

Welsh incremental devolution: history repeats itself, first as tragedy then as tax?

By Democratic Audit

*The possibility of significant tax devolution to the Welsh National Assembly appears to be an increasingly remote prospect. In the latest post of Democratic Audit's [Future of the Union](#) series, **Adam Evans** argues that Financial Competence Orders, a system for devolving taxation, should become the focus for Welsh devolutionists.*

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If time flies by when you're having fun, the Wales Office must be in an almost

catatonic state of puritanical despondency since the publication of the first report of the [Silk Commission](#) (established by government to explore the Welsh devolution settlement) in 2012. Having stretched the meaning of Spring to new levels (or should that perhaps be depths), the Wales Office is still to offer a meaningful response to the Commission's recommendations of a partial devolution of taxation to the National Assembly for Wales. A situation that is particularly curious since insistence on some measure of fiscal responsibility for the Assembly was not only written into the Commission's terms of reference, but was placed as the Commission's highest priority by being part one of the Commission's remit (and thus able to respond and be enacted upon during the lifespan of the coalition government).



The Green Bridge of Wales, Pembrokeshire (Credit: JKMMX, Wikimedia Commons)

The possibility of some measure of significant tax devolution to the National Assembly appears to be an increasingly remote prospect. Firstly, Silk, in response to Welsh Labour and the chairman's personal mission for cross-party consensus, insisted that any form of income tax devolution (the biggest source of potential government revenue in Wales) would be dependent on a referendum. As Wyn Jones [has argued](#), a referendum on such a proposal appears unlikely to occur, particularly because of the quadruple lock (the approval of the UK and Welsh Governments, both chambers of Parliament and two thirds of Welsh Assembly Members) required to activate the referendum. However, even were a referendum to occur it appears difficult to see it being a success for devolutionists, after all who could envisage, or would be willing to consider, campaigning under the banner "Yes to Taxation." Such a campaign would be doomed to fail, indeed Welsh Labour's argument behind such a referendum is rooted in the claim that campaigners in the 2011 Welsh further powers referendum had to specifically promise that income tax would not be devolved. If this was the biggest stumbling block "Yes for Wales" campaigners faced among voters, then we should hardly be filled with confidence for the prospects of any such referendum were it to happen.

However, a more recent threat has emerged to the potential devolution of fiscal accountability to the National Assembly for Wales and more worryingly for proponents of fiscal devolution this has emanated from the department that had been the bastion of such devolution; the Treasury. In a consultation launched last month on the devolution of Stamp Duty to the Assembly (as recommended by both the Holtham and Silk reviews) the Treasury asked a number of questions:

- the potential impacts on the construction industry and the property market (including the housing market) given the populous border between Wales and England;
- the likely impact on investment and business location decisions that might result from different property transaction tax regimes in England and Wales;
- the administrative burdens on companies and the conveyancing profession from having to comply with potentially different property transaction tax regimes and deal with different collection authorities in England and Wales.

It does not take the wits of a high calibre political scientist or consultant to read between the lines of such questions or of the purpose of the Treasury's consultation. Having been at the vanguard of fiscal accountability, the Treasury is now the staunch defender of an increasingly discredited fiscal ancien regime, providing a consultation that in any other context would be compared to push polling i.e. seeking deliberate answers to their questions. In this case clearly seeking responses that are opposed to the devolution of Stamp duty devolution to the Assembly.

Indeed, the seemingly deliberate devosceptical attitude of the Treasury's stamp duty consultation is only further enhanced when one considers recent articles from *The Times* and *The Telegraph* to the consequences of stamp duty devolution, journals of record that can hardly be accused of providing regular analysis of the Welsh devolution dispensation. For both newspapers, the tone was overwhelmingly a negative one, warning that devolution of stamp duty could see English second home owners penalised with a specifically targeted tax bill (for example, see [here](#)).

If any form of income or stamp duty devolution looks unlikely then what about the rest of the Silk agenda I hear you ask, after all surely the aggregates levy is safe? Well... no. The aggregates levy, described by Silk as a "tax on sand, gravel and rock that is dug from the ground or dredged from the sea in UK waters" may appear relatively uncontentious on first glance, yet a further analysis again reveals a more pessimistic (for devolutionists) picture. Despite recommending, in principle, that the aggregates levy should be devolved, Silk essentially offers a more tentative suggestion. Following legal challenges against the use of the aggregates levy in Northern Ireland that has seen success for the British Aggregates Association, who have opposed any form of aggregates relief in the province, in the European Courts, Silk actually ends up recommending that "it would not be appropriate to devolve the levy while any doubt as to the legality of doing so remains".

With barriers to significant fiscal devolution emerging from sources as diverse as the British Aggregates Association, [Bristol Airport](#), Welsh Labour and the Treasury, one might be forgiven for writing Silk off entirely. However, one should not completely write off the chances of any devolution of fiscal levers to the National Assembly for Wales. Indeed, hope may lie in mechanisms that have gone down in Welsh constitutional infamy.

Within both Silk and the Calman Commission reports is the recommendation in both Wales and Scotland of concordats between those respective nations and Westminster over the creation of new taxes and that when Westminster is considering new forms of taxation the presumption should be in favour of devolving such taxation to the respective legislatures (this forms Recommendation Nine in the Silk Commission's First Report). The Scotland Act 2012 legislates for this recommendation, in Part Three of the Act, creating the mechanism, via an Order in Council, for Her Majesty to:

“a) specify, as an additional devolved tax, a tax of any description” (Scotland Act, Part 3 Section 80B: 16).”

For Welsh constitutional scholars, or amateur anoraks, such mechanisms may bring back cold sweats and memories of Part Three of the Government of Wales Act 2006 and the byzantine system of Legislative Competence Orders (a mechanism that essentially created a tricameral Welsh legislature by requiring the Assembly to seek legislative powers via Orders in Council that were dependent on the approval of the House of Commons and Lords). Yet, despite the bad memories and impracticalities of LCOs, in the face of such substantial opposition from vested interests in industry, Welsh Labour and (it apparently seems) the Treasury, this system for devolving taxation, legislated for in the 2012 Scotland Act and recommended in Silk and which I have decided to label as Financial Competence Orders, should become the focus for Welsh devolutionists. Slow and laborious it may be, but in the short term FCOs may be the least worst system of securing a meaningful devolution of fiscal accountability for the National Assembly for Wales.

Note: This article gives the views of the author, and not Democratic Audit, nor of the London School of Economics. It originally appeared on the LSE Politics and Policy Blog and can be viewed [here](#). Please read our [comments policy](#) before posting.

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This post is part of Democratic Audit's **Future of the Union** series, which explores the UK's future prospects as a political union and the implications of constitutional and territorial changes. To read more posts in this series [click here](#).

