



The Constitutional Future of Wales

A RESPONSE FROM WCVA

1. [Wales Council for Voluntary Action](#) (WCVA) is the national membership body for voluntary organisations in Wales. Our purpose is to enable voluntary organisations to make a bigger difference together.
2. This consultation response follows engagement with the voluntary sector. This included a well-attended joint event for members of WCVA and Public Affairs Cymru, as well as wider-ranging cross-sector digital engagement. We thank Public Affairs Cymru, as well as all the people that attended the event or fed back their thoughts on the constitution in other ways.
3. WCVA knows that a large number of voluntary sector organisations feel strongly about the constitution, even though this is not usually their primary focus. Academic research tentatively shows that devolution has been positive for civic society, and there is certainly a perception within the sector that Welsh Government is more accessible than Westminster. Indeed, the Government of Wales Act placed a statutory duty on Welsh Government to maintain a Third Sector Scheme, setting out how government will engage with the sector, at the time hailing Wales as the first country in the world to contain such a duty in its constitution.
4. Our response is also informed by our work enabling voluntary organisations to engage with both the government and legislature at UK and Wales levels over many years. This includes the successful campaign for a partnership approach between government and the voluntary sector to be embedded in the founding legislation for devolution in Wales. WCVA has facilitated voluntary sector engagement under the Third Sector Scheme since devolution. We have lobbied for structures that support more effective voluntary sector participation in successive amendments to the devolution settlement. We also work in partnership with others promoting similar principles at Wales, UK and international levels.
5. The importance of this relationship is reflected in [our strategic goals](#). We want to see voluntary organisations recognised as equal partners in achieving well-being in Wales. We are working towards more collaboration across all sectors and for a democracy that better supports participation by voluntary organisations.
6. Achieving the Wellbeing Goals for Wales – and the Sustainable Development Goals – requires all hands on deck. It needs models of governance that enable all stakeholders to collaborate, pooling resources, knowledge and expertise. The active

participation of the voluntary sector is core to this. This Commission is an opportunity to consider how these forms of governance that support the Wellbeing of Future Generations are reflected in our constitution.

WHAT WORKS ABOUT OUR CURRENT CONSTITUTION?

7. People generally praised engagement with the voluntary sector by both the Welsh Government and the Senedd.
8. We welcome the statutory duty in the Government of Wales Act for Welsh Ministers to make a [Third Sector Scheme](#) setting out how they propose to promote interests of voluntary organisations. This is the first constitutional requirement of this kind in the world.
9. Key pieces of legislation have defined a process for policy-making in Wales which support participation and which are broadly supported by the sector. Most notably this includes provisions in the Wellbeing of Future Generations Act. There are also a number of duties in more specific policy areas, not least under the Social Services and Well-being Act. Whilst not all have been fully implemented across the whole of the public sector, the broad principles behind embedding these attitudes was welcomed.
10. Generally, it was felt that Welsh Government put Wales first in its decision-making. Devolved government has meant more possibility for innovation, with the plastic bag charge and removal of No Fault evictions cited, as well as potentially a more focused approach to issues. Voluntary organisations have often been at the forefront campaigning for these innovations in policy and legislation.
11. Organisations who we engaged with in developing this response did not generally take a position on whether there should be more or less devolution. People commented from an individual perspective informed by their professional experience. Devolved power was welcomed by a large proportion of people we engaged with. Many would like to see further devolution. However, a small minority would like to see devolution ended.

WHAT DOESN'T WORK ABOUT OUR CURRENT CONSTITUTION?

12. The constitution enables different governments at UK and Wales levels to take very different policy positions. The results can be jarring where there are overlapping responsibilities and levers. For example, one person cited the firebreak lockdown imposed by Welsh Government during the pandemic. Welsh Government did not have the ability to pay costs for furlough, and UK Government refused to offer it. Welsh Government has a lot of powers and responsibilities, but this situation highlighted that there are areas beyond their control which limit their options.
13. Tensions have emerged in the operation of devolution settlement that the constitution isn't well equipped to deal with. Respondents reported a sense that legislation is being passed that impacts Wales, despite consent not being given by Wales, and divergence in areas where there should be shared competence. An example given was UK Government's bid to introduce a Bill of Rights to replace the Human Rights Act, which is in 'stark opposition' to the way the legislative landscape in Wales is moving. Another

example would be the Internal Markets Act, which restricts some areas Welsh Government can operate in that were previously devolved.

14. Similarly, there are issues about how Welsh and UK Governments navigate space where there is Welsh activity, but where UK Government can intervene – for example, international affairs. Welsh Government has responsibility in Wales to implement international agreements, but Wales has no constitutional guarantees of being able to feed into the process of developing such agreements at UK level. Wales should surely have a reliable mechanism to feed into these agreements, but currently it does not.
15. Food and farming was highlighted as problematic under the current devolution settlement, with some aspects devolved to Wales and others not. For example, Welsh Government can pass laws governing what happens on farms, but UK Government passes laws on trade, meaning there is no Welsh influence on what happens to its food once it leaves the farms. Similarly, UK Government may be about to pass legislation around genetically-edited food, and Welsh Government has stated it is opposed to this.
16. This is an example of an area where voluntary organisations in Wales have been actively campaigning over for many years. There are routes to engagement with the Senedd and Welsh Government which are relatively open. It is more difficult for voluntary organisations based in Wales to get their voices heard at a UK level. There is no Third Sector Scheme equivalent for engagement with UK Ministers or departments.
17. Respondents felt Wales lacks control in areas such as benefits, taxes, equality, diversity and human rights. There can also be confusion over who is responsible for what, with too much bureaucracy and too many organisational units.
18. Fundamentally, the voluntary sector is concerned that there is not a consistent approach to collaboration and resolving tensions between the Welsh and UK Governments. There have been successes, such as the vaccine rollout, but often there is tension rather than cooperation, even if unintentionally. The structures that support inter-governmental relationships are not well understood. The decision-making does not feel transparent and there is little scope for wider civil society engagement.
19. How well our constitution and democracy functions are impacted by factors beyond the constitutional settlement itself. For example, the media plays an important role in a healthy democracy – sharing information and enabling people to engage in the policy and legislative debates. The weakness of the Welsh media is a concern. Much of Wales relies on English media for its information. This means that people are less aware of policy in Wales and can be unaware that it is different from policy and legislation in England. One respondent highlighted how this results in situations such as during the pandemic, when many people living in Wales heard more from the media based in England about UK Government policy than from Welsh media explaining Welsh Government policy and the rules in Wales. One proposal to address this was a Welsh Government campaign reminding people exactly what its powers are.
20. Government communications itself can also be a barrier to participation. There can be a lack of Plain English/Cymraeg Clir in Welsh Government information and consultations, limiting public involvement and engagement. The Welsh Government

endorsed [National Principles for Public Engagement](#) offer a benchmark as to how engagement should be conducted.

21. The policies of individual governments also make a difference to voluntary sector engagement. Sometimes these are reflected in legislation. Recent governments have taken very different approaches at the UK and Wales levels. The current and recent Welsh Governments have emphasised the unique role voluntary organisations play within wider governance in Wales. This has been reflected in the legislation mentioned above as well as in public statements.
22. In contrast, UK voluntary sector networks are extremely concerned about policy, practice and legislation from recent UK governments which restrict voluntary sector voice in our democratic processes, threaten our independence and shrink the civil space for taking action. Examples include the Lobbying Act, the Police Act, and inappropriate political pressure on the Charity Commission, including during the appointment of its Chair. These are threatening the extent to which voluntary organisations are able to fully participate and play their role in a healthy democracy.
23. We are also aware that the voluntary sector in Wales has relatively less income than the voluntary sector in other parts of the UK (see [WCVA Data Hub](#)). Most of the voluntary sector consists of very small organisations with little or no funding. There is limited capacity to engage in developing policy and legislation. This is also a concern if the voluntary sector is to play its full role within our democracy in Wales. Infrastructure and membership bodies like WCVA have a role to play here. We have been pleased to [work in partnership with the Wales Governance Centre](#) to help increase capacity for our sector to engage in complex areas of policy and legislation.

WHAT SHOULD THE CONSTITUTION LOOK LIKE IN FUTURE?

24. Co-production should be enshrined in the constitution to ensure it is always more than just a box-ticking exercise. WCVA is a member of the [Open Government Network](#) in Wales. We support open principles of participation, accountability and transparency in government and would like the Commission to explore how these can be embedded in our constitution.
25. On a similar note, the constitution should foster a much more cooperative environment through governmental procurement and grant-giving practices, rather than the competitiveness that many processes force upon those bidding to provide services at the moment. This would allow for more innovation and less siloed working. Commitment to the sort of legislation outlined above would be a useful starting place for this. The sector notes with interest the Social Partnership and Procurement (Wales) Bill and anticipates this could help in regard to the points above.
26. A commitment to inclusive governance and in particular the Third Sector Scheme within the Government of Wales Act has been extremely important and we want to see this continuing. We would like to explore similar commitments to support participation with the Senedd. We would also like to see such an arrangement developed between the voluntary sector and the UK Government.
27. A structured mechanism should be put in place to allow all parliaments and governments in the UK to learn from each other and share best practice. UK and Welsh Government should be working in partnership rather than conflict, with the

council with devolved governments, set up following the Intergovernmental Relations Review, playing a key role. These inter-governmental relationships should also be more transparent and open to partnership with other sectors. Currently they are hard to engage with.

28. The constitution should ensure all voluntary sector organisations, including small organisations at grassroots level, are given equal opportunity to have their voices heard by Welsh Government. Again, we highlight the National Principles for Public Engagement here, as well as other mechanisms to require engagement by public bodies.
29. The idea of a written constitution should be explored, via engagement with the voluntary sector. Within it could be contained a best practice approach on how UK and Welsh Government should work together. It could also set out a space to show how the sector can engage with both governments, and help guard against regular ad-hoc changes of the type we have been seeing recently – for example, the Common Frameworks, which, while perhaps beneficial to both countries, lack transparency. All changes in legislation or regulations, and new legislation and regulations, should be debated effectively, with opportunity for the voluntary sector to engage.
30. A new or revised constitution should ensure that sustainable development is one of its guiding principles. To make sustainable development a continued success, participation and collaboration is essential for cross-sector working. Sustainable development already features in the Government of Wales Act; it should be retained and strengthened in any new constitution.
31. Whether a written constitution is adopted or not, cross-border relationships, both now and in the future, are hugely important. Many Welsh and English towns and cities are in very close proximity to each other, and cooperation and conversation between decision-makers in these areas will continue to be vital, no matter what the future holds.
32. Many European countries have bodies that bring together the voluntary sector, businesses and trade unions to have a voice into policy-making. There is nothing like that in the UK, although the upcoming Social Partnership and Public Procurement Bill has some of these elements. We would support such an idea being explored more fully in Wales.
33. Some countries – Australia was cited as an example in its approach to managing its internal market – use cooperative intergovernmental mechanisms, where central and non-central governments collaborate in policy areas that lend themselves to cross-border tensions and solutions. Entrenching this type of collaborative and transparent body has the added benefit of creating fora that makes engagement and workload management easier for stakeholders like voluntary sector organisations, who otherwise may have to split their capacity between central and non-central actors. We would support exploring this idea further to see if it might be suitable in Wales and at the UK level.
34. Any future constitution, written or otherwise, should feature the Wellbeing of Future Generations Act at its heart. We are all working towards achieving the seven wellbeing goals, and it would be a huge oversight for any future constitution to not place this work at its centre.

FURTHER DISCUSSION

35. WCVA is happy to meet with the Committee, Welsh Government or Members of the Senedd to further discuss the issues raised in this response.

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