



DEVOLUTION LOOKS AHEAD

MONITORING



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

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SUMMARY

First Secretary Rhodri Morgan's announcement in July that there would be a review of how devolution is working in Wales in the coming year sparked a fundamental debate about the effectiveness of the National Assembly's secondary legislative powers and its relationship with Westminster. Earlier, in a wide-ranging speech on the issues to be grappled with, the Presiding Officer Lord Elis-Thomas asked the loaded question, "To what extent is the body over which I have the duty of presiding really the National Assembly for Wales?"

The immediate core issue is the extent to which the Assembly can influence primary legislation affecting Wales that is passed at Westminster. In a lecture given to the Law Society at the National Eisteddfod at Llanelli in August the Labour Peer, Lord Gwilym Prys Davies, concluded, "It is here that I see the main threat to the Welsh devolution model". The 22 Parliamentary Bills that refer to Wales published during 1999-2000 have followed no consistent pattern. That is to say, some clearly delineate areas of competence devolved to the National Assembly, while others lack clear definition or retain control with the Whitehall department concerned. The Department of the Environment, Transport and the Regions proved the most anally retentive in this respect with the Department of Health more relaxed.

A major clash over powers arose over the issue of performance-related pay for teachers, in particular linking pay levels with examination results, which provoked the most serious legal test case in the life of the Assembly thus far. The dispute revolved around whether the Assembly possessed transferred powers to decide the issue for itself, through secondary legislation. It also led to a clash between the Pre-16 Education Committee and the Executive over the desirability of Wales being allowed to operate a different system from England. Two Acts of Parliament potentially allowed competence in the field, the 1986 Education (no 2) Act (under which powers are transferred) and the 1991 School Teachers' Pay and Conditions Act (under which they are not). This was part of the background to a legal test case in which the National Union of Teachers sought judicial review in the London Courts of Justice in July of regulations issued by the Department for Education and Employment. In his judgement on the case Mr Justice Jackson found against the DfEE since, he said, it had illegally by-passed both Acts in issuing its regulations on performance-related pay. In relation to the 1986 Act he added, "This may be because the Welsh Assembly would not be prepared to make similar regulations governing teachers in Wales ...".

Following the case the Conservative Chair of the Pre-16 Education Committee, William Graham, called on the Assembly's Counsel General to resign. This prompted the Assembly's Permanent Secretary, Jon Shortridge, to issue a sharp rebuke in a letter to William Graham, accusing him of making a "a misleading statement" and demanding a public apology. In turn this provoked the Presiding Officer, Lord Elis-Thomas, in a further letter, to attack the Permanent Secretary: "Members are accountable to their constituents and not to officials," he said, adding that the Permanent Secretary had breached "a fundamental principle of parliamentary democracy."

Meanwhile, the main business of the Assembly revolved around the long-awaited Public Spending Review by Chancellor Gordon Brown on 18 July which ignited the

political debate about Objective 1 funding in Wales. As a result of the review public spending in Wales will be some £2 billion higher by the financial year beginning April 2003 than it is in the present year, due to a 5.4 per cent real terms increase. The substantial increase entails a breaking of the Barnett formula, with an extra £421 million allocated over the next three years to cover match funding to enable EU Structural Funds to be drawn down for the West Wales and the Valleys Objective 1 region. Opposition parties maintained the amount was not enough, Plaid Cymru claiming a shortfall of at least £357 million. However, it was generally agreed that First Secretary Rhodri Morgan won the propaganda battle with the Opposition parties over the issue.

1. THE EXECUTIVE

By John Osmond, IWA

Cabinet Change

In a surprise intervention Rhodri Morgan replaced his Agriculture Secretary, Christine Gwyther, with her deputy, Bridgend AM Carwyn Jones, on the eve of the Royal Welsh Show, on 23 July. Ms Gwyther, AM for Carmarthen West, was immersed in controversy for much of the Assembly's first year. Her appointment by Alun Michael provoked intense opposition from the farmers' unions and others when it was revealed she had been a vegetarian for 20 years. Previous monitoring reports have dealt with a succession of farming disputes, in particular the ban on beef on the bone, the ill-fated calf-processing scheme, and the controversy around GM crops, which have brought Opposition censure motions and demands for the Agriculture Secretary's resignation.

However, the manner of her sacking produced some disquiet within Labour's ranks. She was telephoned by the First Secretary on a Saturday evening and the Press Release was issued the following day.

The appointment of Carwyn Jones, a barrister and, at 33, one of the youngest members of the Assembly, puts in place another devolution maximalist in Rhodri Morgan's Cabinet. His only other change, immediately on taking up his position in February, was to split the Local Government and Environment portfolio to allow him to promote to the Cabinet another maximalist ally as Environment Secretary, Sue Essex, who had been passed over by his predecessor. Further changes are expected to be announced in September.

The position of Deputy Agriculture Secretary was filled by the newest AM in the Assembly, Delyth Evans, who succeeded to Alun Michael's Mid and West Wales List seat after he resigned from the Assembly following the no confidence vote in February.

Civil Service

A major change in the structure of the civil service at the heart of the Assembly's policy-making was planned during the period. In the Autumn a Cabinet Executive will be created headed by Bryan Mitchell, currently Director of Personnel Management. The Cabinet Executive will incorporate the Cabinet Secretariat, the Central Policy and Strategic Planning Unit, and the Communication Directorate. At the same time it was decided that Peter Gregory, Director of NHS Wales, would be appointed as Director of Personnel Management in Bryan Mitchell's place and his NHS post would be advertised (Cabinet Minutes, 8 May, Assembly website).

In August David Pritchard, who had been responsible for developing the Assembly's first strategic plan **betterwales.com**, was appointed the Assembly's Director of Economic Development, following an open competition. He will be responsible for a department of 150 people and a £300 million budget. The Economic Department is charged with preparing the Assembly's National Economic Development Strategy, sponsorship of the Welsh Development Agency and the Wales Tourist Board, management of Welsh Trade International, the Assembly's export promotion arm, grants to business, energy policy, innovation, and small business policy.

David Pritchard joined the former Welsh Office in 1969, just five years after its creation in 1964:

“He worked in the next office to Rhodri Morgan, then a junior Welsh Office official advising on economic matters and now the Assembly's First Secretary” (Assembly Press Release, 14 August).

Meanwhile the Permanent Secretary Jon Shortridge presented a paper to the Cabinet on 19 June outlining work that was in hand to implement a *Delivering Better Government* initiative, designed to improve the way in which the Assembly's 2,200 officials provide services to the Administration, Assembly Members, outside bodies and the public. The Cabinet Minutes record that the Assembly had been allocated £2.1 million from the UK Government's *Invest to Modernise Fund* to help implement the *Better Government Action Plan*. The Minutes further record that the following points were made in discussion:

- There should continue to be a heavy emphasis on educating all officials about the nature of the political environment in which they now worked;
- The civil service in the Assembly was still very hierarchical and efforts were needed to be made to encourage more ideas and input into policy to come from lower and middle grades;
- Ideas from staff could be encouraged if they were seen to be rewarded, whether the ideas were successful or not. It was inevitable that only a minority of ideas would lead to tangible benefits, but staff had to be encouraged to generate ideas and not be afraid of failure;

- There was not currently a full appreciation of customer service, as was found in the better private sector organisations;
- The Cabinet had a major role to play in talking to their officials at all grades, informing them what their expectations were, and in ensuring that all the work they commissioned was absolutely necessary. Officials were under considerable pressure and it was essential to cut out all unnecessary work;
- The disadvantages of the geographical split between Cathays Park [near the centre of Cardiff] and the Bay [location of the Assembly Chamber] had to be recognised, and as much as possible done to obviate any sense of detachment that officials working in Cathays Park might have from the elected Members in the Bay. One option would be for Assembly Secretaries to spend more time in Cathays Park during recesses;
- Greater contact with other organisations, including through secondments (particularly at lower levels) should be encouraged, to help broaden perspectives, and so help with the policy formulation process; exchanges at a political level could also be considered;
- There was sometimes a lack of flexibility in managing staff resources, such as when vacancies had to be filled, particularly at short notice;
- Cabinet Secretariat recognised the need for the best possible customer service and was engaged in work to help achieve this goal. This included pursuing the ways of working encouraged by the Business Excellence Model.

As part of the *Delivering Better Government* initiative a survey of staff attitudes was carried out by the Assembly's Statistical Directorate (Assembly Press Release, 28 July). On the whole the results - based on an 82% response rate from 198 questionnaires issued- were positive:

- 80% were "aware of the Assembly's strategic objectives and felt they made an important contribution to achieving them"
- 78% were "proud to work for the Assembly"
- 66% felt they were "encouraged to progress, learn and develop"
- 64% felt there was "a good future for them working in the Assembly"

At the same time there were criticisms:

- 59% felt their earnings were not fair for the work they did
- 69% reported they did not receive the IT equipment or software in order to do their job
- 36% don't get their work done within normal hours

2. THE COMPREHENSIVE SPENDING REVIEW

By Dr Gillian Bristow, Cardiff University and Dr Nigel Blewitt, University of Glamorgan

Chancellor Gordon Brown's statement of July 18th on the Comprehensive Spending Review (CSR) re-ignited the political debate about Objective 1 funding in Wales. According to the Secretary of State for Wales, Paul Murphy, the Chancellor's announcement of extra funding for the Assembly's budget represented "an excellent settlement", a sentiment echoed by the Labour leadership in the National Assembly. In sharp contrast, the opposition parties have been unanimous in claiming that the outcome falls far short of that required to make the most of European funds in west Wales and the Valleys.

As a result of the review public spending in Wales will be £2 billion higher by the financial year beginning April 2003 than it is in the current year, due to a 5.4 per cent real terms increase in spending over the next three years. Table 1 gives the National Assembly's block grant for the next three years, together with the extra amounts resulting from the Review and the allocation within these for the Structural Fund Programmes:

Table 1
July 2000 Comprehensive Spending Review Settlement for Wales

| | 2001 - 2002 | 2002-03 | 2003-04 |
|------------------------------|-------------|---------|---------|
| Assembly Block | £8.4bn | £9.1bn | £9.8bn |
| CSR Extra allocation | £480m | £1.173m | £1.821m |
| Of which Structural Funds | £113m | £148m | £160m |

Apart from the amounts, the importance of the settlement was that substantial extra sums were awarded to the Welsh block outside the Barnett Formula (which allocates funding to Wales, Scotland and Northern Ireland on a pro rata basis to increases in England). The breaking or "busting" of the Barnett Formula had to occur if significant extra funds were to be found to match the potential European Union Structural Funds that Wales is eligible to draw down over the next six years. As First Secretary Rhodri Morgan and Secretary of State Paul Murphy put it, in an article in *The Western Mail*:

"...the Government has accepted our special case for funding outside the Barnett Formula. In England the Objective One area only constitutes eight per cent of the population ... In Wales 65 per cent of the population, 1.9 million out of 2.9 million, are in Objective One areas. That is why Wales' case for different treatment was so strong" (*Once-in-a-generation chance in our hands, Western Mail, 19 July*).

Match funding for the Structural Funds will still have to come from within the Welsh

block, but the EU funding will henceforth be treated as additional and extra money within the block has been allowed to cover match funding requirements - an extra £421 million over the next three years. An argument immediately ensued as to whether this amount was enough to enable Wales to draw down all the European money to which it was entitled. Labour insisted that it was, with Paul Murphy, for example insisting that “no worthwhile scheme” under Objective One would be denied funding (*Western Mail* 19 July). On the other hand the Opposition parties maintained that there was a significant shortfall in the match funding available. Plaid Cymru’s Ieuan Wyn Jones, for example, declared that over the next three years there was a shortfall of at least £357 million (*Western Mail*, 19 July). Whilst different interpretations of the settlement are inevitable in the highly charged political context that has characterised Objective 1 debates in Wales, they also reflect the continuing complexities which surround the treatment of European funds in the Assembly’s budget.

Provision for Public Expenditure Cover

European grants are counted as public expenditure in the UK and are thus included in the Assembly’s block grant (known in current parlance as its ‘assigned budget’). The Assembly’s budget must therefore include provision for ‘public expenditure cover’ - in effect, an authority to spend public money - before the European component of structural fund grants can be spent. There is a baseline level of cover included in the Assembly’s budget for European Structural Fund spending, this being determined by historic levels of Structural Fund spending in Wales.

Annual changes in the volume of cover are, however, determined by the Barnett formula which is a population-based method for calculating Wales’ (and Scotland’s) share of annual changes in spending on comparable programmes in England.

The problem caused by Objective 1 in Wales in respect of PES cover was thus two-fold. Firstly, the baseline level of cover (at around £40 million a year) had been set (and fixed) prior to the successful negotiation of Objective 1 status in Wales and would not therefore be sufficient to meet the significant increase in spending required over the duration of the programme. Secondly, the Barnett formula would not deliver the appropriate step-change in cover required.

Critical to any valid assessment of the Chancellor’s generosity in the CSR, is therefore an understanding of the volume of cover required by the Assembly to allow the full take-up of European receipts. Typically, there is no simple answer to this question, with estimates depending on the assumptions made about levels of baseline cover in the Assembly’s budget and the likely spending profile over the life of the Objective 1 programme.

In their report into this issue, published in February (see previous Monitoring Report, *Devolution Relunched*, IWA, March 2000), the Commons Select Committee on Welsh Affairs stated that some £90 million’s worth of cover would be required for each year of the Objective 1 programme in Wales. They noted that there would

probably be some argument about the level of baseline cover available in the Assembly's budget since this has tended to vary from year to year. Assuming a baseline of some £20 million, they stated that extra cover of some £70 million a year would be required by the Assembly over the period over which Objective 1 payments will be made. For the three years covered by the CSR (that is, 2001-02 to 2003-04) this would amount to an additional requirement of £210 million.

In a paper to the Assembly's Economic Development Committee in July 1999, finance officials at the Assembly came up with a different figure and estimated that some £149 million would be required in increased cover over the three years of the CSR. This was based on the assumption that the baseline level of cover stood at £40 million and that, following the experience of current Objective 1 programmes elsewhere in the UK, payments under Objective 1 in Wales would be slow to progress in the first year or two of the programme.

Plaid Cymru have come up with a very different set of figures. According to their calculations, some £540 million of cover is required for the Objective 1 programme in the three years covered by the CSR. This estimate does not take into account the cover already in the Assembly budget, and is based upon a more even spending profile over the first three years of the programme. Plaid's point of reference for these calculations is the European Commission's requirement for a broadly flat pattern of commitments over the programme period. In other words, the Commission expects the total cost of projects approved in each year to follow a fairly even and specified profile, otherwise the funds are 'decommitted' or lost to Wales.

What the Chancellor has announced is that for the three years covered by the CSR there will be an increase in cover for the Objective 1 programme in Wales amounting to £272 million. This consists of £80 million for 2001-02, £90 million for 2002-03 and £102 million for 2003-04. This is, therefore, more than that considered necessary by the Select Committee on Welsh Affairs and Assembly finance officials, but considerably less than that hoped for by the opposition.

Critically, the Chancellor has conceded the argument of the Assembly leadership, that in the context of the very significant resource implications associated with Objective 1 in Wales, cover for the European share of programme receipts could not be determined purely on the basis of the Barnett formula.

What remains unclear is whether this settlement will create the risk of funds being decommitted. The Chancellor's figures seem to follow the logic adopted by Assembly finance officials and assume that Objective 1 projects (and therefore payments) will be relatively slow to pick up. The UK government is thus working on the understanding that whilst commitments have to be relatively even, payments can be made within two years following the year of commitment and can then be weighted towards the middle and end years of the Objective 1 programme.

This means that there may well be a build-up of funding pressure for the Assembly towards the end of the programme - a concern borne out by the significant degree of slippage in kick-starting project approvals in the first year.

Match Funding

On the question of match funding for Objective 1 projects, there is even greater scope for different interpretations to emerge as to the implications of the Chancellor's announcement for the Assembly's budget, because match funding resources will come from a variety of public and private sector sources.

The traditional sources of match funding for Structural Fund programmes in Wales are those public sector agencies (such as local authorities) which are themselves funded out of the Assembly's budget. Since different kinds of Objective 1 schemes will attract different proportions of grant (up to a maximum of 75 per cent), it is difficult to produce a definite figure for the levels of match funds that grant applicants will be seeking to find from Assembly-sponsored public bodies.

In their report into this issue, the Commons Select Committee on Welsh Affairs stated that some £885 million's worth of funding would be required from the public sector over the programming period (i.e. 2000-06), which equates to approximately £450 million for the three years covered by the CSR. They further noted that whilst it would be unrealistic to expect the Treasury to provide additional funding equivalent to the total match funding requirement, it would be impossible for Wales to raise the total amount required from existing sources without drastically cutting other spending programmes (e.g. on health and education).

This seems to have been the line taken by the Assembly leadership who, in their representations to the Treasury, also requested that additional resources be made available under the CSR for match funding purposes. The amount of extra resources requested has not, however, been made clear.

What the Chancellor has announced is a considerable increase - 5.4% in real terms - in the assigned budget in Wales over the next three years. Equally, significant is that this 5.4% real term increase is 1% greater than the settlement for Scotland. Even if the increase in PES cover for Objective 1 (and other Structural Fund programmes in Wales) is taken out of the equation, the assigned budget will increase by some £1.6 billion between 2000-01 and 2003-04.

The Chancellor has stated that this budgetary increase includes extra resources for match-funding which have therefore been provided for within the total spending settlement. The precise amount made available for match funding has not been made transparent however, and remains difficult to calculate in the context of the operation of the Barnett formula.

The Assembly leadership is confident that there is adequate match funding to support all worthwhile projects without raiding other spending programmes, given the estimated level of match funding already in the system (i.e. about £89-90 million per year) and the significant increase in the assigned budget. In contrast, Plaid Cymru have estimated that the increase in the budget is not sufficient and that if it is to fully meet public sector match funding requirements, the Assembly will be forced to spend up to £100 million less on other spending programmes.

Without transparent information on how the Treasury has used the Barnett formula to calculate the increase in the Assembly's budget, it is difficult to be clear about which of these views is correct. However, if (as appears to be the case and notwithstanding the issue of PES cover) the increase in the Assembly's budget has been applied by strict reference to the Barnett formula, then the required step change in the volume of public sector match funding available has not been granted.

This can only mean that the Assembly will be forced to meet its match funding obligations at the expense of other spending programmes. Given the inevitable and significant political pressures to follow the increases in spending on health and education in England, the Assembly faces the prospect of making some very challenging decisions over its spending priorities in the years ahead.

Breaking the Barnett Formula

To sum up, the CSR has undoubtedly provided some very positive news for Wales. The Treasury has recognised the special case presented by the large-scale Objective 1 programme in Wales and has taken the unprecedented step of acknowledging that the Barnett formula alone would not be sufficient to help unlock the potential provided by European funds. There is therefore a clear increase in the volume of cover available for the Assembly to spend the European element of Objective 1 receipts, and certainly an increase on what would have been provided by simple reliance upon the Barnett formula.

This must be viewed as a victory for the Assembly although whether such a fortuitous outcome would have been achieved in a more cash-strapped public spending environment is open to question. The Chancellor has also transferred control of European Social Fund (ESF) resources in Wales to the Assembly which has provided a further increase in funding.

However, the total increase in cover provided for Wales in the CSR settlement is based on cautious assumptions about the spending profile under the Objective 1 programme. This means at the very least that there will be a build up of funding pressure towards the end of the programming period and at the very worst, that a proportion of the European funds available risk being returned to the Commission.

Moreover the CSR has not provided the required step change in the volume of public sector match funding for Objective 1 in Wales. The degree of shortfall is difficult to estimate without more transparent presentation of the manner in which the increase in the Assembly's budget has been calculated. This transparency must surely be provided if the Assembly is to verify that the Barnett formula and its arithmetic have been properly applied. Nevertheless, this is likely to create very severe pressures on other areas of spending in Wales.

In making Wales a special case, the Chancellor has set a significant precedent for large-scale formula bypass, and in broader terms, this is likely to lead to renewed

clamours across the UK for a thorough and independent review of the Barnett formula. The process of devolution will also continue to challenge the lack of transparency and clarity in the treatment of European funds in the public expenditure system. As this brief discussion of the issues involved serves to illustrate, this is by no means a small challenge.

3. POLICY DEVELOPMENTS

By Nia Richardson, IWA

Economic Development

On the 25 July the European Commission finally approved of Wales' Objective 1 plans. This meant that the Objective One programme is now able to operate on an official footing for the first time. The Objective One Monitoring Committee has been meeting in shadow form since April but has now assumed its full responsibilities for supervision of the programme. Objective One will be implemented through a series of partnerships at regional and local level.

Regional and Local Partnerships will be responsible for delivering the programme through Strategic Action Plans. In the case of local projects interested parties must contact their local partnership. These partnerships are drawn up by using unitary authorities boundaries. There are 15 local partnerships. Regional partnerships are linked to projects that cover the whole of the Objective One area and are thematic, for example Agri-Food and Human Resources Development.

There are twelve Regional partnerships. Each will nominate a 'lead body' to service the partnership and act as the channel for communication with the Welsh European Funding Office (WEFO) which is responsible for administering Objective One on behalf of the Assembly. Its role is to work closely with the Partnerships and Lead bodies in developing projects, as well as being responsible for their appraisal. Once projects have been submitted to WEFO, the Project Working Group is responsible for ensuring applications meet the requirements set out in the Single Programme Document.

Action Plans must be submitted to WEFO from each of the Partnerships by the end of September. At present their progress is varied with a majority still in draft whilst others are in the process of consultation with their partnerships. At the beginning of August WEFO announced that projects seeking around £100 million of European aid under Objective One had been accepted under a fast track programme to proceed to detailed discussion with sponsors. The total value of the fast track package could exceed £200 million with programmes such as:

- A finance agency for small and medium sized firms
- Information and communications technology business services
- Infrastructure support for SMEs
- Measures to promote an enterprise culture in Wales
- Schemes reserved for the agri-food and tourism sectors
- Action to improve the skills of employed and unemployed people
- measures to enhance the delivery of education, training and skills
- Regeneration via credit unions for deprived communities

Formal approvals for the fast track package will issue from end of September once the European Commission have endorsed the Programme Complement for West Wales and the Valleys.

Concerns have been expressed that when the fast tracking is over the regional packages will receive most of the funding to the detriment of local action plans since they have already been prepared. Rhodri Morgan conceded in plenary that,

“The way that Objective 1 works has always been that nobody is certain of how the local partnership proposals will intersect with the regional partnership proposals. They could both cover the same ground ... they could also leave an area of potential expenditure and job creation uncovered by not including either the local or the regional partnerships” (*Assembly Record*, 12 July).

The Objective 3 programme for east Wales (covering the seven unitary authorities of Cardiff, Newport, Vale of Glamorgan, Monmouthshire, Powys, Wrexham and Flintshire) was launched in July. It will provide around £80m European funding for measures which

- help businesses
- raise skill levels
- help unemployed people back to work.

The first funding applications will be made by the end of August, with the first grant approvals expected in October.

The Assembly's plans for Objective 2 have been submitted to the Commission for approval due in November 2000. Objective 2 is aimed at economies that require restructuring. Part of Cardiff, Newport and Powys will be eligible for the funds..

A £4.2 million cash boost was given to Welsh Trade International, a new operation bringing together overseas trade promotion work formerly carried out by the Assembly and the Welsh Development Agency. It will provide targeted advice to help companies break into the global trade market. It will also establish an enhanced trade mission programme and support for companies to exhibit at overseas trade fairs.

Health

The vexed question of waiting times continued to hound the Executive during this summer period. In May, in the wake of the budget Health Secretary Jane Hutt announced that an additional £45 million would be given to health authorities to tackle waiting times and winter pressures. Using this additional funding Health Authorities must now reduce the all Wales total waiting list for inpatient and day care treatment by 15,000 to around 65,000 by the end of March 2001.

In an attempt to further advance the attack on waiting lists a new programme called Innovation Care was launched by the Assembly Secretary on 7 June. The programme

is to act as a catalyst to drive the change and innovation needed in NHS Wales to achieve reduced waiting lists and times. The Emergency Pressures Task Force have also published their recommendations. Emergency Pressures Planning Guidance launched on the 3 August emphasises the importance of joint working to deal with health and social care provision, with early joint planning.

On 12 July, a major policy statement *A Healthier Future for Wales* was tabled by the Health Secretary setting out policies for the acute hospitals, primary care, social services, staff relations and ideas for involving the public. The document is a precursor to a wider-ranging NHS Wales Corporate Plan or Strategy due to be launched in October. In strategic terms the document highlights:

- tackling health inequalities
- moving primary care and preventative action to the centre of the administration's thinking
- breaking down old barriers with the professions, across NHS organisations and between health and social services.

However there were criticisms from the Opposition that the document lacked substance, David Melding (Conservative) pointed out that there was no reference in the document to the key questions of capital spending and waiting lists (*Assembly Record*, 12 July)

In addition, numerous strategies have been developed including the launch of the Substance Misuse Strategy and the Human Resource strategy. The Office of Public Management has been selected to take forward the development of the NHS Public Involvement Strategy through a stocktake assessment of examples of current user, carer and public involvement in Wales and elsewhere. Meanwhile, an Advisory Group chaired by Professor Glyn Lewis has been working to draw up a revised all Wales Strategy for Mental Health Services for adults of working age. A *Carers Strategy in Wales* was also launched in July.

The Care Standards Bill, which has now received Royal Assent, had 25 Government amendments which related specifically to Wales, including an amendment to create a Children's Commissioner for Wales. AMs voted unanimously to approve the Health and Social Service Committee report recommending the creation of a Children's Commissioner for Wales in June. More provision for children is planned with the Assembly and the Welsh Local Government Association and Play Wales carrying out a review into children's play.

£267m was set aside in July to pump-prime the development of a West Wales Clinical School by the University College of Medicine and the University of Wales Swansea.

Education

In May the Assembly Secretary approved the first ever Education Strategic Plans produced by local authorities in Wales. Each plan sets out attainment and attendance targets and each authority's vision of how its schools will improve over the next three years.

At the same time a consultation to examine the future of work-based learning was launched. Work-based learning for adults, originally known as *Training for Work* was set up in the early 1990s to provide skills for the long-term unemployed.

The Learning and Skills Bill received Royal Assent in July which means that the Assembly can now press ahead with its programme to streamline post-16 education and training under one organisation. A national Council for Education and Training in Wales (CETW) will assume the functions of the Welsh Training and Enterprise Councils and the Higher and Further Education Funding Councils for Wales. It will be responsible for adult and continuing education and, in due course, the funding of school sixth forms. This reorganisation takes effect in April 2001. The Act also paves the way for the National Assembly to develop *Careers Wales*, an all-age information, advice and guidance service.

The Pre-16 Education, Schools and Early Learning Committee is currently reviewing the supply of school places. It has begun with early years provision for three year olds focusing on the current inequalities of provision for this age-range in Wales. A blueprint to give every three-year old child in Wales free full-time education was put forward by the National Assembly in June. The provisional date for starting the new system is 2010. Pre-16 Committee Chairman William Graham gave the idea a cautious welcome:

“We must beware of raising expectations too much as the whole idea might turn out to be too costly” (*Western Mail*, 30 June).

Following an in-depth examination of the Arts and Culture in Wales, Ceri Sherlock, special advisor to the Post 16 Education and Training Committee, presented his recommendations which included the creation of a *Cultural Consortium - Creu Cymru*. an arms length body, chaired by the Assembly's Post-16 education and Culture Secretary. It would link all the Quangos possessing any interest in culture including the Arts Council, Sports Council, the WDA, the Language Board, CADW and the National Museum and Galleries of Wales. The Post-16 Education Committee has already agreed that the Arts Council should be restructured and that strategic policy should in future be decided by the Assembly itself.

Agriculture

Following the discovery that GM seeds had been sown in fields in Flintshire (see the previous Monitoring Report) the Assembly declared its wish to limit GM crops growth in Wales as far as possible although it was concluded that a complete ban would be illegal. A cross-party motion requiring any applicant for GM permission to bear the burden of proof where safety was concerned, proposed by Liberal Democrat

Leader Mike German was carried in plenary session on 24 May. On 28 June the Assembly approved a new more a restrictive policy, including:

- Department of Environment, Transport and the Regions should notify the Assembly of any future applications for Part C consent received by the UK government.
- The Advisory Committee on Releases to the Environment should submit advice to the Executive on GM experimental release in much greater detail. The advice should be consistent with the Assembly's policy and put into the public domain.
- The Ministry for Agriculture, Food and Fisheries should be pressed to waive fees currently charged to individuals objecting to seed listing applications.

In June new Front Offices for the Assembly's Agriculture Department were opened in Carmarthen, Caernarfon and Llandrindod Wells to provide farmers with greater access. In July it was announced that free agricultural business advice is to be extended to help farmers adapt and diversify in response to changing market requirements. Further initiatives to provide more comprehensive services to farmers and the rural community will be developed under Objective One and the Rural Development Plan.

Revised proposals for Tir Mynydd, a new scheme for Compensatory Allowances for Less Favoured Areas, have been submitted to the European Commission for approval as part of the Rural Development Plan for Wales.

Environment, Planning and Transport

Following the Wales and Welsh borders rail study commissioned by the Shadow Strategic Rail Authority a single rail franchise for Wales and the border counties of England will be established. It will include all stations in Wales, and the border counties, including the key stations of Chester, Shrewsbury and Hereford.

£3.6m has been allocated by the Assembly to Local Authorities to help them improve road safety in their local areas as part of the road safety strategy, *Tomorrow's Roads Safer for Everyone*.

In June a National Cycle Network in Wales was launched by the National Assembly in partnership with Sustrans a charity that works on practical projects to reduce car dependency. This derives from the National Assembly's statutory responsibility for sustainability. Core routes are Lon Las Cymru which runs from Holyhead to Cardiff and Chepstow, and the Celtic trail from Chepstow to Fishguard.

A £3m Environment Development Fund was launched in July. Its purpose is to support innovative partnership projects promoting sustainable development. The

three National Park Authorities will administer the fund in their areas through panels of representatives from community councils, business and local voluntary sector organisations.

Local Government and Housing

A Local Government Partnership Scheme was adopted in July emphasising the Assembly's commitment to working with local government on the basis of mutual respect and support.

In the second round of the *People in the Communities* programme £750,000 has been delivered to eight successful projects from around Wales. The programme aims to promote improved access either to work, to training or education or to other meaningful activities such as community or voluntary work.

Groups formulating the National Housing Strategy for Wales are now in the process of writing their final report. It will have total of 195 recommendations, of which 130 had been classified as requiring short-term action. The Administration aims to have a National Housing Strategy in place by April 2001. Meanwhile the Local Government and Housing Committee launched a review of the policy of transferring council housing to Community Ownership. It wishes to examine:

- The emerging model for Community Ownership and the extent to which the model can be tailored to meet the needs of local communities (including disabled people and other with particular requirements).
- Whether there are alternative approaches which could generate the finance necessary to overcome the backlog of repair and essential modernisation for council housing.

New proposals to change the formula for allocating £3 billion funding to local authorities were announced jointly by Assembly Local Government Secretary Peter Law and Leader of the Welsh Local Government Association Councillor Sir Harry Jones in July. More emphasis should be given to indicators of social deprivation and population sparsity should be included in the calculations. If approved the new formula will be used in the local government settlement for 2001-2, to be announced as part of the overall Assembly budget package later this year.

Lottery Priorities

The National Lottery has committed some £472.5 million to cover around 5,500 projects in Wales which will from now on have to reflect the National Assembly's policies and priorities as set out in *A Better Wales* document. In a speech to the Plenary Tom Middlehurst said,

“It is vital that we work in partnership with the lottery distributors in Wales to ensure that they allocate grants in line with the themes set out in *A Better Wales ...* In future we must begin to move away from the shared vision of UK priorities and develop our own view reflecting our own priorities” (Assembly Record, 6 June).

4. THE ASSEMBLY

By John Osmond, IWA

A Clash Over Powers: Performance-related Pay for Teachers

The issue of performance-related pay for teachers, and in particular linking pay levels to examination results, has provoked the most serious legal test in the life of the National Assembly thus far as to the extent of its powers. It has also proved a test of the willingness of the minority Labour administration to press forward the wishes of the majority in the Assembly when their views do not correspond to those of the Administration.

At the heart of the case is the Westminster Government's wish to have the threshold for teachers' pay increments linked to the achievement of their pupils as assessed in examinations. This proposal has proved highly controversial with the teacher unions, particularly the NUT, campaigning against the linkage. Last December the Pre-16 Education Committee debated the matter and approved by six votes to two a cross-party resolution tabled in the names of Gareth Jones (Plaid), Jonathan Morgan (Conservative), Jenny Randerson (Lib Dem) and John Marek (Labour) stating that

“...the introduction of teachers' pay linked to the results of pupils' external examinations will harm the teaching profession and the schools of Wales.”

However, this position was clouded by arguments over whether the Assembly was entitled to make a decision in relation to the matter at all. As reported previously in this series (*Devolution Relunched* and *Devolution in Transition*) the Administration's position has been that the matter is not devolved. The Committee took its own legal advice on the matter earlier in the year, in itself establishing an important precedent, and this concurred with the interpretation of the Counsel General.

However, the matter is further complicated since two acts of Parliament are involved, the 1986 Education Act and the 1991 School Teachers' Pay and Conditions Act. Powers to make regulations for teachers' performance under the 1986 Act have been devolved to the Assembly, while the power to make regulations for the pay and conditions of teachers under the 1991 Act have not. In coming to the view that the Assembly has no powers in this area the Education Secretary Rosemary Butler has relied on the 1991 Act. For instance, in a letter sent to members of the Pre-16 Education Committee on the issue on 3 March she referred only to this Act, stating at one point:

“The functions of the Secretary of State under the 1991 Act have not been transferred, and the Assembly has no other functions relating to teachers' pay”.

It was open to the Education Secretary to take up the Committee's position and press the Department for Education and Employment (DfEE) to make separate provisions

for Wales using regulations under the 1986 Act as the basis of the criteria for assessing the pay threshold. However, although the Education Secretary did write to David Blunkett informing him of the Committee's view that it wished to have its own discretion under regulations he might make, the potential for this to occur under the 1986 Act was not explored. This reflected a reality that while a majority in the Committee, and therefore the Assembly, wished to prevent linking teachers' performance as measured by examination results with their pay, the Executive was more concerned to ensure that Wales did not have a system different from England.

Having said that, even if the 1986 Act been used, the Secretary of State for Education and Employment would still have had to agreed. That is to say, an appraisal system for Wales different to that for England proposed by the Assembly under the 1986 Act, would have had no legal effect unless allowed by a subsequent order made by the Secretary of State for Education and Employment. It was clear that he was not prepared to make such an order. Consequently the legal advice given the Pre-16 Education Committee by the Counsel General was that it would not be allowed to use its powers under the 1986 Act to frustrate the Secretary of State's intentions in relation to pay.

An entirely new development occurred during July when the National Union of Teachers sought judicial review of regulations on performance related pay which had been made by the DfEE. At the hearing, before Mr Justice Jackson, between 12 and 14 July, it transpired that the Department had failed to follow the requirements of either the 1986 or the 1991 Acts in issuing the regulations. Instead, the Education Secretary David Blunkett merely announced them by means of a circular to schools. Officials in his Department had relied on a Section in the later, 1996, Education Act which provides: "The Secretary of State shall promote the education of the people of England and Wales". However, Mr Justice Jackson, judged that the powers in this section did not

"... extend to rewriting the terms upon which teachers are employed. If the Secretary of State wishes to do that, he must follow the statutory procedures." (Judgement, Royal Courts of Justice, London, 14 July).

Earlier he stated:

"The fact remains ... that the Secretary of State has not used any of the statutory procedures which were available to him. The threshold standards have not been incorporated in regulations made pursuant to the Education (no 2) Act 1986. This may be because the Welsh Assembly would not be prepared to make similar regulations governing teachers in Wales, pursuant to the Assembly's own powers ... The course adopted by the Secretary of State in promulgating the threshold standards by means of announcement has bypassed the School Teachers Review Body, Parliament, and, indeed, the National Assembly for Wales" (*Ibid.*).

This judgement, suggesting that the Assembly has a right of consultation on education changes affecting Wales made by the DfEE, may break new ground. No such right is

enshrined in present legislation. Following the judgement the Education Secretary Rosemary Butler made a statement to the Assembly insisting that it

“... does not alter the Assembly’s position regarding teachers’ pay. Responsibility for setting pay and conditions for teachers in Wales and England remains a matter for the Department of Education and Employment. It has not been devolved to the Assembly, and the judgement does not challenge that position” (Assembly *Record*, 19 July).

Later in the debate, she added:

“I strongly believe that we should have the same pay and conditions in Wales and England” (*Ibid.*).

It was noteworthy that the Conservative Education spokesman, Jonathan Morgan, took a robust contrary stance. He quoted Mr Justice Jackson’s judgement to the effect that the DfEE had by-passed the Assembly and said:

“Not only were we mere consultees, but it appears that the Secretary of State for Education and Employment had no intention of listening to the concerns and views of the National Assembly for Wales. Will the Secretary for Education and Children consider using her authority, which she clearly did not do in the first instance, and go back to David Blunkett and ask him to remove the element of pupil performance in this dreadful system of performance-related pay and design a system that is appropriate to Wales, and Wales alone?” (*Ibid.*).

Relations between Assembly Members, the Civil Service and the Executive

The performance-related pay debate sparked a related but separate dispute about the relationship of Assembly Members with the Executive and civil service, and in particular the Permanent Secretary. The day following the High Court judgement, the Newport-based *South Wales Argus* ran a story reporting that the Chairman of the Pre-16 Education Committee, South Wales East Conservative Member William Graham, was calling for the resignation of the Counsel General Winston Roddick. The story reported comments from Mr Graham alleging that Roddick had given his Committee misleading advice on its powers for changing the criteria concerning performance-related pay:

“The Counsel General should seriously consider his position. He was absolutely adamant that we had no power to change the criteria. This [judgement] has proved him wrong ... The Committee wanted to change the criteria, but the advice we were given was crystal clear: what we wanted to do wasn’t possible. Now the High Court Judge is saying it is” (*South Wales Argus*, 15 July).

As we have seen, however, in his advice the Counsel General concluded there was no doubt that the powers were retained in Whitehall, a view confirmed by the separate advice the Committee obtained from Presiding Officer's legal adviser, David Lambert, and independent counsel. The judgement also confirmed this view. The power to establish pay and conditions of service remains with the Secretary of State as regards both Wales and England. Powers under the 1986 Act to make regulations relate only to the system of assessment of the performance of teachers. The Secretary of State could use this system as the basis for the calculation of performance related pay, or he could establish a separate specific performance related pay system under the 1991 Act with its own criteria. The Assembly's Pre-16 Education Committee wanted him to allow the Assembly to use the current 1986 Act system which contains no threshold criteria as the basis for the calculation of performance related pay in Wales. However, if the Assembly had followed this course and established a system different from England that would have had to have been confirmed in a subsequent Order made by the Secretary of State for Education and Employment. In the aside to his High Court judgement quoted above, Mr justice Jackson suggests that the DfEE by-passed the 1986 Act because it did not want to raise expectations within the Assembly that it could be allowed discretion in the matter. It was open, and remains open, for the Assembly Administration to press the DfEE to deploy the 1986 rather than the 1991 Act as the basis for establishing performance-related pay, in which case the Assembly could have devolved powers to decide the system of implementation in Wales.

In his criticism of the the Counsel General William Graham seems to be suggesting that his Committee should have been given the advice that it should press for the 1986 Act to be used. That may have been a good political tactic, in that powers under the Act were transferred. But even so, and as we have seen, the Secretary of State for Education and Employment would still have to be persuaded to issue a confirmatory Order. On this basis the Counsel General was correct in his advice that, in practice, the Assembly had no discretion in the matter. William Graham's remarks, as reported by the *South Wales Argus*, prompted a strong rebuke from the Permanent Secretary, Jon Shortridge, in a letter sent the following week:

“As I think you know I take complaints against Assembly Members very seriously, and I take great exception to Assembly Members criticising named Assembly officials in the press without good reason and without first raising the matter with me.

In this case, assuming you have been correctly reported, you are wrong in your assertion that the recent High Court judgement involved a ruling that the National Assembly for Wales had a power to change the criteria to be used in performance related pay for teachers in Wales.

In my view, to make such a misleading statement without checking the facts and then to call for Winston Roddick's resignation on the basis of it is totally unacceptable. I should be grateful if you would both withdraw it and make a public apology” (Letter from Jon Shortridge to William Graham, 21 July).

The letter was copied to the Presiding Officer, First Secretary Rhodri Morgan, Education Secretary Rosemary Butler, and the Conservative leader in the Assembly Nick Bourne. It drew an angry response from the Presiding Officer, Lord Elis-Thomas:

“I am not content with this. Your third paragraph suggests that complaints against Assembly Members are a matter for you. I am wholly responsible, as Presiding Officer of the National Assembly for Wales, for complaints against Members and refer these to the Standards Adviser appointed by the Assembly for this purpose. Where appropriate complaints are referred to the Standards Committee in accordance with the procedures agreed by the Standards Committee. There is no role for the Permanent Secretary in the complaints process and it would be improper and inappropriate for the Permanent Secretary to seek to become involved in such complaints. Members are accountable to their constituent and not to officials.

I am also concerned that you have breached a fundamental principle of parliamentary democracy in seeking to rebuke an Assembly Member. As Presiding Officer, I am responsible for protecting the rights of Members and a complaint made against a Member should be addressed at the political level either by the appropriate Assembly Secretary or by reference to me as Presiding Officer. It is not a matter for an unelected official of the Executive to rebuke a Member or to address him or her in discourteous or intimidatory terms. William Graham is the Chair of the Education Committee which has received wholly unsatisfactory legal advice from the Office of the Counsel General and he has acted properly in expressing his concerns.

In Westminster and other legislatures Chairs of Committees frequently name officials whose advice to committees has been less than satisfactory - but it is, as far as I am aware, without precedent for a Permanent Secretary to seek to interfere with a Chair of a Parliamentary Committee. I consider this to be a serious breach of democratic principle. It is wholly unacceptable to me and should William wish to raise this matter on a point of order in the September session I shall be happy to accept this and to rule on the matter from the Chair” (Letter from the Presiding Officer to Jon Shortridge, 27 July).

There seems no doubt that in legal terms the Counsel General was correct in the advice he offered the Committee: power over setting regulation concerning teachers’ pay and the relationship between them lies with the DfEE. The extent to which William Graham has a complaint was that the Counsel General did not advise the Pre-16 Education Committee that the Assembly should press for it to be allowed to use the 1986 Act under which powers were devolved. However, this would have been moving on to the territory of political tactics and away from legal considerations. It is doubtful whether this justifies calling on the Counsel General “to consider his position”.

One outcome of the dispute was that henceforth a lawyer from the Office of the Counsel General will attend meetings of the Subject Committees. This was an attempt to ensure that whenever they need legal advice Committees would naturally refer to the Office of the Counsel General, rather than seeking legal opinion from the

Office of the Presiding Officer or from counsel elsewhere. However, the initiative may not resolve the underlying dilemma of lawyers in the Office of the Counsel General having simultaneously to work for the Executive and the wider Assembly.

This points to a wider constitutional issue, underlying the question of relationships between individual Members and the civil service. That is the relationship between the Assembly as a whole and the Executive, of which officials are a part. The matter is confused since the Assembly is constituted as a corporate body and does not have its own officials separate from those who service the Executive (see the previous Monitoring Report *Devolution in Transition*, IWA, May 2000). Doubtless, Jon Shortridge was acting against that background when he sent his letter to William Graham, albeit that the Executive operates through a Cabinet system. In an address to the Institute of Welsh Politics, prior to the William Graham issue, the Presiding Officer raised the problem and noted at the outset of his remarks that the minority Labour Administration was increasingly referring to itself as *The Government of Wales*:

“This is an important development which means Cabinet Secretaries who form the Cabinet Government within the National Assembly now see themselves as such a corporate entity. However, the other perception is still operating concurrently. That the National Assembly is a body corporate and that all decisions taken by the Government, the Cabinet Secretaries individually or collectively, are in fact decisions of the Assembly, whether the Assembly has voted on them or not. So the news headlines run “The National Assembly decides not to give aid to Broughton ...”, “The National Assembly closes a primary school in Pembrokeshire ...” “The National Assembly published a policy document on forestry ...”. On a number of occasions in plenary session, Assembly Members have raised the issue of the naming of and responsibility-taking within the organisation.

Elected members, quite understandably, have no wish to take responsibility for issues where they have not been consulted. This has an all too obvious bearing on the question of accountability and representation. This issue also goes to the heart of the operation of a democratically elected body. The difficult and complex growth of parliamentary-type government in the National Assembly, from within the body of territorial administrative/executive government in the previous system has provided the main drama of the first year of powers ...” (Lord Elis-Thomas AM, *National Assembly: A Year in Power?* Address to the Institute of Welsh Politics, Aberystwyth, 8 July).

In May the Cabinet itself had discussed the same issue matter in relation to a perception that the role of Cabinet Secretaries was being confused in the public mind with that of Committee chairs:

“ There appeared to be a lack of understanding outside the Assembly of the title Assembly Secretary and its relationship to others, such as Chairman of a Subject Committee. This was leading to confusion, for example about the correct person to whom to address invitations. One solution to this would be to refer to Cabinet members as Ministers instead of Assembly Secretaries. The

First Secretary would raise the matter with the other party leaders to see if agreement to this change could be reached” (Cabinet Minutes, 8 May Assembly website).

Welsh Language

The Assembly debated the Welsh language in plenary for the first time at the end of June and early July and divided over whether to examine the case for revisiting the 1993 Welsh Language Act. A Liberal Democrat motion proposed that the Post-16 Education Committee should

“ ... discuss the need for a new Welsh Language Act for Wales and to consider the content of such an act, with a view to making recommendations to the UK Government through the appropriate channels”.

However, the Liberal Democrats only found the support of Plaid Cymru members for the proposal with Labour and the Conservatives voting against. Hence it was lost by 33 votes to 20 in the only serious division in a debate that registered widespread consensus across the parties in favour of supporting the language. For instance, a Plaid Cymru motion calling upon the Post-16 education Committee

“.. to conduct a comprehensive policy review into the Welsh language in order to form a strategy for the future”

found unanimous support across the parties, with 53 Members in favour and none against. It was noteworthy, too, that because the debate was started late in the afternoon and many Members wished to participate, a procedural motion was agreed allowing it to continue on another day. Opening the debate Post-16 Education Secretary Tom Middlehurst drew attention to “a groundbreaking policy objective” in the Assembly’s Strategic Plan *Betterwales.com* to fostering the benefits of bilingualism. He said to reverse the decades of decline in the numbers of Welsh speakers would be “a stunning achievement”:

“We have said that we want more Welsh speakers by 2010 and the Subject Committee has resolved that the creation of a bilingual Wales is ‘an achievable national aim’. No Westminster Government ever set out to achieve such unambiguous goals for bilingualism in Wales” (Assembly *Record*, 28 June).

proposing the Liberal Democrat motion in favour of a new Language Act, Christine Humphreys AM for North Wales, said the existing 1993 Act,

“... does not give the Welsh language official status ... does not pay attention to the private sector or to the essential privatised services such as electricity and water. Those who formed the Act did not foresee the technological revolution which has led to more and more people carrying out their business over the telephone or through the Internet and being unable to use the Welsh

language. Another fundamental point is that people lose the opportunity to have service in Welsh as local branches of banks close and companies from outside the country provide services in Wales ...” (Ibid.)

Plaid Cymru’s Elin Jones (Ceredigion) added that more than half of the population have mobile phones, yet

“... there is no legislation to ensure that the companies that provide them include the Welsh language as part of their service ... The [1993] Act’s powers have also been completely ineffective in making our communities more visually Welsh. If you walk down any High Street, even in areas where the majority of the population speak Welsh, the signs of most shops and businesses are still in English only ...”(Assembly Record, 4 July)

However, Labour’s Delyth Evans (Mid and West Wales) countered that

“I do not believe that legislation including the private sector would be a good idea at the moment. Our priority in Wales at present is to attract new businesses to invest in Wales in order to strengthen the economy. My concern about any kind of linguistic enforcement is that it would send the wrong message to the sector and make companies think twice before coming to Wales at a time when we are trying our best to attract them to invest here” (Ibid.).

Carwyn Jones (Labour, Bridgend) said the most important issue was the Welsh speaking heartland s:

“If you lose 2,000 speakers in Carmarthenshire, and gain a further 2,000 speakers in Cardiff that does not make up for the loss ... I do not believe that a new Act is needed because it would not help the people who speak the language every day, for example in the former coal mining villages of the Amman Valley, the Swansea Valley and the Gwendraeth Valley and also the villages in north Wales. I would like to change our attitude to the language. We have lost sight of the fact that the most important thing for any language is to have a strong heartland where people speak Welsh everyday and are encourage to speak Welsh every day. That is where we should look now to ensure the survival of the Welsh language” (Ibid.).

Hunting with Dogs

A Minority Party debate on hunting with dogs on 27 June, initiated by the Conservatives, raised a number of important constitutional questions separate from the substantive issue at hand. The motion, put forward by North Wales List Member Peter Rogers, was as follows:

“The National Assembly for Wales calls upon the Government of Wales to request Her Majesty’s Government at Westminster to allow the National

Assembly for Wales to decide on the question of hunting with dogs in Wales by framing an Bill to provide for secondary legislative purposes to this end ...” (Assembly *Record*, 27 June)

The Motion continued that hunting with dogs should be supported since it was the most effective form of vermin control, provided jobs in the countryside and was an established part of rural life. However, this aspect of the motion was removed by amendments from Plaid Cymru and the Liberal Democrats, leaving the first part of the motion simply establishing, as a matter of principle, that the Assembly should have the right to decide on the issue in Wales.

Labour allowed a free vote on the Motion, but its position, as laid down by Environment Secretary Peter Law, was:

“The Labour Party position here and in Westminster is that the issue of a ban on hunting foxes with hounds is a matter that should be determined by a free vote in Westminster ... It is not an issue of devolution as some people wish to portray it for their own reasons. It is an issue of animal welfare and law and order and it is the Home Office’s responsibility “(Ibid.).

When the critical vote was taken the Opposition parties joined together and managed to defeat a united Labour Group by 28 votes to 27. This uncovered at least two dynamics that are working through the Assembly: first, the widening of a rural/urban divide between Labour and the other parties; and, secondly, a developing position across the Opposition parties that they wish primary legislation at Westminster to be framed so as to allow maximum discretion for the Assembly to interpret its implementation. For instance, the day following the vote *The Western Mail* reported that the Conservative leadership at Westminster was unhappy with the Conservative Group in Cardiff, not over their attitude towards hunting with dogs, but because they had supported the principle of the decision being devolved to Wales.

A Home for the Assembly

Following Rhodri Morgan’s three-month review of the proposed new Assembly Chamber, reported in the last Monitoring report, the Assembly debated the issue on 21 June when a majority voted to press ahead with the original Richard Rogers design. This was despite a Cabinet recommendation for a compromise option, to build a smaller extension to the existing building to house a debating Chamber. This was estimated to cost £13.5 million, compared with between £23.5m and £28m for the Richard Rogers design. Crucially, in the days leading up to the vote, Labour decided to allow a free vote since, as Rhodri Morgan put it in the debate:

“... this is a parliamentary matter and not a matter of government policy” (Assembly *Record*, 21 June).

In the decisive division, 35 voted in favour of the Richard Rogers design and 22 against. Those against were the Assembly Cabinet together with the three Deputy Secretaries (the so-called payroll vote), the Conservative Group, and two Labour

backbenchers: Karen Sinclair (Clwyd South) and Gwenda Thomas (Neath). In favour were the Plaid Cymru and Liberal Democrat Groups together with twelve Labour backbenchers: Lorraine Barrett (Cardiff South and Penarth), Ron Davies (Caerphilly), Richard Edwards (Preseli), Delyth Evans (Mid and West Wales List), Val Feld (Swansea West), Brian Gibbons (Aberavon), Janice Gregory (Ogmore), John Griffiths (Newport East), Alison Halford (Delyn), Ann Jones (Vale of Clwyd), Huw Lewis (Merthyr), and Lynne Neagle (Torfaen).

It is difficult to judge what might have happened without the free vote. However, given the strength of feeling on the matter it is likely that sufficient Labour members would have broken ranks to enable the Richard Rogers design to continue. The attitude of most Labour backbenchers can be gauged from a few extracts from the debate. Richard Edwards (Preseli) said he regretted that the issue had been re-opened by Rhodri Morgan:

“The way that this has happened typifies what seems to be a defensive mindset on devolution - always on the backfoot and allowing opponents to dictate the debate. This defensive, apologetic approach compromises the performance of our fledgling Assembly ...” (*Assembly Record*, 21 June).

Brian Gibbons (Aberavon) declared:

“The compromise shed in the back [the Cabinet’s proposal] typifies many of Wales’ problems that stem from the idea that just good enough is good enough” (*Ibid.*).

Delyth Evans (Mid and West Wales List) said:

“The Rogers design is a modest building, but it is appropriate to its purpose, as all great buildings are. I do not overstate the case when I say that that building will redefine Wales as a creative, confident , modern open democracy” (*Ibid.*).

As a result of the vote pre-construction work is expected to begin in October or November with builders moving onto the site between Crickhowell House and the waterfront early in 2001. The building will be completed in 2003 with Assembly members moving in for the first time in September that year, after the second elections due to be held in May 2003.

Business Committee Publishes Minutes

In July it was decided that the Assembly’s Business Committee should publish its Minutes on the Assembly website, six weeks in arrears, following the precedent set by the Cabinet earlier in the year (see the previous Monitoring Report *Devolution in Transition*, IWA, May 2000). The first minutes published were for the 6 June and contained such items as revisions to the Assembly’s standing orders and the

practicalities of moving Wednesday afternoon plenary sessions to Thursday mornings.

The Business Committee operates in a more formal way than the *Usual Channels* at Westminster. It is chaired by the Deputy Presiding Officer and attended by the Administration's Business Secretary together with the Business Managers of the Opposition parties: Ieuan Wyn Jones (and now Jocelyn Davies) for Plaid Cymru, William Graham for the Conservatives, and Jenny Randerson for the Liberal Democrats. Apart from forward planning of the Assembly's timetable, a major function of the Committee is to reach agreement across the parties on the way the Assembly handles secondary legislation. So, for example, the Minutes for 28 June refer to the creation of a Legislation Management Unit within the Office of the Counsel General, discussed in the following Section. The Business Committee also tracks the working of other Assembly committees. So, for example, the 20 June meeting discussed a paper presented by Marie Knox, head of the Committee Secretariat within the Office of the Presiding Officer, on the role of the Regional Committees. This revealed concern that the Regional Committees were not operating effectively:

“Marie Knox ... proposed that given the attendance figures and the occasional lack of a quorum, Members should be emailed one month in advance of a Regional Committee to indicate whether they would be attending or not ... The Business Secretary felt that the work of the Regional Committees should be more focused and cross-referenced more with the policies of the Assembly ... Jenny Randerson ... felt that individual committees needed the scope to look at local issues ... Jocelyn Davies suggested the open microphone sessions should be longer to ensure a dialogue with the public ... William Graham felt that one Regional Committee per term was an attractive proposal but that the Assembly should get to grips with raising the public's awareness of them ...” (Minutes, Business Committee, 20 June, Assembly website).

Appointment of Assembly Clerk

In August the post of Clerk to the National Assembly was advertised. This was a significant development. It meant that the present holder of the post, John Lloyd who had been appointed internally from within the old Welsh Office in advance of the first Assembly elections, would now be replaced following an open competition. The terms of the advertisement also signalled that the successful candidate would not only be holding a senior position worth £100,000 a year (described as “A unique UK Civil Service appointment”), but would be managing a more autonomous Office of the Presiding Officer:

“As Clerk you will at all times uphold and support the integrity, independence and impartiality of the Office of Presiding Officer. You will be able to command the trust and respect of the Presiding Officer, the Deputy Presiding Officer and Assembly Members and Permanent Secretary in protecting the independent role of the Office of Presiding Officer and the quality of services it

delivers. You will be directly and personally responsible to the Presiding Officer and the Assembly as a whole for the provision of a wide range of independent services, including comprehensive secretariat, library, broadcasting, information and translation services and the provision of the Assembly's formal record. You will be the accounting officer for the expenditure of £20 million and responsible for 200 staff" (*Western Mail*, 24 August).

5. RE-WORKING THE ASSEMBLY'S LAW-MAKING PROCESS

By Rick Rawlings, London School of Economics

In recent months wide-ranging action has been initiated behind the scenes to improve the Assembly's lawmaking capability. This reflects a clear signal sent by Rhodri Morgan on his accession as the second Assembly First Secretary: "I am anxious to see the Assembly becoming much more active in using the powers it does possess" (*Western Mail* 15 February 2000).

Pride of place at the official level goes to a Subordinate Legislation Working Party. It has brought together representatives from different parts of the administrative and legislative machine, from the Assembly Chamber Secretariat to the Office of the Presiding Officer, and on through the Cabinet Secretariat to the Office of the Counsel General (OCG) and policy divisions, not forgetting the clerk and legal advisers to the Legislation Committee. A project report was produced in May, which in light of the criticism of the use of urgency procedure laid great emphasis on tighter business processes, for example identification and early warning of forthcoming legislation.

At the political level a striking feature has been the proactive and consensual role in the reform of the all-party Business Committee, which representing a formalisation of the 'usual channels' at Westminster is one of the more distinctive parts of the Assembly architecture. Away from the 'theatre' of plenary session, the Committee has effectively supplied the continuing impetus and forum for negotiation of the procedural changes (a feature emphasised by various parties to the proceedings: see *Assembly Record* 24 May 2000).

Reworking the Assembly legislative process is clearly a multifaceted as well as multiple actor operation. It is appropriate here to identify four key elements in the work, which serve to highlight the strong administrative and legal as well as political input.

Role of the Business Committee

The first element concerns the practical role of the Business Committee. Operating in tandem with the Deputy Presiding Officer, the Committee is appropriately characterised as the hinge or buckle of the distinctive legislative procedures. It is in this forum that major decisions about 'handling' or routing draft orders are made, for example the choice of 'extended procedure'. What has now developed is a more sophisticated classification of proposed statutory instruments, with the aim especially of better targeting of Assembly energies and resources. In other words, the idea of a more variegated approach, or one that accords more closely with the reality of Welsh legislation often being UK or EU driven.

The litmus test is a blossoming of the relationship between the Business Committee and the OCG, which among its many other roles prepares the classification and

procedural recommendations. At the same time it is important to guard against an over-reliance on the OCG, legal assessment being only one measure of an appropriate legislative routing or channelling.

Legislation Management Unit

A second element has been introduced: centralisation in a new unit of the OCG, the aptly named Legislation Management Unit, of the administrative tasks of co-ordination and use of forward planning information, time tabling and handling of Assembly subordinate legislation. For instance, the Minutes of the Assembly Business Committee for 28 June refer to the Unit in the following terms:

“ **Legislation Unit** - The Office of the Counsel General was currently restructuring and recruiting to establish this Unit. It would have responsibility for forward planning, progressing Statutory Instruments, Welsh text, managing the publication process and liaison with Subject areas drafting lawyers. It would also be responsible for identifying devolved issues in primary legislation and communicate with policy sections as appropriate. The Unit would liaise with officials supporting the Executive, the Cabinet, Office of the Presiding Officer and the Business Committee” (Assembly website).

It is thus intended that problems such as policy divisions failing to appreciate the rigours of the distinctive Assembly legislative procedures, or the lack of clear ‘ownership’ or responsibility for a text, shall be bypassed. A clever design, the Unit is involved from beginning to end of the making of Assembly legislation, responsible for example not only for devising individual handling plans including the recommendations to the Business Committee, but also for ensuring that orders are properly signed off and for their registration and publication. It is precisely the kind of nuts and bolts arrangement that is so necessary if the Assembly legislative process is to operate efficiently. Speaking more generally, the development marks a continuing growth away from the structures and processes of the old territorial department, where a limited legislative output function could be more easily accommodated in a disparate and less formal set of administrative arrangements.

Streamlining Standing Orders

Formal procedural change, or amendments to the internal law of the Assembly in the guise of standing orders, is the third main element. A significant measure of streamlining is involved, as also greater flexibility in the architectural design of the Assembly lawmaking function. In evaluation, it is important to bear in mind that the Assembly is severely constrained in this regard by the detailed procedural code of the devolution statute (Government of Wales Act, sections 64-67). Expressed slightly

differently, such reform has demanded careful manoeuvring through the interstices of the so-called 'devolution settlement'.

One of the developments bears directly on the work of the Legislation Committee. It covers the situation where a draft order laid before the Assembly contains typographical or grammatical errors, or 'minor drafting errors' which the Committee identifies as appropriate for correction under the new provision in standing orders (SO 22 (12A), *Assembly Record* 23 May 2000). The Assembly Secretary is thus empowered to lay a Memorandum of Corrections, so allowing for automatic incorporation when the Assembly in plenary session resolves to approve the order. The technique limits a problem of excessive rigidity associated with the original procedural design, whereby once an order is laid the only established machinery for amendment is plenary session, with all the delay and inconvenience that this entails. It is also a cautious development, which demonstrates a strong element of constitutional 'check and balance'. The Presiding Officer 'shall' rule out of order any other kind of amendment that the Executive is tempted to insert in a Memorandum of Corrections. As more experience is gained, one can expect some further loosening of the bonds.

Then there is the creation of a major new variant of Assembly legislative process: the so-called 'standard accelerated procedure' (SO 22[23A] *Assembly Record* 27 June 2000). Perhaps hopefully, it represents a viable alternative to the urgency procedure, a 'middle way' between the longer haul of standard procedure and the short cut of Executive legislative action. An Assembly Secretary is now able to propose a motion in relation to one or more draft orders for the purpose of disapplying the general provisions for debate and amendment in plenary session. So it is that the visitor to the Assembly in July 2000 might have been greeted by the spectacle of Members resolving to approve large groups of legislative instruments unanimously and with no discussion. Of course this is not the whole story. First, use of the procedure is made the subject of a 'handling' recommendation in front of the (all-party) Business Committee. Second, three Members (a low threshold) can prevent it in the case of any particular order or orders by the tabling of a notice (see for practical illustration, *Assembly Record* 4 July 2000). To push home the point, the new procedure works at one level to free up space in the Assembly legislative process, while once again showing strong 'check and balance'; and at another level to underscore the attributes of political collaboration and compromise in the Assembly. Which in turn involves a further re-balancing in favour of the Business Committee. Perhaps it is fortunate then that the decision has now been taken to publish the minutes of the meetings of this Committee.

Transparency

Transparency is our fourth key element, more specifically the issue of public access to pending legislation and the final product. A failure to establish appropriate arrangements at the outset demonstrates once again a lack of preparedness for the constitutional novelty of Welsh lawmaking. For example draft orders were not made easily available on the Assembly web site. Whither broad participation or 'bringing government closer to the people of Wales'? Again, although Assembly Orders could

be accessed via HMSO, this was not the case for local orders (many of which being traffic orders established criminal offences), subordinate legislation not made by statutory instrument, and so-called 'tertiary' rules (circulars and guidance). Whither the Rule of Law? Indeed, had corrective action not been taken as part of the general review of legislative practice and procedure, the Assembly might well have faced the embarrassment of a legal challenge here (the Law Society had commissioned legal advice on the grounds of challenge).

Today such information is generally available on the Assembly web site: a creative use of the new technology. In effect the people of Wales are able to know the (Assembly) laws by which they are governed. Also, as indicated, the establishment of the new Legislation Management Unit with responsibility in such matters helps to secure the position, with prompt and systematic publication of Assembly subordinate legislation now being given high priority.

So far have we travelled? Taken in the round, the various initiatives show a determination to render the Assembly lawmaking process more efficient and focused, while at the same time meeting the basic constitutional requirements of a significant legislative output function and seeking to preserve much of the special potential of Welsh legislative scrutiny. In turn, there can now be developed further opportunities for meaningful debate where there is real scope for separate policy development or diversity in law. Such anyway is the positive potential of a set of developments that represents a more disciplined approach to matters of legislative practice and procedure.

6. THE ASSEMBLY'S OPERATIONAL REVIEW

By John Osmond IWA

In July First Secretary Rhodri Morgan announced there would be a review of how the Assembly is working during the forthcoming year. He stressed that he was anxious that the four parties in the Assembly reach a consensus on any changes and consequently the review should be undertaken within the context of the Government of Wales Act 1998 -

“That is, we act within that Act and I am not eager to discuss whether we should amend it .. I do not want to be a piggy in the middle between Plaid Cymru, who may or may not wish to question the Government of Wales Act, and the Conservative Group, who certainly would not” (*Assembly Record*, 12 July).

A Review Group will be chaired by the Presiding Officer and comprise the party leaders and business managers. The Review will seek contributions from party groups, individual Assembly members, the Assembly's partners in business, local government and the voluntary sector, academics and others. It will be supported by a joint secretariat drawn from the Administration's officials and those of the Presiding Officer. In the plenary debate that followed the announcement Rhodri Morgan suggested a timetable as follows:

- Call for papers and written contributions by end of October 2000
- Hold six or seven open sessions between Autumn 2000 and Spring 2001
- Agree recommendations for changes by September 2001

Cabinet Minutes for 3 July record that it would need to come to its own view on what the Review should cover and what procedural changes it might wish to see made. A day would be set aside in the early Autumn for a full Cabinet discussion of the issues. An insight into Rhodri Morgan's thinking is provided by the Minutes of the Cabinet's in late May:

“The First Secretary said that having been in existence for a year the Assembly was now well established in the public's mind. The start of the second year presented an opportunity to build on this foundation and set out clearly what the public could expect of the Assembly in the year ahead. The First Secretary would be doing this in a number of ways: through participation in a debate at the Hay on Wye festival, and then through planned newspaper articles on how year two would be more exciting in policy and delivery terms than year one, and how plenary and First Secretary's questions would be more relevant, and how the Subject Committees would be more engaged in the developing policies ...” (Cabinet Minutes, 22 May, Assembly website)

Evidently the First Secretary's focus is on policy, delivery and presentation rather than the longer-term constitutional questions such as extending the Assembly's powers in a legislative direction. A spokesman for his Office stressed that the

Review was not Opposition-driven and was not related to the idea of a “Speaker’s Conference” called for by the Liberal Democrats and Plaid Cymru (*Western Mail*, 13 July; see also the IWA’s previous Monitoring Report *Devolution Relunched, March 2000*). Nevertheless, it is inevitable that the Review will promote debate around the Assembly’s legislative competence. Indeed, the weekend before Rhodri Morgan’s announcement the Presiding Officer himself laid down in effect what he interpreted as the parameters of the Review, in a speech to the Institute of Welsh Politics in Aberystwyth. He began by asking a loaded question “To what extent is the body over which I have the duty of presiding, really the National Assembly for Wales?” to which he gave the following response, which is worth quoting at some length (in translation, since the speech was delivered through the medium of Welsh):

“Despite the first year of powers, it would be difficult to argue that there is a policy making cycle, in which legislation, in this case secondary legislation, plays its part, from the perception of issues to consultation with interest groups, Assembly debate, the making of legislation, implementation and the monitoring of consequences. There is still no policy-making process for Wales.

Generally, the new primary legislation of 1999-2000 continues to give specific not general subject functions to the National Assembly. It would be quite possible to draft such general provisions with primary legislation for the UK, or England and Wales, containing enabling clauses that would be productive of further subordinate legislation by the National Assembly, but for whatever political or policy reasons this has not so far been acceptable to the United Kingdom Government.

The current basis of the Assembly’s powers displays no constitutional logic, but was based entirely on the political processes of the gradual acquisition of powers within the office of the Secretary of State for Wales. Devolving ‘secondary legislation’, as a category, makes no constitutional sense, because it is itself legislatively various.

The UK Government has, however, given general subject area competence of the legislation to the Scottish Parliament, to England and Wales, that is to UK Ministers acting as the English Ministers, and to the Scottish executive. For example, in the Pollution, Prevention and Control Act 1999 there are provisions which enable the Scottish Parliament to make Scottish legislation within the subject matter covered by the Act. The Assembly may have specific functions under specific sections of the Act given to it later by a Transfer of Functions Order, but no such Order has so far been made.

But as I indicated, the comparison is not only with Scotland. There are continual and internal inconsistencies with regard to the way the National Assembly currently receives its powers. Whether there should be consistency between these various ways of specifying powers is a matter for debate, for example should the way of defining the National Assembly’s powers in relation to Wales be similar to the way in which the powers of UK Government Ministers are set out in relation to England? Should there be consistency between different Bills in the manner of giving the National

Assembly powers in primary legislation? An analysis of Bills currently before Parliament reveals problems. For example, in the Transport Bill, a Bill containing 13 Parts, the National Assembly is only given functions under Part 2 concerning local transport plans. All Ministerial powers under the other 12 Parts will be exercised not by the Assembly in relation to Wales but by UK Government Ministers. In a survey of current Bills before Parliament it is rare to find a general definition of functions exercisable by the National Assembly. Most Bills have numerous specific references to the Assembly throughout their provisions, but there is no general clause applying to Wales and setting out in one provision a general reference to the National Assembly's functions. This contrasts very clearly with the way in which legislation is written for Scotland.

Legislation is not the only way in which the relationship between the United Kingdom Government and the National Assembly is defined. There are protocols between the Assembly and the UK Government and its departments. Most protocols are now in position but there are different provisions in each. For example, a protocol with the Lord Chancellor's Department is wide and flexible giving the Assembly considerable opportunities to make representations about policy proposals from that department. It is interesting to compare it with the protocol with the Department of the Environment, Transport and the Regions which is far less flexible and provides much less opportunity for making general representations on policy.

Protocols provide no answer to the major problem of enabling the Assembly to discuss proposals for Bills which the UK Government Departments are considering for inclusion in each November's Queen's Speech, forming the Government's legislative programme. This is despite specific assurances given during debates on the Government of Wales Bill in both Houses of Parliament.

Nothing illustrates more clearly the need for the National Assembly to be able to make representations to the UK Government about the form of primary legislation than the varying powers given to the Assembly and the way they are expressed. The Assembly needs to make its views known at an early stage in the formulation of Bills. How is this to happen? Is it Cabinet to Cabinet, or are all Members of the Assembly to be involved? Should the Assembly be preparing draft Bills for presentation to the Westminster Parliament, or draft clauses for inclusion in Bills? If this is to happen, how are these Bills to be processed in Westminster, how are they to be debated and amended? What relationship does there need to be between the primary legislators at both Houses at Westminster and the National Assembly Cabinet and Members?

Like the varying powers given to the Assembly in the initial legislation of the Government of Wales Act, and the Transfer Orders, the continuing legislative basis of the Assembly's powers lacks any logical basis. Why should references to the Assembly in form and content vary between different Westminster Bills, without any coherent way of referring to the National Assembly in UK Parliamentary drafting? Why was the lack of overall function in the Government of Wales Act and the Transfer of Orders perpetuated in

new legislation, so that the form of the Assembly's powers and the difficulties posed by their variation has been compounded?

It should come as no surprise therefore that the Assembly as a whole has established a Review Group of party leaders and business managers chaired by the Presiding Officer to examine its existing processes" (Lord-Elis Thomas AM, *National Assembly: A Year in Power?* Address to the Institute of Welsh Politics, Aberystwyth, 8 July).

The Presiding Officer's assessment of the confusion and uncertainty about the Assembly's powers in relation to Westminster-determined primary legislation was echoed by one of Labour's constitutional experts, Lord Gwilym Prys Davies, in a lecture given to the Law Society some weeks later at the Llanelli National Eisteddfod:

"Under the protocol between the Secretary of State for Wales and the Assembly, and under Section 31 of the Wales Act, the Secretary of State is the link between Cardiff and the department in Whitehall which is responsible for promoting a Bill. However, one cannot be content with the mere existence of a protocol, taking for granted that it will work effectively. It can be difficult to enforce: for example, Cardiff proposals may be contrary to the interests of the UK government, or low on its list of priorities. Who has the ear of the Prime Minister? And when the Assembly Cabinet wishes to amend a Bill being introduced by a Whitehall department, it is not clear to me what will be the mechanism in place to ensure that the Welsh proposal receives full consideration in the Whitehall department - and in time - as the new Bill is being drawn up and formulated. Where the Bill has substantial implications for Wales, will one of the Assembly's civil servants be a member of the Bill team in Whitehall responsible for preparing the primary legislation? Otherwise, who will be there to scrutinise the Bill and safeguard Welsh interests? If the new primary legislation does not adequately meet the requirements of the Assembly's Cabinet and give it an opportunity to make subordinate legislation to meet our distinctive needs, this may lead eventually to conflict between Cardiff and Westminster and instability. It is here that I see the main threat to the Welsh devolution model" (Lord Gwilym Prys Davies, *The National Assembly: A year of Laying the Foundations*, The Law Society, 9 August).

Interestingly this assessment is shared by Plaid Cymru members in the Assembly. In mid August the *Western Mail* reported that leading party members were backtracking on immediate demands for tax-raising powers for the Assembly in order to stand a better chance of reaching a consensus with other parties on the need for legislative competence (*Western Mail*, 14 August). More fundamentally, however, experience of working in the Assembly during its opening months persuaded other Plaid Members that before they could realistically demand full legislative powers the capability of the Assembly civil service to cope with the extra demands that these would bring needed to be put in place. The challenge was formidable and responding to it might take as much as ten years to achieve. Certainly this was the perspective taken in a memorandum *Developing the Functions of the Assembly*, produced by Plaid Cymru's new Business Manager Jocelyn Davies AM. The Paper was written during April, but

was circulated via the Parliament for Wales Campaign in the period covered by this monitoring report. It concludes:

“The Assembly faces a monitoring and implementation burden never faced by the Welsh Office in its 35 years existence and never faced by any other central government department. Prior to devolution the Welsh Office dealt with very few Bills, perhaps one every five or six years. The Assembly already appears in different ways in ten bills and the number will remain at between ten and twelve each subsequent parliamentary session. Also there is the continuing problem of the facility of enabling and implementing policies within the provisions of existing and new legislation.

Problems of this magnitude need radical solutions. The Assembly is seriously under-resourced in terms of staff numbers and expertise. Assembly staff need to acquire the necessary expertise to feed in policy to primary legislation; to monitor progress of Bills; and to produce Orders for implementation of Acts.

The formulating, instructing upon and monitoring of Bills would require an Assembly unit of at least three experienced people per Bill. Implementation of the policies arising from the Bill when it is enacted requires a separate team to work on the drafting of the resulting subordinate legislation. This is because the Bill team will need to move to another Bill to arrange for its preparation and passage through Parliament in the next session.

The agreement with the Secretary of State for Wales of 2 November 2000 [see the previous IWA Monitoring Report *Devolution: A Dynamic, Settled process?*, December 1999] foresees that it would be possible for the Assembly to suggest Bills which particularly, or only, relate to Wales and to the functions of the Assembly. Such Bills could either be suggested as applying solely to Wales or the provisions could be suggested for inclusion in a Bill applying to Wales and to England.

Even within the present constitutional framework, therefore, it is possible to suggest Bills which will have a particular and different application to Wales. However, there is no machinery currently in the Assembly for the formulation of such suggestions. A fast-track mechanism for the passage of these Bills at Westminster is needed.

Before devolution in Scotland, the Scottish Office annually promoted Bills in Parliament and made a considerable amount of Scotland-only subordinate legislation. With some 8,000 civil servants and more than 50 government lawyers, the Scottish Office was able to devote experienced staff to this continual work. These lawyers have now mostly transferred to the new Scottish Executive. The Westminster Government has about 1,200 lawyers with most Government departments having 50-60 each. The Assembly has some 2,300 staff with about 30 lawyers, with limited experience of either Bill work or the making of separate subordinate legislation (two are said to have drafting experience) and there are considerable problems in dealing with the limited amount of Orders to date due entirely to insufficient members of staff.

We cannot lay claim or plan for legislative devolution until we have mastered executive devolution and pushed at its boundary. In ten years time with a significant increase in staff, we may have accumulated enough legislative experience to be able to claim the expertise possessed by Scotland to successfully operate legislative devolution. At present we cannot make such claims” (Jocelyn Davies AM, *Developing the Functions of the Assembly*, Internal Plaid Cymru Policy Paper, April 2000).

This ten-year timescale for accruing legislative powers to the National Assembly found support from another political direction. Interviewed in the *Western Mail* Ron Davies, who as Secretary of State was the principal architect of the 1998 Government of Wales Act, was reported in the following terms:

“The crucial time for Labour, he predicts will be 2003, when the party will have to have a clear statement on how it sees the Assembly progressing. After that, he pinpoints a general election around 2005 as the appropriate time to seek a mandate from the people for substantial alterations needed to the current settlement” (*Western Mail*, 15 August).

7. RELATIONS WITH WESTMINSTER AND WHITEHALL

By John Osmond, IWA

Influencing Primary Legislation

The 22 Parliamentary Bills that refer to Wales published during 1999-2000 have followed no consistent pattern. That is to say, some clearly delineate areas of competence devolved to the National Assembly while some lack clear definition of separate Assembly competence and others retain control by the Whitehall department concerned as regards Wales. A good example of the former is the Learning and Skills Act which received Royal Assent during this monitoring period. It contains five Parts with Parts 1 and 3 referring to England, Parts 2 and 4 to Wales, with Part 5 referring to England and Wales together. Part 2 establishes the new Council for Education and Training for Wales and Part 4 extends the role of Estyn, the body that oversees the role of the Welsh Schools Inspectorate.

Another example is the Care Standards Bill which received Royal Assent during this monitoring period. This has 25 sections relating specifically to Wales to ensure that there are appropriate parallel powers with those applying to England, including sections on establishing a Children's Commissioner for Wales. As Health Secretary Jane Hutt, put it, during a plenary debate on the annual Report of the Health and Social Services Committee, in May:

“We influenced the Bill before it was published. We had an opportunity to develop our thinking on the new regulatory arrangements. We did not want a new Quango. We debated the regulation and inspection of care standards and discussed the fact that we are developing a robust partnership with Estyn to regulate day care services for children under eight and to regulate childminding. That is an example of our influencing the Westminster agenda “ (Assembly *Record*, 9 May 2000).

However, while the Education and Health Departments in Whitehall appear relatively relaxed about giving the Assembly parallel powers within primary legislation to those passed by Ministers in relation to England, the same has not been the case with the Ministry of Agriculture, the Department of Environment, Transport and the Regions or the Department of Trade and Industry. As reported in the last Monitoring report, the then Agriculture Secretary, Christine Gwyther was quoted as saying “The Whitehall machine does not recognise devolution” while Peter Law, the Environment Secretary, referring to the DETR, remarked, “They sometimes seem to feel that devolution is below their radar screens” (*Devolution in Transition*, IWA, May 2000). This last comment was a reference to negotiations over the Local Government Bill and the refusal of officials within the DETR to give the Assembly full powers over local authority activities in Wales. Indeed, the Assembly was losing some existing powers (see also the Section on *Relations with Local Government* below). In a plenary debate in July Peter Law had to tell the Assembly that the Westminster Government would be tabling an amendment to the Bill which would allow the Assembly powers in relation to local authorities in only three areas: air quality, energy

conservation, and waste recycling plans. Other key powers including control of education, Best Value, unitary development and local transport plans, were to remain with the Secretary of State for the Environment and would not be given to the Assembly. In the debate that followed the Liberal Democrat spokesman Peter Black put his finger on what was at stake:

“This is the latest in a long line of such incidents involving the Department of the Environment, Transport and the Regions. These include the genetically modified crops issue and the refusal to go ahead with a passenger transport authority and give us the powers that we want for that. The DETR is now refusing to allow us the discretion we need to introduce the modernisation agenda in local government in Wales as we want to. This is an important principle of devolution. The Assembly has tried to draw up a distinctive agenda, which involves cross-cutting work and partnership and having a Welsh approach to Welsh issues. If we are to do that, we need the powers - even secondary legislation powers - which we are now being denied by the DETR” (Assembly *Record*, 4 July).

Peter Law responded:

“We all agree that the Assembly already exercises powers in relation to Best Value, transport, planning, education and all the areas that should be included in the list. It exercises those powers responsibly and in Wales’ best interests. That is demonstrated regularly in the Local Government and Housing Committee in which you and colleagues from all parties play a part. The First Secretary has pursued this strongly and will continue to do so at the highest level ...” (Assembly *Record*, 4 July).

Meanwhile, on 22 May the Cabinet had discussed a Paper tabled by the First Secretary outlining ways in which the Executive should have an input into Whitehall discussions on future primary legislation. The Minutes record that the Cabinet agreed:

“... it was essential that the Assembly was aware in good time of the bids for legislation that were likely to emerge from Whitehall, so that any Welsh angle could be considered. Cabinet members would write to their opposite numbers in the UK government asking to be kept informed of all policy proposals that were likely to lead to requests for primary legislation” (Cabinet Minutes, 22 May, Assembly website).

At the previous Cabinet meeting, on 8 May, the First Secretary reported that he had discussed with the Secretary of State for Wales the process by which the Assembly could put forward bids for primary legislation. As the minutes state:

“Bids need to be submitted by April each year, so a mechanism needed to be put in place to ensure this deadline was met in 2001 and future years. Officials in the Corporate Planning Unit could provide advice on what legislation might be required, but in making final decisions there was also a need for a strong political input from the Cabinet. The Cabinet agreed that it was preferable to aim to establish the principle of a ‘Welsh slot’ in each year’s legislative programme. Some proposals for legislation were likely to be for enabling

legislation to provide the Assembly with additional powers in specific areas. The Cabinet agreed that each Policy Board should be asked to identify existing areas of legislative deficit, and that these should be considered by the Cabinet at its meeting on 22 May” (Cabinet Minutes, 8 May, Assembly website).

Joint Ministerial Committee

There were two meetings of the Joint Ministerial Committee during the period, both of them connected with health issues. The first, held in London on 5 June, was dubbed an emergency meeting to deal with a raft of problems that had captured the media’s attention, from individual cases of misdiagnosis to more general problems of waiting lists and staff shortages. Outside reaction to the meeting was largely negative, however. The *Western Mail* gave the story its front-page lead with the headline ‘Too much talk and too little action’ quoting the chief officer of the health union Unison, David Galligan:

“The summit seems to be either fairly sterile or fairly secret, and people will draw their own conclusions from this” (*Western Mail*, 6 June).

At the same time it is clear that the summits offer an opportunity to discuss a range of matters alongside what is formally on the agenda. This is made clear in the Cabinet Minutes for 19 June, which record:

“The First Secretary said that in the margins of the Joint Ministerial Committee on Health in Glasgow on 16 June he had been able to speak to the Chief Secretary of the Treasury about Objective 1 funding. He had also extended to the Prime Minister an invitation from the four party leaders to address the Assembly. The Prime Minister had accepted and a date would be arranged. The Cabinet’s view was that the most appropriate time would be in late November or early December” (Cabinet Minutes, 19 June, Assembly website).

Secretary of State for Wales

Interrogated by the Welsh Affairs Select Committee in June the Secretary of State for Wales, Paul Murphy, revealed there had been British Cabinet discussions about subsuming the Welsh, Scottish and Northern Ireland Whitehall Ministries into a single office. The *Western Mail* reported that a senior civil servant had suggested that the Scotland Office’s premises, on the other side of Whitehall from the Wales Office Gwydyr House, had been earmarked as the likely office for what he labelled an Office of the Regions (*Western Mail*, 28 June). However, Paul Murphy told the Committee that he felt it extremely important to maintain his position:

“What the future holds, who knows. But whatever it holds, there will have to be a ministerial presence to look after Welsh interests. I happen to believe that a Cabinet presence is important” *Ibid.*).

In response to a Parliamentary question from former Plaid Cymru leader Dafydd Wigley, it was revealed that the number of people working in Paul Murphy’s Wales Office in London had risen from 27.5 to 42.4 full-time equivalents over the past year. A spokesman for the Office said:

“It’s worth pointing out that a typical parliamentary Bill team consists of a lawyer and four or five policy officials plus administrative support. We’ve had one lawyer and ten policy staff covering three Bills with significant Welsh clauses and at least three more with Welsh relevance” (*Wales on Sunday*, 13 August).

Meanwhile, responding to the hunting with dogs debate in the Assembly (see above) Paul Murphy refused to press for the Assembly to be given the final say in Wales on a ban. At Welsh Questions in the House of Commons at the end of June he told Plaid Cymru’s Ceredigion MP Simon Thomas that he did not see it as his task simply to act as a conduit between the Assembly and Westminster. To which Simon Thomas responded:

“If the Assembly comes to a view I would have thought that one of the main jobs of the Secretary of State is to pass on that view. Otherwise it begs the question what is the point of the Assembly coming to a view?” (*Western Mail*, 29 June).

Assembly’s role in public appointments to UK bodies

In June Finance Secretary Edwina Hart presented a Paper prepared by the Assembly’s Public Appointments Unit to the Cabinet on The Assembly’s Role in Public Appointments to UK Bodies. She said it provided a useful list of organisations whose work impacted on Wales. According to the Cabinet Minutes,

“... she recommended pursuing a more robust line in seeking to ensure the Administration was properly consulted on all those appointments which it regarded as important. There were a considerable number of bodies listed, and the extent of Welsh representation on them varied. There was also variety in the extent to which Whitehall Departments consulted the Assembly on the different appointments. The Cabinet agreed that the list should be further refined so that the bodies were split to correspond with the portfolios of Assembly Secretaries. Assembly Secretaries could then decide on the importance of Welsh representation on the basis of the status and responsibilities of the bodies concerned. The First Secretary could then write to the Minister for the Cabinet Office emphasising the importance of the Assembly Administration being properly consulted on public appointments. Assembly Secretaries could write to their UK government opposite numbers setting out in unambiguous terms what the Administration’s expectations were in relation to individual bodies” (Cabinet Minutes, 19 June, Assembly website).

8. RELATIONS WITH THE EUROPEAN UNION

By Bethan Lewis, BBC Wales Political Unit

A report from the Committee on European Affairs, which met on 8 June, was considered by a plenary meeting of the Assembly on 27 June. The discussion focused on the most effective way for the Assembly to influence EU policies. Among the major points discussed were the need for Assembly Secretaries to attend Council of Ministers' meetings and the fact that secondments to European institutions should be encouraged.

Thus far only Christine Gwyther AM as Assembly Secretary for Agriculture has represented the Assembly in a Council of Ministers meeting and there was a consensus that this practice should be encouraged. An amendment by Nick Bourne, Leader of the Welsh Conservatives, that access for all members of the Assembly to the Wales European Centre should be facilitated was passed.

Liberal Democrat, Mick Bates' also found approval for an amendment proposing that each Subject Committee should undertake a review of the effect of EU legislation within its area. This highlighted a central debate regarding the role of the Committee on European Affairs. It had been envisaged that the Subject Committees would scrutinise relevant European legislation, yet this had not happened to any great degree. Some Members felt that the lack of scrutiny seriously weakened the Assembly awareness of the impact of EU legislation on its responsibilities and stymied its influence on European policy making. The issue of time and resources were raised as particular obstacles to a more thorough scrutiny role. The experience of the Scottish Parliament was used to illustrate the massive demands which monitoring European legislation placed on staff. Plaid Cymru member Phil Williams' conclusion on the Committee after its first year was:

"A promising pupil but must work harder" (Assembly *Record*, 27 June).

The Committee on European Affairs meeting on June 8, the first since March, was chaired by Agriculture Secretary Christine Gwyther in the absence of First Secretary, Rhodri Morgan who was on a visit to New South Wales. The agenda was primarily concerned with issues relating to the working practices of the Assembly in relation to the European Union. Items for consideration included Welsh participation in European Organisations, Influencing European Union Policies, Secondments and a Review of the Work of the European Affairs Committee to date.

The Chair's report summed up recent developments with regard to the Assembly's representation in Europe. With the Assembly having become a member of the Wales European Centre on April 1, a plenary meeting on May 23 agreed nominations to the Wales European Centre Board. The Assembly's three full members were Rhodri Morgan AM (Labour), Ieuan Wyn Jones AM (Plaid Cymru) and Nick Bourne AM (Conservative), the alternate members being Val Feld AM (Labour), Elin Jones AM (Plaid Cymru) and Mick Bates AM (Liberal Democrat). The Head of the Assembly Office in Brussels had now been joined by an Executive Officer. Both officials held

diplomatic status which allowed them full access to the United Kingdom Permanent Representation in Brussels.

In this meeting, the Committee appeared to take a more strategic approach to its work than had previously been the case. This approach probably emerged from the questions raised over the mode of operation of the Committee in previous months. During the discussion on secondments to European institutions it was noted that the Assembly had made a commitment in principle and in budgetary terms to have six secondees a year in Europe by 2003, while secondments to the Assembly Office and to the Wales European Centre would also be encouraged.

Welsh participation in European organisations was also discussed. While membership of the Committee of the Regions and the Congress of Local and Regional Authorities would be maintained, no steps would be taken as yet to join the Assembly of European Regions or the Conference of the Peripheral Maritime Regions. The Welsh Local Government Association had recently withdrawn their membership of these two bodies. It was decided however that Assembly officials would attend some meetings as observers and report back to the Committee.

The Committee's forward work programme addressed some of the concerns expressed regarding the Assembly's scrutiny of European legislation. The Committee would consider forthcoming European policies and the EU Presidency's priorities in two meetings a year and other issues in its other meetings.

On July 25, the National Assembly's Objective 1 Single Programming Document was officially approved by the Commission. This followed the approval of the plans in principle on June 26. The Objective 1 Programme Monitoring Committee met on July 21 to establish arrangements for the Welsh European Funding Office (WEFO) to consider fast-track projects submitted by local and regional partnerships. On August 3, WEFO announced that the first raft of projects had been accepted under the fast track programme. Meanwhile, the Objective 2 and 3 programmes had been considered in plenary meetings at the end of May the Objective 3 Shadow Monitoring Committee met for the first time on June 21.

9. RELATIONS WITH LOCAL GOVERNMENT

By Bethan Lewis, BBC Wales Political Unit

In a statement to a National Assembly plenary session in July, Local Government Secretary Peter Law highlighted further tensions between the Assembly and the Department of the Environment Transport and the Regions. The particular area of contention was Clause 6 of the Local Government Bill which gave the Secretary of State for Wales powers to amend, repeal or revoke statutory requirements on local authorities to produce particular plans. The Welsh Local Government Association and the Assembly's Local Government and Housing committee were in agreement that these powers should be extended to the Assembly. However, in the chamber, Peter Law stated that:

“I did not receive a satisfactory response to our strong representations to the UK government” (*Assembly Record*, 4 July).

A House of Commons amendment proposed to give the assembly Clause 6 powers in relation to air quality action plans, energy conservation reports and waste recycling plans but not over other key areas such as education strategic plans and local transport plans. Stating that he was “disappointed”, Peter Law continued,

“We have been denied secondary legislative powers that we should have. I do not know if that is because of the misguided approach of ministers or civil servants, who have been entrenched in their silos in Whitehall for a long time and still cannot get to grips with devolution” (*Ibid.*).

On 11 July two further issues relating to local government were debated in the Assembly Chamber. An amended motion in the debate on the Local Government Standard Spending Assessment Formula was defeated by the Labour group with some Conservative support. Plaid Cymru challenged the Executive's stance asking if it therefore had no policy on local government spending in view of the motion being defeated. In response, Peter Law pledged to press ahead with consultation on the issue of local government spending.

On the same afternoon the Local Government Partnership Scheme was discussed, reflecting the statutory requirement placed on the Assembly to adopt such a scheme. The Scheme would set out the rules by which the Assembly and local government worked together, establishing arrangements for consultation and ensuring constant dialogue. The Scheme was adopted by the Assembly, having been endorsed by the Partnership Council on 10 July.

In its meeting of 12 July, the Local Government and Housing Committee considered the issue of Policy Agreements between the National Assembly and Local Authorities in Wales. The Welsh Local Government Association had proposed the concept of Policy Agreements between the Assembly and each local authority in Wales in order to identify key objectives and focus on policy outcomes. A draft framework had been drawn up and it was intended that this would then go out to consultation.

The main local issue to be discussed in terms of the Assembly's dealings with local government was the long-standing question over the boundary between the unitary authorities of Denbighshire and Wrexham near the communities of Llangollen and Llantysilio. A consultation period on the issue came to an end on June 30 and on July 12, the Assembly Secretary, Peter Law, announced that he would be directing the Local Government Boundaries Commission to conduct a boundary review. This was despite a Llangollen Town Council referendum in May that resulted in a narrow majority (683 to 664) opposing a boundary review.

10. POLITICAL PARTIES

By John Osmond, IWA

The main party political event of the period was Dafydd Wigley's resignation as Plaid Cymru President and party leader at the end of June, and the subsequent election of Ieuan Wyn Jones as his successor in early August. Although Wigley (57) had been unwell for some time, he had taken three months off from front-line politics at the end of last year because of heart problems, his announcement still came as a shock, both inside and outside the party. Announcing his resignation he explained it was for health reasons:

"I didn't want to follow poor old John Smith and face the fate that he did and therefore I had to take this decision" (*Western Mail*, 1 June).

Nevertheless, throughout the subsequent election campaign there were persistent rumours that loss of support amongst colleagues within the Assembly formed part of the background to his decision. In the weeks leading up to the announcement there was much lobbying within the higher echelons of the party. It emerged that Wigley could rely on the solid support of at least two-thirds of the Assembly Group, while a significant minority felt it was time to make a change to prepare for the forthcoming Westminster general election and the next elections to the Assembly itself in 2003.

Ieuan Wyn Jones (51), the Anglesey AM and MP, was immediately the front-runner, though he was challenged by Helen Mary Jones, AM for Llanelli, and Rhondda-based Jill Evans MEP. He won the powerful backing of Cynog Dafis, AM for Mid and West Wales, Plaid's Director of Policy and an influential figure in the party, and the Presiding Officer, Meirionnydd AM Lord Elis-Thomas. In the event Wyn Jones won a landslide victory with 4,834 of the 6,273 votes cast, a 77 per cent share of the 60 per cent turn-out. Helen Mary Jones came second with 13 per cent (798 votes) and Jill Evans third with 10 per cent (598).

Ieuan Wyn Jones had a head start since he had been acting leader between December 1999 and February 2000, while Dafydd Wigley had been recuperating from a heart operation. As Campaigns Director since he had played a key role in the party's Assembly election success. There were few ideological differences between the candidates, with some differences of emphasis on Plaid's constitutional objectives. All eschewed the word 'independence' - it being regarded as an inaccurate description of what was possible in the context of a rapidly integrating European Union. Ieuan Wyn Jones' formulation seemed to represent the nearest to a consensus in the party, though it still left many in the media mystified as to how it departed from a shorthand description of 'independence':

"I believe that to secure full national status within the European Union would be an accurate description of our aspiration in the modern world. If secured now it would give us the same status as say Ireland or Denmark. In the future much will depend on how the European Union evolves. In any event, we must aspire to whatever status that will best enable Wales to fully develop our

potential as a nation” (Ieuan Wyn Jones, *A New Leader for a New Era*, Leadership Election Statement, July 2000)

In early August Ieuan Wyn Jones recast the shape of the Shadow Cabinet, to take account of his own election and Dafydd Wigley’s retirement to the backbenches (though he takes a place on the Economic Development Committee) for at least a year to give him time to fully recover - he said he would decide later whether he would stand at the 2003 Assembly election . The Shadow Cabinet dispositions shown in Table 2 overleaf.

Table 2
Plaid Cymru’s Shadow Cabinet

| | |
|-------------------------------------|---|
| Leader and Finance | Ieuan Wyn Jones, AM for Anglesey |
| Business Manager | Jocelyn Davies, AM for South East Wales |
| Chief Whip and Rural Development | Elin Jones, AM for Ceredigion |
| Economic Development | Phil Williams, AM for South East Wales |
| Environment, Transport and Planning | Helen Mary Jones AM for Llanelli |
| Health and Social Services | Dai Lloyd, AM for South West Wales |
| Pre-16 Education | Gareth Jones, AM for Conwy |
| Local Government and Housing | Janet Ryder, AM for North Wales |

The main changes here are the promotion of Jocelyn Davies to Business Manager, the post formerly held by Ieuan Wyn Jones himself; Elin Jones to Chief Whip and Rural Development; and Helen Mary Jones to Environment, Transport and Planning. It was noteworthy that Ieuan Wyn Jones made no appointment to the Post-16 Education portfolio, in anticipation that Rhodri Morgan would merge the two education briefs in his expected reshuffle in September. Cynog Dafis and Rhodri Glyn Thomas continue as chairs of the Post-16 Education, and Agriculture and Rural Development Committees.

In addition Ieuan Wyn Jones created three new posts: Deputy Whip and Spokesperson for Small Businesses, Brian Hancock, AM for Islwyn; Spokesperson for Culture, the Welsh Language and Sport, Owen John Thomas, AM for South Wales; and Valleys Spokesperson, Geraint Davies, AM for the Rhondda.

Labour politics during the period was dominated by the personality of the First Secretary Rhodri Morgan and his capacity, as ever, for capturing headlines. This had the paradoxical outcome of securing a continuing popularity with the public at large while engendering murmurs of discontent on the backbenches behind him. As discussed in the following Section, Rhodri Morgan continued to enjoy an extraordinarily high popularity rating in the opinion polls, with 69 per cent saying he was doing a good job as First Secretary in July, compared with only 41 per cent for his predecessor Alun Michael when a similar question was asked in January.

On the other hand as the Summer recess approached there were increased murmurs of discontent at Rhodri Morgan’s style, said to lack focus and decisiveness. A Cabinet reshuffle was expected in July but failed to materialise

prompting some AMs and outside observers to question the desirability of the First Minister continuing to hold on to the Economic Development portfolio alongside his other duties. In May the *Western Mail* ran a front-page splash headlined “Morgan faces murmur of discontent”, with the paper’s Assembly Editor, Clive Betts, quoting unnamed colleagues as criticising him for avoiding making decisions (*Western Mail*, 19 May). His three-month moratorium on a go-ahead for the Richard Rogers debating chamber for the Assembly, to give time for a review, was seen by critics as an example of indecision: “Rhodri, it’s time to grow up” was the headline over a *Western Mail* front page editorial on 26 May. The following month Professor Kevin Morgan, a Labour supporter who headed the Wales for the Assembly campaign in the 1997 referendum, returned to the issue of Morgan’s multi-portfolios. Declaring that the Assembly needed to inject a new sense of urgency into developing its Objective One strategy, he said the surest way would be for Rhodri Morgan to relinquish his Economic Development post:

“No one can possibly hope to do justice to the posts of MP, AM, Economic Development Secretary, Chair of the Objective One Monitoring Committee and First Secretary all at once. Yet at a time when the Objective One programme has been falling behind schedule, Civic Wales is being asked to believe that the two most important economic development posts - the Economic Secretary and Chair of the Monitoring Committee - are part-time jobs” (Kevin Morgan, *The Two Worlds of Objective One*, address to an IWA conference on *Wales, Ireland and the European Union*, Cardiff, 20 June; reprinted in *Agenda*, IWA, Summer 2000).

However, Rhodri Morgan was able to substantially recover his position with the Comprehensive Spending Review announcement by the Chancellor on 18 July. It was generally agreed that Morgan won the media battle with Plaid Cymru and the other Opposition parties over whether sufficient match funding was in place to enable Wales to draw down the EU Structural Funds to which it was entitled over the period 2000-2006.

During this period the fortunes of the Welsh Conservative Party continued to be overshadowed by saga of their former leader, Rod Richard, AM for North Wales. His trial for allegedly causing grievous bodily harm to a woman in London in August 1999 took place at Kingston Crown Court during mid June when he was acquitted . After the result his solicitor said:

“It is his intention to resume his political career with renewed enthusiasm” (*Western Mail* 24 June).

However, he still remained at arms length from the Conservative Group in the Assembly after being expelled last February for failing to follow the party whip. There was also the prospect that he might have to appear before the party’s ethics committee at Conservative Central Office if a complaint were made.

Meanwhile, the Conservative Group in the Assembly was slowly establishing for itself a more coherent Welsh presence. As reported in this issue of the *Assembly Monitor*, on a number of occasions the Group asserted a distinctively Welsh profile, whether it be on the hunting with dogs issue or performance related pay for teachers.

A key challenge for the Group will be how it responds to the forthcoming Review of the Assembly's operation, especially in relation to it creating a more logical basis for its legislative role.

As with the Conservatives the Liberal Democrats were faced with creating a profile by a series of specific interventions seeking cross-party consensus, rather than being able to develop a more broad-based project in ways open to both Labour, which was running the Administration, and Plaid Cymru which was aspiring to do so. Liberal Democrat Leader Mike German managed to seize the initiative on genetically modified crops at the end of May when he led a plenary debate on the issue. The result was a new policy confirming the Assembly's powers under the Environmental Protection Act placing the burden of proof on their potential for causing harm to those wishing to undertake experiments.

In June South Wales West AM Peter Black took advantage of time for a Minority Party debate allocated to the Liberal democrats to propose new secondary legislation extending the categories of homeless people recognised as being in priority need to:

- Homeless people aged 16 to 18
- Care leavers
- Prisoners immediately after release from custody who have no accommodation
- People leaving the armed services without accommodation
- People fleeing from violence and harassment

His motion won cross-party support (*Assembly Record*, 20 June) and the policy has gone out for consultation. In July the party published *Funding for the Future*, a review of the funding of the voluntary sector in Wales, based on a survey of 250 voluntary Group, which will be discussed by the Assembly's Voluntary Sector Partnership Council in October. And Montgomeryshire AM Mick Bates has been chairing a National Assembly Sustainable Energy Group, aimed at promoting sustainable means of energy production.

11 PUBLIC ATTITUDES

By Denis Balsom, Welsh Governance Centre, Cardiff University

No one can doubt the stunning political achievement of the 1997 devolution settlement, yet by the first anniversary of the National Assembly, the fundamental weakness at the heart of Wales's new constitutional arrangements, explored in this *Assembly Monitoring* report, had been exposed. The lack of clarity in the original Government of Wales Act defining what powers the National Assembly actually possesses constitutes a critical, debilitating, flaw. Engineered by Ron Davies, the Act reflected only how far an historically reluctant Labour Party and a cautious electorate were prepared to go, at the time, towards greater political autonomy for Wales. Not only, in Ron's immortal phrase, was devolution "a process and not an event", the Act too, allowed for an evolutionary process rather than defining an absolute. In the ideal conditions of an evangelical, pro-devolutionary Secretary of State, who would metamorphose into a visionary First Secretary, a compliant Labour Government in London and a generally fair political wind, devolution to Wales could grow. Our new political system would both devolve from London and evolve in its own right.

The predicament now exposed in the National Assembly was no better illustrated than in a recent debate when the Conservative Party, sole advocates of a 'No' vote at the referendum, successfully led a demand for a matter reserved to London, namely hunting with dogs, to be devolved to Wales. Rather than taking pleasure from this evidence of the Tories' Damascus-like conversion, however expedient or pragmatic, the motion was opposed by the Labour Party in Wales. In so doing, Labour were making common cause with Nigel Evans MP and Conservative Party Central Office.

The issue of what the National Assembly can, or cannot, do has been further illustrated by the 'Yes we can, No we can't' fiasco on the banning of GM crops. Conflicting legal opinions were not confronted by firm political resolve and the result was that important decisions were obfuscated by bureaucratic complexity. Realistically however, greater political clarity on decision making powers is only likely to be resolved following, firstly, the next General election, and secondly, a stable, constructive, partnership in the Assembly prior to the next Assembly elections in 2003.

The latest opinion poll from HTV Wales, published in July, addressed some of these issues.* The survey showed that a significant proportion of the people of Wales wished to see the Assembly have law making powers. Almost one in four, however, remain unconvinced by the constitutional reform and would wish to see the Assembly abolished. Of the 43% of those wanted law-making powers, support comes from all parties (see Table 3). Whilst one might expect Plaid Cymru supporters to advocate such an enhancement, nearly a third of Conservative supporters share a similar ambition.

* NOP interviewed a sample of 1000 representative of the Welsh electorate by telephone between June 29 – July 4 2000.

Table 3

The National Assembly is one year old. Which of these alternative views comes closest to your own opinion? (All figures are percentages)

| The Assembly should continue with its present range of powers and responsibilities | | | | | |
|---|-----|-----|-----|---------|-------|
| | All | Con | Lab | Lib Dem | Plaid |
| | 28 | 28 | 34 | 18 | 31 |

Table 3 continued

| The Assembly should have law making powers | | | | | |
|---|-----|-----|-----|---------|-------|
| | All | Con | Lab | Lib Dem | Plaid |
| | 43 | 31 | 47 | 56 | 59 |

| The Assembly has failed and should be disbanded | | | | | |
|--|-----|-----|-----|---------|-------|
| | All | Con | Lab | Lib Dem | Plaid |
| | 23 | 39 | 14 | 19 | 8 |

| Don't know / not sure | | | | | |
|------------------------------|-----|-----|-----|---------|-------|
| | All | Con | Lab | Lib Dem | Plaid |
| | 6 | 2 | 5 | 7 | 2 |

The earlier HTV Wales poll in February recorded the huge expectation invested by the public in Rhodri Morgan as he assumed the First Secretaryship. The latest poll confirms his personal standing, with fully 69 per cent of the electorate believing him to be doing a good job, a rating that towers above that of his predecessor, Alun Michael, shortly before he left office.

Table 4

Overall, how good a job do you think Rhodri Morgan is doing as First Secretary? Would you say...

| | Rhodri Morgan | Alun Michael |
|------------|---------------|--------------|
| | July 2000 | January 2000 |
| Good | 69 | 41 |
| Poor | 16 | 36 |
| Don't know | 15 | 23 |

Rhodri Morgan's personal popularity however, has failed to fully restore his party's standing in the polls. Asked how they would vote in an Assembly election, 40 per

cent of voters in Wales said Labour, compared with 34 per cent supporting Plaid Cymru. Both of these parties are now showing a higher share of the vote than they achieved in the actual Assembly elections last May. It is the continued evidence that Plaid Cymru retain the likely support of over a third of voters in any devolved election, contrasted with its still modest support for any Westminster election, that remains the most significant consequence of devolution for Welsh politics.

Table 5

How would you vote if an election for the National Assembly for Wales were held tomorrow?

| | July 2000 | May 2000 | March 2000 | January 2000 | Assembly Election |
|--------------|------------------|----------|------------|--------------|--------------------------|
| Conservative | 15 | 14 | 14 | 13 | 16 |
| Labour | 40 | 41 | 43 | 45 | 37 |
| Lib Dem | 8 | 10 | 10 | 6 | 13 |
| Plaid Cymru | 34 | 32 | 31 | 33 | 30 |
| Other party | 3 | 3 | 2 | 3 | 5 |

In the coming months however, it is the impending general election for Westminster that will become the immediate focus of national, British politics. Whilst the political arithmetic of the House of Commons makes it almost impossible for Labour to lose, Mr Blair is still likely to be returned with a reduced majority. In Wales, the poll evidence suggests that the Conservatives will reverse the whitewash of 1997 and secure the return of some MPs to Westminster. It is difficult to predict which seats the Tories might win, but with their support restored to 25% of voters in Wales, some electoral success is assured.

Table 6

How would you vote if a general election for Westminster were held tomorrow?

| | July 2000 | May 2000 | March 2000 | January 2000 | General Election 1997 |
|------------------|------------------|----------|------------|--------------|------------------------------|
| Conservative | 25 | 23 | 20 | 21 | 20 |
| Labour | 51 | 47 | 50 | 56 | 55 |
| Liberal Democrat | 9 | 12 | 12 | 8 | 12 |
| Plaid Cymru | 13 | 15 | 16 | 13 | 10 |
| Other party | 2 | 2 | 2 | 3 | 3 |

Labour will inevitably return the majority of Welsh MPs to Westminster, but is also likely to lose seats. Both the Liberal Democrats and Plaid Cymru will be looking to build upon their successes in the Assembly elections to elect MPs to Parliament. Liberal Democrat ambitions in Cardiff Central will be high, but will probably need the tactical support from any resuscitated Conservatives to overturn Jon Owen Jones's hold on the seat. Similarly, Plaid Cymru will be hoping to maintain their bridgehead in the Valleys, but to do so will require the conversion of real Labour voters, rather than reliance on Tory tactical support. The surprise adoption of Chris Bryant as Labour candidate in Rhondda (an outsider who was revealed to have been a member of the Conservatives in his student days), and the unsurprising selection of Wayne David (a former MEP who lost the Rhondda to Plaid Cymru in the first

Assembly elections) in Caerphilly, offer Plaid Cymru two such opportunities for an upset, but both will require an intense campaigning effort. Plaid Cymru will also fight the general election under a new Leader, Ieuan Wyn Jones, who will have had little opportunity to secure the respect and widespread recognition, in all parts of Wales, accorded to Dafydd Wigley.

The run of HTV Wales polls since January demonstrates the relatively slow and limited changes that have occurred in public opinion over the course of the first year of the Assembly, even though the tenor of day-to-day media coverage may have suggested considerably more political volatility. Thus whilst Labour are unlikely to repeat their landslide victory of 1997, neither will Plaid Cymru revert to the single figure support achieved at the last general election. For the Assembly, public opinion in Wales appears ready to support a more pro-active stance and, in Rhodri Morgan, may have found an appropriate, popular leader. The electorate's patience however, is not infinite and an effective way of working within, and if necessary, going beyond, the strictures of the Government of Wales Act 1998 must surely be found.

12. PRESS AND MEDIA

By Nia Richardson, IWA

The outstanding National Assembly media event of the period was an angry confrontation on BBC 2's *Newsnight* in August between the First Secretary Rhodri Morgan and presenter Jeremy Vine. It followed a tendentious short film examining the Assembly's progress in its first year that was introduced by Vine in the following terms:

“Don't switch off, there is no easy way to say this. We're about to discuss the Welsh Assembly” (*Newsnight*, 12 August BBC2)

The comment angered Rhodri Morgan, sitting in the Cardiff studio. The ensuing seven minute video made him angrier still. As he put it, in a newspaper article some days later, under a headline *Why I Blew My Top on Telly*, it was

“... full of stereotypes like the Gorsedd of Bards walking along and Llew Smith at the Nye Bevan stones above Tredegar. Their choice of politicians to interview was odd, with two die-hard anti-devolutionists like Llew and Helen Mary Jones, who favours independence. People in England would have seen two people, both of whom don't seem happy about devolution. The report implied that most people are fed up with the Welsh Assembly. In fact, as the recent HTV poll showed, the attitude to the Assembly is quite positive. If anything, a lot of people think it should have more powers. Not only was the *Newsnight* piece a stitch-up, but it was badly stitched ...” (*Wales on Sunday*, 13 August).

Although a BBC spokesman claimed the item “was within the programme's usual humorous style” (*Ibid.*) it provoked an unusually large response, not just in Wales but amongst viewers in England as well. The Welsh Labour Party's headquarters in Cardiff and Morgan's office in the National Assembly were inundated with faxes, emails and calls from people annoyed at what they regarded as an over-patronising tone. One of Morgan's researchers Annabelle Harle remarked,

“Because its August and the silly season, they think its OK to put Rhodri Morgan in a broom cupboard and have open season on the Welsh” (*Western Mail*, 9 August).

The Mail's editorial line was also supportive

'To see him sticking up for Wales and the National Assembly ... was an immensely gratifying spectacle. The First Secretary was right to refuse to roll over and let less-than-objective criticism, presented with unnecessary but all too customary arrogance pass unchecked’(*Ibid.*).

A more positive note, was provided by reportage of the successful action by the NUT in the High Court against the Secretary for Education and Employment on the legality of his issuing regulations for performance related pay for teachers. The judgement

against the DfEE received a rapturous welcome from the Western Mail. “Now we know Assembly has teeth” its editorial proclaimed, adding that the outcome was

“ ... a glimmer of hope...it proves conclusively once and for all at least in the eyes of the law that our fledgling government has more teeth than anyone might have dared imagine or hope” (*Western Mail* 15 July).

The Assembly Chamber debate provided another opportunity for the newspaper to strike a blow for devolution. A month before the vote the it ran a front-page comment urging the First Secretary to quit dithering and proceed with the new building.

“It is not a choice merely between one option and another. It is a choice between an option that will point the way forward for devolution and an option that will stall it”(*Western Mail* , 26 May).

When Dafydd Wigley announced his intention to stand down as Plaid Cymru’s President in June there followed heavy coverage of the ensuing leadership contest by all the Welsh media. The amount of coverage was all the more remarkable given that there was no real ‘story’. That is to say, there was little doubt from the start that Ieuan Wyn Jones would win overwhelmingly, and there few ideological differences between the candidates.

What might have been the real story behind the event, the precise circumstances in which Wigley resigned, failed to be investigated. The Western Mail was reduced to reporting anonymous allegations that Ieuan Wyn Jones had “plotted to bring down Dafydd Wigley” by using his position as business manager to build up a power base for himself (8 June). But little of substance was found to back up such claims by any of the press or media.

The Comprehensive Spending Review announcement in July again failed to prompt much analysis of the extent to which, on this issue the match funding question, which in February had brought down Alun Michael as First Secretary, had been resolved. The *Welsh Mirror* was characteristically forthright with a front page covered with photos of the three Opposition leaders captioned

'Stop Your Whinging" (Welsh Mirror, 19July).

The *Western Mail's* message to Wales' politicians was;

'Rather than playing the numbers game, our politicians now need to focus on ensuring that the Objective One programme is a success.' (*Western Mail*,19 July)

Health issues continued to receive more consistent media attention than any other issue, in particular the constant problem of Welsh waiting lists which compared badly with those in England. The Western Mail adopted a campaigning editorial stance with headlines such as,

“Our second class service”(18 May)

and

'Why waiting won't get better' (25 May)

followed by

'More action and less talking.' (9 June).

Conservative AM Rod Richards received plenty of media attention in Wales and London during the period. Despite being acquitted of grievous bodily harm whilst on a night out in London in August 1999, headlines such as 'Ex-Tory Minister punched Woman' (*Times*, 20 June) illustrated how far he had to go to rehabilitate himself. He also survived an attempt by Whitbread brewers to declare him bankrupt, declaring to the media, "Whitbread have been bullying me for years but today the brewery boys got a bloody nose" (*Western Mail* 4 August). However, Rod Richards met his problems head on so far as the press and media were concerned. On 7 August the BBC's Good Morning Wales ran a lengthy interview on his hopes and prospects for rebuilding his political career, while on 18 August the *Western Mail* ran a half-page interview which he emphasised that, despite the court cases, he was determined to 'rebuild'.

The Administration's own problems with media coverage were demonstrated by the 3 July issue of the *Western Mail*. The previous day Health Secretary Jane Hutt had launched a major statement on *A Healthier Future for Wales*, with an upbeat message on the Assembly's achievements and promising a refocusing of health priorities. However, this was relegated to an inside page, while the front-page splash was given over to "NHS blunders bill trebles in three years". The paper inevitably concluded that a story compensation claims by victims of medical malpractice, estimated to be costing the Welsh NHS more than £200m a year (treble the bill of three years previously) was more interesting than future plans, however ambitious.

At the July 3 Cabinet Meeting, Michael Brooke, Director of the Assembly's Communications Directorate presented a paper on *Developing a Strategic Communication Policy*. The Cabinet minutes record the following points made in discussion:

- The news environment faced by the Assembly was far more complex than that faced by the old Welsh Office. It was more difficult for the Administration to get its message across than it had been for the Secretary of State and his junior Ministers.
- It was important to analyse who the audience was for the material issued by the Press Office. Once this had been done the Press Office should adopt a pro-active approach for communicating what the Assembly was doing in different policy areas. For example, the audience in some cases might be the technical press for whom a different approach would be needed compared to other more mainstream parts of the media.

- It would be beneficial for Assembly press officers to gain some experience of what it is like to work for a newspaper, or in the broadcast media, perhaps through short job shadowing arrangements.
- Different Cabinet members had different approaches to dealing with the media. If staff numbers allowed it, there would be definite advantages in Cabinet members having their own dedicated Press officers.
- On occasion, high profile stories had developed in a damaging way because of insufficient explanation of the Administration's position, or failure to correct factual inaccuracies about the Assembly's work.