



**Wales Centre for Public Policy**  
**Canolfan Polisi Cyhoeddus Cymru**

# **Building a Welsh probation service**

## **Part 1: Models and pathways**

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# Summary

- The Welsh Government is advocating for the devolution of probation and youth justice. In its manifesto for the 2024 General Election, the UK Labour Party committed to exploring the potential for devolving the probation service to Wales.
- WCPP was commissioned to examine options and pathways for devolution, with a focus on short- to medium-term implementation. In this report (Part 1), we suggest three main pathways for devolution. In Part 2, we consider case studies from different European countries.
- **A Memorandum of Understanding (MoU)** similar to that used in Greater Manchester and elsewhere, offers the opportunity for co-commissioning services. Although this provides limited scope for overcoming workforce or delivery challenges, it does facilitate responsiveness to local needs and offers some flexibility to increase the service.
- **Executive devolution** would grant the Welsh Government operational control of probation, while reserving legislative control and most aspects of delivery to the UK government. The Welsh Government could improve working conditions and introduce new values and organisational cultures but would not be able to redefine the role of probation or radically change its delivery.
- **Legislative devolution** would transfer probation from a reserved to a devolved power. New Welsh probation governance would need to be established, allowing for significant changes to current arrangements. However, sentencing would remain with the UK government, limiting the extent to which probation can be delivered differently. This approach would also be highly resource-intensive and may offer limited value for money within a mostly reserved criminal justice system.
- We also consider a range of practical considerations that will need to be managed across the different options, mindful of the practical, operational and financial contexts within which the Welsh Government will be working.
- Ultimately, the decision on which devolution model to pursue will depend on the outcome of negotiations between the Welsh and UK governments. Our work aims to inform these discussions by highlighting the challenges and opportunities associated with the different potential models.

# Introduction

At present, the criminal justice system in Wales operates within a single England and Wales jurisdiction, with the UK government responsible for the administration of justice. The Welsh Government, following the recommendations of the Thomas Commission, is seeking the full devolution of justice to Wales (Commission on Justice in Wales, 2019; Welsh Government, 2022). In line with this, the Labour Party Commission on the UK's Future, chaired by Gordon Brown, recommended that youth justice and probation be devolved to Wales (Commission on the UK's Future, 2022).

In response to these recommendations, and following the conclusions of the Independent Commission on the Constitutional Future of Wales, the Welsh Government believes that there is a realistic prospect of the devolution of aspects of the justice system in the near future. They are, therefore, preparing for this possibility by adopting a phased approach, beginning with the devolution of probation and youth justice (Welsh Government, 2024).

The Wales Centre for Public Policy (WCPP) has been tasked with conducting research to support the work being carried out by the Welsh Government and their independent expert adviser, Dame Vera Baird KC (Welsh Government, 2024). This research is also intended to complement work carried out by the Probation Development Group (PDG) at the Welsh Centre for Crime and Social Justice, which has set out a vision for the future values, governance, and practice of a devolved probation service (Probation Development Group, 2023).

Our research primarily focuses on the **delivery mechanisms and pathways** for devolution, addressing four main questions:

1. What potential benefits could arise from the devolution of probation to Wales?
2. What approaches and models to the delivery of probation could best realise the potential benefits of devolution?
3. To what extent would benefits be realisable without primary legislation?
4. What non-legislative considerations should be taken into account in devolving probation, and how could they be addressed?

Our work was commissioned prior to the UK General Election in July 2024. However, in line with the UK Labour Party's commitments, we have assumed that, should probation be devolved, it would in the first instance be either alone or alongside youth justice only, with the rest of the criminal justice system remaining a reserved power. Should further devolution of justice proceed, it would be necessary to revisit the benefits, trade-offs, and practical considerations we have identified. Importantly, we

do not endorse a particular approach to the devolution of probation but instead present a broad range of options to assist Welsh Government planning.

We have drawn on existing academic and grey literature, and conducted interviews with relevant stakeholders, including: i) academics and researchers both within and outside the UK; ii) practitioners from England and Wales, Scotland, and Northern Ireland; and iii) practitioners from other European countries. Additionally, we held a roundtable event in May 2024, bringing together experts and stakeholders from the above categories, from across government and representatives of third sector organisations.<sup>1</sup> Our research focuses on high-level strategic considerations rather than specific probation functions (such as unpaid work or approved premises). Should devolution proceed, these questions would form part of future planning and negotiations between the UK government (including HMPPS) and the Welsh Government.

Our report consists of two parts. This report, which forms **Part 1**, begins by examining the current settlement and the potential benefits of devolving probation. It also explores practical considerations that will need to be addressed alongside devolution, including governance, workforce, and oversight. We then present different options for devolution, setting out three possibilities and the accompanying opportunities and trade-offs.

**Part 2** examines how various European countries organise their probation systems, with case studies that are of particular relevance to Wales.

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<sup>1</sup> Ethical approval for this project was obtained from the Cardiff Business School Research Ethics Committee at Cardiff University.

# Context and benefits of devolution

The Probation Service is currently not devolved and is operated as part of the England and Wales justice system, specifically as part of His Majesty's Prison and Probation Service (HMPPS). This section outlines how criminal justice operates in Wales and recent developments within the probation service across England and Wales, before exploring potential benefits that could arise from devolving probation.

## The criminal justice system in Wales

Wales is the only devolved nation in the UK without responsibility for justice or its own legal jurisdiction. It has been part of a combined legal jurisdiction with England since the Laws in Wales Acts 1535 and 1542, which annexed the Principality of Wales and the Marcher Lordships to the Kingdom of England, extending English law to Wales. While there have been laws that applied only or in particular to Wales since then, including significant legislation such as the disestablishment of the (Anglican) Church in Wales and the Welsh Language Acts of 1967 and 1993, it is only after the devolution of primary law-making powers in 2011 that a distinct Welsh body of law has emerged.<sup>2</sup>

Following the devolution of primary law-making powers, there have been a number of government commissions that have considered whether further powers should be devolved to Wales. The Silk Commission, which led to the Wales Acts 2014 and 2017, recommended devolving policing and youth justice in part II of its reporting (Commission on Devolution in Wales, 2014). It also recommended devolving prisons and probation following the devolution of policing and suggested a review on the devolution of the administration of justice and, eventually, full legislative devolution. Similarly, the Thomas Commission on Justice in Wales advocated for the full devolution of justice to Wales (Commission on Justice in Wales, 2019). The Welsh Government's position following these recommendations has been to 'pursue the case for devolution of justice and policing' (Welsh Government, 2022: 8).

One reason for pursuing the devolution of justice relates to the so-called 'jagged edges' of the current Welsh criminal justice system. These are the 'intersecting

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<sup>2</sup> Laws applying specifically to Wales before devolution predominantly fell into two categories: those influenced by Wales' historically nonconformist religious makeup (such as regulation of Sunday drinking or disestablishment) and, especially later in the 20<sup>th</sup> Century, those relating to the use of the Welsh language.

competences and responsibilities shared between two governments [the UK and Welsh] with different political priorities and accountable through different electoral mandates' (Jones and Wyn Jones, 2022: 8). These jagged edges are complicated further, Jones and Wyn Jones argue, by the fact that the responsibilities of the Welsh Government make the Welsh Government an 'integral' part of the criminal justice system (2022: 86). These responsibilities include crime prevention and community safety alongside health, education and social services. This, along with Wales-specific legislation, create a *de facto* Welsh criminal justice system within the *de jure* England and Wales jurisdiction.

The case for, and potential benefits of, full legislative devolution of justice are considered elsewhere, and we do not consider them in further depth here; neither do we consider in detail any reasons for opposition to such devolution. It is, however, important to note that the Welsh Government suggests that devolution of justice will proceed in a phased way. Mark Drakeford MS, First Minister at the time, suggested that probation and youth justice are 'the areas of the criminal justice system that sit closest to the responsibilities that are already devolved and where we could make the most immediate difference' (Drakeford, 2019). Both Vaughan Gething and Eluned Morgan, in their roles as First Ministers, have expressed a commitment to pursue probation devolution to some extent.

The UK Labour Party's manifesto for the July 2024 General Election committed to:

- 'Consider' the devolution of youth justice to Wales; and
- 'Explore the devolution of services' as part of a strategic review into the probation system (Labour Party, 2024: 112).

However, the manifesto did not commit to the devolution of policing or justice and it has previously been suggested that these would not be pursued (Deans, 2024). In this context, it is likely that probation devolution will occur initially within a predominantly reserved England and Wales criminal justice system.

## The probation service in England and Wales

Probation in England and Wales is currently delivered through the Probation Service, an executive agency sponsored by HMPPS. The Probation Service was formed following the reunification and nationalisation of the system, which had been largely privately delivered since 2014.

Under the Probation Service, Wales forms one of twelve regions across England and Wales, overseen by a Regional Director. It is further divided into six Probation Delivery Units: North Wales, Dyfed Powys, Swansea Neath Port Talbot, Cwm Taf Morgannwg, Cardiff and Vale, and Gwent (Probation Service, 2021).



The service has three core responsibilities: rehabilitation, supervision, and risk management (Beck and McGinnis, 2022). In a Welsh context, it is argued that a primary aim of a probation service should be to divert people away from custodial sentences, particularly as England and Wales has one of the highest incarceration rates in Western Europe (Fair and Walmsley, 2024). Some academic work disaggregating data from England and Wales shows that Wales has a higher in-country rate of imprisonment than England and a larger population of prisoners based on their declared home address (Jones, 2023).<sup>3</sup>

To fulfil these roles effectively, a well-functioning probation service requires close integration with agencies beyond the court system, including housing, employment, education, welfare, and health services. However, the UK government's retention of responsibility for probation leads to considerable overlap between services delivered at local, devolved, and UK national levels (Commission on Justice in Wales, 2019).

Historically, probation officers were officers of the courts and maintained strong professional relationships with the judiciary, particularly magistrates. This has been perceived by stakeholders as a particular advantage of previous UK probation arrangements, as it enabled close working relationships to be built and led to a high degree of confidence in probation on the part of sentencers. However, in the past two decades, the Probation Service has undergone significant organisational change, including the proposal to create an integrated end-to-end National Offender Management Service by the Carter review (Carter, 2003). This reflected a perceived need to use resources more efficiently and to introduce 'contestability' via private or third-sector organisations. The probation service was subsequently part-privatised under the Coalition government, with 'high-risk' offenders managed by the National Probation Service, while 21 tendered Community Rehabilitation Companies were responsible for other offenders. Evidence suggests that this model negatively impacted desistance in those considered high risk and developed perceptions of both bodies' priorities and capabilities (Kay, 2016). The rationale for moving to a privately delivered probation system was partly to increase innovative practices in the sector, but this did not materialise on the scale intended (Justice Committee, 2021; Tidmarsh, 2020). In 2021, following reunification and renationalisation, the entire Probation Service was placed under HMPPS.

In addition to the contestability rationale mentioned above, prisons and probation were originally merged to better join up offender management, which had been seen

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<sup>3</sup> A number of additional factors might influence the location of court hearings and sentencing, and home addresses are not captured for all prisoners (although they are for 97% of them). These and other factors, including the fact that data are not disaggregated by the Ministry of Justice, mean that these figures cannot be considered completely certain.

as fragmented, and to offer better value for money and budget flexibility across prisons and probation (Garside, 2004). However, the idea that prisons and probation services are both involved in offender management and therefore organisationally well-situated together does not always reflect the perception of those working in probation. There has been a long-standing view that the probation service exists to provide alternatives to custody or even play an anti-incarceration role in the criminal justice system (Gough, 2005). Some probation practitioners and trades unions believe that integrating probation with the prison service risks subsuming probation into wider organisational cultures weighted more towards custodial approaches to offender management (NAPO Cymru, 2018). Additionally, some feel unification with prisons has harmed probation's relationship with the courts and judiciary.

More broadly, devolution could provide an opportunity to strengthen the probation service's presence in local communities (Raynor and Deering, 2023). Research and findings from some interviewees suggests that a reduction in the number of community sentences is due to a lack of judicial confidence in the performance of the Probation Service (Rowland, 2024a). Low staffing levels and high workloads are historical issues for the Probation Service, with many probation officers handling 'unmanageable caseloads' (Justice Committee, 2021: 34). Existing evidence indicates a strong link between caseloads and outcomes for those supervised by the probation service (Raynor and Deering, 2023). Research into practitioner values highlights a commitment to traditional emphases on social work and rehabilitation, however, it is suggested that this would be made more difficult given the continuation of the negative working conditions in the current environment (Raynor and Deering, 2023; Deering et al., 2023).

Probation currently faces a number of significant challenges. Before the UK general election, experts warned that the probation service was 'dangerously overstretched' and lacked the capacity to manage existing offenders effectively, with most only being supervised for two-thirds of their licence period (Rowland, 2024b). Within HMPPS, poor retention and high staff turnover are recognised issues, and the performance of Probation Delivery Units is declining (Rowland, 2024a). Prisons are nearing capacity, and recent changes meaning prisoners are automatically released after 40% of their sentence term rather than 50% will significantly increase probation caseloads in the short term (Kersley, 2024).

## Potential benefits of devolution

There are two main reasons for pursuing the devolution of probation: as part of a broader nation-building agenda, or to better implement policies that improve the performance of the probation function in Wales. Our work focuses on the latter, and therefore we consider the potential benefits of devolution as those that: i) improve coordination with the devolved aspects of the Welsh public service; or ii) provide the

opportunity to reform the values, operating model, and working conditions within a devolved probation service.<sup>4</sup>

### **A better interface with the devolved aspects of the Welsh public service**

These benefits address the jagged edges of the current settlement. The devolution of probation offers an opportunity to support better coordination and joined up working between a Welsh probation service and other services already devolved to Wales.

In particular, this could build on existing partnerships with the public and third sectors in Wales, allowing for a more responsive approach to local needs by involving local partners in service delivery. Better cooperation with local stakeholders and partners could help provide integrated services focused on the needs of offenders and lower the chance of reoffending. A well-functioning relationship between the probation service and these other agencies can help offer holistic support to offenders (Raynor and Deering, 2023). Probation already collaborates with agencies under Welsh Government responsibility, including health, social services, social care, education, housing, and aspects of employment support. Devolution could strengthen these important links, with the ability to better focus resources to offer services tailored to offenders' needs in different areas (Borja et al., 2023). For example, unpaid work schemes could be adapted to maximise future employment opportunities in an offender's local area (Welsh Government, 2024).

In addition to targeting of resources, devolution could also facilitate potential co-location of services. This could build on existing partnerships and pilots such as the Grand Avenues project in Ely and Caerau, Cardiff, which aim to deliver probation services locally through community hubs linked-up with other services such as charitable organisations, learning opportunities, and access to community services. We have heard that local authorities see benefits of this approach, particularly in being able to take a holistic approach to managing offenders in the community, meaning this could be formalised in a devolved system.

Devolution could enable better connections with existing Welsh policy, potentially increasing alignment with Welsh policy ambitions and ways of working, particularly if a desistance approach were adopted.

The UK Probation Service is already invited to meetings of Public Services Boards, and appears to attend when possible, suggesting that there is a degree of existing partnership working that could be enhanced by devolution. A Welsh probation

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<sup>4</sup> It is outside of our remit to consider the merits or demerits of the devolution of probation for nation-building purposes, although should this be the rationale then different weight will need to be given to some of the topics raised in these papers.

service, if established as a public body under the Well-being of Future Generations (Wales) Act 2015, placing a requirement on it to act in accordance with the seven well-being goals and five ways of working. It may also fall under the remit of the Auditor General for Wales for audit purposes.

Devolution could also increase partnership working in areas such as community cohesion (for which the Welsh Government is responsible) and community safety (the responsibility of the Welsh Government, but interacting with reserved criminal justice powers). Some research suggests existing Community Safety Partnerships are not working as effectively as they could, partly due to the complexities of operating on the jagged edges (Rabaiotti and Harrison, 2023). Devolution could present an opportunity to rationalise and reform the governance arrangements for these partnerships and thereby improve their effectiveness.

### **The potential to change values, operating model and working conditions**

These benefits offer the potential for a devolved probation service to address perceived shortcomings in the current probation delivery model over a longer period. These predominantly relate to the working conditions currently faced by probation officers and the values and operating model that a Welsh probation service might adopt.

Working conditions are a recognised issue within probation. The most recent reporting suggests a vacancy rate of 28.3% in the Wales region of the UK Probation Service (HM Inspectorate of Probation, 2023).<sup>5</sup> Staff retention, high rates of sickness absence, and workload pressures are all significant issues within the current service, alongside a high resignation rate – particularly among experienced staff – and a notable percentage of absences linked to mental health (HM Inspectorate of Probation, 2023: 19). Analysis suggests that these issues are contributing to poor performance and service provision (Rowland, 2024a).

With increased recruitment and the return to public provision, caseloads are felt to have reduced compared to when provision was undertaken by Community Rehabilitation Companies (HM Inspectorate of Probation, 2023). However, 68% of probation officers and 62% of probation service officers still feel their caseloads are unmanageable to some extent (HM Inspectorate of Probation, 2023).<sup>6</sup> High vacancy rates are contributing to increased caseloads, sometimes significantly (Kersley, 2024). In March 2022, the average probation officer caseload was 34; by contrast,

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<sup>5</sup> The percentage rate has been calculated by the authors based on data contained within the report cited.

<sup>6</sup> Probation service officers supervise lower-risk offenders and are not required to hold a probation qualification.

the average caseload for justice social workers in Scotland was 27.4 in 2022 (Baroness Scott of Bybrook, 2022; Miller and Barrie, 2022).<sup>7</sup>

Practitioner values surveys show a commitment to more rehabilitative, relationship-based models of probation, linked to a broader social work ethos, extending beyond 'simple' offender management paradigms (Raynor and Deering, 2023:17). Restoring a connection between probation work and social work – for instance, by reinstating the requirement for probation officers to have a social work qualification – would be a step the Welsh Government could choose to take to reinforce these values. This would also help to encourage mobility between probation and social work, encouraging the exchange of good practice between disciplines. Such a process would, however, need to be carefully managed in light of the qualifications within the current workforce. Additionally, examples of good practice such as Integrated Offender Management post-reunification could be expanded, though this would require additional resources (Maguire et al., 2024).

A more relational approach to probation is also present in the post-reunification target operating model, which engages with evidence on effective delivery of probation (HM Prison and Probation Service, 2021).<sup>8</sup> The values and aims outlined in the HMPPS document have been generally well-received, although some concern has been raised about tensions between these values and other sentencing and risk management pressures (Deering et al., 2023). Devolution could provide an opportunity to embed these values in a new Welsh service that is operationally independent from the prison system and which is therefore potentially less exposed to countervailing pressures. This is particularly relevant given Wales' relatively small size, meaning it is easier to implement new models. Moreover, devolution would provide the opportunity to shift away from what some perceive as an excessive focus on risk management, towards more emphasis on individual needs and responsiveness, through changes in policy and practice (Raynor and Deering, 2023).

Specific values for a Welsh probation service have been proposed by the PDG, drawing on work by the Probation Institute and others (Deering et al., 2023). These values emphasise a model of probation which emphasises the importance of diversion from custody in a Welsh context, including a commitment to social justice, trauma-informed, and people-centred approaches, and viewing crime in its broader social context alongside risks to the individual (Deering et al., 2023). This focus

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<sup>7</sup> 'Justice social workers' are the Scottish equivalent of probation officers. Workloads for probation service officers tend to be much higher, with 53% having caseloads of 50 or more in 2022/23 (HM Inspectorate of Probation, 2023).

<sup>8</sup> The target operating model sets expectations for how the Probation Service will operate following reforms underway in HMPPS.

contextualises the set of values developed by the Probation Institute, considered a good building block for development, which reflect:

- An emphasis on rehabilitation, drawing on the belief in the inherent dignity of individuals and their capacity to change;
- Social justice and inclusion, including through community supervision;
- The rights and the needs of victims in managing offenders' sentences;
- The importance of research and development partnerships; professional development; and dissemination of best practice; and
- A commitment to professional integrity (Deering et al., 2023).

The proposed values above all are intended to support 'an individual's path of desistance' (Deering et al., 2023:10). Others within the PDG have suggested supplementing these with a focus on diversion, bail information provision, and a commitment to restorative justice as key components of a devolved service.

There is commitment to these values within existing Welsh Government work, for instance the Blueprints produced for a future Welsh youth justice system and for female offending (Welsh Government, 2019a; 2019b). These Blueprints reflect some of the aims and ambitions suggested for a Welsh probation service, suggesting agreement on longer-term aims, which could be formalised in any devolution settlement.

However, how far a Welsh probation service could fully orient itself around these values would depend on the specific model of devolution adopted and the broader operational context, including the state of public finances (as discussed in the funding section below).



# Practical considerations

Having considered the broader context, including the criminal justice system as a whole, and the potential benefits of devolution, we move to consider the practical consequences of devolution, beginning with areas that would need to be addressed in any devolution strategy. These include pragmatic enablers and barriers to establishing a Welsh probation service, as well as operational challenges of working within a partially devolved criminal justice system.

## Workforce

The probation workforce is employed by HMPPS as civil servants. However, pay and conditions vary depending on whether staff:

- Were previously employed by the publicly-run National Probation Service;
- Were previously employed by private or third-sector Community Rehabilitation Companies; or
- Joined the service after reunification.

Depending on the model of devolution pursued, staff may be transferred out of HMPPS into a new Welsh probation service or an alternative structure. If the Welsh probation service remains part of the civil service, this transition could be relatively straightforward. However, if the service operates outside the civil service – for example, as an independent or quasi-independent arms-length body – a number of workforce issues would need to be addressed. These include pay, pension, workload, training, entry qualifications, and worker representation, each of which is discussed below.

**Pay structure:** It would be important to create a new pay structure for probation, ideally on a national basis. Experience from Scotland suggests that, where pay is regionally variable, there may be issues in attracting staff to lower-paying regions. Similarly, if pay scales are set too low or not established at all, probation staff may choose to enter different careers. For instance, in Northern Ireland, where a social work qualification is still required for probation officers, competition from other social work employers such as health trusts has contributed to recruitment and retention problems. Additionally, existing probation staff often compare their pay and conditions unfavourably with other sectors and roles with lower levels of risk and responsibility (including retail) (Millings et al., 2023). At present, collective bargaining in the sector exists at a national level, meaning there may be divergence on pay and conditions compared to England in a devolved system.

Pension arrangements would also need to be carefully considered if staff were to leave the civil service. Probation officers currently contribute to the Local Government Pension Scheme, a defined benefit scheme (which offers a pension at a predetermined annual rate based on scheme rules). If probation were devolved and a new agency established, arrangements would need to be made to allow staff access to either the existing scheme or a similarly funded defined benefit scheme. Introducing a defined contribution scheme, which does not guarantee a set retirement income, could result in less generous pension provisions. This would be highly likely to introduce friction with trade unions and staff members and to reduce the attractiveness of a Welsh probation service.

**Working conditions:** Research involving interviews with current staff in the Probation Service found that ‘the language of crisis was routinely used’ when talking about many aspects of the role, and a lack of confidence that conditions would soon improve (Millings et al., 2023: 341). This was underpinned by the extremely high workload placed on staff, which negatively impacts their health and wellbeing. Staff were committed and loyal to what they perceived their role to be, but also felt the significant pressure of managing risk and the potential fear of exposure if someone they supervised committed a Serious Further Offence (Millings et al., 2023).

Concerns were also raised about the number of recent entrants into the Probation Service and whether the training for new staff was adequate, as on-the-job training and mentoring opportunities were limited due to workload pressures. Early-career entrants into the role have stated that the reality of the job was very different from their expectations, reinforcing the need to improve conditions and provide honest information about the demands of the role to encourage retention (Millings et al., 2023).

Depending on the model of devolution chosen, a Welsh probation service may be able to address aspects of workload, risk management, and training issues. This would be most effective under fuller models of devolution, though even models that devolve certain aspects of service delivery could enable mitigating measures to be put in place such as more integrated working, management of lower-level functions, or improved training and development tailored to the Welsh context. However, this would likely require some degree of additional resources or investment.

There is also debate about the prerequisite qualifications for jobs in the Probation Service. Until 1998, probation officers were required to hold a social work degree; now, they are required to complete a Level 6 Professional Qualification in Probation (PQiP) which is delivered on-the-job (HM Prison and Probation Service, 2022). Probation Services Officers, who provide pre-sentencing reports to courts and manage low- to medium-risk offenders, are required to hold or be working towards a Level 3 Diploma in Probation Practice (HM Prison and Probation Service, 2022). The



Probation Development Group advocates for restoring social work values (Deering et al., 2023). Options to implement this could include on-the-job training, reintroducing a formal social work qualification, or a combination of both. Social work qualifications are already required in Scotland, Northern Ireland, and other European countries (Notman, Price, and Tilley, 2024).

Given that the vast majority of existing probation officers lack a formal social work qualification, this transition would need careful management. Qualifications could be provided through accredited institutions in Wales, reflecting the values of a devolved service.

Research on previous reforms of probation services in the UK suggests that staff felt that they lacked a voice or agency during the process, with decisions made with minimal consideration on the implications for service delivery (Millings et al., 2023). This frustration was exhibited by staff during renationalisation, despite a broad consensus it was the correct course of action. Ensuring that staff have a voice in any devolution process is critical to maximise outcomes and secure buy-in, even if staff are supportive of devolution.<sup>9</sup>

This is especially important given the context of a perceived ‘change fatigue’ among staff. While we heard that some changes would be welcomed by practitioners, particularly around reinstating social work value or removing probation from HMPPS, there is also a clear need to manage change carefully and with proper regard to the views, hopes and fears of affected staff and offenders.

## Regional governance

A future Welsh probation service will need to determine the appropriate level of regional governance. This should be based on the needs of the service and its users, and in a way that facilitates interactions with related services.

Three of the existing Probation Delivery Units in the Wales region largely align with police force areas (North Wales, Dyfed Powys, and Gwent), while the South Wales Police area is subdivided into three units: Swansea Neath Port Talbot, Cwm Taf Morgannwg, and Cardiff and the Vale.

A number of options exist for ensuring alignment between the needs of the future Welsh probation service and its users. Below, we summarise two contrasting organisational structures: a unitary probation service with regional organisation and

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<sup>9</sup> Trade union recognition will also be an important part of this process if probation is delivered via a new body in Wales.

delivery, and an integrated probation service with local authority social services, as seen in Scotland. Within each of these overarching potential structures there are many different ways in which the probation service could be organised.

It is beyond the scope of this report to provide detailed insights into these different options, and further work will be needed to explore them depending on the preferred option for devolution.

### **A unitary probation service with regional organisation and delivery**

As highlighted in Part 2 of our report, many European probation systems operate as a unitary probation service delivered at a regional level (Notman, Price, and Tilley, 2024). This allows a central body to take charge over key shared concerns such as staff training, strategic planning, data collection, and relations with the Welsh Government, HMPPS, and other national actors, while regional units are then given the responsibility for the day-to-day management and delivery of services.

A number of objections to this model have been raised, however, in particular that it might hinder collaboration with local partners if important decisions regarding service delivery are made at a national level.

Finding the right level of autonomy for regional delivery units within this model requires careful consideration of the respective benefits and trade-offs. More regional autonomy could allow for additional capacity foster stronger local connections and stakeholder relationships. However, this would come at the expense of duplication across Wales, especially in managerial positions. Consideration also needs to be given to the consistency of service delivery in a model with increased autonomy, to mitigate differences in outcomes for service users.<sup>10</sup>

Sub-national service delivery is also possible with increased regional autonomy, taking advantage of local provision and knowledge within existing regional structures. This does however lead to a loss of the greater economies of scale afforded by a centralised model, although it may be possible to separate functions that could reasonably be delivered or managed at a national versus a subnational level. Currently, key rehabilitation and resettlement services are procured through the centralised Probation Services Dynamic Framework, developed during the reunification of the Probation Service to enhance the voluntary sector's role. However, this framework has been subject to criticism for being too complex, with smaller local organisations

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<sup>10</sup> Differences in outcome are inevitable within any locally-delivered framework, and could reflect local priorities; differences in offender profiles; and other locality-specific factors such as demography, economic opportunity, etc. However, there would be a need to balance this appropriate variation with minimum service standards to ensure baseline provision of probation functions.

unable to muster the expertise and resources needed to bid (Johal and Davies, 2022). As part of its devolution arrangements, services in Greater Manchester are not subjected to this process but instead are co-commissioned between the Probation Service and the Greater Manchester Combined Authority (GMCA), using GMCA procurement processes. A Welsh-governed service could adopt a similar practice in Wales and would be required to undertake socially responsible procurement in line with the Social Partnership and Public Procurement (Wales) Act 2023.

Regional autonomy might also involve aligning probation services with existing structures. Below, we highlight three existing regional structures that could be used for regional governance. However, these are not extensive and further work is needed to examine potential options in more detail.

**Police force areas:** This approach would broadly replicate the current arrangements outlined above. Organising devolved service delivery in this way has the notable advantage of minimising structural changes, allowing the workforce to continue to work in established ways and carry over existing relationships. It should be noted that the most recent inspection of probation services in Wales was broadly positive about the use of partnership working and ‘exemplary’ engagement with key strategic partners, despite a challenging assessment overall (HM Inspectorate of Probation, 2022: 6).<sup>11</sup> However, aligning the current regional structure with police force regions may be seen as counterproductive if policing is not devolved, as it may be a missed opportunity to develop regional structures that align with devolved services under the Welsh Government’s remit. Nevertheless, as the existing structures seem to operate relatively well, this could continue as an interim measure.

**Regional Partnership Boards (RPBs):** RPBs were established as part of the Social Services and Well-being (Wales) Act 2014 to assess wellbeing, health, and care needs in local populations. There are seven RPBs in Wales, aligned with Local Health Board areas. Probation services are not currently represented, but positioning them within this regional footprint could align service delivery with local social care needs, ensuring that probation and probationers are represented in plans to improve local wellbeing. However, RPBs are specifically designed to improve how health and care services are delivered, meaning that this footprint may not match the geography of other key partner organisations.

**Public Services Boards (PSBs):** The UK Probation Service already participates in PSBs, alongside other key devolved and non-devolved services. This could promote

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<sup>11</sup> The review was based on inspections of the Swansea Neath Port Talbot Probation Delivery Unit and the Gwent Probation Delivery Unit.

good partnership working across Welsh public services, given the range of services which already interact with PSBs. Moreover, this is already a space where devolved and non-devolved public services already interact. Initially, each local authority in Wales had its own separate PSB, but many have since merged to represent multiple local authorities, with the total number now standing at thirteen. However, the number of PSBs might lead to fragmented organisational structures that replicate some of the disadvantages of local authority provision without the advantages of direct connections to local social services.

A unitary Probation Board responsible for delivering probation functions has been considered by the PDG, and members have highlighted to us the potential for such a body to include representatives from the judiciary and local government (including elected members) to support probation governance and its connections with other public services (Borja et al., 2023).

### **Delivering probation services through local authorities**

In this structure, each local authority would staff and operate its own probation service. This would allow for maximum join-up with local authority-delivered services such as social care, social services, and education. Delivering through local authorities (possibly as part of the social work workforce) would replicate the situation in Scotland. This system would offer opportunities for local commissioning of services and service design to reflect local priorities. There would need to be additional central capacity (similar to Community Justice Scotland) to offer statutory guidance and standards to ensure a consistency of provision. However, concerns have been raised about the effectiveness of this central capacity in Scotland, with suggestions that service delivery remains disjointed (Notman, Price, and Tilley, 2024). The PDG recommends the establishment of a Probation Board in Wales for this purpose, while being broadly positive about the advantages of delivery within a local authority setting (Borja et al., 2023).

While this approach is popular with some stakeholders, it carries risks, and many of our interviewees cautioned against it. A key risk is that probation officers within a wider social work organisation could be redirected to non-probation tasks if these are seen as taking priority or could face additional workload pressures. Similar factors have affected community safety teams in local authorities, for instance (Welsh Government, 2017). Additionally, the wide variation in local authority capacity in Wales means that local governance may be uneven and, in some areas, insufficient for effective practice. Centralised resourcing could allow for appropriate funding of frontline staff, but support functions, as well as strategic oversight and governance, would need to come from within local authorities and would therefore compete with other areas of local government for funding and prioritisation. This is a particular risk in the context of an unfavourable financial climate for local authorities, with local

authority corporate centres (which provide strategic leadership and policy analysis) particularly suffering. Funding for probation may therefore need to be ringfenced as part of local authority allocations to ensure stability in service and avoid negative impacts on outcomes, although this would reduce the flexibility that is a key strength of this delivery model.

This approach is more duplicative than the options outlined above, given the number of separate organisations delivering probation, each with its own upper and middle management. However, functions such as HR and finance, which would otherwise require new roles in a unified body, could be absorbed into existing local authority functions. In youth justice, several Welsh local authorities provide joint Youth Offending Teams, which reduces duplication, but this could remove the option of delivering probation through existing social services, which is a principal advantage of this structure.<sup>12</sup>

If this option is pursued, a capacity-building programme would need to be put in place to ensure adequate resources and staff training are in place to support the effective delivery of the Welsh probation service.

## Control and oversight

Under executive or legislative devolution, control and oversight of the Welsh probation service would transfer to Welsh Ministers. In such scenarios, it would be necessary to create structures that facilitate effective oversight of the probation service.

Oversight structures would need to address a range of topics including benchmarking service performance, professional regulation of probation staff, ensuring policy alignment, compliance with legal and regulatory requirements, and scrutiny of responsible Ministers by the Senedd. There is also an outstanding question as to which Minister would be responsible for oversight and direction of any devolved probation service, which may depend on whether other aspects of the criminal justice system, if any, are also devolved.

The Welsh Government may choose to retain certain existing functions that exist within the current Probation Service, either by opting in or commissioning from existing providers. It could make sense, for instance, to retain the use of HM Inspectorate of Probation for a Welsh probation service in the medium term rather

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<sup>12</sup> Others, however, have stressed that learning lessons from Youth Offending Teams could be instructive, particularly if probation and youth justice are better-connected in a devolved system, for instance with transitional approaches for those moving to probation at 18-25 years of age.

than duplicate the function with associated start-up and higher proportional running costs.

Drawing on existing provisions where appropriate would help minimise disruption and costs associated with building new organisational structures. However, it would also reduce the Welsh Government's or Senedd's ability to directly influence the organisational culture or values of such bodies, which could be important if there is a long-term change in values within any Welsh probation service. Decisions on relevant oversight bodies may also depend on how any devolved probation service is structured: for example, inspection functions in Scotland and Northern Ireland reflect the wider social work and criminal justice systems in which they operate (Borja et al., 2023).

Audit and oversight functions carried out by Audit Wales could be applied to a devolved probation service, if it were set up as a separate public body, although this may require additional legislation.

Other functions, such as professional regulation or performance benchmarking, could either be handled internally by the Welsh probation service (if established as a separate statutory body) or by Welsh Ministers or a body established by them. The PDG suggested several separate organisations that may need to be established to provide oversight and influence practice, including an inspectorate, Probation Board, Probation Advisory Group, and local advisory groups (Borja et al., 2023). The immediate need for establishing these bodies would likely be determined by the devolution settlement and the Welsh Government's willingness and ability to fund such bodies. It may prove easier and less expensive to replicate existing arrangements in the short term, especially if a non-legislative option for devolution is chosen.

## Funding

Executive or legislative devolution would likely be accompanied by some uplift to the Welsh Government's block grant. In addition to reflecting the costs of service provision, it has been suggested that some of the capital costs of devolution could be funded by the UK government, particularly in a full devolution of justice context (Ifan, 2019).

While the exact rate of funding would be subject to negotiation, it would be reasonable to work on the basis that it would reflect the current spending of the Probation Service in Wales on frontline staff (at full staffing levels), estates, and other revenue costs. It is also reasonable to assume that Wales could secure some degree of funding for the additional 'start-up' costs faced in establishing new services.



However, it is not guaranteed that the funding from the UK government would meet the full cost of delivering a Welsh probation service over time. There are two main categories where additional spend may arise: increased costs within the probation service itself, and institutional costs, such as those associated with administration and governance. There will also be one-off costs associated with setting up new services and bodies.

It can safely be assumed that, at the point of devolution, current staffing requirements would be funded at 100% capacity (despite the current high vacancy rate in the Probation Service in Wales). However, building additional capacity would require funding from the Welsh Government. In the short term, this would involve funding from existing budgets. If a more localised delivery model, such as delivery by local authority social services, was adopted, the Welsh Government would need to allocate some of this funding. This funding could be ring-fenced to deliver probation services but could also be provided using existing budgetary mechanisms. In either case, it would be for each local delivery agent to decide the optimal use of funds, potentially leading to more or fewer staff in those areas.

The chosen organisational model for a devolved probation system could also have knock-on impacts on funding. In Northern Ireland, where the probation board is separate from the civil service, the funding allocation includes costs such as estates, rather than being focused primarily on staffing and service delivery (Notman, Price, and Tilley, 2024). As a result, there is no ring-fencing of funds allocated to the delivery of probation services, and the Probation Board Northern Ireland has to compete for funding with other areas of government expenditure, contributing to long-standing constraints on staffing capacity and innovation in practice.

There are a number of reasons why a devolved Welsh service might require additional capacity. Firstly, Wales has a higher imprisonment rate than England, both in terms of 'in-country' imprisonment and imprisonment by home address (Jones, 2023). Probation rates have also been consistently higher in Wales since 2014 (Jones, 2023). This creates additional demand but could also create additional costs, particularly as not all Welsh prisoners are incarcerated in Wales (see below). Furthermore, pressures on the Probation Service are expected to intensify in the coming years due to the UK government's early prisoner release scheme (Kersley, 2024).

Secondly, there may be a desire to increase capacity within the system to address some of the issues identified above. Pay rises or changes to working conditions would also need to be funded. While pay deals in England would lead to Barnett consequential, these are not hypothecated and would not match Welsh pay settlements if these are greater than those in England. There is therefore reason to believe that additional funding would be required for frontline staff.

There would also be costs associated with ‘backroom’ functions such as administrative support, finance, and HR. Some of these roles, particularly those already in place within the Welsh region of the Probation Service, could transfer over; but there will need to be additional capacity established to support functions that are currently managed centrally. Setting up a new smaller Welsh service could lead to the loss of some economies of scale, increasing the relative cost of these roles. Previous experience with devolving social security to Scotland indicated that the number of staff and associated funding was significantly higher than initially anticipated (Audit Scotland, 2022). Moreover, in localised delivery models, the loss of economies of scale could be even greater due to the duplication of job roles.

In terms of institutional costs, capacity would need to be developed within the Welsh Government and other bodies to manage administration and governance functions. These include the oversight, governance, and regulation functions discussed above, whether they are carried out within the Welsh Government or separately, and payment for commissioning or buying into services currently provided on an England and Wales basis.

There would also need to be funding for increased capacity within the Welsh Government, including policy and delivery oversight teams, and for relevant senior leaders within both the Welsh probation service and the Welsh civil service. The costs of external bodies set up for control and oversight functions (as outlined above) would also need to be covered.

If the model for probation focuses on alternatives to custodial sentences and diversion, it will also be important to ensure that these activities are funded beyond the probation service, including through services like mental health support and education, which are funded from the Welsh budget.

It should be noted that if a devolved probation service does successfully divert offenders from custodial sentences, the extra costs of managing the increase in the number of offenders on probation would fall on the devolved service. Meanwhile, the financial savings from a reduced prison population would be realised by HM Treasury and the Ministry of Justice. If the prison service remains reserved to Westminster while probation is devolved to Wales, the more successful the Welsh probation service is at reducing custodial sentences, the greater the potential cost to the Welsh Government.<sup>13</sup> The interaction between prisons, probation, and the criminal justice

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<sup>13</sup> That is, absent any negotiation around redirecting savings from the prison estate to uprate probation funding, although the most likely mechanism for this would be via unhypothecated Barnett consequential.



system is further detailed below, and relationships with the prison service is detailed in the below section on cross-border issues.

## Interaction with reserved powers

One of the key benefits cited for the devolution of probation to Wales is to enable better interaction with key services for which the Welsh Government is already responsible. While interactions with devolved powers are covered in the benefits section of this report, it is also important to consider the interactions with powers and services that will remain reserved.

The devolution of the probation service and youth justice will still leave most of the criminal justice system governed, operated, and legislated at the England and Wales level by the UK government. Although a Welsh criminal justice system already exists *de facto*, it is nonetheless the case that devolution would still leave a number of probation-relevant factors outside the Welsh Government's control.

At present, the jagged edges of the system lie between the non-devolved criminal justice system (including the probation service), and the devolved policy areas that probation services collaborate with, such as housing, health, and education and skills. Devolution would require formalising relationships with courts, prisons, and the police, and require building stronger ties with devolved public services.

For users of the probation service, their current journey through the criminal justice system, including interactions with the police, courts, prison, and probation, is managed solely by UK government institutions, and primarily through HMPPS. The devolution of probation to Wales would involve a transfer of responsibilities in the journey between prison and probation, from the UK government to the Welsh Government. This may present complications, such as the transferring of electronic records and offender data. For example, an offender breaching their licence conditions may then be recalled to prison and would once again fall under UK government responsibility.

Probation functions and relationships between departments, that are currently achieved through having probation sit within HMPPS would need to be formalised on an intergovernmental and interdepartmental basis, so that present work can continue. The relationship between prisons in England and Wales, and the English and Welsh probation services, would also need to be formalised and addressed. We explore this issue further in the section on cross-border issues.

There will also be a need to ensure that relationships with the courts are formalised, both locally within the courts system in Wales and across England and Wales where necessary. These relationships are critical to ensuring that there is confidence for

judges in handing down non-custodial sentences based on the pre-sentence reports provided by the probation service (Whitehead and Ely, 2018).

In recent years, an increasing number of pre-sentence reports have been delivered orally rather than in writing (Whitehead, 2018). Oral pre-sentencing advice is less likely to be considered sufficiently analytical and personalised to the service user, with it also being less likely to draw on information from other services and agencies (Kenton and Moore, 2020). Interviewees indicated that there has been increasing reliance on standardised digital formats for pre-sentence reports, with 'cut and paste sentences' and statistical tools to estimate risk, making these reports less personalised to the individual and therefore less useful for judges.

As part of a devolution agreement, the Welsh Government could consider a different format or means of delivering pre-sentencing reports to the courts, potentially leading to better sentencing advice. This would require consideration being given as to the appropriate assessment tools; deciding whether pre-sentencing reports should be delivered by Probation Officers or by Probation Service Officers (as currently); and negotiating with the courts system to ensure the judiciary welcomes the change.

There is also consensus among leaders within the Probation Service that the previous privatisation resulted in reduced confidence from sentencers, but that relationships are slowly being rebuilt as a result of re-nationalisation (Robinson et al., 2023). A devolved service would need to establish these relationships and build confidence in any specific Welsh model, particularly if there are changes in vision, principles, or how pre-sentence reports are delivered.

Partial devolution of the justice system will also create new jagged edges between the England and Wales criminal justice system and a devolved probation service. In particular, the fact that caseloads for probation officers are at least partially determined by the courts limits the real control that the Welsh Government will have over the service.

For example, sentencing guidelines would remain under UK government control, and any changes by the UK government in either a more lenient or more punitive direction would impact the workload of the Welsh probation service. If the UK government held a different view of the need for custodial sentencing than the Welsh Government, this could result in the probation service being required to undertake work contrary to the direction of Welsh policy. Future changes to practice within the Welsh probation service, such as pre-sentence reports or electronic monitoring, would also require Westminster-controlled institutions to ensure they had compatible technology and were familiar with the changes, and vice versa.

Moreover, UK government policy could increase caseloads. For instance, proposals to end short-term custodial sentences, replace them with suspended sentences

involving community supervision, or release more prisoners serving short-term sentences under supervision, could result in additional work for the probation service (Carr, 2023).

Additional funding in England to address higher caseloads caused by policy changes would lead to an increase in the Welsh Government's block grant. However, this funding would be unhypothecated, and a future Welsh Government might not automatically allocate it to the devolved probation service. Ideally, such changes would be flagged through intergovernmental working arrangements, but budget setting would remain the responsibility of the Welsh Government.

## Cross-border issues

Cross-border issues are inherently linked with interactions involving reserved powers, particularly within a part-devolved justice system. Formalising cross-border arrangements will be a key organisational matter for a Welsh probation service because of the number of Wales-based offenders, including all women prisoners, who are incarcerated in England, as well as the need for a consistent approach to managing higher-risk offenders.

There will be an urgent need to address prison capacity and the allocation of prisoners, particularly in the context of existing pressure on prison spaces. Prisons in Wales accept prisoners from across England and Wales, and Welsh prisoners may be sent to England to serve their sentences, depending on the severity and nature of the offence they are convicted of. In 2019, around one-third of Welsh prisoners were serving their sentences in England, while 70% of prisoners at HMP Berwyn in Wrexham were from England (Jones and Wyn Jones, 2022: 38). Additionally, as there is no women's prison in Wales, all women prisoners serve their sentences in England. There is also no women's Approved Premises in Wales. A Welsh probation service would need to establish a clear, formalised working relationship with its English counterpart to agree on approaches to:

- Delivery of any required probation services for English-resident prisoners while incarcerated in Wales;
- Delivery of any required probation services for Welsh-resident prisoners while incarcerated in England; and
- Post-custodial probation arrangements for prisoners moving across probation jurisdictions upon release.

To some extent, this will be a case of formalising existing working arrangements across the new probation service. Furthermore, over time and with increasing potential divergence between probation approaches there will be a need for careful cross-jurisdictional working to ensure that the needs of individuals are met and

continuity of service can be maintained if offenders move between England and Wales. This could include giving sentencers, judges, or other parts of the court system a formal or informal oversight role in probation governance, as recommended in a PDG paper (Raynor and Deering, 2023). Such a role would go some way to restoring the previous role of the court system in probation work, as well as helping to ensure confidence in the probation function on the part of sentencers.

In particular, ensuring there are good formal connections between probation officers in England and public services in Wales will be vitally important in ensuring the effectiveness of the Welsh probation service for prisoners released from English prisons. Optimistically, this could resolve some existing jagged edge issues.

Moreover, data such as prisoner records will need to be transferred across regimes for offenders relocating from Wales to other parts of the UK. Transfers between Scotland, Northern Ireland, England, Wales, and some crown dependencies typically take place on a restricted basis, meaning that offenders are subject to the same laws and conditions in their new area as they would be in their old area, administered by a probation officer in their new area (Scottish Government, 2022). However, as legislation in England and Wales is the same, at present, offenders are largely transferred between areas on an unrestricted basis, where the requirements are simply replicated in the new area. It is unclear whether this would remain the case if a legislative route for devolution was pursued, and a decision will need to be made about future arrangements for transfer and information sharing between a potential Welsh probation service and the rest of the UK. Between Northern Ireland and the Republic of Ireland, a well-defined protocol exists for offenders wishing to move between countries, enabling cooperation and mutual assistance (Notman, Price, and Tilley, 2024). Common information-sharing practices for the most serious offenders already exist at a UK level, through the Multi-Agency Public Protection Arrangements (MAPPA).

## Long-term vision

A final consideration for all devolution options will be ensuring that changes introduced as part of devolution connect with longer-term visions and principles, particularly those related to operational change, balancing offender management with desistance-focused practices, and establishing and embedding specific professional values.

In their paper on values and principles, the PDG outlined a vision for a Welsh probation service that emphasises integrating traditional social work values of the probation profession, ‘as well as integrating these with broader Welsh public sector values and principles of social justice’ (Deering et al., 2023: 10). It will be important to ensure that any long-term vision is clearly articulated, understood, and supported

early in the devolution process, even if not immediately implementable. This will help prevent the design of a devolved probation service from inadvertently closing off options that may need to remain open in the future.

# Options for devolution

In this section, we present what we understand to be the three principal options for the devolution of probation to Wales. Each of these routes offers opportunities for change and has distinct advantages; however, each also comes with trade-offs that will need to be carefully considered.

The three options we have considered are:

1. A memorandum of understanding (MoU) leading to the co-commissioning of certain services, similar to the arrangement in place in Greater Manchester and elsewhere;
2. Transfer of executive responsibility without legislative competence, allowing the Welsh Ministers administrative oversight of probation without any lawmaking powers; and
3. Full transfer of legislative and executive responsibility, removing probation from the list of reserved powers and giving the Senedd power to legislate to create a Welsh probation service.

These options are not necessarily mutually exclusive: probation could be devolved over time, allowing progression from one option to another. Neither, however, is there any requirement for progression beyond a particular point.

While we refer to legislation and legislative mechanisms for devolution in the following sections, we do not provide legal advice. Any consideration of the proposals presented here would need to be made in consultation with appropriate legal counsel.

The remainder of this section presents and discusses each option. We first explain what each approach involves and its potential consequences. A summary table then outlines the impact of each option on the practical considerations detailed above.

## A memorandum of understanding

The MoU approach would be based on the system of devolution already in place elsewhere in the Probation Service, notably Greater Manchester. This involves establishing an agreement between HMPPS and the relevant authority, which in England is typically a mayoral combined authority, around the co-commissioning of services in a specified area. Greater Manchester is the most established example, although Bristol and London are also pursuing similar approaches.

The MoU in Greater Manchester and elsewhere specifically focuses on the co-commissioning of services and does not involve control of the operations, funding, or governance of probation services. HMPPS continues to be solely responsible for these areas. Therefore, this approach involves the least institutional change, as no functions are formally transferred from HMPPS, nor are any functions formally granted to the other party. The MoU would not require any legislation to implement; it is an agreement between authorities and can therefore be drafted and implemented relatively quickly.<sup>14</sup> It is also not a permanent arrangement – it can be time-limited, and either party can exit the agreement if circumstances change.

The advantage of the MoU, aside from its relatively quick implementation, is that the co-commissioning of services can enable greater local control and responsiveness than operating under a national commissioning framework. In Greater Manchester, there has been a sustained, deliberate effort to ensure that the services delivered under the MoU are aligned with the Mayor and the Combined Authority's priorities. This has included, for example, focusing on women offenders by commissioning services that can be provided in women-only spaces, making them less potentially daunting to access. Budgetary flexibility, including the devolution of the community accommodation grant, means services can be commissioned alongside other existing ones in Greater Manchester. This allows for further resource to be invested in established and proven programmes rather than duplicating spend unnecessarily. In Greater Manchester, for example, investment has been made into existing drug and alcohol services rather than recommissioning. There are clear advantages to this approach in terms of efficiency and value for money, but buying into existing services should also mean a greater quality of provision over the longer term with potential long-term benefits for offender outcomes. Such an approach could also support local delivery agents and align with other area-based public services.

To some extent, similar flexibility and localised arrangements have been possible under the current system. The Grand Avenues project in Cardiff, for instance, shows that a similar community-based, multi-service approach is possible without further devolution. Research also shows that co-commissioning is already happening in Wales to a degree, particularly in the field of substance misuse and healthcare more broadly (Rabaiotti, 2024). However, the advantage of an MoU is that these approaches can be applied more broadly, within the specific policy context of the co-commissioning bodies agreed in the MoU. This enables successful examples of innovative practice to be scaled up more quickly without the need to navigate bureaucratic or institutional hurdles. Stakeholders indicated that the presence of an

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<sup>14</sup> The MoU itself is not a legal instrument but the funding transfer agreement is set on a firmer basis.



MoU can be seen as granting permission to experiment with new approaches, without feeling constrained by what is already in place.

Approaches can also be commissioned to reduce aspects of caseload within the current system. Greater Manchester has recently commissioned a 'well-being hub' that is designed to take on lower-level support functions, such as signposting service provision or helping users access these services. It is hoped that this will free up capacity for probation staff to focus on risk management and higher-need aspects of their caseload, while the well-being hub handles other functions. Anecdotally, there appears to be more confidence in the UK Probation Service from the courts in Greater Manchester, though this has not been formally evaluated or measured. A similar model for probation in Wales could therefore help increase confidence among sentencers. However, international evidence suggests that establishing this relationship can be difficult and often relies on building good personal relationships (Notman, Price, and Tilley, 2024).

There are also drawbacks to this system. While it would allow more flexibility in spending agreed commissioning budgets, these budgets would still be set by HMPPS, and if additional spend was desired, this would have to be drawn from elsewhere (either Welsh Government or local authority budgets in the first instance). There would also need to be a willingness to integrate service provision with other locally commissioned services, requiring good relationship management with the Welsh public service and third sector partners.

The current MoU arrangement in Greater Manchester does not grant local authorities any role in the delivery, operations, or strategic direction of probation, which continue to respond to UK government pressures and directives. The exact amount to which the Welsh Government could influence policy if they chose this model for devolution would be determined by discussion and negotiation between the parties. It is possible that a more extensive agreement could be reached, giving the Welsh Government a more active role in probation governance, though this is by no means guaranteed. This uncertainty presents a potential risk, as while the Welsh Government could have more input in a future model than the Greater Manchester Combined Authority currently has, it is not assured. Furthermore, the ability of either party to withdraw at any time makes it vulnerable to changing political priorities, especially if a future UK government is unhappy with the level of input afforded to the Welsh Government.

The MoU approach also leaves probation within HMPPS, which has raised concerns among some stakeholders due to existing workload and organisational culture issues. While these concerns may be ameliorated, to a degree, if the new Target Operating Model is fully implemented, some stakeholders may feel that an opportunity has been missed if probation remains organisationally part of the prison service. This would also mean that longer-term values, workforce and cultural



changes advocated for in Wales would have to be implemented at a UK level (for instance, restoring a social work qualification).

There would be a need to develop internal capacity within the Welsh Government to support the administration of the MoU and shape the strategic direction and delivery of these functions, requiring dedicated resources.

Practically, consideration would need to be given to how an MoU would be implemented and managed. Current examples in England are all under the auspices of Mayoral Combined Authorities, a governance structure that does not exist in Wales and does not align neatly with existing structures (for instance, they do not exactly match corporate joint committees). The Welsh Government holds more responsibility than a combined authority and has greater power to effect change, meaning it could take aspects of the MoU arrangement further and have a greater impact through co-commissioning than Combined Authorities. However, one advantage of the Combined Authority model is that the Mayor is also normally the Police and Crime Commissioner. This means that they are able to ensure that the strategic direction for policing is informed by developments in other areas they oversee, including probation, and vice-versa. Without the devolution of policing to Wales, there is a risk that strategy and operations under the MoU will be less joined-up than they could be.

If this option is pursued, either on its own or as part of a longer-term devolution settlement, the MoU will therefore need to be carefully considered and drafted to ensure that arrangements suit what is reasonable and practical in Wales, rather than replicating those established in different organisational contexts in England. It will also be important to learn from and evaluate what has worked elsewhere, while avoiding aspects of the programme that may, over time, prove less effective.

## Transfer of executive responsibility

Under Section 58 of the Government of Wales Act 2006, a transfer of functions order can be made, which would transfer operational responsibility for the Probation Service in Wales to the Welsh Ministers (in law, functions are transferred to Ministers to exercise, although the actual exercise of functions is usually carried out by the Welsh Government). This could be achieved using secondary legislation.

This would give Welsh Ministers power over workforce, staffing, governance, procurement and, potentially, the values and long-term operating model of the Probation Service in Wales. There would be a separate Welsh probation service, which could become distinct from the English service. However, the Senedd would

not be able to pass laws affecting probation, which would remain under the control of the UK Parliament.

This approach is similar to the original model of devolution for Wales, in place between 1998 and 2006, under which the Welsh Assembly carried out the functions that were previously exercised by the Secretary of State for Wales (LawWales, 2021). The functions that may be transferred would depend on negotiations with the UK government and would only be exercisable in accordance with the terms of the order. Depending on the negotiations, there could be considerable scope under this model to modify the organisation and, to some extent, the strategic direction of probation.

Workforce management, for instance, could be modified, particularly if probation in Wales were to become an executive agency of the Welsh Government. This would allow the Welsh Government to introduce new practitioner values and organisational culture, perhaps reinstating social work qualification requirements or similar standards. This might require establishing a new professional register or regulatory body, or reaching an agreement with the current professional register currently being implemented across England and Wales. While this would require resources, and arrangements for cross-border recognition with England, existing bodies like the Education Workforce Council suggest that this should not be logistically difficult to establish.

There would also be scope to change some aspects of probation work, for instance by establishing support functions similar to the well-being hubs being introduced in Greater Manchester, to mitigate against high caseloads. This may also require additional resources and investment. However, if services can be shared across devolved areas of responsibility, there could be opportunities to co-ordinate service provision and minimise the additional costs of delivering the probation function. Executive control of probation would allow for formal resource sharing and co-ordination arrangements to be put in place which could allow for longer-term efficiencies as well as setting institutional relationships on a stronger footing.

Staff would need to transfer to the new body, and arrangements in terms of pay, conditions, and pensions would need to be carefully managed to ensure they are at least equivalent to what is currently available. If probation staff remain civil servants, this should be straightforward to manage, but otherwise will require formal consultation and a TUPE process. This management will not only be required at the outset of devolved governance arrangements but will also require ongoing human resources support, with no guarantee of additional funding for this.

It is unlikely governance arrangements could be changed to allow, for example, local authority control and delivery, but regional governance arrangements could be modified within the scope of the devolution agreement to make probation more

locally responsive. There will be a need to ensure Cabinet Secretary or Ministerial responsibility for probation, with scrutiny via a Senedd Committee.

Under this option, it will be necessary to establish formal working relationships with the courts and other reserved functions of the criminal justice system, as outlined above. This could include a formal supervisory or advisory role for the courts in overseeing the work of probation. However, the caseload and requirements of probation officers and other staff would still be determined by policy and legislation on an England and Wales basis, meaning that these arrangements would potentially be less onerous (and require less proactive work from the Welsh Government) than under a fuller model of devolution. This is because these arrangements would be likely to be included in any new legislation or policy set by HMPPS, the Ministry of Justice, or Parliament. Sentencing and custodial arrangements would remain the responsibility of the reserved criminal justice system.

This would limit the degree of change in terms of offender management that could take place, which would continue in a similar manner to the present system. However, changes made to working conditions may help to mitigate caseloads, and building more holistically-informed service provision, particularly community-based, could contribute to developing a service which feels distinctly Welsh, even without the ability to directly change the requirements on probation staff.

A dedicated Welsh Government unit would be needed to oversee probation delivery and policy development, likely requiring more staff than at present. This would be important to ensure the potential benefits of this model could be realised by the Welsh Government.

This approach sits between the MoU and full legislative devolution, and as such risks being seen as a halfway measure and unsatisfactory to some stakeholders. However, it offers an opportunity to steer aspects of the probation service in the direction set out by the PDG and others within a largely reserved criminal justice system, while not requiring the same level of resources and degree of change as full legislative devolution. It may, therefore, be considered a useful step to take if the full devolution of justice (particularly sentencing powers) is not attainable in the medium term.

## Full legislative and executive devolution

This option would grant the maximum degree of devolved control over probation in Wales. Using Section 109 of the Government of Wales Act 2006, the UK government could modify the Senedd's legislative competence so that probation was no longer a reserved area. The Senedd would then be able to pass primary legislation, within the limits of that modification and existing competence, to establish new arrangements in

Wales. A UK Act of Parliament would also likely be necessary, particularly to govern relations between the devolved and reserved parts of the justice system.

Under this approach, probation functions would need to be established in law, and an operating model set out. Probation could either be carried out as part of a new service or merged into an existing body.

This model offers maximum flexibility, providing the opportunity to set up a probation service with as close to a blank slate as possible. It would enable the benefits discussed above and allow further development of a distinctly Welsh model of probation. Although, to some extent, this flexibility may be somewhat constrained by UK legislation relating to how the newly transferred responsibilities would interact with the other justice related activity that remains reserved.

For the probation workforce, existing staff would need to be offered the opportunity to transfer across to Wales to a new employer and a separate pay scales, working conditions, and pension arrangements would need to be established. Wales has successfully managed this process several times, including the establishment of Natural Resources Wales, Transport for Wales, and Medr (the Commission for Tertiary Education and Research). The transition process should therefore be smooth, although the process will need to be managed carefully and with consideration for all parties, including any staff who do not wish to transfer. New bodies may need to be set up to handle professional registration and regulation.

Governance could be structured in new ways, free from existing arrangements. If a new body is established, its relationship to other bodies in the Welsh public service, oversight and scrutiny by the Senedd and/or Welsh Government, and its internal and regional structures would all need to be determined. There would be substantial freedom to implement a model aligned with the values and principles outlined in policy and from the wider evidence base, including the work of the PDG.

Alternatively, probation could be integrated into other existing structures, such as local authority delivery. Under either approach, probation could coordinate or integrate more easily with devolved services, allowing for co-delivered services or shared budgets and commissioning. Probation could also participate more fully in regional structures such as Public Services Boards.

Whichever governance structure is chosen, it will be important to ensure appropriate inspection, scrutiny, and oversight. A decision would need to be made on whether to use existing England and Wales structures or to partially or fully depart from them, mindful of the resources, capacity, and time required to establish new bodies. A responsible Cabinet Secretary or Minister would need to be appointed, with scrutiny in the full Senedd and through committees.

As with executive devolution, formal arrangements will need to be made with courts and the criminal justice system regarding probation's role in the court system, its role in managing risk and offenders, and the cross-border handling of prisoners, among other issues. Under this system, there is also scope for a close working relationship with, and potentially an oversight role for, the courts. This will be particularly important if the Welsh probation service diverges, or is perceived to diverge, from the system in England. It will also help to create and maintain confidence in probation from other parts of the criminal justice system.

This form of devolution will likely be the most resource-intensive, although it will also come with the greatest funding uplift from the UK government. In addition to the costs of running a devolved probation service, there may be a need to establish new regulatory and oversight bodies, and considerable capacity will need to be created within the Welsh Government to support delivery and policy development. Any changes to the operating model of probation, or increasing staffing costs to build additional capacity within any part of the system, will also come at a cost. If these costs cannot be met, which may be a realistic concern given the current financial context, it will limit the extent to which a Welsh probation service can successfully differentiate itself from the current system. Any shortfall in resources would also affect the governance and delivery of the Welsh probation service.

This approach offers opportunities to influence other aspects of the criminal justice system. For instance, victim engagement is currently part of the UK Probation Service but is delivered by non-specialist staff. An expert suggested that this might be an area where the Welsh Government could achieve better outcomes by using funding to commission new and more effective forms of victim engagement, particularly as research suggests that the current system does not serve victims well (Rolfe et al., 2023).

Within the context of a mostly reserved criminal justice system, there will be limitations on what can be achieved, particularly as sentencing is reserved and powers remain with the courts, leaving limited flexibility to trial new approaches. While the Welsh Government would be able to modify organisational culture and values or deliver services in a more joined-up and locally-based manner, the exact probation arrangements for offenders and service users would be a matter for the courts according to sentencing guidelines. This would limit the extent to which a desistance approach could be followed, and potentially lead to tension between a Welsh probation service and the England and Wales courts and prison services, which may be less convinced of the merits of this approach.

Ensuring that the benefits of this type of devolution can be achieved while navigating capacity challenges and issues arising from the new devolution settlement will require careful planning. Moreover, given the range of new bodies that will need to be

established, this is likely to be a multi-year process, potentially supported by another form of devolution as an interim arrangement. Learning from those with experience in managing change (including within the Probation Service) and from other nations that have established probation services could help implement this change successfully (see Part 2, Notman, Price, and Tilley, 2024).

It will be critical to ensure that planning and strategy balances the short- and medium-term running of the service with the longer-term change programme reflecting the values and priorities of the Welsh Government.

## Summary of options

Table 1 illustrates what different methods of devolution might mean for the practical considerations outlined above.

**Table 1: Different approaches and their effects on the practical considerations**

Practical consideration	MoU	Executive responsibility	Legislative devolution
<b>Workforce</b>	Responsibility remains with HMPPS.	Would become the responsibility of Welsh Ministers, and probation staff would be transferred to a new body.	Through an Act of the Senedd, this could become the responsibility of Welsh Ministers, and probation staff would be transferred to a new body.
<b>Regional governance</b>	Responsibility remains with HMPPS.	Ability to flex regional governance or change to a different model.	The Senedd would gain full control over the structure, delivery, and governance of probation in Wales and could legislate to deliver probation functions through a new or existing body.
<b>Control and oversight</b>	Responsibility remains with HMPPS. Welsh Government have limited control in co-commissioning services.	Operational control rests with Welsh Ministers, but oversight, regulation, and inspection may remain as at present. If workforce regulations are changed, this would require a new Welsh	The Senedd could make provisions in relation to operational and legislative control and oversight. New oversight, regulation, and inspectorate bodies would



		professional register or regulatory body.	need to be established, or existing arrangements utilised.
<b>Funding</b>	Remains the responsibility of UK government/HMPPS. Some additional capacity needed in Welsh Government.	Operational cost functions transferred to Welsh Ministers as part of the block grant. Additional capacity needed for administrative support and establishment of Welsh Government unit.	Costs transferred to the Welsh Ministers as part of the block grant alongside, depending on negotiations, some funding for start-up costs for new bodies. Additional funding is likely to be needed for new services, capacity improvements, and the operation of governance structures both within and outside the Welsh Government.
<b>Interaction with devolved/reserved services and bodies</b>	No change, but co-commissioning could allow greater alignment and co-ordination with devolved services.	Allows for greater co-ordination with devolved services. Formal relationships will need to be established with reserved services and courts.	Allows for much greater co-ordination and potential integration with devolved services. Formal relationships, including any role in governance, would need to be agreed and provided for with reserved services and courts (likely via UK Parliamentary legislation).

<b>Cross-border issues</b>	No change.	Agreements will need to be reached on prisoner transfer and other cross-border issues.	Agreements will need to be reached on prisoner transfer and other cross-border issues.
<b>Long-term vision</b>	Limited ability to influence delivery and values through co-commissioning of services.	Ability to change organisational culture and values exists, but the role of probation would not be changeable by the Welsh Ministers.	Ability for the Senedd, or a body set up by Welsh legislation, to potentially modify organisational culture, values, and (to some degree) the nature of probation work. Sentencing, custodial and non-custodial sentences, and probation requirements set out by courts remain outside Welsh Government control.

# Conclusion

The devolution of probation offers opportunities to implement a model of probation that many stakeholders believe reflects its roots and broader social work purpose, as seen in the work of the PDG and practitioner values within probation (Deering et al., 2023). Devolution also allows for better co-ordination with devolved services and a more locally based and responsive approach to local needs.

Within the context of a mostly reserved justice system, which appears likely at least in the medium term, we have identified three primary ways in which probation could be devolved: an MoU, executive devolution, and full legislative and executive devolution. These routes offer varying degrees of control, with different balances of benefits and challenges that will need to be considered if devolution takes place.

It is important to be clear that each devolution route offers opportunities for change and improvement to the existing system, whether that is through the co-commissioning of services or wholesale redesign of the way probation is managed and delivered. Even small-scale change can accumulate into more meaningful and substantive differences over time, with the right amount of resourcing and political will. While some options will, naturally, offer less scope for addressing certain areas of concern than others, there is potential for any form of devolution to allow for a more locally responsive and delivered service in line with Welsh public service values.

However, each route also presents particular challenges. Capacity, workforce issues, and governance will need to be addressed and understood at an early stage. The process of managing change will also be particularly important, especially if some stakeholders feel that the approach taken is not sufficiently ambitious. Devolution should be understood as a long-term project, and not (to echo the famous phrase) a single event. The process of change should therefore be clearly directed towards longer-term goals.

Our review has not sought to recommend a particular route to the devolution of probation. Each comes with relative advantages and disadvantages compared to the other routes and with the status quo. Each will also have different implementation criteria, including the pace and scope of change, the degree of autonomy within the system, and the implications for delivering probation functions. Accountability and oversight arrangements will also need to be carefully considered. Further research and appraisal of these options will help to improve preparation for any devolution settlement that is reached.

Ultimately, which route is pursued will depend on negotiations between the UK government and the Welsh Government. To inform what will therefore be a political decision, however, it will be important for the Welsh Government to consider:

- The purpose of devolution in light of what each option enables, and in particular the extent to which the values and principles that the Welsh Government seeks from probation can be realised;
- The implications of each option for the delivery of probation functions;
- The degree to which each option requires additional funding or capacity development, which would require funding from the Welsh Government's budget;
- The extent to which the Welsh probation service would interact with the courts, prisons and other aspects of the criminal justice system, in particular if the Welsh service diverges from the approach taken in England; and
- The need for careful, considered planning and phased implementation of change to ensure that new responsibilities can be taken on in a managed way that protects staff, service users and the public, and promotes better outcomes for all.

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