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Abbreviations and Acronyms

ASPB	Assembly Sponsored Public Body
BES	British Election Survey
CWLS	Culture, Welsh Language and Sport
ELLL	Education and Lifelong Learning
GOWB	Government of Wales Bill
NAW	National Assembly for Wales
STV	Single Transferable Vote
WAC	Welsh Affairs Committee
WAG	Welsh Assembly Government
WDA	Welsh Development Agency
WEC	Wales European Centre
WLGA	Welsh Local Government Association
WTB	Wales Tourist Board

Summary and Introduction

This is the first Devolution Monitoring Report to be produced by the team led by the Institute of Welsh Politics at the University of Wales, Aberystwyth. The report covers events in the latter months of 2005: principally from September-December of that year, although some sections refer back to slightly earlier events. The report covers a wide range of developments under several broad headings, with this material being described and analysed by specialists in the respective fields.

Devolution in Wales during the latter part of 2005 was dominated less by the present than by considerations of the future. Specifically, the looming parliamentary process of the complex Government of Wales Bill, which proposes substantial changes to the devolution settlement for Wales, has been the major issue since the publication of the government White Paper, *Better Government for Wales*, in June 2005. Thus, paradoxically, the focus of much attention with regard to devolution in Wales has been, and continues to be, the Westminster parliament.

The Government of Wales Bill that emerged from the parliamentary drafting process in the autumn of 2005 is a highly complex piece of legislation. In significant part this reflects the unwieldy nature of the 1998 Act, to which the Bill provides for a substantial number of changes including, *inter alia*, the legal separation of the National Assembly as an institution from the Assembly Government; the enhancement of the legislative powers of the National Assembly through, most particularly, greater use of framework legislation at Westminster; and changes to the electoral system. Perhaps most extraordinarily of all, the Act seeks to make provision now for a further stage of devolution that will potentially be enacted at some future date: primary law-making powers for the Assembly, subject to approval from a referendum in Wales.

Hearings held by the House of Commons' Welsh Affairs Committee through the autumn of 2005 brought out much of the complexity of the detailed provisions of the Bill on legislative powers. They also indicated that the proposed changes to the electoral arrangements (to prohibit candidates standing in both constituency and list contests) are and are likely to remain controversial: the final committee report saw the government's changes approved by the committee on a straight party-line vote, with all opposition members voting against. Both the legislative provisions of the Bill

and the proposed electoral arrangements appear likely to face some difficulty in the House of Lords.

Politics in the National Assembly in the latter part of 2005 continued to be dominated by the consequences of the Labour Party having lost its majority (after Peter Law resigned from the Labour Party to fight – and win – the Blaenau Gwent seat at the May general election as an independent). Law's willingness to join with the opposition parties in voting against Labour business motions and other proposals saw the freedom of movement of the now-minority Rhodri Morgan government limited significantly. A notable consequence was the delay of the Assembly Government budget for several months, before a cross-party compromise saw it finally win approval in late November. However, while willing to cooperate in wounding Labour, the opposition parties did not, as of end-2005, seem willing to join together in an alternative coalition with the May 2007 Assembly elections looming ever larger.

Richard Wyn Jones and Roger Scully
Aberystwyth, 20 January 2006.

Chronology of Key Events

2005

- 20 September** National Assembly for Wales returns from summer recess
- 23 November** *Wales: A Vibrant Economy (WAVE)* – the Welsh Assembly Government’s strategic framework for economic development launched.
- 29 November** Assembly budget agreed after all-party deal
- 30 November** Wales European Centre closes
- 8 December** Government of Wales Bill published. The Bill seeks to implement the proposals included in the *Better Government for Wales* White Paper
- 13 December** House of Commons Welsh Affairs Committee publishes report on the White Paper *Better Governance for Wales*
- 16 December** EU Council of Ministers agrees financial perspective for 2006-13, including convergence funding for West Wales and the Valleys

2006

- 9 January** Government of Wales Bill receives Second Reading in the House of Commons

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

Six themes emerge from an examination of Welsh public policy in the last months of 2005; the continuing development of: (i). indigenous policy-making capacity and, (ii). the further development of the 'horizontal' (participatory) dimension to policy; (iii). the need for greater emphasis and resources directed at effective policy evaluation; (iv). inter-party politicking associated with budgetary allocations to meet public policy priorities; (v). efforts by the Assembly Government to more effectively integrate policy making and implementation across ministerial portfolios and public agencies; and (vi). Wales-only law-making to underpin (and, potentially, enforce) public policy.

An indication of the continuing development of policy capacity and consultation is evidenced by the fact that at least 96 formal policy consultation exercises were undertaken in 2005.¹ The need for greater emphasis on public policy evaluation was highlighted by the Business Minister, Jane Hutt AM, in the foreword to the Sixth Annual Report on the Assembly Government's actions to promote equality of opportunity. The minister's comments have a wider resonance, one that extends across policy areas. She asserted, 'I want the emphasis of reports to be more outcome-based...much remains to be done in terms of moving towards a clear and sharp focus on...outcomes...[in order that] we build on experience'.²

1.2 Health and Social Services

In respect of policy and resource allocation, at its first November meeting the Health and Social Services Committee considered the Assembly Government's Draft Budget. This is of note because the draft budget set out details of an increase in public expenditure and, because it provides further insight into the Assembly Government's policy priorities. In overall terms, the budget set funding for Health and Social Services at £5,217.6 million for the year 2006-07 (an increase of £394.1 million – or 8.2 per cent – over 2005-06). Within this allocation, funding for Health totalled £4,987.8 million (an increase of 7.4 per cent over 2005-06). It was

¹ This follows 128 in 2004. Source: www.wales.gov.uk/keypubconsultation/content/archive-05/index.htm.

² *Sixth Annual Equality of Opportunity Report: 2004-2005*, (Cardiff: Welsh Assembly Government, 2005).

announced that this additional funding is, in part, to cover the policy priorities of: pay modernisation in NHS Wales (following the Agenda for Change reforms),³ reform of consultants' contracts, and introducing the new Dental Contract (see below). Social Services also saw a funding increase (£50.1 million over 2004-05 levels). This is aimed at: allowing more people, particularly the elderly, to be supported in the community; the completion of the learning disabilities resettlement programme; and the establishment of an Older People's Commissioner for Wales.⁴ Opposition scrutiny of the health and social services budget raised concerns about the potential demand and budget implications of the Assembly Government's policy of prescription charge reduction (and ultimate elimination). In response, a government official confirmed that the reduction in the price of prescriptions and associated demand implications had been factored into the current budget calculations.

In October, the health minister set out further details (and associated legislation) relating to the new Dental Contract.⁵ This is part of a broad-ranging strategy designed to: reform dentists' contractual arrangements with NHS Wales (in particular, promoting a move towards a guaranteed income for dentists – and away from the pre-existing fee-per-item basis of pay); improve patients' access to dental services; and, place more emphasis on preventive healthcare. Notably, these reforms aim to develop the local commissioning of NHS Wales primary-care dental services in order to solve the existing geographical variations in service provision that have been the source of much criticism.⁶ Under the new arrangements, local commissioning will mean that if a dentist leaves a practice, resources for his/her contract for dental services will revert to the Local Health Board. Thus, the level of resources for NHS Wales dentistry at a local level should remain constant and not be affected by the decision of an individual dentist to move away from an area (as happens at present). Overall, the minister asserted that these changes 'are designed to place dentistry more firmly in the mainstream of the NHS'. Opposition concerns in respect of these reforms included the need for Local Health Boards to address the dental service needs of children in a fair and equitable manner.⁷

³ Agenda for Change is a new pay and reform package that will ensure that people who work in the NHS are paid on the basis of equal pay for work of equal value. For further details see: www.wales.nhs.uk/sites3/home.cfm?OrgID=433.

⁴ At the time of writing the Commissioner for Older People (Wales) Bill had returned to the House of Commons following Report Stage in the House of Lords on 9 November 2005.

⁵ See: 2006 No. (W.) National Health Service, Wales, The National Health Service (General Dental Services Contracts), (Wales) Regulations 2006.

⁶ See for instance, Rhodri Clark, 'Drop in patients who have NHS dentist', 15 December 2005, *Western Mail*.

⁷ Health and Social Services Committee transcript, 23 November 2005.

Overall, during recent months, the consultative approach to policy has been a notable feature of the health portfolio.⁸ Examples include: the consultation exercise about proposed child protection arrangements in relation to the Children Act 2004 (s. 28 of the Act places a duty on key persons and bodies in Wales to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children)⁹; the Assembly Government's *Food and Fitness Action Plan for Children and Young People*¹⁰; and, consultation on structural reform in NHS Wales.¹¹

As part of the Assembly Government's policy of preventive healthcare, in November, the Assembly Health and Social Services Committee heard the health minister's proposals for the establishment of an NHS Wales Resource Allocation Expert Group. This continues work that commenced with Professor Peter Townsend's 2001 report to the Assembly, *Targeting Poor Health*.¹² The latter was notable for its recommendation that the Assembly Government use a direct needs model for allocating funding to local health boards (currently, a total of approximately £2.6 billion per annum in Wales). However, to be effective, this allocation model requires frequent updating to ensure it achieves its purpose of allocating resources in direct accordance with local health need. For this reason, and in order to improve present procedures, the Health minister proposed the creation of NHS Wales Resource Allocation. This new body will be comprised of Welsh Assembly Government officials together with NHS Wales and local government stakeholders.¹³

A further significant development is the adoption of an evidence-based approach to health and social services policy in respect of advocacy services for children and young people. Thus, in response to the recommendations of Utting, Waterhouse and Carlile,¹⁴ the Welsh Assembly Government commissioned a study by Cardiff

⁸ Source: Ministerial Update, Health and Social Services Committee, 5 October 2005.

⁹ See www.wales.gov.uk/subchildren/content/section-28-children-act-2004-e.pdf.

¹⁰ Issued for consultation on 1 September, 2005. See: www.cmo.wales.gov.uk/content/work/food-and-fitness/index-e.htm.

¹¹ This consultation exercise related to the document *Connecting the Workforce: The Workforce Challenge for Health* (2005).

¹² *Targeting Poor Health: Professor Townsend's Report of the Welsh Assembly's Steering Group on the Allocation of NHS Resources* (NAFW, 2001) www.wales.nhs.uk/publications/TargetingPoorHealth_ENGLISH.pdf

¹³ Source: Ministerial Update, Health and Social Services Committee, 23 November 2005.

¹⁴ *Lost in Care: Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974*, (Department of Health, 2000). Popularly known as the Waterhouse Report.

University. In its report, the latter revealed that advocacy services for children and young people across Wales are inconsistent and inequitable.¹⁵ The study called for urgent change and recommended a tiered service with an integrated advocacy service to support children in making a complaint in either (or a combination of) education, health or social service settings. In November, the Health Minister announced to the Assembly Health and Social Services Committee that consultations on the Study's proposals will commence in early 2006.

1.3 Economic Development and Transport

Data reported to the Assembly Economic Development Committee in November provide a useful context to recent policy developments.¹⁶ Contemporary gross employment flows for Wales show high levels of both job creation and loss. Statistical analyses presented to the committee revealed that 'over the last few years around 2,300 jobs have been lost each week in Wales with about 2,700 created'. Furthermore, employment figures for the year to June 2005 show that there were 304,000 people employed in the public sector in Wales. This represents a reduction of 2,000 (or 0.5 per cent) on the previous year but an increase of 16,000 (or 5.9 per cent) over 1999 levels. Strikingly, these figures confirm that Wales has seen the smallest percentage increase in the level of public sector employment since 1999 compared to other UK countries and English regions'.¹⁷

Jointly launched on 23 November 2005 by Andrew Davies, Minister for Economic Development and Transport, and Jane Davidson, Minister for Education and Lifelong Learning, *Wales: A Vibrant Economy* (WAVE) is the Welsh Assembly Government's latest strategic framework for economic development. According to the Welsh Assembly Government it sets out how policy 'will continue to develop a vibrant Welsh economy capable of delivering strong and sustainable economic growth by providing opportunities for everyone in Wales'.¹⁸ The policy document asserts that 'devolution has enabled the Assembly Government to have more influence over the economic environment in Wales and offer more tailored support to businesses than ever

¹⁵ Study of Advocacy services for Children and Young People in Wales by Cardiff University (July 2005) see www.wales.gov.uk/subchildren/toc-e.htm. See also WAG (2003) *National Standards for the Provision of Children's Advocacy Services*, ISBN 0 7504 3078 8

¹⁶ Published on the Assembly website on 8 November 2005. See www.wales.gov.uk Papers of the Economic Development Committee 16 November 2006, EDT(2) 15-05 Paper 1: Minister's Report (pdf, 180KB)

¹⁷ Source: Papers of Assembly Economic Development and Transport Committee, Minister's Report, 16 November 2005.

¹⁸ WAG Press Release: 23 November 2005.

before, backed by record investment in economic development and transport of over £1 billion per year.¹⁹ WAVE purports to build on earlier policy statements. Its key function appears to be to coordinate a number of policy areas in relation to economic development including: 'the social justice, environmental, better health, community, language and learning agendas, both at an all-Wales level and regionally, via the *Wales Spatial Plan* (see 'Local Government and Public Services' below).²⁰ One of the stated aims of the new policy is: 'the need to ensure that programmes and policies support Sustainable Development. This is achieved by integrating consideration of the social and environmental impacts of policies with traditional economic analysis, and pursuing approaches that play to the strengths of the environment, culture, language and people of Wales'.²¹ Equality is a further, if less prominent, aspect of the document. It refers to the need to: 'increas[e] the business stock, through encouraging under-represented social groups to start a business (for example, women and ethnic minorities).²² The publication of WAVE marks the start of a formal consultation process with stakeholders across Wales. It is intended that the views expressed during the consultation period will help to shape the economic development agenda for the Assembly Government after the mergers with the WDA, WTB and ELWa.²³

In respect of the Assembly Government's role in overseeing the expenditure of European Objective One structural funds, as at 31 October 2005, the Objective 1 Programme had committed £1.21 billion of grant aid to 1,581 projects, representing a total project investment of over £2.86 billion. Some 92 per cent of the original value of the Programme has now been committed. At its 16 November meeting, the Assembly Economic Development and Transport Committee heard that, to date, this funding had led to the creation of 49,900 gross new jobs and, furthermore, that 'the safeguarding of some 63,000 gross jobs can be associated with projects match funded by structural funds'.²⁴ When these figures were reported, opposition parties raised a number of concerns with the Minister (and officials from the Wales European Funding Office, an executive agency of the Assembly Government) including:

¹⁹ WAVE, p. 1.

²⁰ WAVE, p.9. *People, Places, Futures – The Wales Spatial Plan* (Cardiff: Welsh Assembly Government, 2004) available at: www.wales.gov.uk/themesspatialplan/content/spatial-plan-e.htm.

²¹ WAVE, p.9-10.

²² WAVE, p.52.

²³ As set out in the policy document *Making the Connections: Delivering Better Services for Wales* (Cardiff: Welsh Assembly Government, 2004). At:

www.wales.gov.uk/themespublicservicereform/content/Making_Connection_Eng.pdf.

²⁴ Source: Papers of the Assembly Economic Development and Transport Committee, 16 November 2005, European Structural Funds 2000–2006: Quarterly Report.

problems with some of the accounts from local schemes and, major disparities between the amounts of Structural Fund money committed to projects as opposed to the actual spend.²⁵

1.4 Education and Lifelong Learning

A package of policy measures to tackle school bullying was outlined in the autumn. A prominent example was 'Respecting Others Week'. Launched on 10 October, its aim was to address issues surrounding bullying and to publicise the work that schools are already undertaking to tackle bullying. A further objective was to raise awareness of other policy initiatives including: the Assembly Government's *Summary Report of the Assessment of School Anti-bullying Policies*²⁶ and emerging findings from the ESTYN²⁷ study on good practice in schools; the launch of the Welsh Anti-Bullying Network (that held its first meeting on 17 October, 2005); and, the development of *Information for Children and Young People*²⁸ on what they should do if they are being bullied (including who they can turn to and how they may help others who are being bullied).²⁹

Also in October, the Education Minister announced to the Assembly Education and Lifelong Learning (ELLL) Committee that the Welsh Baccalaureate Qualification (WBQ) will be evaluated 'to ensure that we have the best possible framework of study to offer to our students'. Appointed by the Welsh Joint Education Committee, the University of Bath will carry out an internal evaluation of the WBQ (relating to the period from the initial preparatory year for the WBQ that commenced in September 2002 until the end of the WBQ pilot in 2007).³⁰

Extensive law-making is a notable aspect of the Assembly Government's education policy in the latter part of 2005; no fewer than 58 Wales-only laws featured in the list of education-related statutory instruments presented to the Education and Lifelong Learning Committee at its October meeting alone. These varied in focus, and included legislation on: student tuition fees; the *Teacher Training Incentive Scheme*,

²⁵ Raised by Janet Davies AM and Kirsty Williams AM, respectively. Source: The Economic Development and Transport Committee, Transcript, Wednesday, 16 November 2005.

²⁶ www.childreninwales.org.uk/policy/index.html.

²⁷ Estyn is the State Schools Inspectorate in Wales. Website: www.estyn.gov.uk.

²⁸ See www.respectingothers.org.uk.

²⁹ Source: Education and Lifelong Learning committee, October 13, 2005, Minister's Report.

³⁰ Source: Education and Lifelong Learning committee, October 13, 2005, Minister's Report.

and amendments to existing Welsh law so as to include references to the new type of legal relationship created by the Civil Partnership Act (2004).

Inter-party politicking associated with budgetary allocations was also evident in respect of education policy. Following both the Education Minister's presentation to the ELLL Committee in early October – and the Minister for Finance and Local Government's Cabinet Written Statement on the Assembly Government's budget – the ELLL Committee wrote formally to the education minister requesting that, in respect of education funding, she 'take account of and give priority to' the following areas: early years education; small schools funding; address the funding gap between the higher education sectors in Wales and England; funding for post-16/further education; general funding for schools, in relation to the local government revenue settlement, transition between primary and secondary school; and continued support for the free school breakfast initiative.

1.5 Culture, Welsh Language and Sport

Two years after it was originally proposed in the Assembly Government's Welsh language policy document *laith Pawb*,³¹ Fforwm laith, met for the first time in October. Described by critics as 'no more than a talking shop',³² the latter is officially designated as a network of 'organisations with an interest in language planning and the delivery of services ... [to] allow for greater co-ordination between their activities and for a more regular opportunity for them to share ideas and best practice'.³³ Held in Porthmadog, the Fforwm's first meeting attracted around 200 people and debated the implementation of the Assembly Government's language policy. Further focus was placed on the Welsh language at the meeting of the Assembly Culture Committee on 7 December 2005 when the Welsh Language Board presented a review of its work. The committee was told that: £2.6 million in grants had been allocated to promote Welsh language education over the previous 18 months; and that continuing work (including a policy evaluation) is being undertaken on the *Twf* initiative (that seeks to encourage parents to speak Welsh with their children). The Board also reported that it had completed a Welsh language strategy for the private sector; and that in respect of the public sector, 66 new Welsh Language Schemes

³¹ Welsh Assembly Government, *laith Pawb: A National Action Plan for a Bilingual Wales* (Cardiff: Welsh Assembly Government, 2003). *laith Pawb* translates as 'Everybody's Language'.

³² Steffan Cravos, 'It's time to listen, Mr Pugh', *Western Mail*, October 29, 2005.

³³ Welsh Assembly Government, *laith Pawb*, p.19.

had been agreed.³⁴ In addition, Committee members were told that the Board had been 'restructured to place more emphasis on the monitoring of Language Schemes' and, that three inquiries into compliance with Language Schemes were completed in the preceding 18 months.

Following opposition parties' criticism of the Assembly Government's intention to merge the Welsh Language Board with the Assembly Government by 1 April 2007, the Board itself reported that it had recently published its *Strategic Plan: The Future of Welsh*.³⁵ The self-stated aim of the Plan is to secure continuity for the Board's work and mission after it has been incorporated in the Assembly Government. The Plan identifies the following eleven priority areas for future action by the Assembly Government: language transmission in the family; supporting learning of Welsh for years 0-7; bilingual education and training; use of Welsh by young people; promoting and facilitating use of Welsh in the community; Welsh and the private sector; Welsh language schemes and developing and providing services in the Welsh language; normalising bilingualism; promoting language rights as part of the equal opportunities field; information technology and corpus planning,³⁶ and, developing research and data.³⁷

In September, the Assembly Government reaffirmed its intention to establish an independent regulatory office ('dyfarnydd') to undertake appeal functions relating to Welsh language schemes made under the Welsh Language Act (1993). Assembly Government Minister Alan Pugh AM stated: 'we shall create the office of the dyfarnydd on a statutory basis as soon as possible after the Welsh Language Board is merged with the Assembly Government. We are considering the most effective method of doing that'.³⁸ Also in September, the Education Minister updated the meeting of the Assembly Education and Lifelong Learning Committee with details of a series of proposed initiatives in relation to what she called 'a challenging target [7 per cent] for increasing the proportion of students undertaking studies at higher

³⁴ In accordance with the Welsh Language Act (1993).

³⁵ Welsh Language Board, *Strategic Plan: The Future of Welsh* (August 2005). At: www.bwrdd-yr-iaith.org.uk/en/cynnwys.php?cID=6&pID=109&nID=1428.

³⁶ According to the Strategic Plan, 'corpus planning' is: 'amongst other things, translation, the standardisation of terms and place names and developing a form of Welsh which is popular, useful and used'.

³⁷ See: www.bwrdd-yr-iaith.org.uk.

³⁸ Papers of the Culture, Welsh Language and Sport Committee, 29 September 2005, 'ASPB Reform and the Culture Board.'

education (HE) through the medium of Welsh'.³⁹ The minister proposed: the creation of a Welsh Medium Development Centre; 'taking forward the options appraisal of different models to ensure the long term sustainability of Welsh medium provision in higher education'; and, a study by the Higher Education Funding Council for Wales (HEFCW) into the costs associated with Welsh Medium Provision in the HE sector including the effects of critical mass and economies of scale on such costs. According to the minister, these announcements commit almost £1m over 3 years.⁴⁰ Responding to earlier questions by opposition parties, at the 30 November meeting of Assembly Education and Lifelong Learning Committee, the Education Minister revealed that whilst HEFCW does not record data on the number of courses taught through the medium of Welsh, presently there are 65 subjects taught either wholly or partially through the medium of Welsh (excluding Welsh and Welsh literature) and 3,730 Postgraduates and Undergraduates enrolled within those subject areas for academic year 2003/04.⁴¹

At the September meeting of the Culture, Welsh Language and Sport (CWLS) Committee, the Culture minister gave further details of government reform of the arts. The minister advised the Committee that, following the creation of the Culture Board for Wales in July 2005, work was progressing to establish a new Culture Department of the Welsh Assembly Government. According to officials, the latter brings together the strategy and planning capability in Arts Council Wales and Sports Council Wales and the Assembly Government's staff. It will be accompanied by new arrangements for direct funding of large-scale arts companies with an all-Wales remit. The minister asserted that these developments: 'provide opportunities to develop better and more integrated cultural policies, greater efficiency through shared services and greater synergies with local government support for the cultural sector'.⁴² It was also reported that 'in November 2005 the Board will consider a draft framework for a new culture strategy for Wales. The Board will also consider the timescales for developing the strategy, including consultation'.⁴³

³⁹ 'The proportion of students in Welsh HEIs undertaking some element of their course through the medium of Welsh to increase to 7% by 2010', *Reaching Higher*, The Welsh Assembly Government's (2002) strategic policy for Welsh Higher Education, p. 21.

⁴⁰ Source: Papers of the Assembly Education and Lifelong Learning Committee, 21 September 2005

⁴¹ Papers of the Assembly Education and Lifelong Learning Committee, Minister's Report, 30.11.2005

⁴² Papers of the Culture, Welsh Language and Sport Committee, 29.09.2005, 'ASPB Reform and the Culture Board.'

⁴³ Official publication of further details is awaited.

In relation to sport, at its October meeting, the Assembly CWLS Committee announced that it will undertake a review of football in Wales. The purpose of the review will be to address some of the issues set out in the *National Development Strategy for Football (2002-2007)* such as: the fragmented structure of the game; the development of young players; lack of dedicated training facility for Junior National squads; and limited organised competitive opportunities to assist the development of girls' football.

In December, the cross-party Assembly CWLS Committee published its *Policy Review of Dance in Wales*. Based on consultation with a reference group made up of representatives from dance organisations across the country, the review highlighted the need for a national body for dance in education, and better teacher training in dance. It concluded that 'young people presently neither have the opportunity to experience dance, in the fullest sense, nor make the right choices about a possible future career in dance'. In response, the Review also called for the development of a Strategy for Dance in Wales, led by the Arts Council. The Review also stated that: 'a Forum for Dance should be established by the Arts Council of Wales to help develop the Strategy and to keep it and current developments in dance under review'. Other recommendations included: the commissioning of a separate review of dance training and an increase in funding by £1.35million to support the proposed Dance Strategy. The Assembly Government's response to the Review will be published in 2006.⁴⁴

1.6 Social Justice and Regeneration

Minister Edwina Hart told the Assembly Social Justice and Regeneration (SJR) Committee's October meeting that work had begun on implementing the 2005 Assembly Government's Child Poverty Strategy, *A Fair Future for Children*. The aim of the Strategy is to eradicate child poverty by 2020. The minister advised that the implementation plan associated with the Strategy will apply across⁴⁵ Ministerial portfolios and require joint working by Assembly Government departments. The Strategy will be scrutinised by the Social Justice and Regeneration Committee in 2006.⁴⁶ Also in October, this committee received a ministerial update on the *Social Enterprise Strategy for Wales* that was launched in June 2005. Social enterprises are

⁴⁴ Papers of the Culture, Welsh Language and Sport Committee, 17 November 2005, Policy Review: Dance in Wales, Final Report.

⁴⁵ *A Fair Future for Our Children: The Strategy of the Welsh Assembly Government for Tackling Child Poverty* (Welsh Assembly Government, 2005)

⁴⁶ Papers of the Social Justice and Regeneration Committee, Thursday 20 October 2005, Minister's Report.

defined as: 'businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners'.⁴⁷ Examples include: credit unions, housing associations, development trusts, community or social businesses, cooperatives, employee-owned businesses, social entrepreneurs, intermediate labour markets and social firms and other charities and voluntary organisations that derive their income primarily from trading activities. The Committee was informed of a series of measures that had thus far been undertaken to develop the Strategy, including: the establishment of a working group to look at a range of options for financing the social enterprise sector; continuing progress in creating development trusts across Wales; a research study into the relationship between social enterprise and private sector small-to-medium sized enterprises; and the development of a Communications Strategy to better promote the sector.

Opposition concerns were voiced in October following the publication of the *Draft Social Justice and Regeneration Budget*.⁴⁸ Particular criticism was targeted at the housing budget. According to one opposition AM: 'it is still woefully inadequate to deal with the problems that we have'.⁴⁹ Subsequently, at its November meeting, the SJR Committee considered the revised version of the *National Homelessness Strategy for Wales 2006 - 2008*.⁵⁰ Opposition parties broadly welcomed the strategy, which sets out how the Assembly Government will 'work with other public, voluntary and private agencies, and homeless people themselves, to prevent homelessness and alleviate it where it cannot be avoided'.⁵¹ The Homelessness Strategy, which sets out objectives in a three-year action plan, states that: 'services must be planned to connect so that they address these other problems alongside meeting their housing need'. It continues: 'homelessness is very often linked to other aspects of social disadvantage. We need to become much smarter at working jointly across boundaries to intervene to help people address these problems and break the cycle of deprivation'. A welcome aspect of the new policy is its use of specific targets. Examples include: reducing the number of homeless households found to be unintentionally homeless and in priority-need by 20 per cent (from 9,856 in 2004-05);

⁴⁷ Welsh Assembly Government, *Social Enterprise Strategy for Wales* (2005), p.6.

⁴⁸ See www.wales.gov.uk Papers of the Social Justice and Regeneration Committee, October 20, 2005 'Consideration of the Draft Budget'

⁴⁹ Leanne Wood AM, Transcript, 20 October 2005, Assembly Social Justice and Regeneration Committee.

⁵⁰ *National Homeless Strategy for Wales 2006 – 2008* (Welsh Assembly Government, 2005)

⁵¹ 'National Homelessness Strategy for Wales 2006', Papers of the Assembly Social Justice and Regeneration Committee, 16 November, 2005.

reduce the numbers of households in bed and breakfast accommodation by 50 per cent (from 761 in 2004-05); and, reduce the average length of time spent in temporary accommodation by 20 per cent (over current figures).

1.7 Local Government and Public Services

At its 9 November meeting, the Assembly Local Government and Public Services (LGPS) Committee was given a ministerial update on the Assembly Government's *Spatial Plan*. Launched in November 2004, the *Spatial Plan*, according to the Assembly Government, aims to improve: 'interaction of different policies and practice across regional space, and sets the role of places in a wider context...[this approach] goes well beyond 'traditional' land-use planning and sets out a strategic framework to guide future development and policy interventions, whether or not these relate to formal land use planning control'.⁵² The Committee was informed that Ministerial 'Area meetings' were being undertaken in each of the *Spatial Plan* Areas. These were aimed at tackling the strategic issues that go beyond individual Local Authority boundaries/remits. Work is ongoing to produce an agreed set of prioritised actions in each area to help their longer term development.⁵³ In response to the minister's briefing, opposition parties were concerned that they were not receiving sufficient information to fulfil their role of holding government to account. Thus, for Plaid Cymru, Dai Lloyd AM asserted: 'in terms of scrutiny, I want to get to grips, in more detail than we have here, with what is happening with the *Spatial Plan*'. Glyn Davies AM (Welsh Conservatives) echoed this concern. He stated: 'we need to have a good understanding of where the whole spatial planning process is taking us, not in terms of just the *Spatial Plan* itself, but the extent to which it will change the governance of Wales and the relative balance of powers in local government'. In response, the minister said that she was 'open to any ideas' as to the best way of providing Committee members with greater detail on the ongoing implementation of the *Spatial Plan*.⁵⁴

At its 30 November meeting, the LGPS Committee considered a key piece of legislation: 'The Public Services Ombudsman for Wales (Jurisdiction and Transitional Provisions and Savings) Order (2006). This draft Order is notable as one of the pieces of subordinate legislation that is required to implement the Public Services

⁵² *Wales Spatial Plan*, p. 4.

⁵³ Source: Local Government Committee, 9 November 2005, Report by the Minister for Finance, Local Government and Public Services.

⁵⁴ Transcript, Local Government Committee, 9 November 2005.

Ombudsman (Wales) Act (2005) – that will come into effect from 1 April 2006. The new Ombudsman will have powers to investigate – and undertake dispute resolution in respect of – complaints made about public services by members of the public and other interests. Opposition parties, whilst broadly welcoming this development, questioned whether adequate mechanisms were in place to regularly update the list of public bodies covered by the Public Services Ombudsman for Wales.⁵⁵ At the same meeting, the Committee also heard from the minister about the completion of the consultation process associated with local government plan rationalisation. The latter initiative stems from the 2002 policy statement, *Freedom and Local Responsibility in Government*. This committed the Assembly Government to developing a more coherent and streamlined forward-planning system for local authorities. The Committee was informed that the seventy-one consultation responses received – as well as three regional consultation workshops – ‘overwhelmingly supported the concept of plan rationalisation’. Work will now proceed in order to implement the local government plan rationalisation in 2006.⁵⁶

1.8 Equality

In November, the Assembly Government published its 6th *Annual Equality Report* as required under the National Assembly’s unique statutory duty to have due regard to equality opportunity for all persons and respect of the exercise of all Assembly functions.⁵⁷ The Report detailed actions taken to promote equality across ministerial portfolios and Assembly Government Departments. In examining the Report, members of the Assembly’s Standing Committee on Equality of Opportunity highlighted a number of concerns including the need for more effective questioning of ministers. As Lorraine Barrett AM (Welsh Labour) asserted: ‘I do not think that we scrutinise our Ministers that much on the equality aspect of their portfolios’. Further dissatisfaction centred on the over-emphasis placed on policy aims and the comparative dearth of information on the effects or outcomes of earlier Assembly Government policies. For example, Helen Mary Jones (Plaid Cymru) remarked: ‘I still have some concerns...and I will not run through [all the] the examples, Chair, or we will be here all day – about outputs being reported as outcomes. For example, in the education division, as an equality outcome, it says: ‘The Rees review report identified the need for student support measures to be sensitive to the needs of

⁵⁵ Local Government Committee, Transcript, 30 November 2005.

⁵⁶ Papers of the Local Government Committee, *Local government plan rationalisation – consideration of consultation responses*, 30 November 2005.

⁵⁷ Government of Wales Act (1998), s.120.

underrepresented and disadvantaged groups. The report highlighted the potentially difficult situation for Muslim students whose religion forbids them to take out loans which bear interest'. *That is not an outcome*⁵⁸. This point was echoed by Mark Isherwood AM (Welsh Conservatives), who stated: 'this is a fairly defensive report...it seems that anything that fits an objective has been put down rather than there being a plan that works...[that includes] action[s] taken, outcome[s] using measurable, achievable, realistic and timed action points'.⁵⁹

In 2004, the findings of a systematic, cross-party review were highly critical of the Assembly Government and its policy officials. It concluded that: 'currently the Assembly does not have an overall equality strategy, and in our view there is no doubt that this is hampering the Assembly's efforts in relation to mainstreaming equality'. It continued, '...there is a lot of positive activity is going on but with little strategic direction...there [is] a high level of variation across the organisation'.⁶⁰ In order to address this, a number of initiatives have been implemented including, in November 2005, the commissioning of a study of the manner and effectiveness of the Assembly Government's response to its statutory duty to promote equality in the preparation of public policy.

In respect of specific policy initiatives, in October, the Assembly Government updated the Assembly Equality Committee on progress in relation to its *Mainstreaming Equality in Public Appointments Action Plan*.⁶¹ The latter relates to those holding appointments on a range of Assembly Sponsored Public Bodies (and other public bodies in Wales). Such appointments continue to be made on merit. However, the Assembly Government has implemented a number of initiatives to increase representation from currently under-represented groups (and to increase the number of good quality applications coming forward from those groups). The Equality Committee was advised of the latest such measure, namely a pilot scheme designed 'to give people from minority ethnic groups experience at board level of public bodies and training to help them develop the necessary skills to be a successful board member'.⁶² However, despite such initiatives, modest progress has thus far been made towards achieving a more diverse profile of public appointees. The Committee

⁵⁸ National Assembly for Wales, Sixth Annual Equality Report, 2005, p11.

⁵⁹ Transcript, The Committee on Equality of Opportunity, Thursday, 24 November 2005.

⁶⁰ National Assembly for Wales Standing Committee on Equality of Opportunity, *Mainstreaming Review*, p. 31-2.

⁶¹ 12 October 2005, Papers of the Assembly Equality Committee, Update on the Assembly's Public Appointments Process.

⁶² The scheme is initially to be piloted by the Welsh Industrial Development Advisory Board.

heard that of the appointments (and re-appointments) to public bodies made in 2004-05 (180 in total): 37 per cent were women, 0.5 per cent were classified as 'ethnic minority', and 11 per cent as disabled people. In scrutinising the progress made by the Assembly Government in relation to its *Public Appointments Action Plan*, opposition parties raised concerns about the rate of progress – and the present lack of monitoring of other under-represented groups in relation to public appointments – including groups (in part) defined by age, religion and sexual orientation.⁶³

1.9 Environment, Planning and the Countryside.

At its October meeting, the Assembly Environment, Planning and the Countryside (EPC) Committee received a ministerial update on reducing greenhouse gas emissions in Wales. This was one of the aims contained in the Welsh Assembly Government *Sustainable Development Action Plan 2004-07*. The latter document stated: 'we also need to be aware of how we are performing in these significant areas...while total greenhouse gas emissions have started to decrease, carbon dioxide emissions are not yet below the baseline set in 1990, and further action is needed to establish a steady downward trend'.⁶⁴ In his update, the minister told Committee members: 'a report detailing regional Greenhouse Gas Inventories for 1990-2003 was published last month. It showed that greenhouse gas emissions in Wales were an estimated 3.6 per cent lower in 2003 than in 1990. This contrasts with the sharp decrease of 8.6 per cent reported last year, for the period 1990-2002, which was due to the closure of Llanwern steel works and the unfortunate accident at Corus, Port Talbot, which led to the temporary closure of one of the furnaces. Together with efforts being made in England, Scotland and Northern Ireland the UK is well on course to meeting its Kyoto Protocol target of a 12.5 per cent reduction in greenhouse gas emissions by 2008-12. Latest figures show that UK emissions were already 13.4 per cent below their 1990 levels in 2003'.⁶⁵ Whilst acknowledging that the minister does not have responsibility for some of the policy areas that are likely to have the biggest impact on sustainable development, opposition concerns were nevertheless forthright. Helen Mary Jones AM asserted: 'there are some issues to be really concerned about...one of those is carbon dioxide emissions. We are not succeeding in getting those down. They were higher in Wales – not by much; by 0.2 per cent – in 2003 when compared with the base year of 1990. I am a bit concerned

⁶³ Papers of the Assembly Equality Committee, 12 October 2005, Transcript.

⁶⁴ Welsh Assembly Government, *Sustainable Development Action Plan 2004-07* (2004), p. 5.

⁶⁵ Environment, Planning And Countryside Committee, 5 October 2005, Report From The Minister.

by the tone of the Minister's report, because it suggests complacency: that is a bit worrying'.⁶⁶

In respect of emergency planning policy, the minister advised a November meeting of the Assembly EPC Committee that a *Welsh Exotic Animal Disease Contingency Plan*⁶⁷ had been prepared. The Plan contains comprehensive arrangements for an outbreak of Avian Influenza and other diseases. Assembly Government policy in this area sets out measures for operational delivery of disease control measures in Wales, including detailed veterinary instructions and the 'additional structures the Assembly would put in place, how they would work, the decision making process, the roles and responsibilities and the lines of communication'. To support the development of this policy, a consultation exercise targeted at operational partners and stakeholders concluded in late December. The final Plan will be published in 2006.

In November, the minister also reported to the EPC Committee on the outcome of the recent public consultation exercise on the *Draft Policy Statement for the National Park Authorities*.⁶⁸ This work follows the independent review of the Welsh National Park Authorities commissioned by the Assembly Government in 2003. The final report of the review and associated Action Plan recommended that the Assembly Government should issue an updated policy statement to the Park Authorities setting out a clear vision for the future of the parks in Wales and a medium-term strategic agenda for the Park Authorities. The draft policy statement was issued for public consultation between August and October 2005. Over 20 responses were received from a range of organisations including the Park Authorities themselves, the Farmers Union for Wales, and, the Campaign for the Protection of Rural Wales. The contents of the draft policy statement were generally welcomed by the respondents, though a number of suggestions for expanding the content of the statement were made, including: that the Assembly Government should include a commitment to reflect the importance of the Welsh national parks in relevant strategies/policy documents; there should be stronger references to the Community Strategies and the scope for further joint working between the Park Authorities and local government on a range of community issues; and, there should be expanded reference to the possible scope

⁶⁶ Environment, Planning and Countryside Committee, 5 October 2005, Transcript.

⁶⁷ See www.wales.gov.uk 3 November, 2005, Papers of the Environment, Planning and the Countryside Committee, Minister's Report, Item 8.

⁶⁸ See www.wales.gov.uk 23 November, 2005, Papers of the Environment, Planning and the Countryside Committee, Statement on National Parks

for a range of renewable energy projects within the Parks. The minister advised Committee members that the outcome of the consultation is currently being considered by the Assembly Government and appropriate revision/expansion of the draft policy statement is being arranged.⁶⁹ Opposition scrutiny of the *Draft Policy Statement* raised concerns about the development control role of National Park Authorities in the future – and the need to introduce appropriate forms of renewable energy projects in national parks.⁷⁰

1.10 Conclusion

Earlier analysis has highlighted the weakness of indigenous policy-making capacity during the period of administrative devolution under the Welsh Office (1964-99). For example, Bogdanor concluded that there were: ‘very few instances where the Welsh Secretary...challenged an important [British government] policy presumption or worked out a major policy from basic principles dictated by specifically Welsh patterns of need’.⁷¹ Similarly, Rawlings suggested that, ‘the Welsh Office was responsible for...the great proportion of identifiable general government expenditure in Wales. Yet there was limited territorial autonomy. The standard view is of a [government] department tightly constrained by the British constitutional framework, engaged for the most part in the humdrum business of implementing policies decided elsewhere’.⁷² Welsh government policy initiatives in the last quarter of 2005 alone illustrate the transformative effect that elected devolution has had on public policy. The plethora of policies across the range of devolved functions signals the rapid development of indigenous policy-making capacity, one that increasingly involves the use of consultation exercises to foster public and stakeholder participation in the policy process. The growing use of Wales-only law-making to underpin (and, potentially, enforce) public policy is a further feature of the shift from administrative to elected devolution. Whilst the importance of these changes should not be overlooked, key questions remain in relation to the Assembly Government’s policy programme. In particular, it is too early to assess the effectiveness of ongoing attempts to more effectively integrate policy making and implementation across ministerial portfolios and public agencies. Moreover, as acknowledged by ministers,

⁶⁹ Source: Papers of the Assembly Environment, Planning and Countryside Committee, 23 November 2005, Draft policy statement for the National Park Authorities.

⁷⁰ Source: Papers of the Assembly Environment, Planning and Countryside Committee, 23 November 2005, Transcript.

⁷¹ Bogdanor, V., *Devolution in the United Kingdom* (Oxford: Oxford University Press, 2001), p. 160.

⁷² See Rawlings, R., ‘The new model Wales’, *Journal of Law and Society* 25: 4 (1998), 461–509, at p. 466.

there is a need for greater emphasis and resources directed at effective policy evaluation based on measurable outcomes. Notwithstanding these concerns, the evidence of 2005 reveals that public policy in Wales continues to be the subject of rapid change leading to increasing divergence with approaches to social and economic issues found elsewhere in the UK.

2. The Legislative Process

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2.1 Primary Legislation

2.1.1 2005 Acts giving powers to the Assembly

Within the period covered by this issue of the monitoring report there have been no Acts passed giving powers to the Assembly. Since April 2005 only two Acts have been given Royal Assent and each relate to emergencies. This is a consequence of the general election which took place earlier this year. Nonetheless consideration of the 2005 Acts enacted before April 2005 is valuable for this report.

Out of the 22 Acts passed since 1 January 2005, eleven give powers to the National Assembly for Wales but in only five of the Acts are the powers substantial. There was only one Wales-only Act in 2005. Each Act also gives powers to the office of the Secretary of State in relation to Wales.

Acts giving substantial powers to the Assembly enacted in 2005:

- Railways Act 2005 c.14
- Inquires Act 2005
- Clean Neighbourhoods and Environment Act 2005 c.16
- Education Act 2005 c. 18
- Mental Capacity Act 2005 c.9

Wales Only Acts 2005

- Public Services Ombudsman (Wales) Act 2005 c. 10

Other 2005 Acts giving powers to the National Assembly for Wales:

- Disability Discrimination Act 2005
- Income Tax (Trading and Other Income) Act 2005 c. 5
- Constitutional Reform Act 2005 c. 4
- Gambling Act 2005 c. 19
- Serious Organised Crime and Police Act 2005 c. 15

⁷³ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk.

It is interesting to note that out of the eleven Acts which give powers to the Assembly, five Acts fall outside the original list of subject fields contained in Schedule 2 to the Government of Wales Act 1998. These are the Income Tax (Trading and Other Income) Act 2005, the Constitutional Reform Act 2005, the Gambling Act 2005, the Serious Organised Crime and Police Act 2005 and the Disability Discrimination Act 2005.

As they are outside of the scope of the devolved fields, with one exception these Acts do not vest powers directly in the Assembly. They only require the Secretary of State to consult the Assembly in relation to the exercise of his powers for Wales. The exception is the Income Tax (Trading and Other Income) Act 2005 where three powers in the Act are directly exercisable by the Assembly.

2.1.2 Brief summary of the 2005 Acts giving powers to the Assembly

Railways Act 2005⁷⁴

The Railways Act 2005 received Royal Assent on 7 April 2005. The main purpose of this Act is to tackle the long-standing structural problems of the railways. 'The general effect of the Act on the NAW is to extend its rail powers. The Act gives the Assembly a new role in making decisions about franchises that serve Wales.'⁷⁵ The Assembly received most of the powers in Part 4 of the Act, which sets out procedures for operators and public sector funders to follow when they wish to discontinue all passenger services on a line or from a station or close all or part of a network or station. This Part also enables the NAW to secure the provision of substitute bus services where a railway passenger service has been temporarily interrupted or discontinued. There is a definition of 'Wales-only service' and 'Welsh service' in section 57. The Act extends the powers of the NAW to provide assistance to freight operators under schemes to support the development of freight services and facilities in Wales.⁷⁶ Apart from Part 4, most powers in the Act are retained by central government in relation to both England and Wales though several duties are placed on the Secretary of State to consult with the Assembly.

Inquires Act 2005⁷⁷

⁷⁴ www.opsi.gov.uk/acts/acts2005/20050014.htm.

⁷⁵ Paragraph 263 of the explanatory notes. www.opsi.gov.uk/acts/en2005/2005en14.htm.

⁷⁶ Paragraph 266 of the explanatory notes. www.opsi.gov.uk/acts/en2005/2005en14.htm.

⁷⁷ www.opsi.gov.uk/acts/acts2005/20050012.htm.

The Inquiries Act received Royal Assent on 7 April 2005. The Act is intended to provide a comprehensive statutory framework for inquiries set up by Ministers (which includes the Assembly in relation to Wales) to look into matters of public concern. The Inquiries Act is very generous in granting legislative discretion and devolves most of its functions to the Assembly in relation to Assembly established inquiries.⁷⁸

Clean Neighbourhoods and Environment Act 2005⁷⁹

The Clean Neighbourhoods and Environment Act 2005 received Royal Assent on 7 April 2005. The Act refers to the 'appropriate person' and gives almost equal powers to the Assembly in relation to Wales as it does to the Secretary of State in relation to England. The only exception is Part 8 – Architecture and Built Environment which is of primary relevance to England.⁸⁰

Education Act 2005⁸¹

The Education Act received Royal Assent on 7 April 2005. This Act is divided into four substantive Parts. Part 1 (including Schedules 1 to 9) reforms school inspections in England in line with the introduction of a new system of more regular, lighter touch inspections, and, by means of wide framework powers, it gives the National Assembly for Wales the power to introduce similar reforms in the future. It revises the current categorisation for schools causing concern, introducing a new designation of requiring significant improvement, and removes the duty on schools in England to provide an action plan. It aligns the inspection of early years provision with school inspections, and also includes a number of Wales-only provisions: for the inspection of careers services in Wales; for the Assembly to establish an advisory board; and for the Assembly to provide advice on the appointment of the Chief Inspector for Wales. Part 2 (including Schedules 10 to 12) extends the circumstances in which a local education authority must invite proposals for a new or replacement secondary school. Part 3 (including Schedules 13 to 15) broadens the objectives of the Teacher Training Agency so that it may carry out activities in relation to the whole school workforce, not just in relation to teaching.

Part 4 (including Schedules 16 to 18) contains a number of miscellaneous provisions relating to maintained schools, information sharing, and attendance for excluded

⁷⁸ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en12.htm.

⁷⁹ www.opsi.gov.uk/acts/acts2005/20050016.htm.

⁸⁰ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en16.htm.

⁸¹ www.opsi.gov.uk/acts/acts2005/20050018.htm.

pupils at places giving alternative educational provision. In relation to maintained schools, Part 4 provides for schools to adjust their accounting period from financial year to academic year; for the introduction of a guaranteed 3-year budget for schools; for the delegation of powers from the Secretary of State to school forums enabling them to agree proposals from local education authorities in England for variations in central expenditure limits as part of the local setting of school budgets; and allows for similar provisions for Wales to be enacted by order of the National Assembly for Wales should it wish to do so at a later date. In relation to attendance at alternative educational provision, Part 4 brings the power of governing bodies to direct excluded children to attend alternative provision in line with those for other children, and extends the fixed penalty notice system to the parents of such children.

As many sections of the Act apply separately to England only and to Wales only, the explanatory notes contain a new type of Annex which lists each section and schedule of the Act and describe where they apply. This is a very useful tool whose development in future explanatory notes is to be encouraged.

Mental Capacity Act 2005⁸²

The Mental Capacity Act 2005 received Royal Assent on 7 April 2005. The Act aims at clarifying a number of legal uncertainties in the field of mental health and to reform and update the current law where decisions need to be made on behalf of others. It covers a wide range of decisions, on personal welfare as well as financial matters. The Act includes new rules to govern research involving people who lack capacity and provides for new independent mental capacity advocates to represent and provide support to such people in relation to certain decisions. The Act provides recourse, where necessary, and at the appropriate level, to a court with power to deal with all personal welfare (including health care) and financial decisions on behalf of adults lacking capacity.

Most powers under this Act are vested in the Lord Chancellor in relation to both England and Wales. There is one duty of the Lord Chancellor to consult the Assembly. The Assembly is nevertheless given all the powers relating to research and the independent mental capacity advocate service under Part 1 of the Act which includes powers to make regulations and to issue guidance.⁸³

⁸² www.opsi.gov.uk/acts/acts2005/20050009.htm.

⁸³ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en09.htm.

Public Services Ombudsman (Wales) Act 2005⁸⁴

This is the only Wales-Only Act so far this year. The Public Services Ombudsman (Wales) Act received Royal Assent on 7 April 2005.

The Act establishes the office of the Public Services Ombudsman for Wales. The offices of the Welsh Administration Ombudsman, the Health Service Commissioner for Wales and the Social Housing Ombudsman for Wales are to be abolished. The Commission for Local Administration in Wales (including the office of the Local Commissioner for Wales) is also to be abolished. Broadly speaking, the Act makes provision for the Public Services Ombudsman to investigate those matters that currently are investigated by these existing ombudsmen/commissioners in Wales. The Ombudsman will have responsibility for investigating maladministration and service failure by the Assembly; its sponsored public bodies (the equivalent, in Wales, of non-departmental public bodies) and a number of other publicly funded bodies; Welsh health service bodies (primarily NHS Trusts and Local Health Boards in Wales), certain health service providers in Wales, local government bodies in Wales and social landlords in Wales. Thus uniquely there will be a unified ombudsman service in Wales. All the powers which are not vested directly in the Ombudsman for Wales are vested in the Assembly in relation to Wales. This Act is very generous towards the Assembly as it gives it extensive and numerous Henry VIII powers (as detailed below).⁸⁵

Disability Discrimination Act 2005⁸⁶

The Disability Discrimination Act received Royal Assent on 7 April 2005. The Assembly has been given sole powers only under section 9 (Recognition of disabled persons' badges issued outside Great Britain), though there are duties imposed on the Secretary of State to consult the Assembly in one section and to obtain the consent of the Assembly under another.⁸⁷

Income Tax (Trading and Other Income) Act 2005⁸⁸

The Income Tax (Trading and Other Income) Act received Royal Assent on 24 March 2005. The purpose of the Act is to rewrite income tax legislation relating to trading,

⁸⁴ www.opsi.gov.uk/acts/acts2005/20050010.htm.

⁸⁵ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en10.htm.

⁸⁶ www.opsi.gov.uk/acts/acts2005/20050013.htm.

⁸⁷ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en13.htm.

⁸⁸ www.opsi.gov.uk/acts/acts2005/20050005.htm.

property and investment income so as to make it clearer and easier to use. The Act only gives powers to the Assembly in relation to local enterprise organisations (three sections) and gives it one concurrent power relating to the meaning of 'designated educational establishment'. All the other powers (and there are many) are retained by central government.⁸⁹

Constitutional Reform Act 2005⁹⁰

The Constitutional Reform Act 2005 received Royal Assent on 24 March 2005. 'The Constitutional Reform Act modifies the office of Lord Chancellor and makes changes to the way in which some of the functions vested in that office are to be exercised. The Act also creates the Supreme Court of the United Kingdom and abolishes the appellate jurisdiction of the House of Lords. It creates the Judicial Appointments Commission to select people for judicial appointments in England and Wales, and provides for judicial discipline in England and Wales. The Act modifies the jurisdiction of the Judicial Committee of the Privy Council and removes the right of the Lord President of the Council to sit judicially.'⁹¹

There are only two duties imposed on central government to consult with the Assembly under sections 27 and 28.

Gambling Act 2005⁹²

The Gambling Act 2005 received Royal Assent on 7 April 2005. The Gambling Act 2005 gives effect to the Government's proposals for reform of the law on gambling. The Act contains a new regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting. As the Act falls outside the Assembly's present scope of powers, there are no powers vested directly in it, but there is one duty of the Secretary of State to consult the Assembly in relation to the overall limits of the number of casino premises licences in Wales.⁹³

Serious Organised Crime and Police Act 2005⁹⁴

The Serious Organised Crime and Police Act received Royal Assent on 7 April 2005. The Act provides for the establishment and functions of the Serious Organised Crime

⁸⁹ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/05c5ENv1/2005en05.htm.

⁹⁰ www.opsi.gov.uk/acts/acts2005/20050004.htm.

⁹¹ See paragraph 3, Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en04.htm.

⁹² www.opsi.gov.uk/acts/acts2005/20050019.htm.

⁹³ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en19.htm.

⁹⁴ www.opsi.gov.uk/acts/acts2005/20050015.htm.

Agency and makes further provision for combating crime and disorder in the UK. As the Act falls outside of the Assembly's scope of powers, there are no powers vested directly in it, but there is one duty of the Secretary of State to consult the Assembly in relation to the contracting out of local authority functions relating to anti-social behaviour orders.⁹⁵

2.1.3 Other powers of the Assembly in relation to the 2005 Primary Legislation

The policy of giving certain wide 'Henry VIII' powers to the Assembly enables it to amend or add to existing provisions in individual Acts of Parliament. Following the new policy promising to give greater flexible powers in Acts in the 2005 White Paper the Assembly continues to receive Henry VIII powers in new legislation as well as powers to commence certain provisions of new legislation in Wales .

An example is the Public Services Ombudsman (Wales) Act 2005, which enables the Assembly to do this in relation to Acts coming within the subject matter of the Act.

2.1.4 The effect of the proposals in the Government White Paper: Better Governance for Wales⁹⁶ on legislation enacted in 2005

References to the Assembly Executive in two 2005 Acts

The White Paper proposes to create a separate Assembly and Welsh Assembly Government, the latter becoming a legal body in its own right with powers vested directly in the Assembly Ministers, or in certain cases, the First Minister. In anticipation of the enactment of legislation to give effect to these proposals, Acts are beginning to refer directly to 'the Welsh Assembly Government' and to include more references to 'the Assembly First Secretary'.

For example in the Appropriation Act 2005, Part 2 of the Schedule makes a number of references to the Assembly Government including referring to transfers of functions to the 'Welsh Assembly Government'. The Constitutional Reform Act 2005 contains a number of references to 'the Assembly First Secretary'.

⁹⁵ See Explanatory Notes at www.opsi.gov.uk/acts/en2005/2005en15.htm.

⁹⁶ *Better Governance for Wales*.

Broader powers in Acts following an amendment of Devolution Guidance Note 9 (DGN9): 'Post Devolution Primary Legislation affecting Wales'⁹⁷

As a result of the Government's commitment in the White Paper, which in this respect reflects the Richard Commission recommendations for an interim increase of the Assembly's powers, the DGN9 guidance has been amended to seek to broaden the Assembly power's in new Acts of Parliament. Paragraph 1.24 of the White Paper states as follows:

First, the Government intends immediately, in drafting primary legislation relating to Wales, to delegate to the Assembly maximum discretion in making its own provisions, using its secondary legislative powers. This will not require any change to the provisions of the Government of Wales Act 1998.

In this regard the Secretary of State for Wales appeared before the Select Committee for Welsh Affairs in November of this year. In answering questions in relation to the Committee's investigations of the White Paper's proposals he explained that DGN9 has already been changed. The change reflects the commitment to give the Assembly wider and more flexible powers in each new Act of Parliament giving it functions.

The new provision of the Note as updated in November 2005 reads as follows:

The UK Government has agreed that parliamentary Bills should be drafted in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales.⁹⁸

Broader powers in new Bills illustrating the Government policy: the emergence of 'Framework powers'

The Education Act 2005 gives an example of what an enhanced power could look like in section 62, which could be described as a super-Henry-VIII power:

62 Power of Assembly to change inspection framework for Wales

- (1) The Assembly may by order-
 - (a) make provision in relation to Wales corresponding to-
 - (i) that made in relation to England by any English inspection provision, or
 - (ii) that which could be made in relation to England by regulations under any English inspection provision,
 - (b) repeal any Welsh inspection provision which does not correspond to an English inspection provision, and

⁹⁷ DGN9, *Post Devolution Primary Legislation affecting Wales*, summary, page 1, at www.dca.gov.uk/constitution/devolution/guidance/dgn09.pdf.

⁹⁸ DGN9, *Post Devolution Primary Legislation affecting Wales*, summary, p. 1.

(c) make such provision as the Assembly thinks fit in connection with any provision made by virtue of paragraph (a) or (b).

(2) In relation to section 39 (statement to be prepared by appropriate authority for maintained school), the power conferred by paragraph (b) of subsection (1) includes power, instead of repealing the section, to limit the cases in which it applies.

(3) The powers conferred by paragraphs (a) and (c) of subsection (1) include power to amend or repeal any enactment (whenever passed or made), including any provision of this Act.⁹⁹

So far there are no Acts passed since June 2005 (the date of the White Paper) giving powers to the Assembly and so it is not possible, as yet to test the commitment to this undertaking.

However, the NHS Redress Bill¹⁰⁰ is the first example since the White Paper of the broader powers to come. It is referred to as an example of the new permissive approach to legislative drafting in the Explanatory Notes to the Government of Wales Bill 2005. The White Paper made an immediate commitment to draft future Acts of Parliament in devolved areas 'in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales.'¹⁰¹

The NHS Redress Bill states:

17 Framework power

The National Assembly for Wales may by regulations made by statutory instrument make provision –

(a) for the purpose of enabling redress to be provided without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales;

(b) for any purpose connected with provision under paragraph (a).

(2) The reference in subsection (1)(a) to qualifying liability in tort is to liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in

⁹⁹ Education Act 2005, s.62. At: www.opsi.gov.uk/acts/acts2005/50018--h.htm#62.

¹⁰⁰ HL Bill 45 at www.publications.parliament.uk/pa/ld200506/ldbills/045/06045.i.html.

¹⁰¹ Paragraph 3.12.

connection with the diagnosis of illness, or the care or treatment of any patient.

(3) Subject to subsection (4), **the provision that may be made under subsection (1) includes any provision that could be made by an Act of Parliament.**

(4) The power conferred by subsection (1) shall not include power –

(a) to make any provision imposing or increasing taxation;

(b) to make provision taking effect from a date earlier than that of the making of the instrument containing the provision;

(c) to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal;

(d) to create any new criminal offence;

(e) to make provision extending otherwise than to England and Wales;

(f) to make provision applying in relation to England, without the consent of the Secretary of State.

(5) Subsection (4)(c) does not preclude the modification of a power to legislate conferred otherwise than under subsection (1), or the extension of any such power to purposes of a like nature as those for which it was conferred.

(6) A power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of subsection (4)(c).

(7) The power under subsection (1)(a) (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.¹⁰²

The precedents of the Education Act 2005 and the NHS Redress Bill demonstrate that the birth of ‘framework powers’ for the Assembly has already occurred, marking an impressive step forwards.

If the use of such framework powers does become automatic, forthcoming acts can be expected to grant the Assembly wider and more flexible powers than those given to the Secretary of State in relation to England.

¹⁰² NHS Redress Bill [HL] 2005-06, s. 17. Available at: www.publications.parliament.uk/pa/ld200506/ldbills/045/2006045.pdf.

2.2 Assembly General Subordinate Legislation

2.2.1 The Nature of subordinate legislation

Subordinate Legislation gives powers in Acts of Parliament and in EU Designation Orders for Central Government or the Assembly to make laws. Such laws are entitled 'subordinate legislation' and can include powers to make Orders in Council, regulations, orders, directions, rules, schemes, codes of practice or statutory guidance. The enabling legislation under which the subordinate legislation is made determines two matters:

- the extent of the powers of the subordinate legislation and
- whether or not such subordinate legislation is made by statutory instrument.

It is usual for enabling legislation to specify that Orders in Council, Regulations and certain Orders and Rules are to be made by Statutory Instruments (SIs). It is not usually the practice for other types of subordinate legislation to be made by SIs. This means that, for example, an Act may give power to make regulations, as well as directions and statutory guidance. The Act may state that regulations are to be by SI but may make no provision for the form of the other two types of subordinate legislation made under the Act. This leads to a fundamental difference between SIs and non-SIs in relation to their making, consideration and publication.

Unless made for reasons of emergency, general SIs (i.e. those which apply to the whole or considerable areas of Wales) are usually published in draft, placed on the Assembly website (not the Assembly Government website) and made available for consideration by the relevant Assembly Subject Committee. Then, after considering whether the necessary statutory and procedural requirements (including consultation with affected parties and regulatory appraisals as to the likely costs and benefits of complying with the proposed legislation)¹⁰³ are fulfilled, the Assembly's Business Committee agrees to the SI being tabled for consideration and debate by the plenary session of the Assembly.

Both the committee and plenary consideration of the SI allows Assembly Members not only to debate whether or not the SI should be made but also whether amendments should be made to it.

¹⁰³ Section 65(1) Government of Wales Act.

If approved by resolution of the plenary session, the Presiding Officer or a deputy then signs the instrument and it is registered centrally by the Statutory Instruments Office in London and appears on the Office of Public Sector Information (OPSI)¹⁰⁴ list of published SIs. All general SIs must be printed and published and must follow the format prescribed under the Statutory Instruments Acts 1946.

2.2.2 Publication of Non-SI Subordinate legislation: The Assembly leads all Government Departments in the UK

Non-SI Subordinate legislation

Assembly subordinate legislation which is not required by the particular enabling legislation to be made by SI is not usually subject to *any* of the procedures outlined above. This means that it is rare for such subordinate legislation to be considered by a Subject Committee or plenary session of the Assembly, it is not signed by the Presiding Officer and the whole procedure is usually one internally undertaken by Assembly Ministers and their officials.

There are no statutory requirements that this type of legislation should take any particular form. It need not be numbered, classified or registered and it need not be published or printed. The result is that it is not an easy task to find such subordinate legislation.

On average each year since its creation, the Assembly has made about 200 SIs and possibly at least the same number of non-SI instruments. The Wales Committee of the Law Society together with the Editors of Cardiff Law School Wales Legislation Online Service¹⁰⁵ have worked with the Assembly and Assembly Government to resolve issues arising from the lack of registration and publication of such legislation.

The result is that from January 2006:

- all Assembly non-SI subordinate legislation will have to comply with a format prescribed by the Presiding Office of the Assembly. This will mean that all such subordinate legislation will have to follow the format required for SIs with the omission of the words 'Statutory Instrument'.

¹⁰⁴ Previously HMSO.

¹⁰⁵ www.wales-legislation.org.uk.

- all such legislation will be registered in a central register kept by the Assembly Government by reference to sequential numbering and subject classification of each piece of subordinate legislation. As soon as possible in the new year the register will be placed on a newly created dedicated part of the Assembly Government Website.

Such a system, it is understood, will only operate for post-2005 subordinate legislation and not for any non-SI subordinate legislation made by the Assembly between 1999 and the end of 2005.

This is nonetheless a unique innovation with regard to the method of formatting, registering and publishing non SI subordinate legislation. Such a method has not been adopted by the UK government. Consequently there will continue to be serious problems regarding the finding of non-SI subordinate legislation made in Whitehall including that made for Wales, because it will still not be centrally published, numbered, classified or regularly updated.

2.2.3 General Statutory Instruments made by the Assembly

Since 1 September 2005, the Assembly has made 37 general SIs, four of which are commencement Orders.¹⁰⁶ In addition one local SI is listed because it was printed by Opsi.¹⁰⁷

Two of the Orders represent the exercise of Henry VIII powers, because they amend primary legislation.¹⁰⁸ Only four SIs have no Welsh language version meaning that there were particular reasons for them being made in English only (for example because they have been made under the emergency procedure).¹⁰⁹

The 38 SIs can be found on the Opsi website at www.opsi.gov.uk/legislation/wales/w-2005.htm. They start at SI 2605(W.180) and end with SI 3115(W.235).

Among these SIs, it is interesting to note that:

¹⁰⁶ SIs 2722(W.193); 2800(W.199); 2910(W.207) and 3112(W.134).

¹⁰⁷ SI 3034 (W.222).

¹⁰⁸ SIs 2913(W.210) and 2929(W.214).

¹⁰⁹ SIs 3035(W.223); 3036(W.224); 3037(W.225) and 3038(W.226).

- The Assembly has powers in relation to taking precautions against the spread of Avian Flu (SI 2005/2840 (W.204); SI 2005/2929 (W.218) and SI 2005/2984 (W.219)).
- New Regulations have been made for the government of state schools (SI 2005/2914 (W.211)).
- A generally reserved matter, the state credit scheme for families, is the subject of an Order: (SI 2005/3110 (W.230))
- There are a series of Regulations relating to the involvement of local authorities in adoptions SIs 2005/3113; 3114; 3115.

2.2.4 General SIs made by central government under Acts giving powers to the Assembly:

During the period covered by this report, central government has also produced general SIs which apply to Wales under England and Wales powers in those Acts which also give powers to the Assembly.

Twenty nine such SIs have been made by the UK government between 1 September and 18 October, including five orders which commence provisions in Acts which give powers to central government in relation to Wales. A list of such SIs can be found on the Wales Legislation Online Website, in the central government SIs section.¹¹⁰

2.3 The Government of Wales Bill 2005: General Overview of the Bill¹¹¹

The Government of Wales Bill was published on 8 December 2005 and seeks to implement the proposals set out in the White Paper *Better Governance for Wales*.¹¹² It is divided into six Parts, 165 clauses and 12 Schedules. The Bill if enacted will repeal and replace the Government of Wales Act 1998.

2.3.1 The New Assembly

Part I of the Bill separates the Assembly from the Welsh Assembly Government, which becomes a separate legal entity. The Assembly itself will no longer be a legal entity. As with the Scottish Parliament (and its 'Corporate Body'), there will be a

¹¹⁰ www.wales-legislation.org.uk/scripts/si_year_index.php?siYear=2005&siType=C&siNo=123&siStart=0&order=1&lang=E.

¹¹¹ This section has been written with David Lambert of Cardiff Law School.

¹¹² *Better Governance for Wales* is at: www.walesoffice.gov.uk/bgfw.html. The Government of Wales Bill is at: www.publications.parliament.uk/pa/cm200506/cmbills/100/2006100.htm.

separate Assembly Commission which will have the necessary legal identity to provide the Assembly with its buildings, its staff and support services. The officials employed by the Commission will not be civil servants. The current provisions in the 1998 Act relating to the election of AMs and the conduct of the business of the Assembly generally remain, though the Assembly will be able to resolve (by at least a two-thirds majority) to dissolve itself before the end of its four-year period.

The Assembly will be able to decide what committees it wishes to establish and what they will do. The exception is the Audit Committee, whose establishment is required by the bill. There will be no ministers on the committees, the membership of which, at least initially, will be constituted in the same way as regional seats in the Assembly are presently allocated.

A new set of Standing Orders for the Assembly will be made by the Secretary of State for Wales prior to the Assembly elections in May 2007 but he will have to make them in the form proposed by the Assembly if approved by a two-thirds majority prior to May 2007.

The Assembly will no longer have many executive powers vested in it. Most statutory functions will become the direct responsibility of Assembly Ministers, meaning that the threat in 2000 to deprive Alun Michael of the powers delegated to him by the Assembly will never again occur. Instead a majority in the Assembly could pass a vote of no confidence in the First Minister or Assembly Ministers.

The contentious provisions banning candidates from running both in a constituency and on a regional list appear in Part I of the Bill.

2.3.2 *The Assembly's work*

The Assembly would be able to decide annually what budgetary resources to vote to the Assembly Ministers. New procedures akin to those in the UK Parliament would be established for subordinate legislation (which Ministers, not the Assembly would become responsible for making). Such legislation would either be subject to either Assembly debate and a vote before being made (the affirmative procedure), potential annulment after being made (the negative procedure), or no Assembly procedure at all. The nature of the procedure followed would generally be governed by the extent of the parliamentary procedure to which parallel subordinate legislation under the

particular Act is subject if made by central government in England. The Assembly could itself decide what procedure, if any, to apply to the powers given to the Assembly Ministers in Measures to be made by the Assembly after May 2007. Ministers would be accountable to the Assembly Committees and to the Assembly as to the exercise of their functions.

A new and possibly major part of the Assembly's work will be to propose Orders in Council to the Secretary of State for Wales which if agreed to by Parliament will enable the Assembly to consider and make Measures within the ambit of the Orders. Such Measures, which could amend, add to and repeal existing or future Acts of Parliament or make new provision in their stead, would not be subject to any parliamentary procedure.

2.3.3 *The Welsh Assembly Government*

Part II of the Bill deals with the new legal entity to be established to carry out the functions presently vested in the Assembly and the post May 2007 functions which will be directly vested in the 'Welsh Ministers'. Such functions can be exercised by the First Minister or other Welsh Ministers individually. Certain specific functions will be exercised by the First Minister or the Counsel General (who will be a member of the Assembly Cabinet, though not necessarily an AM).

The existing statutory functions of the Assembly will generally be transferred to the Assembly Ministers automatically after the end of the 'initial period' (after May 2007) by paragraph 28 of Schedule 11 to the Bill. Particular powers will be transferred to the First Minister, the Counsel General, the Assembly Commission or the Assembly by Order in Council under paragraph 29.

The staff serving the Ministers will remain civil servants.

2.3.4 *Orders in Council*

Clauses 92 and 93 set out the powers of the Assembly to make Measures. The main requirement is that the Measure must relate 'to one or more of the matters specified in Part I of Schedule 5' to the Bill (Clause 93(4)(a)).

Clause 94 provides for the making of Orders in Council. The Orders will be added to the Fields which are set out in Schedule 5 to the Bill. This means that Schedule 5 itself will be amended each time an Order in Council is made. Consequently, for example in due course, under the 'education and training' field, an Order in Council relating, with specific exceptions, to 'primary and secondary schools' might be made. When made, it would appear as an addition to Schedule 5 under the Heading 'Field 5'. The Assembly could then debate and make as many Measures as it wishes within the ambit of the Order in Council.

To give the Assembly a start in life in its own law-making career instead of having to wait for the first Order in Council, the Bill actually sets out a 'matter' under the Heading 'Field 13 - National Assembly for Wales'. This means that the Assembly could make Measures under this 'matter' from May 2007 onwards.

Paragraph 309 of the Explanatory Notes accompanying the published Bill sets out the possible nature of Orders in Council which will establish the Schedule 5 matters. It states that 'it is envisaged that Orders in Council...will be quite short'. What might be considered 'quite short'? Potentially there may be a guide in Schedule 7 which sets out what would be the ultimate nature of the full primary legislative powers of the Assembly following a vote of at least two-thirds of the AMs and a subsequent successful referendum.

Schedule 7 refers to fields and subjects within fields. Mercifully, unlike Schedule 5 to the Scotland Act 1998 (which sets out the exceptions to the powers of the Scottish Parliament), the Assembly's legislative powers are generally not described by reference to subject matters of particular Acts. Taking subject 15 (Social Welfare) in Schedule 7 as an example, the matters which relate to the care of children exactly mirrors the example given in the June White Paper as being a subject matter which could form the contents of a Schedule 5 Order in Council under which Measures could be made. This perhaps holds out the possibility that Schedule 7 matters could also form the contents of Schedule 5 matters. The Assembly might persuade Parliament that as it is suggesting using subject matters which are already set out in the Act, Orders in Council should be made in these terms.

2.3.5 The Measures

When an Order in Council has been made, Clauses 92 and 93 enable the Assembly to make Measures. Because such Measures 'may make any provision that could be made by an Act of Parliament' (Clause 93(1)), the Queen approves the Measure (as with an Act of the Scottish Parliament).

Clause 92 provides no particular internal Assembly procedure for the consideration and making of a Measure. Such procedures will be set out in the Assembly Standing Orders.

The Measure, within the ambit of its Order in Council, can amend, repeal, add to or make new provision in relation to any relevant existing Act of Parliament passed after the Order. There is no parliamentary procedure involved.

2.3.6 Acts of the Assembly under Part IV of the Bill

As with a Measure, an Act of the Assembly can make any provision that could be made by an Act of Parliament. Such Acts can only be made following a successful referendum giving powers to the Assembly to make Acts. A referendum would follow a vote of at least two-thirds of the Assembly Members calling for one.

If the referendum gives a simple majority in favour of the proposition, then without parliamentary involvement, Assembly Ministers can make a commencement order bringing in the Act making provisions which could immediately extend to all the matters listed in Schedule 7. If and when this is done, the Assembly's powers to make Measures cease.

2.4 Conclusion

It will be seen from the above discussions that the law in Wales is already different to that of England, and with the introduction of framework powers in 2005 the Assembly is now given even broader powers than before. If the Government of Wales Bill is enacted in its current form and Orders in Council are made enabling the Assembly to make its own laws (which will be able to contain the same provisions as Acts of Parliament), the present differences between Welsh and English law will quite rapidly and systematically grow. We are now moving from an executive devolution settlement to a legislative one.

The past year has been unprecedented in the history of Welsh devolution in terms of the changes proposed to the devolution settlement. Wales has now seen the introduction of unique governmental proposals which in due course will totally transform the legislative process relating to Wales. Such major developments could have been foreseen by few. In 2006, it will be fascinating to watch as the extent of parliamentary support for the provisions in the Government of Wales Bill is revealed during the course of the legislative process. The recent report of the House of Commons Committee on Welsh Affairs shows general approbation for the Bill, at least among Labour members. However, of particular interest will be the views of the House of Lords when asked to consider some of the widest framework and Henry VIII provisions ever put before Parliament.

3. Economic Development and the Budget

Professor Peter Midmore, University of Wales Aberystwyth

3.1 Introduction

Autonomy in economic policy-making in Wales continues to be limited by the volatility of external influences. Some small successes in terms of attracting inward investment, such as in the creative and cultural industry, the roll-out of the prototype Airbus 380 and 250 new jobs generated by the Admiral insurance group in Swansea, and the final approval of the locally-initiated Bluestone tourism project, were counterbalanced by closures and employment losses. In particular, the decision of the Ministry of Defence to close the Defence Aviation Repair Agency (DARA) with the loss of 500 high quality jobs announced on 8 November¹¹³ suggests very publicly that the economic priorities of the UK Government and its Cardiff counterpart are uncomfortably mismatched. Overall, the Welsh Assembly Government is able to highlight continued employment growth and a reduction in the rate of economic inactivity, but its political opponents have concerns that such growth is not matched by an improved performance in terms of per capita Gross Value Added, which mean that in relative terms Wales remains a low-wage economy. Some of the most important aspects of the Assembly's work in this period have been focused on how to improve the economic performance of Wales; and the loss of an overall majority for the governing Labour Party has reduced its flexibility of manoeuvre and in some respects nudged it towards a more consensual approach.

3.2 ASBP Mergers

Part of the strategy for inducing a step change in economic performance has been to incorporate into the Welsh Assembly Government the Welsh Development Agency and the Wales Tourist Board, along with other Assembly-Sponsored Public Bodies. The main arguments for abandoning this long-standing 'arm's-length' relationship between policy-making and policy delivery are that, as a result of savings in administrative costs, more resources will be devoted to the primary delivery of services, supporting entrepreneurship and thereby establishing better paid jobs. The reporting and monitoring procedures for the WDA have also been criticised, and an expanded in-house Economic Development and Transport Department would come under improved management and performance scrutiny. While critics have accepted

¹¹³ <http://news.bbc.co.uk>, 9 November 2005.

that the merger between the Assembly Government and its ASPBs will go ahead, there are still concerns which have been raised in both the Economic Development and Transport Committee, and in the Plenary debates which approved the merger orders.¹¹⁴ These concern the uncertainty of the size of the administrative savings being made; in particular, the merger will allow the current employees of the WDA to transfer to the civil service pension scheme, and a deficit in the WDA's own scheme will need eventually to be covered. Also, the value of the brand image of both the WDA and in particular the WTB has been a controversial topic, since neither will remain after the merger.

3.3 Science Policy

The substantive work of the Economic Development and Transport Committee for the autumn session comprised an inquiry into science policy in Wales, to more effectively develop a knowledge-based economy. A range of witnesses, from the science community itself (particularly that based in Wales' universities), from the Higher Education Funding Council Wales, the WDA and private business set out some of the more contentious issues involved in achieving this. Historically, Wales' share of UK research funding has been disproportionately small, and despite the existence of a few outstanding areas of research and technological excellence, the small size and fragmentation of the Welsh university sector is recognised as a constraint. The Government's strategy, described by the Assembly Government's Dr Ron Loveland, Chief Technology Officer, is to concentrate on three key areas: health sciences, low carbon energy, and

'sustained economic renewal' – some people might want to call it sustainable development ... at the confluence of economic, technological, cultural and environmental issues ... advanced manufacturing and communications, high resource efficiency and community development.¹¹⁵

Alongside these priorities, concerns were raised by the private business sector about the difficulties of gaining access to sufficient scientific talent, either through interaction with appropriate university departments, or in terms of hiring scientifically-trained staff.¹¹⁶ The Committee has yet to report on its inquiry, but despite this the Assembly Government itself published a consultation paper on science priorities and science policy on 16 January¹¹⁷.

¹¹⁴ Assembly Record of Plenary Proceedings, 22 November 2005.

¹¹⁵ Record of Proceedings, Economic Development and Transport Committee, 6 October 2005.

¹¹⁶ Record of Proceedings, Economic Development and Transport Committee, 16 November 2005.

¹¹⁷ *A Science Policy for Wales?* (Welsh Assembly Government, 2006).

3.4 Wales: A Vibrant Economy

The Assembly Government also published a refreshed consultation version of its economic development strategy, *Wales: A Vibrant Economy* on 23 November.¹¹⁸ It provides an assessment of economic performance over the past four years and suggestions for revised targets. One clear problem is that, in geographic terms, inequality has been widening, and the criticisms of the opposition parties focus on the fact that no spatial distinction has been provided for the economically lagging areas. While lack of skills is closely associated with geographic concentrations of disadvantage, and the plan is closely linked to actions to be taken by the Department for Education and Lifelong Learning, no separate targets are identified to direct appropriate and effective public sector interventions.

3.5 The Budget

The new minority status of the governing party was tested with regard to setting Assembly's budget for the financial years 2006/07 and 2007/08. In plenary session on 4 October 2005, the minority parties combined to re-orient the priorities in amendments to the draft budget, and as a consequence a protracted process of negotiations between party leaders continued until late November, when a consensus budget was agreed. This included enhanced spending on universities and small rural schools, north-south transport links, and support for the households most seriously affected by the Council Tax re-banding exercise (see Figure 1).

A further political issue resolved during the Assembly's autumn term will have significant economic development and budgetary implications in the future. The UK Presidency of the EU set itself the objective of reaching an agreement on the overall EU budget for the period 2007-2013. Although dominated by the issue of the British Fontainebleau rebate agreed in 1984, if the budget had not been agreed in 2005 more recent statistics of sub-regional Gross Value Added per capita would have been used in calculating eligibility for the next round of regional aid. Specifically, current statistics for the West Wales and the Valleys subdivision of Wales indicate that incomes are below the 75 per cent threshold of the EU average, but after this year the position of the accession states will tilt that threshold substantially lower. As

¹¹⁸ *Wales: A Vibrant Economy, The Welsh Assembly Government's Strategic Framework for Economic Development* (Cardiff, 2005). www.wales.gov.uk/subitradeindustry/content/wave/wave-e.htm

a result of the EU budget agreement, 'a welcome Christmas boost' according to First Minister Rhodri Morgan,¹¹⁹ Wales will be able to qualify for the full Convergence Programme, providing an estimated additional level of funding of £1.3 billion over the coming seven years. As part of the overall agreement, however, the EU has committed itself to a fundamental review of the Common Agricultural Policy, which provides a relatively high contribution to the employment, if not the incomes, of the poorer parts of Wales. Working through the implications of changes in the mix of European funding will provide substantial fodder for the deliberations of the Assembly in coming months; opposition parties are disappointed with the lack of effectiveness of programme expenditure between 2000-06, since failure to achieve sufficient income growth is the reason that the West Wales and Valleys region has qualified again for support.

Figure 1: Components of the Welsh Budget (£ 000)

Expenditure Group	2006/7		2007/8	
	Draft	Actual	Draft	Actual
Health and Social Services	5,217,571	5,114,478	5,574,407	5,471,044
Local Government	3,721,657	3,840,103	3,876,287	3,991,485
Social Justice and Regeneration	588,305	591,958	631,118	635,118
Environment, Planning and Countryside	326,230	327,421	341,981	344,491
Economic Development and Transport	1,144,111	1,150,396	1,145,024	1,152,222
Education and Lifelong Learning	1,525,523	1,515,576	1,673,621	1,662,605
Culture, Welsh Language and Sport	124,082	122,897	133,305	132,305
Assembly Parliamentary Service	30,997	30,997	31,768	31,768
Central Administration	320,050	309,144	310,563	302,007
Auditor General for Wales	4,642	4,642	4,757	4,757
Public Services Ombudsman for Wales	820	1,920	840	1,970
Other Assembly Services	13,139	13,439	17,139	17,139

¹¹⁹ *Western Mail*, 18 December 2005.

Inspectorates	11,466	14,529	11,466	14,525
Central Cash Reserves	107,726	99,429	224,203	216,298
Central Capital Charge Reserves	98,940	98,380	116,062	114,807
<i>Assembly Total</i>	<i>13,235,259</i>	<i>13,235,309</i>	<i>14,092,541</i>	<i>14,092,541</i>

3.6 Conclusions

The continuing strength of the UK economy has undoubtedly influenced the positive performance in Wales, although it is worrying that economic growth is not yet sufficiently strong to begin to close the GVA gap in relative terms. If – as many economic commentators suggest – the growth in UK public spending needs to be reigned in because of misjudgements about the nature and length of the economic cycle, then efforts to consolidate and extend the technological basis for high waged jobs will become increasingly urgent. In this autumn session of the Assembly, advancement in this respect seems to have been limited by organisational changes and continued failure to develop a clear consensus over the direction of economic policy. Given the minority status of the governing Labour Party, faltering at this point may turn out to be a serious shortcoming in the overall devolution project to develop policy more appropriate to the specific circumstances of Wales.

4. Intergovernmental relations

Alan Trench, UCL Constitution Unit

4.1 General

Intergovernmental relations between Cardiff and London throughout 2005 have been dominated by the question of Wales's constitutional future, and the Government of Wales Bill. The contents of the Bill have already been summarised in Section 2 of this report, and will not be repeated here. However, a number of aspects of the Bill and the process relating to it are worth consideration.

Perhaps the most important single point about the Bill is that it has been published. Its publication is a major landmark both in Wales's constitutional development and in the development of the relationship between devolved institutions in Wales and those at UK level. That process was kicked off by the National Assembly's establishment of the Richard Commission on the Assembly's powers and electoral arrangements. Since publication of the Richard Report in April 2004, the process has largely been a governmental one (and much of it has taken place behind the scenes, as is typical for many intergovernmental issues in the UK). The most notable landmark in it was the publication in June 2005 of the UK Government's plans in the white paper *Better Governance for Wales*.¹²⁰ However, it has also involved a wider range of bodies including the National Assembly collectively, and its Committee on the Better Governance for Wales White Paper, and the Welsh Affairs Committee at Westminster. While Wales has lacked the sort of focus for deliberation on its constitutional future that Scotland had in the late 1980s and early 1990s through the Scottish Constitutional Convention, the process that has led to the 2005 Government of Wales Bill has involved careful and detailed consideration of a wide range of issues.

4.2 Preparation of the Government of Wales Bill

Throughout the summer and autumn, work was underway on drafting the new Bill. This had started as early as July, even while the consultation period on the White Paper *Better Governance for Wales* was underway. While the Wales Office in Whitehall was in charge of the Bill, much of the detailed preparatory and policy work was undertaken by Welsh Assembly Government officials. To facilitate this, a small team of WAG officials was seconded to Gwydyr House, home of the Wales Office. Parliamentary Counsel in charge of the Bill was the same person as had drafted the

¹²⁰ Wales Office, *Better Governance for Wales*, Cm 6582 (London: The Stationery Office, 2005).

Government of Wales Act 1998 – an unusual form of continuity for UK legislative drafters.¹²¹

4.3 The Welsh Affairs Committee Report

During the autumn the Commons Welsh Affairs Committee carried out a relatively quick inquiry on the White Paper *Better Governance for Wales*. Its report was published on 13 December 2005. In a sense this was an oddly-timed exercise, as it began after the end of the Wales Office's formal consultation period for the white paper but before the Bill was introduced into Parliament – but given the timing constraints arising from the approach taken by the Wales Office it is hard to see how this could have been otherwise.

The WAC report largely endorses the approach set out in the White Paper (and Bill). It expresses concern about the extent to which the UK Government's proposals provide for executives (in the UK case, the Secretary of State) rather than legislatures to deal with matters that relate to legislative powers, such as the Assembly's standing orders or the extension of the Assembly's legislative powers.¹²² The report recommends retention of the North Wales Regional Committee (dropped in the Bill), creating a mechanism for increasing the size of the Assembly if 60 AMs prove to be insufficient, and calling the new government the 'Welsh Executive' rather than the 'Welsh Assembly Government' (as the Bill does).¹²³ Regarding the transition to stage 3, it recommends that there should be a delay of at least 2 Assembly terms before there should be a further referendum for primary powers, if a first proposal is unsuccessful, and that there should be a two-thirds majority for such a referendum to pass.¹²⁴

The committee's position on two difficult issues is terse in the extreme. Regarding the approach to the structure of powers at stage 3 – which follows that of the Scotland Act 1978 rather than the more general grant in the Scotland Act 1998 – the committee simply 'notes' the Government's position.¹²⁵ While the issue is difficult and

¹²¹ This section is based on the author's interviews and other private information. However, on the Bill team, see House of Commons Welsh Affairs Committee Government *White Paper: Better Governance for Wales*, First Report of Session 2005-06, HC 551 (London: The Stationery Office, 2005), Evidence of Peter Hain and Rhodri Morgan, 10 November 2005, Q. 191. Available at: www.publications.parliament.uk/pa/cm/cmwelaf.htm#reports Henceforth referred to as 'WAC report'.

¹²² WAC Report, paragraphs 81 and 131.

¹²³ Respectively paragraphs 62, 57 and 49.

¹²⁴ Paragraphs 137 and 145.

¹²⁵ Paragraph 142.

technical, the Government's position has been widely criticised by outside observers.¹²⁶ Regarding the vexed issue of electoral arrangements – and the proposed ban on candidates standing for both 'list' and constituency Assembly seats – the Committee says

'Taking into consideration evidence to the Committee, informal feedback from the public and written evidence submitted to the Committee, we support the proposals for electoral reform as laid down in the White Paper.'¹²⁷

For all its blandness, this conceals deep divisions – the committee voted three times on the wording of this clause, dividing on straight party lines between Labour and Opposition members.¹²⁸ It is also worth noting that in his evidence to the Committee, Peter Hain gave a warning to the House of Lords, if peers should seek to alter these provisions or obstruct progress of the Bill because of them, by referring to the fact that this was a manifesto commitment at the UK General Election.¹²⁹ He therefore implicitly invoked the Salisbury convention, by which the (unelected) Lords should not obstruct Government Bills that embody manifesto commitments. (It is worth noting that not only has the convention been under increasing strain in recent years, but that it only ever applied to second and third readings not committee stages, and that Labour as well as Tory peers have breached it to oppose legislation they disliked.¹³⁰ It is also worth noting that there is now widespread support, from the public and Labour MPs among others, for obstruction of Government Bills by the Lords.¹³¹)

4.4 The 'new permissive approach' to legislation for Wales

One key provision of *Better Governance for Wales* was the idea of a new approach to framing legislation for Wales, which would expand the Assembly's room for manoeuvre. This would involve more consistent drafting of legislation to give the Assembly wider and more permissive powers, to summarise paragraph 3.12 of the White Paper. To this end, Devolution Guidance Note 9 on Post Devolution Primary

¹²⁶ See for example the evidence of Prof Richard Rawlings to the Welsh Affairs Committee: Ev 7-21; A. Trench *Better Governance for Wales: An analysis of the white paper on devolution for Wales* (ESRC Devolution and Constitutional Change programme, Devolution Policy Paper, no. 13, August 2005).

¹²⁷ WAC Report, paragraph 156.

¹²⁸ WAC Report, Formal Minutes, 29 November 2005, pp. 56-7.

¹²⁹ WAC Report, Evidence of Rt Hon Peter Hain MP, 10 November 2005, Q 260.

¹³⁰ See R Blackburn and A Kennon *Griffith & Ryle on Parliament: Functions, Practice and Procedures* Second edition (London: Sweet & Maxwell, 2003), paras. 12-123-12-127.

¹³¹ See M. Russell, *Views from Peers, MPs and the Public on the Legitimacy and Powers of the House of Lords* (December 2005), available at www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords.html.

Legislation Affecting Wales was revised and re-circulated in November 2005.¹³² The principal change is to incorporate references to the White Paper's principle of framework drafting, and to emphasise the need for consultation in each particular case. As discussed in section 1, this has been manifested so far in one Bill, the NHS Redress Bill.

What is perhaps most interesting about the adoption of this principle is what it has *not* involved. A Devolution Guidance Note is merely internal guidance to UK Government departments. It is not in any sense an intergovernmental agreement (although doubtless WAG was consulted about it). It is not mandatory; it is merely a form of guidance (albeit an authoritative one, the more so for embodying a principle stated as government policy in a white paper). It needs to be applied in each particular case, and the variation of legislation affecting Wales from Bill to Bill has been a major problem with the development of the Welsh statute book. This is therefore a slim foundation for the next stage of Wales's constitutional development. In the past when Peter Hain has spoken of making greater use of framework powers for legislation affecting the National Assembly's functions, he has talked of embodying that in a House of Commons resolution. While that would itself be far from definitive or irrevocable, it would be a more authoritative way of stating Parliament's (as well as the UK Government's) intention than internal governmental guidance that some departments may possibly ignore.

4.5 Implications of the Bill for intergovernmental relations

It is premature to examine the likely effects of proposed legislation, when that legislation has not been enacted let alone brought into effect. Two aspects of the draft Bill merit comment at this stage, however, for their likely implications. The first concerns the relationship between executives and legislatures. The Bill strongly reinforces the role of the executive. It does this partly by strengthening the Welsh Assembly Government in relation to the National Assembly while providing for only limited accountability of ministers to the Assembly (a major concern of the Assembly's own committee on the white paper).¹³³ It also does this by strengthening the role of the executive (usually in the form of the Secretary of State) undertaking various

¹³² It is available at www.dca.gov.uk/constitution/devolution/guidance.htm. The extent of revision is unclear, as the Note refers in para. 10 to seeking policy clearance from a Cabinet Committee (DA) which was abolished in June 2005.

¹³³ See National Assembly for Wales Committee on the Better Governance for Wales White Paper, *Report* (Cardiff: National Assembly for Wales) September 2005, available at: www.wales.gov.uk/keypubassembettergov/content/reports-e.htm.

tasks that relate to the transfer of legislative powers to the Assembly. If enacted in this form, such provisions would reinforce the existing trends toward executive-oriented relations in which elected representatives have limited information and little ability to control or hold to account the executive.

The second relates to who undertakes various tasks. Not only does the Bill confer extensive powers on the executive, in some cases it appears to confer them on unelected officials rather than elected politicians. Notable cases are the requirement for the Assembly's Clerk to present Assembly Measures and Acts of the Assembly for royal assent (clauses 101 and 114). Normally this would be a formal obligation of the presiding officer (although no doubt actually undertaken by the clerk), and this is the case for Acts of the Scottish Parliament. Why such a different approach should be taken in Wales is not clear. Under clause 32 (3) (b), it appears that officials from the Wales Office could be empowered under the Assembly's standing orders to participate in Assembly committees. While there may be occasions when it will be advantageous for officials to give evidence to committees, for them to participate otherwise in Committee business would be curious.

4.6 Parliamentary progress of the Bill

The Bill was introduced into Parliament on 8 December 2005, and the second reading took place on 9 January 2005. The provisional dates for the Commons Committee stage are 23 & 24 January.

This indicates that progress on the Bill is already running a little behind schedule, as officials involved had hoped this would happen before the Christmas recess not immediately after it. The timetable for the Bill is tight, as it needs to complete its parliamentary passage by the autumn of 2006, in order that its provisions – particularly those relating to the May 2007 elections, given that parties have to select their candidates – can be put into place in time. Given the controversial terms of parts of the Bill, and the likely close scrutiny (if not opposition) these will face in the House of Lords, it needs to complete its passage through the Commons by March 2006 to have any hope of the timetable being workable.

4.7 Financial issues: the Comprehensive Spending Review and EU Objective 1

HM Treasury announced in July 2005 that the next spending review, expected to take place in the spring and early summer of 2006, would be postponed a year and be a Comprehensive Spending Review.¹³⁴ This has major implications for Wales. First, it is significant that the review – expected to signal bad financial news for Wales – will take place after the 2007 National Assembly elections and not before them. Deferring the unfavourable outcome of the review until after the elections is likely to help Labour in contrast to the opposition parties. There is no reason to think that this was designed to achieve that – indeed, the evidence is that the Treasury did not consult any other parts of UK Government about this decision at all, but made a unilateral decision without considering the impact on elections in Wales (or Scotland).

Second, according to the Treasury statement the review will take a zero-based approach to assessing the effectiveness of Departments' existing spending in delivering the outputs to which they are committed; examine the key long-term trends and challenges that will shape the next decade and assess how public services will need to respond; and look at how the public expenditure framework can best embed and extend ongoing efficiency improvements and support the long-term investments needed to meet these challenges.

This implies a fundamental review of spending – which raises the question of how the Barnett formula applies to that review. On the one hand, the Treasury has denied any plans to change the Barnett formula.¹³⁵ Treasury officials have privately suggested that the process will be to take the outcomes for spending in England, and apply the formula to the increases (or presumably reductions, if appropriate) that result. It has also long been the Treasury position that any review of Barnett would need extensive consultation. On the other hand, there has been no express public statement to the effect that the review will not involve assessments of devolved spending, and simply apply the Barnett formula to the outcome for England. Furthermore, a Comprehensive Spending Review (when the overall structure of public spending is reviewed) would be the logical time for a re-assessment of Barnett to take place. At the very least, the lack of clarity from the Treasury is bound to fuel speculation.

¹³⁴ The Treasury's announcement can be found at:

www.hm-treasury.gov.uk/newsroom_and_speeches/press/2005/press_65_05.cfm.

¹³⁵ See the response of the Chief Secretary at HC Deb, 18 October 2005, Col. 934W.

The European Council meeting in Brussels on 17 December resulted in a confirmation of further Objective 1 funding for West Wales and the Valleys, after the end of the present package in 2007, as part of the overall agreement on the EU budget.¹³⁶ This largely confirms the existing position, that tapering relief after the end of the main Objective 1 funding would be available, but ensures that such funding is not lost as a result of the general reduction of the amount of money available to existing EU member states following the accession of poorer states in central and eastern Europe. However, it raises the question of how much assistance exactly will be available, for how long, and whether the Treasury will continue to provide PES cover so that Wales in fact receives extra money.

4.6 Other intergovernmental issues

In March 2005 the Welsh Affairs Committee published a report on the *Police Service, Crime and Anti-Social Behaviour in Wales*, in which it criticised the way the Home Office had operated in relation to the National Assembly.¹³⁷ In particular it noted that 'there remains a low level of awareness and insufficient understanding of the nature and impact of the devolution settlement on policy services in Wales within the Home Office' (citing as an example a Home Office official who claimed a close working relationship with the Assembly Government but could not recall the name of the relevant Welsh minister). It also deplored the extended absence of a permanent Home Office Director for Wales.

The UK Government's response was published on 11 October 2005.¹³⁸ The Government noted that an appointment to the Director's post had been made. Regarding working relations, it said:

The Home Office accepts that the close working relationships it has established with other Government departments across Whitehall has (sic) not been sufficiently replicated in its dealings with the National Assembly for Wales. We will work with the Welsh Assembly Government to put in place further guidance and training to raise the level of awareness amongst officials of the impact of the devolution settlement on the development and implementation of community safety policies in Wales and to ensure that there is

¹³⁶ See 'Great deal for Wales – Rhodri Morgan' *Wales on Sunday*, 18 December 2005.

¹³⁷ House of Commons Welsh Affairs Committee *Police Service, Crime and Anti-Social Behaviour in Wales* Fourth Report of Session 2004-05 HC 46-I (London: The Stationery Office, 2005), particularly paragraphs 18-23.

¹³⁸ House of Commons Welsh Affairs Committee *Police Service, Crime and Anti-Social Behaviour in Wales: Government Response to the Committee's Fourth Report of Session 2004-05* Second Special Report of Session 2005-06 HC 514 (London: The Stationery Office, 2005).

effective engagement at official level between the two administrations. The Home Secretary is intending to establish regular bi-lateral meetings with ministers in the Welsh Assembly Government to ensure that issues of mutual interest are considered on a more systematic basis and that the Welsh perspective is incorporated into the development of, for example, the ASB [anti-social behaviour] agenda.¹³⁹

It is worth noting that the Home Office has become notable for its poor dealings with the devolved administrations – evidenced, for example, in the displeasure shown by Edwina Hart when Minister for Finance and Communities over its conduct of matters relating to asylum seekers, and more recently in Scotland over its failure to consult the Lord Advocate over provisions in the Terrorism Bill.¹⁴⁰ Its reluctance to establish any sort of machinery for routine consultation over devolution matters has been conspicuous, and ministerial meetings of the sort referred to would be a marked departure from that practice.

¹³⁹ Ibid, para. 6.

¹⁴⁰ On the latter, see Scotland Devolution Monitoring Report, January 2006, section 5.

5. Relations with Europe and Local Government

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5.1 Europe

In European matters, the period was dominated by the UK's presidency of the European Council and especially so by the need to secure a budget settlement before the end of 2005. The period also saw the closing of WEC, the Brussels representative office that pre-dated devolution; while new relationships continue to be formed between Wales and other devolved regions in Europe.

5.1.1 *The EU Budget and Structural Funds*

The main priority of the UK Presidency was to achieve agreement on a budget for the 2007-13 financial perspective, something the Luxembourg Presidency in the first half of 2005 had failed to do. This was finally achieved at the EU Council meeting on 15-16 December.

Throughout the period of the UK Presidency, WAG ministers and officials stated repeatedly to the Assembly and to the UK Government that an early agreement on the budget was a priority for Wales. This was not only so that preparations could be made for implementing structural funds programmes in Wales but also due to the danger that – due to a bureaucratic coincidence – new data set on regions' GDP are to be published by Eurostat in January including the figures for 2003. This could have resulted in West Wales and the Valleys losing out on full convergence funding should the figures show that their GDP has risen slightly above 75 per cent of the Community average.

While the First Minister conceded to the European and External Affairs Committee that in many respects Wales' interest were closer to the eastern European countries than they were to the UK¹⁴¹, he stood by the UK Government position that a deal at any price with excessive concession on the rebate would be bad for Wales as it would entail a cut in public spending. This despite the fact, as noted especially by

¹⁴¹ European and External Affairs Committee, Transcript 24 November 2005 www.wales.gov.uk.

Mike German in Plenary that Wales proportion of the rebate was significantly smaller than the amount it stood to gain from another period of structural funds.¹⁴²

Under the regulations for the 2006-13 budget period the old 'Objectives' architecture for Cohesion funds has been replaced by a new system comprising of three programmes: convergence (for those regions with less than 75 per cent of the average GDP); regional competitiveness and employment; and European territorial co-operation¹⁴³. In the event, agreement on the budget was reached at the December Council, and convergence funding for West Wales and the Valleys is expected to be around the current level of £1.3 billion over seven years.¹⁴⁴ Those areas in east Wales not eligible for the full 'convergence' funding should be eligible for regional competitiveness and employment funding.

5.1.2 Relations with other Regions and Governments

UK Presidency

The UK held the Presidency of the EU Council between July and December 2006. As a result, the Welsh Assembly Government had greater opportunities than usual to meet and host ministers and officials from other member states: the First Minister was present at the College of Commissioners visit to London to mark the start of the UK's EU Presidency on 1 July where he emphasised the importance to Wales of an early budget settlement¹⁴⁵. In all Wales hosted eight official Presidency events, including the major Presidency Youth Event in Cardiff on 24-27 October.

An informal council was held at the Celtic Manor resort near Newport on 1-2 September. As well as co-hosting receptions for the foreign ministers and for 200 journalists the First Minister took the opportunity to meet with Artis Pabriks, the Latvian Minister for Foreign Affairs. Of the 2004 intake of new member states, the Assembly decided to form a special relationship with Latvia and the two governments signed a Memorandum of Understanding in May 2004.

¹⁴² *The Record of Proceedings*, Questions to the First Minister, 6 December 2005. www.wales.gov.uk.

¹⁴³ European Commission, Proposals for the new structural funds regulations for the period 2007-2013 www.europa.eu.int/comm/regional_policy/sources/docoffic/official/regulation/newregl0713_en.htm.

¹⁴⁴ WAG Press Release: 'A terrific night for Europe and tremendous day for Wales', 17 December 2005. www.wales.gov.uk.

¹⁴⁵ European and External Affairs Committee, Minister's Report 22 September 2005. www.wales.gov.uk.

Danuta Huber, Commissioner for Regional Policy visited Wales on 29 September and met with the First Minister, the minister for Economic Development and with members of the European and External Affairs Committee. During her visit she emphasised that during the next period of structural funding the Commission would wish to concentrate more on funding human resource development projects such as education and training and developing and supporting SMEs rather than large construction projects – an approach that is supported by WAG.

REGLEG

The First Minister attended the 6th Annual Conference of Presidents of Regions with Legislative Powers on the 21-22 November 2005 in Munich. Among matters discussed were issues of subsidiarity, the role of regions with legislative powers in the future construction of Europe, and co-operation with the Committee of the Regions. The Conference Declaration reaffirmed the member regions' support for the Constitutional Treaty.

Wales will assume the REGLEG Presidency for 2006 despite the fact that the extent to which it is a Region with Legislative powers is debatable. The First Minister reported to the European and External Affairs Committee that Wales' priority would be 'to get the message over very clearly that we do not believe in fortress Europe or in fortress REGLEG'¹⁴⁶. The organisation includes 74 member regions from the UK, Germany, Spain, Portugal, Italy, Austria, Finland and Belgium.

Other Regions

On November 17-20 the First Minister visited Silesia: the Polish region with which the Assembly has a Memorandum of Understanding. In September the First Minister met with Jean-Yves Le Drian, President of the Regional Council of Brittany. As well as the historical and cultural links between the two regions, WAG believes that there is a commonality in being peripheral Atlantic regions with a historical over-dependence on one industry (in the Breton case: agriculture) who are putting an emphasis on telecommunications as a vital part of future economic development.

¹⁴⁶ European and External Affairs Committee, 24 November 2005, transcript. www.wales.gov.uk.

5.1.3 Wales European Centre (WEC)

November saw the Wales European Centre in Brussels close its doors for the last time. Set up 12 years ago by a consortium of Welsh public bodies, the WEC could be described as the first victim of the ASPB merger process. Though not directly a part of it, the impending abolition of several of its main funders including the WDA, ELWa and the Wales Tourist Board had made WEC's demise inevitable. WEC was had already been considerably downsized in recent years after the WLGA and the National Assembly itself, in a move instigated by WAG, pulled out of WEC in 2002.

Those ASPBs brought in-house, many of whom have direct delivery roles in European programmes, will in future engage with EU business directly through the expanded Assembly Government EU office. Arrangement for other WEC members such as the WCVA and environmental organisations remain unclear, but it is the First Minister's stated intention that the WAG office be open and available to anyone from Wales who has an interest in European policy issues. Higher Education Wales (the body that represents Wales' Universities) have, however, already held discussions with WAG regarding co-locating a representative of their own in the same office.

Coinciding with WEC's closure, the whole Welsh representation in Brussels moved offices from the old town house on Rue Joseph II to an office block at the heart of the EU district on Rond-Point Schuman. As well as the WAG Office with 10 staff, the same building houses the Assembly Parliamentary Service's member of staff (to be joined by a second in February) and the WLGA's three members of staff.

5.1.4 Subsidiarity Monitoring Network of the Committee of the Regions

At its 24 November meeting the Assembly's European and External Affairs Committee took part in the test phase of the Committee of the Regions (CoR)'s subsidiary monitoring network. The Committee of the Regions aims to be more systematic about its monitoring of Commission proposals' impact on the principle of subsidiary and to strengthen its role as the guardian of subsidiarity as envisaged by the Treaty of Amsterdam and the proposed Constitution Treaty.

The test involved the CoR studying two Commission proposals on air pollution and air quality along with opinions on them provided by the Committee's legal adviser, the Members' Research Service, the House of Commons European Scrutiny Committee and the UK government. In this instance the CoR accepted the advice that this was

an area where the Commission was justified in acting and that the proposals did not infringe upon the principle of subsidiarity.

The Committee of the Regions' aim is to establish an electronic network of regional and local governments to facilitate input on all Commission proposals from the sub-national level within six weeks of them being published. In order to enhance its ability to play an effective part in this network without such matters infringing upon its main work programme, the Committee on European and External Affairs has decided to set up a sub-committee to consider subsidiarity issues related to EU Directives.

5.1.5 Conclusions

The UK Presidency and the debate over the 2006-13 budget meant this period was far from typical where European matters are concerned. The agreement on the budget however has brought a sigh of relief from politicians from all parties in Wales, ensuring as it does continued Objective 1 funding for West Wales and the Valleys for the next seven years. In other areas, the significance of the closure of WEC and Wales being nominated to the REGLEG Presidency should not be underestimated, signalling as they do how Wales's relationship with Europe has changed and continues to change in view of devolution. With an elected Assembly, not only does Wales now sit at the 'top table' of European regions, but it has also led to a shift away from civil society and non-governmental representation in Brussels to direct engagement by the Assembly and the Assembly Government themselves.

5.2 Local Government

A range of developments in Assembly – Local Government relations has taken place in the past Assembly term. The main developments relate to and complement the implementation of the *Delivering the Connections* Plan, local government finance and issues relating to elections that could impact on local government's role in the administration of elections from 2007.

5.2.1 Reforms and Improvements

Developments in the *Making the Connections* agenda and the *Delivering the Connections* Action Plan aimed at producing efficiency savings and developing a new model for public services in Wales directly impact on local government. First, the

review of local service delivery in Wales chaired by Sir Jeremy Beecham, Vice Chair of the Local Government Association commenced in the autumn.¹⁴⁷ Other members include Dame Gillian Morgan, Sir Adrian Webb, and as academic advisor, Professor Steve Martin.¹⁴⁸ The written consultation closed in January 2006, the review continues to hear evidence from a range of public service invitees until the end of February and will report in July 2006. It has an extensive focus on local government, there is strong cooperation with WLGA which was instrumental in establishing the review, and the appointment of Sir Jeremy is also significant.

Expectations surrounding the review are high. The strategic review aims to identify improvements in local service delivery arrangements. Collaboration, coordination and addressing some of the problems at the local level are key parts of the review. It has the potential to set the basis for fundamental change, for instance, recommendations on the implications of relations between WAG and Whitehall, and the local level processes of regulation and inspection of public services in Wales the relevance of the performance indicators system the implications of the ASPB merger for the local level. The review aroused speculation over Welsh local government reorganisation.¹⁴⁹ Sir Jeremy and Rhodri Morgan have both emphasised that reorganisation is not part of the Review's brief.¹⁵⁰

The strength of the review compared with the concurrent Lyons Inquiry into local government in England is its coverage of all areas of local service delivery. Extending Lyons' terms of reference to include funding and local government functions meant delaying its final report until the end of 2006. As a result, the Welsh Assembly Government did not publicly release its evidence to the Lyons Inquiry and the links between the reviews were played down. Beecham's findings will now feed into the Lyons Review. The latter could impact on Wales, particularly recommendations regarding finance.

Second, reflecting *Making the Connections*' emphasis on greater collaboration, in October 2005 the WLGA agreed to the establishment four Regional Partnership Boards covering North, Mid, South West and South East Wales. They will deliver five

¹⁴⁷ Review of Local Service Delivery in Wales: Terms of Reference, WAG (2005) www.wales.gov.uk.

¹⁴⁸ Local Government and Public Services Committee, LGPS (2)-10-05(p.1) 9 November 2005, Report by the Minister for Finance, Local Government and Public Services, NAW (2005) www.wales.gov.uk.

¹⁴⁹ Shipton, M., 'Why Wales should just rip up its map of 22 authorities,' 25 November 2005 *Western Mail*.

¹⁵⁰ R. Morgan speech announcing the Review of Local Service Delivery, 14 July 2005, WAG (2005) www.wales.gov.uk/themesmakingconnection/content/events/key-note-e.htm.

major national collaborative working projects in areas of waste management, looked after children, energy management and capital projects and expand the agenda of joint working. Regional Co-ordinators to support the boards will be jointly funded by WAG.

Another aspect of the broader programme of public service reform was the Minister's announcement of a process to rationalise the number of statutory local authority plans that was strongly welcomed by local government. Moving towards requiring local authorities to produce four statutory plans in areas of devolved policy – community strategy, health and well-being, children and young people, and local development will have potential implications for local government political structures.¹⁵¹

Another complementary agenda highlighting greater cooperation is developments in implementing the Wales Spatial Plan *People, Places, Futures*, discussed on section 1.7.¹⁵² During the second round of Ministerial meetings held in December in the six spatial areas of Wales, agreement was reached on projects proposals for the local areas.¹⁵³ There is some speculation as to whether or not these new building blocks will usurp the previous four economic regions of Wales and there are further concerns in North Wales that these could undermine the co-operation and cohesion developed between local authorities and other partners since 1996.

5.2.2 Finance

Details on the final Local Government Revenue and Capital Settlement for 2006-07 were published on 8 December. After adjusting for transfers, the revenue support grant and the non-domestic rates funding signifies an average increase of 5.1 per cent over the settlement for 2005-06. The capital settlement for 2006-07 increased to £618.8 million, an increase of 4.2 per cent and specific capital grants increased by 5.8 per cent to £403 million.¹⁵⁴ An additional budget expenditure line of funding of £2.3 million was included to assist local authorities in obligations arising from the Civil

¹⁵¹ WAG Press Release: 'Minister reduces the burdens on local authorities' 30 November 2005. www.wales.gov.uk.

¹⁵² See *People, Places, Futures: The Wales Spatial Plan* (Cardiff: Welsh Assembly Government, 2004). At: www.wales.gov.uk/themesspatialplan/content/wsp-101104-pt1-e.pdf.

¹⁵³ Local Government and Public Services Committee, Report by the Minister for Finance, Local Government and Public Services, 12 January 2006.

¹⁵⁴ WAG Press Release: Final Local Government Revenue and Capital Settlements 2006-07, 8 December 2005 www.wales.gov.uk.

Contingencies Act 2004.¹⁵⁵ Responding to the provisional settlement, Councillor Derek Vaughan (Neath Port Talbot) the WLGA's new Leader, stated that the overall increase was 'better than expected' but that 'significant local pressures will remain'.¹⁵⁶

In November, the Local Government Finance Division launched a consultation on *Three Year Revenue and Capital Settlements for Local Authorities in Wales* until 27 January 2006.¹⁵⁷ It is likely that the proposals will be broadly welcomed by enhancing the ability of individual authorities to plan forward more effectively rather than having to go on the basis of all-Wales provisional budgets. It raises implications for the Welsh Assembly Government in fulfilling its funding commitments and retaining its policies for the settlement periods, and the formulas used to calculate funding to each local authority.

5.2.3 Elections

The Local Government and Public Services Committee conducted detailed scrutiny of the Electoral Administration Bill with the intention of contributing to Westminster debates at the Committee stage. It coincided with the committee's scrutiny project, 'Electoral Arrangements in Wales'. It broadly supported the Bill and amongst its recommended amendments was including measures on automatic registration of electors and piloting electronic voting systems in polling stations. It also proposed amendments to clarify the position of the National Assembly and recognise that electoral services arrangements in Wales are conducted bilingually and recommended that adequate funding be put in place to ensure the effective implementation of the provisions in the Bill.¹⁵⁸ The Committee used a previously unused Standing Order to put down a Plenary motion directing the First Minister to make recommendations for Amendments to the Bill to the UK Government. Following its first meeting, the Elections Planning Group led by WAG decided to meet on a quarterly basis particularly in view of the fact that the Electoral Administration Bill is likely to influence the administration of the 2007 Assembly elections.

¹⁵⁵ Local Government and Public Services Committee, (LGPS-09-05(p.1) Consideration of the Draft Budget, www.wales.gov.uk.

¹⁵⁶ WLGA, 'Budget settlement better than expected, says new WLGA leader', 1 November 2005

¹⁵⁷ See the consultation document at:

www.wales.gov.uk/subilocalgov/content/consultation/revenue/tysconsultation-e.pdf.

¹⁵⁸ Local Government and Public Services Committee (LGPS(2)-13-05(p.1) Scrutiny of the Electoral Administration Bill 2005 Final Report, www.wales.gov.uk.

5.2.4 Emerging Issues

- Reorganisation of Police Force Structures – 23 December was the deadline for police forces and authorities to submit their preferred option. It raises implications for accountability and local government representation on the authorities.
- Post-16 Education – in November the Minister for Lifelong Learning made a commitment that local authorities will have an enhanced role in the planning of post-16 education following Elwa's merger into WAG.
- Review of School Funding – WLGA submitted evidence to the National Assembly for Wales committee on School Funding.
- The consultation on Performance Measurement Framework for Local Government.
- Housing – amongst the key issues currently being discussed are local authority difficulties in meeting the Welsh Housing Quality Standard (WHQS), affordable housing and homelessness.

5.2.5 Conclusions

Overall, the Welsh Assembly Government's agenda of public service reform highlights the strong ties with local government in Wales and the importance of good relations between the two levels. Publications such as *Making the Connections* and plan rationalisation suggest the evolution of relationships between the centre and local government in Wales away from 'command and control' tendencies to greater autonomy for local authorities to respond to local needs. Further steps in this direction could include enhanced flexibility for local government in the allocation of finance. Finally, the outcomes of the Beecham and Lyons inquiries will have significant implications for the future of local government and Assembly relations.

6. Elections, Parties and Public Attitudes

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6.1. Elections

There were no parliamentary or National Assembly by-elections in the latter months of 2005. All the major (and minor) parties were recovering from the UK general election of May 2005, and beginning to look ahead to the National Assembly election in May 2007.

Five local government by-elections were held in Welsh local authorities during the last four months of 2005. The results are summarised in the table below. With such a small number of by-elections occurring in such disparate authorities, it would be foolhardy to attempt to observe general trends in the results.

Figure 2: Local Government By-Elections, Sept-Dec 2005

<i>Ward</i>	<i>Council</i>	<i>Month</i>	<i>Winner</i>	<i>Change?</i>	<i>Swing</i>
Bryncoch North	Blaenhonddan Comm. Council	September	Plaid Cymru	PC Hold	N/A
Montgomery	Powys CC	September	Independent	Ind. Hold	17.1%, Ind. to Cons.
Mountain Ash W.	Rhondda Cynon Taff CC	September	Labour	Lab. Hold	4.25%, Lab. to PC
Marshfield	Newport CC	October	Conservative	Con. Hold	20.4%, Con. to LD
Eglwysbach	Conwy CBC	December	Plaid Cymru	PC Gain	35.2%, Con. to PC

Source: www.gwydir.demon.co.uk/byelections

The other main development in regard to elections in this period was the proposal contained in the Government of Wales Bill (GOWB) for changes in the electoral system used for National Assembly elections. (This development is also discussed elsewhere in Section 4 of this monitoring report). The GOWB proposal followed on from the rejection in the Government White Paper of the Richard Commission's suggestion: an 80-seat National Assembly, elected by the Single Transferable Vote (STV) system. Instead, the government has proposed retaining a 60-seat Assembly

elected under the Additional Member System (AMS), but disbaring individuals from standing as candidates in both constituency and list contests (to overcome what one might term the 'Clwyd West Problem').¹⁵⁹

The government's proposals have attracted widespread criticism. Criticism has focussed on the absence of any evidence produced by the government to support the White Paper's claim that 'for losing candidates to become Assembly Members regardless of their constituency election results both devalues the integrity of the electoral system in the eyes of the public and acts as a disincentive to vote in constituency elections';¹⁶⁰ the fact that the vast majority of territories using 'mixed' electoral systems such as AMS do not prohibit dual candidacy; and the potential damage to public confidence caused by the introduction of changes to the electoral rules in the absence of cross-party consensus. The proposed changes have been opposed by the Electoral Commission, the Electoral Reform Society, the majority of academic commentators, and all political parties in Wales other than Labour. Nonetheless, the government has appeared determined to press ahead with its plans.

6.2. Parties

In the wake of the general election, and prior to the build up to the National Assembly election, all the political parties had some room for taking stock.

Labour

For Welsh Labour, a key issue remains the tense and sometimes tetchy relationship between Welsh Labour MPs, who remain largely devo-sceptic, and the Welsh Assembly Government in Cardiff. Whatever the merits of the proposals contained within it, the White Paper published in June 2005 represented a master-class in the art of political management, with Secretary of State Peter Hain succeeding in conjuring up substantial inducements to both sections of his party. (Although it should be said that Hain's unexpected decision to include the provision of primary powers within the bill – to be enacted only after approval in a subsequent referendum –

¹⁵⁹ So named after the events of 2003, when three defeated candidates from this constituency were subsequently elected as regional list AMs for North Wales.

¹⁶⁰ Wales Office, *Better Governance for Wales* (London: The Stationery Office, 2005), pp.28-9).

means that, on balance, the proposed legislation is probably more favourable to the Labour's AMs than its MPs.)

Tensions also manifested themselves with the publication of Rhondda MP Chris Bryant's Smith Institute pamphlet, *Transforming Britain: The Politics of Modern Progressive Reform*, in mid-November.¹⁶¹ In the section of the pamphlet dealing specifically with Wales, Bryant provided a thorough-going critique of the Assembly Government's attempt to place 'clear red water' between itself and the Blair government's much vaunted 'reform agenda' in public services. Bryant charges that a 'political cosiness' characteristic of the Assembly Government's relations with producer groups has had a negative impact on service provision. The pamphlet brought into the public sphere a criticism of the Assembly Government's alleged 'producerist' bias often heard in private among the more 'reform' minded members of the Welsh Labour Party. Unsurprisingly, Bryant's views were given short shrift by First Minister Rhodri Morgan, and they probably have little resonance in the wider party in Wales. If, however, it remains a common perception that public services in Wales are lagging behind those in England, then it will surely become more difficult to dismiss this type of argument in the future.

During the second half of 2005 it certainly became impossible for the Labour Party in Wales to ignore the implications of the fact that they now form a minority government in the National Assembly. A series of lost votes in the Assembly left the Assembly Government both embarrassed and frustrated. Particularly noteworthy were the attempts by the opposition to dampen the Assembly Government's vaunted 'bonfire of the quangos' by demanding assurances about the future of the various activities – including statutory functions – currently undertaken by the Welsh Language Board, a clash that has developed into an almost textbook example of the classic executive-legislature conflict. The irony of Rhodri Morgan's central role in the ensuing furore – backbench poacher turned executive game-keeper – has certainly not been lost on long-time observers of Welsh politics. More consequential, however, are the questions raised by the current standoff for the capacity of the legislative branch to hold the executive to account in the context of increased powers.

¹⁶¹ Chris Bryant MP, *Transforming Britain: The Politics of Modern Progressive Reform* (The Smyth Institute, London 2005).

Conservatives

As for Tories in the rest of the UK, the question of the party leadership and the future direction of their party has preoccupied Welsh Conservatives in recent months. Now that this question has been answered so emphatically in the form of David Cameron and his dash for the centre ground of British politics, attention has shifted to the implications of this new direction for the Conservative party's position and prospects in Wales. In particular, speculation has focused on the implications of the change of leadership for efforts by the Tory group in the National Assembly to develop a different, more obviously 'Welsh', image for their party. This strategy has been called into question by the election in 2005 of 3 Conservative MPs from Welsh constituencies, all of whom can reasonably be regarded as devo-sceptic.

In the event, Cheryl Gillan, MP for Chesham and Amersham, was appointed Shadow Secretary of State. Although not notably more knowledgeable about or interested in Wales than her predecessor, the much maligned Bill Wiggin, her first substantial public pronouncements have struck a very different tone. Although the Tories have decided to oppose the Government of Wales Bill, it was made clear prior to the Second Reading debate on the 9 January 2006 that the Tories would be abandoning their commitment to a multi-option referendum on the future of Welsh devolution that would include the option of abolition. This 'preferendum' policy was itself only just over one year old, and had been introduced in a bid to maintain party unity over a very divisive issue in the run-up to the 2005 General Election. The latest policy change instituted by the Cameron team is significant: no major party in Wales now advocates even the serious consideration of the abolition of democratic devolved government. Moreover, the shift may also be interpreted as an important vote of confidence in the Conservative group in the Assembly and their leader, Nick Bourne.

Liberal Democrats

Despite their success during the 2005 general election in Wales, where the party doubled their parliamentary representation with the gain of two seats (Cardiff Central and, more surprisingly, Ceredigion), the Welsh Liberal Democrats have been notably introspective in recent months. A brief flurry of press speculation surrounding the purported (Assembly Group) leadership ambitions of Brecon and Radnor AM Kirsty Williams in early autumn notwithstanding, the party seems to have suffered from the same post-election malaise that has gripped the party in the rest of Britain. The very public eruption of dissent and recrimination that led to the downfall of Charles

Kennedy in early January 2006 resonated painfully throughout in the Welsh party, with Welsh leader Lembit Opik resolutely loyal to the last. It remains to be seen what impact the loss of one of the Liberal Democrats' most important electoral assets will have on the fortunes of the Welsh party.

Plaid Cymru

In the immediate aftermath of the party's poor showing in the May 2005 general election, several prominent members of the party launched an internal pressure group called *Dewis* ('Choice') calling on the party to consider forming a coalition government in Cardiff, including the Welsh Conservatives. Although their call was decisively rejected by the party's National Council in June 2005, it is clear in retrospect that the real significance of the formation of *Dewis* was: (i) it signalled a significant thawing in previously frosty relations between key senior figures in the party – *Dewis* members included Dafydd Wigley and Cynog Dafis, as well as others considered close confidants of Lord Elis Thomas and Ieuan Wyn Jones; and (ii) that it presaged a return to active politics by the former party President Wigley. Wigley was made Honorary Party President at the party's September conference and it has since become apparent that he regards this as far more than a figurehead role. His return to the Assembly in 2007 now seems assured. While his popularity and high profile will undoubtedly provided a much-needed boost to the party's flagging fortunes, it remains to be seen whether the party's present leadership and leadership structure can cope with the re-emergence of this previously dominant figure following his recovery from health problems.

6.3. Public Attitudes

There were no major political events during the latter months of 2005 that provided direct evidence of the shape of public attitudes towards devolution, the devolved institutions, or the policies produced by them. However, late-2005 did see the release of survey data gathered by the 'Welsh Booster' sample from the 2005 British Election Study (BES).¹⁶² The majority of this data was garnered via the representative sample survey implemented immediately after the election on 5 May 2005. The BES data does have some significant limitations. Even with over-sampling of Welsh

¹⁶² The BES has conducted post-election surveys of public attitudes and behaviour after every UK general election from 1964 onwards. It is thus one of the longest-running, as well as one of the most high-quality, academic election surveys in the world. The conduct of a 'Welsh Booster' in 2005 meant that respondents in Wales were over-sampled in relation to the rest of the UK; the 2005 BES thus contained the largest-ever proportion of Welsh respondents in this survey.

respondents relative to their proportion of the British population, the number of respondents in the Welsh sample was still well below the 1000+ obtained in dedicated Welsh election studies conducted (by the Institute of Welsh Politics at Aberystwyth) in 1999, 2001 and 2003.¹⁶³ The BES sample also compares unfavourably with the Aberystwyth studies in that it sampled in only 22 parliamentary constituencies (compared with the dedicated Welsh studies, which drew respondents from all 40 constituencies).¹⁶⁴ Nonetheless, in the continued absence of a regular social attitudes survey in Wales (as exists in both Scotland and Northern Ireland), the BES data provide us with the best and most up-to-date indications about the state of public attitudes in Wales.

In addition to many questions common to respondents across Britain, a small number of questions particular to Wales were included in the BES. One continued a long-standing question (asked in every survey since the 1997 post-referendum survey) that gauges constitutional preferences between four options: Independence for Wales; a Parliament with legislative powers; an Assembly with limited powers (as now); and No Devolution. Figure 3 reports results for this question, with responses in previous surveys also included. Two things should be noted in regard to the 2005 results. The first is the low number of responses to this question compared to previous years: in addition to minor reservations about the sample (see footnote 151), this suggests a need for great caution in interpreting the findings. But the second thing to note is the change in responses since 2003. While support for extending devolution towards a parliament, or even towards full independence, has hardly altered, support for the status quo has fallen, with the No Devolution option rising in popularity for the first time since the referendum.

¹⁶³ The 1999 Welsh National Assembly Election Study, and 2001 and 2003 Wales Life and Times Surveys, were funded by the Economic and Social Research Council (grant numbers R000238070 and L219252042), with fieldwork conducted by the National Centre for Social Research.

¹⁶⁴ It should also be noted that, notwithstanding the efforts of the BES team to achieve representativeness in their sample, there may be some modest biases in the BES sample. The 22 constituencies sampled these included two of the three won by the Conservatives in 2005, two of the four won by the Liberal Democrats, but only one of the three won by Plaid Cymru. Analysis of how respondents reported voting in the general election also suggested a mild bias towards the Conservatives: in contrast with the Aberystwyth studies (and indeed most opinion surveys and recent post-election studies across the UK), which tend to mildly under-report Conservative electoral support, the BES Welsh Booster over-estimated Conservative electoral support by 1.6 per cent (it also over-stated Liberal Democrat support by 1.3 per cent, and under-estimated Labour support by 3.5 per cent and Plaid Cymru support by 0.4 per cent). Along with the small number of responses on some questions, this does indicate a need for caution in comparing these BES results with the findings of the earlier Aberystwyth studies.

Figure 3: Constitutional Preferences (%) in Wales, 1997-2005

<i>Constitutional Preference</i>	<i>1997</i>	<i>1999</i>	<i>2001</i>	<i>2003</i>	<i>2005</i>
Independence	14.1	9.6	12.3	13.9	11.1
Parliament	19.6	29.9	38.8	37.8	37.6
Assembly	26.8	35.3	25.5	27.1	21.0
No elected body	39.5	25.3	24.0	21.2	30.3
Number of respondents	641	1173	1044	935	344

One plausible interpretation of the above findings is that they are simply a reflection of a small sample size and (somewhat) problematic sample. But another interpretation is also highly plausible – that they reflect a genuine change in popular attitudes that is linked to the public’s experience of devolution in recent times. The BES also included several questions on policy delivery that paralleled previous questions in the fields of the Economy, Health and Education.¹⁶⁵ Figures 4-6 report responses from the 2005 BES, again with figures from previous surveys included as a comparison. While caution must again be entered regarding the small number of responses, the data across all three policy areas show negative reactions to the impact of devolution to have grown substantially since 2003, and to now be at its highest recorded levels. To put it simply, few people appear to be much impressed with what devolution is actually delivering.

Figure 4: Impact of the Assembly on the Standard of Living (%), 1997-2005

<i>Response</i>	<i>1997</i>	<i>1999</i>	<i>2001</i>	<i>2003</i>	<i>2005</i>
Improve	31.0	28.3	34.7	37.8	26.1
No Difference	56.3	66.2	57.4	54.5	55.2
Reduce	12.7	5.5	7.9	7.7	18.8
Number of respondents	630	1185	1028	926	346

¹⁶⁵ These questions had asked respondents in 1997 and 1999 about their expectations regarding the impact of devolution in these areas, and from 2001 onwards have asked respondents about their experiences.

Figure 5: Impact of the Assembly on Education, (%), 1997-2005

<i>Response</i>	<i>1997</i>	<i>1999</i>	<i>2001</i>	<i>2003</i>	<i>2005</i>
Improve	54.9	45.4	25.0	31.4	30.9
No Difference	39.7	51.2	71.4	61.8	47.5
Reduce	5.4	3.4	3.5	6.7	21.6
<i>Number of respondents</i>	<i>627</i>	<i>1175</i>	<i>964</i>	<i>848</i>	<i>348</i>

Figure 6: Impact of the Assembly on Health, (%), 1997-2005

<i>Response</i>	<i>2001</i>	<i>2003</i>	<i>2005</i>
Improve	31.0	43.3	18.4
No Difference	63.6	47.7	38.6
Reduce	5.4	9.0	43.0
<i>Number of respondents</i>	<i>1042</i>	<i>929</i>	<i>371</i>

It does not necessarily follow that people's views on devolution as a principle will be primarily shaped by their experience of devolution in practice. Much work on public opinion around the world has emphasised the distinction between people's level of 'diffuse' support for institutions (roughly speaking, a long-term commitment to them as being right in principle) from their specific support for particular actions or the achievements of such institutions. And previous analysis of public attitudes in Wales has indeed found evidence that such a distinction holds to at least some degree for many people.¹⁶⁶ But this does not mean that the specific record of the Assembly government can have no impact at all on attitudes; and consistent perceptions of failure are likely to have a corrosive impact on the public legitimacy of devolution.

6.4. Conclusion

The latter part of 2005 was inevitably something of an interregnum for the political parties in Wales. But one obvious consequence of devolution has been to institute more frequent elections, and with May 2007 looming ever larger, the run-up to their next big contest is much more imminent for the parties in Wales (and Scotland) than is probably fully appreciated in the Westminster political village. The next months are likely to see greater urgency developing within the parties, as they seek to define

¹⁶⁶ See Richard Wyn Jones and Roger Scully, 'A Settling Will? Wales and Devolution, Five Years On', *British Elections and Parties Review*, 13 (2003), 86-106.

their appeal to the public, and position themselves ahead of the next devolved elections.

7. The Assembly and the Media

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7.1 Introduction

The revelation by former Number Ten spin doctor Lance Prince¹⁶⁷ that British Prime Minister Tony Blair, in his anger at the outcome of the first Assembly elections, berated the ‘fucking Welsh’ should not overshadow an increasingly unsettling period for the media sector in Wales in the latter part of 2005. Assembly members have expressed their anxieties about developments in the media and cultural industries and their impact on the democratic deficit in Wales and the state of the Welsh economy. Expressions of concern have been accompanied by initiatives, primarily in the form of the Assembly government’s creative industries strategy, as well as reviews by the Culture Committee into aspects of the state of the media in Wales. Set against all this gloom is one of the greatest triumphs in Welsh television history: the making of the reinvented *Doctor Who* series by BBC Wales. This series has put the Welsh TV industry on the UK and global map and provided a huge impetus to whole sector, as well as a great badge of credibility to the efforts of politicians to promote Wales as a thriving media hub.

7.2 Retrenchment

While *Doctor Who* has generated employment, job losses and cutbacks have dogged the media industries during the period of this report. In July, BBC Wales revealed plans to re-structure its activities and lay off employees as part of Director General Mark Thompson’s commitment to save £355 million across the Corporation. It announced that 172 posts would be lost from programme making content and output areas and 30 from non-programme making professional services. The in-house Arts department at BBC Wales is to close, a move described by a local NUJ official as ‘scandalous’.¹⁶⁸ Pledges that Wales could benefit in the future from an estimated £13 million of reinvestment did little to offset what some see as a diminution of the Welsh voice in British broadcasting. These losses come on top of the cutbacks in ITV’s regional commitment in Wales.

¹⁶⁷ Price, L., *The Diary of a Spin Doctor* (London: Hodder and Stoughton, 2005).

¹⁶⁸ ‘BBC staff in tears as 202 jobs set to go’, *The Western Mail* 22 July 2005.

Electronic giant Sony announced in June that its Bridgend plant would close with the loss of 400 jobs. An additional 250 would go at an assembly plant outside Bridgend. The plant, which makes traditional televisions, had been condemned by the rapid increase in consumer demand for flat screen sets. The decision was seen as especially painful as the man behind it was new Sony boss, 'Cardiff-born Welshman, Howard Stringer'.¹⁶⁹ A further 67 production jobs went at South West Wales Publications with the closure of its printing plant at Swansea, which prints the *Llanelli Star*, the *Carmarthen Journal* and the *South Wales Evening Post*. The threat of editorial cuts still hangs over the *Evening Post*, a threat which was given added urgency in December when Trinity Mirror announced it was to cut 44 jobs at the group's Welsh titles, which include the country's leading newspapers *The Western Mail*, the *South Wales Echo* and *Wales on Sunday*. These cuts come two years after the loss of 55 jobs at the Cardiff centre as well as other cuts at Trinity's newspaper in north Wales, the *Daily Post*. Such losses represent a blow to Wales's fragile press.

7.3 Trinity not mirroring local democracy?

The cuts announced by Trinity brought about a strong response from AMs and Welsh MPs. Trinity's decision was a shock. Martin Shipton, chief reporter of *The Western Mail* and an NUJ representative, reflected the views of politicians and journalists when he said 'we are very angry about what is happening because the fact of the matter is the company is making an enormous profit out of Wales'.¹⁷⁰ In March the group had reported a healthy rise in revenues and pre-tax profits; operating profits for the year up more than 20 per cent to £253 million. Chief executive Sly Bailey praised the 'highly motivated and talented people' who make up Trinity Mirror and Chairman, Sir Victor Blank, focussed on plans for growth.¹⁷¹ Against this commercial background the cuts announced in December called into question the company's commitment to Wales. As the dominant company in the market, Trinity Mirror determines the health and vibrancy of the Welsh press. In 2003 the closure of the *Welsh Mirror*, which was selling around 130,000 copies per day in Wales, had brought to an end the only serious attempt in recent years by a national daily to address Welsh readers.

Already significantly under-developed compared to Scotland and some regions of England, the newspaper industry in Wales appeared to be seriously threatened by

¹⁶⁹ *The Guardian*, 30 June 2005.

¹⁷⁰ 'Protests over newspaper job cuts' BBC News, 30 November 2005. www.bbc.co.uk/wales.

¹⁷¹ 'Trinity Mirror delivers on targets', *The Western Mail*, 4 March 2005.

Trinity's proposed cuts. The leaders of the three opposition parties in the Assembly issued a joint statement condemning Trinity's proposal, which they said was 'driven by a company with both eyes on its profit margins rather than maintaining the excellence of its newspapers'.¹⁷² They suggested that the cuts would lead to a decline in the coverage of local politics and community issues, thereby undermining local democracy and accountability. Plaid's spokesperson, Owen John Thomas, regretted that the company had decided not to invest in its newspapers to meet the needs of post-devolution Wales.¹⁷³ Welsh Conservative leader Nick Bourne questioned the company's future intentions with regards to their news coverage in Wales.¹⁷⁴ In the House of Commons, MPs of all parties signed up to Rhondda MP Chris Bryant's Early Day Motion urging Trinity to reconsider and calling on the Competition Commission to review the south Wales newspaper market.¹⁷⁵ Bryant joined with his Labour colleague in the Assembly, Leighton Andrews, to ask the Assembly's Culture Committee to hold an inquiry into the state of the press in Wales. As Rhondda politicians, Bryant and Andrews are particularly concerned at the possible editorial merger of the *Rhondda Leader*, read by almost 60 per cent of local people, with *Pontypridd and Llantrisant Observer*.¹⁷⁶

The call for a review was welcomed by all the Assembly's political parties, and as a result the Culture Committee decided, before the Christmas recess, to hold a wide ranging inquiry into the state of the newspaper industry in Wales. The Committee also decided to ask Trinity Mirror's chief executive to appear before it at the start of 2006 to explain the reasoning behind the company's decision. As part of this review, Plaid has called on WAG to explore the possibility of 'indirect or direct cross departmental support' for *Y Byd*, a Welsh language newspaper due for publication in the near future¹⁷⁷.

7.4 Rolling out the Creative Industries Strategy

The notion of Assembly subsidies for newspapers may be in keeping with what is an increasingly interventionist stance taken towards the media and cultural industries in Wales. A cultural strategy was unveiled in 2002 by the then-Culture Minister Jenny Randerson as a 10-year plan to transform the arts, media and cultural industries in

¹⁷² 'Protests over newspaper job cuts' BBC News, 30 November 2005. www.bbc.co.uk/wales.

¹⁷³ www.plaidcymru.org/press051206.

¹⁷⁴ www.conservatives.com/wales/story. 7 December 2005.

¹⁷⁵ EDM1158. <http://edmi.parliament.uk>.

¹⁷⁶ http://leightonandrews.typedpad.com/leighton_andrews_am.

¹⁷⁷ Written statement of opinion OPIN-2006-0002/Papur dyddiol yn Gymraeg 10 January 2006.

Wales.¹⁷⁸ She emphasised that WAG should take the lead in ‘bringing about that transformation – in our thinking, planning and funding and, as a result, in our delivery’.¹⁷⁹ The focus was on enhancing the ‘entrepreneurialism’ in the sector. In 2004 under the remit of Economic Development Minister Andrew Davies a strategy was formulated in more detail. The review ‘Creative Success – A Strategy for the Creative Industries in Wales’ placed the emphasis on economic development in the sector. This year the Minister of Education and Lifelong Learning has become involved in developing the skills needed to support the growth of the creative industries. The co-ordination of policy implementation across these ministries will be an issue as the strategy is rolled out, several components of which were announced or became operational in 2005.

The Assembly’s creative Intellectual Property Fund offers financial support to film, TV, new media and music companies to help attract more productions to Wales and assist Welsh companies to be more competitive. The focus of the investment is the intellectual property content of a project and recipients must demonstrate an economic benefit to Wales. Projects benefiting from the fund must spend a proportion of their total production budget in Wales. WAG set aside £7 million for this fund. In November leaders of the creative and cultural industries in Wales gathered at the Millennium Centre in Cardiff to launch a strategy document to develop creative skills. Bringing together representatives of a wide range of cultural businesses and institutions the event outlined the Cultural Leadership programme, a £12 million UK investment in management and leadership training in the creative industries. In April a National Manager for Wales was appointed by the new organisation, Creative and Cultural Skills, charged with overseeing the programme. A Wales office will open in 2006 and be co-located with the new Creative Industries Development Service of WAG.

The importance of the creative industries to Wales was acknowledged in the establishment of an all-party group in the National Assembly. This grouping is seen as a forum to bring politicians and the industry together and develop priorities on how best the creative industries can contribute to the Welsh economy and represent Wales. To support the strategy the Creative Industries Development Service was established to oversee the strategy and the former Chief Executive of TAC, the

¹⁷⁸ ‘10 year plan for culture unveiled’ press release, 7 February 2002, (Cardiff: National Assembly for Wales).

¹⁷⁹ ‘Strategy to boost arts’ BBC News, 7 February 2002. www.bbc.co.uk/Wales.

independent TV and film producers association in Wales, was appointed as its first head.

7.5 All Change for Independent Television Producers?

The appointment of TAC's chief executive to head the Cultural Industries Development Service was one of several notable successes in the independent film and TV sector in Wales since 2005. The most significant development was the takeover of the London-based Television Corporation by the West Wales television and new media producer Tinopolis. Based in Llanelli, Tinopolis is one of the UK's largest television producers with significant interests in e-learning and animation. In 2004 it was selected as one of the key suppliers to the BBC Digital Curriculum, the largest e-learning project in Britain, and half of its £10 million turnover is accounted for by S4C.¹⁸⁰ Just before Christmas, much to the surprise of many in the broadcasting industry, it took over one of UK's largest independent production company and owner of companies such as Mentorn and Sunset + Vine. In 2004 TV Corp accounted for over 2,700 hours of television in the UK with a turnover of £62.4 million.¹⁸¹ Another Welsh 'indie' to achieve success is Boomerang. In June Boomerang was selected as one of only 11 companies in the UK to receive funding from the BBC's new regional development fund.¹⁸² Channel 4's Creative Cities programme as well as S4C's development fund have invested in the company, with Finance Wales, the WDA's business development bank, poised to make its largest ever equity investment, estimated to be around £1million, in Boomerang.¹⁸³

The growth of the 'super-indies' has been facilitated by decisions made by broadcasters such as S4C, encouraged by Assembly Ministers, to focus on a small number of preferred suppliers. The broadcasting regulator, OFCOM, by regulating for high quality, original network programmes from the nations, has furthered the opportunities for independent producers in Wales. The amount of network programming to be commissioned outside of London has increased. Tim Hartley, director of corporate affairs at S4C, talking on the eve of a Royal Television Society conference on the creative industries, spoke of the 'changes in the terms of trade between independent producers and the broadcasters' which allow the independent companies to retain the rights to programme ideas, formats and spin-offs. He said

¹⁸⁰ 'Tinopolis beats a fast path to the City', *The Western Mail*, 14 January 2005.

¹⁸¹ Broadcast, 6 January 2006.

¹⁸² Broadcast, 17 June 2005.

¹⁸³ 'Boomerang ready to fly high', *The Western Mail*, 23 November 2005.

this 'creates huge opportunities' with a 'whole new world opening up' for the independent sector in Wales.¹⁸⁴ Hartley's optimism is not shared by everyone. Questions must be raised about who is to share in the changing broadcasting environment. The smaller independent companies in Wales run the risk of being squeezed out, either having to merge with larger companies to win contracts from S4C, and perhaps even from the creative industries fund, or going out of business. The emphasis on the business and finance of the sector detracts from discussion of content and quality of programmes being produced and how they reflect Wales, as well as the problems of nurturing and developing the critical mass of talent. Other critics are arguing that the amount of money set aside to invest in the creative industries is simply not enough.¹⁸⁵

7.6 Closure of Sgrin

In July work finally started on the film studio complex in the Vale of Glamorgan. The facilities here will meet demands for production space in the UK, and support the endeavours of Welsh producers. Dubbed 'Valleywood', the £330 million complex is supposed to comprise five silent stages, an outdoor street set and film production facilities which, according to Lord Attenborough, the Chairman of Dragon International which is responsible for the development, 'will be as good, as sophisticated, as affordable as any studio in the world'.¹⁸⁶ The start of the project had been delayed six months, not getting the go-ahead until it was confirmed that Objective One match funding would be provided by the Welsh Assembly Government. To educate and train film-makers to use the complex, a Screen Academy was launched in October by Skillset as part of a network of seven academies across the UK promoting film skills, including business skills. A joint effort of The Film Academy at the University of Glamorgan and the International Film School Wales (UCW Newport) Screen Academy Wales will receive £500,000 from Skillset over the next two years and an additional £620,000 from WAG. For the First Minister the combination of the Screen Academy and Dragon International Studios will 'produce accomplished graduates, ready and able to add value to the film industry in Wales, the UK and beyond'.¹⁸⁷

Overseeing the development of skills, the production base and creative talent of film and audiovisual workers in Wales will not be the responsibility of Sgrin, the Media

¹⁸⁴ 'Wales in foothills of creative revolution' *The Western Mail* 22 July 2005.

¹⁸⁵ Wagstaff, N., 'Lights, Camera, Inaction' POV2, Chapter Arts Centre.

¹⁸⁶ 'Lord's "tears of joy" at studios' *BBC News*, 20 July 2005. www.bbc.co.uk/wales.

¹⁸⁷ www.skillset.org/uk/cymru/article accessed 6 January 2006.

Agency of Wales. Established in 1997 Sgrin was responsible for spending £2.5 million annually on developing the industry in Wales. Doubts about the effectiveness of the body had been raised as part of the Creative Success document in 2004 which accused Sgrin of a 'lack of clarity' in how it managed its relationship with the sector.¹⁸⁸ In May a report, commissioned by the Arts Council of Wales (ACW), delivered a highly critical assessment. As with many other Welsh quangos, Sgrin has become part of the First Minister's bonfire. It will become part of the Assembly with a new film agency expected to start operating in April 2006. It will reportedly take over some of the functions previously operated by the ACW, such as the distribution of the lottery funds for filmmaking in Wales.¹⁸⁹ The Wales Screen Commission, which promotes the country as a shooting location, will eventually become part of the Creative Industries Service while other parts of Sgrin's remit will be handled by the Welsh Development Agency as part of the Assembly.

Sgrin's future is part of broader concerns about political interference in the media and cultural industries. These concerns have been most publicly expressed in relation to WAG's decision to fund directly six of the biggest artistic companies in Wales including the Welsh National Opera, the BBC National Orchestra of Wales and the literary body *Academi*. Charges of political interference have been levelled both by artists and by opposition AMs. The decision not to renew the appointment of former BBC Wales controller, Geraint Talfan Davies, is seen by many as a vindication of their concerns about 'creeping politicisation'.¹⁹⁰ In his 2005 annual review the Chairman of the Arts Council of England expressed his concern that the changes happening in the relationship between the Arts Councils in Scotland and Wales and government were undermining the tradition of 'arm's length' funding between politicians and the arts. Other bodies such as the Welsh Music Foundation, which provides business support for music-based small enterprises in Wales from Assembly funding, are watching the situation with the Arts Council with some trepidation.

7.7 S4C and BBC Wales – Dancing with Wolves?

The appointment of a new chief executive, a date for the switch-off of the analogue signal and a shrinking and ageing audience are all crucial factors behind a radical re-

¹⁸⁸ '£7m creative fund unveiled' *The Western Mail* 24 November 2004.

¹⁸⁹ www.sgrin.co.uk 8 December 2005.

¹⁹⁰ www.conservative.com/wales/story 6 January 2006.

think inside S4C about the future of Welsh language television. This re-think could mean S4C acquires a new name, logo and brand over the next 12 months, although the new chief executive believes a name change is highly unlikely.¹⁹¹ Whatever happens, the relationship between S4C and the BBC is changing. OFCOM suggested a number of options for the future of the Welsh language channel. The option of the BBC incorporating S4C into its operation in Wales has proven controversial. The Assembly's Minister of Culture, Welsh Language and Sport as part of the consultations on the Green Paper expressed his views against the proposal on the grounds that the BBC in Wales is too dominant.¹⁹² S4C dismisses any move into English language production.¹⁹³ The channel is therefore left with meeting the shortfall in programme output that will occur when the 'sustaining service' of Channel 4 disappears with the switch off of analogue, by pushing for an increase in the value of programming provided by BBC Wales out of the licence fee.

In recent months BBC Wales and S4C have been developing the concept of a 'strategic partnership' between the two broadcasters. In the process S4C has sought to address what it has seen historically as a lack of control over what the BBC produces for their audience. Initially there were tensions, with S4C hinting at the possibility of an approach to ITV to produce some of its news. The ITV Wales response was to argue such a move would be healthy for democracy, playing on fears about the BBC dominance of political news in the country. However, under pressure from the Department of Culture, Media and Sports whose review¹⁹⁴ of the Welsh language channel in 2004 favoured closer co-operation between the two broadcasters, there has been a rapprochement.

¹⁹¹ 'S4C says no to English language move' *The Guardian*, 6 December 2005.

¹⁹² Response to Green Paper on broadcasting, National Assembly for Wales, 27 June 2005.

¹⁹³ 'S4C says no to English language move', *The Guardian*, 6 December 2005.

¹⁹⁴ Department of Culture, Media and Sport (DCMS), *S4C: An Independent Review* (London, 2004).

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Abbreviations and Acronyms

AM	Assembly Member [of the National Assembly for Wales]
BCW	Broadcasting Council Wales
CEHR	Commission for Equality and Human Rights
DCA	Department for Constitutional Affairs
DCMS	Department for Culture, Media and Sport
EDT	Economic Development and Transport
EDTC	Economic Development and Transport Committee [of National Assembly]
EEAC	European and External Affairs Committee [of National Assembly]
EINC	Enterprise, Innovations and Networks Committee [of National Assembly]
ELL	Education and Lifelong Learning
EOC	Equal Opportunities Commission
EPC	Environment, Planning and the Countryside
GOWB	Government of Wales Bill
HSS	Health and Social Services
LEA	Local Education Authority
LGPS	Local Government and Public Services
NAFW	National Assembly for Wales
ONS	Office for National Statistics
REGLEG	Conference of European Regions with Legislative Powers
SI	Statutory Instruments
SJR	Social Justice and Regeneration
WAG	Welsh Assembly Government
WDA	Welsh Development Agency

Summary and Introduction

This is the second Devolution Monitoring Report to be produced by the team led by the Institute of Welsh Politics at the University of Wales, Aberystwyth. The report covers events in the months January-April 2006. As in our first report, we cover a wide range of developments under several broad headings, with this material being presented and analysed by specialists in the respective fields.

Devolution in Wales in the first part of 2006 was dominated by considerations of architecture – both literal and figurative. Literally, in that February saw the official opening of the new building containing the National Assembly's debating chamber. The opening ceremony for the *Senedd* was highly symbolic in how it seemed to suggest that devolution in Wales was now an established fact, accepted by the many pillars of the British establishment who participated.

The figurative architecture of devolution also loomed large. The Government of Wales Bill continued its (not entirely untroubled) way through parliament. At the same time, the impact – realised and/or potential – of other legislation on Welsh devolution was considerable, and showed any notion of a static devolution 'settlement' in Wales to be highly problematic.

Meanwhile, those powers already devolved continued to be used, even though policy-making was coming to be increasingly affected (in every sense) by the looming 2007 election. More immediately, party politics is bound to be influenced by the death in late April of Independent (former Labour) AM and MP Peter Law; two by-elections in the erstwhile Labour stronghold of Blaenau Gwent are now awaited.

Richard Wyn Jones and Roger Scully

Aberystwyth, 5 May 2006.

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

The first months of 2006 saw the continuing development of public policy capacity in Wales, not least through the ongoing cross-party policy reviews of Assembly subject committees but also through ad hoc policy development committees such as those on School Funding, and Rail Infrastructure and Improved Passenger Services. A notable development was the launch of the policy consultation *A Science Policy for Wales?*¹ This is significant on a number of levels, but its primary importance here is that it further signals the Welsh Assembly Government (WAG)'s willingness to develop public policy beyond the boundaries of those matters formally devolved in 1998-99. Whilst such developments might indicate the 'organic' development of Welsh policy-making other evidence points to restraining influence of the centre as evidenced by the Office for National Statistics (ONS)'s reluctance to address the concerns of the Assembly Equality Committee and contrasting Cardiff and London views on the restructuring of Welsh police forces (see section 4.4 below). Overall, the first quarter of the year saw public policy centre-stage as the opening shots were fired in the run up to the 2007 Assembly elections. Responding to criticism of the Assembly Government's policy programme and its failure to deliver all of its 2003 manifesto commitments the First Minister asserted: 'I'm more than happy to stand on my record... we've delivered a lot from learning grants, reducing the poverty of child and elderly people to the huge investment in schools and the health service'.²

1.2 Culture, Welsh Language and Sport

In January the Assembly Government launched its 60+ Free Swimming Scheme. This extends its existing policy (as set out in its Sports Strategy *Climbing Higher*) and entitles those aged 60 years and over to free swimming in municipal pools.³ According to the minister responsible 'we want to move to a mass culture in which people get a basic

¹ Welsh Assembly Government, *A Science Policy for Wales?* (Cardiff, January 2006). At: www.wales.gov.uk/subitradeindustry/content/consultations/science_priorities-e.pdf.

² Report by Phillip Nifield, 'Rhodri: "A case of us or them"', *South Wales Echo* (23 March 2006).

³ Minister's Report, papers of the Culture, Welsh Language and Sport Committee, 19 January 2006.

level of exercise'.⁴ Also at the beginning of the year the Assembly Government announced the completion of its all-Wales survey to identify buildings that meet the standard for listing. This was the culmination of twenty years of work by the historic environment body, Cadw. All 866 community areas in Wales were surveyed and as a result 30,000 buildings have been listed (1-2 per cent of the total building stock).⁵

Reflecting AMs' concerns over a planned reduction in staff, financial cuts and the possible merger of posts at the Welsh daily newspaper the *Western Mail*, representatives of the paper's owners Trinity Mirror Group appeared before the Culture Committee in January as part of its examination of the company's role in the media market in Wales. Trinity staff highlighted increased sales and investment in the *Western Mail*. In turn, Committee Members expresses cross-party concerns over a range of issues including the extent of coverage of the Assembly's proceedings and the demise of the Welsh edition of the *Daily Mirror*.⁶

In respect of the use of Welsh language in policy development, the March meeting of the Assembly Social Justice and Regeneration (SJR) Committee⁷ was informed of measures taken by the WAG SJR Department following the Assembly Government's 2003 Welsh language policy *Iaith Pawb*. Under this 'national action plan for a bilingual Wales' all Assembly Government Ministers and their officials share responsibility for identifying and addressing Welsh language issues in their respective policy areas. AMs were told how the draft SJR departmental plan for 2006-07 sets out a range of measures to promote language equality including an obligation 'that Welsh language issues are factored into policy development and delivery of services across the Department'. The SJR department currently has 50 Welsh-speaking officials out of a total of 420. This is broadly consistent with the overall figure of the 9.3 per cent of Assembly Government officials who are able to speak Welsh.⁸

⁴ Transcript of proceedings, Culture, Welsh Language and Sport Committee, 19 January 2006.

⁵ Minister's Report, papers of the Culture, Welsh Language and Sport Committee, 19 January 2006.

⁶ Minister's Report, papers of the Culture, Welsh Language and Sport Committee, 19 January 2006.

⁷ Papers of the Social Justice and Regeneration Committee, 15 March 2006.

⁸ National Assembly Mainstreaming Review (2004), p.90. 9.3 per cent from a total of 3,452 staff in 2003.

1.3 Economic Development and Transport

At the beginning of the year the Economic Development and Transport (EDT) Minister's Report to the cross-party EDT Committee included a range of Welsh economic indicators. AMs were advised that employment in the three months to October increased by 12,000 over the previous quarter (marking an increase of 120,000 since the start of the Assembly); the employment rate amongst those of working age in August to October 2005 was 72.0 per cent, up 0.4 per cent on the previous quarter (compared with a UK rate of 74.7 per cent); during the third quarter of 2005 4,800 businesses started up – representing a rise of 7 per cent on the previous quarter.⁹ Notwithstanding this progress a recent academic survey concluded that: 'the Welsh economy will continue to lag behind that forecast for the wider UK economy. In 2006, and in line with lower expected growth in the UK economy, Welsh economic growth is forecast at around 1.8 per cent'.¹⁰

At the first EDT Committee meeting of the year the minister told AMs that post-2006 EU economic aid funding for West Wales and the Valleys ('convergence funding') 'is likely to be at a similar level to the current programme, which is approximately £1.3 billion over 7 years'.¹¹ Relating the new funding to existing economic development policy he said that the Wales Spatial Plan¹² will 'allow us to target expenditure on a spatial basis rather than, as happened before, on the whole programme area basis or within the local authority basis'.¹³ In response to these announcements, Kirsty Williams AM (Welsh Lib Dems) asked the minister about the progress of negotiations with the UK Treasury on match funding to which the minister, Andrew Davies AM, stated: 'we have now had an agreement with the Chancellor that European funding will come through as a direct receipt to the Assembly for future programmes. So, that will be a huge asset for us and will reduce the complexity of the current situation'.¹⁴ In March the EDT Committee heard that: 'as at 28 February 2006, the Objective 1 Programme had committed £1.26 billion of grant to 1,643 projects, representing a total project investment of over £3.0 billion'.¹⁵

⁹ Minister's Report EDT Committee, 11 January 2006.

¹⁰ Welsh Economic Review, Bryant et al (2005). See: www.weru.org.uk/Review17_1/Wer17_1.pdf.

¹¹ Transcript of Proceedings, Papers of the EDT Committee, 11 January 2006.

¹² See January 2006 Wales Devolution Monitoring Report (London: The Constitution Unit, 2006).

¹³ Transcript of Proceedings, Papers of the EDT Committee, 11 January 2006.

¹⁴ Transcript of Proceedings, 11 January 2006, op cit.

¹⁵ Papers of the ELL Committee, 'European Structural Funds: Quarterly Report' (29 March 2006).

Also in January, the EDT Committee considered a ministerial paper on 'Wales: A Vibrant Economy' – WAG's latest economic development strategy launched for consultation in November 2005. According to the minister it will 'form the substantial foundation for how we allocate funds from the convergence programme and the European funding programmes'.¹⁶ Amongst a number of opposition party concerns Alun Cairns AM (Welsh Conservatives) stated: 'the weakness is ... it does not mention *how* the deficiencies that the document rightly identifies will be achieved'. In response the minister noted "WAVE' is not meant to be a delivery programme, or a specific delivery mechanism. It is a strategic framework that will inform the Assembly Government and its departments."¹⁷

A major development in the first quarter of 2006 was the granting of royal assent to the Transport (Wales) Bill. The resulting act comes into effect on 26 May.¹⁸ It will shape the future trajectory of transport policy in Wales for it 'places on the Assembly a general duty to develop policies for the promotion and encouragement of safe, integrated, sustainable, efficient and economic transport facilities and services to, from and within Wales and to carry out its functions so as to implement those policies. It requires the Assembly to prepare and publish a Wales Transport Strategy setting out how it proposes to discharge the general transport duty'.¹⁹ A March meeting of the EDT Committee heard that WAG plans to issue a draft of the required Wales Transport Strategy for public consultation in May 2006.²⁰ An indication of current thinking was provided in a paper presented to the committee's 8 February meeting. This stated: 'there is no doubt that Road Pricing has a key part to play in the Assembly Government's future transport policies'.²¹ Also in relation to transport, the minister announced the launch of WAG's Route Development Fund, a programme of financial support to airports. This initiative was linked to a new twice-daily Air Wales flight between Cardiff and Brussels.²² In terms of future policy development a new Assembly Committee was set up at the beginning of the year tasked with examining rail services in Wales.²³ It began its work with the launch of a public consultation exercise. According to Committee Chair John Marek AM (Independent), 'this Committee has been set up to formulate a programme of costed,

¹⁶ Transcript of Proceedings, 11 January 2006, op cit.

¹⁷ Transcript of Proceedings, 11 January 2006, op cit.

¹⁸ see: www.opsi.gov.uk/acts/acts2006/20060005.htm.

¹⁹ Transport (Wales) Act 2006, Explanatory notes.

²⁰ Papers of the EDT Committee, 'Update on Wales Transport Strategy', 15 March 2006.

²¹ Papers of the EDT Committee, 8 February 2006, 'Update on Road Pricing', p.2, para 12.

²² Transcript of Proceedings, 11 January 2006, op cit.

²³ See: www.wales.gov.uk/keypubassemrailinfrastructure/index.htm.

achievable improvements in rail infrastructure and improved passenger services affecting Wales and [in May 2006] we will be making recommendations to the Assembly Government based on our findings'.²⁴

In its 2003 election manifesto Welsh Labour asserted: 'our free bus travel for pensioners and the disabled has been extremely successful ... In a second term we will keep this scheme in place and add to it, developing half price bus travel for 16-18 year olds'.²⁵ With little over a year remaining before the 2007 Assembly elections it was announced that a pilot study will commence from 1 April in order to prepare for the Wales-wide introduction of half price bus travel for 16-18 year olds.

On 16 January WAG launched for consultation the document *A Science Policy for Wales?* As noted, this is significant on a number of levels, not least because it demonstrates WAG's willingness to develop policy outside the boundaries of those matters which have been formally devolved to Wales since at the outset of devolution. The foreword by the First Minister states: 'Should Wales have a science policy? ... The arguments against are that science policy is not devolved to Wales (nor Scotland) ... the other side of the coin is that we in Wales cannot compete in the global economy on the basis of low wages ... What therefore is Wales' future except in the knowledge economy, enriched by science and technology and able to develop specialist niches in products and services that are ahead of the game?'.²⁶

1.4 Education and Lifelong Learning

Following her plenary statement to AMs on 17 January the ELL minister wrote to all schools, LEAs, employers and others in the education sector about the need to exercise robust pre-appointment procedures to prevent unsuitable people from working with children. On 31 January, in an associated measure, WAG used its powers delegated under section 175 of the Education Act (2002) in order to introduce a statutory duty on Welsh local education authorities, governing bodies and further education institutions to exercise their functions with a view to safeguarding and promoting children's welfare.²⁷

²⁴ Press Release, 23 January 2006, Assembly Railway Committee launches public consultation

²⁵ *Working together for Wales* - Welsh Labour's manifesto 2003, p.12.

²⁶ www.wales.gov.uk/subitradeindustry/content/consultations/science_priorities-e.pdf

²⁷ Minister's Report, ELL Committee, 8 February 2006.

In addition, the minister updated the ELL Committee on the Assembly Government's response to the Children's Commissioner's recommendations arising from the Clywch inquiry.²⁸ The latter included the call for the Assembly Government and the General Teaching Council for Wales to take steps to ensure that teachers receive specialist input in their professional qualifying training programme about the way in which child abusers operate.²⁹ Opposition parties broadly welcomed these developments.

12 January saw the publication of the Assembly Government commissioned 'Furlong Review' into the provision of initial teacher training in Wales (ITT).³⁰ Specifically, this study was designed to address a number of issues including: the fact that Wales continues to over-supply primary teachers – according to one expert 'effectively training them for unemployment',³¹ continuing shortages of teachers in secondary schools, notably in maths, physics and Welsh as a second language; and, limited numbers of applicants for posts in Welsh medium schools. These problems are compounded by the fact that official statistics available to policy-makers are designed to serve the pre-devolution 'England and Wales' mode of policy-making. At the end of March the ELL Committee considered the Assembly Government's response to the review.³² Proposed measures included: improvements in Wales-only data available to policy-makers; the need to establish an outline plan for reductions in ITT course numbers in 2007-08; and, that the Higher Education Funding Council for Wales will be remitted to produce for the Assembly Government a detailed plan (including the likely cost and timing) for a reconfiguration of higher education institution ITT providers in Wales.³³ The Furlong Review was broadly welcomed by the state body responsible for ITT in Wales, the General Teaching Council for Wales.³⁴

On other matters, in a paper presented to the Assembly LGPS Committee AMs were advised that: 'the Assembly Government is committed to ensuring that all children and young people aged 0-25 have opportunities to contribute to, and have their voices heard on decisions which it takes and can influence on issues which affect their lives'. The

²⁸ The investigation of a former teacher over child abuse: www.childcom.org.uk/clywch/index.html

²⁹ Minister's Report, ELL Committee, 8 February 2006, Annex B.

³⁰ Downloadable from: www.learning.wales.gov.uk/pdfs/itt-provision-wales-e.pdf.

³¹ J. Andrews in 'Diversity and flexibility key to meeting our teaching needs', *Western Mail* (9 March 2006).

³² Papers of the ELL Committee, 29 March 2006, 'Initial Teacher Training Provision – Next Steps'.

³³ The Open University in Wales excepted.

³⁴ See: www.gtcw.org.uk and ELL Committee, 26 January 2006, 'GTCW Initial Reaction'.

committee was updated on present measures to foster political participation by young people such as the Personal and Social Education (PSE) element of the national curriculum in Wales which has the key stage four aim for pupils to: 'understand the issues relating to democracy in Wales and know the rights and responsibilities of a young citizen'. The whole of the Welsh curriculum is currently in the process of being revised with a view to its (re)introduction in September 2008 and WAG officials advised that: 'the revision will include strengthening ... active citizenship and pupil participation in decision making'.³⁵

1.5 Environment, Planning and the Countryside

At the beginning of the year the Assembly Government restated its intention to introduce new measures other than culling to control bovine tuberculosis (TB) in order to balance agricultural and wildlife management issues.³⁶ In January the EPC Minister announced changes to the legal regulations governing veterinary checks on imports of animal products into Wales (including meat, dairy products and fish). In particular, he outlined a list of legislative amendments to the Products of Animal Origin (Third Country Imports) (Wales) Regulations (2005).³⁷

In terms of policy development, on 11 January consultation was launched on the draft *Rural Development Plan for Wales 2007 – 2013: The Strategic Approach*.³⁸ This policy is the product of multi-level governance and reflects the interplay of Welsh and EU priorities, including: improving the competitiveness of the agricultural and forestry sectors; improving the environment and countryside; improving the quality of life in rural areas; and, building local capacity for employment and diversification. In February the WAG-commissioned research report *The Role of the Housing System in Rural Wales* was published.³⁹ This study underlined that: 'cultural conflicts are apparent in relation to rural housing in Wales. The clearest example is found where Welsh remains a significant everyday language, and where housing has taken on a symbolic role in the contestation of social, cultural and linguistic changes'.⁴⁰ In respect of other matters, in March, the

³⁵ Papers of the LGPS Committee, 9 February 2006, 'Scrutiny Project'.

³⁶ Minister's Report, Papers of the ETC Committee, 19 January, 2006.

³⁷ Minister's Report, Papers of the ETC Committee, 19 January, 2006.

³⁸ See: www.wales.gov.uk/keypubconsultation/.

³⁹ www.housing.wales.gov.uk/ see the links: 'research'; 'completed research (Outputs)'

⁴⁰ WAG (2006) *The Role of the Housing System in Rural Wales*, p. 13.

Chief Veterinary Officer for Wales reaffirmed that, in respect of avian flu, 'we have all the measures in place needed to tackle any outbreak here'.⁴¹ Such contingency planning is underpinned by recent Welsh legislation⁴² and was the subject of a paper presented to the Assembly Health and Social Services Committee on 8 March.⁴³

1.6 Equality

At its January meeting the EDT Committee considered a report by Women into Science, Engineering and Construction in Wales (WISE) about initiatives taken to address the under representation of women in science. The latter include campaigns, publications and leaflets to encourage women to take up science as a career.⁴⁴ The cross-party Assembly Equality Committee also returned to consider measures aimed at improving communication between Welsh government and ethnic minority communities in Wales. These have been developed following the launch in 2005 of the Assembly's second, statutory Race Equality Scheme (RES).⁴⁵ It is intended that RES 'will lead to a better understanding of the diverse needs of the different ethnic and minority groups in Wales, and to the development and delivery of policies and services that are responsive to those needs'.⁴⁶

The 15 February meeting of the Assembly Equality Committee focused on the information that the 2011 census will gather in order to address equality issues in Wales'.⁴⁷ At the meeting the Office for National Statistics (ONS) asserted that its intention is one of 'the Welsh Assembly Government and the National Assembly hav[ing] a more formal role in the run-up to the 2011 census than was possible in the run-up to the 2001 census'. Concerns were raised at the meeting in respect of the exact form of Census questions to be included on the Welsh language – and the consequences of a failure to include questions on citizens' sexual orientation. An advisor to the Committee observed: 'we should be allocating resources in terms of overturning inequality... I and my colleagues already know about the inadequacy of the data that exist. The National Assembly is hampered by really not being able to target policy in terms of addressing

⁴¹ WAG Press Release (22 March 2006).

⁴² E.g. The Avian Influenza (Preventive Measures) (Wales) (No. 2) Regulations 2005.

⁴³ Papers of the HSS Committee, 8 March 2006, 'Preparation for flu pandemic'.

⁴⁴ Transcript of Proceedings, Papers of the EDT Committee, 26 January 2006.

⁴⁵ Downloadable from: www.wales.gov.uk/themes/raceequality/content/order-e.htm.

⁴⁶ Papers of the Equality Committee, 18.01.06, 'Toolkit for ... Ethnic Minority Communities in Wales'.

⁴⁷ Transcript of the Equality Committee meeting, 15 February 2006.

inequality... we need this data'.⁴⁸ In response, ONS officials were non-committal and referred to a future publication of a consultation exercise on the census questions applying to Wales. Underlining the importance of these issues, the following month the Assembly Local Government and Public Services Committee heard that 'local Government does not have adequate performance indicators to measure progress and delivery on equality'.⁴⁹

1.7 Health and Social Services

At its 8 March meeting the HSS Committee considered a paper entitled 'Men's health issues and gender health inequality'. This document represents initial preparations for the gender equality duty that will come into effect in 2007 across Britain. It places an obligation on all public sector bodies in Wales and elsewhere (including health providers) to deliver services in such a way to promote equality between men and women.⁵⁰ The HSS Committee heard that presently, 'there is a lack of evidence-based practice relating to effective health interventions undertaken for men'.⁵¹ Opposition AMs raised a number of key areas of concern with the Health minister including: the decision not to introduce prostate cancer screening and, the need for further initiatives to encourage men to be proactive in health matters.⁵²

In its 2003 election manifesto Welsh Labour announced that: 'in our second term we will ... eliminate all charges for home care services for disabled people in Wales'.⁵³ In the first quarter of 2006, and to the dismay of campaign groups, the health minister Dr Brian Gibbons announced that: 'we commissioned detailed and independent work on costing the policy of free home care for disabled people ... it is clear that at the current time we could not put in place our original plans equitably and affordably'.⁵⁴ According to a representative from the campaign group Disability Wales this is a 'promise that the Assembly Government has just reneged on'.⁵⁵ In response to widespread criticism and

⁴⁸ See statutory equality duty under S.120 of the Government of Wales Act 1998.

⁴⁹ Papers of the LGPS Committee, Equal Opportunities Commission Paper, 2 March 2006.

⁵⁰ See www.womenandequalityunit.gov.uk/cehr/gender_duty.htm.

⁵¹ Papers of the HSS Committee, 8 March 2006, 'Men's health issues and gender health inequality'.

⁵² Transcript of the HSS Committee, 8 March 2006.

⁵³ *Working together for Wales* - Welsh Labour's manifesto 2003, p.5.

⁵⁴ WAG Press release 'Multi-million pound package for older and disabled people', 15 February 2006.

⁵⁵ quoted in report by Martin Shipton 'We've got the Senedd but how can it best be used?', *Western Mail* (2 March 2006).

threats of legal action against the Assembly Government in respect of this policy U-turn⁵⁶ the First Minister asserted: 'I'm more than happy to stand on my record. We weren't able to deliver one of our manifesto promises to offer free home care to the disabled and have to hold our hands up to that. But we have come forward with a very good package to help those affected.'⁵⁷ Announced on 15 February, the latter 'package' included: an increase in the margin above income support before people pay charges for personal care at home;⁵⁸ £3m to provide extra support for carers of people who have mental illness; and, £9m capital funding over two years to support around 10,000 people with telecare technology⁵⁹ which will help vulnerable people to be safe at home.⁶⁰ Following sustained opposition criticism of the Assembly Government's rethink on free home care the chair of the Assembly HSS Committee said in late March that he would ensure that the Committee had the opportunity for 'a full discussion on this' topic. Plaid Cymru AM Helen Mary Jones told the Committee that 'this is the main issue that people are currently raising with me as a matter of concern'.⁶¹

At its February meeting the HSS Committee discussed a paper by the Health Minister on the provision of services in Welsh and other languages as well as meeting other cultural needs in NHS Wales. Committee members were told that over 11,000 staff in NHS Wales had received language awareness training and that the Strategic Framework for Workforce Development for Social Services now addresses Welsh and other languages as a 'mainstream subject'.⁶² Opposition parties broadly welcomed WAG's policy in this area but they raised a number of concerns including the need for WAG to accept that people have a legal right to receive public services in the language of their choice. They also questioned the future effectiveness of monitoring and evaluation of the provision of services in Welsh once, as planned, the Welsh Language Board is merged with the Assembly Government Civil Service.⁶³ On other matters, in March, the HSS Committee announced a policy review of cancer services available to people in Wales. The review

⁵⁶ Report by Martin Shipton 'Disabled may take Labour to court over broken pledge', *Western Mail* (28 February 2006).

⁵⁷ 'Rhodri: "A case of us or them"' report by Philip Nifield, *South Wales Echo* (23 March 2006).

⁵⁸ On average people below 60 years of age with a disposable charging income below £110 per week and people over 60 with a disposable charging income of £143 should not have to pay for personal care at home provided by the local authority.

⁵⁹ See for e example www.telecarealliance.co.uk.

⁶⁰ WAG Press release 'Multi-million pound package for older and disabled people', 15 February 2006.

⁶¹ Transcript of the HSS Committee, 8 March 2006.

⁶² Papers of the HSS Committee, 1 February 2006, 'The provision of services...' etc.

⁶³ Transcript of the HSS Committee, 1 February 2006.

is due to be published in March 2007. Its principal aims will include an examination of equality of provision – and equity of access to – the full range of cancer services and gaining a better understanding of how statutory and voluntary organisations can best work together to ensure that the services provided meet the National Cancer Standards⁶⁴ and patients' expectations.⁶⁵

1.8 Local Government and Public Services

In February the LGPS Committee considered a paper by the Equal Opportunities Commission (EOC). Against the background of an enduring 12 per cent gap between the pay of men and women and successful legal cases against local authorities in England and Scotland, the EOC informed the committee that 'all local authorities in Wales are operating at high risk of losing equal pay cases'. Committee members were also informed that, in anticipation of the Equality Act (2006) that will come into force in April 2007 and will require public bodies to promote equality in both their employment and service delivery functions, the EOC had 'secured commitments from 25 public organisations in Wales to pilot [gender equality schemes] in advance of the legislation coming into force'.⁶⁶

The UK chancellor's March budget allocated an additional £45 million for devolved public services in Wales in relation to the two years 2006-07 and 2007-08. Following the chancellor's announcement of a substantial increase in spending on state education in England,⁶⁷ Welsh professional bodies were quick to call for additional funding. For example, a spokesperson for NASUWT Cymru,⁶⁸ said, 'what I'm asking is the extra investment promised for schools is matched here in Wales by the Assembly Government'.⁶⁹ According to the Welsh Finance Minister, 'the Cabinet will now be giving urgent consideration to how to allocate the additional money. Our aim will be to get this money in to our front line services in Wales and to get the money working for those most in need as soon and effectively as possible'.⁷⁰ The issue of capital allocation in state

⁶⁴ Launched 18 January 2001, see: www.dh.gov.uk/PublicationsAndStatistics.

⁶⁵ Papers of the Health and Social Services Committee, 23 March 2006, 'Cancer Services...' etc.

⁶⁶ Papers of the LGPS Committee, Equal Opportunities Commission Paper, 2 March 2006.

⁶⁷ Average direct payments to English secondary school headteachers are scheduled to rise from £98,000 (2006) to £190,000 (2007).

⁶⁸ The National Association of Schoolmasters Union of Women Teachers Cymru.

⁶⁹ Aled Blake, 'Match-fund our schools or face bitterness', *Western Mail* (23 March 2006).

⁷⁰ WAG press release 'A budget for Public Services in Wales', 22 March 2006.

education is presently being studied by the cross-party Assembly Committee on School Funding.⁷¹ This forum met six times in the first quarter of 2006. Its aim is 'to review all the sources of income (both revenue and capital), how so ever generated, which create maintained primary and secondary school funding (to include pupil referral units)'. The Committee will report its findings to the Assembly by September 2006. Also in March, the Assembly Environment, Planning and the Countryside Committee was given a ministerial update on public procurement and progress in relation to Assembly Government policy of encouraging Welsh public services to purchase more Welsh food produce.⁷² Committee members heard that the identified public sector spend on Welsh products of £9.99m recorded in 2003, had increased to £14.63m in 2005 (+ 46 per cent); and, the overall percentage of Welsh food purchased has risen from 18 per cent in 2003 to 24 per cent in 2005.

1.9 Social Justice and Regeneration

In the first months of 2006 Assembly Members were given an update on potentially significant developments relating to the role and capacity of the voluntary sector in the formulation of public policy. Under the Government of Wales Act 1998 the Assembly is statutorily required to publish a Voluntary Sector Scheme (VSS) that sets out partnership working between the Assembly Government and the voluntary sector. A key part of the Scheme is the Voluntary Sector Partnership Council (VSPC), a series of 21 consultative policy networks.⁷³ Statute requires that that the VSS be reviewed within 12 months of each Assembly election. Accordingly, an Independent Commission was established in October 2003 with the following aim: 'to consider ways in which the Welsh Assembly Government and the voluntary sector in Wales can work more closely together in pursuit of common goals'. Principal areas covered by the review included: policy consultation and policy development. In response to earlier calls from the opposition parties, in February the Social Justice and Regeneration (SJR) Minister updated the Assembly SJR Committee on the progress made in addressing the 59 recommendations in the Independent Commission's Report (published in 2004). One area of reform reported on by the minister was the Partnership Capacity Building Fund, an initiative designed to enable voluntary sector organisations to engage in the policy work of government. Here

⁷¹ See www.wales.gov.uk/keypubassemschoolfund/index.htm.

⁷² 'Update On Public Procurement Initiative In Wales', papers of the EPC Committee, 23 March 2006.

⁷³ See: www.wales.gov.uk/themesvoluntarysector/index.htm.

the WAG Voluntary Sector Unit is currently undertaking a review of the associated issues and it is due to report in June 2006. The minister advised that, overall, 24 Independent Commission Report recommendations had thus far been completed. In a key recommendation yet to be fully addressed, the Independent Commission called on the Assembly Government to 'develop and publish a new strategic action plan, setting out the next steps in implementing the [statutory Voluntary Sector] Scheme'. To this end the Social Justice Minister advised AMs that 'a joint [voluntary] sector and Assembly Government working group has prepared a scoping paper and that detailed work on the resultant new strategic action plan is expected to commence in April 2006. This will include measures to ensure the involvement by all Assembly Ministers and Departments, and for ensuring that small voluntary organisations, and others not currently involved in existing consultative networks can contribute to policy work'.⁷⁴

Recent developments in relation to the, presently, non-devolved policy area of policing reveal interesting tensions between central government and the National Assembly. These have emerged not only between the respective tiers of government but also within Labour, the governing party in both legislatures. In September 2005, the UK Home Secretary wrote to the Assembly SJR Minister to inform her that the Westminster Government intended to endorse the findings of the report *Closing the Gap – a review of the 'fitness for purpose' of the current structure of policing in England and Wales*.⁷⁵ This includes plans for the four existing police forces in Wales to merge into one All Wales Strategic Force. The Assembly Minister subsequently asked the SJR Committee to: undertake a review of the report's findings, take evidence and, consider different ways in which the aims of the *Closing the gap* report (i.e. effective policing to deal with cross-border issues, organised criminality, major incidents and events) might be achieved in Wales. The resulting committee report concluded that 'the Committee is unanimous in its concern about the timescale that had been imposed by the Home Secretary'. It continued, within the committee 'there is a majority view that responsibility for the Police Service in Wales, together with the necessary funding, should be devolved to the National Assembly'.⁷⁶ In February, reflecting the likelihood that the Home Secretary's plans will be imposed, the SJR Committee launched a further, related policy review

⁷⁴ Papers of the SJR Committee, Minister's Report, 9 February 2006.

⁷⁵ See: <http://inspectors.homeoffice.gov.uk/hmic/docs/docs/closinggap.pdf>.

⁷⁶ *Restructuring the Constabulary: Report*, see: www.wales.gov.uk/keypubassemstregen/content/constabulary.htm

*Restructuring the Constabulary – Democratic Structures.*⁷⁷ Its purpose is to invite written submissions on the issues and options for regional and local accountability which would underpin a new national Strategic Police Force in Wales. In the first months of 2006, intra-party tensions between Labour ministers in the Assembly and UK parliament came to the fore with the Assembly ministers attempting to delay the imposition of the proposed changes and challenging UK ministers' cost-assumptions over the creation of a single Welsh force.⁷⁸

In February, following the publication of a WAG-commissioned research report,⁷⁹ the SJR Committee heard from the Assembly minister about the development of measures to increase the supply of affordable housing in Wales. The minister announced three variants of the 'homebuy' model currently being introduced in England (whereby those eligible pay annual charges on the unpurchased equity of a property with a cap on the equity loan of £50,000). The minister signalled a contrasting approach saying: 'I am glad to say that neither of these constraints will exist in Wales, and I will not be rushing to mimic what England is doing in this area... Assembly officials are in discussions with the Council of Mortgage Lenders Cymru and private sector house builders about the development of new products in Wales'.⁸⁰ Whilst broadly supportive of these measures, opposition concerns centred on the proposed level of Assembly Government funding under the schemes. This, as one AM highlighted, 'may still leave many people on average Welsh incomes unable to access the housing ladder'.

1.10 Conclusions

A notable feature of the first months of 2006 is the different modes of cross-party work in the development of policy: through the subject committees' scrutiny of the Assembly Government's proposals and programmes; via committee- initiated policy reviews (e.g. Cancer Services in Wales; Restructuring the Constabulary; Football in Wales); ministers' requests to committees to undertake policy development work (e.g. the "Closing the gap" review); and, the increasing use of ad hoc committees (e.g. School Funding; Rail Infrastructure and Improved Passenger Services). A further noteworthy dimension of the

⁷⁷ see: www.wales.gov.uk/keypubassemsocjustregen/content/restruct-const-demo/index.htm

⁷⁸ See: Mark Stead, 'Ministers clash over police merger plans', *South Wales Echo* (3 March 2006); David James, 'Delay this police merger until after Assembly poll', *South Wales Echo* (14 March 2006).

⁷⁹ WAG, *The Role of the Housing System in Rural Wales* (WAG: Cardiff, 2006).

⁸⁰ Edwina Hart AM, 'Minister's Report', Papers of the SJR Committee, 9 February 2006.

policy process is the growing use of commissioned research to inform policy-making.⁸¹ Recent developments also underline the fact that, as the devolved policy process matures, the adequacy of official data gathering based on the practices of the earlier mode of administrative devolution is often called into question.⁸² Tensions have also been evident between Cardiff and Westminster – with the Assembly keen to extend the scope of its policy-making beyond the present devolution ‘settlement’ (e.g. into science and, policing). Beyond substantive policy topics, systemic issues are also receiving attention, most noticeably in respect of measures related to civil society groups’ ability to engage with the policy process – as evidenced by ongoing work on the voluntary sector Partnership Capacity Building Fund and, Strategic Action Plan. Whilst cross-party policy development may have been evident in the Assembly’s work at the beginning of the year, the oppositional politics witnessed over the Assembly Government’s U-turn on free home care for disabled people suggests that, with just over a year remaining before the next Assembly elections, electoral competition has already begun on the public policy record of the Assembly Government’s second term.

⁸¹ For example: *The Role of the Housing System in Rural Wales; Review of Social Landlords’ Implementation of the Black, Minority Ethnic Housing Action Plan for Wales* (19 December 2005); see: www.housing.wales.gov.uk/rreports.asp?a=35.

⁸² E.g. the Furlong Review comments on data in respect of teacher training; inadequate performance indicators to measure progress and delivery on equality in local government; a lack of evidence-based practice relating to effective health interventions undertaken for men; need to include of a full range of equality indicators in the 2011 Census.

2. The Legislative Process

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2.1 Primary Legislation

2.1.1 January to March 2006: Acts giving powers to the Assembly

Within the period covered by this issue of the monitoring report the UK Parliament has passed 16 Acts out of which only the following three give powers to the Assembly:

Figure 1: Acts giving powers to NAFW enacted in 2006

Equality Act 2006 (c. 3)

Transport (Wales) Act 2006 (c.5)

Natural Environment and Rural Communities Act 2006 (c.16)

Only one is a Wales-only Act, while the 'England and Wales' Natural Environment and Rural Communities Act 2006 gives substantial powers to the Assembly in relation to Wales.

As regards the Equality Act, it is interesting to note that equal opportunity is normally a matter reserved to the UK Parliament⁸⁴ and that 'Under the Welsh devolution settlement the subject matter of equal opportunities is not transferred to Wales.'⁸⁵ The act therefore does not give many powers to the Assembly directly but imposes duties on the relevant UK Secretary of State to consult the Assembly e.g. s.14, 50 or 86 or to gain the Assembly's consent e.g. s. 85 or paragraph 3 of Schedule 1.

2.1.2 Brief summary of the 2006 Acts giving powers to the Assembly

Equality Act 2006 (c.3)

⁸³ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk.

⁸⁴ Paragraph 362, Explanatory Notes to the Act at www.opsi.gov.uk/acts/en2006/2006en03.htm.

⁸⁵ Paragraph 363, Explanatory Notes to the Act at www.opsi.gov.uk/acts/en2006/2006en03.htm.

The Equality Act 2006 (c. 3) received Royal Assent on 16 February 2006. The act's main provisions are to:

- establish the [GB-wide] Commission for Equality and Human Rights (CEHR) and define its purpose and functions;
- make unlawful discrimination on the grounds of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises, and the exercise of public functions;
- enable provision to be made for discrimination on the grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions;

and

- create a duty on public authorities to promote equality of opportunity between women and men ('the gender duty'), and prohibit sex discrimination and harassment in the exercise of public functions.

The CEHR will take on the work of the existing equality Commissions (the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE), and the Disability Rights Commission (DRC)) and will additionally assume responsibility for promoting equality and combating unlawful discrimination in three new strands, namely sexual orientation, religion or belief, and age. The CEHR will also have responsibility for the promotion of human rights.⁸⁶

Transport (Wales) Act 2006 (c.5)

The Transport (Wales) Act 2006 received Royal Assent on 16 February 2006. Its main purpose is:

to provide the National Assembly for Wales with additional powers in the field of transport which, together with its existing powers, will enable the Assembly to develop and implement, in partnership with Welsh local authorities and other bodies, a safe, integrated, sustainable, efficient, and economic transport system serving Wales. It gives effect to the Assembly's request that it be granted such powers expressed in a resolution of the Assembly approved in plenary session on 17 March 2004.⁸⁷

Interestingly this Act applies also outside of Wales:

The Act's provisions extend only to England and Wales. Since the Act relates to the powers of the Assembly its provisions apply, in practice, primarily to Wales. Some of the powers granted to the Assembly relate, however, to transport not only wholly within Wales but also to and from Wales.⁸⁸

Natural Environment and Rural Communities Act 2006 (c.16)

⁸⁶ www.opsi.gov.uk/acts/en2006/2006en03.htm.

⁸⁷ Paragraph 3, Explanatory Notes at www.opsi.gov.uk/acts/en2006/2006en05.htm.

⁸⁸ Paragraph 9, Explanatory Notes at www.opsi.gov.uk/acts/en2006/2006en05.htm.

The Natural Environment and Rural Communities Act 2006 received Royal Assent on 30 March 2006. The purpose of the act is:

to make provision about bodies concerned with the natural environment and rural communities; to make provision in connection with wildlife, sites of special scientific interest, National Parks and the Broads; to amend the law relating to rights of way; to make provision as to the Inland Waterways Amenity Advisory Council; to provide for flexible administrative arrangements in connection with functions relating to the environment and rural affairs and certain other functions; and for connected purposes.⁸⁹

The Assembly can exercise many of the powers which in England are exercisable by the Secretary of State and there are some specific sections to Wales (e.g. s. 42: Biodiversity lists and action (Wales))

2.1.3 Other powers of the Assembly in relation to the 2006 Primary Legislation

The policy of giving certain wide 'Henry VIII' powers to the Assembly enables it to amend or add to existing provisions in individual Acts of Parliament is continued, for example the Assembly can exercise such power to amend legislation under the Schedule to the Transport (Wales) Act 2006.

2.2 Bills

2.2.1 Bills introduced to Parliament giving powers to the Assembly

A significant number of bills before Parliament since 1 January 2006 provide for powers to be given to the Assembly in relation to Wales. They are as follows:

Public Bills:

- Police and Justice Bill
- Electoral Administration Bill
- Climate Change and Sustainable Energy Bill
- Animal Welfare Bill
- Childcare Bill
- Legislative and Regulatory Reform Bill (141)
- NHS Redress Bill
- Safeguarding Vulnerable Groups Bill

⁸⁹ Long Title to the Act, www.opsi.gov.uk/acts/acts2006/20060016.htm.

- Education and Inspections Bill
- Commissioner for Older People (Wales) Bill
- Health Bill
- Identity Cards Bill (This bill has received Royal Assent and the Act will be found on the Office of Public Sector Information site shortly)
- Government of Wales Bill
- Police and Justice Bill
- National Lottery Bill
- Road Safety Bill
- Children and Adoption Bill

Private Bills:

- Identification and Support of Carers (Primary Health Care) Bill
- Disabled Children's Assessment and Services Bill
- Constitutional Reform (Prerogative Powers and Civil Service etc.) Bill
- Breast Cancer Bill

Of particular interest in the list above are:

NHS Redress Bill: The Bill gives very wide framework powers to the Assembly in one general clause in the Bill, which has to be compared to more than 10 specific clauses for England. This recognises the commitment set out in last June's White Paper *Better Governance for Wales* to draft primary legislation in such a way as to 'delegate to the Assembly maximum discretion in making its own provisions using the secondary legislative powers'.⁹⁰

Education and Inspection Bill: Clause 154 Of the Bill makes provisions which have no parallel in England and which would give the Assembly wide powers over education in Wales (including Universities), thereby realising the commitment to permissive drafting of legislation quoted above.

⁹⁰ www.walesoffice.gov.uk/2005/better_governance_for_wales_report.pdf , para. 1.24.

2.3 Assembly Subordinate Legislation

2.3.1 General Statutory Instruments made by the Assembly

Since 1 January 2006, the Assembly has made 53 general SIs.⁹¹ Of those, five are commencement orders,⁹² and one is an exercise of a 'Henry VIII' power in that it amends primary legislation (in this particular case the Education Act 2002).⁹³ Seven of the SIs have no Welsh version, meaning that there were particular reasons for them being made in English only (for example because they have been made under the emergency procedure).⁹⁴

Among these SIs, noteworthy provisions include:

- The abolition of some of the Welsh Quangos: the Historic Buildings Council for Wales and the Ancient Monuments Board for Wales functions are now exercisable by the Assembly following SIs. 62(W.12) and 64(W.13).
- The setting out of the functions of Local Health Boards in relation to dental services SIs 487(W.56) to 491(W.60).
- The making of new regulations for the Welsh Single Education Plan SI 2006/877 (W.82).
- The abolition of many fees in relation to adoption and fostering services by SI. 2006/878(W.878).

2.3.2 Publication of Local SIs made by the Assembly

There are new sections on the Assembly and Assembly Government website detailing local SIs (see section 2.3.4).

⁹¹ The 53 SIs can be found on the Opsi website at www.opsi.gov.uk/legislation/wales/w-2006.htm. They start at SI 30(W.4) and end with SI 885(W.85)(C.23).

⁹² SIs 172(W.23); 345(W.42); 768(W.75), 879(W.84) and 885(W.23).

⁹³ SI 173(W.24).

⁹⁴ SIs 179(W.30); 345(W.42); 487(W.56); 488(W.57); 489(W.58), 490(W. 59) and 491(W.60).

2.3.3 Publication of Non-SI General Subordinate legislation: Wales leads all Government Departments in the UK

January 2006 saw the long awaited launch of the non-SI general subordinate legislation publication on the web. The publication of this legislation can be found on both the National Assembly for Wales⁹⁵ and the Welsh Assembly Government⁹⁶ websites.

The Assembly Parliamentary website presents the data in a chronological list whereas the Assembly Government is showing it by subject area. The Assembly Government website in particular shows great clarity in its new presentation and navigation, promising to aid research on legislation in Wales tremendously.

Generally speaking since 1 January 2006, all non-SI subordinate legislation follows a form prescribed by the presiding office which means that the instruments are easily recognisable as law: apart from the words 'statutory instrument' they look exactly the same as an SI.

2.3.4 General Publication of Assembly and Assembly Government legislation:

Following the redesign and relaunch of the Assembly and Assembly Government websites major improvements can be seen in relation to the following matters: comprehensive lists of Assembly and Assembly Government legislation made from 1 January 2006 can be found which are organised clearly by reference to the type of legislation and which include local SIs and circulars.

2.4 The Government of Wales Bill 2005⁹⁷

2.4.1 General

The bill has been reviewed in a number of reports, the latest being that of the Assembly Committee on the Government of Wales Bill.⁹⁸ This report was laid before the Assembly

⁹⁵ www.wales.gov.uk/servlet/LegislationAndCirculars?area_code=38A3EAEB000541B500006E9500000000&p_arch=null&module=dynamicpages.

⁹⁶ new.wales.gov.uk/legislation/legislationinforce/210923/?lang=en.

⁹⁷ This Part has been written with David Lambert, Cardiff Law School.

⁹⁸ Available at: www.wales.gov.uk/keypubassemgovofwalesbill/report-0306-e.pdf.

on 15 March 2006 and debated in plenary on 22 March. A committee of each of the Houses of Parliament has also reported on the bill.⁹⁹

2.4.2 Review of the Bill's Progress

The bill has passed through all its stages through the House of Commons. It received its second reading in the House of Lords and was in committee in the Lords as parliament began its Easter recess. The progress of the bill through the Commons is reviewed in the following Assembly research Papers:

- Government of Wales Bill 2005-06 (January 2006) 06/001¹⁰⁰
- Government of Wales Bill 2005 – 2006: Second Reading) (January 2006) 06/003¹⁰¹
- Progress of the Government of Wales Bill 2005 – 06 (March 2006) 06/011¹⁰²

The Assembly research team has also published the following paper:

- Welsh Assembly Government bids for primary legislation (March 2006) 06/010¹⁰³

2.4.3 Conventions arising from the Government of Wales Bill

There are certain matters which are not in the Bill but which will nevertheless govern the extent of the Orders in Council and the procedure which they will follow before being considered by both Houses of Parliament. The White Paper identifies certain matters which will not be included in Orders in Council for example:

3.17 It would need to be made clear that the Assembly's powers could only apply to policy areas which were the responsibility of Assembly Ministers and could not be used to alter primary legislation relating to policy areas for which UK Ministers were responsible in Wales.

3.18 The power would be framed to ensure that no Order could give the Assembly powers over the whole of any of the fields listed in Schedule 2 of the Government of Wales Act.

3.21 The procedure for considering these draft Orders would be for Parliament to determine.

The bill prevents the addition of 'fields' by Orders in Council 'where no functions in the field are exercisable by the Welsh Ministers' (Clause 93(7)) to potential powers of the

⁹⁹ House of Commons Welsh Affairs Committee, *Government White Paper: Better Governance for Wales*, First Report of Session 2005-06, HC 551 (13 December 2005), at: www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/551/551.pdf; House of Lords Committee on the Constitution, *Government of Wales Bill*, Eighth Report of Session 2005-06, HL 142 (16 March 2005) at: www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/142/142.pdf; Government responses to these two reports are also available on the respective committee websites.

¹⁰⁰ www.wales.gov.uk/keypubmrs/content/06-001.pdf.

¹⁰¹ www.wales.gov.uk/keypubmrs/content/06-003.pdf.

¹⁰² www.wales.gov.uk/keypubmrs/content/06-010.pdf.

¹⁰³ www.wales.gov.uk/keypubmrs/content/06-011.pdf.

Assembly. It is however considered that a 'field' is different to a policy area which would be part of a field (such as health) where powers within the field are otherwise given to the Assembly.

A letter on 17 January 2006 from Nick Ainger (Parliamentary Under-Secretary at the Wales Office) to Cheryl Gilliam (Shadow Secretary of State for Wales) sets out the procedure to be followed by the Assembly Government and the Secretary of State for Wales in discussing proposed Orders in Council with Parliament. Interestingly the letter makes no reference to the involvement of the Assembly in these initial stages. The intention seems to be that it will only be the Assembly Government via the Secretary of State for Wales who will discuss proposed draft Orders in Council with the Welsh Affairs Select Committee and the relevant House of Lords Committee. The Assembly only appears at the end of the process once the contents of the draft Order in Council have been agreed with these various other bodies.

The letter also sets out a model draft Order in Council together with a Memorandum setting out the reasons for the request for making the Order by reference to the perceived lack of existing legislation and an indication of how the Assembly Government might intend to exercise power in Measures under an Order in Council if made. None of the matters in the letter is in the bill, therefore a convention could be established by letter!

2.5 Legislative and Regulatory Reform Bill

If enacted, this Bill could considerably increase the Assembly's powers. Reproduced below is the memo produced on the bill for the Assembly's Legislation Committee by David Lambert:

The Legislative and Regulatory Reform Bill

1. Outline of its Provisions

The report of the Regulatory Reform Committee of the House of Commons on the Bill published on January 31st states at paragraph 38 that:

"...the main provisions of Part 1 empower any Minister by order to make provision amending, repealing or replacing any legislation, primary or secondary, for any purpose....In summary, therefore, that Part, in providing mechanisms for streamlining legislative procedures strengthened the powers of Ministers – whichever party is in office – in relation to other Members of Parliament. It does so by giving Ministers a concurrent general power to legislate without the constraints that primary legislation normally imposes, in particular, the need to fit Bills in the Parliamentary timetable".

2. References to the Assembly in the Bill

Under clause 9 of the Bill the Assembly has to agree to the making of a Ministerial Order -

- (a) conferring a function on the Assembly,
- (b) modifying or removing a function of the Assembly
- (c) restating any provision which already confers a function on the Assembly.

3. The effect of the Bill's provision on the Assembly post-2007

(a) The Bill has the potential of being at least as equally important to the giving of new powers to the Assembly as the existing and continuing system of giving new powers in Acts of Parliament and the proposed system post-May 2007 of giving powers under Orders in Council under the Government of Wales Bill.

This is because, as the Select Committee emphasises, Ministers will have the same power to make law as Parliament possesses. These powers are subordinate legislative powers but they are as extensive as provisions which can be put into Acts of Parliament.

(b) It is therefore very important to establish the role that the Assembly, as opposed to the Assembly Government, will play in discussions with Central Government leading up to the making of orders under the Legislative Bill. Clause 9 refers to the necessity for the Assembly to agree to orders giving or affecting Assembly powers. Under the provisions of the Government of Wales Bill this reference to the "Assembly" could well become a reference to the Assembly Government.

While the Assembly Government has an important role to play, I consider that the Assembly separately must also ensure that it establishes procedures whereby it can monitor and take part in discussions in relation to proposed orders under the Legislative Bill in the same way as it must establish procedures to monitor and discuss draft Orders in Council under the Government of Wales Bill.

4. Conclusion

I consider that the Legislative and Regulatory Reform Bill is of the utmost importance in developing the future powers of the Assembly. It has the potential of giving powers which are as wide, if not wider than can be obtained by Order in Council under the Government of Wales Bill or under new Acts of Parliament.

This is because of the Ministerial flexibility, which is available in the making of Legislative Bill Orders. The Assembly must therefore consider as quickly as possible the machinery for considering proposals for orders under the Legislative Bill. It is possible that the Bill will be enacted at about the same time as the Government of Wales Bill and may become fully operational before May 2007.

David Lambert

2.6 Sources of Wales legislation: Proliferation of the sources of powers for Wales

Following the expected enactment of the Government of Wales Bill and the Legislative and Regulatory Reform Bill, laws in Wales within the subject fields set out in Schedule 2 to the Government of Wales Act 1998 will be derived from the following main areas:

(a) WAG law:

WAG will be exercising functions under the following legislative instruments:

- Wales-only acts
- UK Acts applying specific Parts or sections to Wales
- UK Acts applying equally to England and Wales
- Orders in Council
- Measures made by the Assembly under Orders in Council
- Subordinate legislation made by WAG under Acts or Assembly Measures
- Orders made under the Legislative and Regulatory Reform Act 2006
- Exceptionally subordinate legislation made by Whitehall specifically for Wales or for England and Wales

(b) Assembly law:

- Measures made under the new GOWA
- Exceptionally powers under Acts of Parliament, including the new GOWA

(c) Central Government Law:

- Subordinate legislation made by central government in relation to Wales under Acts and under subordinate legislation which applies either specifically to Wales or to England and Wales generally.

(d) EU Law

It is interesting to note that at present the Assembly only has machinery specified in its standing orders to consider general statutory instruments made by the Assembly together with a limited number of instruments made by the Assembly Government and certain Bills. Consideration will have to be urgently given as to whether and if so what machinery it establishes for any of the other legislative sources set out above.

2.7 Conclusion

Several of the Bills which are now currently being debated in Parliament offer a great potential for devolution in Wales in that they would allow the granting of wide powers to the Assembly and the Assembly Government. It is truly fascinating to discover such unprecedented legislation and legislative devices. Generally the executive is taking over many of the powers traditionally associated with parliament, and the Assembly Government as an executive body in Wales is benefiting from constitutional trend.

3. Economic Development

Professor Peter Midmore, University of Wales Aberystwyth

3.1 Introduction

The economy of Wales has always been believed to be more vulnerable to the effects of an economic downturn than that of the UK as a whole, and events of the spring of 2006 lent support to this hypothesis, sharpening the focus of the Assembly discussions on economic development issues and leading to some ill-humoured exchanges. The main business concerned discussions of the launch of the refreshed economic development strategy,¹⁰⁴ the merger of the major economic Assembly-Sponsored Public Bodies into the central apparatus of the Welsh Assembly Government, and a continuing inquiry into science policy in Wales, which has yet to produce a final report. The announcement before Christmas that West Wales and the Valleys had secured continued Structural Fund support from the European Union, also featured as a substantial element of discourse in the spring term of the Assembly.

Ministerial reports to the Economic Development and Transport Committee (EDTC) featured a standard series of announcements of employment expansion or jobs protected with financial support from the Assembly Government; spending under the Structural Funds programmes is also broadly on target. Other announcements concerned major employment losses; a number of these are agriculture and food related (for example, closures of the Caernarfon abattoir and the Dairygold cheese-making plant in Felinfach) exposing an ambiguity of responsibility between the briefs of the Economic Development and Rural Affairs Ministers, respectively. Overall, it is quite difficult to interpret precisely how effectively the administration's economic policies are working. In percentage terms, unemployment remains slightly lower in Wales than in the UK as a whole, but the proportion of the population in the labour force is substantially (and stubbornly) lower, and acts as a constraint on the improvement of per capita GVA.

¹⁰⁴ *Wales: A Vibrant Economy*, or WAVE:
http://new.wales.gov.uk/docrepos/40382/4038231141/4038211251/403821125/403821125/wave_wjsessionid=24F380548B13EDA304200B2D5C7C41A5?lang=en.

Manufacturing jobs (even in technologically advanced activities) continued to decline in the face of global cost pressures. Therefore, the other major economic policy objective, improving the quality of jobs and wage levels, suffered some significant if symbolic reverses; the closure of the DARA fast jet maintenance and repair facility at St Athan was finally confirmed¹⁰⁵ (although it may be reconstituted as a military academy) and policy changes by the BBSRC and Defra cost highly paid scientific jobs at the Institute of Grassland and Environmental Research in Ceredigion, and rendered future development of the only UK Research Council establishment in Wales uncertain. These decisions at Westminster level, at variance with the interests of the Wales economy, exposed some discomfort for the (same) governing party in the Assembly.

3.2 Wales: A Vibrant Economy

Although published as a consultation document in November 2005, substantive discussion of the Assembly Government's overhauled economic development strategy occurred in the Assembly in the spring term.¹⁰⁶ Minority parties provided a broad if qualified welcome for its basic analysis and design for tackling lagging performance deriving from low economic activity and low wages. It aims to promote an attractive and stable business environment (increasing employment opportunities) and to support the key drivers of innovation, enterprise, investment and skill development (improving job quality). Whilst much of the substance of economic development policy continues along the lines set out in the previous strategy (*A Winning Wales*) two new elements emerge in its current form: a commitment to reduce regulation and compliance costs for business, by simplifying the plethora of support schemes and making them more flexible; and development of a Knowledge Bank providing customised support for a restricted number of businesses with major growth potential. There is also increased emphasis on providing locally appropriate support packages, using regeneration programmes to address the most acute problems of low workforce participation levels, and to foster industry cluster development.

¹⁰⁵ Plaid Cymru made an official complaint alleging that Andrew Davies, Minister for Economic Development and Transport, misled the Assembly on the extent to which representations were made to Westminster Ministers. In the event, as a *Western Mail* commentator wrote 'With Mr Morgan deciding on ... (the Plaid Cymru) .. complaint, it is a racing certainty that it will be rejected', *Western Mail* (30 January 2006).

¹⁰⁶ Record of Proceedings, Economic Development and Transport Committee, 11 January 2006.

Unfortunately, the examples used of appropriate regeneration programmes to illustrate the new framework are all in South Wales (especially as the Heads of the Valleys Programme is strongly highlighted), and this fomented suspicions among EDTC members of spatial bias in economic development policy towards the concentrations of governing party constituencies. The major opportunity for a critique, however, arose from the publication on 23 December 2005 of the most recent estimates of GVA for the regions of the UK.¹⁰⁷ These provisional figures indicate that in 2004, with a per capita GVA of £13,300, Wales has become the poorest region of the UK, behind the North East (£13,400) and Northern Ireland (£13,500).

Minority parties, and particularly the Conservatives, have compared this performance to the target set out in the previous economic development strategy of achieving 90 per cent of UK per capita GVA by 2010, and use this as an indication of the failure of economic policy in general, and of the use of Structural Funds in particular. Generally similar exchanges occurred in the EDTC, in ministerial questions, and in the Conservative minority party debate in plenary session.¹⁰⁸ The response of the Assembly Government is that although per capita GVA is only 79.1 per cent of the UK average, it has recovered from an exceptionally low level inherited from the previous Conservative tenure of the former Welsh Office, overall GVA has increased more quickly than in the UK as a whole, employment continues to grow and unemployment remains low, and GVA is an imperfect measure and only one of a range of targets against which progress was to be assessed: according to the First Minister, 'We are up in six, and down in two, but we are up spectacularly in two of those six'.¹⁰⁹

A dispassionate assessment of these debates suggests that though provisional regional GVA figures are subject to considerable revision, Wales remains one of the group of least well-performing regional economies in the UK. Secondly, with a restricted range of economic policy instruments (and an even more limited set of indicators on which to base fine-tuning of interventions) it is inevitably going to be difficult to achieve the necessary structural improvements in the Wales economy. Prudently, the new WAVE strategy has avoided specifying targets at this stage, leaving the decision to an

¹⁰⁷ ONS release, available from www.statistics.gov.uk/pdfdir/rgva1205.pdf

¹⁰⁸ Respectively, Record of Proceedings, Economic Development and Transport Committee, 11 January 2006; Assembly Record of Plenary Proceedings, 11 January 2006; 28 February 2006; 7 March 2006.

¹⁰⁹ Assembly Record of Plenary Proceedings, 28 February 2006.

operational version of the plan to be developed in the new Department for Enterprise, Innovation, and Networks.

3.3 The Department for Enterprise, Innovation, and Networks

On 1 April, the WDA, the WTB and ELWa merged with the Assembly Government; the first two within the Department for Enterprise, Innovation, and Networks (from which, henceforth, the Assembly Committee will take its name; henceforth it will be the EINC). The formal process required an Assembly motion and debate on transferring the powers to the First Minister,¹¹⁰ and was also discussed by the EDTC. Although previous discussions had centred on the extent of genuine cost savings that the reorganisation would achieve, the merger orders were supported by all parties apart from the Conservatives. Some concerns were expressed in the subject committee regarding the proper oversight of the significantly expanded internal remit, although the responsible officials for tourism and economic will now appear more regularly at EINC meetings.

This raises more extensive questions about the effectiveness of the Assembly, the number and calibre of its members and the frequency of its deliberations, particularly as developing a more locally-owned and therefore effective economic development strategy was one of the original theoretical arguments in favour of devolved government.¹¹¹ It is much too early to make a judgment on the merits of this reorganisation but will need to be the subject of careful and detailed future monitoring.

3.4 European Structural Funds

The EU's 2007-13 regional policy programme is designed to meet the needs of an enlarged group of member states, many of which are significantly poorer than the fifteen pre-2004 members. By statistical quirk the West Wales and the Valleys area qualifies for the re-titled Objective One support framework, known as the Convergence Programme. There are complications for the East Wales region, much of which is currently covered by an Objective Two programme. Most importantly, new rules on State Aids will govern

¹¹⁰ Assembly Record of Plenary Proceedings (22 March 2006).

¹¹¹ See, for example, Cooke P. and Clifton N., 'Visionary, precautionary and constrained 'Varieties of devolution' in the economic governance of the devolved UK territories', *Regional Studies* 39 (4): 437-451 (June 2005).

the level of investment grant available from Regional Selective Assistance, and delicate negotiations are required to achieve an equitable UK balance of the distribution of the discretionary zones receiving preferential support.¹¹²

There have been attempts, in discussions over the level of member state funding in Wales, to revive the controversy which led to the resignation of Alun Michael as First Secretary in 2001; without adequate extra support from the Treasury, the co-financing element of Structural Funds programmes will draw spending away from core areas such as education and health. However, the Assembly Government's view is that, until the detail of the Convergence Programme becomes clear, particularly in terms of the budgetary allocation to West Wales and the Valleys and grant intervention rates, it would be premature to embark on discussions with the Treasury. Under this programme, however, the Treasury has agreed to treat the Structural Fund allocation as a direct receipt, which to an extent alleviates the difficulties of securing adequate match funding.

Some minority party members argued that qualifying for a second round of support is an indication of failure to make best use of the first round; however, since the per capita GVA measure on which the decision was based relates to 2001, much more data and appropriate analysis is required before such an assessment can be justified. What is clear (supported by the Mid Term Evaluation Update¹¹³) is that the framework of delivery was cumbersome and risk-averse, and although many of the targets of the former programme were achieved, employment creation and new business foundation were both disappointingly less than desired. Therefore attempts to improve the design by incorporating simplicity and flexibility into grant application requirements are being made. Once again, judgement on this issue must necessarily be suspended until much later in the programme's life.

3.5 Science Policy

The continuing inquiry into science policy in Wales heard evidence from the DTI, Eluned Morgan MEP, the WDA's Director of Technology and Innovation, engineers and

¹¹² Article 87(3)c of the Consolidated Version of the Treaty establishing the European Community; the so-called "State Aids" provision, allowing aid to facilitate the development of economic activities or economic areas which does not affect the operation of a common market.

¹¹³ Economic Development and European Services, *Mid Term Evaluation Update for the Objective 1 Programme: Final Report* (Ludlow, December 2005).

physicists, Techniquest and the Northwest Regional Development Agency. Development of a knowledge economy based on science and technology represents Wales' best hope of offsetting the drain in conventional manufacturing employment, but none of the witnesses were particularly optimistic in this respect. Wales, relative to the UK, has few significant clusters of science expertise (although there are notable exceptions), a poorer gender balance in knowledge related occupations, and as a whole the universities in the UK are not good at rolling out innovation into commercially successful businesses. The EDTC has to face some hard issues if it is to make meaningful recommendations when it finally produces its report on this issue.

3.6 Conclusions: a pivotal moment for economic policy?

The Assembly has so far existed only in conditions of economic growth, and thus has yet to be tested by the difficulties which a recession may bring. The Assembly Government has embarked on a series of innovations in economic policy which may be necessary, but come at a time when global uncertainty is having a marked upward effect on energy prices. If this prompts a severe recession, embarking on an economic policy framework which has yet to bed in may prove to be foolhardy. It is a risky moment in economic terms, but few, if any, of the politicians within the Assembly seem to have firmly grasped the implications of this.

4. Intergovernmental relations

Alan Trench, UCL Constitution Unit

4.1. General

The period since December 2005 has been characterised by relatively low-key intergovernmental relations between Cardiff and London. The principal issue has been the constitutional future of Wales, with the Government of Wales bill before Parliament, and most of the rest of this section is devoted to a discussion of its parliamentary progress.

There have been no meetings of the plenary Joint Ministerial Committee, nor any publicised meetings of functional formats of the JMC. There has similarly been no intergovernmental litigation.

4.2 Progress of the Government of Wales bill through Parliament

The Government of Wales bill completed its progress through the House of Commons with minimal fuss and with only government amendments made to it. Its second reading took place on 9 January 2006, its committee stage (a committee of the whole House) on 23, 24 and 30 January, and its report stage on 27 and 28 February.¹¹⁴ During debate in the Commons, much energy was expended on the question of whether candidates should be barred from standing for both a constituency and the regional list of the Assembly, and on the use of the D'Hondt formula for selecting members of Assembly committees. The divisions that took place on these issues were largely along party lines (Labour versus the opposition parties). There was also discussion of whether Parliament should exercise more detailed control over requests for legislative powers under Part 3 (where the Conservatives faced Labour, the Liberal Democrats, Plaid Cymru and the SNP).

¹¹⁴ The debates can be read in House of Commons Hansard for those dates, available from www.publications.parliament.uk/pa/cm/cmhansrd.htm.

Its second reading in the Lords took place on 22 March, and its committee stage (again, of the whole House) was scheduled to start on 19 April.¹¹⁵ Various amendments have been submitted for consideration during the committee stage, including a number on behalf of Cymru Yfory/Tomorrow's Wales.

So far, the bill appears to be running largely to the timetable that the UK Government hoped it would (perhaps a little behind, but nothing of substance).

4.3 Lords Committee reports: The Constitution Committee and the Delegated Powers and Regulatory Reform Committee

The House of Lords has before it two detailed reports to assist its deliberations on the Government of Wales Bill, from its Select Committee on the Constitution (chaired by Lord Holme of Cheltenham) and from the Delegated Powers and Regulatory Reform Committee (chaired by Lord Dahrendorf). Each report raises issues for the House to consider further (rather than making firm recommendations to the House), and each is likely to shape further parliamentary debate on the bill.

The Constitution Committee's report was published on 16 March 2006.¹¹⁶ Unusually for a report on a bill (rather than an investigatory inquiry), the committee took evidence from Peter Hain, Secretary of State for Wales on 15 February, as part of its work on the bill. Mr Hain's evidence included further 'illustrative examples' of how the Part 3 procedures for enhancing the Assembly's powers might work, including the sorts of memorandums the UK Government would expect the Assembly to submit and the form an order might take. (These examples are included in the committee's report.)

The committee had little difficulty accepting the principle of transferring extensive powers to the Assembly, noting that 'delegation' of such powers to an elected body is very different from delegating them to ministers (para. 45). It considers the amount of work likely to be involved in parliamentary consideration of orders in council to be made under

¹¹⁵ The bill as introduced into the Lords can be found at www.publications.parliament.uk/pa/ld200506/ldbills/081/2006081.htm. The Lords second reading debate can be read in Hansard starting at

www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/60322-10.htm#60322-10_head0

¹¹⁶ 8th Report of Session 2005-06, HL Paper 142. Available from www.publications.parliament.uk/pa/ld/ldconst.htm#reports

Part 3 of the bill, which it notes should be relatively modest, and how work in the Lords can complement rather than duplicate that of the Welsh Affairs Committee in the Commons.

Despite this, the committee have a number of concerns about the bill. The principal ones it expresses are:

- The over-reliance on informal communication between members of institutions (para. 29), and the dormant nature of the Joint Ministerial Committee (para. 43). However, the committee's suggested solution to the former problem (of the Assembly's annual reports being laid before parliament) itself raises grave issues, notably whether one elected institution should be held accountable for its actions by another.
- Whether there should be a referendum before Part 3 of the bill (providing for transfers of some legislative powers to the Assembly by orders in council) is brought into force, as it considers Part 3 to be a major constitutional shift not (as presented by the Government) an incremental change (para. 32)
- The problems arising from putting on the statute book provisions for legislative powers for the Assembly, which will not come into force for several years, especially as there was no manifesto commitment to legislate for fully devolved primary powers only for enhanced legislative powers (para. 34).
- The complicated nature of the sources of law for Wales and processes by which law is made (para. 31).
- Whether it is acceptable for the wording of the question for a referendum to bring the Assembly Act provisions into effect to be laid down in secondary legislation at some future date (para . 36).

The Secretary of State's evidence to the Constitution Committee also illustrates the extremely close nature of the co-operation between the Wales Office and the Welsh Assembly Government over the bill. He was accompanied by two officials. One, Keith Bush, was introduced as 'his' [Hain's] legal adviser, although he is legislative counsel to

WAG. The other, John Williams, is a WAG official seconded to the Wales Office for the purposes of the bill.¹¹⁷

The UK Government formally responded to the committee's report on 30 March.¹¹⁸ The most interesting part of its response is the annex, setting out the issues relating to the various alternative electoral systems that might be used for Assembly elections. As this aspect of the bill has been highly controversial and may be the subject of a revolt in the Lords, it is notable that the government has sought to set out its position at this point.

The Delegated Powers and Regulatory Reform Committee's report was published on 3 April 2006.¹¹⁹ The committee highlight three matters for consideration by the House:

- The need for the Assembly to be able to scrutinise effectively the powers the Assembly will exercise under Part 3 (the transitional phase using orders in council) (para. 21)
- The possibility that Part 3 could be used to grant the Assembly virtually all the powers that would be granted under Part 4, on an incremental basis, but avoiding a referendum (para. 27).
- The difficulties raised by the way the bill provides for the referendum question (to bring the Assembly Act provisions into effect) to be set out in secondary legislation. It suggests that the question should be set out in this bill. It also suggests that, if the House wishes the Government's proposed question to be amendable, then subordinate legislation would be inappropriate and, if the question is not included in the present bill, that it should be set out in a separate bill shortly before the referendum (para. 37).

4.4 Policing reform

The UK Government's agenda for reform of policing in England and Wales has been the major non-constitutional issue on the intergovernmental agenda since January. The Home Secretary, Charles Clarke, has sought to reduce significantly the number of police

¹¹⁷ Op cit, Minutes of Evidence, Q.1.

¹¹⁸ Available from www.parliament.uk/parliamentary_committees/lords_constitution_committee/cwm.cfm

¹¹⁹ 17th Report of session 2005-06, HL Paper 160. Available from www.publications.parliament.uk/pa/ld/lddelreg.htm

forces, and as part of this process has been considering the merger of police forces in Wales. This issue has seen Peter Hain appear in public as a strong advocate of a single police force for Wales. On 3 March 2006 the Home Secretary gave notice that he proposed to amalgamate the four forces in Wales into one from 1 April 2007, and to establish a new 'strategic police authority' responsible for the new force.¹²⁰

While policing is, of course, not a devolved matter, it is one of considerable concern to the Assembly. (As noted in the January 2006 Wales Devolution Monitoring Report, the Home Office's poor record in its dealings with the Assembly has been a source of tension in the past.) The determination of the Home Secretary to press ahead with this amalgamation has been a matter on which the Assembly Government has made its concerns known publicly, urging a delay of 12 months to enable the significant practical and strategic issues to be dealt with, and also expressing concern about the cost of the amalgamation which the Assembly Government's Social Justice Minister considers will not be met by funds allocated by the Home Office.¹²¹ The move has been opposed by all four police authorities in Wales. It also has been the subject of a highly critical report from the Commons Welsh Affairs Committee, which singled out the very short timetable set, the Home Secretary's announcements about his favoured option before all evidence had been received, the lack of timely information provided by the UK Government, while welcoming the openness of the Government to certain aspects of implementing its plans.¹²²

4.5 Lord Falconer's speech to ESRC Devolution conference, 10 March 2006

Lord Falconer of Thoroton gave the keynote speech to the final conference of the Economic and Social Research Council's Devolution and Constitutional Change programme on 10 March.¹²³ His speech was a robust defence of the UK Government's present approach to devolution in general, including the asymmetric nature of the UK's

¹²⁰ The notice is available at police.homeoffice.gov.uk/news-and-publications/publication/police-reform/2006_03_03_Wales_Police_Ord1.pdf?view=Binary. Objections to the proposals must be submitted by 2 July 2006.

¹²¹ See Tomos Livingstone report 'Delay police merger, says Hart' *Western Mail* (14 March 2006); Mark Stead report 'Ministers clash over police merger plans' *South Wales Echo* (3 March 2006).

¹²² House of Commons Welsh Affairs Committee *Proposed Restructuring of the Police Forces in Wales* Second report of Session 2005-06, HC 751 (London: The Stationery Office, 2006); available at www.publications.parliament.uk/pa/cm/cmwelaf.htm.

¹²³ Available at www.dca.gov.uk/speeches/2006/sp060310.htm.

arrangements, and he praised devolution for its success in ‘stymieing’ support for nationalist parties in Scotland and Wales and so strengthening the Union (without discussing what role the Union serves in the modern world). He described the Government of Wales Bill as a package of sensible reform to enable the National Assembly to get on with the job rather than being hamstrung by the present settlement, and characterised it as a development of the devolution settlement not a fundamental change. He rejected suggestions of changes in the role of the UK Parliament or in arrangements for legislation for England (blocking Scottish or Welsh MPs from voting on legislation affecting devolved matters, as proposed in the Parliament (Participation of Members of the House of Commons) Bill, a private member’s bill introduced in the Lords by Lord Baker of Dorking).¹²⁴

He also defended the present practice of intergovernmental relations, saying

The boundaries of the settlement have been respected. Everyone knows who is responsible for what. The real effort goes on making sure that we’re joined up in terms of handling and co-ordination.

The relationship between the Scotland Office and the Scottish Executive in managing the Sewel Convention is a model of this work. And this work will continue. But let’s be clear committees can’t trump politics; if people want to disagree then the best administrative structures in the world will not stop them doing so.

I have no doubt that there will be significant variations in policy in future years. But we – the Government, the Scottish Executive and the Welsh Assembly Government – will work together to make devolution work. And that work will be based on a pragmatic approach to problem solving.

It is not complacency that approach. It is good government. Making sure that unexpected hiccups don’t obstruct delivery and making sure that the settlements themselves are respected and functional.

And we will continue to focus on this approach, not on obsessing about administrative architecture.¹²⁵

Such an approach suggests a confidence that the boundaries of devolution are knowable, a view that is unlikely to be shared by many involved in making devolution work.

¹²⁴ Lord Baker’s bill is available at www.publications.parliament.uk/pa/ld200506/ldbills/061/2006061.htm

¹²⁵ Lord Falconer of Thoroton, speech to ESRC Devolution and Constitutional Change Programme Final Conference (10 March 2006), at: www.dca.gov.uk/speeches/2006/sp060310.htm.

It also suggests a reluctance to engage with the public or to make devolution transparent, which is shared by other parts of the Lord Chancellor's department. The website of the DCA's devolution branch has been revised, so that communiqués and other details of JMC meetings (mostly from 1999-2002) have been removed. These are now inaccessible on the DCA website, and can only be found with difficulty from the devolved administrations' websites.

5. Relations with Europe and Local Government

Aled Elwyn Jones & Dr Elin Royles, Institute of Welsh Politics; University of Wales Aberystwyth

5.1 Europe

5.1.1 Regional Aid 2007-13

Convergence Funding

Following the budget agreement at the December Council summit, it is now confirmed that West Wales and the Valleys will again qualify for the top level of EU Regional Aid previously known as Objective 1, but for 2007-13 to be called convergence funding. The funding will be at a similar level to the 2000-06 period at £1.3 billion over seven years.

The Chancellor of the Exchequer announced in his Pre-Budget Report of December 2005 that EU funds will this time be treated as direct receipts to the National Assembly budget, thereby avoiding the need to negotiate another 'Barnett plus' deal. This however has not completely placated the opposition parties, who have continued to raise the issue of match funding from the Treasury both at EEAC and at the plenary debate on European matters held on 25 January. On this matter however, the First Minister remains non-committal, stating that no request for such funds (which through the Pathways to Prosperity programme amounted to £400 million in the 2000-06 period) will be made to the Treasury until more of the programme details have been finalised, if at all.¹²⁶

The Operational Programmes are currently being prepared by WAG and the private, public and voluntary partners and will be put out to consultation over the summer before being submitted to the European Commission in the autumn. Unlike previously, the programme documents will not have a detailed measure structure, but rather will stop at the priority level. WAG's aim this time is for a more focused programme with a smaller number of projects but with projects being significantly larger in scale.¹²⁷ The European

¹²⁶ Assembly Record of Plenary Proceedings 25 January 2006, *Debate on Matters Related to the European Union*.

¹²⁷ EEAC Record of Proceedings 9 March 2006, paragraphs 149-153.

Council has stipulated that at least 60 per cent of convergence funds must be spent on the Lisbon Agenda of sustainable economic growth and job creation.

Competitiveness Funding

Under the new Financial Perspective, UK receipts for Regional Competitiveness funding (the old Objective 2) will drop by 50 per cent compared to 2000-06. Allocation of funds within the UK is subject to intra-UK negotiations involving the devolved administrations and the UK government through the DTI.

A DTI consultation is currently open on the National Strategic Reference Framework which provides the overall planning framework for the preparation of more detailed operational programmes, and will close on 22 May.¹²⁸ The Wales chapter of the NSRF provides a breakdown of WAG priorities which reflect those set out in its Wales: A Vibrant Economy document¹²⁹. Under the European Council agreement, 75 per cent of competitiveness funding must be linked to the 'Lisbon Agenda' priorities.

The outcome of this process, and therefore the amount of funding available to East Wales area, should be known by the summer.

State Aid

Only the convergence areas of West Wales and the Valleys, Cornwall, and the Highlands and Islands will qualify for the highest level of State Aid funding (known as Article 87 3 (a) status) in the UK. The removal of South Yorkshire and Merseyside from this category, as compared to 2000-06, leaves the south Wales valleys as the only large urban and industrial area able to offer this highest level of support to investors.

The Assisted Area status of the rest of the UK for 2007-13, including the East Wales NUTS II region, is yet to be decided and is also subject to a review being carried out by the DTI. A consultation on the first phase of 'Identifying Criteria' opened in February and closed on 19 April.¹³⁰ The result of the review will be a UK Assisted Area Map which will

¹²⁸ www.dti.gov.uk/consultations/consultation-1601.html

¹²⁹ *Draft National Strategic Framework: EU Structural Funds Programmes 2007-13* (DTI, 2006) p. 44-55

¹³⁰ www.dti.gov.uk/consultations/consultation-1593.html

cover only 23.9 per cent of the total UK population, compared to 30.9 per cent for 2000-06.

5.1.2 European and External Affairs Committee

At its meeting on 9 March 2006 the EEAC considered the European Commission's work programme for 2006 and agreed on the following priority areas:

- EU Financial Perspectives 2007-13;
- Structural Funds Regulations;
- Strategic Community Guidelines on Cohesion;
- White Paper on Communications Strategy;
- Future of the EU Constitutional Treaty: Plan D;
- Lisbon Strategy for Growth and Jobs;
- State Aid Actions Plan: Regional Aid Guidelines 2007-13;
- Service Directive;
- Working Time Directive.

All Assembly Subject Committees have also considered their priority areas in view of the Work Programme and a list of priorities is available from the Assembly website¹³¹.

5.1.3 Regions with Legislative Powers

Wales's presidency of the 74-member Regions with Legislative Powers (REGLEG) network was discussed by the EEAC during its March meeting.

The centre-point of the presidency will be an Annual Conference bringing together the governmental leaders of the member regions that will be held in Wales, probably in November. Among the priorities areas foreseen by WAG for the Welsh presidency are subsidiarity monitoring, better regulation, the Commission's communication agenda and the perceived gap between institutions and citizens including the decentralisation of the former Communist countries of eastern Europe. The salience of the Constitutional Treaty as an issue will depend to a large extent on the outcome of the June Council summit under the Austrian Presidency.

¹³¹ Papers of the EEAC, 9 March 2006, *EC Work Programme 2006 – Priorities*.

At the Committee of the Regions meeting on 26-27 April, the inaugural meeting of an inter-regional group bringing together the CoR representatives of the REGLEG regions was held. The formation of the group was mandated by the Munich REGLEG Conference of 2005, with the aim of raising the profile of the legislative regions within the CoR and providing opportunities for co-operation on policy issues where appropriate.

5.2 Local Government

The results of the Beecham and Lyons reviews are still awaited and are anticipated to have considerable effect on local government. There is already evidence that local authorities have embraced the WAG collaboration agenda.

5.2.1 Beecham and Lyons

The Beecham Review into local public service delivery in Wales, part of the *Making the Connections* agenda, is to report at the end of June 2006. Sir Jeremy Beecham updated the Local Government and Public Services (LGPS) Committee on 9 February 2006. He characterised their approach as being evidence-based and drawing on experience in Wales and mainly in England.¹³² Sir Jeremy noted that the nature of the devolution settlement would partly constrain the review's recommendations. He commended the WLGA and Social Services Improvement Agency for promoting collaboration and driving the improvement agenda.¹³³

The review's initial conclusions were presented to the Public Services Board on 17 March 2006.¹³⁴ A paper to the LGPS Committee on 25 January 2006 outlined the review's emerging themes. Strengths included the degree of engagement and greater consultation between the Welsh Assembly Government and local agencies in Wales. Potential issues to be addressed included: the complexity of governance in Wales; performance management limitations; reliance on bureaucratic processes; the need to

¹³² LGPS Committee, Committee Record of Proceedings, 9 February 2006.

¹³³ *Ibid.*

¹³⁴ LGPS Committee, LGPS(2) 03-06: Paper 2 - Report by the Minister for Finance, Local Government and Public Services, 9 February 2006.

strengthen leadership and management skills. Issues of capacity were a particular concern and the report is likely to suggest that greater collaboration is essential.¹³⁵

The Welsh Assembly Government's submission to the concurrent Lyons Inquiry into local government in England was discussed by the LGPS Committee on 15 March 2006. The submission recognises the close legislative and financial links between England and Wales. It gives a strong signal that the inquiry's conclusions should give a maximum amount of discretion for WAG and should avoid being incompatible with its agenda. It states: 'it would be unacceptable, if because of the way in which funding for the Welsh block is calculated, the Assembly Government's flexibility to determine what is best for Wales is undermined, removed, or limited in some way because of a change in the way things are done in England.'¹³⁶

5.2.2 The 'New Regionalism' in Wales

The WLGA's response to the Beecham Review underlined their adoption of a 'new regionalism' as a 'step change' in local government collaboration.¹³⁷ Establishing four Regional Boards is, according to the WLGA, 'evidence of local government's commitment to improve public services and demonstrates that they are driving the Assembly Government's Making the Connections Agenda.'¹³⁸ In reaction to the questions, the response discussed WAG's leadership. While arguing that collaborative working within local government should be voluntary, it suggested that a level of compulsion could be examined by WAG.¹³⁹ A WLGA official elaborated on the issue before the LGPS Committee. The Association acknowledged the significant challenges facing the Welsh public sector and WAG leadership should provide strategic direction, 'it is about somebody standing out in front, waving the torch.'¹⁴⁰

5.2.3 Wales Spatial Plan

The first National Steering Group meeting was held on 9 March. Implementation of the Wales Spatial Plan is expanding to address cross border issues, initially with the West

¹³⁵ LGPS Committee, LGPS (2)-06p.5, *The Review of Local Service Delivery in Wales*, 25 January 2006.

¹³⁶ LGPS Committee, LGPS(2) 05-06: Paper 4 - Assembly Government Submission to the Lyons Inquiry.

¹³⁷ LGPS Committee, LGPS(2) 02-06: Paper 6 - WLGA's Response to the Becham Review Consultation.

¹³⁸ WLGA, Press Release 'Regionalism' (27 February 2006), at: www.wlga.gov.uk/content.php?nID=6;ID=23;1ID=1.

¹³⁹ WLGA's Response to the Becham Review Consultation.

¹⁴⁰ LGPS Committee, LGPS(2)-02-06: Committee Transcript, 25 January 2006.

Cheshire / North East Wales Sub-Region and discussions are being developed with West Midlands authorities to consider issues affecting Central Wales.¹⁴¹

5.2.4 Finance

Following the publication of the final Local Government Revenue and Capital Settlement for 2006-07 in December 2005, all authorities set their budgets for 2006-07 by 10 March 2006. As a result, council tax increases in Wales will average at 4.4 per cent. This is lower than the anticipated increase and 'the result of councils working hard to deliver better services within tougher financial constraints' according to WLGA's Finance Spokesperson.¹⁴²

5.2.5 Emerging Issues

- Local Government (Town and Community Councils) (Wales) Bill – One of WAG's legislative bids for 2006/07. It aims to promote the service delivery role of local councils in Wales, increase the effectiveness of their representational role and their partnership working abilities.¹⁴³
- Equal Pay – it seems that this is going to be a significant issue for local government over the coming years with financial implications.
- A White Paper issued by the Office of the Deputy Prime Minister this summer is expected to include greater powers for town and parish councils and could have implications for Wales.

5.2.6 Conclusion

The recommendations of the Beecham Review and Lyons Inquiry are awaited by WAG and local authorities and are expected to have significant implications for future structures. Issues already articulated include how the division of powers between Westminster and Wales impinge on local government issues. Collaboration and regionalisation rather than reorganisation is the strong message coming from both WAG and local government.

¹⁴¹ LGPS Committee, LGPS(2)-02-06(p.3) Wales Spatial Plan – Update 25 January 2006.

¹⁴² WLGA Press Release 'Welsh council tax increases by average 4.4 per cent' (13 March 2006). [at: www.wlga.gov.uk/content.php?nID=6;ID=28;1ID=1](http://www.wlga.gov.uk/content.php?nID=6;ID=28;1ID=1).

¹⁴³ National Assembly for Wales (2006), 'Welsh Assembly Government Bids for Primary Legislation' www.wales.gov.uk/keypubmrs/content/06-011.pdf.

6. Elections, Parties and Public Attitudes

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6.1 Elections

There were no parliamentary or National Assembly by-elections in the first four months of 2006. However, the National Assembly election in May 2007 was beginning to loom larger for all of the major parties.

Five local government by-elections were held in Welsh local authorities during the first four months of 2006. The results are summarised in the table below. With such a small number of by-elections occurring in such disparate authorities, it would be difficult to deduce general trends in the results.

Figure 2: Local Government By-Elections, Jan-April 2006

<i>Ward</i>	<i>Council</i>	<i>Month</i>	<i>Winner</i>	<i>Change?</i>	<i>Swing</i>
Nottage	Porthcawl TC	January	Lib-Dem	LD Gain	n/a
Dixton/Obaston	Monmouth CC	February	Conservative	Con Gain	8.9 per cent LD to Con
Rhiw	Conwy CBC	March	Conservative	Con Gain	25.3 per cent PC to Con
Baglan	Neath-Port Talbot CBC	March	Ind. Ratepayer	IR Hold	2.7 per cent IR to Lab
Penyrheol	Caerphilly CBC	March	Plaid Cymru	PC Hold	7.5 per cent, PC to Lab

Source: www.gwydir.demon.co.uk/byelections

The other main development in regard to elections in this period was the continuing saga of the Government of Wales Bill's (GOWB) proposed changes in the electoral system used for National Assembly elections. (The details of the proposed change were discussed in the previous Monitoring Report). While the proposals, along with the rest of the bill, were able to clear the House of Commons by the end of February, they ran into rather predictable trouble in the Lords. (Predictable, that is, given that the proposals have been opposed by all political parties other than Labour, as well as by most independent observers). A vote in the Lords on 19 April rejected the GOWB's proposed ban on 'dual candidacy', and raised the serious possibility that the progress of the entire Bill might be seriously delayed or even jeopardised.

6.2 Parties

Labour

Close observers of the Welsh political scene have begun to detect signs of (thus far very discrete) behind-the-scenes manoeuvring within the Welsh Labour Party, with a view to the succession to Rhodri Morgan. While Morgan – who will be 67 in September – is under no immediate pressure to depart, he is widely expected to relinquish the leadership should Labour lose ground in next year's National Assembly election. Given that even a modest improvement in Tory fortunes ought to bring about just that eventuality, there is therefore a strong possibility of Welsh Labour facing a leadership contest in little more than 12 months' time.

Four potential candidates are currently being touted: Andrew Davies (Minister for Economic Development and Transport), Carwyn Jones (Minister for Environment, Planning and Countryside), Edwina Hart (Minister for Social Justice and Regeneration), and Jane Davidson (Minister for Education and Lifelong Learning). Davies and Jones would currently appear to be the front-runners, but it remains early days in this particular race.

Conservatives

Two interesting developments in the Welsh Conservative Party are worthy of note. First, as the party announces its candidates for the next year's Assembly election, it is

becoming clear that – notwithstanding the fact that they are expected to gain seats at the next Assembly election – the Conservatives are likely to find themselves with fewer female members in the next Assembly. Given that the Tories are already the least gender-balanced of the major parties in the Assembly, and given also David Cameron’s high-profile entreaties to his party on the need to increase the number of female candidates, such an outcome would undoubtedly be the source of significant embarrassment to the party.

Secondly, parliamentary debates over the GOWB have yet again exposed the ambivalence of much of the Welsh Conservative party towards devolution. In particular, the seeming inability of the Conservatives to definitively bury the Howard-era policy of a multi-option referendum on the future on devolution in Wales – which would include the option of abolishing the National Assembly – suggests that the three Welsh Conservative MPs are acting as a brake on the attempts of the Conservative Assembly group to develop a more positive attitude to devolution.

Liberal Democrats

With the singular exception of Lembit Öpik, the Leader of the Welsh Liberal Democrats, the party has kept a rather low public profile in recent months, concentrating instead on campaigning ahead of next year’s Assembly elections. Party sources claim to be ‘confident’ about the party’s chances of capturing Ceredigion from Plaid Cymru – repeating their unexpected success in the 2005 UK general election. Strong performances are also anticipated in Wrexham and Swansea West.

Plaid Cymru

For Plaid Cymru’s members at least, the most significant development over the past few months has been the confirmation of former party president Dafydd Wigley’s return to the political fray. Wigley will be second candidate on the north Wales regional list (Plaid having reserved first position in all regions for female candidates). Given that Plaid Cymru hopes to win 3 constituency seats in the north Wales region, the party will likely need to perform spectacularly well on the list vote to secure a place for Wigley in the National Assembly. Indeed, given the nature of the electoral system used for Assembly elections, the risk for the party is that opponents in target constituency seats will

succeed in persuading potential Plaid-voters in those constituencies to vote tactically in order to increase Wigley's chances of securing a seat ('Vote Labour to get Wigley'). Nonetheless, it may be unwise to underestimate Wigley's ability to galvanise both his party and the electorate in north Wales.

The party has also recently unveiled a new logo – a stylised Welsh poppy – and announced that it will now campaign under the name 'Plaid'. These changes, as well as the institution of a new Campaigns Unit under the direction of Adam Price MP, and the formation of various policy commissions, are all part of the party's preparations for the next Assembly election.

Peter Law

Peter Law, independent AM and MP for Blaenau Gwent, died on 25 March 2006. His passing marks the close of a remarkable chapter in Welsh politics. Elected to the Assembly under Labour colours in 1999, Law decided to challenge the official Labour candidate in Blaenau Gwent in 2005 UK general election in opposition to the party's decision to impose an all-women short list on the local party. In the event he won a crushing victory in this Labour bastion. His resulting expulsion from Labour denied the party a working majority in the National Assembly, and has thus had a substantial impact on the functioning of the Assembly.

The postscript to this episode will be the two byelections – for the Westminster and National Assembly seats – that are now awaited.

6.3 Public Attitudes

There were no major political events during the early months of 2006 that provided direct evidence of the shape of public attitudes towards devolution, the devolved institutions, or the policies produced by them. However, the BBC did commission a major public opinion poll on devolution (conducted by a leading opinion research company, ICM), to coincide

with the Official Opening of the new Assembly building on St David's Day.¹⁴⁴ This poll benefited not only from a large sample size but also from including several important questions that paralleled those asked in previous academic surveys, thus facilitating longer-term comparisons.

Figure 3: Constitutional Preference in Wales, 1997-2006 (%)

<i>Constitutional Preference</i>	<i>1997</i>	<i>1999</i>	<i>2001</i>	<i>2003</i>	<i>2006</i>
Independence	14.1	9.6	12.3	13.9	16.7
Parliament	19.6	29.9	38.8	37.8	40.6
Assembly	26.8	35.3	25.5	27.1	21.9
No elected body	39.5	25.3	24.0	21.2	20.8
<i>Number of respondents</i>	<i>641</i>	<i>1173</i>	<i>1044</i>	<i>935</i>	<i>1001</i>

The BBC/ICM poll included a standard question on constitutional preferences that has been asked regularly since the post-1997 referendum study; the figures for each major survey since then are shown in Figure 3. The main and most obvious result to emerge from these figures is the continuation of the trend for opposition to devolution to decline – those favouring the ‘no devolution’ option constitute barely half the proportion of the sample that they did in 1997. Indeed, the latest poll suggests that support for Welsh independence is now little lower than support for returning to the constitutional *status quo ante*. Meanwhile, the option of a ‘Parliament’ for Wales continues, by some distance, to command support from a plurality of the electorate.

An alternative way of enquiring into public attitudes to how Wales is and should be governed is that reported in Figure 4, where parallel questions are asked of respondents regarding the level of government that they believe is, and that which should be most influential over ‘the way Wales is run’. The table reports results for the BBC/ICM poll, along with the comparable figures from the 2003 post-NAfW election survey. The comparison here is striking: while more people believe that London remains the dominant influence in governing Wales, a clear (and growing) majority would prefer the devolved level of governance to be the more powerful.

¹⁴⁴ BBC Wales St. David's Day Poll – February 2006, at: www.icmresearch.co.uk/reviews/2006/BBC%20Wales%20-%20Government%20in%20Wales/bbc-wales-government.asp.

Figure 4: Level of government with most Influence over 'the way Wales is run' (%)

<i>Response</i>	2003		2006	
	<i>Does Influence</i>	<i>Ought to Influence</i>	<i>Does Influence</i>	<i>Ought to Influence</i>
NAfW	22.4	56.0	34	63
UK Government	57.9	29.1	44	22
Local Councils	15.0	13.8	13	13
European Union	4.7	1.2	8	2
<i>Number of Respondents</i>	<i>917</i>	<i>943</i>	<i>1001</i>	<i>1001</i>

A third, retrospective way of enquiring into attitudes to devolution is reported in Figure 5. This shows results from a question in the BBC/ICM poll that explicitly asked respondents to give their views on how Wales is governed compared with the situation pre-devolution. While the findings do not show an overwhelming degree of enthusiasm, they do indicate the balance of opinion to be definitely positive.¹⁴⁵

Figure 5: Governance of Wales Since 1999

<i>Response</i>	<i>%</i>
A Lot Better	6
A Little Better	35
No Difference	39
A Little Worse	11
A Lot Worse	9
<i>Number of Respondents</i>	<i>1001</i>

¹⁴⁵ It should be noted that the BBC/ICM poll suggests a rather more positive public mood on devolution than that indicated in the 2005 BES Welsh Booster sample, the findings of which were discussed in the previous Monitoring report. There are several reasons why the findings might differ. One is simply the context in which the particular surveys were conducted – the BES one immediately after a UK general election that would have focused respondents' minds on UK-wide matters and institutions, the BBC/ICM poll in the lead up to the high-profile public ceremony of the opening of the new NAW building. Another possible cause of differences is 'house effects' – different polling companies and techniques leading to different results. (However, given that both the BES study and the BBC poll were conducted by highly reputable survey companies, NatCen and ICM respectively, this factor seems unlikely to be a major cause of differences). A third factor is simply the sample size – many of the BES questions had only small numbers of respondents, whereas the BBC/ICM poll garnered a sample of 1000, rendering it overall probably the more reliable source.

Two other points of distinct interest emerged out of the BBC/ICM poll. The first concerns gender. On all the measures reported above, and on several other questions, there is a distinct gender gap regarding reported attitudes, with men less enthusiastic about devolution than women. (For instance, men were more than 1.5 times as likely as women to favour the 'no devolution' option in our constitutional preference question). Such a gap did not exist in the 1997 or 1999 surveys; it began, tentatively, to appear, in 2001 and 2003; and this trend has apparently continued since. The reasons for such a gap emerging have not thus far been explored, but this will surely be subject to future research. A second point concerns regional differences – or, rather, the lack thereof. While the 1997 referendum saw significant regional cleavages across Wales, opinion has been becoming more geographically homogenous subsequently.¹⁴⁶ This trend is also confirmed by the BBC/ICM poll: disaggregated by three regions (North Wales, Mid and West, and South East), it finds few significant differences by region in attitudes to devolution.

6.4 Conclusion

Preparations are already proceeding apace for the 2007 Assembly election with campaigning likely to step up noticeably after the summer break. One would expect – and, indeed, hope – to see more substantial policy ideas emerging over the coming months. At present, all four main parties appear to be confident about their prospects in May 2007. They can't all be right.

¹⁴⁶ Wyn Jones, R. and R. Scully (2004) 'Devolution in Wales: What Does the Public Think?', *Briefing Paper 7, ESRC Programme on Devolution and Constitutional Change*.

7. Assembly and Media

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7.1 The BBC White Paper

The most significant media event in the first quarter of 2006 was the publication of the White Paper on the future of the BBC. The BBC's Director-General regards the document as a 'real milestone' for the Corporation which will result in a 'real change for everyone who works for it'. Besides the loss of jobs -- the White Paper contains repeated reference to further 'efficiencies' in the BBC -- the exact nature of the change is a matter of conjecture and debate. The future of the BBC in Wales is a matter of major importance. Not only is the BBC the major media employer in Wales, it also dominates the media landscape in the country. What the future holds for BBC Wales is far from clear. There are strong verbal commitments to the role of the BBC in serving the nations and regions (and the communities) of Britain. However, these commitments can be seen as problematic by the vague way in which the White Paper addresses a number of issues, in particular the relationship between BBC and S4C. The lack of clarity on how this relationship should develop could in the long run lead to a shift in Welsh broadcasting. Not only might relations between the two organisations become more tricky to manage but the nature of the BBC's operation for S4C could be transformed.

7.1.1 *Wales and the BBC White Paper*

The most important condition set out in the White Paper for renewal of the BBC's Royal Charter was the continuation of the licence fee until 2012. By 'putting the licence fee payers at the heart of everything', the Culture, Media and Sport Minister hopes to ensure the 'quality and distinctiveness' of what the BBC does¹⁴⁷. As far as the key issues for Wales are concerned the most important relate to the radical changes foreseen in the governance of the BBC. The White Paper confirmed that the Board of Governors will be replaced with a BBC Trust. Since the publication of the Green Paper a year ago the Department of Culture, Media and Sport (DCMS) political pressure appears to have resulted in the government including Welsh representation on the new Trust. The Welsh member on the BBC Trust will be appointed by DCMS in consultation with the Assembly

¹⁴⁷ The *Western Mail* (15 March 2006).

government. As with OFCOM, representation of the nations and regions was not part of the initial discussion about the new regulatory arrangements. Only through lobbying has attention been focussed on the need to have a Welsh voice inside the new mechanisms. However, as with OFCOM, the representation of the Welsh voice is restricted. It does not extend to the key day-to-day decision making body, the Executive Board. As the history of BBC regional policy shows, commitments to reflect the diversity of cultures and communities in the UK are often undermined by the organisational structures that the Corporation develops.

Another change in the Corporation's governance is the disappearance of the Broadcasting Council of Wales (BCW). Consultation found that the BCW, like its counterparts in Scotland and Northern Ireland, is 'not be widely known' and people are unclear who its members are and how they get in touch with them. The White Paper dismisses the BCW as having had limited impact. The unrepresentative and unaccountable nature of the BCW body is something that critics have drawn attention to over a long period of time.¹⁴⁸ To ensure greater accountability the government recommends the establishment of 'Audience Councils' for England, Scotland, Wales and Northern Ireland. While the aspiration of more accountability is to be welcomed there is not much detail in the White Paper about how these Audience Councils are going to have any more impact than their predecessors and who is going to sit on them. It may be worth looking to the structure and performance of similar bodies in some of our European neighbours. For example, in Austria the Audience Council, rather than appoint from the ranks of the 'good and great', has some elected members. This ensures a bond with viewers and listeners that has been lacking in British broadcasting.

While there is limited reference to the BBC's service to Welsh language audiences, what appears is potentially of great significance. The White Paper stresses the government's 'commitment to a sustainable future for Welsh language television'. The BBC in partnership with S4C is seen as playing a crucial role and the White Paper 'welcomes the commitment of the BBC and S4C to reaching a new settlement that will benefit Welsh language audiences'. What this settlement will involve is far from clear. The White Paper talks of the need to provide clarity over 'levels of funding', 'control over the

¹⁴⁸ For example, Williams, K., *Shadows and Substance: The Development of a Media Policy for Wales* (Llandysul: Gomer, 1997), p. 33-4.

commissioning of programmes to be provided' and 'how the budget is used'. The two broadcasters have to reach an agreement before the new charter and agreement are finalised.

The need for a 'new settlement' mainly arises from the precarious position that S4C will occupy when the analogue signal is switched off.¹⁴⁹ Fears for the future of the channel have been central to a number of official reports over the last couple of years.¹⁵⁰ These reports have been part of the lobbying operation S4C has been involved in to position the channel in the digital world. Increasingly the spin favoured by the Welsh language broadcaster seems to a greater or lesser extent to be centred on changing the relationship between S4C and BBC Wales. This could be a means of injecting more resources into S4C and rectifying what many inside the Welsh Language channel have seen as an injustice; the exercising of editorial control by the BBC over the programmes that it makes for free for S4C. The possibility of an increase in the amount of the licence fee money spent on making programmes for S4C has to be seen against the back-drop of the general decline in the Welsh speaking audience. A recent report described S4C's audience as 'literally dying'.¹⁵¹ Reviewing the quantitative data available on S4C viewing habits, authors James Thomas and Justin Lewis found little evidence that the channel is succeeding in attracting younger viewers to regenerate its audience. They found this especially worrying as it coincides with an overall increase in the number of Welsh speakers, as indicated by the 2001 Census in Wales, a stable Radio Cymru audience and a growth in the audience for the BBC Welsh language online service, Cymru'r Byd. To achieve a more modern appeal, the new management at S4C has embarked on re-branding the channel which 'will involve shaping everything from the style of stationery and website to the promotional fillers between programmes'.¹⁵² Nevertheless the authority's new chairman, former civil servant John Walter Jones, will have to address the increasing political vulnerability and loss of advertising revenue that flows from S4C's ageing audience.

¹⁴⁹ See *Wales Devolution Monitoring Report: January 2006* (London: The Constitution Unit).

¹⁵⁰ Laughton, R (2004) *S4C: an independent review*; S4C (2005) *Review of the BBC Royal Charter - S4C's response*; OFCOM (2005) *Statement of programming for the Nations and Regions* (London: Ofcom).

¹⁵¹ Thomas, J and Lewis, J (2005) 'Coming out of a mid life crisis? The past, Present and future audiences for Welsh Language Broadcasting' *Cyfrwng Media Journal Wales* 3, pps 7-40.

¹⁵² Williamson, D 'The television makeover show with a difference', *The Western Mail* (17 March 2006).

There are also a number of possible implications of the 'new settlement' considerations for the BBC. Over the last year the Corporation under new Director-General Mark Thompson has embarked on a process of major restructuring. BBC Wales has had to fight to maintain jobs and resources. There must be a question about the impact of an increase in the level of funding devoted to making programmes for S4C on the service provided to the English speaking audience. Will the overall range and quality of the service suffer? Any agreement to allow S4C to have editorial control over what BBC Wales produces for the channel could have wider implications for the Corporation. It could establish a precedent for top-slicing the licence fee for other uses and other channels. It will be interesting to see how the new settlement will take shape.

The white paper was welcomed by the Welsh Assembly Government's Culture Minister. Alun Pugh is reported to have praised the 'better representation for Wales' in the new governance arrangements.¹⁵³ He also appears happy with the white paper's call for a 'new settlement' between the BBC and S4C, appealing for both channels 'to work closely together to help us deliver our vision of a bilingual Wales'.¹⁵⁴ As part of the consultation the chiefs of the broadcasting organisations in Wales appeared before Assembly's Culture Committee. AMs and the minister stressed the importance of ensuring better representation of the nations and regions in UK programming. This is an important matter for all the parties in the Assembly as the broadcasters, including the BBC, still struggle to come to terms with devolved political institutions in their reporting. The independent sector is going to be an increasingly important part of this. The BBC has pledged itself to commission more content, including from Wales and the other nations and regions of the UK, through the window of creative competition (WOCC). This provides an opportunity for television production industry in Wales and the WAG is setting down the commercial foundations and skills base for the industry to take advantage.

The BBC is a major catalyst in the development of the Welsh media economy. WOCC is one example of how the Corporation is responsible for the injection of additional money from the centre into the Welsh economy. Equally importantly the BBC makes a major contribution to developing talent and helping to grow a vibrant creative broadcasting and

¹⁵³ Press Release 'Assembly Government Welcomes BBC White Paper'.

¹⁵⁴ Livingstone, T, 'Cut the copycat and lighten up, Jowell tells the Beeb', *The Western Mail* (15 April 2006).

media sector. Much of the talent in Wales has been shaped by the BBC, directly or indirectly. A recent example is *Doctor Who*, whose production team is overwhelmingly Welsh, working directly for BBC Wales or elsewhere in the industry here. However, *Doctor Who* illustrates some of the tensions between developing talent and growing the business *and* giving Wales a voice. Much of the programme is filmed in and around Cardiff, with the city appearing in two episodes in the first series. This was criticised by former DG Greg Dyke: 'If I could land anywhere in the universe at any time, would I really go to Cardiff more than once?'¹⁵⁵ There is a debate over whether the series represents Wales and Welshness to the world which some stress should be central to the mission of Welsh television and media. Similar issues face the development of an independent sector. Successful companies are vulnerable to being bought out. The London based RDF recently purchased the Welsh company Presentable in order to be able to cash in on the increasing monies available to regional companies across the UK. Servicing the commercial interests of larger UK corporations is not necessarily compatible with representing Wales.

7.2 Implementing Creative Industries Strategy

Rolling out its Creative Industries strategy, the Welsh Assembly Government introduced in February a new Creative Industries' Support Service aimed at providing assistance for Wales-based commercial creative businesses¹⁵⁶. The service will provide specialist, commercially-based support including a new Creative Industries' Business Support team to provide specialist advice and support to Wales-based companies to grow as well as encourage inward investment to Wales; co-ordinate training to meet the needs of the creative businesses and operate a £7 million Wales Creative Intellectual Property Fund.¹⁵⁷ At the outset the focus is on film, television and music and the opportunities presented by new technologies. Several organisations will act as the catalyst in the various sectors. The Welsh Music Foundation will pull together the efforts of the music sector in Wales while the Cultural Enterprise Services will assist and mentor the smaller creative businesses. Film Wales came into being at the beginning of April to promote the

¹⁵⁵ Quoted in Hills, M., 'Doctor Who discovers.....Cardiff' *Cyfrwng Media Journal Wales*, 3 (2005), p. 58.

¹⁵⁶ 'New Creative Industries' Support Service' *The Western Mail* (20 February 2006).

¹⁵⁷ www.wda.co.uk/creativeindustries.

Welsh film industry working. Through such actions WAG hopes that Wales will be well placed to reap dividends from the creativity boom.¹⁵⁸

¹⁵⁸ 'Reaping dividends from creativity boom' The *Western Mail* (1 March 2006).

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www.wlga.gov.uk

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Abbreviations and Acronyms

ACCAC	Awdurdod Cymwysterau, Cwricwlwm a Chymwysterau Cymru
CEHR	Commission for Equality and Human Rights
CWLS	Culture, Welsh Language and Sport
DRC	Disability Rights Commission
EEAC	European and External Affairs Committee
EIN	Enterprise, Innovation and Networks
ELLS	Education, Lifelong Learning and Skills
EPC	Environment, Planning and Countryside
ERDF	European Regional Development Fund
ESF	European Social Fund
GVA	Gross Value Added
GOWB	Government of Wales Bill
HSS	Health and Social Services
JMC	Joint Ministerial Committee
LGPS	Local Government and Public Services
NAfW	National Assembly for Wales
NUTS	Nomenclature of Territorial Units for Statistics
OFCOM	Office of Communications
RSA	Regional Selective Assistance
SEN	Special Educational Needs
SI	Statutory Instrument
SJR	Social Justice and Regeneration
WAG	Welsh Assembly Government
WAS	Welsh Ambulance Service
WAVE	Wales: A Vibrant Economy

WDA	Welsh Development Agency
WJEC	Welsh Joint Education Committee
WLGA	Welsh Local Government Association
WO	Wales Office

Summary and Introduction

This is the third Devolution Monitoring Report to be produced by the team led by the Institute of Welsh Politics at the University of Wales, Aberystwyth. The report covers events between May – July 2006.

Devolution in Wales during these months was dominated by two major events. The first was the passage of the Government of Wales Act in late July. The Act, which grants much enhanced powers to the National Assembly for Wales, represents a substantial political achievement for its chief architect, Secretary of State Peter Hain. But it also constitutes remarkable progress for devolution itself. Less than a decade after winning only the narrowest public support in the 1997 referendum, devolution in Wales has advanced significantly.

The second major event in Welsh politics was the two Blaenau Gwent by-elections, held following the death of Peter Law. While the results of these by-elections will likely prove to be of less long-term importance than the Government of Wales Act, they nonetheless were fascinating political contests, and offered an important insight into the state of the parties and public attitudes less than a year before the 2007 National Assembly election. That the Labour Party – despite a highly professional and very well-funded campaign – could not win back either the Westminster or National Assembly seats, or even come very close to doing so, in an area that they have traditionally dominated, offered a worrying electoral portent for Wales' governing party.

Richard Wyn Jones and Roger Scully
Aberystwyth, 10 August 2006.

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

The past quarter marked a further significant stage in the public debate about the institutional development of the National Assembly and, in particular, its ability – and scope – to develop public policy and legislation. *Y Llywydd*, or Presiding Officer, Lord Elis-Thomas, provoked heated debate on 22 May when he said, ‘it’s very difficult to point out anything that has happened recently... we are not really loved out there by the Welsh public, they are not getting value for money and therefore we need to do something about it’.¹ At the heart of his criticism was the Assembly’s effectiveness in formulating policy and law through its cross-party committees and plenary sessions. The former Secretary of State for Wales, Ron Davies, entered the fray, blaming the Assembly Government ‘for failing to understand the role of committees in developing policy [which has] allowed them to become talking shops’ (see also discussion of the Beecham Review below).²

Once again, public policy was centre-stage in July with the publication of the First Minister’s Annual Report that set out progress in implementing the policies outlined in WAG’s core strategy document, ‘Wales: A Better Country’.³ The achievements highlighted in the Annual Report included: ‘quicker access to hospital treatment’, ‘seven more years of European [economic aid] Funding’, and ‘a successful programme of mergers’ (of Assembly Sponsored Public Bodies into the Assembly Government). Opposition parties were forthright in their criticism of the Assembly Government’s policy record – as typified by a proposed plenary amendment by Kirsty Williams AM (Welsh LibDems) that: ‘the National Assembly note the paucity of policies contained in the First Minister’s programme of government’.⁴ With royal assent granted to the Government of Wales Bill on 25 July, Secretary of State Peter Hain pointed to its potential to address the concerns about the Assembly’s record on public policy development, stating: ‘by granting enhanced legislative powers for

¹ Quoted in report by David James, ‘Presiding officer in attack on Assembly’s processes’, *South Wales Echo*, 22 May 2006.

² James, 22 May 2006, Op cit

³ Downloadable from:

<http://new.wales.gov.uk/about/strategy/strategypubs/bettercountry;jsessionid=14AAA0E258A21EB3C0E63E811FF880DD.www2?lang=en>

⁴ Record of Proceedings, 12 July 2006

Wales, it will enable the Assembly to deliver tailor-made policies for the people of Wales'.⁵

Against this background of oppositional politics and questioning of the effectiveness of policy development by the Assembly, we now focus on the nature and substance of policymaking between April and July 2006.

1.2 Culture, Welsh Language and Sport

A consultation exercise on the merger of the Welsh Language Board with the Welsh Assembly Government was launched on 6 April 2006 by the Minister for Culture, Welsh Language and Sport. Subsequently it resulted in over 200 written responses. According to the minister, the contentious proposed merger 'is to enhance democratic accountability and mainstream the Welsh language within government, across all policy areas'. A key aspect of the proposed reform is the creation of the office of *Dyfarnydd*. This will be a statutory regulator that will operate at arm's length from Government. Amongst his or her functions, the *Dyfarnydd* will: have an adjudication role (when a public body and the Assembly Government are unable to agree with regard to that body's Welsh Language scheme); oversee the preparation, implementation, revision and monitoring of the statutory Welsh language schemes; and bring views to Government on promoting the use of Welsh.⁶ In July WAG announced the postponement of the proposed merger until after the 2007 Assembly elections.

The Welsh Office's (WO) record on bilingualism is well documented. One 1970s account states, 'very rarely were government services offered in Welsh';⁷ another reveals that, in one year, the WO issued Welsh versions of just 35 of a total of 2,340 Health and Social Security forms and publications.⁸ Contemporary policy initiatives to secure Welsh as a language of government continued over the past quarter. Developed in consultation with trades unions and the Welsh Language Board, on 1 March, WAG launched its *Bilingual Skills Strategy*⁹ that sets out how, WAG claims, it will make best use of the linguistic skills of its staff in order to provide better quality bilingual services. A recent skills survey of staff revealed that 17 per cent of respondents could speak Welsh in most or all work-related conversations and at

⁵ 'Morgan and Hain hail "great day for Wales"', *Western Mail*, 26 July 2006.

⁶ Ministerial Press Release, 'Putting the Welsh Language at the heart of Government', 6 April 2006.

⁷ Betts, C., *Culture in Crisis: The Future of the Welsh Language* (Wirral: Ffynnon Press, 1976) p. 121.

⁸ Rees, I.B., *The Welsh Language Today* (Llandysul: Gwasg Gomer, 1973) p. 213.

⁹ WAG, *Bilingual Skills Strategy*, (Cardiff: WAG, 2006).

least 9 per cent of respondents noted that they were currently learning Welsh.¹⁰ Also on language matters, the Presiding Officer sparked yet further debate when, on 18 July, he stated 'I do not believe we should continue to translate into Welsh all the [Assembly plenary] speeches that are made in English'. Instead, he suggested: 'we should give priority to ensuring that proposed Assembly legislation should be published in both languages'.¹¹ This proposal was referred to the Assembly House Committee for consideration.

At the Assembly's annual plenary debate on the Welsh language (11 July), opposition AMs influenced language policy by forcing two amendments to WAG's initial motion to 'reaffirm support for the Welsh Assembly Government's long-term aim of creating a bilingual nation'.¹² The first amendment proposed by Jocelyn Davies (Plaid Cymru), Lisa Francis (Welsh Conservatives), and Kirsty Williams (Welsh LibDems) demanded that WAG 'reviews the need for legislation to strengthen the Welsh language'.¹³ The second, proposed by Jocelyn Davies (Plaid Cymru), called for 'the power to legislate on the Welsh language to be devolved to the National Assembly in 2007'.¹⁴ Speaking in the debate, Lisa Francis (Welsh Conservatives) highlighted shortcomings in the existing legislation on Welsh language equality by asking the Culture minister Alun Pugh: 'do you accept that it is difficult for language planning to take place without establishing linguistic rights'? In response the minister was dismissive. He stated: 'we must not get obsessed with moving down the route of, for example, Quebec-style rights-based legislation'.¹⁵

In June, the CWLS Committee considered the summary report of its Review of English Language Newspapers in Wales;¹⁶ this recommended that WAG's Minister for Education 'reviews the provision of publicly funded training courses for journalists – both in further and higher education'.¹⁷ It went on to conclude that, 'the establishment of an all-Wales newspaper is attractive in principle in terms of promoting the Welsh national identity and furthering awareness of all Wales issues

¹⁰ No sampling details were set out in the Ministerial Report that outlined this development to the Culture, Welsh Language and Sport Committee on 5 April 2006.

¹¹ Report by Martin Shipton, 'Assembly to dump Welsh', *Western Mail* (19 July 2006).

¹² Motion NDM3185 as amended.

¹³ 50 AMs voted for the amendment, 0 against.

¹⁴ For 42, Abstain 7, Against 0.

¹⁵ Record of Proceedings, 11 July 2006.

¹⁶ Papers of the Culture, Welsh Language and Sport Committee, Review of Newspapers in Wales, 15 June 2006. Downloadable from

www.wales.gov.uk/assemblydata/N000000000000000000000000045120.pdf

¹⁷ Papers of the Culture, Welsh Language and Sport Committee, Review of Newspapers in Wales, op cit, p.2.

and news. On balance, we accepted the evidence that an all Wales newspaper is unlikely to be commercially successful'.¹⁸

1.3 Economic Development and Transport

Under the Railways Act 2005, from 1 April 2006, WAG gained government responsibility for all trains operating under the principal Welsh rail franchise (currently Arriva)¹⁹ for all services in Wales – or between Wales and England. WAG also gained powers to fund rail improvements, including support for improvements to other rail passenger franchises. In June, the Economic Development Minister told the Enterprise Innovation and Networks (EIN) Committee (formerly the Economic Development and Transport Committee) that '£140 million subsidy this year was going into the rail services run by Arriva and that, over and above that, the Assembly Government and my department are investing a considerable amount of additional resource into the services ... I will be looking very closely at value for money and performance – and I have reminded them of the five-year reviews'.²⁰ Yet all were not sanguine about these developments. The Welsh Labour backbencher Christine Gwyther AM stated 'it is certainly the case that the state of our stations has deteriorated since Arriva has had the franchise'.²¹

In April, the Minister for Enterprise, Innovation and Networks announced the extension of the Community Transport Scheme (launched in March 2005) that provides free travel for people with severe disabilities. The announcement will see the creation of an additional five community transport project areas.²²

In May, the EIN Committee discussed the number and distribution of Regional Selective Assistance (RSA) and Assembly Investment Grant offers made between April 2005 and March 2006.²³ The Committee heard that in the period 1 April 2005 to 31 March 2006, 116 offers of RSA with a total value of £59 million were made to companies. It was also informed that associated project investment is £285 million – and the projects are forecast to create 4,818 new jobs and safeguard 2,506 existing jobs.

¹⁸ Ibid.

¹⁹ www.arrivatrainswales.co.uk.

²⁰ Record of Proceedings, EIN Committee, 7 June 2006.

²¹ Ibid.

²² Ministerial Press release, 'Further investment in free travel for disabled across Wales', 5 April 2006.

²³ Regional Selective Assistance (RSA) and Assembly Investment Grant (AIG) Statistics for 2005-06, Papers of the EIN Committee, 3 May 2006

1.4 Education, Lifelong Learning and Skills

In April the Minister for Education launched the consultation document 'The Learning Country 2: Delivering the Promise'.²⁴ This document sets out key policy developments since the publication of WAG's original education strategy, 'The Learning Country', in September 2001. These include: part time schooling provision for all three-year-olds whose parents want it; the introduction of the Foundation Phase for children aged 3-7; the abolition of statutory national testing for pupils aged seven (2000), eleven (2004) and fourteen (2005); a new framework for 14-19 Learning Pathways; and, the introduction of the Welsh Baccalaureate. According to the minister, '2006 marks the half way point in our 10 year journey of investment and improvement. It coincides with the establishment of the new Department for Education, Lifelong Learning and Skills. Time therefore to take stock of what we have achieved, to assess what remains to be done and to consider how the new structure will take the tasks forward'.²⁵

On 5 April, the Minister for Education announced a new funding scheme called RAISE (Raising Attainment and Individual Standards in Education Grant).²⁶ The total funding for the scheme is £16m (2006-07), with the intention that the same level of funding will be available in 2007-08. In May, the Minister told the ELLS Committee that the intention is to allocate the funding: 'to support disadvantaged pupils in schools where 20 per cent or more of those pupils are eligible for free school meals; for learning support for looked-after children; to resource a small number of school improvement professionals to work with local authorities and support schools in receipt of the new funding; and, to run and evaluate the programme'.²⁷ This scheme for tackling disadvantage was broadly welcomed by opposition parties yet some AMs were unhappy with the methods used to target the money. Janet Ryder AM (Plaid Cymru) stated that: 'we may have to look at the mechanism that is being used to distribute this ... The Minister has made repeated reference to [the uptake of] free school meals as being a good indicator [of disadvantaged communities]. It is an economic indicator, but it is not an educational attainment indicator ... when it is taken down to an individual school level, it certainly proves to be problematic'.²⁸ Plaid President Dafydd Iwan highlighted what he saw as a party-political dimension to the scheme: 'the fact that so much RAISE money has been allocated to Labour-

²⁴ WAG, 'The Learning Country 2: Delivering the Promise' (Cardiff: WAG, 2006).

²⁵ Ministerial Press release, 'The Learning Country: Delivering the promise', 12 April 2006.

²⁶ See Papers of the ELLS Committee, 3 May 2006.

²⁷ Papers of the ELLS Committee, 'Minister's Report', 3 May 2006.

²⁸ Record of Proceedings, ELLS Committee, 3 May 2006.

controlled areas I fear does nothing to allay the general public's growing cynicism about the integrity of politics under New Labour'.²⁹

In mid-May, the Minister for Education announced the development of a national strategy for the youth service in Wales. The threefold aims of the new policy framework are: to present a vision for the Youth Service in Wales; outline what the Service will require to meet the needs of the vision, in terms of staff, structures and resources; and, to present a staged action plan to meet these requirements.³⁰

Public policy on Special Educational Needs (SEN) provision has recently been the focus of public debate, notably with the publication of a pamphlet in June 2005 by Baroness Warnock³¹ and a more recent House of Commons Education and Skills Committee Report on Special Educational Needs in England.³² The latter concluded that 'What is urgently needed is for the [UK] Government to clarify its position on SEN ... and to provide national strategic direction for the future'.³³ In Wales, the Assembly ELLS Committee has given this issue sustained attention. At its meeting on 9 July 2003, it agreed that the third part of its Review into SEN would focus on planning for the transition from school to adult life for young people with SEN. The terms of reference for the review included the need to make recommendations to the Assembly Minister on how current arrangements for SEN transition could be improved.³⁴ In June, the ELLS Committee heard presentations from a range of professionals and experts as part of the evidence gathering for the review. The final report of the review will be placed before a plenary session of the Assembly by February 2007.

One of the recommendations of the 2005 Rees Report into student funding³⁵ was an independent review of the student support and financial arrangements for part-time higher education study in Wales. The purpose of this initiative is to widen access to

²⁹ Letter to the *Western Mail*, 'Free school meals equity a farce', 6 May 2006.

³⁰ WAG Press Release, Minister announces strategy for youth services in Wales', 17 May 2006.

³¹ 'Special Educational Needs: a new look' (c. June, 2005) by Baroness Warnock, who established the 25-year-old policy of including pupils with learning difficulties in mainstream classrooms. Latterly she has revised her views suggesting that rather than teaching all children in mainstream schools, more special schools should be established.

³² House of Commons Report number HC 478-I, (London: The Stationery Office, 2006).

³³ *Ibid*, p.8.

³⁴ Papers of the ELLS Committee, 18 May 2006

³⁵ Independent Study into the Devolution of the Student Support System and Tuition Fee Regime to Wales, *Fair and Flexible Funding: A Welsh Model to Promote Quality And Access In Higher Education, Final Report of an Independent Study into the Devolution of the Student Support System and Tuition Fee Regime in Wales* (The Rees Review) (2005). ISBN 0 7504 3657 3. Downloadable from: www.learning.wales.gov.uk/students/rees-review-e.shtml

higher education. Launched in July 2005, the specific task of the resulting Graham Review was to detail measures to establish a new regime for part-time study to be introduced in the academic year 2007-8. This policy measure will affect a significant number of students for 41 per cent of all undergraduate student enrolments in Wales are part-time. At its June 2006 meeting, the Assembly ELLS Committee considered the final report of the Graham Review.³⁶ Amongst the recommendations of the Review was the adoption of Combined Support Model for part-time students based on variable fees set by Higher Education Institutions (HEIs) who would be supported by an additional funding stream intended to compensate them for the lower tuition fees paid by part-time students. The review also recommended: 'a means-tested sliding scale of support' and 'that the individual benefits currently available to full-time students should also be available for part-time study'.³⁷ The latter are principally the Childcare Grant, the Parents' Learning Allowance and the Adult Dependents' Grant.

1.5 Environment, Planning and the Countryside

Following an earlier consultation exercise, on 17 May WAG published its vision for the Welsh environment in 2026 as set out in a 20-year strategy document. The first Environment Strategy for Wales³⁸ was supported by an action plan outlining proposals to tackle a range of environmental challenges including a new programme to improve local environmental quality, an extension of the public awareness programme on waste, and the production of a climate change adaptation plan for Wales. According to the Welsh Environment Minister, 'the Strategy sets out our commitment to reducing greenhouse gas emissions and ensuring effective adaptation to the impacts of climate change'.³⁹

In May, the Secretary of State for Wales told the House of Commons that he 'strongly supported' the Welsh Assembly Government's decision to recommend in its submission to UK Energy Review the construction of a power-generating tidal barrage on the River Severn.⁴⁰ It is claimed by WAG that the proposed project offers

³⁶ Independent Review of Part-Time Higher Education Study in Wales Panel, *Final Report: Independent Review of Part-Time Higher Education Study in Wales* (Cardiff, 2006). (The "Graham Review"), ISBN 0 7504 8851 4, Papers of the ELLS Committee, 22 June 2006

www.wales.gov.uk/keypubassembledlearnskills/content/1006-paper2-e.pdf

³⁷ Graham Review (2006) op cit, Executive Summary pp. 1-10.

³⁸ WAG (2006) Environment Strategy for Wales, Cardiff, WAG G/507/05-06 CMK-22-01-052.

Downloadable from:

http://new.wales.gov.uk/topics/environmentcountryside/epg/Environment_strategy_for_wales/About_the_strategy/?lang=en

³⁹ WAG Press Release, 'Twenty year vision for the environment of Wales', 17 May 2006.

⁴⁰ See www.dti.gov.uk/energy/review/

the potential to deliver as much power as two nuclear stations for the next 150 years. Andrew Davies, Minister for Enterprise, Innovation and Networks, and Energy Minister for Wales said that unlike nuclear power, the barrage would not leave a 'problematic legacy'. He stated that: 'throughout its life the barrage would produce zero-carbon electricity on a totally predictable, low-cost and reliable basis, which could also have considerable long-term financial investment attractions'.⁴¹ WAG's support for the barrage scheme attracted sustained criticism from environmental groups. RSPB Cymru, said, 'risking irreplaceable wildlife sites for the sake of energy generation is not a sustainable option, and would contravene the Welsh Assembly Government's duty to promote sustainable development'.⁴² We believe that the Welsh Assembly could achieve greater savings in carbon dioxide emissions by investing in small scale renewable projects in Wales'.⁴³ World Wildlife Fund Cymru claimed the project would 'completely destroy one of the UK's most important wildlife habitats'.⁴⁴ Based upon the Review, the UK government will publish a statement on energy policy before the end of 2006.

1.6 Equality

From 6 April 2007, a new statutory duty set out in the Equality Act 2006 will require all public authorities – including the Welsh Assembly Government – to have plans in place to promote equality between men and women. Specifically, the new duty will require the Assembly Government (and other public and crown bodies) to publish a scheme identifying gender equality goals and action to implement them; consult employees and stakeholders in setting gender equality goals and schemes; publish their gender equality goals and schemes; monitor progress on the former – and publish annual reports on progress; and review gender equality goals and scheme every three years. Theoretically, Section 120 of the Government of Wales Act 1998 places an imperative on the Assembly to promote equality for 'all persons' and in respect of 'all its functions' but flawed drafting of the 1998 devolution statute meant that this mechanism lacked adequate enforcement mechanisms. In contrast, the new single equality body, the Commission for Equality and Human Rights (CEHR) that begins work in March 2007, will have strong enforcement powers backed by the courts. To prepare for the new duty the WAG Equalities minister stated that 'we want

⁴¹ WAG Press Release, 'Climate Change – The tide is turning', 26 April 2006.

⁴² National Assembly for Wales has a duty under section 121 of the Government of Wales Act 1998 to promote sustainable development in the exercise of its functions

⁴³ Tryst Williams, 'Rhodri faces anger over Severn energy plan', *Western Mail*, 11 April 2006.

⁴⁴ Matt Withers, 'Barrage project tide up in knots', *Wales on Sunday*, 14 May 2006.

to hear the opinions of men and women across Wales on what is important to them, be it pay discrimination issues, work opportunities – or other issues. This will help inform our Gender Equality Scheme and help us take account of the different needs of women and men when planning policies'.⁴⁵

In April, the EPC Committee heard evidence from the Disability Rights Commission Wales (DRC) on mainstreaming disability equality in public policy. The DRC advised the Committee that it had established a Wales Built Environment Forum that brings together representatives from the voluntary and statutory sectors with a particular interest in built environment issues. The forum aims to share best practice and to lobby on priority issues. The DRC went on to assert that whilst WAG's 'overall policy commitments [to equality for disabled people] are commendable, there is a need to embed them within regulation, guidance, and performance measurement frameworks in order for them to become meaningful'. Amongst the demands presented to the Committee by the DRC were the need to introduce secondary legislation at the earliest opportunity to ensure that Access Statements become part of the planning process within Wales and the need to adopt clear disability access guidance and a disability access standard for Wales.⁴⁶

On 12 July, the Equality Committee considered WAG's Statutory Annual Equality Report for 2005-06.⁴⁷ Future equality policy priorities set out in the report included: completion of the Review of Services for Disabled Young People; monitoring progress with mainstreaming equality in the work of the National Assembly; and analysing progress on implementing the recommendations of the Review of Service Provision for Gypsies and Travellers.

1.7 Health and Social Services

On 3 May 2006, the Report of the Safeguarding Vulnerable Children Review 'Keeping Us Safe' was published.⁴⁸ The review was commissioned by WAG in

⁴⁵ Ministerial Press Release, 'Assembly Government calls on people of Wales for their views on gender equality', 13 June 2006.

⁴⁶ Disability Rights Commission (Wales) evidence on mainstreaming disability equality, Papers of the EPC Committee, 25 April 2006.

⁴⁷ Downloadable from:

www.wales.gov.uk/servlet/EqualityOfOpportunityCommittee?area_code=37D6B01D000A0FB6000012530000000&document_code=N00000000000000000000000000000046287&p_arch=post&module=dynamic_pages&month_year=null

⁴⁸ Downloadable from:

<http://new.wales.gov.uk/topics/childrenyoungpeople/careandprotection/childprotection/safeguardingvulnerablechildren/keepingussafe?lang=en>.

December 2003 to assess the progress of service delivery against policies and guidance – and other initiatives taken by the Assembly Government in recent years. The report identified some positive initiatives but also highlighted work that remains to be done – *inter alia*, better planning of service delivery; achieving accurate costing; securing realistic funding; the need for a children’s scrutiny committee with powers to examine issues affecting children; and, that vulnerable children who are physically and emotionally abused need to be identified and responded to at an earlier stage. The Children’s Minister highlighted the participatory dimension to the review, stating: ‘the right to participate in decisions made about you is a fundamental right ... One of the best protections that we can offer to children is the opportunity to be heard. This review has been particularly scrupulous in taking account of the views of children’.⁴⁹

Also in May, the HSS Committee heard WAG’s legislative proposals for the Local Safeguarding Children Boards (Wales) Regulations (2006). This law will co-ordinate what is done by Children Boards for the purposes of safeguarding and promoting the welfare of children. Under the proposals, the boards will prioritise the raising of awareness of the need to safeguard and promote children’s welfare and they will undertake ‘serious case reviews’ (i.e. where abuse or neglect of a child is known or suspected and a child has died, or sustained serious and permanent impairment of health or development). Also in relation to children’s welfare, in June, the Children’s Minister announced the details of a new initiative (commencing September 2006) whereby WAG will reimburse local authorities’ contributions to Child Trust Fund (CTF) accounts of eligible children in their care.⁵⁰

In June, a full public inquiry was launched following a report by a former chief executive of the Welsh Ambulance Services NHS Trust (WAS). This highlighted a series of organisational shortcomings and concluded that ‘as a conservative estimate, some 500 lives are needlessly lost in Wales every year... [The Welsh Ambulance Service] does not – and cannot in the near future – provide a safe, responsive, reliable and clinically sound service to the public of Wales.’⁵¹ As a result of these accusations the Healthcare Inspectorate for Wales is now investigating the issue.⁵² A public inquiry was agreed after a Plaid Cymru motion was supported by a

⁴⁹ Ministerial Press Release, ‘Jane Hutt responds to Safeguarding Vulnerable Children Review Report’, 3 May 2006.

⁵⁰ Ministerial Press Release, ‘Looked after children to benefit from Child Trust Fund Re-imbursement Scheme’, 20 June 2006.

⁵¹ Quoted in, ‘Assembly keeps its powder dry on ambulance service inquiry’, *Western Mail*, 28 June 2006.

⁵² See www.hiw.org.uk

majority in a plenary vote of the National Assembly. It will be conducted over the summer of 2006 by the Auditor General for Wales.⁵³ Plaid claimed that WAG were responsible for an inadequate response to the Department for Health's 2003 'Agenda for Change' plan⁵⁴ which set out a new framework for NHS pay, terms and conditions. Ieuan Wyn Jones AM (Plaid Cymru) opened the plenary debate by stating: 'the former chief executive of the Ambulance Service, has said that investment of £35 million is needed in a service where the 'Agenda for Change' has been under-funded to such an extent that the Service is dangerous and close to collapse'. In response, the First Minister said, 'we are very aware of some of the problems. We expect to see great improvement in the quality of the administration of the Welsh Ambulance Services NHS Trust.'⁵⁵

On 21 July, the Health minister launched for consultation draft regulations for a ban on smoking in all enclosed public places and workplaces in Wales. Using powers transferred to the Assembly under the Health Act 2006, the draft regulations cover issues such as definitions of 'enclosed', proposed exemptions, signage requirements and enforcement arrangements. Under the new measures, smokers who fail to observe the ban could face on-the-spot £50 fines – whilst owners of premises will be liable for £2,500 penalties. Dedicated websites have been established by WAG to provide information on the proposed ban and gather consultation responses.⁵⁶

1.8 Local Government and Public Services

On 17 May, the LGPS Committee heard the latest progress on WAG's Location Strategy; the latter implements the decisions of the Assembly Government Cabinet taken at its February 2005 meeting concerning the relocation of significant numbers of WAG officials from Cardiff to regional offices around Wales. The Committee heard that: CADW (Welsh historic monuments) had relocated to Nantgarw in February 2005; that since March and August 2005 site development had continued at sites in Merthyr Tydfil and Aberystwyth respectively; and that a new site at Llandudno Junction had been transferred to the Assembly Government (February 2006).⁵⁷

⁵³ See www.wao.gov.uk

⁵⁴ www.nhsemployers.org/pay-conditions/agenda-for-change.cfm

⁵⁵ See:

www.wales.nhs.uk/sites3/home.cfm?orgid=136&redirect=yes&CFID=1294764&CFTOKEN=3864736

⁵⁶ See www.gwaharddsmygucymru.co.uk and www.smokingbanwales.co.uk

⁵⁷ Papers of the Local Government and Public Services Committee, 17 May 2006, Community Strategy Research Report

In June, WAG announced two initiatives following on from the Review of Public Services that was published in October 2004 and entitled 'Making the Connections'.⁵⁸ First, the Finance and Public Services Minister announced the funding for 30 projects as part of the inaugural round of awards from the Making the Connections Improvement Fund⁵⁹ – these encourage collaboration and co-operation between public service providers. Second, the Assembly Government published the first consultative draft of 'Smarter Buying – Sharing Success', the Welsh public sector sourcing plan for 2006-2009. This calls for more collaboration and value for money in procurement across the public sector.⁶⁰ It will be implemented by Value Wales, a specialist agency set up to deliver change across the whole (devolved) public sector. The draft 'Smarter Buying' plan sets a target for £600m value for money 'improvements' (i.e. savings) by 2010; according to the policy document £120m of these will stem from the use of smarter procurement measures (including electronic procurement methods).

At the Public Sector Leaders conference held in July 2005, the First Minister announced the Review of Local Service Delivery to be lead by Sir Jeremy Beecham. The resulting report 'Beyond Boundaries: Citizen-Centred Local Services for Wales' was published on 10 July 2006.⁶¹ This publication stated that: 'the public sector is in the midst of a sea change: a fundamental transformation from the model inherited from the post-war years to one sustainable in the early twenty first century'. It continued, 'this has two major features: the changing relationship between services and the public; the requirement for greatly enhanced efficiency in the use of resources in order to improve services'.⁶² The review proceeded to highlight the citizen model of public service provision; one that marks a shift from the early welfare state/ public service model targeted at passive recipients to that of 'engaged consumers'. The review document continued: 'set along side this is the recent notion of 'co-production': of active consumers who achieve desired outcomes jointly with the

⁵⁸ <http://new.wales.gov.uk/about/strategy/makingtheconnections/?lang=en>

⁵⁹ WAG Press Release, 'Minister announces support for public service improvements', 15 June 2006.

The details of funded projects are given at:

<http://new.wales.gov.uk/about/strategy/makingtheconnections/improvementfund/?lang=en>.

⁶⁰ See:

http://new.wales.gov.uk/docrepos/40382/403823121/403829/Welsh_Public_Sector_Sourcin1.pdf?lang=en

⁶¹ Review Team, Review of Local Service Delivery, Report to the Welsh Assembly Government 'Beyond Boundaries: Citizen-Centred Local Services for Wales, (The "Beecham Review")', (Cardiff: WAG, 2006) ISBN 0 7504 4089 9, Downloadable from:

http://new.wales.gov.uk/docrepos/40382/403823121/40382213/528962/English_Report.pdf?lang=en

⁶² Beecham Review (2006) op cit, p.3, para 2.3.

service providers'.⁶³ In the report, Beecham et al conclude: 'the particular circumstances of Wales make this easier to achieve, because of the very practical sense in which the governance process has come together since devolution'.⁶⁴ Amongst the Beecham Review's recommendations is enhanced scrutiny of public service issues by the National Assembly and local government. In response, the Assembly's Presiding Officer, Lord Elis-Thomas, linked this to the need to reform the Assembly's policy work. He stated, 'these recommendations stress the importance of the Assembly leading the work of liaising more with citizens ... to set an example with regard to citizen-centred scrutiny, and to use the powers that will come through the Government of Wales Bill [2005] to review the procedures and structures of [Assembly] committees to ensure a cross-cutting citizen focus across all public services'.⁶⁵

1.9 Social Justice and Regeneration

In mid-May, Welsh police authorities gave evidence to the SJR Committee. Their paper focused on the financial implications of the proposed unification plan and concluded: 'there is a fear that if a single police service in Wales does not receive sufficient support from the outset it will inevitably lead to a situation where the requirement to apply the lowest common denominator as the service standard will create a situation where the public of Wales receive a less effective service than they current enjoy'.⁶⁶ In mid-June, the Minister for Social Justice and Regeneration welcomed the Home Office statement on police reorganisation that ruled out possibility of the planned merger of the Welsh forces happening on 1 April 2007, the date previously set for reorganisation of the service. The proposed merger has united many AMs in cross-party dissatisfaction at the Home Office's (perceived) failure to fully consult with elected representatives and interested parties in Wales.⁶⁷ On 13 July, Police Minister Tony McNulty finally met with AMs to discuss the matter. Following the meeting, the inconsistencies in the Home Office's position were apparent for whilst AMs were told 'no constabularies will be forced to merge against their will'⁶⁸, a Home Office statement said: 'it is certainly not the case that the

⁶³ Beecham Review (2006) op cit, Page 6, para 2.5.

⁶⁴ Beecham Review (2006) op cit, page 6, para. 2.24.

⁶⁵ Statement by the Presiding Officer, Record of Proceedings, 12 July 2006.

⁶⁶ Papers of the SJR Committee, 'The Police Service in Wales Evidence to Social Justice and Regeneration Committee: Restructuring of Constabulary – Democratic Structures', 17 May 2006.

⁶⁷ See Wales Devolution Monitoring Report, May 2006 (London: The Constitution Unit).

⁶⁸ Mark Stead, 'Minister to explain police merger failure', *South Wales Echo*, 13 July 2006.

proposed merger has been scrapped. What we are asking is for alternatives to be proposed'.⁶⁹

1.10 Conclusions

Is the Presiding Officer correct to assert that 'it's very difficult to point out anything that has happened recently'?⁷⁰ The foregoing evidence of the last quarter suggests otherwise. The present account charts a policy process characterised by, amongst other things, cross-party policy reviews; lobbying by statutory and public sector bodies; and willingness on the part of the Assembly Government to legislate and resource Wales-only policy initiatives – as well as a growing capacity to consult civil society organisations. However, the current evidence also suggests that public policy (and law-making) is most productive in areas where the devolution 'settlement' affords the greatest levels of autonomy to the Assembly/ Welsh executive; *vide* the outputs of the health and education portfolios compared to more 'opaque' (in devolution settlement terms) policy areas such as economic development, equality and sustainable development. What Lord Elis-Thomas's intervention – and the Beecham Review – have done in timely fashion, is to underline the need for furthering and deepening citizen engagement and the scrutiny of public policy as the National Assembly assumes the enhanced powers conferred in the Government of Wales Act 2006.

⁶⁹ Mark Stead, 'Politicians at loggerheads over mergers', *South Wales Echo*, 14 July 2006.

⁷⁰ Quoted in report by David James, 'Presiding officer in attack on Assembly's processes', *South Wales Echo*, 22 May 2006, *op cit*.

2. The Legislative Process

Marie Navarro⁷¹, Cardiff Law School

2.1 Primary Legislation

2.1.1 April to July 2006 Acts giving powers to the Assembly

Within the period covered by this issue of the monitoring report the UK Parliament has enacted 14 Acts out of which five give powers to the Assembly.

Figure 1: Acts giving powers to the National Assembly

<p>Acts giving powers to the National Assembly for Wales so far enacted in 2006</p>	<ul style="list-style-type: none"> • Identity Cards Act 2006 • Children and Adoption Act 2006 • Climate Change and Sustainable Energy Act 2006 • London Olympic Games and Paralympic Games Act 2006 • Government of Wales Act 2006
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The following section describes the powers granted to the Assembly under the first four of these acts. The most significant of the five – the Government of Wales Act – is discussed separately in section 2.6 below (see also previous monitoring reports).

2.1.2 Brief summary of the 2006 Acts giving powers to the Assembly

Identity Cards Act 2006 (c.15)⁷²

The Identity Cards Act 2006 (c.15) received Royal Assent on 30 March 2006.

The main power given to the Assembly in this Act comes under section 13. The Assembly may make public services in Wales conditional on identity checks so far as their provision is a matter in relation to which the National Assembly for Wales has competence.

The Act provides the legal framework required to establish a National Identity Register, and to issue ID cards to those on the Register. Its main features are:

- setting up the National Identity Register and its statutory purposes;
- establishing powers to issue ID cards;

⁷¹ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk

⁷² Paragraph 7 and 8 of the Explanatory notes www.opsi.gov.uk/acts/en2006/2006en15.htm

- establishing powers to designate existing documents as documents together with which ID card will be issued (for example British passports) or as ID cards themselves;
- ensuring that biographical checks can be made against other databases to confirm an applicant's identity and guard against fraud;
- setting out what information may be held and establishing safeguards to protect individuals' data;
- enabling public and private sector organisations to verify a person's identity with the person's consent before providing services;
- defining the circumstances in which certain public authorities specified in the Act (such as the police), or to be prescribed in regulations (such as government departments), could be provided, without an individual's consent, with information held on that individual's entry on the register;
- providing for a National Identity Scheme Commissioner to have oversight of the scheme and to report to the Secretary of State and for these reports to be laid before Parliament;
- creating new criminal offences relating to misuse of ID cards and other identity fraud issues;
- including powers to link future access to specified public services to production of an ID card and or a check on the Register.

In addition, the Act includes provisions relating to passports:

- to amend the Consular Fees Act 1980 (c.23) in order to create a general power which will allow cross subsidisation of fees for different types of passports and passport services. This will provide a statutory basis, for example, to the issue of free passports which has already been introduced for those born on or before 2 September 1929 to be subsidised by charges made for other passports;
- to ensure biographical checks can be made by the Secretary of State (to be exercised by the Identity and Passport Service) for the purpose of verifying information supplied by applicants for British passports.

Children and Adoption Act 2006 (c.20)

The Children and Adoption Act 2006 (c.20) received Royal Assent on 23 June 2006. The act provides the courts with new powers to promote contact and enforce contact orders made under section 8 of the Children Act 1989. The act also makes a number

of provisions about inter-country adoption, including a statutory framework for the suspension of inter-country adoption from specified countries where there are concerns about practices in connection with the adoption of children.⁷³ In accordance with the undertaking to the House of Lords taken two years ago by the Government, there is an annex at the end of the Explanatory Notes which contains a summary of the powers of the National Assembly for Wales in the Act.

Figure 2: Summary of the powers of the National Assembly for Wales under the Children and Adoption Act 2006

PROVISION	EFFECT
Section 1 (inserting section 11F of the 1989 Act)	Power to make regulations containing provision authorising the National Assembly for Wales to make payments to assist individuals in paying charges or fees imposed by persons providing specified contact activities. Power for the purposes of such financial assistance to approve providers of activities required by a contact activity direction or condition.
Section 9	Requirement that the Secretary of State consults the National Assembly for Wales before making an order declaring that special restrictions are to apply.
Section 10	Requirement that the Secretary of State consults the National Assembly for Wales before revoking an order making a declaration of special restrictions.
Section 13	Power to set and charge a fee for services provided or to be provided by it as the Central Authority in Convention adoptions.
Section 17(3)	Power to commence section 13 in so far as it relates to adoptions and prospective adoptions in relation to which it may charge a fee under section 91A of the Adoption and Children Act 2002.

⁷³ Explanatory notes www.opsi.gov.uk/acts/en2006/2006en20.htm

Climate Change and Sustainable Energy Act 2006 (c.19)

The act received Royal Assent on 21 June 2006. It makes provision for the reduction of emissions of greenhouse gases, the alleviation of fuel poverty, the promotion of microgeneration and the use of heat produced from renewable sources, compliance with building regulations relating to emissions of greenhouse gases and the use of fuel and power; the renewables obligation relating to the generation and supply of electricity and the adjustment of transmission charges for electricity; and for connected purposes⁷⁴. The Assembly has marginal powers under this act, the only exclusive power being that of amending the types of energy-saving measures local authorities may undertake under section 20.

London Olympic Games And Paralympic Games Act 2006 (c.12)

The Act received Royal Assent on 30 March 2006. It gives effect to the commitments made by the Government as part of London's bid to host the 2012 Olympic and Paralympic Games. It provides for the statutory remit of the public bodies which will be tasked with delivering the Games. In particular, it sets up the Olympic Delivery Authority to deliver public sector obligations for the Games, principally the necessary venues and infrastructure. The act also provides the legislative framework needed to enable the UK to fulfil the requirements which the International Olympic Committee place on host cities.⁷⁵ The Extent and Application section (section 41) of the act provides that powers granted to the Secretary of State under sections 19 to 30 (dealing with advertising and trading) are exercisable by the Assembly for things done in Wales.

Figure 3: Headings giving powers to the National Assembly for Wales in the London Olympic Games and Paralympic Games Act 2006

<i>Advertising</i>	<i>Trading</i>
<u>19 Advertising regulations</u>	<u>25 Street trading, &c.</u>
<u>20 Regulations: supplemental</u>	<u>26 Section 25: supplemental</u>
<u>21 Offence</u>	<u>27 Offence</u>
<u>22 Enforcement: power of entry</u>	<u>28 Enforcement: power of entry</u>
<u>23 Role of Olympic Delivery Authority</u>	<u>29 Role of Olympic Delivery Authority</u>
<u>24 Local planning authorities</u>	<u>30 Other authorities</u>

⁷⁴ No explanatory notes were published with this Act.

⁷⁵ Paragraph 3 Explanatory notes www.opsi.gov.uk/acts/en2006/2006en12.htm

2.2 Bills

The Assembly Members' Research Service has published a report, entitled *Bills Under Consideration by Assembly Committees, July 2006*⁷⁶. The Abstract and Key Points sections are reproduced for information:

Abstract

This paper provides an overview of the content and progress, through Parliament and the Assembly, of bills being considered by Assembly Committees.

It details the powers conferred by each bill and the extent to which they deliver the Government's commitment in the White Paper – Better Governance for Wales – to provide the Assembly, with immediate effect, with wider and more permissive powers. A version of the paper goes to the Business Committee and to the Panel of Chairs each month.

Key Points

Eighteen bills were formally remitted to Assembly Committees following the Queen's Speech in May 2005. A number of other bills have also been scrutinised by Committees, e.g. the Electoral Administration Bill by LGPS. In addition, a Committee on the Better Governance for Wales White Paper was set up, followed by a Committee on the Government of Wales Bill.

Reports on 17 of the 18 remitted bills have been produced and laid. The report on the one outstanding bill will be laid shortly.

Two bills contained provision for framework powers; the NHS Redress Bill and the Education and Inspections Bill.

Following scrutiny by Environment Planning and Countryside committee, an amendment was proposed to Clause 38 of the Natural Environment and Rural Communities Bill. As it stood, the Bill provided for the Secretary of State to issue directions to the Joint Nature Conservation Committee about the exercise of certain functions, whilst having no legal duty to consult devolved administrations. Members questioned whether this was in keeping with the Better Governance for Wales paper and requested that the Minister sought an amendment to the Bill that would ensure that Ministers in devolved administrations would be consulted.

In an update to Committee on 22 September 2005, the Minister Carwyn Jones AM, reported that the amendment had been accepted by DEFRA and would be proposed

⁷⁶ www.wales.gov.uk/keypubmrs/content/06-032.pdf

as a Government amendment to the Bill. The amendment was reflected in Section 38 (2) of the Act.⁷⁷

2.2.1 Bills introduced to Parliament giving powers to the Assembly

Since the last Report the following Bills have been introduced to Parliament which give powers to the Assembly in relation to Wales:

Public Bills:

National Health Service (Wales) Bill [HL]

National Health Service (Consequential Provisions) Bill [HL]

Disabled Persons (Independent Living) Bill [HL]

Welfare Reform Bill

Sustainable Communities Bill

Of particular interest in the list above are:

National Health Service (Wales) Bill twinned with the National Health Service Bill

These two ‘consolidation’ bills are the first example of a recognition that even under the current system of executive devolution, the law in Wales in certain public law areas is different to the law in England. So clear is the difference that it is necessary ‘to separate provision about the health service in Wales from that in England’ as is stated by the Health Department in its covering note (see below). There are other areas where such a consolidation to make separate provision is a growing necessity.

The Department of Health in its proposed legislation covering note⁷⁸ explains:

Why we need separate Bills for England and Wales

The Law Commission has drafted two Bills to separate provision about the health service in Wales from that in England. This reflects situations such as: the transfer of functions of the Secretary of State to the National Assembly for Wales; the creation of Local Health Boards in Wales; the creation of Strategic Health Authorities, Primary Care Trusts and NHS Foundation Trusts in England; the retention of Community Health Councils in Wales and certain different methods in the provision of health care. Health law in England and Wales now diverges in so many respects that one

⁷⁷ Ibid

⁷⁸ www.dh.gov.uk/assetRoot/04/13/42/47/04134247.pdf

Act covering both would be neither concise nor comprehensible to users of the legislation. A separate Bill for Wales has no constitutional implications; it does not affect the position of the Assembly, which currently has no primary law making powers and the Bills do not substantively change the law.

[...]

The Acts affected by Consolidation are as follows: Health and Social Care (Community Health and Standards) Act 2003; National Health Service Reform and Health Care Professions Act 2002; Health and Social Care Act 2001; Health Act 1999; National Health Service (Private Finance) Act 1997; National Health Service (Primary Care) Act 1997; National Health Service (Residual Liabilities) Act 1996; Health Authorities Act 1995; National Health Service and Community Care Act 1990; Health and Medicines Act 1988; Hospital Complaints Procedure Act 1985; Health and Social Security Act 1984, Health Services and Public Health Act 1968, and the Ministry of Health Act 1919.

This is an illustration of the consolidation which could be carried out in the future by a Measure made by the Assembly itself under an enabling Order in Council. This would mean that areas of public law in Wales giving powers to the Assembly could be consolidated in the same way as is achieved in the NHS (Wales) Bill: for example, the law relating to aspects of education such as primary and secondary education in Wales could be consolidated into one Measure under an appropriate Order in Council relating to the education of children in Wales. It is important to note that this Bill resulted from a draft prepared by the Law Commission. This raises for consideration the possibility of having a Law Commission in Wales, as exists in Scotland, to put forward consolidation proposals. The Assembly and the Assembly Government would not have the time, nor possibly the resources for this, thus pointing to the need for a separate body to make such proposals.

In addition, the National Health Service (Consequential Provisions) Bill [HL]⁷⁹ was introduced to deal separately with the repeals, revocations, consequential amendments, transitional and transitory modifications and savings in connection with the consolidation of enactments in the National Health Service Act 2006 and the National Health Service (Wales) Act 2006..

⁷⁹ www.publications.parliament.uk/pa/pabills/200506/national_health_service_consequential_provisions.htm

2.3 Assembly Subordinate Legislation

2.3.1 General Statutory Instruments made by the Assembly

The Assembly has made 56 general SIs since the last report, all of which are published on the Office of Public Sector Information website at www.opsi.gov.uk/, and four of which are commencement orders.⁸⁰

Many SIs deal with housing, animal health (including several SIs dealing with fish or BSE) and plant health. Several SIs provide for education matters or health authorities; one important SI being The Health Professions Wales Abolition Order 2006 (SI.2006/978 (W.101)).

One other interesting SI relates to the Firefighters' Pension Scheme: SI 2006/1672(W.160). This is an example of the Assembly using the powers in relation to the Fire Services in Wales which were recently acquired by the Assembly. Also worth noting is SI 2006/1275 (W.121) entitled the Local Authorities (Standing Orders) (Wales) Regulations 2006.

There is also an important Order relating to private arrangements for fostering children; SI 2006/940(W.89). Finally worth noting is the Public Services Ombudsman for Wales (Standards Investigations) Order 2006 SI 949 (W.98) relating to investigations concerning the conduct of members or co-opted members of a local authority in Wales where an allegation has been made that such a member has failed, or may have failed, to comply with the relevant authority's code of conduct..

16 general SIs were made either together with or with the agreement of UK Ministers. The list given below illustrates very well the variety of ways in which both the Assembly and UK level are involved in subordinate legislation which applies to Wales and also shows that it is very difficult to draw principles as to when, how and to what extent they collaborate in certain subject areas.

- **2006 No. 1701 (W.163) The Plant Health (Export Certification) (Wales) Order 2006**, National Assembly for Wales with the consent of the Treasury
- **2006 No. 1742 The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) (Amendment) (No. 2) Regulations 2006**

⁸⁰ The four commencement orders are: SIs 2006/1403 (W.140) (C.48); 1338 (W.130) (C.45); 1278(W.123)(C.41); 1279(W.124)(C.42).

Secretary of State for Environment, Food and Rural Affairs and the Assembly acting jointly

- **2006 No. 1659 The Human Tissue Act 2004 (Persons who Lack Capacity to Consent and Transplants) Regulations 2006**, Secretary of State for Health has consulted on the proposal to make the Regulations with the Assembly, the relevant Northern Ireland Department, the Scottish Ministers and such other persons as she considers appropriate.
- **2006 No. 1660 (W.159) (C.56) The Higher Education Act 2004 (Commencement No.2 and Transitional Provision) (Wales) (Amendment) Order 2006**, Assembly with the agreement of the Secretary of State
- **2006 No. 1503 The Home Information Pack Regulations 2006** Secretary of State has consulted the Assembly in relation to residential properties in Wales.
- **2006 No. 1466 The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006** Secretary of State for Transport with the agreement of the Assembly
- **2006 No. 1357 The Home-Grown Cereals Authority (Rate of Levy) Order 2006** Secretary of State and the Assembly acting jointly, with the consent of the Scottish Ministers and the Northern Ireland Department
- **2006 No. 1260 The Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006** Secretary of State for Health after consulting the Assembly
- **2006 No. 1281 (C. 43) The Planning and Compulsory Purchase Act 2004 (Commencement No. 9 and Consequential Provisions) Order 2006** Secretary of State with the agreement of the Scottish Ministers and after consultation with the Assembly
- **2006 No. 1295 The Plant Protection Products (Amendment) Regulations 2006** Secretary of State and the Assembly acting jointly (Assembly acting in relation to Wales only)
- **2006 No. 1177 The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006** Secretary of State after consultation with the Assembly
- **2006 No. 1061 (C.35) The Planning and Compulsory Purchase Act 2004 (Commencement No. 8 and Saving) Order 2006** Secretary of State after consultation with the Assembly
- **2006 No. 931 (C. 26) The Planning and Compulsory Purchase Act 2004 (Commencement No. 7) Order 2006** Secretary of State after consultation with the Assembly
- **2006 No. 984 (C. 30) The Water Act 2003 (Commencement No. 6, Transitional Provisions and Savings) Order 2006** Secretary of State after consultation with the Assembly

- **2006 No. 985 The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) (Amendment) Regulations 2006** Secretary of State and the Assembly acting jointly

The following SI offers a wording in its enabling provision that seems not to have been used before, viz 'acting respectively in relation to land in England and land in Wales':

2006 No. 1289 The Protection of Water Against Agricultural Nitrate Pollution (England and Wales) (Amendment) Regulations 2006

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to matters relating to water resources.

The National Assembly for Wales is designated for the purposes of section 2(2) of that Act in relation to matters relating to the protection of waters against pollution caused by nitrates from agricultural sources.

In exercise of the powers conferred upon them by that section and acting respectively in relation to land in England and land in Wales

2.3.2 Non SI General Subordinate Legislation made by the Assembly

The Assembly and the Welsh Assembly Government both continue to register and publish subordinate legislation which is not published by HMSO. This is the case for legislation made since January 2006 but given the small number of subordinate legislation published thus far in certain subject areas it is unclear whether the Assembly is publishing all such legislation. An example is housing, where only five instruments are recorded to date. The probable result of not recording such legislation is that it is unenforceable because it is not being published in the form required by the Assembly Standing Orders.

Through Members of the House of Lords, the Law Society proposed an addition to the Government of Wales Bill which would require the Assembly Government to publish all subordinate legislation made since July 1999 which has not been published by OPSI. Because of the absence of comprehensive records in this respect the Government in response to the amendment said on 28 June at Lords Committee stage of the Bill that it was not certain it could comply with such a requirement. Instead it undertook to find as much of this legislation as possible and to

publish it on the Assembly Government Website. On this basis the amendment was withdrawn. It will be interesting to see which legislation the government finds as a result of this exercise.

2.4. Other Assembly matters

2.4.1 The Legislation Committee Report

The Legislation Committee of the Assembly published a report in June 2006 entitled *The Technical Scrutiny of Legislation at Westminster*.⁸¹ It makes six recommendations in respect of post May 2007 legislation when the new Government of Wales Act will mostly come into force. The relevant recommendations are:

8. The Committee recommends that a Legislation Committee be established and be given the following responsibilities-

(i) the continuation of its current role of the technical scrutiny of subordinate legislation, with the freedom to consider the merits of occasional items of legislation. It would not question the policy objective, but consider whether the legislation was the most effective way of achieving that objective.

(ii) to review and report on all provisions in Assembly Measures that grant powers to make subordinate legislation to Welsh Ministers;

(iii) to review and report on provisions in Bills not being considered by another Assembly committee, that grant powers to make subordinate legislation to Welsh Ministers;

(iv) to review and report on the implications for Welsh legislation of draft orders under the Legislative and Regulatory Reform Bill not being considered by another Assembly committee;

(v) to review the use of commencement powers in Assembly Measures and Acts of Parliament of particular application to Wales;

(vi) to consider and advise the Assembly on any other matter of a legislative nature of general application, including in particular the operation of bilingual legislation.

The Committee should also be given the power to review and report on the implications of any draft European legislation not being considered by another Assembly committee.

These recommendations increase the scope of the Legislation Committee's jurisdiction, particularly with regard to the consideration of merits, which the Committee is prevented from doing under the present Government of Wales Act.

⁸¹www.wales.gov.uk/keypubassemlegislation2/content/review-090506/060509-technical-scrutiny-legis.htm

Implementation of any of these recommendations will depend not on the provisions of the new act – which has no requirements relating to a Legislation Committee – but on the new Standing Orders which have to be prepared for the new Assembly to be elected next May.

2.4.2 The Standing Orders Committee

In anticipation of the commencement of the new Government of Wales Act, the Assembly established a Standing Order Committee in May. It consists of seven AMs from all parties. A part of the Assembly website is dedicated to it:

www.wales.gov.uk/keypubassemstandingorders/index.html

The committee's terms of reference are to:

1. Make every effort to recommend new standing orders, which are capable of securing a two thirds majority approval by plenary;
2. Prepare a report, which shall set out proposed new standing orders for consideration by plenary.

The committee is to report on or before 31 January 2007 and will cease to exist on 1 March 2007.⁸² At present it appears that the committee is taking evidence from selected bodies outside the Assembly.

The Standing Orders Committee has considerable work to carry out, particularly as the new standing orders will have to include new proceedings relating to the new functions that the Assembly will acquire post May 2007 as provided for by the Government of Wales Act 2006. The committee will have to create new procedures rather than adapt the old standing orders for the far-reaching exercise of the new legislative powers of the Assembly which include the preparation of draft Orders in Council and of Measures, as such legislative devices have no precedents in UK legislation in Wales or in Scotland. The new standing orders will also have to take into account the radically different jurisdiction the Assembly will have in relation to general statutory instruments which needs to be considered as after May they will no longer be made by the Assembly but by the Assembly Government.

The committee will no doubt take account of the detailed standing orders of the Scottish Parliament in relation to the preparation and progress through the Scottish

⁸² www.wales.gov.uk/keypubassemstandingorders/index.html

Parliament of bills, including consultation with outside bodies. There are also detailed provisions about the manner in which the Scottish Parliament considers the subordinate legislation made by the Scottish Executive. This too will have to be taken into account in deciding the requirements necessary for debating such legislation in the new Assembly.

2.4.3 The Shadow Commission

Under the new act a corporate body has to be established known as 'The National Assembly for Wales Commission' or 'Comisiwn Cynulliad Cymru'. Its purpose will be to provide, or to ensure that the Assembly is provided with, the property, staff and services required for its operation.⁸³

A shadow commission has been established comprising the Presiding Officer and a member from each of the main four political parties in the Assembly. They are considering how the commission should carry out its functions post May, particularly the terms and conditions of service which will apply to Assembly officials who cease to be civil servants after next year's elections.

2.4.4 The Beecham Report: 'Review of Social Service Delivery: Report to the Welsh Assembly Government'

This report was published on 10 July 2006.⁸⁴ The following references from the summary of recommendations in chapter 7 of the report emphasise that both parts of the new devolution system – the Assembly and the Assembly Government – must involve the public in decision-making processes under the new legislation.

7. 6 We have suggested that Wales should aspire to be an example of excellence in small country governance. Many of the issues facing small countries are the same as those in larger countries, but some are crucially different. Most obviously, small scale allows an intimacy and focus which should yield highly joined-up government. But it can equally lead to cosiness, and become a comfort zone for middling performance. This report is about developing a distinctive approach which maximises the advantages of being a small country and avoids the pitfalls.

7. 7 Becoming an exemplar depends on rigorous consistency in applying the citizen model across all the agencies of government. In a small country, this calls for a new

⁸³ Clause 27(4) of the Government of Wales Bill as of 1 March 2006.

⁸⁴ [www.allwalesunit.gov.uk/media/pdf/6/0/English_Report_10_Jul_06_\(3\).pdf](http://www.allwalesunit.gov.uk/media/pdf/6/0/English_Report_10_Jul_06_(3).pdf)

form of leadership: the Welsh Assembly Government leading not through bureaucracy, but through engagement – example, persuasion and constructive challenge to achieve results for citizens.[...]

7. 9 This requires a continuing transformation of the whole: National Assembly, Assembly Government, and the full range of local service delivery organisations. To this end, this chapter makes suggestions about first steps for each sphere of government in Wales, but we re-iterate that they need to be worked out in practice in the light of the critical success factors we have proposed in Chapter 6. [...]

2. Recommendations for the National Assembly for Wales

2. 1 Take the lead in encouraging greater citizen engagement, developing cross-cutting scrutiny and ensuring rigorous, evidence based challenge so that Wales can become an exemplar of effective small country governance, including by:

- leading a mature, informed and constructive public debate about the policy and investment choices facing Wales in both the short and long term;
- setting an example of citizen-centred scrutiny, geared to improvement, with no party whip and involving a wide range of stakeholders;
- using the Government of Wales Bill powers to review procedures and Committee structures to ensure a cross-cutting citizen focus, across all public services, including non devolved services such as: policing, benefits, offender management and others which are critical to improving outcomes for people in Wales.

2.5 Central Government Subordinate Legislation

Central Government has made 51 SIs which apply to England and Wales under acts which also give powers to the Assembly. Some relate to the carrying of guide dogs in taxis or private hire vehicles. Section 37 of the Disability Discrimination Act 1995 imposes a duty on taxi drivers to carry an assistance dog, without additional charge, when it accompanies a disabled person. It also provides that a taxi driver may be exempted from this obligation on medical grounds and in particular the regulations prescribe the manner in which the exemption notice should be displayed by the exempted taxi driver and the wording on the back of the exemption notice. The notice must be displayed on the windscreen; display on the dashboard is no longer permitted.⁸⁵

⁸⁵ 2006 No. 1616 The Disability Discrimination Act 1995 (Taxis)(Carrying of Guide Dogs etc.) (England and Wales)(Amendment) Regulations 2006; 2006 No. 1617 The Disability Discrimination Act 1995 (Private Hire Vehicles)(Carriage of Guide Dogs etc.)(England and Wales)(Amendment) Regulations 2006.

SI 2006/1629 entitled the Serious Organised Crime and Police Act 2005 (Amendment of Section 61(1)) Order 2006 is an example of a Henry VIII exercise of powers, as is SI 2006/1407 the National Health Service (Pre-consolidation Amendments) Order 2006 which makes minor amendments to the National Health Service Act 1977 ('the 1977 Act') and other health service legislation prior to the passage of two National Health Service Consolidation Bills – one relating to England and one relating to Wales (discussed above in section 2.2.1). This Pre-Consolidation Order is made under section 36 of the National Health Service Reform and Health Care Professions Act 2002. That provision enables the Secretary of State to make by order amendments to legislation relating to the health service in England and Wales which in her opinion “facilitate, or are otherwise desirable in connection with the consolidation” of that legislation:

7.3 The Pre-Consolidation Order makes minor amendments to the 1977 Act and other health service legislation prior to the legislation being consolidated. The amendments can broadly be categorised as:

7.3.1 desirable to clarify the legislation or remove an element of ambiguity from it;

7.3.2 necessary to remedy a missed consequential provision in earlier legislation;

7.3.3 removing certain requirements for Treasury consent before certain payments can be made;

7.3.4 repealing provisions in the existing legislation that are either spent or now considered unnecessary to repeat;

7.3.5 incorporating modifications (modifications not being the same as amendments); and

7.3.6 consequential provisions relating to the provisions of this Order.

7.4 The Annex to this Memorandum sets out in more detail the effect of the provisions of the Order.

7.5 The Consolidation Bills themselves do no more than consolidate the law, whereas this Order allows changes to the law to be made prior to the law being consolidated.⁸⁶

SI 2006/1458 comprises a further Transfer of Functions Order. It transferred new functions to the Assembly relating to fire services and student support which are new areas of the Assembly competencies. The Order transfers:

- The functions under section 1 of the Education (Fees and Awards) Act 1983. That section enables the Secretary of State to make regulations authorising or requiring certain institutions which provide higher or further education to charge students who

⁸⁶ Explanatory note to the SI at www.opsi.gov.uk/si/si2006/20061407.htm

do not have such a connection with the United Kingdom as is specified in the regulations, fees which are higher than those charged to students who do have such a connection.

- Functions of the Secretary of State under the Regulatory Reform (Fire Safety) Order 2005. The 2005 Order reforms the law relating to fire safety in non-domestic premises. The functions transferred include—
 - power to make regulations about fire precautions (article 24); power to authorise persons as enforcing authority for certain premises (article 25); power to issue guidance to enforcing authorities (article 26); power to determine disputes (article 36); and a duty to ensure guidance is available (article 50).⁸⁷

Worth noting is SI 2006/1274 The Education (School Teachers' Pay and Conditions) Order 2006 which demonstrates that not all matters relating to education in Wales are within the powers of the Assembly. The order allows teachers to participate voluntarily in certain salary sacrifice arrangements. Central government also made seven Commencement Orders which apply to England and Wales.⁸⁸

⁸⁷ Explanatory note, www.opsi.gov.uk/si/si2006/20061458.htm

⁸⁸ SI. 2006/ 1498(C.51) The Nationality, Immigration and Asylum Act 2002 (Commencement No. 11) Order 2006; 2006 No. 1176 (C. 40) The Natural Environment and Rural Communities Act 2006 (Commencement No.1) Order 2006; 2006 No. 1002 (C. 31) The Clean Neighbourhoods and Environment Act 2005 (Commencement No.2, Transitional Provisions and Savings) (England and Wales) (Amendment) Order 2006; 2006 No. 1014 (C.33) The Constitutional Reform Act 2005 (Commencement No. 5) Order 2006; 2006 No. 1082 (C. 36) The Equality Act 2006 (Commencement No.1) Order 2006; 2006 No. 1085 (C. 37) The Serious Organised Crime and Police Act 2005 (Commencement No. 6 and Appointed Day) Order 2006; 2006 No. 934 (C. 27) The Environment Act 1995 (Commencement No. 23) (England and Wales) Order 2006.

2.6 The Government of Wales Bill 2005

2.6.1 Review of the Bill's Progress

Figure 4: The Parliamentary Progress of the Government of Wales Bill

House of Commons	House of Lords
Introduced: 8 Dec 2005	First reading: 1 March 2006 (<u>HL Bill 81</u>)
Second reading: 9 Jan 2006	Second reading: 22 March 2006
Committee 23, 24 & 30 Jan 2006	Committee 1st day: 19 April 2006
House: 27 & 28 Feb 2006	2nd day: 3 May 2006
	3rd day: 23 May 2006
	4th day: June 6 2006
Consideration of Lords amendments: 18 July 2006	Report stage: 27 – 28 June 2006
	Third reading: 13 July 2006 ⁸⁹
End of term: 21 of July	End of term: 25 July
	<u>Royal Assent: 25 July</u>

2.6.2 Amendments in the House of Lords

The only amendment of importance which has been agreed by the government following the consideration of the bill in the House of Lords was that so far as is reasonably practical the membership of Assembly Committees must reflect the balance of the political groups to which Assembly Members belong, and that every Assembly Member who does not belong to a political group is entitled to be a Member of at least one committee.

The bill received Royal Assent on Tuesday 25 July. For the first time in centuries, Statutory Law will be made in Wales by a body other than the UK Parliament and it will be in both the Welsh and English languages. This will start to occur after the Assembly elections on 4 May next year.

⁸⁹ www.epolitix.com/EN/Legislation/200505/91596055-766b-4371-89d0-1890fd68e8a0.htm

3. Economic Development

Prof Peter Midmore, University of Wales Aberystwyth

3.1 Introduction

The relative deficiency of statistical information for the Welsh economy provides scope for a range of interpretations on its performance; for example, major indicators such as Gross Value Added (GVA) per head are only available, in terms of final estimates, after a two-year lag. The periodic Ministerial Reports to the Enterprise, Innovation and Networks (EIN) Committee provide a catalogue of job gains and losses,⁹⁰ but there is little which allows either for validation, or articulation of a coherent critique, of the range of economic policies being applied. Assembly discussions on the economy have provided an arena in which both the government and opposition parties attempted to wrest the initiative from each other, but without any clear winners emerging. While it is obvious that the Welsh economy is growing, whether it is growing rapidly enough to close the gap with the rest of the UK is far from certain. The context for economic policies rests on a broad consensus, since all parties agree that the analysis contained in the consultation document *Wales: A Vibrant Economy*⁹¹ is correct. As for the type of policy to correct the evident weaknesses, however, exchanges between parties are particularly ill-tempered and inconsistent.

The substantive issues of the Assembly's summer term were the implementation of the WAVE strategy within the new, merged Department for Enterprise, Innovation and Networks (DEIN); the coming framework of European funding for 2007-13; and structural change in the economy, particularly regarding the role of tourism and manufacturing. The EIN Committee continued to work on, but did not conclude,⁹² its inquiry into science policy, and also held a meeting in Colwyn Bay focusing on business support and tourism in the North Wales economy.

⁹⁰ Most urgent questions in Plenaries, to the EIN Minister and the First Minister, also relate to job losses.

⁹¹ See:

<http://new.wales.gov.uk/docrepos/40382/4038231141/4038211251/403821125/4038211251/wave>.

⁹² Two closed sessions of the EIN Committee were held to consider the report, but at the time of writing it had not been published.

3.2 Wales: A Vibrant Economy

The Assembly debated the refreshed economy strategy in plenary session on 7 June 2006, presenting the document as a framework within which the enlarged DEIN will work, and providing a basis for the next round on Structural Funds expenditure. The major priorities for the Assembly Government will be to continue to expand employment; to improve the quality of jobs and the incomes earned from them; and to improve the environment for business growth, in particular by upgrading the infrastructure which are the transport and electronic networks responsibilities of the DEIN. Other parties' responses to the document provide some insight into how perspectives vary among the Assembly membership.

Both Plaid Cymru and the Conservatives highlight the failure of the Assembly Government to meet their GVA commitment (to achieve 90 per cent of the UK level by 2010), set out in the previous strategy *A Winning Wales*.⁹³ Some indicators suggest that the relative gap is widening, others that it is not; for example, while GVA per head, at 79.1 per cent, is still the lowest relative to the UK as a whole, Gross Disposable Household Income (GDHI), at 88 per cent of the UK figure, is at its highest relative level since 1996, and is closer to the UK average than GVA per head in the North East of England and Northern Ireland.⁹⁴ Arguably, the latter is a better measure of economic performance at the regional level, although the minority parties focus chiefly on the former.

The minority parties continue to press for a greater level of resources in addition to the block grant settlement under the Barnett formula, in order to match fund and thereby unlock resources from Europe; Plaid Cymru estimate, according to Ieuan Wyn Jones speaking in the debate on the WAVE, that annually, '[the Welsh Assembly] Government has had to find £65 million from public funds to ensure that there was sufficient match funding ... over the lifetime of the programme, over £400 million has had to come from health and education'.⁹⁵ In other respects, minority parties differ: Conservatives focus on regulation and local taxes as constraints on business development; Liberal Democrats would spend more on targeted sectors

⁹³ Welsh Assembly Government, *A Winning Wales: the national economic development strategy of the Welsh Assembly Government* (Cardiff: WAG, 2002). Available from: www.wales.gov.uk/themes/budgetandstrategic/content/neds/awinningwales-0302-e.pdf.

⁹⁴ ONS Statistical Bulletin SB 41/2006: <http://new.wales.gov.uk/docrepos/40382/40382313/403824/econ-2006/sb41-2006.pdf>.

⁹⁵ Assembly Record of Plenary Proceedings, 7 June 2006.

(particularly environment-related industries) and regeneration; and Plaid Cymru would focus on promoting indigenous business with growth potential, rather than on inward investment. There is also concern, not just in the opposition parties, about the distributional impacts of economic policy, with benefits concentrated around the M4 and A55 road transport corridors, and much less impact on the most deprived areas, and continuing decline in the more peripheral, rural areas.

The Business Plan for the first full year of the new merged department, introduced in the EIN Committee,⁹⁶ provides a breakdown of resources and targets, and a framework for improved delivery through rationalisation of the enterprise agency structure. Of the business (rather than transport) related expenditures of the department, just under a third will be spent supporting innovation, a fifth each on measures to promote employment, enterprise and to provide some of the matched funds for European programme, respectively, and just over 5 per cent on tourism. A large number of different targets are set for employment creation and safeguarding, business start-ups, investment support and consequent product and process innovation, exports and tourism enhancement, which may provide opposition parties with much future grist for deliberation. The draft EIN budget for the coming financial year (2007-8), introduced prior to the business plan, provides for a virtual standstill in this expenditure, with very modest increases for energy and environmental industry support and regeneration packages; no increase is currently planned in match funding for Structural Funding programmes.

3.3 Structural Funds

The next programming period for European Structural Funds, from 2007 to 2013, differs from the current period in two important respects: further simplification of the objectives of European regional policy have led to a focus on to just two programmes, the Convergence Programme (formerly Objective One), and the Regional Competitiveness and Employment Programme (formerly Objectives Two and Three); and because of the recent enlargement of the EU, less funds are available for the UK: the country as a whole will receive about half of the funds it obtained from Objectives Two and Three in the past. Decisions on where and how much funding will be spent under the Employment and Competitiveness Programme

⁹⁶ Record of Proceedings, Enterprise, Innovation and Networks Committee, 7 July 2006; the Business Plan itself is at www.wales.gov.uk/keypubasementinovnet/content/paper5-0506-e.pdf.

will be taken at the UK level, and it is as yet uncertain whether east Wales will be supported at all under the new arrangements.

The Assembly Government's approach for the next round of funding rests on both the WAVE document and its business plan for DEIN; at a regional level, it is using the Wales Spatial Plan⁹⁷ as a framework for the development and implementation of its policies. It aims to take a more streamlined, strategic approach, reducing the complexity of the current funding framework (which has 6 priorities, 37 measures and almost 3000 projects). For the West Wales and the Valleys Convergence Programme, provided that the European Commission approves, there will only be 6 priorities with the detail left to the discretion of the Assembly Government. The Heads of the Valleys Strategy, integrating development of transport networks, regeneration of townscapes and engagement of wide networks of stakeholders, including local authorities and the Sector Skills Councils, has been used frequently by the Government in this Assembly term as an exemplar of how various strategies can be combined at local level, in particular evoking the Wales Spatial Plan as an overarching framework.

While there are concerns that such an approach will further centralise decision-making, leading to large projects and excluding the voluntary sector from worthwhile participation,⁹⁸ until the definitive detail of the new programmes has emerged there is little for the minority parties to criticise; in the main, their exhortations revolve around the need to gain sufficient additional funds from the Westminster Treasury to adequately support the new programmes, to avoid diversion of block grant resources from other policy areas such as health and education.

3.4 Tourism and Business Support

The Colwyn Bay meeting of the EIN Committee focused entirely on tourism and business support, and took evidence from representatives of the North Wales Economic Forum, Flintshire County Council, North Wales Tourism, the Federation of Small Businesses and the Confederation of British Industry.⁹⁹

⁹⁷ See: <http://new.wales.gov.uk/about/strategy/strategypubs/walesspatialplan?lang=en>.

⁹⁸ Also, much voluntary sector match-funding depends on in-kind contributions: the hours worked by volunteers may currently be costed to draw down match funding. The possibility that private match funding may not be eligible in the next programming period has still not been settled.

⁹⁹ Record of Proceedings, Enterprise, Innovation and Networks Committee, 22 June 2006.

With regard to tourism, arguments were made by witnesses that it is unrecognised for the importance of its contribution to the wider economy and ability to diversify away from declining sectors,¹⁰⁰ support frameworks are far from adequate, and that there is anxiety that the merger of the former Wales Tourist Board into the DEIN will further dilute policy emphasis on this important sector. Overlapping concerns with the business support sector included regulation, the quality of business support services, and high levels of local taxation. The business community were concerned about the complexity of business advice and support provided by DEIN through various channels, and wished to see it streamlined and rationalised. A recent survey by the Federation of Small Businesses revealed that the flagship Business Eye service had only been used by 7 per cent of members; the CBI drew attention to a substantial fall in new business starts. Local authorities, however, exhibited concern that various business support programmes for which they were responsible were unsettled by arbitrary changes and the frequent need to re-tender for contracts. In the round table discussion involving Committee Members, DEIN officials (both from the former WDA and WTB) and the witnesses, substantial support emerged for both stability and rationalisation of the business support service. Since the tourism market continues to develop rapidly, despite substantial past investment there will still be a need for Convergence Programme resources to improve the quality and attractiveness of facilities and accommodation to the higher-spending international visitor.

3.5 Manufacturing

Manufacturing is of considerable importance in the Welsh economy. As a sector, in general it pays higher wages than other forms of economic activity. A higher proportion of the workforce in Wales is employed in manufacturing than in other parts of the UK, mainly as a result of success in attracting foreign direct investment over the past two decades. Its existence compensates for the problems elsewhere in the economy, and without this dominance, the relative gap between Wales and the rest of Britain would be even wider. Since manufacturing, globally, is migrating to low cost countries, employment losses in the sector in Wales have become increasingly large. The Assembly's support for manufacturing business is therefore a fundamental component of its economic development policies; it spends a substantial proportion of the EIN resources on investment grants to the sector, and the support it provides

¹⁰⁰ The overall position of tourism in the economy has recently been more accurately measured: see Jones, C., Munday, M. and Roberts, A., 'Regional tourism satellite accounts: a useful policy tool?', *Urban Studies*, 40:13 (2003), pp. 2777-2794.

for innovation is designed to foster new, technologically-advanced forms of manufacturing which will be less footloose in response to the pressures of globalisation. Because of all this, the plenary debate held on manufacturing was arguably the most important of the current term.¹⁰¹

From the governing party perspective, despite problems in the sector, its policies are performing reasonably strongly. Demand-led grant expenditure on investment support is relatively buoyant, and it has been productive in terms of generating new employment. Despite strong competition from elsewhere in the world, employment in Wales is continuing to rise and unemployment is proportionately lower than in the rest of the UK. Taking note of the developing recognition that manufacturing fits into a complex supply chain, recommendations of an advisory group on the issue that a Manufacturing Forum should be set up have been acted upon.

Minority party contributions to the debate highlighted the difficulties which this perspective glosses over, especially as recent statistics show steeper falls in the index of manufacturing output and slower growth in exports than the rest of the UK, and these problems affect rural manufacturing more seriously than elsewhere. The suggestions offered to enhance the policy framework were regional targets for investment within Wales, a greater focus on small indigenous firms with growth potential (particularly where the substantial procurement budget of the Assembly Government might be used to better effect), and better targeting of high-growth sectors. From the Liberal Democrats, one amendment suggested that joining the Euro would help to expand the export performance of the sector.

In essence, however, the debate was disappointing in two respects. Firstly, the policy framework used to support manufacturing has not changed substantially, even though the governance of Wales has undergone radical change. Secondly, all of the parties in the Assembly display a serious lack of realism about the problems facing the sector, and the dearth of practical policy options which can be used to tackle them. Since the Assembly and its Government have far fewer policy options than the UK Government and a far weaker statistical evidence base on which to guide their deployment, the quality of discourse is almost inevitably going to be poorer. Since one of the expectations of devolution was that economic governance would be more

¹⁰¹ Assembly Record of Plenary Proceedings, 17 May 2006.

closely aligned and responsive to the needs of Wales, this may soon turn out to be one of its major political fault lines.

3.6 Conclusion

Although economic performance constitutes a substantial element of the political legitimacy of the Assembly, its recent discussion in the Assembly has begun to take on a posturing dimension, characteristic of the final year before an election. The lack of fresh ideas appears to have been the outcome of a traditional style of politics in which proposal and counter-proposal are in diametric opposition. As a consequence, the opportunity to develop the ambitious, radical policies which will be essential for success in a rapidly changing economic environment is not being exploited.

4. Intergovernmental relations

Alan Trench, UCL

4.1. General

The period since December 2005 has been characterised by relatively low-key intergovernmental relations between Cardiff and London. The principal issue has been the constitutional future of Wales, with the Government of Wales bill before Parliament, and most of the rest of this section is devoted to a discussion of its parliamentary progress.

There have been no meetings of the plenary Joint Ministerial Committee, nor any publicised meetings of functional formats of the JMC. It is now over three and a half years since there was a meeting of the plenary JMC – although the Memorandum of Understanding requires there to be a meeting every 12 months.

There has been no intergovernmental litigation.

4.2 UK Cabinet reshuffle

A reshuffle of the UK Cabinet took place in May 2006, shortly after the last monitoring report was completed. The Wales Office was not directly affected, with Peter Hain retaining his position as Secretary of State for Wales (and Northern Ireland), and Nick Ainger remaining Parliamentary Under-secretary at the Wales Office. Huw Irranca-Davies, MP for Ogmore, became the junior whip responsible for Wales, in a development that curiously was announced by the Wales Office and described in its news release as a change to the 'Wales Office team'.¹⁰² Elsewhere in Whitehall, there were a number of changes among the holders of portfolios with an interest in devolution. These are discussed in the September 2006 Devolution and the Centre Monitoring Report.¹⁰³

¹⁰² 'Peter Hain Welcomes Changes To Wales Office Team', Wales Office Press Notice, 8 May 2006, available at www.walesoffice.gov.uk/2006/pn_20060508.html

¹⁰³ 'Devolution and Whitehall', in *Devolution and the Centre Monitoring Report: September 2006* (London: The Constitution Unit, 2006), at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Sept06.pdf.

4.3 Progress of the Government of Wales bill through Parliament

As noted in other chapters of this report, The Government of Wales bill completed its progress through Parliament and received royal assent on the final day of the parliamentary term, 25 July 2006.

The extent of intergovernmental dealings in the later stages of its parliamentary progress appears to have been less than during its earlier stages. Typically, there are fewer technical issues requiring civil service support at the later stages of parliamentary debate, and this has been the area in which Assembly Government has been most involved. Thus, although the number of amendments tabled in the Lords was much greater than the number in the Commons, these presented less of an organisational challenge to the Government.

There was a short session of 'ping-pong' between the Lords and Commons arising from those amendments. Unsurprisingly, the main point of tension turned out to be the ban on 'dual candidacy' for list and constituency seats in elections to the National Assembly. Peter Hain and other UK Government ministers indicated a strong reluctance to accept amendments on this point, and signalled that if the bill failed to pass before the summer recess it would be lost altogether, as they claimed there was insufficient time for it to be dealt with in the 'spill-over' come the autumn.¹⁰⁴

In the event, a compromise was reached between the two Houses. The key element in this was the Liberal Democrat peers, who agreed to abandon their support for the amendment provided the Government accepted another Lords amendment relating to arrangement for committees (removing a requirement for the D'Hondt formula to be used to allocate seats on committees to parties, and substituting a requirement only to use D'Hondt as a last resort if agreement on composition based on more general proportionality fails. This enabled the Liberal Democrats to abstain in a vote on the bill, while the Conservatives remained opposed. Labour was able to muster enough votes in the Lords to enable the bill to pass.

4.4 Policing reform

The proposals for reorganisation of police authorities in England and Wales, discussed in the May 2006 report, were abandoned by the Government following the

¹⁰⁴ See e.g. 'Extra powers 'on knife-edge'', *Western Mail*, 22 July 2006; 'Hain Warns Lords Amendments Put Assembly Powers in Jeopardy', Wales Office Press Notice, 28 June 2006.

change of guard at the Home Office. John Reid announced on 19 June 2006 that the proposed reorganisation (which included creating a single all-Wales force) would be postponed, but without indicating when they would take place. On 30 June the Police Minister announced that the policy of seeking mergers was abandoned altogether (partly because even the one force merger to which both parties agreed, between the Cheshire and Lancashire Constabularies, had collapsed).¹⁰⁵ News releases on the Wales Office website suggest that, at the very least, Peter Hain had maintained a keen interest in the Home Office's policy.

Along with a number of English forces, one Welsh force – North Wales – has declared its intention to recover the costs of undertaking work on force mergers from the Home Office. These amount to £375,000.¹⁰⁶ The position of the other Welsh forces remains unclear. The Home Office has given no indication whether it intends to pay such claims.

4.5 The West Lothian Question and 'English votes for English laws'

This issue continues to rumble on, with a speech given by Jack Straw to the Hansard Society on 10 July 2006 dealing (amongst other things) with the idea of 'English votes for English laws'.¹⁰⁷ Straw robustly rejected the idea of restricting Scottish MPs from voting on certain items of business at Westminster, and suggested that

Power devolved is not power ceded – quite the reverse ... [L]egally, the Scotland Act is no different from any other Act of Parliament. It is not specially entrenched law. No Parliament can bind its successor. So in theory, the majority of English MPs could – however unlikely it might be – change or repeal the Scotland Act.

The logic of Straw's position would apply equally to Wales – but curiously no-one ever talks of how Wales fits into the problems posed by West Lothian Question.

¹⁰⁵ Copies of both letters are available at <http://police.homeoffice.gov.uk/police-reform/force-restructuring>

¹⁰⁶ See 'Police claim for merger money', *Western Mail*, 22 July 2006.

¹⁰⁷ The speech is available at www.commonleader.gov.uk/output/Page1605.asp#

5. Relations with Europe and Local Government

Aled Elwyn Jones & Dr Elin Royles, Institute of Welsh Politics; University of Wales Aberystwyth

5.1 Europe

5.1.1 Regional Aid 2007-13

State Aid

The UK Government published its Draft Assisted Areas Map for 2007-13 on 10 July, and it was open to consultation and responses until 7 August.¹⁰⁸ While the NUTS 2 area of West Wales and the Valleys qualifies automatically by virtue of being a Convergence Area, additional areas are included at the government's discretion (known as article 87(3)c areas). Under the DTI's proposals, the parts of Wales included under this section are all of Flintshire, most of Newport local authority areas, along with Cardiff's Trowbridge ward and Aber-craf, Cwm-twrch, Ynyscedwyn and Ystradgynlais in Powys. A final map will be sent to the European Commission in the autumn.

Convergence and Competitiveness Programmes

The draft operational programmes for both the ERDF Convergence Programme and the Convergence element of the All Wales Human Resources programme (ESF) will be published for consultation over the summer. The consultation will last into October, allowing time for responses from Assembly Committees including the EEAC and the Enterprise, Innovation and Networks Committee. Negotiations will then take place with the Commission so that the programme can be agreed in time for the start date of January 2007.

5.1.2 Relations with other Regions and Governments

At the EEAC meeting of 12 July, WAG provided an update on its external relations activity; something it will now do on an annual basis. While much of the content has been covered in previous Devolution Monitoring Reports, by giving an overview of the whole area of activity, WAG's paper does provide some interesting information. Not least perhaps is the fact that following the 'bringing-in' of the WDA and the Wales Tourist Board, WAG now has a direct presence in 21 foreign cities; Amsterdam, Bangalore, Beijing, Brussels, Chicago, Dubai, Dublin, Hong Kong, Houston, Milan,

¹⁰⁸ www.dti.gov.uk/consultations/page31762.html

Munich, New York, Ontario, Paris, San Francisco, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.¹⁰⁹

Of WAG's relationships with other regions and states (those considered worthy of mention were New South Wales, Latvia, Chubut, Silesia, Catalonia, Brittany and Chongqing¹¹⁰) those with Brittany and Latvia merit special attention within the current period.

Brittany – On 16 June 2006, the First Minister visited the Regional Council of Brittany in Rennes and addressed the Council's Plenary Session. He also signed an Action Plan that is intended to build on the Memorandum of Understanding agreed between the two countries in January 2004. The Plan of Action sets out objectives for co-operation across virtually all the Assembly's areas of policy competence, as well as for exchanges between towns and local authorities and co-operation in European affairs.¹¹¹

Latvia – A Memorandum of Understanding was signed with Latvia as it ascended to EU membership in May 2004, which underpins activity in the fields of local government, regional policy, trade and economic development, education, arts and culture.¹¹² On 12 July, Latvian Economic Minister Aigars Štokenbergs headed a trade mission of 30 companies to Wales, and met with the First Minister. A reciprocal trade mission to Latvia will take place in November.

5.1.3 European and Global Citizenship Education Review

At its May and June meetings, the EEAC discussed the European Commission's Communication Strategy White Paper. As a result of these discussions, the committee not only put together a response to the Commission¹¹³ but, more unusually, decided to conduct a policy review into European and Global Citizenship Education and Awareness in Wales.

This may well be the first time that the committee has conducted a policy review of this kind, such activities being more usually the preserve of the subject committees.

¹⁰⁹ EEAC, EUR(2) 06-06: Paper 3 – Wales in the World, 12 July 2006 www.wales.gov.uk

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ EEAC, EUR(2) 05-06: Paper 2 - Committee's Response to the White Paper on a European Communication Policy www.wales.gov.uk

The intention is that the review, which will be completed by the autumn, will feed into the work of both the Local Government and Public Services Committee (particularly its review of electoral arrangements in Wales) and the Education and Lifelong Learning Committee. In addition, the Committee's recommendations could feed into the curriculum and qualifications authority ACCAC's review of Personal and Social Education within the national curriculum.

The committee has already heard evidence from WJEC, the Council for Education in World Citizenship, and from Andy Klom; Head of the European Commission Office in Wales. After the summer, evidence will be sought from organisation such as Urdd Gobaith Cymru and the Wales Centre for International Affairs, as well as from other regions such as Scotland and Ireland.

5.2 Local Government

July saw the publication of *Beyond Boundaries*, the report of the Beecham Review into Local Service Delivery. In conjunction with other developments, the report's recommendations highlight the continuing evolution of public services and its further implications for local government.

5.2.1 *Beyond Boundaries and Making the Connections*

The Beecham Report, also discussed by Paul Chaney in Section 1 of this report, was published on 10 July 2006.¹¹⁴ Local government warmly welcomed the report. WLGA Leader, Councillor Derek Vaughan stated:

Beecham's insistence for public services to become more citizen centred and tougher on performance are key messages which we fully recognise. Similarly the emphasis on public sector bodies working together at a level hitherto unheard of is fully supported within Welsh local government.¹¹⁵

Subsequent responses in WAG's 'Public Service Leader's Conference' in Swansea 14 July emphasised the leadership role local government envisaged in implementing the recommendations and it called for action by other actors. WLGA's Leader called on the Assembly Government to simplify central-local regulations, reduce inspectorate activity, streamline local government finance and provide greater

¹¹⁴ WAG, *Beyond Boundaries: Citizen-Centred Local Services for Wales. Review of Local Service Delivery: Report to the Welsh Assembly Government* (June 2006).

¹¹⁵ WLGA, Press Release, 'Re-organisation of Welsh councils not the way forward re-affirms Beecham' (10 July 2006), at: www.wlga.gov.uk/content.php?nID=23;ID=43;IID=1

strategic leadership at the national level.¹¹⁶ In response to the idea of local strategic partnerships, WLGA advocated that the pilot Partnership Action Contracts (PACTs) be local government led, 'however, other public bodies must also be fully committed and bring their money to the table too. We therefore call on the Assembly Government to introduce a duty of collaboration on public bodies or those bodies in receipt of public funding'.¹¹⁷

Two developments coinciding with the report's publication emphasise local government's embrace of the efficiency and collaboration agenda to date. Local authorities were key partners in 17 of the 30 projects in the first set of 'Making the Connections Improvement Grants' announced on 15 June.¹¹⁸ In addition, on 14 July, WLGA reported survey findings that local government had done extremely well in surpassing efficiency savings targets. For 2005-06, it had achieved nearly £80m savings rather than the £45m target.¹¹⁹

5.2.2 Community Strategies and collaboration with town and community councils

Other areas of development are reviewing community strategies and developing the role of town and community councils. The independent evaluation of the first set of community strategies implemented since 2004 in accordance with the Local Government Act 2000 has been widely discussed.¹²⁰ The Evaluation Report recommended introducing a statutory duty to cooperate on Community Strategy Partnerships to address the reluctance of some stakeholders to be involved in partnerships. The Community Strategies Working Group established by the Partnership Council will bring forward recommendations in October 2006.¹²¹ The next round of community strategies will also take account of proposals for Plan Rationalisation, Making the Connections, the Wales Spatial Plan and the Policy Statement on public services in Wales in light of the Beecham Report.¹²²

¹¹⁶ WLGA, Press Release, 'Councils call for change in response to Beecham' (14 July 2006), at: www.wlga.gov.uk/content.php?nID=23;ID=45;IID=1

¹¹⁷ Ibid.

¹¹⁸ LGPS Committee, LGPS(2)-11-06 (p.1) Report by the Minister for Finance, Local Government and Public Services, 6 July 2006.

¹¹⁹ WLGA, Press Release 'Welsh councils making massive savings, reveals survey' (14 July 2006), at: www.wlga.gov.uk/content.php?nID=23;ID=46;IID=1

¹²⁰ LGPS Committee, 17 May 2006; Welsh Assembly Government, Minutes of the Local Government Partnership Council, 2 March 2006.

¹²¹ LGPS Committee, LGPS(2)-08-06(p.3), Community Strategy Research Report, 17 May 2006.

¹²² LGPS Committee, Committee Record of Proceedings, 17 May 2006.

WAG is also keen to increase the role of community and town councils as service providers. In the Local Government Partnership Scheme Report 2005, the minister called on WAG, the WLGA and One Voice Wales to collaborate on this agenda. The report also advocated developing a model charter for delegating specific functions to community and town councils to deliver services.¹²³ Building on this, a first meeting was held on 22 May to discuss improving working relationships between local authorities and town and community councils.¹²⁴ Engaging with community councils was also included in the Beecham Report's recommendations for local authorities.¹²⁵ However, this agenda sits rather uncomfortably with the recent history of reluctance by unitary authorities to engage with community councils.¹²⁶

5.2.3 Equality and Equal Pay

The Local Government and Public Services Committee scrutinised the Sex Discrimination (Public Authorities) (Statutory Duties) Order 2006 on 21 June 2006. Essentially, the Equality Act 2006 places a duty on public authorities to 'promote equality of opportunity between men and women; and to eliminate unlawful sex discrimination and harassment'.¹²⁷ It requires public authorities to publish a Gender Equality Scheme by 6 April 2007 and to evaluate all jobs by 2010. For local authorities, costs could arise in relation to publishing annual reports on the gender equality duty, reviewing and updating the schemes every three years, and reviewing pay arrangements by 2010.¹²⁸

5.2.4 Finance

Priorities for Assembly Government's Local Government expenditure for 2007-08 are being set.¹²⁹ Overall, there is little room for manoeuvre as no spending review will take place in this period. Additional funding is likely to deal with the requirements arising from the Electoral Administration Bill 2006 that received its third reading on 7 June 2006.¹³⁰

¹²³ LGPS Committee, LGPS(2) 10-06: Paper 04 - Local Government Partnership Scheme Report For 2005-2006, 21 June 2006.

¹²⁴ LGPS Committee, LGPS(2)-11-06 (p.1) Report by the Minister for Finance, Local Government and Public Services, 6 July 2006.

¹²⁵ WAG, *Beyond Boundaries: Citizen-Centred Local Services for Wales. Review of Local Service Delivery: Report to the Welsh Assembly Government*, June 2006.

¹²⁶ LGPS Committee, Record of Proceedings, 6 July 2006.

¹²⁷ LGPS Committee, LGPS(2)-10-06(p3), Secondary Legislation - Sex Discrimination (Public Authorities) (Statutory Duties) Order 2006, 21 June 2006.

¹²⁸ LGPS Committee, Record of Proceedings, 21 June 2006.

¹²⁹ LGPS Committee, [LGPS\(2\) 10-06: Paper 07 - Assembly Government Budget 2006 - Priorities for the Local Government MEG in 2007-2008](#), 21 June 2006.

¹³⁰ LGPS Committee, LGPS(2)-10-06(p.10), Progress of the Electoral Administration Bill 2006, 21 June 2006.

Regarding the financial implications of the Lyons review, the LGPS committee's meeting with Sir Michael on 8 June highlighted that 'current thinking was that council tax was problematic but hard to replace, and felt that the public space for a supplementary income tax was limited'.¹³¹

5.2.5 Forthcoming Issues

- Publication of the review of local government members and scrutiny conducted by the Local Government Division.
- Welsh Assembly Government and WLGA's response to the Beecham Review of Local Service Delivery. WAG intends to publish details of its next steps in the public service reform agenda early autumn 2006.
- In the autumn, the Department for Communities and Local Government White Paper and Local Government Bill will be published.
- Sir Michael Lyons report following the review of local government finance and structures to be published in the autumn.
- A new local government policy statement for Wales is to be published by the end of the year and seminars will be held in the autumn to feed into this work.

5.2.6 Conclusion

Local government's commitment to the reform and collaboration agenda is clear. It will play a central role in implementing WAG's action plan following Beecham's recommendations. The leadership role that local government aspires to bring to this agenda is important. However, cultural and institutional factors suggest a possible reluctance by some at operational level to fully commit to deepening collaboration, there is also potential for tension between actors. The publication of the Beecham Report is the beginning of another stage in the development of a collaborative model of public service delivery in Wales. Responses to the report and the subsequent implementation over the proposed five-year period will illustrate whether Wales has accepted the challenges of going beyond the boundaries.

¹³¹ LGPS Committee, LGPS(2)-10-06(p.12), Report of Meeting with Sir Michael Lyons on 8 June 2006, 21 June 2006.

6. Elections, Parties and Public Attitudes

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6.1. Elections

The period between May and July 2006 saw a major electoral event in Wales – the two Blaenau Gwent by-elections, occasioned by the death after a long illness of Peter Law, former AM and MP for the constituency. Blaenau Gwent has historically been one of the most solid Labour seats in Wales – it is the former constituency of both Aneurin Bevan and Michael Foot, and even in the 1999 National Assembly election, when Labour was losing support across its traditional heartland areas, and being defeated in totemic seats like Rhondda and Islwyn, the party still secured a majority of more than 10,000 in Blaenau Gwent. But in 2005, Law, standing as an independent against his former party, had won the Westminster seat in a landslide.

Despite Labour running very high-profile and well-resourced campaigns in the constituency, both by-elections were won by independent candidates. Peter Law's former agent and his widow, respectively, defeated Labour in the Westminster and National Assembly contests. The full results are given in Figure 5.

Figure 5: Blaenau Gwent by-election results, 29 June 2006

Westminster seat

<i>CANDIDATE (PARTY)</i>	<i>NUMBER OF VOTES</i>	<i>% VOTE</i>
Davies, D. (Independent)	12543	46.2
Smith, O. (Labour)	10059	37.0
Lewis, S. (Plaid Cymru)	1755	6.5
Kither, A. (Lib-Dem)	1477	5.4
Williams, M. (Conservative)	1013	3.7
Hope, A. (Loony)	318	1.2
Majority = 2,484 Turnout = 51.7%		

National Assembly seat

<i>CANDIDATE (PARTY)</i>	<i>NUMBER OF VOTES</i>	<i>% VOTE</i>
Law, T. (Independent)	13785	50.3
Hopkins, J. (Labour)	9321	34.0
Bard, S. (Lib-Dem)	2054	7.5
Price, J. (Plaid Cymru)	1109	4.0
Burns, J. (Conservative)	816	3.0
Matthews, J. (Green)	302	1.1
Majority = 4,464 Turnout = 52.1%		

The broader implications of these results for the main political parties in Wales are discussed in the following section of the report. For now, it is important to note that the victory of Trish Law has denied the Labour Party a renewed majority in the National Assembly. Furthermore, her majority of almost 4,500 would appear to give Mrs Law a very strong chance of holding Blaenau Gwent in next May's Assembly election, should she stand again for the seat. Such a result would render Labour's chances of winning majority control of the Assembly in 2007 very slim indeed.

Three local government by-elections were held in Wales during the months covered by the report. On the whole the results provide cheering news for Plaid Cymru, a party that has suffered a series of setbacks since its 1999 highpoints. A substantial swing saw the party gain Llandrillo yn Rhos in north Wales; the party also performed well in two other seats.

Figure 6: Local Government By-Elections, May-July 2006

<i>WARD</i>	<i>COUNCIL</i>	<i>MONTH</i>	<i>WINNER</i>	<i>CHANGE?</i>	<i>SWING</i>
Tywyn	Gwynedd CC	June	Plaid Cymru	PC Hold	9.7% Ind to PC
Llandrillo yn Rhos	Conwy CC	July	Plaid Cymru	PC Gain from Ind	31.6% Ind to PC
Beddau	Rhondda Cynon Taff CBC	July	Labour	Labour Hold	7.2% Lab to PC

Source: www.gwydir.demon.co.uk/byelections

The other main development in regard to elections in this period was the passage of the Government of Wales Bill, which included changes in the electoral system used for National Assembly elections. Despite it having occasioned considerable controversy, the ban on 'dual candidacy' set out in the GOWB will now be in place for the May 2007 NAFW elections.

6.2. Parties

Labour

While a public façade of optimism remains intact, there is clearly deep nervousness within the Labour Party about the prospects for next year's devolved elections. Blaenau Gwent provides part of the explanation for this: despite an energetic campaign which won the admiration of opposition party strategists, Labour's candidates were soundly defeated by inexperienced and poorly resourced independents. But in addition, there are concerns about the state of party funding, the demoralisation of the activist base, and the perceived lack of new ideas for the campaign ahead. Increasing doubts are being expressed (again privately so far) about the wisdom of entering a campaign with another 'lame duck leader' – Rhodri Morgan has made it clear that he would not seek to serve a full third term. Concerns about the negative impact on Labour's prospects of Tony Blair's apparent desire to hang on in Downing Street until after the May elections are also becoming increasingly public – a trend only likely to intensify in coming months.

Thus, while public talk is still of securing an outright majority, discreet manoeuvring is already taking place with regards to the succession to Morgan and a possible coalition agreement with the Liberal Democrats. With regards the former, the relative success of Andrew Davies' management of the 'bringing in' of the Welsh Development Agency has been duly noted by his supporters.¹³² With regards the latter, whilst relations between both parties appear to be increasingly cordial, the big question remains the price of any agreement. With the GOWB having seemingly removed the big devolution issues from the agenda (for the time being at least), it seems certain that the Liberal Democrats would insist on some form of PR for local government. Labour's willingness to pay (in its estimation at least) such a heavy price will surely depend on how well or poorly it performs next May.

¹³² See M. Shipton, 'Carwyn in deal to take over from Rhodri claims TV pundit,' *Western Mail*, 2 August 2006, p. 4. See also Lee Waters, 'Life after Rhodri', ITV Wales 1, 11.30pm, 31 August 2006.

Conservatives

David Cameron's reforms to the Conservative party continue to chime with the attitudes that have come to characterise the Conservative group in the Assembly since 1999. Indeed, since taking on her new role, Shadow Secretary of State Cheryl Gillian seems to have adopted almost wholesale the positions of Assembly Group leader Nick Bourne. Buoyed by stronger opinion poll ratings at the UK level, Welsh Conservatives seem to be approaching next May's elections in confident mood. It is noticeable, however, that Conservative activists in some of the party's key target seats are less bullish than their national leaders. Nevertheless, should the Tories now fail to secure second place by displacing Plaid Cymru as the official opposition there is likely to be severe disappointment within the party and, almost certainly, a leadership challenge. Significantly though, any such challenge is unlikely to have any significant ideological dimension. The basic position of the Welsh Conservatives (at least at the Assembly level) on the 'wetter', more socially liberal (and pro-devolution) wing of the party seems secure.

Liberal Democrats

The decision of the Liberal Democrats to facilitate the final passage into law of the GOWB, in return for relatively minor concessions, has been interpreted by many close observers of the Welsh political scene as further evidence that the ground is being prepared for another possible 'partnership agreement' (coalition) between Labour and Liberal Democrats after the next May's election. With only relatively minor gains likely in terms of its overall electoral performance, such a coalition remains probably the party's best hope of exercising any real influence in Welsh politics. Nonetheless, the activist base will demand a high price and any perception that Liberal Democrat Assembly Members are more concerned about securing Cabinet posts for themselves rather than the enactment of cherished Liberal Democrat goals could well lead to a severe internal backlash.

Plaid Cymru

No doubt galvanised by the approaching Assembly election, Plaid appears more united and focused than for some time. Grandiose talk of a 'grand coalition' of the opposition parties has dissipated (in public at least) as the party organisation concentrates on a more immediate objective: maintaining its status as the second largest party in the National Assembly. Given the vagaries of the electoral system, that battle for second place may well hinge on a few hundred list votes. Plaid's

unlikely triumph in the recent council by-election in anglicised Llandrillo will, however, give the party faithful a much needed fillip. This result is the first tangible evidence of the much vaunted 'Wigley effect' since the former party President Dafydd Wigley returned to frontline politics. While experience cautions against reading too much into a result of this nature, any good news will be very welcome following several years in the doldrums.

6.3. Public Attitudes

There have been no major new surveys into public attitudes reported in Wales during the months covered by this report. However, the Electoral Commission in Wales is known to be conducting extensive research into attitudes towards devolution and voting in devolved elections; findings from this research are due to be published in late-summer 2006. While the Electoral Commission will not be investigating the partisan preferences of voters ahead of the 2007 election, their work should provide the earliest indications of likely levels of voter turnout.

An opinion poll published in the 30 July issue of *Wales on Sunday* suggested that fully 70 per cent of the Welsh electorate favoured the increased powers granted to the National Assembly in the GOWB with 25 per cent opposed. Most surprisingly, the poll also reported that 52 per cent of the electorate favour eventual independence for Wales with 46 per cent opposed. Given however the relatively small sample size of 420 respondents, it is clear that the findings should be treated with great caution.

6.4. Conclusion

The Blaenau Gwent results undoubtedly represent a very significant blow to the Welsh Labour Party. From the party's perspective there is, however, one piece of good news that can be extracted from those results: the fact that it was not the opposition parties that benefited from the Labour's evident unpopularity among its core voters. While this remains the case, Labour's prospects for next May's election remain relatively undimmed. That said, Labour's Welsh leadership would be unwise to be too sanguine about the outlook. In a recent commentary the BBC's highly experienced political correspondent Vaughan Roderick suggested that the electorate may well decide to view the May election as, in effect, a large-scale by-election and avail themselves of the opportunity to punish Rhodri Morgan and, even more pertinently, Tony Blair, by voting for whichever candidate is best placed to defeat

Labour.¹³³ Such a 'nightmare scenario' for Labour must be what the party is hoping, and working, to avoid next May.

¹³³ http://news.bbc.co.uk/welsh/hi/newsid_5150000/newsid_5154300/5154328.stm

7. Assembly and the Media

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7.1 Labour – BBC Wales friction resurfaces

Legislators often have a talent for reducing complex issues to simple soundbites. MP Chris Bryant made the extraordinary claim in the House of Commons in June that Plaid Cymru, the main opposition party in Wales, was ‘founded in the bowels of BBC Wales and is mostly sustained by BBC Wales’. As a former employee of the BBC, where one of his colleagues was the former Minister for Broadcasting, James Purnell, Bryant should know something about what is happening in Britain’s largest media organisation. In defending his comments Bryant highlights the confusion many Assembly members and some MPs have about the role of BBC Wales. BBC Wales’s support for Plaid Cymru results not from party political bias but from the way in which it ‘encouraged the creation of a national [Welsh] cultural identity’ as opposed to a British identity, something he believes ‘is a sort of nationalist – with a small “n” – endeavour’.¹³⁴ Not only does this view confuse culture and politics, it also challenges the whole *raison d’être* for a separate arm of the BBC in Wales. More significantly it highlights the tensions between the Labour Party in Wales and BBC Wales that have characterised relations since the establishment of the National Assembly. Many Labour AMs believe they are not treated fairly by the media in Wales; something the First Minister has stressed in a series of remarks made throughout his time in office.¹³⁵ BBC Wales’s flagship political programme, *Dragon’s Eye*, and its main presenter David Williams have figured prominently in Labour’s criticism of the way in which they and their policies are treated.

These concerns in some ways reflect the traditional enmity that characterises the relationship between politicians and the media in any political democracy. They also emerge from what some see as the lack of a robust public culture in Wales. However, they are perhaps acutely felt in Wales because of the nature of the Welsh media system. The BBC is the dominant actor on the Welsh media landscape. Not only does it provide its own news services on TV and radio in the English language, it is the provider of S4C’s Welsh language news and supplies 50 per cent of its current

¹³⁴ Interview quoted in *Shropshire Star*, 30/6/06; *The Western Mail*, 23 June 2006.

¹³⁵ See *An Uneasy relationship: the National Assembly and the Press and Media* in Barry Jones, J and Osmond, J (eds), *Building a Civic Culture: Institutional Change, Policy Development and Political Dynamics in the National Assembly for Wales* (Institute of Welsh Affairs/Welsh Governance Centre, 2002) pp 247-57.

presented to the committee that most people in Wales pick up their information about Assembly elections from sources other than newspapers.¹⁴²

7.3 Broadcasting and the BBC's Annual Report

The BBC Wales annual review published in July was, as one would expect, effusive about the organisation's success in network terms. The ratings success of *Dr Who* and *Life on Mars* were emphasised in what has been regarded as a year of phenomenal achievement. However, the report of the Broadcasting Council for Wales, now in its twilight days as the structure of the BBC's governance changes, raised concerns about some aspects of the switchover from analogue to digital. The UK government has recently embarked on a £200m information campaign as the countdown to the brave new digital world begins. Wales will be the first nation in the UK to complete digital entry when the analogue signal is switched off in 2009. OFCOM research has shown 72 per cent of Welsh homes already had digital TV, ahead of the UK national average of 65 per cent. But the picture for digital radio is nearly the exact opposite: 70 per cent of Welsh speakers and 57 per cent of the whole population cannot receive Radio Wales or Radio Cymru on Digital Audio Broadcasting (DAB).¹⁴³ The switchover to digital, as the Broadcasting Council warns, still threatens to exclude segments of the population from consuming Welsh-made media.

ITV is also seeking to play a key role in the future development of the media in Wales. The purchase of the Culverhouse Cross site for £18.5 million from former owners of HTV, United Business Media, and the announcement of a £2.6 million investment in facilities are part of a new strategy to resurrect an enterprise which has been seen as in the doldrums in recent times. ITV Wales is hoping to use its Culverhouse Cross site to establish an 'all Wales centre for the creative industries' as part of the Creative Industries initiative launched by the Assembly.¹⁴⁴ The talk is of developing a 'hub' at the site, where independent production companies relocate under the ITV Wales umbrella 'to create a sense of critical mass – a creative community that gives us sustainability through the exchange of ideas, sharing of technology and pooling of resources'.¹⁴⁵ Such a hub could be appealing to Welsh

¹⁴² Thomas, J 'The Regional and Local Media in Wales'

¹⁴³ BBC Annual Report, 2005/6

¹⁴⁴ See *Wales Devolution Monitoring Report*, May 2006 (London: The Constitution Unit).

¹⁴⁵ Roger Lewis, MD ITV Wales, quoted in S. Barry, 'ITV aims for key role in evolution of media', *The Western Mail*, 14 June 2006.

companies in terms of economies of scale of production and certainly they offer ITV Wales a potential lifeline in the present difficult financial circumstances. Such a hub could bring in money from the Assembly, enable the company to manage costs more efficiently through co-operation and develop new ideas and formats. Greenfield Media, a Cardiff based media solutions company, was announced as the first media company to move in.¹⁴⁶ Ominously in the week following the announcement of new investment ITV Wales launched a review of staffing roles and responsibilities which could result in further job losses.¹⁴⁷

Meanwhile S4C has appointed Proud Creative of London to re-brand the channel for the digital switch-over.¹⁴⁸ The importance of promoting S4C in the multi-channel digital world is recognised as essential to the channel's survival. The move to being a wholly Welsh channel – at the moment S4C has the Channel 4 wrap around to attract viewers – promises reduced income and advertising revenue. Audiences no longer watch the channel out of duty, as the new S4C chair, John Walter Jones, acknowledges.¹⁴⁹ Branding will be secondary to the need for good programming and content to attract viewers. Already S4C has experienced a decline in its overall viewing share and, like the other main broadcasters, it is failing to draw in sufficient younger viewers. While S4C struggles in its search for viewers, one of Wales's leading production companies, struggles in its search for profits. Tinopolis, after its startling takeover of one of Britain's largest independent production companies, TV Corporation, announced losses of £1.06 million in the present financial year.¹⁵⁰ While showing considerable business acumen in acquiring the company, Tinopolis is finding the running of a large media company is more of a challenge. Nursing creative talent is a particular skill and several big names have left TV Corporation since the takeover. This will have an impact on the ability to do business with commissioning editors.

¹⁴⁶ Ibid.

¹⁴⁷ S. Barry, 'ITV investment may cost Cardiff jobs', *The Western Mail*, 21 June 2006.

¹⁴⁸ D. Williamson, 'S4C opts for Proud image', *The Western Mail*, 29 June 2006.

¹⁴⁹ T. Williams, 'S4C avoid being Lost as viewers tune in', *The Western Mail*, 12 July 2006.

¹⁵⁰ 'Tinopolis reports pre-tax losses', *Broadcast*, 16 June 2006.

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