



Building a Welsh probation service

Introduction

The criminal justice system in Wales currently operates within a single jurisdiction for England and Wales, administered by the UK Government.

In light of the conclusions of the Thomas Commission, the Labour Party Commission on the UK's Future, and the Independent Commission on the Constitutional Future of Wales, the Welsh Government is pursuing the devolution of justice to Wales and believe there is a realistic prospect that certain aspects of the justice system may be devolved in the near future. As such, they are actively preparing for the possibility of a phased approach to the devolution of justice, beginning with probation and youth justice (Welsh Government, 2024).

The Welsh Government tasked the Wales Centre for Public Policy (WCPP) with conducting research to support this preparatory work, focusing on the possible delivery mechanisms and pathways for devolution. Our reports consider four main questions, with Part 1 providing an overview of key practical considerations and options for devolution, and Part 2 presenting case studies of how other European countries organise their probation services.

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?

This research is intended to complement the work undertaken by the Probation Development Group (PDG), which sets out a vision for the future values, governance, and practice of a devolved probation service (Probation Development Group, 2023).

Context and benefits of devolution

Probation in England and Wales is currently delivered through the Probation Service, an executive agency sponsored by His Majesty's Prison and Probation Service (HMPPS). The Probation Service was formed following the reunification and nationalisation of the system, which was largely privately delivered since 2014.

To perform its core functions – rehabilitation, supervision, and risk management – a well-functioning probation service requires close integration with agencies both within and outside of the criminal justice system, including the courts, prosecutors, police, housing, education, employment, welfare, and health services. While most criminal justice functions remain reserved, there is a need for close collaboration between services delivered at local, devolved and UK levels.

Currently, the probation service faces several significant challenges. Experts warned before the 2024 UK General Election that the service was overstretched and lacked the capacity to manage existing offenders, a problem likely to be exacerbated in the short term by recent changes aimed at freeing up capacity in prisons (Rowland, 2024). Within HMPPS, high staff

turnover and poor retention are also recognised issues.

Our work focuses on how the devolution of probation could allow policies to be pursued which improve the performance of probation in Wales. With this in mind, the two key benefits of devolution would be:

- Providing a better interface with devolved Welsh public services; and
- The opportunity to change the values, operating model and working conditions within a devolved probation service.

Providing a better interface with devolved Welsh public services comes from the desire to address the so-called ‘jagged edges’ within the current criminal justice system. These occur where responsibilities intersect and are shared between the Welsh and UK Governments, each with differing political priorities (Jones and Wyn Jones, 2022).

Devolving probation would therefore offer an opportunity to improve coordination and integration between a devolved probation service and other services which are already devolved to Wales. These include:

- Greater policy alignment with Welsh ambitions and ways of working, including under the Well-being of Future Generations (Wales) Act;
- Enhanced partnership working in the areas of community safety and community cohesion;
- Strengthening relationships with the third and private sectors in Wales;
- Increased responsiveness to local needs;
- Greater potential for the co-location of services; and
- Expanded use of local partnerships for the delivery of services.

Probation already works with agencies the Welsh Government are responsible for, including health, social services, social care, housing and some elements of employment support. Devolution could strengthen these links and enable better allocation of resources to

offer, allowing services to be more closely tailored to the needs of offenders.

Devolution also offers **the opportunity to change the values, operating model and working conditions** of the probation service. This would primarily involve being able to address perceived shortcomings in the current system. Devolution could offer opportunities to help resolve issues related to working conditions and create an opportunity to embed values that are independent from the prison system, allowing for a shift towards a new long-term vision. However, the extent to which these benefits can be realised would however depend on the model of devolution chosen and the broader operational context.



Options for devolution

We present three principal options for devolution of probation to Wales:

1. **A memorandum of understanding (MoU)** leading to the co-commissioning of certain services, similar to the arrangements 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 legislative and executive responsibility** giving the Senedd legislative power to create a Welsh probation service.

Each has distinct advantages but also comes with trade-offs that will need to be carefully considered. They are also not mutually exclusive, meaning probation could be devolved over time, allowing progression from one option to another.

We outline what each approach entails, key considerations and potential consequences for each option below. Our Part 1 report contains further a more detailed evaluation of these options, and further discussion of seven key aspects that need to be addressed as part of any model.

A memorandum of understanding

This approach would be based on devolution arrangements already in place elsewhere in the Probation Service, most notably in Greater Manchester. It involves an agreement between HMPPS and an organisation (usually a mayoral combined authority in England) for the co-commissioning of services in that area. However, this does not include control of the operations, funding, or governance of the probation service.

This approach would involve the least institutional change, as no functions are formally transferred away from HMPPS. It would not require any legislation to implement, and an agreement could be drafted and implemented relatively quickly. The arrangement is also not permanent – it can be time-bound and either party can walk away from the agreement at any time.

Aside from quick implementation, the greatest strength of the MoU is that it allows for increased local control and responsiveness through co-commissioning. In Greater Manchester, there has been an ongoing effort to ensure service delivery aligns with Combined Authority and mayoral priorities. Budgetary flexibility also means that services can be commissioned alongside existing local programmes, avoiding unnecessary duplication of spending. Stakeholders have indicated that this approach allows for flexibility in trying new approaches without being constrained by

existing arrangements. There are clear advantages in efficiency and value for money, and investing in established services may lead to improved quality of provision, with potential long-term benefits on outcomes for offenders.

However, while there is increased flexibility in how agreed budgets for the commissioning of services are spent, these budgets remain set by HMPPS. Any additional spending, if desired, would have to be drawn from elsewhere (either from the Welsh Government or local authority budgets in the first instance). This approach also requires a willingness to integrate service provision with other locally-commissioned services.

Responsibility for the workforce, governance, and oversight of the Probation Service would remain with HMPPS, and decisions regarding delivery, operations, and strategic direction would continue to be made by the UK Government. This would not address current concerns about workload and organisational culture.

The Welsh Government would need to build capacity to develop and administer the MoU, as well as shape direction and delivery.

This approach currently only exists with Mayoral Combined Authorities in England, which have significantly less responsibility than the Welsh Government. Given the Welsh Government's greater ability to enact change, they could take aspects of the MoU arrangement further to ensure arrangements reflect what is most practical for Wales.

Transfer of executive responsibility

Under Section 58 of the Government of Wales Act 2006, a transfer of functions order can be made to transfer operational responsibility for the Probation Service in Wales to the Welsh Ministers. This could be achieved using secondary legislation and offers the opportunity to change some aspects of the service without requiring the same level of resource

commitment and degree of change as full legislative devolution.

There would be a separate Welsh probation service, distinct from that in England, with Welsh Ministers holding power over workforce, staffing, governance, procurement, and (potentially) the values and operating model of probation in Wales. However, the Senedd could not pass laws affecting probation; these would remain the responsibility of the UK Parliament. The precise nature of transferred functions would depend on negotiations with the UK Government.

Staff would need to transfer to a new body, and arrangements for pay, pensions, and working conditions would need careful management to ensure equivalency. This should be straightforward if staff remain civil servants. Management of these arrangements would require ongoing human resources support, with no guarantee of additional ongoing funding for this. However, elements of workforce management could be modified to implement new values and organisational culture, including the potential to reinstate the requirement for a social work qualification.

It is unlikely that responsibility for probation could be further devolved to local authorities in this scenario. However, regional governance could be modified to help make probation become more locally responsive. Executive control could allow for some resource sharing and coordination with other services devolved to Wales, which could improve institutional relationships and create longer-term efficiencies.

There would be a need to establish mechanisms for accountability, including Cabinet Secretary or Ministerial responsibility, and scrutiny by a Senedd Committee. Welsh Government capacity to oversee delivery and policy development would also need to be developed, requiring more staff than are currently in place.

Formal working relationships with courts and other reserved criminal justice agencies would need to be established. However, the caseload and requirements of probation officers and other staff would continue to be determined by policy

and legislation set on an England and Wales basis. This would limit the degree of change available to probation methodology. However, building a more holistic approach to service provision could help create a distinctly Welsh approach without changing the requirements placed on probation staff.

Arrangements regarding the cross-border handling of prisoners would also need determined. Welsh prisons accept prisoners from England, and vice versa, and there is no women's prison or approved premises in Wales, meaning. This means that arrangements would need to be developed and implemented from the start. Data would also have to be transferred between the two services.

An organisational model which remains part of the civil service could benefit from shared capacity for administrative needs such as human resources and financing, thereby reducing these costs and allowing budgets to be focused on the delivery of services. In Northern Ireland, where the probation board is not considered part of the civil service, overspending is not permitted, and the probation service must compete for extra funds with other areas of government expenditure, constraining staffing capacity and innovation in practice.

It should also be noted that if a devolved probation service successfully diverts offenders from custodial sentences, the additional costs of managing these offenders would be borne by the devolved service, while the financial savings from a reduced prison population would be realised by HM Treasury and the Ministry of Justice. Similarly, while changes to expenditure on the probation service in England would result in an uplift to the Welsh Government's block grant, there is no guarantee these savings would be transferred in full to a devolved service, and it would be for the Welsh Government to decide how best to use this uplift.

Full legislative and executive devolution

Using Section 109 of the Government of Wales Act 2005, the UK Government could modify the Senedd's legislative competence so that probation is no longer a reserved area. The Senedd could then pass primary legislation within its competencies to establish new arrangements in Wales. It is likely that a UK Act of Parliament would also be needed, particularly to govern relations between the devolved and reserved areas within the justice system.

Devolved arrangements would need to be established in law, setting out probation functions and an operating model, with probation either operating as a new service or merged into an existing body.

This model offers maximum flexibility, allowing the setup of a probation service with as close to a blank slate as possible. It would enable the benefits mentioned above to be realised and facilitate the further development of a distinct Welsh model. However, this could be constrained by UK legislation on how any transferred responsibilities interact with other reserved justice agencies.

Existing staff could transfer to a new employer with separate pay scales, and new working conditions and pension arrangements would need to be established. New bodies might also need to be created for professional registration and regulation, if required.

Governance arrangements could be developed in new ways, defining relationships with other Welsh public bodies, Welsh Government oversight, and internal structures. There are various options for structuring a devolved service, including a unitary probation service (likely with at least some level of regional organisation and delivery), or subsuming the probation functions into local authority social services, as in Scotland. One notable risk of this latter approach is that probation officers operating in a wider social work organisation may be redirected to non-probation tasks. More regionally based approaches may also lead to

increased duplication, especially at middle managerial levels, and therefore resulting in higher expenditure.

Oversight structures would need to consider a range of topics including service performance, professional regulation, policy alignment, legal and regulatory compliance, and scrutiny of Ministers and senior leaders. Decisions would be required on whether to retain existing England and Wales structures for this, or to move away from them, though existing structures could be used in the short-to-medium term. While this might help minimise costs, the Welsh Government or Senedd would have less influence over the culture and values of these bodies. A responsible Cabinet Secretary or Minister would need to be appointed, with scrutiny in the full Senedd and through committees.

Probation could coordinate with, or even integrate into, other devolved services more easily, facilitating co-delivery of services, or shared commissioning budgets.

Formal arrangements like in the executive devolution case, would need to be established with courts, other criminal justice agencies, and for cross-border handling of prisoners.

This form of devolution would require the most resources, although this will be accompanied by the largest funding uplift from the UK Government. Alongside the costs of running a devolved service, there would likely be associated costs for establishing oversight and regulatory bodies and creating capacity in the Welsh Government for policy making and delivery. It is however not certain that UK Government funding would meet the full cost of delivering probation in Wales over time, especially given potential additional ongoing costs associated with administration and governance.

There would also be limitations as to what can be done, as sentencing would remain reserved to the UK Government for the time being. This means that the exact arrangements for

offenders would be a matter for the courts, somewhat restricting the extent to which a devolved probation system could focus on desistance. However, the Welsh Government would still be able to modify organisational culture and values, and have the potential to deliver more integrated and locally based services.



Lessons from other countries

Part 2 highlights important lessons that can be learned from other European countries. One notable case is Belgium, which devolved aspects of its criminal justice system, including probation, in 2014.

Several other European countries have reorganised their probation systems over the past decade, largely in response to austerity. Learning from these other experiences will be important to mitigate unintended consequences, especially given that many countries are facing similar workforce challenges.

Conclusion

The devolution of probation could provide opportunities to reshape the values, culture, and operating model of the service. However, it is important to ensure that any long-term vision is clearly articulated, understood, and bought into at an early stage of devolution. This will ensure that early decisions about the design of a devolved service do not inadvertently close off other routes that may need to remain open for future developments.

Devolution could also lead to better coordination with already devolved public services, allowing for an approach which responds to local needs. However, it is likely that only some parts of the justice system will be devolved to Wales in the first instance, including probation. While addressing the jagged edges that currently exist between probation and Welsh public services, partial devolution could create new 'jagged edges' between a devolved probation service and the wider England and Wales justice system. Clearly defined responsibilities and formalised working arrangements could help mitigate the impact of this for service users.

Our report does not seek to recommend a specific route for the devolution of probation but rather considers the advantages and disadvantages of each. Every devolution option offers opportunities for improvements to be made; and even relatively small-scale changes can lead to more meaningful and substantive differences over time.

At the same time, each option presents challenges, such as workforce and governance, which must be understood and addressed at an early stage. Further research and appraisal of these options will be required. Devolution should be seen as a long-term project, with the option for a phased approach if preferred.

Ultimately, the route pursued will depend on negotiations between the UK and Welsh governments and will be a political decision. However, it will be important to consider:

- The extent to which each option responds to the intended purpose of devolution and the values and principles that the Welsh Government seeks;
- The implications of each option for the delivery of probation functions;
- The extent 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 reserved aspects of the criminal justice system, especially if the Welsh service diverges from the approach taken in England; and
- The need for careful, planned, and phased implementation to ensure that new responsibilities are taken on in a way that protects staff, service users, and the public, while promoting better outcomes for all.

References

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Find out more

For the full report see:

Price, J., Notman, G., and Tilley, H. (2024). **Building a Welsh probation service. Part 1: Models and pathways**. Cardiff: Wales Centre for Public Policy.

Notman, G., Price, J., and Tilley, H. (2024). **Building a Welsh probation service. Part 2: Country comparison**. Cardiff: Wales Centre for Public Policy.

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