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Acronyms

AMS	Alternative Member System
BIC	British-Irish Council
DCA	Department for Constitutional Affairs
FPTP	First Past the Post
JMC	Joint Ministerial Committee
NIASC	Northern Ireland Affairs Select Committee
ODPM	Office of the Deputy Prime Minister
STV	Single Transferable Vote

Executive Summary

The UK Government continues to show little interest in developing a coherent approach to devolution as a single, integrated settlement. Relations with the devolved institutions have become almost entirely bilateral with the Department for Constitutional Affairs (DCA) playing second fiddle to the Scotland and Wales Offices, despite the DCA's overall responsibility for devolution. The Joint Ministerial Committee, designed as the principal forum for intergovernmental relations in the UK, lies disused. The process of setting devolution policy is similarly (perhaps even more) fragmented. The Wales, Scotland and Northern Ireland Offices deal with their own respective devolution agendas, while the financial arrangements are firmly within the Treasury's domain. As far as regional governance in England is concerned, there is no single department in charge of the agenda and consequently no clear direction in policy.

Within this fragmented system of managing devolution in Whitehall some significant developments took place in the May-December 2005 period. Most notably, in December the Government published the Government of Wales Bill, which is to reform the powers, structure and electoral system of the National Assembly for Wales. The bill makes provision for legislative authority to be devolved to the National Assembly on a piecemeal basis by means of Orders in Council, debated and voted on at Westminster. Under the new system Westminster and Whitehall will retain an important role in the process as both Houses of Parliament and the Secretary of State for Wales will be able to veto the Orders. Welsh Secretary Peter Hain also recently indicated that the Commons Welsh Affairs Committee would be given responsibility for scrutinising the Orders before they are taken on the floors of the two Houses.

Acts of the Scottish Parliament do not face any such Westminster hurdles, but Westminster continues to legislate for Scotland via the Sewel convention. There are currently seven government bills passing through Westminster that legislate in devolved areas and consequently require the Scottish Parliament to pass 'Sewel motions' delegating legislative consent to the UK Parliament. The operation of this convention has increasingly attracted criticism on the grounds that it is being used excessively, inconsistently and without sufficient scrutiny from the two parliaments. A recent Scottish Parliament Procedures Committee report recommended that Westminster bills subject to the Sewel convention be clearly labelled and that the

results of any Sewel votes in Holyrood should be formally conveyed to the two Houses of Parliament. Following this report, the Commons Scottish Affairs Committee in October itself launched an inquiry into Sewel from the Westminster perspective.

With devolution suspended, in July 2005 the Government's capacity to legislate directly for Northern Ireland by means of Order in Council was renewed for a sixth time. Under the terms of the Northern Ireland Act 2000, this power expires after six months unless explicitly renewed by statutory instrument. Fifteen Orders in Council creating Northern Irish legislation were made between May and December 2005.

Meanwhile, on the Opposition benches, new Conservative leader David Cameron has begun to reposition his party as a friend of devolution in Scotland and Wales, though the Tories will oppose the new Government of Wales Bill.

Chronology of Key Events: May – December 2005

5 May	Labour wins third general election with majorities in England, Scotland and Wales, though Tories outpoll Labour in England.
20 May	Seventh annual summit of the British-Irish Council takes place in Isle of Man.
15 June	Wales Office publishes White Paper <i>Better Governance for Wales</i> .
16 June	Transport (Wales) Bill reintroduced into House of Commons; the bill had fallen with dissolution in April.
12 June	Debate on regional government and Cornwall held in Westminster Hall
23 June	Welsh Grand Committee discusses the Government's Legislative Programme as it affects Wales.
15 October	Government's power to legislate for Northern Ireland in devolved areas by means of Orders in Council extended for further six months.
27 October	Scottish Affairs Committee launches inquiry into the Sewel Convention
23 November	Northern Ireland Offences Bill receives Second Reading. Division is won by Government by 310 votes to 262.
1 December	Scotland's Future Energy Needs report debated in Westminster Hall.
7 December	ODPM Select Committee launches inquiry into regional government.
8 December	Government of Wales Bill introduced to Parliament
12 December	British-Irish Council drugs sectoral group meets in Dublin.
13 December	Welsh Affairs Committee report into <i>Better Governance for Wales</i> published.

1. Devolution and Government Policy

1.1 Better Governance for Wales?

The government's major devolution policy initiative since the 2005 general election has been to set out its plans for reform of the National Assembly for Wales. The Labour Party fought the May 2005 election on a pledge to 'creat[e] a stronger Assembly with enhanced legislative powers and a reformed structure and electoral system'¹ but the detail only began to be filled in with the publication of the white paper *Better Governance for Wales* in June.² This document laid out the changes the government proposed to make to the structure, powers and electoral system of the Assembly.

The main structural change is to split the Assembly into legislative and executive, ending the corporate body model that had informed the initial devolution legislation. This has attracted virtually universal support among parties and legislators at Westminster and Cardiff Bay alike.³ At the other end of the controversy spectrum is the proposed ban on 'dual candidacy' – the practice of standing both in a constituency and on a regional list. This is seen by many as a partisan move by Labour which will jeopardise the election hopes of opposition parties' leading candidates.⁴

Last, and certainly not least, the white paper set out a three stage process towards full legislative devolution to Wales. Stage 1, described in the white paper as 'developing the current settlement',⁵ requires no new legislation; it entails the Government's inclusion of broad framework powers within England and Wales bills allowing significant policy leeway to the Assembly. This is already under way; as discussed in section 5.1.5, the NHS Redress Bill is cited by the government as an example. The second stage is to create a fast track legislative procedure by which the devolved bodies are given authority to legislate in a specific area by means of an Order in Council. It is expected that the Assembly Government will draft the Order,

¹ *Britain forward, not back* (Labour Party 2005 manifesto), p. 108. At:

www.labour.org.uk/fileadmin/manifesto_13042005_a3/pdf/manifesto.pdf.

² Wales Office, *Better Governance for Wales*, Cm 6582 (London: The Stationery Officer, 2005). At:

www.walesoffice.gov.uk/2005/better_governance_for_wales_report.pdf.

³ The principle of a clear separation between legislative and executive branches was passed unanimously by the National Assembly in 2002 (National Assembly for Wales Official Record, 14 February 2002, debate on Assembly Review of Procedure).

⁴ Richard Wyn Jones and Roger Scully are particularly critical of this element of the white paper proposals in written and oral evidence to the Welsh Affairs Select Committee. See Welsh Affairs Committee, Corrected Transcript of Oral Evidence, 18 October 2005, HC 551-i, QQ45-61.

⁵ Wales Office, *Better Governance for Wales*, p. 21.

the Assembly will debate and approve it, then the Secretary of State for Wales will lay it before Parliament, meaning that Commons, Lords and the Secretary of State will be veto players in the process. The stage 2 proposals – ‘enhancing the current settlement’⁶ – are something of a messy compromise between the status quo and a swift move to full legislative devolution, as enjoyed by Scotland and as recommended in the Richard Report.⁷ They are also an admission of the continuing divisions within the Welsh Labour Party on the merits of devolution. To sweeten the pill for those in favour of parity with Scotland,⁸ the Government’s proposals will allow for full legislative powers to be devolved subject to a referendum at an unspecified time in the future. This stage 3 – ‘changing the current settlement’⁹ – would only come into effect if supported by two-thirds of the Assembly, the Secretary of State for Wales and the two Houses of Parliament. For supporters of full legislative devolution, the government is throwing up far too many barriers on the road to the promised land. In particular, the requirement for a two-thirds majority in the Assembly can be interpreted as a way for Labour to guarantee itself a veto over the holding of a referendum even if it were out of power in both Cardiff and London.

Following the publication of the white paper, inquiries were held into the proposals at both ends of the M4, by the National Assembly (discussed in the January 2006 Wales Devolution Monitoring Report¹⁰) and the Welsh Affairs Select Committee, whose broadly supportive report was published on 13 December 2005 and is discussed in section 6.2. The Government of Wales Bill, containing the white paper proposals, was published prior to this on 8 December. In piloting the bill through Parliament, the government will come under attack from opposition parties on the dual candidacy ban, from Plaid and Liberal Democrat members who would prefer to move straight to stage 3, and from those concerned about the constitutional implications of the use of Orders in Council to delegate legislative authority to the National Assembly.¹¹ The government has a tight schedule for the bill as the 2007 election is to be held under the new rules so it will be intriguing to see how willing to

⁶ Wales Office, *Better Governance for Wales*, p. 22

⁷ Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, *Report of the Richard Commission* (Cardiff; National Assembly for Wales, 2004). At: www.richardcommission.gov.uk/content/finalreport/report-e.pdf.

⁸ This is a shorthand phrase used to mean the transfer to the National Assembly of full primary legislative powers within devolved areas. This would not mean full parity with Scotland however since Wales would still not have a distinct legal system nor control of policing or criminal justice policy.

⁹ Wales Office, *Better Governance for Wales*, p. 25.

¹⁰ ref

¹¹ This last critique is likely to arise principally in the House of Lords, a point made by Lord Richard in his evidence to the Welsh Affairs Committee (Welsh Affairs Committee, Corrected Transcript of Oral Evidence, 25 October 2005, , HC 551-ii, Q. 66).

compromise it is. Expect at the very least some concessions to the muted criticism found in the Welsh Affairs Committee report. Interestingly, Peter Hain was reported as having told an interviewer that his 'mind is not closed' on the suggestion that rather than banning dual candidacy, a national top-up list could replace the current regional lists.¹²

1.2 Arbuthnott Commission: Electoral Systems Policy

On 21 September, the Commission on Boundary Differences and Voting Systems (the Arbuthnott Commission) published a summary of the responses it had received during the consultation exercise which began in January 2005.¹³ Established by Secretary of State for Scotland Alistair Darling in May 2004, the Commission has been examining the implications of having different boundaries for Westminster and Holyrood elections ('non-coterminosity') and from 2007 different electoral systems for each of the four levels of government in Scotland. These two issues are deemed confusing to voters, potentially harming public engagement with the institutions of government and reducing turnout in elections.

In its final report, due to be published and submitted to the Secretary of State and First Minister in mid-January 2006, the Commission is expected to recommend reform of the electoral system for Scottish Parliament elections. In their consultation responses, only the Scottish Greens and the Scottish Socialists, of the parties represented in the Scottish Parliament, favoured maintaining the status quo (the Additional Member System, AMS). Labour and the Conservatives both stated a preference for first-past-the-post (FPTP) elections while the Liberal Democrats and SNP recommended adoption of the Single Transferable Vote (STV), to be used in local elections in Scotland from 2007.

In its September publication the Commission also reported strong support for moving to STV from individual respondents, civic bodies and local authorities, but with the four major parties in Scottish politics on opposite sides of the electoral systems debate, the final outcome of the process may well be a modified form of AMS. Labour and the Tories recognise that FPTP is not a genuine option for Holyrood elections – their stated preference for FPTP is more or less hypothetical – and so both parties

¹² Cited in Martin Shipton, 'Hain "acts like a colonial governor"', Western Mail, 28 December 2005. At: <http://icwales.icnetwork.co.uk/0100news/newspolitics>.

¹³ The summary of responses can be viewed at: www.arbuthnottcommission.gov.uk/docs/Consultation/Consultation%20Responses%20

raise the possibility of moving to a single ballot AMS system, which would mean voters could no longer split their votes between, for example, a Labour constituency candidate and the Green or Socialist regional list. The Conservatives also argue for a swift restoration of coterminosity and a reduction in the number of MSPs in line with this year's reduction in Scotland's representation at Westminster.¹⁴ Labour, on the other hand, argues that while non-coterminosity is not ideal, neither is it a great concern among voters. The party also highlights as problematic the practice of candidates standing for both an individual constituency and on a regional list, which, as discussed above, the Government is currently legislating to outlaw in Wales. The UK Government, which will have to table any legislation to amend the current settlement, will wait to receive Arbuthnott's recommendations before indicating its policy preferences.

1.3 Finance: The Barnett Formula

In response to a written parliamentary question from Lembit Öpik – Liberal Democrat Wales Spokesman – Treasury Minister Desmond Browne repeated the standard Government line on the financing of the devolved bodies, that there are 'no plans' to replace the Barnett Formula, which has been used to determine budget increments for Scotland, Wales and Northern Ireland since the late 1970s.¹⁵

[%20Summary.pdf](#); and the original consultation document at:

www.arbuthnottcommission.gov.uk/docs/Consultation/Consultation%20Document.pdf.

¹⁴ Such a reduction would have automatically occurred under Schedule 1 of the Scotland Act 1998, had this not been amended by the Scottish Parliament (Constituencies) Act 2004.

¹⁵ HC Deb, 18 October 2005, Col 934W.

2. Devolution and Whitehall

2.1 Secretaries of State

Since Blair reshuffled his team in the wake of the 2005 election victory, all three territorial Cabinet posts are held part-time. Alistair Darling continues in charge of both the Scotland Office and Department for Transport while Peter Hain is now both Wales Secretary and Northern Ireland Secretary. The Northern Ireland portfolio remains a large one, as the NI Office must simultaneously work to revive the devolved institutions and legislate for Northern Ireland in devolved as well as reserved and excepted areas.

As for the Scotland and Wales Secretaries, their role, though limited in policy terms, is certainly not fading away. With the Department for Constitutional Affairs taking little interest in managing devolution as a coherent whole, relations with the devolved institutions continue to be directed through the territorial offices. In the case of the Secretary of State for Wales, until full legislative devolution occurs (stage 3 of the white paper proposals), he or she will retain an important task relating to moving Orders in Council and occasional Wales-only bills and piloting them through Parliament. According to First Minister Rhodri Morgan, the Secretary of State's basis for deciding whether to move Orders in Council requested by the Assembly will be 'something more than *vires* but something less than merit'.¹⁶ This suggests that a not inconsequential amount of discretion is expected to reside at Gwydyr House, home of the Wales Office, during stage 2.

2.2 Cabinet Committee on Devolution

After the May 2005 election, the cabinet committee with responsibility for devolution policy was disbanded, a further sign of the 'missing centre' in Whitehall's management of devolution. Responsibility for devolution policy now comes within the ambit of the general Constitutional Affairs (CA) committee, whose wide remit reads 'To consider strategic issues relating to the Government's constitutional reform policies including House of Lords reform and issues arising from devolution to Scotland, Wales and Northern Ireland.'¹⁷

¹⁶ House of Commons Welsh Affairs Committee, Corrected Transcript of Oral Evidence, 10 November 2005, HC 551-iv, Q.219. At: www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc551-iv/uc55102.htm.

¹⁷ www.cabinetoffice.gov.uk/secretariats/committees/ca.asp (viewed on 28 December 2005).

2.3 Devolution Guidance Notes

In order to give effect to the government's commitment to a more permissive approach to legislating for Wales (see section 1.1), the Department for Constitutional Affairs published a revised version of Devolution Guidance Note 9, on 'Post-Devolution Primary Legislation affecting Wales', a document which gives instructions to those involved in crafting legislation across Whitehall on consultation with the Welsh Assembly Government and other matters.¹⁸ The updated version of the DGN draws attention to the stated intention of the government 'to draft Parliamentary Bills in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales'¹⁹ and gives instructions on the steps that departments should take before proposing bills with such enabling provisions.²⁰ Further, departments are advised to clearly state in white papers or other consultative documents that the proposed legislation will be drafted permissively with regards to Wales.²¹

¹⁸ See the November 2005 version of DGN 9 at:

www.dca.gov.uk/constitution/devolution/guidance/dgn09.pdf.

¹⁹ DGN 9, para. 7. The wording is taken from the white paper *Better Governance for Wales*.

²⁰ DGN 9, para. 10.

²¹ DGN 9, Annex, paras. XVII-XIX.

3. Intergovernmental Relations

3.1 Joint Ministerial Committees

The Joint Ministerial Committee (JMC) formal intergovernmental framework continues to lie in its customary dormant state. The exception, as reported in previous monitoring reports,²² has been the JMC (Europe) which has found a role as a forum for the British Government and devolved administrations to discuss European issues, particularly during the negotiations on the European Constitution.. This committee is understood to continue to meet regularly but no public notification is given of dates, attendance or agendas.²³

3.2 British-Irish Council

In May 2005, the British-Irish Council (BIC) held its seventh annual summit in the Isle of Man. The meeting had a particular focus on telemedicine, the sector of the BIC which the Manx government leads. One subject discussed was patient confidentiality. According to the communiqué issued following the meeting, the various administrations present agreed to 'co-operate in examining relevant issues, including the safe and secure electronic transfer of patient data/records and effective ways of ensuring that telemedicine and e-health information from the Internet can be quality assured'.²⁴ Updates were also given on work conducted in the other sectoral groups.

On 12 December, the Misuse of Drugs Sectoral Group of the BIC met in Dublin under the chairmanship of Noel Ahern, the Irish minister with responsibility for the National Drugs Strategy. The meeting was attended by representatives of the UK Government, Scottish Executive and Guernsey, Jersey and Isle of Man governments. Northern Ireland was represented by Northern Ireland Office junior minister Shaun Woodward while the Welsh Assembly Government was unrepresented.²⁵

Since its inaugural meeting in December 1999, there have been seven summit meetings and twelve sectoral ministerial meetings of the BIC, established by the 1998 Belfast Agreement 'to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands'.²⁶

²² See Devolution and the Centre reports at: www.ucl.ac.uk/constitution-unit/publications/devolution-monitoring-reports/index.html.

²³ The JMC homepage is at: www.dca.gov.uk/constitution/devolution/jmc.htm.

²⁴ www.british-irishcouncil.org/documents/iom_summit.asp.

²⁵ This communique can be viewed at: www.british-irishcouncil.org/documents/drugs4.asp.

²⁶ *Agreement reached in the multi-party negotiations* (The Belfast Agreement), Strand 3, para. 1. At: www.nio.gov.uk/agreement.pdf.

The BIC's inclusion in the Agreement was of symbolic importance to Unionist negotiators anxious for 'East-West' institutions to balance the 'North-South' bodies favoured by Nationalists. In practice, it is not always clear what function the BIC serves although its publications always stress that participants find the meetings useful for sharing information and best practice.

It appears that this varies from sector to sector, however. Notably, it is the sectoral groups led by Ireland (Drugs – four meetings to date) and the UK (Environment – six meetings to date) that have met most frequently suggesting either that there is simply a greater overlap of interests in these areas than the other sectors, or that it is the two *national* governments that have the greatest incentive to be seen to use the BIC at intergovernmental (rather than official) level. In particular, the fact that only one ministerial meeting has been held in the sectors led by Scotland and Wales (Social Inclusion, jointly and Minority Languages, Wales) might be explained by the fact that the devolved administrations have no great stake in the Northern Ireland peace process.

3.3 Scottish Executive – UK Government relations under strain

While the formal intergovernmental machinery discussed above lies disused, significant differences between the UK Government and Scottish Executive continue to arise and be dealt with informally. One ongoing controversy relates to deportations of failed asylum seekers and so-called 'dawn raids'. Asylum policy is reserved under Schedule 5 of the Scotland Act²⁷ but, under attack from opposition parties in the Scottish Parliament, Jack McConnell made attempts to forge a new protocol on deportations in Scotland. The Scotland Office reportedly played an active mediation role in discussions between the Home Office and Scottish Executive but ultimately the Home Office, which has a reputation for being 'devo-hostile',²⁸ let it be known that although they would listen to the opinions of the Scottish Executive, the policy would continue to be applied in a standard way on both sides of the border.²⁹ Other causes of intergovernmental tensions include the possible construction of new nuclear reactors in Scotland (see section 8.3) and the government's ID Cards legislation, to which many in the Scottish Parliament, including McConnell's Lib Dem allies, are opposed.

²⁷ *Scotland Act 1998*, Schedule 5, para. B6. At: www.opsi.gov.uk/acts/acts1998/19980046.htm.

²⁸ Alan Trench, 'Washing Dirty Linen in Private: The Processes of Intergovernmental Relations and the Resolution of Disputes', in Alan Trench (ed.), *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, forthcoming 2006-07).

4. Political Parties: Conservative Devolution Policy

New Conservative Party leader David Cameron has, as part of his general review of party policy, taken several steps that indicate a less devo-sceptic approach to devolution than under any of his predecessors.

4.1 Wales

One significant move was the replacement of Bill Wiggin by Cheryl Gillan as Shadow Secretary of State for Wales. Wiggin was the author of the 'preferendum' policy which would offer the Welsh people various options on the future of devolution ranging from full legislative powers to abolition. It was also known that Wiggin personally favoured the latter policy. Although the party has not formally dropped the preferendum policy, Gillan is expected to take a softer line, bringing the UK Tory leadership closer to the Welsh Party, led by Nick Bourne who is a strong supporter of a stronger National Assembly.

On a trip to Wales after assuming the leadership Cameron said that the National Assembly was here to stay and that the Tories would offer 'constructive opposition' to the Welsh Assembly Government.³⁰ However, he has also announced that his party will oppose the Government of Wales Bill on account of what he called the 'spiteful' proposal to ban dual candidacy (see section 1.1).³¹ In a sign of the more cooperative relationship between London- and Cardiff-based Conservatives, Nick Bourne backed up his leader on this and denounced the government for seeking to 'rig[] the elections against the opposition.'³²

4.2 Scotland

Cameron surprised, and indeed piqued, many in the Scottish Labour Party when he met First Minister Jack McConnell in the Scottish Parliament to discuss, among other things, how a Conservative Government in London and a Labour-led administration in Edinburgh could manage their relations. Cameron claimed after the meeting that he and McConnell had a shared understanding that in a situation of political cohabitation there might be a need for greater formalisation in intergovernmental

²⁹ See Hamish MacDonnell, 'McConnell attacked over asylum claim', *The Scotsman*, 23 November 2005. At: <http://thescotsman.scotsman.com/index.cfm?id=2285322005>.

³⁰ Cited in 'Assembly here to stay – Cameron', BBC News, 20 December 2005. At: <http://news.bbc.co.uk/1/hi/wales/4547374.stm>.

³¹ 'Assembly here to stay – Cameron', BBC News, 20 December 2005.

³² Cited in 'Welsh Tories slam "colonial governor" Hain', ePolitix, 28 December 2005. At: www.epolitix.com/EN/News/200512/093493e6-beeb-4a33-b298-e322b07ce59b.htm.

relations,³³ something that Labour has deemed unnecessary during a time when it has dominated across Great Britain.

David Mundell, the newly-appointed Shadow Secretary of State for Scotland, has also spoken of the need to develop working arrangements between UK and Scottish administrations of different colours.³⁴ The appointment of Mundell – a former MSP and now the Tories' only Scottish MP – and the restoration to the Shadow Cabinet of the Scotland post are further signs of Cameron's determination to defuse lingering perceptions of the Conservatives as an anti-devolution party. Cameron has also recently stated that he would not rule out full devolution of tax-raising powers should his Scottish colleagues come down in favour.³⁵

4.3 West Lothian Question

The Conservatives remain committed in principle to a policy of 'English Votes for English Laws' under which Scottish MPs would be barred from voting on legislation that doesn't apply to Scotland. As discussed in section 8.1, elements of Blair's public service reform agenda may struggle to pass through the Commons meaning that Scottish votes could prove vital. Such a development would certainly provide ammunition to the Conservatives but whether Cameron would choose to use it is another matter. Once in government the Conservatives might prefer to quietly drop what many consider an unworkable policy³⁶ although opinion polls suggest it has the backing of the electorate in all parts of the country.³⁷

³³ See Hamish MacDonell, 'Cameron meeting puts Labour in a spin', *The Scotsman*, 21 December 2005. Also at: <http://news.scotsman.com>.

³⁴ See 'Mundell appointed Shadow Scottish Secretary' on the Conservative Party website. At: www.conservatives.com/tile.do?def=news_story_page&obj_id=126811.

³⁵ See Hamish MacDonell, 'Cameron says Scotland can have fiscal autonomy if Tories want it', *The Scotsman*, 21 December 2005. Also at: <http://news.scotsman.com>.

³⁶ See, for instance, Robert Hazell (ed.), *The English Question* (Manchester: Manchester University Press, 2006 forthcoming).

³⁷ A YouGov poll in 2004 found that 78 per cent of Scots and 66 per cent of people in England and Wales agreed that Scottish MPs should not vote on laws not applying to Scotland (Robert Hazell, 'Introduction: What is the English Question?', in Hazell (ed.), *The English Question*, p. 14).

5. Devolution and Westminster: Territorial Legislation

5.1 Wales Bills

The Government's legislative programme for the 2005-06 session includes three Welsh bills, one planned draft Welsh bill and the first examples of the Government's commitment to use broad framework powers in bills to allow greater order-making discretion to the National Assembly for Wales.

5.1.1 Government of Wales Bill

The most significant of this session's Welsh bills – and indeed the most significant devolution bill since 1998 – is the new Government of Wales Bill, given its First Reading in the Commons on 8 December 2005.³⁸ The bill was preceded by the White Paper *Better Governance for Wales*, published in June.³⁹ This bill will have three main effects once it becomes law: to formally split the National Assembly for Wales into legislative and executive branches; to ban candidates in Assembly elections from standing in both a constituency and on a regional list; and to increase the National Assembly's role in the process of legislating for Wales. The Government's intention is for the bill to be on the statute book in time for the 2007 Assembly elections which means the bill must probably complete all Commons and Lords stages between January and October 2006. The Government's proposals are further discussed in section 1.1 and in the January 2006 Wales Devolution Monitoring Report.

5.1.2 Transport (Wales) Bill

The Transport (Wales) Bill, which will 'enable the Assembly to develop and implement...a safe, integrated, sustainable, efficient, and economic transport system',⁴⁰ fell with the dissolution of Parliament in April 2005. It was reintroduced to the Commons on 19 May and completed its passage through the Commons on 17 October.⁴¹ On behalf of the Conservatives, leading devosceptic Bill Wiggin moved an amendment which would have placed a requirement on the Assembly to consult the Secretary of State for Transport when exercising powers to provide public passenger transport services that cross the border with England. Wiggin was persuaded by Nick

³⁸ The bill and accompanying Explanatory Notes can be viewed at:

www.publications.parliament.uk/pa/cm200506/cmbills/100/2006100.htm.

³⁹ Wales Office, *Better Governance for Wales*, Cm 6582 (London: The Stationery Office, 2005). Online at: www.walesoffice.gov.uk/2005/better_governance_for_wales_report.pdf.

⁴⁰ Transport (Wales) Bill Explanatory Notes, published as HL Bill 26—EN and available at: www.publications.parliament.uk/pa/ld200506/ldbills/026/en/06026x--.htm.

⁴¹ HC Deb, 17 October 2005, Cols. 641-69. At: www.publications.parliament.uk/pa/cm200506/cmhansrd/cm051017/debtext/51017-09.htm#51017-09_head1.

Ainger, Wales Office minister, to withdraw the amendment. Ainger argued that in the circumstances outlined in the proposed amendment, 'it is inconceivable that the Assembly would fail to consult the Secretary of State for Transport as a matter of course'.⁴² Wiggin's proposed amendment was also criticised from the Government benches on the grounds of increasing the likelihood of an intergovernmental dispute being referred to the Judicial Committee of the Privy Council.⁴³ Thus the widely-discussed preference of the Government for intergovernmental relations to be conducted on an informal and confidential basis was once more in evidence.⁴⁴ On 24 November the bill completed its Lords committee stage without amendment and should reach the statute book early in the New Year.

5.1.3 Commissioner for Older People (Wales) Bill (HL)

A draft Commissioner for Older People (Wales) Bill was published on 22 March 2005. The bill establishes a Commissioner for Older People in Wales, whose role will be to ensure that the interests of older people in Wales are safeguarded and promoted. The dissolution of Parliament in April and the long hiatus before the reformation of select committees prevented detailed pre-legislative scrutiny. The Welsh Affairs Select Committee was able to hold one evidence session with then Wales Office minister Don Touhig on 5 April.⁴⁵

The bill was introduced on 25 May 2005, completed its Lords stages on 9 November and has now joined the queue of bills awaiting a legislative slot in the Commons.

5.1.4 Draft Tourism Accommodation (Registration) (Wales) Bill

Speaking in front of the Welsh Grand Committee on 23 June 2005, Secretary of State for Wales Peter Hain confirmed that the Government would be publishing a draft bill on tourism accommodation registration in Wales later in the 2005-06 session.⁴⁶ This bill is one of six bills requested by the National Assembly for Wales in its annual primary legislation 'bid' to the UK Government. The Government of Wales Bill and Commissioner for Older People (Wales) were also part of the 2005 bid (the transport bill was in the 2004 bid). The debate in the Welsh Grand Committee on the Government's legislative programme is discussed in section 7.2.

⁴² HC Deb, 17 October 2005, Col. 644.

⁴³ This point was made by Chris Bryant MP, *ibid.* col. 642.

⁴⁴ See for instance, A. Trench, 'Intergovernmental Relations Within the UK', in A. Trench (ed.), *The Dynamics of Devolution: The State of the Nations 2005* (Exeter: Imprint Academic, 2005).

⁴⁵ The Minutes of Evidence for this meeting on 5 April 2005 can be viewed at:

www.publications.parliament.uk/pa/cm200405/cmselect/cmwelaf/547/5040501.htm.

⁴⁶ Welsh Grand Committee debate (23 June 2005), col. 4.

5.1.5 Permissive Drafting of Legislation

The government has pointed to the NHS Redress Bill – which relates to compensation in cases of clinical negligence – as an early example of permissive drafting of legislation to allow discretion to the National Assembly.⁴⁷ The Health Bill – which will allow Wales to set its own policy on public smoking bans – can also be interpreted in this way.

5.2 Bills subject to the Sewel convention

Seven bills that legislate for Scotland in devolved areas have been introduced to Parliament since the May 2005 election. The Scottish Parliament has passed ‘Sewel motions’ for five of these giving consent to Westminster to legislate on its behalf. Sewel motions (which are now being referred to as ‘Legislative Consent Motions’ in line with the recommendation of the Scottish Parliament Procedures Committee) will shortly be moved for the final two bills on the list.

Figure 1 gives details of the status of these seven bills and the reasons why a Sewel Motion / Legislative Consent Motion was necessary.

Figure 1: Sewel Bills in 2005-06 Session⁴⁸

Title of Bill	Sewel Motion no. Date passed by Scottish Parliament	Date Bill introduced to Westminster	Status of Bill on 20 December 2005 (last sitting day before recess)	Need for Sewel Motion / Legislative Consent Motion
Natural Environment and Rural Communities Bill	S2M-3327 6 October 2005	19 May 2005	The bill has completed all Commons stages and is under consideration in the Lords.	Provisions for several cross-border and Scottish agencies to be reformed or abolished.
Civil Aviation Bill	S2M-3328 6 October 2005	9 June 2005	The bill has completed all Commons stages and its Lords committee stage.	The Bill makes adjustments to the range of functions previously conferred on Scottish ministers by the Civil Aviation Act 1982 to do with the planning and

⁴⁷ See NHS Redress Bill [HL], Explanatory Notes, para. 7.

⁴⁸ Principal source: Scottish Parliament Information Service, *Sewel Motions/ Legislative Consent Motions: Session 2* (Fact Sheet FS3-01). Can be viewed at: www.scottish.parliament.uk/business/research/briefings-05/SewelMotionsandLegislativeConsentMotionsSession2.pdf. With thanks to Andrea Marie for research assistance.

				development of airports.
Equality Bill [HL]	S2M-3440 26 October 2005	18 May 2005	Having completed its Lords stages the bill was reported back to the Commons by Standing Committee on 8 December 2005.	The Bill relates to two areas within Scottish jurisdiction, to legislate for: 1. the encouragement of equal opportunities 2. the imposition of duties on any office holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to meet the equal opportunity requirements.
London Olympic Games and Paralympic Games Bill	S2M-3506 10 November 2005	14 July 2005	Completed Commons stages on 6 December. First reading in Lords on 7 December	Provisions relating to the Hampden Park, Glasgow venue including restrictions on street trading, outdoor advertising and ticket touting, and police powers and criminal procedures.
Animal Welfare Bill	S2M-3741 15 December 2005	13 October 2005	Passed formal first Commons reading and scrutinised in Environment Food and Rural Affairs Committee inquiry.	Provision for reciprocal recognition of court orders that disqualify keeping animals.
Health Bill	n/a	27 October 2005	Under consideration in Standing Committee.	Provisions relating to supervisory requirements on community pharmacists and recovery of NHS costs in cases of personal injury compensation, and related powers of Scottish Ministers.
Company Law Reform Bill [HL]	n/a	1 November 2005	Introduced to Lords in November 2005	Provisions relating to accounting standards, auditing requirements and trade names including the conferral of additional powers on the Scottish Ministers.

5.3 Northern Ireland Bills

There are, at present, two bills relating exclusively to Northern Ireland passing through Parliament. The controversial Northern Ireland Offences Bill makes provision to deal with so-called 'on-the-runs' (OTRs) – [predominantly IRA] suspects wanted for Northern Ireland-related terrorist offences committed prior to Good Friday 1998.⁴⁹ The bill establishes a process for an OTR to apply for a 'Certificate of Eligibility' which, if granted, exempts him/her from arrest. The bill was opposed by all opposition

⁴⁹ The bill is available at: www.publications.parliament.uk/pa/cm200506/cmbills/081/2006081.pdf.

parties at Second Reading on 23 November 2005 but passed by 310 votes to 262.⁵⁰ The bill completed its Commons committee stage on 15 December without amendment⁵¹ but the government has indicated that it will make concessions when the bill returns to the floor of the House in the New Year.

The second piece of legislation relating to the security situation in the six counties is the Terrorism (Northern Ireland) Bill. This bill makes provision for the extension of the 'temporary' anti-terror powers relating to Northern Ireland that successive acts have granted the government since 1973. Although some MPs (especially Conservative and DUP members) used the debate to criticise the Government's broader approach to the 'peace process' the bill itself received its Second Reading unopposed on 31 October 2005.⁵²

5.4 Orders in Council: Legislating for Northern Ireland in 'devolved' areas

While Acts of Parliament are needed to legislate for Northern Ireland in reserved areas, during the of devolution the Government can legislate in devolved areas by means of Orders in [Privy] Council. This power is granted by the Northern Ireland Act 2000, which requires that the relevant provision be renewed by means of statutory instrument every six months.⁵³ The six-month limit allows each House of Parliament to revisit the issue on a regular basis as the orders are subject to the 'affirmative' procedure for approving secondary legislation. The most recent such order – The Northern Ireland Act 2000 (Modification) (No. 2) Order 2005 – came into force on 22 July 2005, extending the power of the Government to legislate by means of Order in Council for a further six month period from 15 October 2005.⁵⁴ This order was approved by the Commons (in the 21st Delegated Legislation Standing Committee) on 14 July⁵⁵ and the Lords on 11 July.⁵⁶

A total of fifteen Orders in Council legislating for Northern Ireland were passed between the 2005 general election and the end of the year. These are listed in figure 2.

⁵⁰ HC Debs, 23 November 2005, cols. 1528-1626.

⁵¹ View the committee transcripts at: www.publications.parliament.uk/pa/cm/cmscnor.htm.

⁵² HC Debs, 31 October 2005, cols. 627-89.

⁵³ Northern Ireland Act 2000, schedule, section 1.

⁵⁴ The Northern Ireland Act 2000 (Modification) (No. 2) Order 2005 is available at: www.opsi.gov.uk.

⁵⁵ Debate at: www.publications.parliament.uk/pa/cm200506/cmstand/deleg21/st050714/50714s01.htm.

⁵⁶ The debate took place four days earlier in Grand Committee. HL Debs, 7 July 2005, Cols. GC84-8.

Figure 2: Orders in Council legislating for Northern Ireland, May-December 2005

Title of Order	Date made in Privy Council
The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 (SI)	07/06/2005
The Drainage (Amendment) (Northern Ireland) Order 2005 (SI)	07/06/2005
The Company Directors Disqualification (Amendment) (Northern Ireland) Order 2005 (SI)	07/06/2005
The Insolvency (Northern Ireland) Order 2005 (SI)	07/06/2005
The Local Government (Northern Ireland) Order 2005(SI);	19/07/2005
The Budget (No. 2) (Northern Ireland) Order 2005 (SI);	19/07/2005
The Unauthorised Encampments (Northern Ireland) Order 2005 (SI)	19/07/2005
The Firearms (Amendment) (Northern Ireland) Order 2005 (SI)	19/07/2005
The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (SI)	19/07/2005
The Criminal Justice (Northern Ireland) Order 2005 (SI)	19/07/2005
The Colleges of Education (Northern Ireland) Order 2005 (SI)	19/07/2005
The Local Elections (Northern Ireland) (Amendment) Order 2005 (SI)	19/07/2005
The Traffic Management (Northern Ireland) Order 2005 (SI)	19/07/2005
The Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005 (SI);	14/12/2005
The Legal Aid (Northern Ireland) Order 2005 (SI).	14/12/2005

6. Devolution and Westminster: Territorial Select Committees

6.1 Scottish Affairs Committee launches Sewel Convention Inquiry

On 27 October the Scottish Affairs Committee in the House of Commons announced that it would be conducting an inquiry into 'The Sewel Convention: The Westminster Perspective'. This followed the publication, on 5 October, of a report on Sewel by the Procedures Committee of the Scottish Parliament.⁵⁷ Many commentators have noted the unexpectedly high number of 'Sewel motions' passed at Holyrood, conferring authority on Westminster to legislate for Scotland in non-reserved policy areas.⁵⁸ The decisions by the two committees to investigate this mechanism follows criticisms of the lack of legislative scrutiny given to Sewel legislation in the two parliaments.⁵⁹

The focus of the Scottish Affairs Committee inquiry will not be Sewel Motions per se, 'but rather how Members of Parliament can be better made aware that a particular Bill before the House of Commons has been subject to a Sewel Motion in the Scottish Parliament – for example, perhaps by a more formal communication between Holyrood and Westminster – and how such Motions are scrutinised at Westminster.'⁶⁰

The committee will also consider changes to Westminster procedure recommended in the Procedures Committee report. These included: a clearer system of labelling of bills to which the Sewel convention applies – perhaps by means of Speaker certification; a requirement for Explanatory Notes to government bills to include a section on Sewel implications (i.e. sections of the bill that alter Scottish law in devolved areas); and a mechanism by which notification of Sewel resolutions at Holyrood is conveyed directly to the two Houses of Parliament.⁶¹

The committee will be accepting submission of evidence until 9 January 2006, after which it will begin a series of oral evidence-taking sessions. Publication of the final report can be expected by summer 2006.

⁵⁷ www.scottish.parliament.uk/business/committees/procedures/reports-05/prr05-07-vol01.htm

⁵⁸ See, *inter alia*, Barry Winetrobe, 'A Partnership of the Parliaments? Scottish Law making Under the Sewel Convention at Westminster and Holyrood', in Robert Hazell (ed.), *Devolution, Law Making and the Constitution* (Exeter: Imprint Academic, 2005).

⁵⁹ *ibid.*

⁶⁰ Press release announcing the launch of the enquiry and call for evidence available at: www.parliament.uk/parliamentary_committees/scottish_affairs_committee/sac_051027.cfm.

⁶¹ See paras. 203-7 of the Procedures Committee report.

- The Scottish Affairs Committee is also currently holding an inquiry into 'The Potential Benefits for Scotland of the 2012 Olympics', and held six evidence sessions between 8 November and 13 December 2005.

6.2 Welsh Affairs Select Committee: White Paper Inquiry and Report

The most significant inquiry held by the Welsh Affairs Select Committee in the 2005-06 session was on the government's white paper, *Better Governance for Wales*. As part of its inquiry, the committee took evidence from Secretary of State Peter Hain and First Minister Rhodri Morgan, among others.⁶² Under predictable attacks from opposition members Hain and Morgan repeated the government line that reform of the electoral system as discussed above is necessary to prevent abuse by list members masquerading as alternative constituency representatives.

The pair were also asked whether the 'stage 2' proposals in the white paper would be robust enough to function when different parties were in government in Wales and the UK. Hain retorted that intergovernmental disagreements would be less likely to disrupt the Assembly's legislative priorities under the new arrangements than the current. He further argued that UK Government would be unlikely to defy the will of the Assembly for fear of electoral punishment, raising the Conservative Welsh wipe-out of 1997 as an example. However, the story of Conservative rule between 1979 and 1997 could equally be interpreted as an example of how a government with a large majority in England can afford to over-ride Welsh interests without suffering severe threats to its stability.⁶³ Morgan interestingly suggested that an equivalent of the Salisbury Convention could come into operation, under which it would be normal practice that manifesto commitments of the party or parties forming the Welsh Assembly Government would not be opposed at Westminster.⁶⁴

The committee published its report on 13 December,⁶⁵ shortly after the Government of Wales Bill was printed. The government will respond to the committee in the New Year and will come under pressure to accept some of the recommendations of its

⁶² House of Commons Welsh Affairs Committee, Corrected Transcript of Oral Evidence, 10 November 2005, HC 551-iv. At: www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc551-iv/uc55102.htm.

⁶³ House of Commons Welsh Affairs Committee, Corrected Transcript of Oral Evidence, 10 November 2005, Q. 211.

⁶⁴ House of Commons Welsh Affairs Committee, Corrected Transcript of Oral Evidence, 10 November 2005, Q. 212.

relatively supportive report as amendments to the bill or non-statutory commitments made by government ministers. For instance, the committee suggested that it might be necessary to revisit the question of the size of the National Assembly since 'a 60 Member Assembly may not prove sufficient to carry out its scrutiny and legislative roles'.⁶⁶ Further, it urged the Wales Office 'to play an active and visible role in the education of Government Departments' to meet the commitment to permissive drafting of England and Wales Bills.⁶⁷ During stage 2, the committee argues that 'in principle, all draft Orders in Council should be debated on the floor of the House'.⁶⁸ As to be expected from a Labour-dominated committee, the final report supported the more controversial ban on dual candidacy and the requirement for a two-thirds majority vote in the Assembly before a referendum on stage 3 would be considered. The committee did argue, however, that should such a super-majority be forthcoming, the Secretary of State should have no discretion in whether to lay the motion authorising a referendum before Parliament.⁶⁹

6.3 Northern Ireland Affairs Select Committee

With the devolved institutions in Northern Ireland now suspended for over three years, the NIASC in the House of Commons has one of the heaviest workloads at Westminster, its remit covering both 'reserved' and 'excepted' matters such as policing and EU relations, and formerly devolved matters such as education which remain the responsibility of the Northern Ireland Office until and unless the Northern Ireland Assembly and Executive resume their functions.

Interestingly, the new NIASC – formed in July 2005 – has not followed its predecessor's decision to divide its work between a main committee with responsibility for non-devolved matters, and a sub-committee 'to consider matters that had fallen previously within the remit of the Northern Ireland Assembly'.⁷⁰

⁶⁵ House of Commons Welsh Affairs Committee, *Government White Paper: Better Governance for Wales*, First Report of Session 2005-06, HC 551 (London: The Stationery Office, 2005) and available at: www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/551/551.pdf.

⁶⁶ House of Commons Welsh Affairs Committee, *Government White Paper: Better Governance for Wales*, Recommendation 11.

⁶⁷ House of Commons Welsh Affairs Committee, *Government White Paper: Better Governance for Wales*, Recommendation 23.

⁶⁸ House of Commons Welsh Affairs Committee, *Government White Paper: Better Governance for Wales*, Recommendation 29.

⁶⁹ House of Commons Welsh Affairs Committee, *Government White Paper: Better Governance for Wales*, Recommendation 35.

⁷⁰ House of Commons Northern Ireland Affairs Committee, *The Work of the Committee in 2004*, Fourth Report of Session 2004-05, HC 262 (London: The Stationery Office, 2005) and available at:

Between July and December 2005, the NIASC had held public evidence sessions as part of four different inquiries and had issued a call for evidence for a fifth, on 'Organised Crime in Northern Ireland'.⁷¹ Two of the ongoing inquiries are on reserved matters – 'The Police Service of Northern Ireland' and 'Political and Security Developments in Northern Ireland', on the latter of which Secretary of State for Northern Ireland Peter Hain gave evidence on 26 October.

The other two inquiries are on matters devolved under the Northern Ireland Act 1998. One, an ongoing inquiry into 'Education in Northern Ireland' has focussed on the decision of the Government to press ahead with the abolition of academic selection at the age of 11 and the grammar/secondary school division.⁷² Angela Smith, the junior minister in the Northern Ireland Office with responsibility for education, was criticised for this decision by members of the NIASC when giving evidence to the committee on 14 December.⁷³ First of all, the chairman of the committee (Patrick Cormack MP) pointed out that surveys conducted by the Northern Ireland Executive have repeatedly shown a majority in favour of maintaining the status quo. The minister suggested that the available data was contradictory in assessing public opinion on this point. Another criticism was that any decision on the future of Northern Ireland's schooling system should be left for the Northern Ireland Assembly to decide after the restoration of devolution. Sammy Wilson (DUP) pressed this point, arguing that 'had these kinds of proposals come to the Northern Ireland Assembly, given the way in which decisions have been made in the Northern Ireland Assembly, there would be absolutely no chance of them ever going through in their present form'.⁷⁴ Angela Smith responded that she could not predict what the Assembly would do and also pointed out that all decisions could not be put on hold until the Assembly were to resume its functions.⁷⁵

The second ongoing inquiry into a formerly devolved matter is on the Review of Public Administration (RPA) in Northern Ireland.⁷⁶ The RPA was established in early

www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/262/262.pdf, p. 3. This report discusses the reasoning behind the establishment of the sub-committee in January 2004 and its work.

⁷¹ See the press notice announcing the launch of the inquiry at:

www.parliament.uk/parliamentary_committees/northern_ireland_affairs/niac_pn_4_05_06_.cfm.

⁷² The decision to move to a comprehensive schooling system was originally taken by Sinn Fein's Martin McGuinness as Education Minister, in one of the final acts of the Northern Ireland Executive prior to suspension in October 2002.

⁷³ Uncorrected Minutes of Evidence (14 December 2005) can be viewed at: www.parliament.the-stationery-office.co.uk/pa/cm200506/cmselect/cmniaf/uc726-iii/uc72602.htm.

⁷⁴ Uncorrected Minutes of Evidence (14 December 2005), Q.183.

⁷⁵ Uncorrected Minutes of Evidence (14 December 2005), Q.179 and 183.

⁷⁶ The work of the Review of Public Administration is detailed at: www.rpani.gov.uk/latestnews.htm.

2002 by David Trimble and Mark Durkan (then First Minister and Deputy First Minister) then taken on by the Northern Ireland Office following suspension of devolution. The NIASC met in Londonderry on 29 November 2005 to take evidence from officials from the Review of Public Administration Team, the Panel of Independent Experts and the Departments of Education, and Health, Social Services and Public Safety.

6.4 ODPM Select Committee: Launch of Regional Government Inquiry

In December 2005, the Select Committee on the Office of the Deputy Prime Minister launched an inquiry entitled 'Is There a Future for Regional Government?'.⁷⁷ Its last venture into the English Regions part of its remit was in summer-autumn of 2004, when it scrutinised the Government's draft Regional Assemblies Bill, which was to have set out the powers to be devolved to elected regional assemblies in England.⁷⁸

However, as a result of the overwhelming 'No' vote in the November 2004 referendum on whether to establish such an assembly in the North East, directly-elected assemblies are off the table for the foreseeable future. The call for evidence launching the new inquiry reflects this new reality, speaking instead of examining 'the potential for increasing the accountability of decision-making at the regional and sub-regional level' as well as looking at the possibility of devolving powers *from* the regional *to* the local level.⁷⁹ In addition, the committee will look beyond regional governance in the sense of the triumvirate of regional governance bodies (Government Office, Regional Development Agency, unelected regional chamber) that exist in the eight standard English regions outside London. The inquiry is to examine models of sub-regional governance – including city regions – and inter-regional cooperation such as in the Northern Way.

The committee will be accepting evidence until 23 January 2006 before commencing oral evidence taking and deliberation.

- The committee also launched inquiries this autumn into 'Affordability and the Supply of New Housing' and 'The Fire and Rescue Service'. Both these inquiries

⁷⁷ See press release at:

www.parliament.uk/parliamentary_committees/odpm/odpm_session_2005_06_pn15.cfm.

⁷⁸ This report (HC 62-I, Session 2004-05) is at:

www.publications.parliament.uk/pa/cm200405/cmselect/cmselect/cmselect/62/62.pdf with the Government's response published as HC 459, Session 2004-05, at:

www.publications.parliament.uk/pa/cm200405/cmselect/cmselect/cmselect/459/459.pdf.

contain important regional angles, the former relating to regional disparities in housing availability and prices and the latter to the introduction of regional fire control centres and its implications.⁸⁰ Future monitoring reports will provide updates on the committee's findings and recommendations on the regional level of governance.⁸¹

⁷⁹ See press release at:

www.parliament.uk/parliamentary_committees/odpm/odpm_session_2005_06_pn15.cfm.

⁸⁰ Press releases and Minutes of Evidence associated with these inquiries can be found at:

www.parliament.uk/parliamentary_committees/odpm.cfm.

⁸¹ For detailed discussion of these issues see the January 2006 English Regions Devolution Monitoring Report at: XX.

7. Devolution and Westminster: Territorial Grand Committees

7.1 Northern Ireland Grand Committee

The Northern Ireland Grand Committee, a rare Commons committee on which the Government is in a minority, has met twice in the 2005-06 Parliamentary session.

On 29 June it met to consider the Draft Budget (No. 2) (Northern Ireland) Order 2005: when devolution was suspended in 2002, responsibility for authorising the budget of Northern Ireland departments returned to Westminster from Stormont.⁸² After a wide-ranging debate, during which the ministers present took some flak on issues including hospital waiting lists, changes to the system of local taxation and the debate over academic selection (see section 6.3), the Order was approved without division.

On 15 November 2005, the committee met for a second time to consider the Draft Priorities and Budget 2006–08 and the proposal for a draft Rates (Capital Values, etc.) (Northern Ireland) Order 2005.⁸³ The sitting was adjourned without the motions being approved.⁸⁴

7.2 Welsh Grand Committee

The Welsh Grand Committee has met on a single occasion this session. This meeting took place on 23 June 2005 to discuss the Government's Legislative Programme, formally on a motion 'That the Committee has considered the matter of the Government's legislative programme as outlined in the Queen's Speech as it relates to Wales.'⁸⁵ Much of the debate unsurprisingly centred on the plans contained in *Better Governance for Wales*. In the opening speech, Secretary of State Peter Hain spent much of his time fending off opposition attacks on the proposed ban on Assembly candidates standing in a constituency and also on a regional list.

⁸² Northern Ireland Grand Committee, 29 June 2005. At: www.publications.parliament.uk/pa/cm200506/cmstand/nilrelg/st050629/50629s04.htm, cols 13-51.

⁸³ Northern Ireland Grand Committee, 15 November 2005. At: www.publications.parliament.uk/pa/cm200506/cmstand/nilrelg/st050629/50629s01.htm.

⁸⁴ Northern Ireland Grand Committee, 15 November 2005. Col. 45.

⁸⁵ Welsh Grand Committee, 'The Government's Legislative Programme', 23 June 2005. At: www.publications.parliament.uk/pa/cm200506/cmstand/welshg/st050623/pm/50623s01.htm.

Plaid Cymru parliamentary leader Elwyn Clwyd also took the opportunity to press the case for moving straight to full legislative devolution instead of the Order in Council procedure that would give the UK Parliament and Government a veto over each extension of the Assembly's legislative discretion. He also highlighted the perceived under-funding of Wales and called for a review of the Barnett formula which allocates spending increases to the devolved territories on a per capita basis.⁸⁶ On behalf of the Liberal Democrats, Lembit Öpik also criticised the current funding settlement and called for 'a more needs-based formula than the Barnett formula seems to be'.⁸⁷

Former Secretary of State for Wales Paul Murphy labelled the Additional Member System 'the worst of all those [systems] on offer' and expressed a preference for an 80-member Assembly elected on the Alternative Vote system, a move which would significantly reduce the proportionality of Assembly election results.⁸⁸ Conservative members Bill Wiggin, David Jones and David T. C. Davies all criticised the performance of the Assembly and confirmed their personal views that the Assembly should be abolished, or at least certainly not strengthened. They also confirmed their preference for replacing the electoral system with First Past the Post. Nick Ainger summed up for the government, drawing attention to the various bills in the Queen's Speech applying wholly or partly to Wales. The motion was then passed without division.⁸⁹

7.3 Scottish Grand Committee

The Scottish Grand Committee has not met this session. Its last meeting was for a debate on 'Constitutional Arrangements' on 12 November 2003. In a Westminster Hall debate on Scottish energy needs (see section 8.3), Labour MP Jimmy Hood raised the question of why that debate wasn't being held in Scottish Grand Committee. He said 'I think that I have seen Halley's comet since we last had a Scottish Grand Committee, and I want to mention it, not as a criticism but as a wee point to be mentioned in a chat over a cup of tea later.'⁹⁰

7.4 Regional Affairs Committee

The [English] Regional Affairs Committee has also not met this session. It last met in June 2004 to discuss 'Regional Economic Performance and the Northern Way'.

⁸⁶ Welsh Grand Committee, 23 June 2005, col. 34.

⁸⁷ Welsh Grand Committee, 23 June 2005, col. 18.

⁸⁸ Welsh Grand Committee, 23 June 2005, col. 27.

⁸⁹ Welsh Grand Committee, 23 June 2005, col. 78.

⁹⁰ HC Deb, 1 December 2005, Col. 183WH..

8. Devolution and Westminster: Other Developments

8.1 The West Lothian Question

With Labour's majority in the House of Commons down to 66 since May 2005, the Government has already begun to struggle to push its legislative programme through Parliament. Major rebellions thus far this session have been on the non-devolved matters of ID Cards and anti-terrorism legislation⁹¹ but with controversial legislation coming up in devolved areas (particularly the Education Bill), the chances are rising that Scottish votes will be needed to pass England and Wales legislation.⁹² Such an outcome would be seen by many as constitutionally indefensible and would certainly revive the debate on the West Lothian Question – the constitutional anomaly whereby Scottish MPs can vote on English matters but not vice versa. The best source of data on MPs' voting behaviour and backbench rebellions is www.revolts.co.uk; territorial aspects of major rebellions will be discussed in future Devolution and the Centre reports.

The Conservative Party fought the 2005 election on a platform of 'English Votes for English Laws', whereby the Commons Speaker would certify bills or parts of bills that only applied to England or England and Wales thereby disqualifying Scottish members from voting.⁹³ The workability of this proposal is put to the test and found wanting by Russell and Lodge in *Westminster and the English Question*.⁹⁴ Aside from breaching the constitutional principle that all MPs are of equal status and raising interpretative questions over whether certain bills or clauses should be certified or not, such a policy might lead to a situation in which one party had a majority at UK level but another did so with Scotland out of the picture. In effect there would be a different majority at Westminster depending on whether the policy on the table was reserved or devolved. New Conservative leader David Cameron has so far not disowned this policy but there are indications that a possible rethink is under way within the party along with the more widely-discussed changes to the Tory approach to Welsh and Scottish devolution more generally (see section 4).

⁹¹ The Government's majority fell as low as 27 during the passage of the ID Cards bill while on the Terrorism Bill it memorably lost its first whipped vote in the Commons on the proposal to allow 90-day detention of terror suspects without trial.

⁹² The Education Bill will in practice apply principally to England though in legal terms its territorial extent will be 'England and Wales'.

⁹³ *It's Time For Action* (The Conservative Party Election Manifesto 2005) (London: The Conservative Party, 2005), p. 22. At: www.conservatives.com/pdf/manifesto-uk-2005.pdf.

⁹⁴ Russell, M. and Lodge, G., *Westminster and the English Question* (London: The Constitution Unit, 2006). See also, Hazell, R. (ed.), *The English Question* (Manchester: Manchester University Press, 2006 forthcoming).

Meanwhile, the English Democrats Party (EDP) and its sister organisation the Campaign for an English Parliament (CfEP) continue to agitate for the more radical solution of creating a separate English Parliament.⁹⁵ The English Democrats recently won a town council seat in Crowborough taking 57 per cent of the vote (though in terms of votes cast this came to only 120).⁹⁶ This latter figure (and the fact that there was no Labour or Conservative candidate) gives a better indication of the continuing indifference on the part of the English people towards what the EDP and CfEP consider Albion's 'unfair' constitutional, financial and cultural deal. Support for this view comes from Lord Baker who has recently announced a plan to introduce a bill to enact the English Votes for English Laws policy as a first step toward an English Parliament.⁹⁷

8.2 Westminster Hall Debate on Regional Government⁹⁸

On 12 July 2005, Andrew George (the Liberal Democrat MP for St Ives) led a debate on regional government in which he pressed the Government not to give up on its plans for elected regional assemblies within England and to consider devolution of powers to Cornwall rather than to the unelected South West Regional Assembly. Responding for the Government, junior ODPM minister Jim Fitzpatrick ruled out granting any special regional status to Cornwall, stating that 'Cornwall is a county; it is a separate entity and not a region, and it does not fit our plans for regional devolution'.⁹⁹

8.3 Westminster Hall Debate on Scotland's Future Energy Needs

On 1 December 2005, a debate was held in Westminster Hall on Scotland's Future Energy Needs,¹⁰⁰ following a Scottish Affairs Select Committee inquiry and report into the subject.¹⁰¹ The issue is proving controversial since the UK Government, which controls energy policy under the Scotland Act 1998, is leaning towards building new nuclear power stations, including in Scotland, where there is significant opposition to such a move. Given that planning policy is devolved, it is not clear what the outcome

⁹⁵ EDP site: www.englishdemocrats.org.uk; CfEP site: www.thecep.org.uk.

⁹⁶ www.wealden.gov.uk/Council/Electoral_services/Results/documents/CrowStJohns241105.PDF.

⁹⁷ Interview of Lord Baker by Mark D'Arcy on Radio Four's Today in Parliament, 2 December 2005.

Transcript reproduced at: www.thecep.org.uk/news/ViewItem.asp?Entry=789.

⁹⁸ HC Deb, 12 July 2005, Cols. 232WH-238WH.

⁹⁹ HC Deb, 12 July 2005, Col. 237WH.

¹⁰⁰ HC Deb, 1 December 2005, Cols. 151WH-200WH.

would be should the Scottish Executive or Parliament oppose UK plans to build new reactors north of the border as sites such as Dounreay come to the end of their natural life.

8.4 Early Day Motions

Although they do not lead to debates in the Commons, let alone legislative changes, early day motions (EDMs) can provide a good indication of opinion on the backbenches and among opposition members. EDMs introduced this session relating to devolution include several expressing concerns about government plans to restructure police forces (EDM 1008, 1010, 1121) and fire services (EDM 229 and 229A) in England along standardised regional lines.¹⁰² Other EDMs call for the abolition of the Regional Assemblies (EDM 56), a multi-option referendum on Welsh devolution (EDM 382), greater recognition of St George's Day (EDM 1168) and increased Protestant representation on the Equality Commission in Northern Ireland (EDM 639). Figure 3 shows the level of support for these and other motions.

Figure 3: Devolution-related Early Day Motions as of 11 January 2006¹⁰³

EDM Number	Title	Primary Sponsor	Date Proposed	Number of Signatories
1168	ENGLAND AND ST GEORGE'S DAY	Nicholas Winterton	30.11.2005	27
1121	MERGER OF SUSSEX POLICE	Peter Bottomley	28.11.2005	14
1010A	MERGER OF POLICE FORCES IN EASTERN ENGLAND	Mike Penning	14.11.2005	9
1010	MERGER OF POLICE FORCES IN EASTERN ENGLAND	Bob Spink	14.11.2005	16
1008	POLICE RESTRUCTURING AND THE SOUTH WEST	David Heath	11.11.2005	26
639	COMPOSITION AND WORK OF EQUALITY COMMISSION IN NORTHERN IRELAND	Gregory Campbell	20.07.2005	6
382	BETTER GOVERNANCE FOR WALES WHITE PAPER	Bill Wiggin	21.06.05	38
240	GRAMMAR SCHOOLS IN NORTHERN IRELAND	David Lidington	26.05.2005	48
229A1	REGIONAL EMERGENCY FIRE CONTROL CENTRES	Caroline Spelman	06.06.2005	100

¹⁰¹ House of Commons Scottish Affairs Committee, *Meeting Scotland's Future Energy Needs*, Second Report of Session 2004-05, HC 259-I. At:

www.publications.parliament.uk/pa/cm200405/cmselect/cm Scotaf/259/259i.pdf.

¹⁰² These policy debates are discussed in the January 2006 English Regions Devolution Monitoring Report. At: www.ucl.ac.uk/constitution-unit/research/devolution.

¹⁰³ Information on EDMs is available at: <http://edmi.parliament.uk/EDMi/Default.aspx>. With thanks to Laura Venning for research assistance on this section.

229	REGIONAL EMERGENCY FIRE CONTROL CENTRES	Andrew Dismore	25.05.2005	141
78	NORTHERN IRELAND ELECTION RESULT AND CONTINUING DIRECT RULE	Gregory Campbell	17.05.2005	7
56	ABOLITION OF REGIONAL ASSEMBLIES	Caroline Spelman	17.05.2005	82
35A1	WAITING LISTS IN WALES	Martyn Jones	19.05.2005	2
35	WAITING LISTS IN WALES	Bill Wiggin	17.05.2005	41

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Acronyms

AM	Assembly Member [of National Assembly for Wales]
BIC	British-Irish Council
EDM	Early Day Motion
GOWB	Government of Wales Bill
JMC	Joint-Ministerial Committee
LCC	Lords Constitution Committee
MSP	Member of the Scottish Parliament
NIASC	Northern Ireland Affairs Select Committee
ODPM	Office of the Deputy Prime Minister
RPA	Review of Public Administration in Northern Ireland
SASC	Scottish Affairs Select Committee
WASC	Welsh Affairs Select Committee

Executive Summary

The major piece of devolution business at 'the centre' in this monitoring period was the Government of Wales Bill (GOWB). As of 30 April the bill is still before parliament having suffered a defeat on the controversial clause banning 'dual candidacy' in Assembly elections.

Until the GOWB comes into effect (expected to be in May 2007), Westminster remains the sole source of primary legislation for Wales. Two Wales-only acts were in front of parliament in the January-April 2006 period, one – the Transport (Wales) Act – reaching the statute book. In its annual (though possibly last) 'legislative bid', the National Assembly for Wales requested a further two bills in the 2006-07 session.

The Northern Ireland Assembly is finally due to be re-established in May after a hiatus of over three years. The government's Northern Ireland Bill will re-establish the Assembly and give it until November to agree upon a power-sharing executive, failing which the institution will be formally wound up. Meanwhile, the government is also taking the first step towards devolving police and justice policy to the six counties at such future time as both nationalist and unionist parties in the Assembly and Executive are in favour.

The government continues to resist 'reopening' the Scotland Act despite some pressures on it to do so. The Arbuthnott report recommended moving to an 'open list' electoral system for Scottish parliamentary elections and is awaiting a reply from the UK and Scottish governments. And there have been calls for a dual candidacy ban in Scotland to match that proposed for Wales. The government opposes this proposal.

The West Lothian Question has been asked once more, with a private member's bill introduced in the Lords seeking to enact the Tory 'English votes on English laws' policy. The bill would enable (and indeed oblige) the Speaker to certify legislation as to territorial extent and rule on which groups of MP may speak or vote. The government remains firmly opposed.

The Joint Ministerial Committee lay dormant throughout this monitoring period except for in its European sectoral format. Other negotiations and consultations between UK and devolved governments remained informal and bilateral.

Chronology of Events: January to April 2006

19 January	Arbuthnott Report on electoral systems and boundaries in Scotland published.
7 February	Northern Ireland Grand Committee debates Northern Ireland budget order
10 February	Second Reading of Lord Baker's bill to tackle West Lothian Question
15 February	Westminster Hall debate on Arbuthnott recommendations
16 February	Transport (Wales) Act 2006 receives Royal Assent
16 February	Government introduces bill paving way for eventual devolution of police and justice policy to Northern Ireland
28 February	Government of Wales Bill completes Commons proceedings
2-3 March	British-Irish Council social exclusion group meets in Edinburgh
3 March	Second Reading of bill to ban 'dual candidacy' in Scotland
28 March	N. Ireland Grand Committee debates Review of Public Administration
29 March	National Assembly for Wales bids for two Wales-only bills in 2006-07 Westminster session
31 March	Government power to legislate for Northern Ireland by order in council extended for seventh time
19 April	Government defeated in Lords on candidacy rules clause of Government of Wales Bill
19 April	Welsh Grand Committee debates the implications for Wales of Budget
20 April	Government introduces a bill to re-establish the Northern Ireland Assembly

1. Devolution Policy Debates: Government of Wales Bill

1.1 Progress of the Bill

The Government of Wales Bill (GOWB) has been the major piece of devolution business at Westminster throughout the period covered by this report (January to April 2006). The progress of the bill and related developments are shown in Figure 1 below.

Figure 1: Chronology of Government of Wales Bill – January to April 2006

9 January	Commons second reading debate
19 January	Publication of Government response to Commons Welsh Affairs Committee report on <i>Better Governance for Wales</i> white paper
23 January	Commons committee stage first day
24 January	Commons committee stage second day
30 January	Commons committee stage third day
27 February	Commons report stage first day
28 February	Commons report stage second day and third reading debate
1 March	Lords first reading
16 March	Publication of Lords Constitution Committee report on the bill
22 March	Lords second reading debate
29 March	Publication of Lords Delegated Powers and Regulatory Reform Committee report on the bill
19 April	Lords committee stage first day
28 April	Publication of Government response to Lords Constitution Committee report

1.2 Summary of the bill

The provisions of the bill have been discussed in previous Monitoring Reports¹ so a brief précis will suffice here.

¹ See Akash Paun, *Devolution and the Centre Monitoring Report: January 2006* (London: The Constitution Unit); and Richard Wyn Jones and Roger Scully (eds.), *Wales Devolution Monitoring Report: January 2006* (London: The Constitution Unit). Both are available at: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html.

Parts 1 and 2 of the bill reform the *structure* of the Welsh institutions, formalising the de facto division between National Assembly and Assembly Government as legislative and executive branches. Part 1 also changes the *electoral system* for Assembly elections, making the controversial change of banning candidates from running both in an individual constituency and on a regional list. Parts 3 and 4 relate to the *powers* of the Assembly and Assembly Government. Part 3, to use the government's phrase, 'enhances the current settlement' (but does not replace or broaden it), by creating a complex procedure for augmenting the legislative role of the Assembly.

The two main stages of this procedure are: first, an order in council will be passed to grant legislative competence to the Assembly in a clearly-defined policy area (these have been termed 'legislative competence orders'), and second, that the Assembly will then be able to legislate within that policy area by means of 'measures' (these latter will be similar to acts of parliament).

Part 4 of the bill has been described as a 'blueprint for the future'² in that it legislates for the granting of full primary legislative powers to Wales subject to a referendum at an unspecified future point. And Part 5 deals with finance.

While some of the debates surrounding the bill have already become quite stale, a number of interesting points did arise in the recent parliamentary proceedings. Some insight has also been gained into the positions of the respective political parties.

1.3 Structure

The formal separation of Assembly and Assembly Government has elicited no opposition although Lib Dem Shadow Wales Secretary Lembit Öpik did move an amendment at committee stage seeking to rename the Assembly the '*Senedd*' (Welsh for parliament and also the name for the newly-opened Assembly building).

1.4 Electoral System

The Part 1 provisions banning 'dual candidacy' have been opposed by all opposition parties at every stage of the process. In the Commons, the sizeable Labour majority saw the bill sail through, the government comfortably fending off an opposition

² House of Lords Select Committee on the Constitution, *Government of Wales Bill*, HL 142 (London: The Stationery Office, 16 March 2006). At: www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/142/142.pdf, p. 6.

amendment on the candidate selection clause.³ At Lords committee stage on 19 April, however, the government was defeated, with peers passing a Conservative amendment by 133 votes to 114.⁴ As shown in figure 2, the effect of the amendment is to replace the government's blanket ban on dual candidacy with a softer version that would enable constituency candidates to run on a regional list so long as the constituency is part of the region.

Figure 2: Dual candidacy ban – original and amended versions

<p><i>(original government version)</i>⁵</p> <p>7. Candidates at general elections</p> <p>(5) The list must not include a person—</p> <p>(a) who is included on any other list submitted for the Assembly electoral region or any list submitted for another Assembly electoral region,</p> <p>(b) who is an individual candidate to be an Assembly regional member for the Assembly electoral region or another Assembly electoral region, or</p> <p>(c) who is a candidate to be the Assembly constituency member for an Assembly constituency.</p> <p><i>(as amended in the Lords on 19 April 2006)</i>⁶</p> <p>7. Candidates at general elections</p> <p>(5) The list must not include a person—</p> <p>(a) who is included on any other list submitted for the Assembly electoral region or any list submitted for another Assembly electoral region,</p> <p>(b) who is an individual candidate to be an Assembly member for the Assembly electoral region or another Assembly electoral region,</p> <p>(c) who is a candidate to be the Assembly member for an Assembly constituency which is not included in the Assembly electoral region, or</p> <p>(d) who is a candidate to be the Assembly member for an Assembly constituency included in the Assembly electoral region but is not a candidate of the party.</p>

As of 1 May, this was the only defeat suffered by the government on the GOWB. However, the prospect of a long stand-off between the two Houses will have the government sweating as it is vital for the bill to pass in good time for candidate

³ The debate on this amendment can be found at HC Deb, 30 January 2006, Col. 85-131. The amendment fell by 280 votes to 200 on a straight party line vote. That is to say, all Labour MPs who voted opposed the amendment while every single voting opposition member was in favour (source: www.publicwhip.org.uk).

⁴ The 133 supporters of the amendment included 83 Conservatives, 41 Lib Dems and 9 others. All 108 Labour peers who voted opposed the amendment as did 6 crossbenchers. (Source: Meg Russell and Maria Sciarra, *Government Defeats in the House of Lords 2005-06 Parliamentary Session* (The Constitution Unit), defeat 31, at: www.ucl.ac.uk/constitution-unit/research/parliament/defeats.html).

⁵ Government of Wales Bill 2005-06, Bill 100, at: www.publications.parliament.uk/pa/cm200506/cmbills/100/2006100.pdf (viewed 1 May 2006).

⁶ Amendment No. 17, at HL Deb, 19 April 2006, col. 1092.

selection processes for the May 2007 elections to take place. Over-riding the Lords by wielding the Parliament Act is a possibility but should this avenue be chosen the earliest the bill could reach the statute book would be February 2007 (a year and a month after the Commons gave the bill its second reading).⁷ Alternatively, compromise may be sought but the opposition parties appear in no mood for conceding on this point (despite Labour's manifesto commitment to make such a reform⁸). Further, the room for manoeuvre of the Labour leadership is limited as the dual candidacy ban is one of the sops to the devo-sceptic wing of the party and therefore key to holding together the party's consensus on the whole package.

1.5 Powers

The Conservatives, for their part, have revealed a clear continuing ambivalence towards Welsh devolution in general, although it was confirmed at Commons committee stage that the party no longer planned to offer voters the choice of abolishing the Assembly altogether in a multi-option 'referendum'.⁹ One Tory amendment addressed the process by which the Assembly will be able to exercise quasi-primary legislative powers under the GOWB. The bill provides that 'measures'¹⁰ passed by the Assembly are submitted by the clerk of the Assembly to Her Majesty in Council to be granted royal assent but that 'the Secretary of State may make an order prohibiting the Clerk from submitting the proposed Assembly Measure for approval by Her Majesty in Council' if certain conditions apply.¹¹

The proposed Conservative amendment (moved by Dominic Grieve MP) was that each House of Parliament be given a vote on an Assembly measure before it could become law. In the debate on this amendment (which was defeated 314 to 160), the point was made that its effect would be to 'roll back the latitude that the Welsh Assembly has even in regard to its existing powers'.¹² This is an arguable point as any powers already delegated to the Assembly by Westminster bills could continue to be exercised as at present. However, the likely effect of the GOWB is that Orders in

⁷ Richard Kelly and Chris Pond, *The Parliament Acts*, Standard Note: SN/PC/675 (House of Commons Library 2004), at: www.parliament.uk/commons/lib/research/notes/snpc-00675.pdf, p.5.

⁸ Welsh Labour Party, *Wales forward not back* (Welsh Labour 2005 election manifesto), at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/LAB_wales_manifesto.pdf, pp.108-10.

⁹ This admission was made by Dominic Grieve MP, HC Deb, 23 January 2006, col. 1182.

¹⁰ Measures are a form of legislation similar to bills that the Part 3 of GOWB will enable the Assembly to pass within specific areas of policy explicitly devolved by means of Orders in Council and where the Assembly Government has executive competence. For further discussion, see Alan Trench, *Better Governance for Wales: An analysis of the White Paper on Devolution for Wales*, ESRC Devolution Policy Paper no.13 (London: ESRC, 2005); and House of Lords Select Committee on the Constitution, *Government of Wales Bill*, op cit.

¹¹ Government of Wales Bill, op cit., clause 100.

¹² Lembit Öpik, HC Deb, 23 January 2006, col. 1191.

Council will largely replace loosely-drafted 'framework' bills as the principal means of granting legislative discretion to the Assembly. Therefore, the Assembly will increasingly come to rely on measures rather than subordinate legislation under Westminster acts to fulfil its policy agenda. Therefore, giving Westminster powers over Assembly measures that it does not have over Assembly subordinate legislation would, in a sense, 'roll back' the process of devolution. However, as noted above, the GOWB does give the Secretary of State the power to block Assembly measures, a power (s)he does not have with regard to subordinate legislation made by the Assembly under Acts of Parliament. One could therefore argue that the GOWB as it stands might itself create mechanisms by which a 'rolling back' of devolution could be effected by a UK government and parliament so inclined.

Indeed, the powers granted to the Secretary of State under the GOWB have caused quite some concern. In addition to the power to block Assembly measures, (s)he will have a veto over 'legislative competence orders' and over whether a referendum is held to move to full legislative devolution.¹³ Figure 3 sets out the actors with the power of veto over various key decisions and type of legal instrument relating to the Welsh devolution settlement at present, following the passage of the GOWB and following a referendum on full legislative devolution.

Figure 3: Veto powers of different actors

	<i>Secretary of State</i>	<i>Parliament</i>	<i>Assembly</i>	<i>Welsh electorate</i>
Act of Parliament giving powers to Assembly	Yes	Yes	No	No
Assembly subordinate legislation under Acts of Parlt.	No	No	Yes	No
Government of Wales Bill	Yes	Yes	No	No
Legislative Competence Orders (varying schedule 5 ¹⁴)	Yes	Yes	Yes	No
Assembly Measures made within scope of Orders	Yes	No	Yes	No
Move to full primary legislative devolution	Yes	Yes	Yes	Yes
Acts of Welsh Parliament (following referendum)	No	No	Yes	No

¹³ The relevant clauses of the bill are: 94 (Legislative competence: supplementary), 100 (Power to intervene in certain cases), and 103 (Proposal for referendum by Assembly).

¹⁴ Schedule 5 to the GOWB is where the list of 'fields' and 'matters' within which the Assembly may legislate is set out. The 'legislative competence orders' discussed above will enhance the powers of the Assembly by adding to or amending a field in this Schedule.

1.6 House of Lords Constitution Committee Report¹⁵

In March, the Lords Constitution Committee (LCC) reported on the GOWB in line with its remit 'to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.'¹⁶ One concern raised by the committee was that the GOWB 'makes extensive use of secondary legislative powers to achieve important constitutional ends'.¹⁷ It goes on to concede, however, that 'delegation of law making powers to an elected body is...very different from delegating them to Ministers',¹⁸ the point being that scrutiny of the exercise of such powers will be greater in the former than the latter case.

Concerns over scrutiny of 'legislative competence orders' are also raised in the report. At the Westminster end, the LCC suggests that 'the scale of work involved...is likely to be quite modest',¹⁹ but poses questions as to the respective roles of the two Houses and suggests considering the creation of a new Lords committee 'charged with a broad responsibility for keeping the whole of the UK's devolution settlement under review'.²⁰ In its response to the committee, the government did not comment on this particular proposal but did express a general preference for the two Houses to conduct concurrent rather than consecutive scrutiny of draft orders.²¹

At the Cardiff end, the LCC points to concerns about the Assembly's scrutiny capacity, especially given the decision not to increase the number of Assembly Members, as recommended in the Richard Report.²² The government's response is that the Assembly should increase the number of weeks it sits and make procedural changes to reduce the amount of time spent on routine subordinate legislation.²³

¹⁵ House of Lords Select Committee on the Constitution, *Government of Wales Bill*, op cit.

¹⁶ House of Lords Select Committee on the Constitution, *Reviewing the Constitution: Terms of Reference and Method of Working*, First Report Session 2000-01, HL 11, at: www.publications.parliament.uk/pa/ld200102/ldselect/ldconst/11/1101.htm, p.1.

¹⁷ House of Lords Select Committee on the Constitution, *Government of Wales Bill*, op cit., p. 20. On this point, see also House of Lords Delegated Powers and Regulatory Reform Committee, *Government of Wales Bill*, 17th Report of Session 2005-06, HL 160, at: www.publications.parliament.uk/pa/ld200506/ldselect/lddelreg/160/160.pdf.

¹⁸ *Ibid.*, p. 21.

¹⁹ *Ibid.*, p. 14.

²⁰ *Ibid.*, p. 14.

²¹ House of Lords Select Committee on the Constitution, *Government Response to a report on the Government of Wales Bill*, HL 168, at: www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/168/168.pdf, p. 2.

²² Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, *Report of the Richard Commission* (Spring 2004), at: www.richardcommission.gov.uk/content/finalreport/report-e.pdf.

²³ House of Lords Select Committee on the Constitution, *Government Response...*, op cit., p. 2.

Another important point raised by the LCC related to the complexity that exists and will continue to exist in the range of sources of legislation for Wales. The committee emphasises that ‘confusion about who makes legislation caused by complexity in the legislative process...risks undermining public confidence.’²⁴ The government’s retort was that the GOWB will, conversely, ‘make it easier to identify new legislation as it relates to Wales. It will be easy to identify the scope of the Assembly’s legislative competence because this will always be set out in Schedule 5 to the bill’.²⁵

It may be true that lawyers and other experts will find it easier to trace the contours of Welsh legislative discretion once the GOWB is in effect. However, it seems doubtful that the complex legislative process for Wales will be easily grasped by the Welsh electorate. In particular, the crucial difference between ‘legislative competence orders’ passed at Westminster and ‘Assembly measures’ passed at Cardiff Bay is likely to be poorly understood,²⁶ leading to confusion about which level of government is responsible for particular policies and policy areas. Ultimately, the complexity of the process and related accountability problems will only bolster the case for moving swiftly towards a referendum on devolution of primary legislative powers as set out in Part 4 of the bill.

²⁴ House of Lords Select Committee on the Constitution, *Government of Wales Bill*, op cit., p. 16.

²⁵ House of Lords Select Committee on the Constitution, *Government Response...*, op cit., p. 3.

²⁶ Indeed, on reading Hansard transcripts it is not always clear that MPs themselves clearly understand this distinction.

2. Devolution Policy Debates: West Lothian Question

A number of recent developments in and around Westminster have kept the West Lothian Question on the fringes of the political agenda.

2.1 Parliament (Participation of Members of the House of Commons) Bill

In the House of Lords, Lord Baker of Dorking introduced a Parliament (Participation of Members of the House of Commons) Bill [HL] which would enable MPs to be barred from speaking and voting if the bill (or section) under consideration does not apply to the territory they represent.²⁷

Lord Baker's proposed solution is that prior to second reading of any bill before the Commons, 'the Speaker shall...certify in writing the territorial extent of the bill' and 'designate which category or categories of members of the House of Commons may speak and vote on the second and third readings of the Bill'.²⁸ Different parts of a bill may be certified differently and similar rules would apply for statutory instruments.

Although the bill has been spoken about as a form of 'English votes on English laws', a policy the Conservative Party is committed to, Baker's bill makes no special dispensation for 'English' legislation.²⁹ MPs would be placed in one of four categories (England, Wales, Scotland, Northern Ireland) and all legislation, primary and secondary, would be subject to certification and potential bars on one or more categories of MPs participating in debates and votes.

As pointed out by a number of opponents in the second reading debate in the Lords, this could have a chaotic effect on the practice of government in that there would be different majorities in the Commons for English legislation, English and Welsh legislation, Wales-only legislation, Northern Ireland legislation, Scottish legislation, Great Britain legislation and United Kingdom legislation. In the words of the Ulster Unionist Lord Laird, 'It is a bit like a kaleidoscope – every now and again, you would have to shake the bits and look to see what the pattern was.'³⁰ And as the Lord Chancellor put it, this could lead to a government which 'could enjoy the support of

²⁷ Parliament (Participation of Members of the House of Commons) Bill, HL Bill 61 (Session 2005-06). At: www.publications.parliament.uk/pa/ld200506/ldbills/061/2006061.pdf.

²⁸ *Ibid.* Section 2.

²⁹ Among the many criticisms made of 'English votes on English laws' are that unlike Scotland and Northern Ireland, England and Wales share a single legal jurisdiction meaning that purely 'English' legislation does not exist.

³⁰ Lord Laird, HL Deb, 10 February 2006, Col. 912.

the majority [in the Commons] on some issues, but not on others. There might be a majority for the government on defence or social security but not on health or education.³¹

When Northern Ireland legislation was under consideration, furthermore, presumably only the 18 members from the six counties would be eligible to speak and vote, granting Democratic Unionists an absolute majority.

Lord Falconer also drew attention to the issue of finance. In his words: 'Parliament has at its heart the issue of supply, determining how the national cake should be cut. To exclude the non-English from voting on issues central to that is unthinkable.'³² This relates to the argument that even legislation that applies solely to England and Wales may have an effect on the budget of the Scottish Parliament through the workings of the Barnett formula.

It was also argued by several peers that Baker's bill was constitutionally unsound in that a private member's bill in the Lords should not seek to impose requirements upon the Speaker of the Commons or restrictions upon the rights of MPs.

In the face of such criticism, Lord Strathclyde – the Tory leader in the upper house – confirmed his party's support for the principle of 'English votes for English laws' but left open the question of how closely Baker's proposed version resembled official party policy.³³ This latter point may be clarified in the deliberations of the Democracy Taskforce established by David Cameron with a wide-ranging remit including 'questions of fairness... addressing problems arising from Tony Blair's constitutional changes such as the West Lothian (or more accurately) the English question'.³⁴

In his latest appearance in front of the Liaison Committee of select committee chairmen, Tony Blair was questioned on English votes for English laws by two Labour MPs: Public Administration Select Committee chair Dr Tony Wright and Father of the House (and long-standing Welsh opponent of devolution) Alan Williams.

³¹ Lord Falconer, HL Deb, 10 February 2006, Col. 949.

³² Lord Falconer, HL Deb, 10 February 2006, Col. 950.

³³ Lord Strathclyde, HL Deb, 10 February 2006, Cols. 943-6.

³⁴ Democracy Taskforce homepage, at: www.conservatives.com/tile.do?def=democracy.taskforce.page. (accessed 29 April 2006).

Blair ruled out the idea on the grounds that one should not create different classes of MP. He also stressed the difficulty of defining exclusively English matters.³⁵

On 18 April Lord Baker's bill received its third reading in the Lords (without debate or division) meaning that it will now join the queue of private member's bills awaiting time for a debate on a sitting Friday in the Commons. In practice no further debate or progress is likely given government opposition.

2.2 The Education and Inspections Bill

Despite the best efforts of Lord Baker, the Campaign for an English Parliament and others, the West Lothian Question remains of marginal concern to most English voters principally since English votes and the English voice are so dominant at Westminster.

The issue only gains any political salience when non-English MPs are seen to be making the crucial difference in crucial votes on mainly English matters, which has not occurred in this parliament. It might have done so on the second reading division on the Education and Inspections Bill had the Conservatives not chosen to support the government. In the event, the bill passed with a majority of 343 making the question of non-English votes irrelevant.

However, on the programme motion vote that followed, the Conservatives voted unanimously against the government along with Liberal Democrats and 30 Labour MPs. The motion – whose defeat could have posed serious problems for the progress of the bill – was carried by a mere ten votes (300 to 290). If all the votes of Scottish MPs were removed from the calculations, the motion would actually have fallen by two votes (270 to 268). However, when Northern Ireland MPs' votes are also deducted, the government is again ahead by five votes (267 to 262). The bill includes some important provisions for Wales so the participation of Welsh MPs is uncontroversial.³⁶

³⁵ Liaison Committee – Minutes of Evidence, 7 February 2006, QQ269-73.

³⁶ HC Deb, 15 March 2006, Col. 1568-71 (Division No. 193: Education and Inspections Bill (Programme)).

Figure 4: Education and Inspections Bill: Programme motion division

	<i>Aye</i>	<i>No</i>	<i>Majority</i>
Total	300	290	+10
Scottish MPs	32	20	+12
Northern Ireland MPs	1	8	-7
English & Welsh MPs	267	262	+5

3. Devolution Policy Debates: Scottish Electoral Systems

3.1 Arbuthnott Commission

In January 2006 the Commission on Boundary Differences and Voting Systems in Scotland (the Arbuthnott Commission) published its final report.³⁷ Established in 2004 by Scotland Secretary Alistair Darling, the Commission's remit was to examine the consequences of having different boundaries for Scottish and UK parliamentary elections and of having (from 2007) four different electoral systems in operation in Scotland. As predicted in the previous monitoring report, the Commission's recommendation was for a modified form of the existing Additional Member electoral system (AMS) for Holyrood polls.³⁸ This was always a likely outcome given the splits between the four major Scottish parties on this issue. The Liberal Democrats and SNP favour the Single Transferable Vote while Labour and the Conservatives remain hostile to proportionality, both parties expressing an unrealistic preference for a move to First Past the Post. In this environment, much movement in either direction from the status quo would be difficult given the desire for constitutional amendments of this sort to proceed with some degree of cross-party support.

Thus, for electoral reformers, the proposals in the Arbuthnott Report are while modest about as much as could be expected. The report recommended the retention of a Scottish Parliament of 129 members comprising 73 single-member constituency members and 56 elected via regional 'top-up' lists. The modest reform to AMS proposed is to move from 'closed' to 'open' lists enabling voters casting their regional vote to choose between candidates. At present, voters can cast their ballot for a party list but have no say in determining the order of the list meaning that many candidates on regional lists are either virtually guaranteed election or have no chance of success irrespective of personal popularity or otherwise.

The Commission also proposed that constituency boundaries be linked to local authority boundaries (rejecting the view that non-coterminosity between Westminster

³⁷ Commission on Boundary Differences and Voting Systems, *Putting Citizens First: Boundaries, Voting and Representation in Scotland* (The Arbuthnott Report) (Edinburgh: The Stationery Office, January 2006), at: www.arbuthnottcommission.gov.uk/FinalReport.htm.

³⁸ Paun, Akash, *Devolution and the Centre Monitoring Report: January 2006* (London: The Constitution Unit), at: www.ucl.ac.uk/constitution-unit/research/devolution/Monitoring%20Reports/Jan06/Centre%20Jan06.pdf. See section 1.2.

and Holyrood constituencies was a serious problem³⁹), that changes be made to ballot papers to help voters better comprehend the electoral system, that local elections in 2007 be held on a different day than Scottish parliamentary elections to minimise confusion among the electorate, and that the Single Transferable Vote (STV) be adopted for European elections. One thing the Commission explicitly recommended not introducing was a ban on dual candidacy as proposed for Wales in the Government of Wales Bill (see section 1) and favoured for Scotland by some elements of the Labour Party.

The government is yet to formally respond to the report, but some insight into the government's position can be gleaned from a debate on the Arbuthnott recommendations in the House of Commons. On 15 February, a half-hour Westminster Hall debate was held on the initiative of Labour MP Brian Donohoe. He and other Labour MPs expressed their dissatisfaction with both the operation of AMS and the recommendations of the Arbuthnott Commission, which – as noted – chose not to address key Labour concerns over non-coterminous boundaries and the complex voting system landscape. Donohoe himself advocated holding a referendum on the electoral system with options including his favoured option of First Past the Post. One Scottish Labour backbencher also argued that PR had allowed 'disreputable minority parties [to] claim the credit' for Labour's achievements in Scotland, hardly a sign of cosy consensual politics.⁴⁰

On behalf of the government, David Cairns ruled out any electoral reform in time for the May 2007 elections, noting that 'there is no consensus as to how we should proceed'⁴¹ (though it might be pointed out a lack of consensus has not deterred the government from pushing ahead with the controversial changes to the electoral system in the Government of Wales Bill). Cairns also poured cold water on the ideas of holding a referendum on the issue or of holding Scottish local and parliamentary elections on different days. As for the opposition parties, no Conservative member participated in the debate while the Liberal Democrat and SNP members expressed little enthusiasm about the Arbuthnott proposals – understandable given the both parties' preference for STV.

³⁹ As suggested in the research carried out on behalf of the Commission by Jonathan Bradbury and Meg Russell, *The Local Work of Scottish MPs and MSPs: Effects of Non-coterminous Boundaries and AMS* (London: The Constitution Unit, 2005), at: www.ucl.ac.uk/constitution-unit/unit-publications/125.html, particularly pp56-8.

⁴⁰ Jim Sheridan, HC Debs, 15 February 2006, cols. 500WH-501WH.

⁴¹ David Cairns, HC Debs, 15 February 2006, cols. 504WH.

3.2 Scottish Parliament (Candidates) Bill

The singular provision of the Scottish Parliament (Candidates) Bill, introduced by former Labour MP Lord (George) Foulkes of Cumnock, is to ban candidates in Scottish Parliamentary elections from standing both in an individual constituency and on a regional party list. This provision would mirror the 'dual candidacy' ban that part 1, clause 7 of the GOWB will impose upon candidates in future National Assembly for Wales elections (though see section 1.4 on opposition to this measure).

In a second reading debate on 3 March, Lord Foulkes laid out his case, that it was necessary 'to tackle the anomaly whereby losers at the constituency level turn up as MSPs on the list'.⁴² Although this is essentially the same case made by the government in defence of the Welsh dual candidacy ban, junior minister Lord Evans of Temple Guiting rejected any possibility of the government supporting Foulkes' bill stating that 'the Government have no plans to reopen the Scotland Act'.⁴³ This statement effectively guarantees the bill's demise.

There is some political sense in the government's position as the Welsh dual candidacy ban is of course part of a large and finely-balanced bill which amends the structure and powers of the Welsh devolved institutions as well as its electoral system. To attempt to push through a dual candidacy ban in a stand-alone bill for Scotland would pose serious political difficulties as well as opening up another front in the spreading conflict between the two coalition parties in the Scottish Executive. However, with the Arbuthnott Report (see section 3.1) still awaiting a governmental response and frequent calls for further devolution to Scotland including from the Labour First Minister, the chances are growing that one way or another the Scotland Act will be 'reopened' in the not too distant future and the dual candidacy ban may come back onto the agenda at that stage.

⁴² HL Deb, 3 March 2006, Column 489.

⁴³ Lord Evans of Temple Guiting, HL Debs, 3 March 2006, cols. 501-2.

4. Territorial Legislation at Westminster: Scotland

4.1 The Sewel convention under scrutiny

The operation of the Sewel convention continues to be a matter for debate at Westminster and Holyrood. The convention – that Westminster will not legislate for Scotland in devolved areas or amend the competence of the devolved institutions without the consent of the Scottish Parliament – was recently the subject of a Scottish Parliament Procedures Committee inquiry. The inquiry was principally concerned with the Holyrood end of the process but did also consider what reforms Westminster might usefully adopt to improve the overall scrutiny of Sewel legislation. Its recommendations in this area were for bills containing Sewel provisions to be certified as such by the Speaker, for explanatory notes to clearly note the extent to which a bill strays into devolved matters, and for the establishment of a formal mechanism to convey the outcome of votes in the Scottish Parliament on Legislative Consent [formerly Sewel] Motions.⁴⁴

Since the completion of the Procedures Committee inquiry the House of Commons Scottish Affairs Select Committee (SASC) launched its own inquiry into the 'Westminster Perspective' on the Sewel convention. It held four evidence sessions in March 2006 with witnesses from the Scotland Office, Scottish Executive and Scottish Parliament Procedures Committee among those called to give evidence.

On 14 March both Scottish Executive Minister for Parliamentary Business Margaret Curran and junior Scotland Office minister David Cairns appeared before SASC. Both argued that the Sewel convention and procedures relating to it operate reasonably well as they stand and are robust enough to withstand potential strains arising if administrations of different political hues were in office at the levels of government.

In written evidence to the committee, the Scotland Office set out the government's response to the recommendations of the Procedures Committee. It rejected the need for certification of Sewel bills but committed instead to make available in the parliamentary libraries copies of all Legislative Consent Motions passed by the Scottish Parliament and accompanying memoranda in order to keep MPs better

⁴⁴ Scottish Parliament Procedures Committee, 7th Report, 2005 (Session 2), *The Sewel Convention*. At: www.scottish.parliament.uk/business/committees/procedures/reports-05/prr05-07-vol01.htm.

appraised of the devolved implications of Westminster legislation. The government further committed to clearer explication of Sewel provisions in explanatory notes.

On the establishment of formal communication channels between Holyrood and Westminster, the government sounded a sceptical note but noted that this was in any case a matter for the two parliaments rather than the executive branch. Finally, some of the more radical reforms considered but not formally recommended by the Procedures Committee inquiry were also ruled out by the government. These ideas included joint scrutiny of Sewel bills by MSPs and MPs, and the use of the Scottish Grand or Scottish Affairs Committee to consider Sewel provisions of bills at committee stage.

4.2 Current 'Sewel Bills'

As shown in figure 5, four bills introduced to parliament in this monitoring period fall within the scope of the Sewel convention in that the Scottish Executive is due to introduce 'legislative consent motions' relating to them. The total number of such motions passed by the Scottish Parliament since 1999 stands at 67 as of 30 April 2006.⁴⁵

Figure 5: Sewel Bills introduced to parliament – January to April 2006⁴⁶

- Legislative and Regulatory Reform Bill
- Police and Justice Bill
- Northern Ireland (Miscellaneous Provisions) Bill
- Housing Corporation (Delegation) etc Bill

⁴⁵ Scottish Parliament Information Centre, *Sewel / Legislative Consent Motions: Session 2 (2006)*, at: www.scottish.parliament.uk/business/research/factsheets/documents/SewelMotionsandLegislativeConsentMotionsSession2.pdf.

⁴⁶ For more information on these bills and the reasons why legislative consent motions are needed, see *ibid.*

5. Territorial Legislation at Westminster: Wales

5.1 Welsh Bid for Primary Legislation

On 29 March 2006, the National Assembly for Wales held its annual debate on primary legislation that it would ask the British government to introduce in the 2006-07 parliamentary year (starting in November 2006).

The Welsh Assembly Government motion called upon the UK Government to introduce two Welsh bills in what is likely to be the last session before the Assembly's own legislative powers are beefed up by the new Government of Wales Bill (GOWB).⁴⁷ A total of 14 amendments were put down by opposition members but with several of their number absent and all Labour AMs in the new *Senedd* chamber, the executive won the day.

Both the bills proposed in the motion – a Housing (Suspension of Right to Buy) (Wales) Bill and a Local Government (Town and Community Councils) (Wales) Bill – had also been bid for in 2004 and 2005 without success. Negotiations will take place between the two governments in the lead-up to the November 2006 Queen's Speech to get the bills included this time round. With elections to the National Assembly in May 2007, the UK Government may well be more generous this time in order to give Welsh Labour a boost in the polls.

Meanwhile, in the 2005-06 parliamentary session, the GOWB and two other Wales-only bills have been before Parliament. The GOWB is by far the most significant in that it will rewrite the Welsh devolution settlement. It is separately discussed in section 1. The other two also had to be requested more than once by the Assembly before parliamentary time was found for them but one (the Transport (Wales) Bill) has now received Royal Assent and the other (Commissioner for Older People (Wales) Bill [HL]) looks likely to do so.

5.2 Commissioner for Older People (Wales) Bill [HL]

Having completed its passage through the Lords, the Commissioner for Older People (Wales) Bill [HL] was introduced to the Commons on 16 February 2006. The general functions of the Commissioner's office, which the bill is to create, will be to:

⁴⁷ Indeed, the expectation is that the Assembly will take on its new powers part-way through the 2006-07 Westminster session, namely following the May 2007 Assembly election.

- (a) promote awareness of the interests of older people in Wales;
- (b) promote the provision of opportunities for, and the elimination of discrimination against, older people in Wales;
- (c) encourage good practice in the treatment of older people in Wales;
- (d) keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales.⁴⁸

The proposal to establish a champion of older people's rights in Wales dates back to the recommendations of a Welsh Assembly Government Advisory Group in May 2002.⁴⁹ As it remains unable to do so itself, the National Assembly formally asked the UK Government to introduce legislation to enact this proposal. The bill was introduced to the House of Lords in May 2005 but despite its uncontroversial nature, it has made slow progress since then. It will be expected to reach the statute book this session.

In policy terms, the bill is also interesting in that it represents another example of agenda-setting by a devolved institution. Wales was the first part of the UK to have a Children's Commissioner but Northern Ireland, Scotland and England all eventually followed suit. In the case of the Older People's Commissioner, the Welsh idea has been picked up on in Scotland with the formal lodging of a proposal for a Commissioner for Older People (Scotland) Bill in December 2004⁵⁰, though the bill has made no progress since then.

5.3 Transport (Wales) Act 2006

On 16 February 2006 the Transport (Wales) Act received Royal Assent, nearly four years after the National Assembly for Wales first formally requested a transport bill.⁵¹ The general effect of the act is to give the Assembly a 'general transport duty' and the additional powers needed 'to develop and implement...a safe, integrated, and economic transport system serving Wales'.⁵²

The bill was not a controversial one and enjoyed cross-party support. That it has taken so long to reach the statute book is a case study of the problems faced by a devolved government dependent on the UK parliament for all its primary legislation.

⁴⁸ Commissioner for Older People (Wales) Bill [HL], s.2(1).

⁴⁹ Advisory Group on a Strategy for Older People in Wales, *When I'm 64...and more* (Cardiff: Welsh Assembly Government, 2002). At: www.wales.gov.uk/subisocialpolicy/content/older/olderpeople-e.pdf.

⁵⁰ Details of the proposed bill and associated consultation process can be found at:

www.scottish.parliament.uk/business/bills/membersBills.htm.

⁵¹ National Assembly for Wales Official Report, 19 March 2002, debate on 'Welsh Assembly Government Proposals for Bills'.

⁵² Transport (Wales) Act 2006 Explanatory Notes (London: The Stationery Office), at: www.opsi.gov.uk/acts/en2006/ukpgaen_20060005_en.pdf, p. 1.

Assuming the GOWB comes into effect in its current form, legislation such as this after 2007 will likely be passed by the National Assembly rather than Parliament, subject to the granting of legislative competence by means of Orders in Council.⁵³

⁵³ Indeed, the government has given the Transport (Wales) Act as an example of how the post-2007 legislative process should work, publishing a mock Order in Council and explanatory memorandum granting legislative competence to the National Assembly in the field of Highways and Transport policy. These are merely illustrative examples and will remain as such because the enactment of the Transport Wales (Act) renders them redundant. They are included in Annex 3 to House of Lords Committee on the Constitution, 8th Report of Session 2005-06, *Government of Wales Bill*, HL 142 (London: The Stationery Office, March 2006). At: www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/142/142.pdf.

6. Territorial Legislation at Westminster: N. Ireland

6.1 Northern Ireland Bill

On 20 April 2006, following the joint statement by Tony Blair and Irish Taoiseach on 6 April and the ministerial statement by Peter Hain on 18 April, the government introduced a bill which will have the effect of re-establishing the Northern Ireland Assembly on 15 May after three and a half years of direct rule.⁵⁴ The Assembly will be expected to appoint a First Minister and Deputy First Minister and to form a power-sharing Executive within six weeks. If this proves impossible, it will have a further twelve weeks in the autumn to do so with a final deadline of 24 November. If this deadline is not met, the government pledges to cancel the May 2007 elections and cease paying salaries and allowances to Assembly Members, effectively disbanding the legislature of the six counties on an indefinite basis.⁵⁵ Unless and until a new Northern Ireland Executive is established, the UK government continues to govern Northern Ireland directly in 'devolved' as in 'reserved' and 'excepted' areas.⁵⁶

6.2 Terrorism (Northern Ireland) Act

The effect of the Terrorism (Northern Ireland) Act 2006⁵⁷ is to extend until 31 July 2007 counter-terrorism provisions contained in the Terrorism Act 2000. Among other things, these provisions provide for trial without a jury for certain categories of defendant in Northern Ireland.⁵⁸ The act allows for a single further year-long extension of the provisions by means of statutory instrument. This proved a point of disagreement in both Houses with Conservatives seeking without success to amend this part of the bill to allow for an indefinite number of such extensions.

6.3 Northern Ireland (Offences) Bill

The Northern Ireland (Offences) Bill would have allowed for on-the-run terrorist suspects to be granted exemption from arrest or imprisonment for offences

⁵⁴ *Joint Statement by the Prime Minister and the Taoiseach* (6 April 2006, Armagh), at: www.nio.gov.uk/media-detail.htm?newsID=12944; Peter Hain Ministerial Statement, HC Debs, 19 April 2006, cols. 20WS-22WS.

⁵⁵ These developments are covered further in Wilford, R. and Wilson, R. (eds.), *Northern Ireland Devolution Monitoring Report: May 2006* (London: The Constitution Unit). Forthcoming at: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html.

⁵⁶ Reserved matters in the Northern Ireland context are those that the government has indicated could be devolved at a later point should the situation allow. They include the sensitive issues of policing and criminal justice. Excepted matters such as foreign policy, defence and the currency will remain controlled from Westminster/Whitehall.

⁵⁷ Terrorism (Northern Ireland) 2006 Act, at: www.opsi.gov.uk/acts/acts2006/20060004.htm.

⁵⁸ Terrorism Act 2000 (The Stationery Office) at: www.opsi.gov.uk/acts/acts2000/20000011.htm 9see in particular Part VII).

committed prior to the April 1998 Belfast Agreement subject to their compliance with certain conditions. The bill had been opposed by the two main opposition parties at Westminster as well as all parties in Northern Ireland bar Sinn Fein. Following criticism from within the nationalist community Sinn Fein withdrew its support for the legislation on the grounds that it opposed the inclusion in the scheme of members of British security forces suspected of committing crimes during the Troubles.⁵⁹ Isolated by this development, the Northern Ireland Secretary withdrew the bill on 11 January.⁶⁰

6.4 Northern Ireland (Miscellaneous Provisions) Bill

On 16 February, the government introduced to the House of Commons a Northern Ireland (Miscellaneous Provisions) Bill.⁶¹ As indicated by its title, this piece of legislation contains a variety of provisions in fields including electoral registration procedures, the timing of elections, party funding, and judicial appointments. Its headline effect, however, is to pave the way for the devolution to Northern Ireland of control of the police and justice systems. These two policy areas – devolved in Scotland but not in Wales – were classified as ‘reserved matters’ in the Northern Ireland Act 2000 meaning that they could be devolved at some later point should circumstances allow and unlike ‘excepted’ matters such as foreign policy.

The explanatory notes to the bill explain that:

This Bill does not itself initiate the devolution process. That will not happen until the Northern Ireland parties have been able to concur on institutional models for devolved functions which the British Government agrees are robust, workable and sustainable. Also, for devolution to occur, the Assembly will need to be restored, and a resolution requesting devolution will need to be passed by the Assembly with cross-community support.⁶²

6.5 Extension of Direct Rule over Northern Ireland

On 31 March 2006, the government’s power to legislate for Northern Ireland in devolved areas by means of Orders in Council was extended for the seventh time since the suspension of devolution in 2002. Under the terms of the Northern Ireland

⁵⁹ As discussed in Wilford, R and Wilson, R (eds.), Northern Ireland Devolution Monitoring Report: January 2006 (London: The Constitution Unit, 2006), at: www.ucl.ac.uk/constitution-unit/research/devolution/Monitoring%20Reports/Jan06/NI%20Jan06.pdf.

⁶⁰ Statement by Peter Hain MP, HC Deb, 11 January 2006, cols. 287-9.

⁶¹ Northern Ireland (Miscellaneous Provisions) Bill, current version at: www.publications.parliament.uk/pa/cm200506/cmbills/131/2006131.htm.

⁶² Northern Ireland (Miscellaneous Provisions) Bill, Explanatory Notes (Bill 131-EN), Part 5 (14). At: www.publications.parliament.uk/pa/cm200506/cmbills/131/en/06131x--.htm.

Act 2000,⁶³ the government's authority to legislate in this way for the six counties expires after six months. As a result, it has become a biannual tradition for a Northern Ireland Act 2000 (Modification) Order to be laid before parliament under the affirmative procedure for passing secondary legislation.

The first such order of 2006, also known as Statutory Instrument 2006 No. 1012,⁶⁴ was laid before parliament on 27 February and formally approved by the Lords on 29 March (following an earlier debate in Grand Committee) and by the Commons in on 21 March.⁶⁵ In both Houses, the responsible ministers (Lord Rooker and David Hanson MP) expressed their regret at the continuation of direct rule but emphasised the necessity of such a process until the reestablishment of devolution. Both Houses approved SI 1012 without division.

In the three Privy Council meetings held between January and April 2006 (on 14 February, 8 March and 11 April), a total of six Orders in Council legislating for Northern Ireland in devolved areas were passed.⁶⁶

⁶³ Northern Ireland Act 2000, Schedule – Provisions Applicable During Suspension, at: www.opsi.gov.uk/acts/acts2000/20000001.htm.

⁶⁴ Northern Ireland Act 2000 (Modification) Order 2006 (SI 2006 No. 1012) (The Stationery Office), available at: www.opsi.gov.uk/si/si2006/20061012.htm.

⁶⁵ The two parliamentary debates on the Order can be found on www.parliament.uk. References: House of Commons Seventh Standing Committee on Delegated Legislation, 21 March 2006, cols 3-24, and House of Lords (in Grand Committee), HL Debs, 22 March 2006, cols. GC158-71.

⁶⁶ Minutes of Privy Council meetings can be viewed at: www.privacy-council.org.uk/output/Page473.asp. Orders once made can be viewed at: www.opsi.gov.uk/stat.htm.

Figure 6: Orders in Council Legislating for Northern Ireland – Jan to April 2006

- The Budget (Northern Ireland) Order 2006. (SI)
- The Disability Discrimination (Northern Ireland) Order 2006.
- The Industrial and Provident Societies (Northern Ireland) Order 2006 (SI).
- The Rates (Capital Values, etc.) (Northern Ireland) Order 2006. (SI)
- The Safety of Sports Grounds (Northern Ireland) Order 2006 (SI).
- The Stormont Estate (Northern Ireland) Order 2006. (SI)

7. Devolution and Westminster: Territorial Select Committees

7.1 Scottish Affairs Select Committee

The House of Commons Scottish Affairs Select Committee (SASC) recently finished its series of evidence sessions for its inquiry into 'The Sewel Convention: The Westminster Perspective'. It plans to publish a report before the summer recess with a set of recommendations for procedural change when the 'Sewel bills' (legislating for Scotland in devolved areas or varying the competence of the devolved institutions) are on the table. The Sewel convention is discussed further in section 4.1.

SASC also held a one-off evidence session on 14 February with Sir John Arbuthnott and Dr Nicola McEwan of the Commission on Boundary Differences and Electoral Systems in Scotland (the Arbuthnott Commission). It plans to publish a report shortly. Arbuthnott's recommendations are discussed further in section 3.1.

Other SASC activity include the ongoing inquiry on 'The Potential Benefits for Scotland of the 2012 Olympics', the issuing of a brief follow-up to last year's report on *Meeting Scotland's Future Energy Needs*, and the publication of the committee's annual report, *The Work of the Committee in 2005*. Noteworthy points in the latter document include a brief section on 'Relations with the Scottish Parliament', something which falls within the remit of SASC. It was reported that the members of SASC had agreed to hold a meeting with the Conveners' Group (of committee chairs) in the Scottish Parliament. However, the response received from the chair of the Conveners' Group (one of the Deputy Presiding Officers) was that it might be more useful for SASC to meet with individual subject committees of the Scottish Parliament according to the work programme of the Commons committee. SASC are unconvinced by this, however, stating that 'our work generally would be assisted if we could persuade the Scottish Parliament Conveners' [sic] Group to engage with us in a regular pattern of meetings'. This, it is further noted, was the mode of operation adopted by the Welsh Affairs Committee and the Assembly's Panel of Chairs.⁶⁷

⁶⁷ House of Commons Scottish Affairs Committee, First Report of Session 2005-05, *Work of the Committee in 2005*, HC 836 (London: The Stationery Office, 24 January 2006), p.9.

7.2 Northern Ireland Affairs Select Committee

The NIASC continues to take responsibility for devolved, reserved and excepted policy with regard to Northern Ireland. This situation will not change until a power-sharing Executive is successfully established in the six counties and the Northern Ireland Assembly resumes its legislative functions.

On 9 February the NIASC published a brief report on *Education in Northern Ireland*, which focussed on the decision of the government to abolish the 'transfer test' (equivalent of the 11+) in Northern Ireland. This is a divisive issue in the province as education ought to be a devolved matter and if left to the Northern Ireland Assembly such a reform would be unlikely due to unionist opposition. However, with an entrenched Labour majority, the NIASC made only the modest recommendation that we urge that opportunity be provided for the [draft Education (Northern Ireland)] order to be debated on the floor of the House'.⁶⁸ The three Democratic Unionist and Conservative members sought to amend the text of the report to urge a delay in implementation of the order and opposed the text as agreed.⁶⁹

The NIASC's current inquiries are on 'Organised Crime in Northern Ireland' and 'Tourism and its Economic Impact and Benefits'.

7.3 Welsh Affairs Select Committee

The WASC is currently conducting an inquiry into 'Energy in Wales', holding six evidence sessions between January and April 2006. The inquiry is looking into UK government energy policy relating to Wales (energy is a non-devolved policy area), the relationship between UK Government and National Assembly for Wales regarding energy policy, and 'the current and future portfolio of energy provision in Wales'.⁷⁰ The big question (as in the Scottish Affairs Committee's recent inquiry into a similar subject) revolves around nuclear energy, toward which there is some considerable hostility in both Scotland and Wales (including within the ruling Labour groups there). The report, when published, will feed into the ongoing debate on energy policy across the UK.

⁶⁸ House of Commons Northern Ireland Affairs Committee, First Report of Session 2005-06, *Education in Northern Ireland*, HC 726 (London: The Stationery Office, 9 February 2006), p.4.

⁶⁹ *Education in Northern Ireland*, pp.5-7.

⁷⁰ The remit of the inquiry is set out at: Welsh Affairs Committee, *Press Notice No. 8: Inquiry into Energy in Wales* (25 October 2005).

On 22 February, the committee published its report on 'Proposed Restructuring of the Police Forces in Wales',⁷¹ addressing the government's apparent determination to merge the four existing Welsh police forces into a single all-Wales force. The tone of the report was highly disapproving toward the government, criticising the lack of sensitivity toward political, geographic and cultural factors specific to Wales, and the Secretary of State's announcement that he favoured the all-Wales option while consultation was still ongoing. The committee also sought a guarantee that any costs incurred by the restructuring will be borne by the government and will not come out of the operating budget for the police forces.

The committee also published the government's response to its earlier report into the white paper *Better Governance for Wales*.⁷²

7.4 Committee on the Office of the Deputy Prime Minister

The Commons ODPM Committee is currently conducting an inquiry entitled 'Is there a future for Regional Government?'. It has received a large quantity of written evidence and held three oral evidence sessions in March 2006. Its conclusions will be discussed in the subsequent Devolution and the Centre Monitoring Report.

⁷¹ House of Commons Welsh Affairs Committee, *Proposed Restructuring of Police Forces in Wales*, Second Report of 2005-06 Session, HC 751, at:

www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/751/751.pdf.

⁷² House of Commons Welsh Affairs Committee, *Government White Paper: Better Governance for Wales: Government Response*, Third Special Report of 2005-06 Session, HC 839, at:

www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/839/839.pdf.

8. Devolution and Westminster: Territorial Grand Committees

8.1 Welsh Grand Committee

On 19 April, the Welsh Grand Committee met for the first time in 2006 to discuss the implications for Wales of the Budget, announced by Chancellor of the Exchequer Gordon Brown in March. Secretary of Wales Peter Hain welcomed the 'extra allocation of £45 million for the Welsh Assembly', the bulk of which, he said, would be channelled to schools in Wales.⁷³ The ensuing debate ranged across a wide range of subjects including levels of taxation in Wales, the general performance of the Welsh economy and the Barnett formula used to allocate money to all the devolved institutions. On this latter point Plaid Cymru MP Adam Price criticised the funding mechanism for producing a 'Barnett squeeze' as Welsh public spending per head gradually converges with that of England despite the principality's greater needs.⁷⁴ Price suggested that this was resulting in 'an increasingly impeding effect on the practical autonomy of the Welsh Assembly Government' and higher council taxes prompting Peter Hain to point out that public spending in Wales was 18 per cent higher per capita than in England.⁷⁵

8.2 Northern Ireland Grand Committee

The NI Grand Committee met twice in the first four months of 2006, on 7 February to consider the Draft Budget (Northern Ireland) Order 2006 and on 28 March to discuss the Review of Public Administration (RPA). Both meetings began with a session of oral questions to the Northern Ireland Secretary.⁷⁶

The budget order has the effect of authorising revised amounts of resources and cash for 2005–06, and authorising the flow of to public services for the early months of the 2006-07 financial year, until the preparation of the main estimates for the year. It is one of five orders made in 2006 in areas that would be the responsibility of the Northern Ireland Assembly and Executive were they not in suspension (see section 6). In the Grand Committee debate on 7 February concerns were raised about the

⁷³ Peter Hain, Welsh Grand Committee, 19 April 2006, col. 10.

⁷⁴ Adam Price, Welsh Grand Committee, 19 April 2006, cols. 65-8.

⁷⁵ Peter Hain, Welsh Grand Committee, 19 April 2006, col. 67.

⁷⁶ Debates of the Northern Ireland Grand Committee can be viewed at:
www.publications.parliament.uk/pa/cm/cmniirelg.htm.

decrease in funding for agriculture, the rise in rates (local taxation), and the imposition of water charges.

Displeasure was also expressed that more time was not being devoted to scrutiny of the budget order, and with the procedural constraints that meant that the Grand Committee could not amend the Order. In the words of Ulster Unionist MP Sylvia Hermon 'we can talk until we are blue in the face but ... not a dot, comma or other provision in the order will be changed as a result of our debate this afternoon'.⁷⁷ Defeats in Grand Committee can also be overturned by government in the House (as happened when the committee voted against an order increasing tuition fees for Northern Ireland in January 2005). On this occasion, the order was approved without a division, as also happened when the committee met on 28 March to debate a motion 'that the Committee has considered the matter of the Review of Public Administration in Northern Ireland'. The RPA has led to somewhat controversial government proposals to reduce from 26 to seven the number of local councils in Northern Ireland.⁷⁸

8.3 Scottish Grand Committee

No meetings of the Scottish Grand Committee (where second readings of Scotland-only bills used to take place) have been held this parliamentary session, or indeed since 13 November 2003. In a 15 February Westminster Hall debate on the recommendations of the Arbutnott Commission (see section 3.1), the point was made by Labour MP Brian Donohoe (on whose initiative the debate was being held) that 'the Scottish Grand Committee...might be the vehicle for a full debate on the whole issue of the contents of the report and the way forward on its conclusions'.⁷⁹ The response of Scotland Office junior minister David Cairns was that 'the fact that there has not been a Scottish Grand Committee for some time does not mean that the Government are preventing them, but that no one has requested one hitherto'.⁸⁰

8.4 Standing Committee on Regional Affairs

The House of Commons Standing Committee on Regional Affairs has not met this session. The committee was established as a forum for discussing 'any matter

⁷⁷ Lady Hermon, Northern Ireland Grand Committee, 7 February 2006, col 16.

⁷⁸ The RPA is discussed in several recent *Northern Ireland Monitoring Reports* (edited by Rick Wilford and Robin Wilson). At: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html.

⁷⁹ Brian Donohoe, HC Deb, 15 February 2006, col. 498WH.

⁸⁰ David Cairns, HC Deb, 15 February 2006, col. 502WH.

relating to regional affairs in England which may be referred to it'⁸¹ but has fallen out of use. It last met in June 2004. Labour MP Lindsay Hoyle recently called upon the government to establish grand committees for each of the English regions by means of an early day motion.⁸² Only 23 members have signed up in support, however, indicating a lack of interest among English MPs with territorial fora at Westminster.

⁸¹ *Standing Orders of the House of Commons: Public Business (2005(2))*, rule 117.

⁸² EDM 1180 on Grand Committees, available at:
<http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=29546&SESSION=875>.

9. Devolution and Westminster: Early Day Motions

Though rarely debated, and labelled ‘parliamentary graffiti of the worst and most useless kind’ by critics,⁸³ Early Day Motions (EDMs) can at least give an indication of the strength of feeling on various matters among backbench MPs. In the four-month monitoring period covered in this report, a number of EDMs relating to devolution have been tabled. EDM 1180, tabled by Labour MP Lindsay Hoyle, resurrects the perennial proposal to establish grand committees for each of the English regions in the absence of democratic devolution to the sub-national level in England. EDM 1421, which has gained the support of 94 MPs, is in favour of a dual candidacy ban for Scotland to mirror that proposed for Wales while EDM 1421A1 argues against any such change. Tory-sponsored EDM 1476, finally, gives support to the government’s decision not to change the election process for the 2007 Scottish parliamentary elections.

Figure 7: Early Day Motions pertaining to devolution – January to April 2006

EDM Number	Title	Primary Sponsor	Date Proposed	Number of Signatories
1476	Secretary of State for Scotland’s Assurance on Scottish Parliament Election Process	David Mundell	25.1.06	25
<i>EDM 1476 welcomes the certainty produced by the Secretary of State’s announcement that there will be no changes to the Holyrood election process ahead of the Scottish parliament elections in 2007</i>				
1421A	Elections to the Scottish Parliament	Angus MacNeil	19.1.06	17
<i>EDM 1421A1 (amendment to EDM 1421) opposes a ban on dual candidacy.</i>				
1421	Elections to the Scottish Parliament	Jim Devine	18.1.06	94
<i>EDM 1421 calls upon ‘the Scottish Parliament [to] follow the lead of the Welsh Assembly and introduce guidelines for all political parties that ensure that candidates for election cannot stand for both the list and the constituency’.</i>				
1180	Grand Committees	Lindsay Hoyle	1.12.05	23 ⁸⁴
<i>EDM 1180 ‘calls on the Government to establish grand committees for each of the English regions with question time sessions to be introduced in the House for each region respectively, so that hon. Members can discuss in more detail issues relating to their locality and Ministers can be made more accountable to the region.’</i>				

⁸³ Eric Forth, HC Debs, 6 April 2005, col. 1429.

⁸⁴ 19 signatories to EDM 1180 plus four signatories to EDM 1180A1 which supports EDM 1180 but adds provision for the proposed regional grand committees to meet in their respective regions.

10. Parties and Party Policy

10.1 Conservatives

As noted in section 1, the January-April 2006 monitoring period saw the Conservatives confirm the abandonment of the policy of offering the Welsh electorate the choice of abolishing the National Assembly in a multi-option referendum. With Cheryl Gillan and David Mundell respectively the party's shadow Wales and Scotland Secretaries, Cameron's Tories profess a desire to 'make devolution work'. The party is apparently also still committed to tackling the West Lothian Question by banning non-English MPs from voting on English matters at Westminster though exactly how such a policy might work may have to wait for the party's new Democracy Taskforce to report.

10.2 Liberal Democrats

The party is in the middle of an internal policy consultation exercise on devolution and local government policy.⁸⁵ The bulk of the paper relates to sub-national governance in England and represents part of a necessary rethinking within the party since its favoured option of elected regional government was sunk by the North-East referendum in November 2004. The paper does also pose questions about the place of England in a devolved UK and about the funding arrangements for the devolved institutions.

⁸⁵ See Liberal Democrats, *Federal Policy Consultation Paper on Devolution and Local Governance*, at: www.libdems.org.uk/media/documents/policies/75%20Devolution%20and%20Local%20Governance.pdf.

11. Intergovernmental Relations

11.1 British Irish Council

The only meeting of the British-Irish Council (BIC) in the January-April 2006 monitoring period was of the Social Inclusion Sectoral Group. The meeting was hosted in Edinburgh on 2-3 March by the Scottish Executive, which jointly leads the BIC's work on social inclusion with the Welsh Assembly Government. The meeting, which focussed on the problems faced by disabled people in getting access to employment, education and training, was attended by ministers and officials from Scotland, Wales, the UK, Jersey, Guernsey and the Isle of Man. Following usual practice, a brief communiqué was released emphasising the value of the meeting in facilitating "the exchange of information, knowledge and ideas". With its elected devolved institutions still suspended, Northern Ireland was represented by civil servants from the Northern Ireland Office and the Northern Ireland Executive.

11.2 Joint Ministerial Committee

There remains little outward sign that the Joint Ministerial Committee, established as a forum for consultation and dispute-resolution between the UK government and devolved administrations, is being utilised. The last plenary JMC was held over three years ago despite a commitment for annual meetings.⁸⁶ The sectoral JMCs in health, the knowledge economy and poverty have also become similarly inactive. The standard government line on why JMC meetings have been so rare is that there is no point in holding meetings for their own sake,⁸⁷ but it is known that the JMC (Europe) has continued to meet as a forum in which the common UK line in EU negotiations can be hammered out. However, no public notification of these meetings is given (indeed all details of JMC meetings since 1999 were recently removed from the relevant section of the DCA website).

However, the answer to a recent parliamentary question put to the Foreign Secretary (under whose ambit the JMC (Europe) operates) revealed the number of meetings held each year since 1999. According to Minister of State Douglas Alexander's reply, "No Joint Ministerial Committee (Europe) meetings were held in 1999 and 2000, two

⁸⁶ *Memorandum of Understanding between Between the United Kingdom Government Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee*, CM 5240 (London: The Stationery Office, 2001).

⁸⁷ See for instance: Lord Falconer, *Speech to ESRC Devolution and Constitutional Change Programme Final Conference* (10 March 2006), at: www.dca.gov.uk/speeches/2006/sp060310.htm.

meetings were held in 2001, two in 2002, four in 2003, eleven in 2004 and nine in 2005.⁸⁸

It is clear that the JMC machinery is viewed in purely instrumental terms by the government and that its use has depended largely on the whims of individual ministers. The disuse of the other sectoral JMCs, for instance, apparently followed Blair (health) and Brown (knowledge economy, poverty) losing interest in the JMC as a mechanism for influencing policy in the devolved territories. The current Foreign Secretary (and the government's European Secretariat), on the other hand, clearly continue to find the multi-lateral JMC format of use. While there is some *prima facie* logic in the government's stance against 'meetings for meetings' sake', an alternative view is that relying on informal, bilateral and intra-party mechanisms for inter-governmental relations leaves the system unprepared to cope when serious political tensions do arise.⁸⁹

In its recent report on the GOWB (discussed in section 1), the House of Lords Constitution Committee's expressed its continuing concern with the disuse of the JMC, arguing that 'It is important for the long-term future of devolution for the formal machinery of inter-governmental relations to be kept in good working order'.⁹⁰ The government, in its response, reiterated its standard line that bilateral, informal relations had always been expected and that government does use the JMC format 'when it considers it to be the most effective way of addressing an issue.'⁹¹ Critics of this approach are likely to continue asking whether 'effectiveness' of government is being allowed to overshadow the competing claims of transparency and accountability.

⁸⁸ HC Debs, 10 Jan 2006, Column 465W.

⁸⁹ See Alan Trench, 'Intergovernmental relations within the UK', in Trench (ed.), *The Dynamics of Devolution* (Exeter: Imprint Academic, 2005).

⁹⁰ House of Lords Select Committee on the Constitution, *Government of Wales Bill*, op cit., p. 20.

⁹¹ House of Lords Select Committee on the Constitution, *Government response...*, op cit., p. 4.

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Executive Summary

After a tussle between the two Houses of Parliament, the Government of Wales Act received royal assent. The 2007 Welsh elections will now be held under new candidacy rules and the Assembly elected will take on stronger legislative powers following the May poll.

The publication of the government's Energy Review has fed into the debate on nuclear power in Scotland and Wales. The government conceded that it could not enforce power stations on Scotland against the will of the Scottish Executive but debate continues as to whether similar veto powers should be devolved to Wales.

Responsibility for local and regional government in England has been moved to a new Department for Communities and Local Government. The department is expected to publish a white paper in the autumn setting out government policy in this area.

The government has promised to inject more accountability to its direct rule arrangements should the parties in Northern Ireland fail to agree upon a power-sharing executive. A joint statement with the Irish taoiseach also indicated a desire for greater cooperation between the two governments.

Debate continues on the West Lothian Question and related issues. The new Leader of the Commons, Jack Straw, has attacked Conservative 'English votes on English laws' proposals. Regular media coverage and a series of opinion polls suggest that awareness of the asymmetries of the devolution settlement may be growing.

The newly-enacted Northern Ireland (Miscellaneous Provisions) Act legislates for the devolution of police and justice functions at a later date, and bans all non-Irish foreigners from donating to political parties in Northern Ireland.

The government has still to respond to the Arbuthnott report on boundaries and electoral systems in Scotland. A Westminster Hall debate was held on the subject.

DUP members walked out of a Northern Ireland Grand Committee meeting in protest at the decision not to meet in Northern Ireland itself.

CHRONOLOGY OF EVENTS: MAY TO AUGUST 2006

4 May	Local elections held across much of England
5 May	Blair reshuffles his Cabinet and creates new Department for Communities and Local Government
10 May	Secretary of State Peter Hain gives evidence to Northern Ireland Affairs Committee days before recall of Northern Ireland Assembly
2 June	British Irish Council holds 8 th Summit meeting in London
19 June	Scottish Affairs Committee launches report on the Sewel Convention in Edinburgh
20 June	Northern Ireland Grand Committee debates budget order. DUP members walk out of meeting
29 June	British and Irish prime ministers make joint statement on their plans for Northern Ireland should the resumption of devolution fail
4 July	Scotland Office minister David Cairns confirms that the Scottish Executive has veto power over building new nuclear power plants
11 July	Commons Leader Jack Straw attacks the English votes on English laws policy favoured by the Conservatives in a speech
12 July	Home Secretary confirms the abandonment of police mergers plan following widespread opposition across England and Wales
20 July	MPs debate the Arbuthnott Report for second time in Westminster Hall
20 July	Welsh Affairs Committee publishes report on Energy in Wales
25 July	Government of Wales Act receives royal assent
25 July	Commissioner for Older People (Wales) Act receives royal assent
25 July	Northern Ireland (Miscellaneous Provisions) Act receives royal assent
25 July	Parliament rises for summer recess

1. Devolution Policy Debates: Government of Wales Act

The major devolution-related development of the May to August monitoring period was the 25 July enactment of the Government of Wales Act. But before the bill was granted royal assent, it was subject to a brief tussle between the two Houses of Parliament and eventually resolved in favour of the government.

The bill had completed its Commons stages in February without much difficulty. Passage through the Lords was always expected to pose greater problems. In the event a Conservative-LibDem alliance in the Lords inflicted a total of six defeats on the government (see figure 1). Among other things, the Lords overturned the proposed ban on 'dual candidacy', stripped the Secretary of State of his power to veto a request made by the National Assembly to hold a referendum on devolving full legislative powers to Wales, and placed restrictions on the power to pass secondary legislation with retrospective application under the Act.¹

When the bill was returned to the Commons on 18 July, MPs overturned these three amendments, although on three less controversial issues – the name of the Audit Committee, the method for appointing Assembly committee members, and the membership of the new Assembly Commission – the government offered compromise amendments that ceded much to the opposition. The following day, the bill bounced back to the Lords at which point the opposition accepted the government's compromise package allowing the bill to pass as amended. Now that the dual candidacy ban is on the statute book – meaning that candidates cannot stand both on a regional list and in an individual constituency – the parties in Wales can push on with their candidate selection processes in time for the May 2007 Assembly election campaign.

¹ The provisions of the Government of Wales Act 2006 are analysed in detail in Akash Paun, *Devolution and the Centre Monitoring Report: May 2006* (London: The Constitution Unit), at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_May06.pdf

Figure 1: Opposition amendments to Government of Wales Bill passed in Lords²

<i>Date Passed</i>	<i>Mover of Amendment</i>	<i>Result of Division</i>	<i>Hansard Reference</i>	<i>Effect of Amendment</i>	<i>Eventual Outcome</i>
19 April 2006 (Amdmt 17)	Lord Roberts of Conwy (Cons)	133 to 114	Cols. 1092-1106	Removal of dual candidacy ban	Overtaken in Commons
27 June 2006 (Amdmt 11)	Lord Livsey (LD)	194 to 133	Cols. 1127-1129	Requirement that four members of Assembly Commission do not belong to the same party	Government concession of the main principle
27 June 2006 (Amdmt 13)	Lord Henley (Cons)	181 to 131	Cols. 1131-1138	Removal of requirement that D'Hondt system be the default method for appointing committee members	Compromise: D'Hondt now used only as fallback option
27 June 2006 (Amdmt 15)	Baroness Noakes (Cons)	155 to 127	Cols. 1140-1143	To rename Audit Committee the Accounts Committee	Compromise: Assembly can rename committee
13 July 2006 (Amdmt 4)	Lord Kingsland (Cons)	110 to 106	Cols 840-844	To restrict power to pass orders in council with retrospective application	Overtaken in Commons
13 July 2006 (Amdmt 9)	Lord Roberts of Conwy (Cons)	142 to 105	Cols 851-858	To remove Sec. of State's veto power over holding a referendum on full legislative devolution	Overtaken in Commons

² In compiling this table, the authors are much indebted to the database of government defeats in the House of Lords compiled by Meg Russell and Maria Sciarra at the Constitution Unit. See: www.ucl.ac.uk/constitution-unit/research/parliament/defeats.html

2. Devolution Policy Debates: Energy Policy

Energy policy has been high on the political agenda in recent months with the government's Energy Review publishing its report on 11 July.³ The review considered two key energy challenges: the need to reduce carbon emissions and the country's growing dependence on imported energy. As widely predicted, the review gave qualified support to the construction of new nuclear power stations in the UK. In presenting the report to the House of Commons, Trade and Industry Secretary Alistair Darling spelled out the government's view that 'new nuclear power stations could make a significant contribution to meeting our energy policy goals'.⁴

The review was UK-wide as energy policy is formally reserved to the UK Government with regard to both Scotland and Wales. However, for reasons both political and legal, the UK Government will have to take account of the positions of the Scottish and Welsh devolved bodies in acting upon the recommendations of the Energy Review, most particularly in terms of building new nuclear power stations.

2.1 Energy Policy and Scotland

Planning permission for power stations of all sizes is devolved in Scotland.⁵ The crucial question of what the UK Government would do if it clashed with the Scottish Executive on building new nuclear plants was answered categorically by Scotland Office minister David Cairns on 4 July. Quizzed by members of the Scottish Affairs Select Committee he confirmed that 'There are no powers for the UK Government to impose new nuclear power plants in Scotland against the wishes of the Scottish Executive'.⁶

Therefore, although energy policy in the United Kingdom is reserved, in practice the Scottish Executive could stop plans to build new nuclear power stations in Scotland. This could lead to a direct conflict between the wishes of the UK Government to use nuclear power as part of a long-term energy strategy (and to replace the existing

³ Department of Trade and Industry, *The Energy Challenge: Energy Review Report 2006*, Cm 6887 (London: The Stationery Office, July 2006). At: www.dti.gov.uk/files/file31890.pdf

⁴ Alistair Darling, Commons Hansard, 11 July 2006, Col. 1264.

⁵ For power stations above 50MW in size the issue is devolved under section 36 of the Electricity Act 1989. Smaller power stations, below 50MW, are devolved under the Town and Country Planning Act (Scotland) 1997.

⁶ David Cairns, House of Commons Scottish Affairs Committee uncorrected transcript, 4 July 2006 (to be published as HC 1440-i), Q4, at: www.publications.parliament.uk/pa/cm200506/cmselect/cmsscota/uc1440-i/uc144002.htm

nuclear power stations shortly to be closed) and those of the Scottish Executive. The party balance in Scotland makes this not unlikely as Liberal Democrats, SNP and Greens are all strongly against nuclear power and Scottish Labour remains reluctant, arguing that the issue of waste disposal must be resolved first. Although Westminster could potentially amend the Scotland Act 1998 to remove the Scottish Executive veto power, the Energy Review confirms that 'there is no intention to promote a single UK-wide planning system or to alter arrangements for dealing with major energy generating developments'.⁷

Another process which would have to be undertaken in order to build any nuclear power station would be the Justification process. Under the European Basic Safety Standards Directive,⁸ all European Member States undertake to ensure that exposure to ionising radiation is justified, meaning that economic, social and other benefits are deemed to outweigh the health risks. This initial regulatory step is part of energy policy and therefore is a reserved matter, with the responsibility for making a decision resting with the UK Secretary of State for Trade and Industry. However, the Scottish Executive and other devolved administrations are involved in the process through the Justification Liaison Group (JLG),⁹ an intergovernmental forum in which the UK and devolved governments seek to reach consensus on justification decisions. It remains to be seen how this intergovernmental process would function in a situation of serious disagreement. Provision is made for disputes to be referred to the Joint Ministerial Committee for resolution but given that the Scottish Executive could use its planning powers to block construction, disagreement at this stage would likely kill off any proposal for new nuclear plants.

2.2 Energy Policy and Wales

Planning permission for power stations below 50MW in size is devolved to local authorities and the Welsh Assembly under the Town and Country Planning Act 1990. In contrast to Scotland, the National Assembly for Wales has no formal role in the decision making process with regards to power stations in excess of 50MW, into which category nuclear plants would fall. The Welsh Affairs Committee report on

⁷ Department of Trade and Industry, *The Energy Challenge: Energy Review Report 2006*, Chapter 7, Section 7.15, (London: The Stationery Office, July 2006). At: www.dti.gov.uk/files/file32009.pdf

⁸ Justification was first recommended by the International Commission on Radiation Protection (ICRP) in 1977. The UK legislation on this flows from the Euratom Basic Safety Standards Directive 96/29, which was implemented in the UK under the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769 (The 2004 Regulations), (London: The Stationery Office) at: www.opsi.gov.uk/si/si2004/20041769.htm

Energy in Wales highlighted the potential problem of a UK Government in favour of nuclear power and a Welsh Assembly Government (WAG) retaining its policy aspirations of a non-nuclear future for Wales.¹⁰

Giving evidence to the committee on 13 June, Malcolm Wicks MP, Minister of State for Energy did not rule out over-riding the wishes of the Welsh Assembly Government¹¹ though he confirmed that negotiations were ongoing which would take into account the views of the Welsh Assembly and differences in regional energy resources.¹² In his own evidence to the Committee Andrew Davies, Welsh Minister for Enterprise, Innovation and Networks, recognised that WAG could not block planning permission for large power plants but argued that the nuclear-free Wales policy represented the ‘overwhelming majority view’ in Wales.¹³ The political reality is that enforcing new nuclear plants on Wales in the face of opposition from the majority of Assembly majority members would be seriously damaging for Welsh Labour and seems unlikely.

This tension between UK and Welsh governments is not a new phenomenon. In 2003, the Welsh Assembly made a formal request for the transfer of powers with regards to the decision-making process involving power stations above 50MW in size. In response, a Tripartite Working Group consisting of the Wales Office, the DTI and the Welsh Assembly Government was established to consider the matter. The group was due to report at the end of 2004 but to date no findings have been reported and only a handful of meetings held, leading WASC to conclude that there was ‘a clear impression that the Tripartite Group on Energy Consents has been left to wither on the vine.’¹⁴

⁹ The functions of the JLG are set out in a *Concordat on the implementation of the Justification of Practices Involving Ionising Radiation Regulations 2004*. At:

www.defra.gov.uk/environment/radioactivity/government/legislation/pdf/concordat-justification.pdf

¹⁰ House of Commons Welsh Affairs Committee, *Energy In Wales*, HC876-I, Third Report of Session 2005-06, para 121, (London: The Stationery Office, July 2006). At:

www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/876/876-i.pdf

¹¹ Mr Malcolm Wicks MP, House of Commons Welsh Affairs Committee, Uncorrected Minutes of Evidence, Q865. At: www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc876-ix/uc87602.htm

¹² Mr Malcolm Wicks, House of Commons Welsh Affairs Committee, Uncorrected Minutes, op cit., Q821

¹³ Andrew Davies, House of Commons Welsh Affairs Committee, Uncorrected Minutes of Evidence, Q731. At: www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/uc876-vii/uc87601.htm

¹⁴ House of Commons Welsh Affairs Committee, *Energy In Wales*, op cit., paras 27-34.

In written evidence, the Welsh Assembly Government described it as an 'anomaly' that planning powers for large power stations were reserved to Whitehall¹⁵ but the UK Government remains non-committal about when the Tripartite group may reach its conclusions.

¹⁵ House of Commons Welsh Affairs Committee, *Energy In Wales, Volume II: Oral and Written Evidence*, HC876-II, 'Written evidence from the Welsh Assembly Government', para 19(ii).

3. Devolution Policy Debates: Regional and local government

There have been a number of recent developments relating to the future of English sub-national government, an open question since the North East voted against a directly-elected regional assembly in November 2004.

In the May Whitehall reshuffle, responsibility for English local and regional government was moved from John Prescott's Office of the Deputy Prime Minister to the new Department for Communities and Local Government under Ruth Kelly. The immediate result of this was that the publication of the government's white paper on local government was postponed from June 2006 until later this year.

In the meantime, a debate appears to be under way within the government between those in favour of strengthening the existing nine administrative regions of England and those looking to new forms of sub-national governance such as city-regions. The former case has been made by Treasury ministers Ed Balls and John Healey who, together with the New Local Government Network, recently published a pamphlet professing themselves 'very sceptical' about shifting power from regions to city regions.¹⁶

Ruth Kelly, for her part, has spoken more warmly about city-regional administrative arrangements noting that 'a better fit between administrative boundaries and the real, underlying economic geography, strengthens economic performance' with the consequence that 'some key decisions need to be taken across the city-region'.¹⁷ In a speech to the Local Government Association Kelly has also spoken of the need for government to 'get off the centralising treadmill'¹⁸ and elsewhere has vaguely called for 'devolution to and from the town hall',¹⁹ an echo of the concept of 'double devolution', pushed by David Miliband when minister for local government.

¹⁶ Ed Balls, John Healey and Chris Leslie, *Evolution and Devolution in England: How regions strengthen our towns and cities* (London: New Local Government Network, July 2006).

¹⁷ Ruth Kelly, Speech to the Core Cities Summit, Bristol, 26 June 2006, at: www.communities.gov.uk/index.asp?id=1501044.

¹⁸ Ruth Kelly, speech to LGA Conference, 5 July 2006, at: www.communities.gov.uk/index.asp?id=1501327.

¹⁹ Ruth Kelly, 'Devolution to and from the town hall', Speech to Bellingham (Lewisham) Neighbourhood Seminar, 11 July 2006, at: www.communities.gov.uk/index.asp?id=1501519.

All in all, clarity on the government's position may have to await the white paper publication. However, Tony Travers, a seasoned observer of this policy area has ventured the following sceptical prediction:

The most likely outcome is that the government will use the white paper to seek advice on a series of vaguely couched options. Nothing will be ruled out. Institutions outside government will be consulted on so many options that decision-making will prove difficult. More policy papers and negotiation will be required.²⁰

The result therefore, may be little meaningful change from the status quo and a continuation of weak sub-national government in England coupled with repeated claims by government to be in favour of decentralisation.

As far as the other parties are concerned, the Conservatives remain committed to 'abolishing unelected Regional Assemblies and returning their powers to local government'.²¹ Recent Liberal Democrat publications, meanwhile, have called for a strengthening of the regional level, for instance by transferring to Regional Development Agencies many of the functions of the Department of Trade and Industry (which the party wishes to abolish).²² In a policy paper entitled *Your Community, Your Choice*, the party also states that it continues to regard directly-elected regional assemblies as 'a potential option in the long term'.²³ The general thrust of the paper is a call for decentralisation from Whitehall (including to new Community Councils) but without the imposition of a 'one size fits all' regional governance model.

Further party policy developments are likely over the coming months both during the September conference season and in debates following the publication of the white paper, expected this autumn. The autumn should also see the publication of the reports of the House of Commons Committee on Communities and Local Government (see section 9.4) and the Lyons Inquiry on Local Government.

²⁰ Tony Travers, 'All talk, no action', on PublicFinance.co.uk, 28 July 2006, at: www.publicfinance.co.uk/opinion_details.cfm?News_id=28365.

²¹ The Conservative Party, *Built to Last: The Aims and Values of the Conservative Party*, p.7, at: www.conservatives.com/pdf/BuiltToLast-AimsandValues.pdf.

²² Liberal Democrat Party, *The Lib Dem Plan for Slimming Government*, at: www.libdems.org.uk/government/issues/ (accessed 5 September 2006).

²³ Liberal Democrat Working Group on Local Governance, *Your Community, Your Choice: Policies for Local Government in England*, Policy Paper 73, at: www.libdems.org.uk/media/documents/policies/73%20-%20Your%20Community%20Your%20Choice.pdf, p. 12.

For more detailed analysis of all aspects on regional governance in England, see the latest English Regions Devolution Monitoring Report.²⁴

²⁴ Mark Sandford, *English Regions Devolution Monitoring Report: September 2006* (London: The Constitution Unit), at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Regions_Sept06.pdf

4. Devolution Policy Debates: Governing Northern Ireland

As reported in the previous Devolution and the Centre Monitoring Report, the government's Northern Ireland Act 2006 recalled the Northern Ireland Assembly in May and gave it until 24 November to find cross-community consensus and create a power-sharing executive or face permanent dissolution.²⁵ While the tortuous negotiations between the parties continue at Stormont,²⁶ thoughts at the centre have turned to the question of what happens if the 24 November deadline is not met.

Since the suspension of devolution in Northern Ireland in October 2002 the UK Government has exercised home rule, passing legislation by means of orders in council as provided for by Schedule 1 of the Northern Ireland Act 2000. This method of legislating has caused concern from time to time with members of both Houses of Parliament criticising the lack of accountability of the order in council procedure both to parliament itself and to the people of Northern Ireland.

Having hitherto defended the procedure as a regrettable but temporary necessity, the government has now given clear indications that should the talks at Stormont collapse, greater accountability will be injected into the instruments of direct rule. Specifically, in the Commons on 25 July, Junior Northern Ireland Office minister David Hanson made the following commitment:

Many of the matters dealt with under the Order-in-Council procedure are properly dealt with by the Assembly, should it be reconstituted. In the event of the Assembly not being reconstituted...we will consider how to make those measures more accountable, agreed through the usual channels, if I may say so, with a stage of parliamentary consideration at which Northern Ireland Orders in Council can be amended. We will also ensure that, whenever possible, we legislate for Northern Ireland through primary legislation.²⁷

This commitment by the government was welcomed by MPs on all sides of the House, coming as it did after pressure from the Opposition to amend the Northern Ireland (Miscellaneous Provisions) Bill (discussed below in section 7.3) to include a

²⁵ Northern Ireland Act 2006, Chapter 17, at: www.opsi.gov.uk/acts/acts2006/ukpga_20060017_en.pdf

²⁶ See: Robin Wilson and Rick Wilford (eds.), *Northern Ireland Devolution Monitoring Report: September 2006* (London: The Constitution Unit), at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Ni_Sept06.pdf, section 1.

²⁷ David Hanson, Commons Hansard, 25 July 2006, Col. 766.

statutory commitment to make it possible for parliament to amend orders in council of this type.²⁸

In a joint statement with the Irish prime minister, the government has also indicated that its Plan B – should the resumption of the devolution arrangements fail to come about – will involve ‘new partnership arrangements [between UK and Irish governments] that would need to be put in place to ensure our effective joint stewardship of the Good Friday Agreement’.²⁹ This seems to indicate that post-devolution direct rule will be ‘greener’ (in the nationalist, not the environmental sense) than pre-devolution direct rule, or at least that the government wants to give out this impression.³⁰

²⁸ The relevant amendment was moved in the Lords by Lord Glentoran: Lords Hansard, 13 July 2006, Col. 889.

²⁹ Statement by the Prime Minister and the Taoiseach, 29 June 2006. See: www.nio.gov.uk/media-detail.htm?newsID=13290

³⁰ This issue is analysed in greater detail in Wilson and Wilford, *Northern Ireland Devolution Monitoring Report: September 2006*, op cit.

5. Devolution Policy Debates: West Lothian Question

5.1 English Votes on English Laws

As noted in the previous monitoring report, Lord Baker of Dorking has introduced a private peer's bill to enable MPs to be banned from speaking or voting in the Commons if the business under consideration does not apply to the territory they represent. The principal target of this bill is Scottish MPs, whose ability to vote on England and Wales measures has repeatedly been called into question as constitutionally illegitimate. In shorthand, this policy is termed English Votes on English Laws (EVEL). Baker's bill has received its third Lords reading and is unlikely to progress further but has had some success in publicising the perceived unfairness (to England) of the devolution settlement.

The Conservatives remain committed to tackling the issue as most recently demonstrated in the party's *Built to Last* policy document.³¹ Although recent Tory manifestos have suggested a preference for EVEL, the specificities of the party's policy may not become clear until its Democracy Taskforce reports. As in many things, David Cameron has thus far chosen a strategy high on symbolism, low on detail.

Nonetheless, political and media attention on the issue prompted Jack Straw MP – the new Leader of the House of Commons – to devote part of a major speech to attacking Baker's proposals.³² Straw laid out a number of charges against the policy: that determining the territorial extent of clauses and bills would be difficult and cause delays and controversy; that the policy would destroy the key constitutional principle of Cabinet collective responsibility for all issues before Parliament; and that the policy would pose a threat to the very future of the United Kingdom. Straw also argued that a basic premise of Baker's case was flawed. In Straw's words, 'Power devolved is not power ceded' [emphasis in original]³³ meaning that MPs (of which 85 per cent are English) could abolish devolution should they so choose.

³¹ The specific commitment was to 'Strengthening the United Kingdom by providing a constructive Unionist response to the West Lothian Question', The Conservative Party, *Built to Last* op cit., p.7.

³² Jack Straw MP, Speech given to The Hansard Society, *The Future for Parliament*, 11 July 2006. At : www.hansardsociety.org.uk/assets/Hansard_society_speech.pdf

³³ *Ibid.*, p. 9

Lord Baker's response to this was that designating clauses' territorial extent was already commonly done and therefore feasible; that while Westminster was technically supreme, repeal of the devolution acts was practically impossible; and that it was the unfair treatment of England that would foster separatism and threaten the unity of the country.³⁴

While the Labour leadership maintains the position that the West Lothian Question is an anomaly worth living with, there are also signs of some disquiet on its backbenches. Most notable in this regard was the recent Scottish Affairs Committee report on the Sewel Convention (see section 9.1 for more detail) which suggested that some solution to the problem should be found.³⁵

5.2 Public Opinion

In addition to these developments in the Westminster Village, regular media coverage and a series of opinion polls relating to the West Lothian Question have suggested that the issue may be diffusing into the wider public political consciousness. Inconsistent findings, on the other hand, are an indication that many have no strong opinion and may be swayed by the phrasing of the question or recent events.

For instance, a poll conducted in June showed that 55 per cent of respondents felt that Scottish MPs should not vote on matters that only concern England and Wales.³⁶ However, this figure was down on a poll in February of last year, where the figure was 67 per cent. Another poll put the figure at 43 per cent.³⁷

In media coverage, the West Lothian Question proper – why Scottish MPs should be able to vote on 'domestic' England and Wales matters – is often bundled together with other perceived anomalous and unfair aspects of devolution. For instance, the question of whether Scottish MPs should be eligible to become ministers with predominantly English portfolios or even to become Prime Minister. Two recent polls

³⁴ Lord Baker's response to Jack Straw's speech to The Hansard Society. At: www.hansardsociety.org.uk/assets/English_Votes_for_English_Laws.pdf

³⁵ House of Commons Scottish Affairs Committee, *The Sewel Convention: the Westminster Perspective*, HC983, Fourth Report of Session 2005-06, (London: The Stationery Office, July 2006). At: www.publications.parliament.uk/pa/cm200506/cmselect/cmsscota/983/983.pdf

³⁶ YouGov Opinion Poll, *Scottish Politics 2006*. June 2006. At: www.yougov.com/archives/pdf/TEL060101009_2.pdf, www.yougov.com/archives/pdf/TEL060101009_1.pdf

³⁷ YouGov Opinion Poll, June 2006. At: www.24dash.com/content/news/viewNews.php?navID=57&newsID=7170

have found opposition to a Scottish MP in Number 10 Downing Street among 25 per cent³⁸ and 52 per cent of the population, although it is notable that the higher figure came when respondents were given the following introductory prompt: 'Now that Scotland has its own Parliament, dealing with internal Scottish affairs...'.³⁹ Another problem with gauging public opinion in this area is that the questions about whether a Scot should be eligible to be prime minister are inevitably tainted by short-term political considerations, given the likely accession to the premiership of Gordon Brown.

Leaving aside any critique of polling methodology, what is rarely recognised in media coverage is that ministers (including the PM) are accountable not to their constituents but to the UK Parliament as a whole. As a result, a Scot sitting in Number 10 or in the Home Office should not be considered a constitutional anomaly.

The final issue repeatedly raised as evidence of the bad hand dealt to England is finance, specifically the higher per capita public spending in Scotland and Wales. One June poll found support for scrapping the Barnett Formula (which is widely, though inaccurately, interpreted as the source of this disparity) among 70 per cent of English voters but only 12 per cent of Scots.⁴⁰ Despite this, no major party has risked opening what may be a Pandora's Box leading to inter-regional strife across the country.

www.snp.org/snpnews/2005/snp_press_release.2006-06-21.9108627576/plonearticle_view?month:int=6&year:int=2006

³⁸ YouGov Opinion Poll, June 2006, at: www.yougov.com/archives/pdf/TEL060101009_2.pdf

³⁹ 'English "unhappy" with devolution', *BBC News*, 19 June 2006, at: <http://news.bbc.co.uk/1/hi/5094178.stm?ls>.

⁴⁰ YouGov Opinion Poll, June 2006, at: www.ukpollingreport.co.uk/blog/archives/253

6. Devolution and Whitehall⁴¹

6.1 Cabinet Reshuffle May 2006

On 5 May 2006, in the aftermath of a bad set of local election results for Labour, a major Whitehall reorganisation was undertaken, resulting in a number of changes to the lineup of ministers with responsibilities for devolution.

Most dramatic was the reduced role of Deputy Prime Minister John Prescott, whose responsibility for regional and local government in England was moved to a new Department for Communities and Local Government (DCLG) under Ruth Kelly. The new department has also taken on the housing and planning remits as well as policy areas from elsewhere in Whitehall such as communities and civil renewal, equality policy and sponsorship of the new Commission for Equalities and Human Rights.⁴² The new DCLG Minister of State with responsibility for local government is Phil Woolas, while David Miliband has moved to the Department for Environment, Food and Rural Affairs.

The reshuffle spelled broader changes for devolution. Douglas Alexander replaced Alistair Darling as Secretary of State for both Transport and Scotland. Peter Hain remains in charge at both the Wales and Northern Ireland Offices though Huw Irranca-Davies has been appointed junior whip with responsibility for Wales. Lord Falconer retains overall responsibility for the devolution settlement but the Constitutional Affairs Cabinet Committee (CA), which since 2003 has also been responsible for devolution matters, is to be chaired by Jack Straw, the new Leader of the Commons. Straw has already entered the debate on the West Lothian Question, strongly criticising the English Votes on English Laws policy (see section 5.1).

As a result of the reshuffle and machinery of government changes, five Cabinet ministers now have direct interests in devolution: Peter Hain (Wales and Northern Ireland), Douglas Alexander (Scotland), Lord Falconer (the overall devolution settlement), Ruth Kelly (English regions), and Jack Straw. The fragmentation of responsibility for devolution within the UK Government therefore persists.

⁴¹ With thanks to Alan Trench for his contribution to this section.

⁴² The departmental remit is set out at: www.communities.gov.uk/index.asp?id=1165628.

7. Devolution and Westminster: Legislation

7.1 Scotland

Debate over the use of the 'Sewel' or 'Legislative Consent' Convention has continued with the Scottish Affairs Committee publishing a report on the subject in June 2006 (see section 9.1).

Two bills currently before parliament have been the subject of Scottish Executive legislative consent memoranda, indicating that they may contain provisions legislating for Scotland in devolved areas or adjusting the competence of the Scottish devolved institutions.

First, on 4 May, the Scottish Executive published a memorandum relating to the Lighter Evenings (Experiment) Bill,⁴³ a Lords private member's bill that would advance time in Great Britain by one hour, so that the country was in the same time zone as mainland Europe. The bill would grant the Scottish Parliament and the National Assembly for Wales the power to apply or disapply this change in their respective jurisdictions, in the former case by amending the Scotland Act to remove time zones from the list of reserved matters in Schedule 5 of the bill. Following usual practice, as the government will block the bill from progressing the Scottish Executive has decided not to table a legislative consent motion in the Scottish Parliament.

Second, on 26 June, the Executive published a memorandum on the Compensation Bill announcing its plan to lodge a legislative consent motion.⁴⁴ The bill was originally designated an England and Wales bill but strayed into the devolved area of damages law following the UK Government's decision to amend the bill relating to compensation for asbestos victims. On 29 June, the Scottish Parliament duly approved the motion granting Westminster the right to legislate in this area. The motion was carried without a division.⁴⁵

⁴³ Lighter Evenings (Experiment) Bill, at: www.publications.parliament.uk/pa/ld200506/ldbills/048/2006048.pdf . Scottish Executive Legislative Consent Memorandum at:

[www.scottish.parliament.uk/business/legConMem/pdf/LighterEvenings\(Experiment\)Bill-LCM.pdf](http://www.scottish.parliament.uk/business/legConMem/pdf/LighterEvenings(Experiment)Bill-LCM.pdf)

⁴⁴ Compensation Act 2006, Chapter 29, at: www.opsi.gov.uk/acts/acts2006/20060029.htm . Scottish Executive Legislative Consent Memorandum at:

www.scottish.parliament.uk/business/legConMem/pdf/LCM-CompensationBill.pdf

⁴⁵ Scottish Parliament Official Report, 29 June 2006, Cols. 27047-60 and 27139.

The total number of legislative consent motions passed by the Scottish Parliament since 1999 stands at 70 as of 31 August 2006.⁴⁶

7.2 Wales

In addition to the newly-enacted Government of Wales Act (see section 1), Parliament has been considering a number of other pieces of legislation with important effects for Wales and the devolved institutions.

National Health Service (Wales) Bill (HL) 2005-06

This bill - along with the National Health Service Bill and the National Health Service (Consequential Provisions) Bill – was introduced to the House of Lords on 5 June 2006. It is classed as a consolidation bill, bringing under a single legislative roof provisions relating to healthcare provisions currently to be found in 14 existing acts of parliament.⁴⁷ The purpose of consolidation bills is to make existing law more accessible and easier to understand rather than to amend the legislative status quo. As a result they are typically politically uncontroversial and in this respect the NHS (Wales) Bill is no exception, receiving a second reading in the House of Lords and passing through the committee stage without any debate prior to the summer recess.

The decision to introduce separate consolidation bills for England and Wales (with the ‘consequential provisions’ bill ancillary to the other two) is interesting from a devolution perspective in that it demonstrates that the Welsh and English health systems have separated to a sufficient extent to justify putting them on separate legislative foundations. In its notes to the bill, the Department of Health confirms its view (based on Law Commission recommendations) that ‘Health law in England and Wales now diverges in so many respects that one Act covering both would be neither concise nor comprehensible to users of the legislation’.⁴⁸

Commissioner for Older People (Wales) Act 2006

The bill to create a commissioner for older people in Wales completed its passage through parliament and was granted royal assent on 25 July 2006. The role of the new commissioner is to:

⁴⁶ Scottish Parliament, *Sewel /Legislative Consent Motions: Session 2*, SP Fact Sheet (June 2006), at: www.scottish.parliament.uk/business/research/factsheets/documents/SewelMotionsandLegislativeConsentMotionsSession2.pdf

⁴⁷ The purpose of the bill and the existing acts affected by the consolidation exercise are set out in: Department of Health, *Consolidation of NHS Law in England and Wales* (2006), at: www.dh.gov.uk/assetRoot/04/13/42/47/04134247.pdf

- (a) promote awareness of the interests of older people in Wales;
- (b) promote the provision of opportunities for, and the elimination of discrimination against, older people in Wales;
- (c) encourage good practice in the treatment of older people in Wales;
- (d) keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales.⁴⁹

The passage of this legislation – first requested of the UK Government by the National Assembly for Wales in its March 2004 legislative ‘bid’⁵⁰ – follows on from the Children’s Commissioner for Wales Act 2001, a Welsh policy innovation later replicated in Scotland (2003), Northern Ireland (2003) and England/the UK (2004).

Other Bills

Three other bills have been introduced to Parliament that grant powers to the National Assembly in regard to the exercise of functions in Wales:

- Disabled Persons (Independent Living) Bill [HL]
- Welfare Reform Bill
- Sustainable Communities Bill

For an analysis of the powers devolved under these bills, see the September 2006 Wales Devolution Monitoring Report.⁵¹

7.3 Northern Ireland

Northern Ireland (Miscellaneous Provisions) Act

On the final sitting day before the summer recess, this piece of legislation completed its passage through parliament and was granted Royal Assent. The act includes provisions to devolve policing and justice functions to the Northern Ireland Assembly should the devolved institutions manage to scramble back onto their feet. These reserved matters will only be transferred to the Assembly if and when a cross-community resolution in the Assembly so requested.

⁴⁸ *Ibid.*, p.1.

⁴⁹ Commissioner for Older People (Wales) Act, s.2(1).

⁵⁰ See National Assembly for Wales, *Welsh Assembly Government Bids for primary legislation* (Cardiff: Members Research Service, March 2005), at: www.wales.gov.uk/keypubmrs/content/05-011.pdf#search=%22national%20assembly%20legislative%20bids%22.

⁵¹ Marie Navarro, ‘The Legislative Process’, in *Wales Devolution Monitoring Report: September 2006* (London: The Constitution Unit). At: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_Sept06.pdf

More controversial were the provisions relating to party funding which allow political parties in the six counties to accept donations from citizens of the Irish Republic, while banning donations from all other non-Britons. An amendment to extend this ban to Irish citizens was passed in the Lords on 13 July with Conservative, Liberal Democrat and Crossbench support. After overturning this defeat in the Commons the government prevailed over the Upper House, arguing that the legislation should 'take account of the special role Ireland has in relation to Northern Ireland's political culture'.⁵²

The other major point of conflict on the bill was on the procedure by which legislation for Northern Ireland in devolved areas will be passed should devolution not be reestablished. As discussed above in section 4, following a Lords defeat on the matter, the government made a commitment that it would cease to legislate for Northern Ireland by means of non-amendable orders in council and would aim to use primary legislation whenever possible.

⁵² Lord Rooker, Lords Hansard, 25 July 2006, Col. 1736.

8. Devolution and Westminster: Backbench Initiatives

8.1 Parliament (Participation of Members of the House of Commons) Bill⁵³

This bill, first introduced in the House of Lords by Lord Baker in January, would prevent MPs from speaking and voting on bills or certain clauses if the territory they represented was not affected. The bill received its third reading in the House of Lords on 18 April and has been sent to the Commons.

8.2 Scottish Parliament (Candidates) Bill⁵⁴

Labour peer Lord Foulkes' bill to ban candidates from standing on a regional list and an individual constituency in Scottish Parliamentary elections has made no further progress since receiving its second Lords reading in March 2006.

8.3 Scotland (Petitions for a Referendum on Independence) Bill [HL]⁵⁵

The Scotland (Petitions for a Referendum on Independence) Bill was introduced to the Lords on 22 May 2006 by the Earl of Mar and Kellie (Liberal Democrat). It provides that if 500,000 people petitioned the House of Commons in a year, the government would be required to introduce a referendum bill allowing Scots to vote on the political withdrawal of Scotland from the United Kingdom. As Lord Mar explained at second reading, 'political withdrawal' means the dissolution of the 1707 parliamentary union between England and Scotland but not the 1603 union of the crowns. He also argued that his bill would respect the principles of both parliamentary sovereignty (as a referendum could only be held following the passage of an additional bill) and popular sovereignty (as 'the people' would have the power to instigate directly the move towards independence through the petition process and then to make the ultimate decision in a referendum).⁵⁶ The bill does not represent Liberal Democrat party policy.

8.4 Police (Northern Ireland) Bill [HL]⁵⁷

Lord Laird, an Ulster Unionist sitting on the crossbenches, introduced this bill which would end the current practice by which 50 per cent of new recruits to the Police Service of Northern Ireland (PSNI) must be Catholic. This policy was introduced to

⁵³ Parliament (Participation of Members of the House of Commons) Bill [HL], HL Bill 61. At: www.publications.parliament.uk/pa/ld200506/ldbills/061/2006061.pdf

⁵⁴ Scottish Parliament (Candidates) Bill [HL], HL Bill 73 2005-06. At: www.publications.parliament.uk/pa/ld200506/ldbills/073/2006073.pdf.

⁵⁵ Scotland (Petitions for a Referendum on Independence) Bill [HL], HL Bill 111. At: www.publications.parliament.uk/pa/ld200506/ldbills/111/2006111.pdf

⁵⁶ Second Reading debate at: Lords Hansard, 14 July 2006, Cols. 982-92.

redress the historical underrepresentation of Catholics in the security services of Northern Ireland but is resented by unionists as discriminatory given that the Catholic community represents at most 44 per cent of the population.⁵⁸ Liberal Democrat and Conservative spokespersons expressed some sympathy with Lord Laird's proposal while government minister Lord Rooker emphasised that the 50:50 recruitment strategy is only a temporary measure and one that has had a positive impact in terms of increasing public confidence in the PSNI.⁵⁹ On 12 May, the bill received its third reading in the Lords without division, though Lord Rooker made plain that the government would oppose the bill in the Commons, thus ensuring its demise.⁶⁰

8.5 St George's Day Bill⁶¹

On 21 June, Conservative MP Andrew Rosindell presented a bill to designate St George's day as an annual public holiday in England.

8.6 Early Day Motions⁶²

A number of Early Day Motions pertaining to devolution have recently been tabled in the House of Commons, allowing for an assessment of strength of opinion on the backbenches

- Tabled by Labour MP Lindsay Hoyle, EDM 2565 calls on the government to establish grand committees and question times for each of the English regions. The EDM was tabled on 13 July and has attracted 33 signatories.
- EDM 2519, tabled by Labour MP Tom Harris, criticises the Conservative policy of 'English votes on English Laws', arguing that the policy would lead to 'constitutional crisis' and 'threaten the future of the United Kingdom'. The EDM has been signed by 96 Members, comprising 91 Labour, 4 LibDem and 1 Ulster Unionist.
- Alex Salmond, SNP leader, tabled an EDM supporting independence for England and Scotland, attracting support from his five Scottish Nationalist colleagues.

⁵⁷ Police (Northern Ireland) Bill [HL], HL Bill 59 2005-06.

⁵⁸ National Statistics, *Community background (religion or religion brought up in)*, April 2001, Northern Ireland, at : www.statistics.gov.uk/cci/nugget.asp?id=980.

⁵⁹ The second reading debate can be found at: Lords Hansard, 3 Mar 2006, Cols. 505-22.

⁶⁰ Lords Hansard, 12 May 2006, Col. 1183.

⁶¹ St Georges Day Bill, Bill 199 2005-06.

⁶² The text of all current EDMS along with their signatories can be found at: <http://edmi.parliament.uk/EDMi/EDMList.aspx>

- Noting the controversy surrounding the West Lothian Question, EDM 2429 calls for a 'full and frank debate' on the constitutional settlement between Scotland and England. This motion gained 17 signatories including representatives of all the major parties.
- EDM 2203, tabled by LibDem MP Mark Williams, criticises government plans to merge the four Welsh police forces and calls for a review of the policy. The EDM was signed by 37 Members from all major parties.

9. Devolution and Westminster: Select Committees

9.1 Scottish Affairs Select Committee

The Sewel Convention: the Westminster Perspective

The Scottish Affairs Committee produced its report on 19 June, making a number of recommendations for procedural changes relating to the operation of the Sewel (legislative consent) convention.⁶³ The committee endorsed the proposals of the Procedures Committee of the Scottish Parliament – to create a formal mechanism for the Scottish Parliament to communicate to Westminster its decisions on legislative consent motions; and for bills and explanatory notes to clearly indicate whether and how their provisions stray into Scottish areas, thereby invoking the convention.⁶⁴ It was also recommended that those bills that affect Scotland should be summarised in the Secretary of State for Scotland's Written Ministerial Statement following the Queen's Speech. Scotland Office minister David Cairns later said that in its response to the report the government would look favourably on the recommendations.⁶⁵

The committee also considered ways in which links between Westminster and Holyrood might be enhanced, including the inclusion of MSPs in meetings of Westminster committees. The report noted the special provision made in standing orders for joint sittings of the Welsh Affairs Committee and committees of the National Assembly for Wales but did not formally recommend similar changes for the Scottish case. Instead, the committee indicated its support for a 'Super' Scottish Grand Committee consisting of Scottish MPs, MSPs and MEPs, whose role would be as a forum for debate rather than a decision-making body. The committee expressed a hope 'that the relevant Committees of the House of Commons, such as the Modernisation Committee or the Procedure Committee, might pick up and consider our suggestion for one of their future inquiries.'⁶⁶

The committee also touched briefly upon the West Lothian Question at the end of its report. No recommendations were made but the committee argued that the issue

⁶³ House of Commons Scottish Affairs Committee, *The Sewel Convention*, op cit.

⁶⁴ Scottish Parliament Procedures Committee, *The Sewel Convention*, SP Paper 428, Seventh Report, October 2005. At: www.scottish.parliament.uk/business/committees/procedures/reports-05/prr05-07-vol01.htm

⁶⁵ David Cairns, House of Commons Scottish Affairs Committee, Uncorrected Minutes of Evidence, Q59 At: www.publications.parliament.uk/pa/cm200506/cmselect/cmsscota/uc1440-i/uc144002.htm

⁶⁶ House of Commons Scottish Affairs Committee, *The Sewel Convention*, op cit., paras. 34-44.

needed to be comprehensively debated and resolved before it undermined the whole devolution settlement.⁶⁷

Arbuthnott Commission

Having held a one-off evidence session with Professor Sir John Arbuthnott and Dr Nicola McEwen, respectively chairman and a member of the Commission on Boundary Differences and Electoral Systems in Scotland, SASC published a brief report on 16 May.⁶⁸ The committee did not express an opinion on the recommendations of the commission⁶⁹ but made a formal request that a Scottish Grand Committee meeting be held to discuss the subject.⁷⁰ This did not occur, although a Westminster Hall debate on the report was held, in which supporters of the Arbuthnott recommendations (for a move to an 'open list' Mixed Member System but no reversion to coterminous constituency boundaries for Westminster and Holyrood) were thin on the ground. A number of speakers, including SASC chair Mohammed Sarwar, spoke in favour of the Single Transferable Vote system. Conservative Charles Walker, meanwhile, advocated the abolition of the Scottish Parliament with Scottish MPs spending two days per week in Edinburgh to deal with devolved issues. Closing the debate, Scotland Office minister David Cairns stated that the government's response to Arbuthnott would be published early next session meaning that electoral reform prior to the 2007 elections will not be possible.⁷¹

Other Activities

The Scottish Affairs Committee's annual oral evidence session on the Scotland Office's Departmental Report took place 4 July.⁷² The Committee heard evidence from Douglas Alexander MP, Secretary of State for Scotland, Mr David Cairns MP, Parliamentary Under-Secretary of State for Scotland and Dr Jim Wildgoose, Head of the Scotland Office. The three main topics covered in the evidence session were energy and power generation, electoral administration in Scotland, and intergovernmental and interparliamentary relations.

⁶⁷ House of Commons Scottish Affairs Committee, *The Sewel Convention*, op cit., paras 45-50.

⁶⁸ House of Commons Scottish Affairs Committee, *Putting Citizens First: The Report from the Commission on Boundary Differences and Voting Systems*, HC924, Third Report of Session 2005-06, (London: The Stationery Office, May 2006). At: www.publications.parliament.uk/pa/cm200506/cmselect/cmsscota/924/924.pdf

⁶⁹ Commission on Boundary Differences and Voting Systems, *Putting Citizens First: Boundaries, Voting and Representation in Scotland* (The Arbuthnott Report) (Edinburgh: The Stationery Office, January 2006), at: www.arbuthnottcommission.gov.uk/FinalReport.htm

⁷⁰ House of Commons Scottish Affairs Committee, *Putting Citizens First*, op cit., para. 13.

⁷¹ Commons Hansard (Westminster Hall), 20 July 2006, Cols. 141WH-190WH.

Other SASC activities include the inquiry into 'The Potential Benefits for Scotland of the 2012 Olympics'. The committee has completed its gathering of evidence and the findings are now being considered. The Committee has also decided to undertake new inquiries on 'Poverty in Scotland' and 'The Effects of Tax Increases on the Oil Industry'.⁷³

9.2 Welsh Affairs Select Committee

The Welsh Affairs Committee (WASC) has published three reports and one special report (a government response to a previous committee report) in the May to August monitoring period:

- 10 July 2006, Fourth Special Report, *Proposed Restructuring of the Police Forces in Wales: Government Response to the Committee's Second Report of 2005-06*
- 20 July 2006, Third Report, *Energy in Wales*
- 25 July 2006, Fourth Report, *Future of RAF St Athan*
- 27 July 2006, Fifth Report, *Current Restructuring of the Police Forces in Wales*

The report on energy fed into the wider policy debate on the UK's energy strategy and also the intergovernmental tensions over whether planning permission for large power stations should be reserved or devolved. These issues are discussed in detail in section 2.

Police restructuring has also been a matter of intergovernmental controversy in recent months. Under Charles Clarke, the Home Office was planning a series of police force mergers including of the four Welsh forces. In a February report, the committee had been critical of the government's failure to consult or take into account factors specific to Wales.⁷⁴ Since then, however, the government has backed away from the merger plans with new Home Secretary John Reid stating that while mergers were still the ultimate goal he was 'no longer proceeding with a situation in which we would be laying orders against the wishes of the forces

⁷² House of Commons Scottish Affairs Committee, Scotland Office Annual Report Oral Evidence Session, Uncorrected Evidence. At:

www.publications.parliament.uk/pa/cm200506/cmselect/cm Scotaf/uc1440-i/uc144002.htm

⁷³ For information on all the activities of the House of Commons Scottish Affairs Select Committee, go to: www.parliament.uk/parliamentary_committees/scottish_affairs_committee.cfm

⁷⁴ House of Commons House of Commons Welsh Affairs Committee, *Proposed Restructuring of Police Forces in Wales*,

Second Report of 2005-06 Session, HC 751, at:

www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/751/751.pdf

involved',⁷⁵ effectively killing off the all-Wales force plan. In its follow-up report in July, WASC shifted the focus onto the costs already incurred by the Welsh police forces in preparing for the merger and called for the UK Government to cover these expenses.⁷⁶ The government will presumably formally respond to this request in due course.

9.3 Northern Ireland Affairs Select Committee

On 5 July the committee published its report into 'Organised Crime in Northern Ireland'. Those that gave evidence included Paul Goggins MP, a junior minister in the Northern Ireland Office. The committee expressed concern about links between paramilitary groups and organised crime, including extortion, identity and benefits fraud, fuel and cigarette smuggling. As justice and policing are reserved matters under the Northern Ireland Act 2000 (though see section 4), the report did not touch upon questions relating to the suspension of devolution since 2002 and the effects of restoration.⁷⁷

In addition, on 10 May the committee held a one-off oral evidence session with Peter Hain MP, Secretary of State for Northern Ireland, to consider 'Political and Security Developments in Northern Ireland'. This meeting took place shortly before the Northern Ireland Assembly was recalled for negotiations on forming a power-sharing executive. Hain professed his optimism that the 24 November deadline would be met⁷⁸ and was repeatedly challenged as to why he was pushing through controversial policies such as water charges, restructuring the local government system and abolishing the 11-plus exam, rather than leaving them for the Assembly to decide.⁷⁹ Hain's response, which led to accusations of inconsistency about his prognosis for devolution, was:

If restoration occurred this summer, pretty well all of these things would not have been decided. That is my answer to that. What I am not willing to do, and I think I have said that across the floor in the debate on the emergency

⁷⁵ Commons Hansard, 12 July 2006, Col. 1393

⁷⁶ House of Commons Welsh Affairs Committee, *Current Restructuring of the Police Forces in Wales* HC1418, Fifth Report of Session 2005-06, (London: The Stationery Office, July 2006). At: www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/1418/1418.pdf, para. 25.

⁷⁷ House of Commons Northern Ireland Affairs Committee, *Organised Crime in Northern Ireland*, Third Report of Session 2005-06, HC 886-I, at: www.parliament.the-stationery-office.co.uk/pa/cm200506/cmselect/cmniaf/886/886i.pdf

⁷⁸ House of Commons Northern Ireland Affairs Committee, Uncorrected Transcript of Oral Evidence by Rt Hon Peter Hain MP, 'Political and Security Developments in Northern Ireland', 10 May 2006 (to be published as HC 1107), at: www.parliament.the-stationery-office.co.uk/pa/cm200506/cmselect/cmniaf/uc1107/uc110702.htm, Q2.

⁷⁹ See *ibid.*, QQ 10-18.

bill, is delay decisions which I think are absolutely necessary when there is no certainty, despite my optimism, that we will ever get restoration.⁸⁰

The Committee has also launched an inquiry into 'Tourism and its economic impact and benefits' though no evidence sessions have yet been held.

9.4 Communities and Local Government Committee

The committee's inquiry on the question 'Is there a future for regional government?' has continued during this monitoring period. Witnesses called included representatives of a number of sub-national government bodies as well as Sir Michael Lyons, who has been chairing a major ongoing inquiry into local government since 2004. The committee's report is expected later this autumn.

⁸⁰ Ibid., Q13.

10. Devolution and Westminster: Grand Committees

10.1 Scottish Grand Committee

The Scottish Grand Committee has not met despite the Scottish Affairs Committee's request for it to discuss the findings of the Arbuthnott Commission.⁸¹ This followed on from a suggestion by Labour MP Brian Donohoe during a Westminster Hall debate earlier in the year.⁸²

10.2 Welsh Grand Committee

The Welsh Grand Committee has not met since 19 April when, as reported in the previous Devolution Monitoring Report, it discussed the implications for Wales of the Budget announced by the Chancellor of the Exchequer in March.

10.3 Northern Ireland Grand Committee

The NI Grand Committee has met only once in this monitoring period: on 20 June to discuss the Draft Budget (No. 2) (Northern Ireland) Order 2006.⁸³ The meeting was marked by a dramatic walk-out by the Democratic Unionist Party in protest at the fact that the committee was blocked from meeting in Northern Ireland because of the opposition of the SDLP.⁸⁴ The DUP was also unhappy with the lack of input the Northern Ireland parties were given into the agenda of grand committee meetings. NIO minister David Hanson retorted that both DUP gripes – about the location of meetings and the peripheral role of the NI parties – would be solved if and when the Northern Ireland Assembly resumed its legislative.⁸⁵

With the DUP members absent, the meeting was shorter than usual. A brief oral question time with NIO ministers David Cairns and David Hanson was followed by a debate on the budget order. A motion 'that the Committee has considered the draft Budget (No. 2) (Northern Ireland) Order 2006' passed without division. As the grand committee plays no legislative role, the order was formally approved by the Commons on 26 June⁸⁶

⁸¹ This call was made in House of Commons Scottish Affairs Committee, *Putting Citizens First*, op cit.

⁸² Brian Donohoe, Commons Hansard, 15 February 2006, Col. 498WH.

⁸³ Draft Budget (No. 2) (Northern Ireland) Order 2006. At : www.opsi.gov.uk/si/si2006/20061916.htm

⁸⁴ See Nigel Dodds, Northern Ireland Grand Committee transcript, 20 June 2006, Col. 3.

⁸⁵ David Hanson, Northern Ireland Grand Committee transcript, 20 June 2006, Col. 9-10.

⁸⁶ Commons Hansard, 26 Jun 2006, Col. 100.

11. Inter-Institutional Relations

11.1 Joint Ministerial Committee

The plenary Joint Ministerial Committee – a body to which intergovernmental disputes can be resolved for resolution – has not met since 2002, with disagreements resolved through informal channels. Other ‘sectoral’ JMCs also apparently no longer meet (though their meetings are not necessarily publicised in any case). The only exception is the JMC(Europe), believed to still meet several times a year to formulate the UK line in EU negotiations. This body is known to have met seven times in 2005 in London.⁸⁷

11.2 British-Irish Council

On 2 June 2006, the British-Irish Council (BIC) held its 8th summit meeting in London, with representatives of the UK, Ireland, Scottish, Welsh, Jersey, Guernsey and Isle of Man administrations in attendance. The Council commenced its meeting by welcoming the joint UK-Ireland strategy on restoring devolution in Northern Ireland and ‘called on the political parties in Northern Ireland to take advantage of this opportunity to make progress towards restoration.’⁸⁸

The main focus of the summit was climate change, which forms part of the BIC’s Environment sector, led by the UK Government. The attendants discussed emissions reductions and ways to adapt to the effects of climate change. Agreement was reached on several future steps including the creation of a working group on the indicators of climate change impacts and adaptation. The Irish government raised its long-running concerns about nuclear safety and the Sellafield nuclear power station but recognised the improvement in intergovernmental coordination on this issue in recent times.

Further resolutions passed included the addition of demography to the list of sectors covered by the BIC. This priority work area was proposed and will be led by Scotland, whose interest in this area relates to its declining population.

Future BIC meetings were planned for the Minority Languages, Misuse of Drugs, and Social Inclusion sectors.

⁸⁷ Margaret Curran, Written Question Answer, 6 February 2006, Question S2W-22136.

11.3 Inter-Parliamentary Relations

No use has been made in this parliament of Standing Order 137A(3) which provides that 'The Welsh Affairs Committee may invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote).'⁸⁹ This mechanism has previously been used to bring Welsh MPs and Assembly Members together to scrutinise draft Wales bills.

As noted in section 9.1, the Scottish Affairs Select Committee (SASC) has recently called for the creation of a new inter-parliamentary body involving Scottish MPs, MSPs and Scottish MSPs.⁹⁰ This Super Scottish Grand Committee would be a forum for debate with no formal role in parliamentary decision-making processes. Earlier in the year SASC also stated that it wished to instigate a regular series of meetings with the Conveners' Group of the Scottish Parliament (comprised of committee chairs), following practice established by the Welsh Affairs Committee. It appears, however, that the Conveners' Group is less keen on this proposal and has suggested that SASC approach subject-specific committees of the Scottish Parliament instead.⁹¹ Following the publication of its report on the Sewel Convention, the committee held a joint press conference and launch with the convener of the Scottish Parliament Procedures Committee, demonstrating a more informal form of inter-parliamentary coordination.⁹²

⁸⁸ British-Irish Council, *Communiqué issued after 8th Summit Meeting*, 2 June 2006, at: www.british-irishcouncil.org/documents/london_summit2.asp

⁸⁹ House of Commons, *Standing Orders of the House of Commons: Public Business*, 2005(2), (London: The Stationery Office), at: www.publications.parliament.uk/pa/cm200506/cmstords/416/416.pdf

⁹⁰ House of Commons Scottish Affairs Committee, *The Sewel Convention*, op cit., paras. 34-44.

⁹¹ House of Commons Scottish Affairs Committee, *Work of the Committee in 2005*, First Report of Session 2005-06, HC 836, at:

www.publications.parliament.uk/pa/cm200506/cmselect/cmselect/cmselect/836/836.pdf, paras 35-38.

⁹² Press release at:

www.parliament.uk/parliamentary_committees/scottish_affairs_committee/sac060615.cfm

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