



Cymdeithas y Cyfreithwyr  
The Law Society

**Consultation on a separate  
legal jurisdiction  
for Wales**  
June 2012



1. The Law Society is the representative body for 150,128 solicitors in England and Wales<sup>1</sup>. The Society represents and supports solicitors, negotiates on behalf of the profession, lobbies regulators, government and others and serves our members, the profession and public by defending the rule of law and promoting access to justice.
2. In Wales, The Law Society has a permanent office which is resourced to enable solicitors across England and Wales to reply to both law and policy consultations and to respond to current legal issues both stemming from the devolution of law-making and consequent upon a developing and distinct legal community.

### 3. **Overview**

4. The Law Society has responded to the recent inquiry on this subject by the Constitutional and Legislative Affairs Committee of the National Assembly for Wales. Both in our written and oral evidence we explored many of the issues raised in this consultation and how Wales might become a distinct legal jurisdiction. A copy of our evidence to the committee is attached. What could constitute a separate Welsh legal jurisdiction is fluid: there is no single complete definition of a legal jurisdiction for every situation.
5. This consultation is being undertaken ahead of the review by the Commission on Devolution in Wales ("the Silk Commission") of the "powers of the National Assembly for Wales and... modifications to the present constitutional arrangements". In the foreword it is stated that "the Welsh Government will submit written evidence to the [Silk] Commission... That evidence will in part be informed by the outcome of this consultation".

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<sup>1</sup> Total number of solicitors on the roll as of 31 July 2011 - Law Society Annual Statistical Report

6. It is open to argument whether individual aspects of a legal jurisdiction if adopted for Wales might solve the concerns arising from our current circumstance of a single jurisdiction for England and Wales but with distinct legislatures in each country. Any change to the current arrangement raises a wide range of constitutional, administrative, judicial and access to justice issues. All of these issues require careful consideration, in the public interest which should be the guiding principle behind any proposals for change.
7. It appears that more thorough consideration has at this stage been given to the legislative and administrative arrangements that would have to be made in order to create a separate jurisdiction for Wales, than to the implications of a separate jurisdiction for users and providers of legal services in Wales or, indeed, for providers of legal education and training in Wales.
8. The section in the consultation paper on the impact of a separate jurisdiction on the legal profession is short and there is no discussion at all of the possible implications for the public, as users of legal services, of any changes which might be made. It is the impact on both the legal profession and the public of dividing the jurisdiction of England and Wales which requires careful consideration.
9. In our response to the current consultation we explore the broader impact of a separation from the current legal jurisdiction of England and Wales.

#### **10. A global market**

11. The Law Society promotes the benefits of the jurisdiction of England and Wales on a global stage. The law in England and Wales is transparent, predictable, flexible and supports the needs of modern commerce; in addition English is the language of international business. These features make England and Wales a highly attractive jurisdiction in which to resolve disputes.

12. Legal services contribute £3.2 billion per annum to export earnings, largely driven by the popularity of the choice of the law of the jurisdiction of England and Wales in international trade and finance and of our courts and other forms of dispute resolution by international parties. In the context of a separate Welsh jurisdiction, whose future development was uncertain, would all this added value necessarily accrue to England not Wales? While these matters are under consideration, would England and Wales suffer as a law and forum of choice, if parties could not be certain how their contract would be interpreted after separation?
13. Would the legislation on the provision of legal services more generally and the opening up of new markets continue to apply to Wales? With the introduction of Alternative Business Structures ("ABS") into the legal market for England and Wales, an important consideration is whether changes to the delivery of legal services would continue to march in parallel in England & Wales if a separate jurisdiction were to be created? This is particularly so if it involved the creation of a separate profession. Would ABS, or other practices with ambitious growth plans, be as willing to invest and create jobs in Wales in that context? And would ABS, unlike individual law firms, continue to be licensed to provide services in England and Wales?
14. The creation of a separate Welsh legal jurisdiction might dilute some of these benefits and the resulting legal environment in Wales may be weakened as a consequence.

**15. The Profession - Serving our clients and the people of Wales**

16. A separate jurisdiction would raise the question of whether there needs to be a separate legal profession – a defined set of persons qualified and permitted to provide legal representation and advice within the jurisdiction, on matters of domestic law.
17. There are other jurisdictions within the British Isles, many much smaller than Wales for example the Channel Islands and the Isle of Man which have their own legal professions. A separate profession implies a process of

qualification and regulation, designed to protect the public from the risks of incompetent advice and to serve the proper administration of justice.

18. A sophisticated system of regulation of legal services in England and Wales has been established over the past few years, involving the Legal Services Board, the Legal Ombudsman and a set of Approved Regulators e.g. the Law Society through the Solicitors Regulatory Authority ("SRA"). This regulatory structure, even spread across a profession as large as the 150,000 strong solicitors' profession, represents two-thirds or more of the cost of a practising certificate. To duplicate these regulatory structures for Wales alone (even at the Approved Regulator level only) would represent a huge cost burden on Welsh lawyers (and their clients).
19. Would a separate Welsh jurisdiction create a need for a separate regulatory infrastructure in Wales for the legal profession, e.g. the equivalent of the Solicitors Regulation Authority or could practitioners in Wales remain within the current regulatory system? Regulation of legal services includes record keeping, disciplinary proceedings, supervising legal education providers and dealing with the transfer of lawyers into the jurisdiction. This is of central importance because of concerns regarding the ability of practitioners to move freely across the border between Wales and England to practise in future. Solicitors wishing to practise in England could face a double regulatory cost.
20. It might, however, be possible to adapt the existing structures that work for both England and Wales, at least in the first instance, to apply to both jurisdictions. How solicitors qualified in England and Wales would qualify to practise in the new jurisdiction is central. It would be possible, in principle, to ameliorate the potential costs of a separate profession by a variety of measures to make cross-border rights of practise and audience readily accessible and cross-qualification easy to achieve. The SRA could be empowered to regulate two solicitors' professions, of England and of Wales. All those currently qualified in England and Wales might retain that qualification indefinitely.
21. The relationship between Northern Ireland and England and Wales has been held up as an example of mutual recognition of legal qualification however a practitioner from Northern Ireland cannot automatically practise in England and Wales. The SRA requires application through its Qualified Lawyers

Transfer Scheme as for lawyers coming from any other jurisdiction. In the case of Northern Ireland academic qualifications are recognised but a period of training is often required. This situation does not provide an efficient precedent.

22. Are we yet in a position where the body of law which applies uniquely in Wales is so extensive as to justify, in the interests of protecting the public or the due administration of justice, the costs and other consequences of a separate legal profession? In future, a system of accreditation of competence in “the law applying in Wales”, may be a more proportionate measure.
23. There is, too, the impact on providers of legal education and training in Wales. Would all courses in Wales offer only Welsh legal qualifications? At present all are able to provide courses such as Qualifying Law Degrees, Graduate Diplomas in Law and the Legal Practice Course which are recognised by the SRA. Graduates can choose freely whether, having qualified in Wales, to practise in England or Wales. A separate recognition process for such courses for Wales would be hugely burdensome for the providers and a course recognised only for Wales would open far more limited opportunities to graduates.
24. In the context of a smaller legal profession, the costs of training and maintaining a separate legal profession might well be considerable. This is a particular problem as even now there are few practitioners' texts available which deal with the law that solely applies in Wales. Some publications acknowledge that there are separate laws governing subjects in Wales but don't go on to cover that law. Where such resources are not commercially viable the Welsh Government must step in to ensure that materials are available to the profession.
25. And what of the interests of the clients, the Welsh public (both individual and corporate) and those beyond Wales needing legal advice and representation in Wales and on Welsh matters. At present they can choose any solicitor or barrister of England and Wales and the more important or specialised their need is, the more valuable that freedom of choice becomes. Furthermore, that very breadth of choice helps to sustain the competitiveness of the market for legal services in Wales. Creating a separate legal profession in Wales

would have the potential to harm both choice and competition, to the detriment of clients.

26. Any impact on the numbers coming into the profession in Wales could harm access to justice for the public.
27. Further, there must be provision for an adequately funded legal aid system ensuring quality representation and access to justice for all. What funds would be available to the Welsh Government for the new Welsh legal jurisdiction?
28. The Welsh Government is undertaking a review of advice services for Wales which should take account of future developments in order to guarantee that the most vulnerable members of society receive good legal representation, where required, which is essential if they are to be able effectively to enforce and defend their rights.

## **29. Conclusion**

30. The impact on the legal profession and the consequent impact on access to justice by the public requires careful consideration: the price of creating a separate legal profession for Wales, as an incident of a separate legal jurisdiction, would be a heavy one.
31. Whatever political and administrative decisions are made the Law Society, would hope to continue to represent all solicitors in England and Wales, in whatever kind of practice they operate. Maintaining a single profession would be in the public interest, even if a separate Welsh jurisdiction were to be created, unusual as such an arrangement might be.

Please refer any questions regarding this response to:

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