

# A Welsh jurisdiction?

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**The Yes vote on 3 March 2011, which gave the green light to expanding the Assembly's legislative powers, has strengthened calls for a separate Welsh jurisdiction. What are the pros and cons?**

## Why a Welsh jurisdiction?

The Acts of Union of 1536 and 1543 abolished Welsh law and provided that Wales should be subject to English law. Now that the Assembly has been making distinct Welsh laws since 2007 and has expanded its legislative competence from May 2011, is the next logical step the creation of a separate jurisdiction?

Since the Yes vote in the referendum on 3 March 2011 calls for a separate Welsh jurisdiction have strengthened from some quarters. One argument is the suggestion that nowhere else in the world do two primary law making bodies exist in the same jurisdiction. Another is that as a discrete body of Welsh law grows, it is becoming increasingly difficult to make the single 'England and Wales' legal jurisdiction work and, without a separate jurisdiction, is the Welsh devolution model sustainable? Parallels are drawn with Northern Ireland which is a separate legal jurisdiction but is based on common law principles and has clear similarities with England and Wales.

## Why not?

The case against a separate jurisdiction is that Welsh laws are inextricably linked with those of England and there are considerable practical implications. For example, would decisions of the English courts be binding in Welsh cases? Would a separate legal profession need to develop?

The assertion that the differing body of law emerging in Wales requires separate jurisdictions is disputed because common jurisprudence, system and procedure allow courts to work in different territories. The courts of England and Wales are fully competent to decide cases involving the laws of England and Wales and the laws of Wales only.

***Without a separate jurisdiction, is the Welsh devolution model sustainable?***

## What is a 'jurisdiction'?

A jurisdiction is the territory or sphere of activity over which the legal authority of a court or other institution extends.

England and Wales currently form a single jurisdiction – one upshot of this is that a Westminster Act will be described as having an 'England and Wales' territorial extent even if the provisions apply only to England.

## Consolidation and a Welsh statute book

Although many of the legal profession in Wales would oppose the creation of a separate jurisdiction, there is, however, a growing concern about the need for the consolidation of legislation pertaining to Wales. The current situation, involving the development of Acts of Parliament making different provision for England and Wales and then being amended separately and by different legislatures, is felt by some to be unsustainable for the evolution of accessible and comprehensible laws. A suggested solution is to consolidate legislation into a series of major Welsh Acts, for example relating to local government or education, which would make the law in Wales – and in England – easier to comprehend.

***A suggested solution is to consolidate legislation into a series of major Welsh Acts***

On a similar theme, committees in Cardiff and Westminster have heard evidence from the legal profession and other civil society groups that there is a need for a Welsh statute book which would provide a single comprehensive reference source for legislation impacting on Wales.

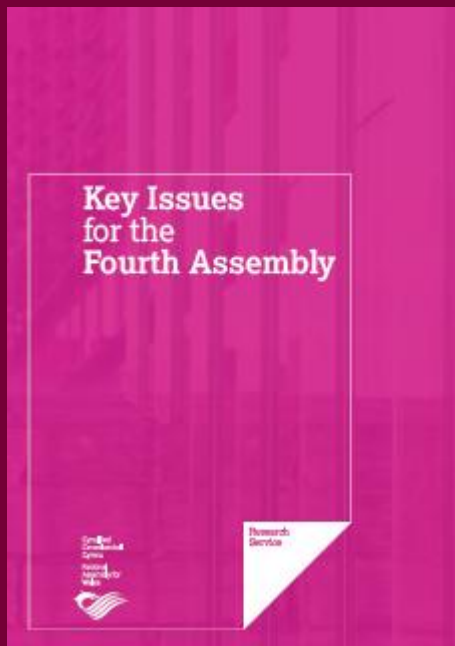
***A Welsh statute book may provide a single comprehensive reference***

## A Welsh legal personality?

Despite differing views about a separate legal jurisdiction there is widespread agreement that since devolution Wales has been acquiring a distinct legal personality in terms of the administration of justice. Wales now stands alone as an administrative unit within the legal system of England and Wales which is co-extensive with the territory of Wales. The Presiding Judges have become the Presiding Judges of Wales and within Her Majesty's Court Service there is a separate administrative unit, HMCS Wales, with its own director.

The Administrative Court is the place where the courts come into the most direct contact with the acts of devolved institutions in Wales because it hears challenges to the legality of the acts of public bodies. Its role has been evolving since 1999 but since 2009 it is administered by a team based in Cardiff. Once proceedings have been assigned to Wales, the proceedings will normally be both administered from Wales and determined by a judge of the Administrative Court at a suitable court within Wales.

# Article taken from Research Service publication



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This document has been specially prepared for Assembly Members by the Research Service. It sets out some of the key issues likely to matter to Members during the Fourth Assembly.

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