

The **Constitution** Unit

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**DEVOLUTION  
MONITORING  
PROGRAMME  
2006-08**

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**Wales Devolution Monitoring Report**

**January 2007**

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**Dr Richard Wyn Jones & Dr Roger Scully (eds.)**



Sefydliad Gwleidyddiaeth Cymru

Institute of Welsh Politics

**Cymru** mewn **Ewrop**  **Wales** in a **Regional Europe**

## The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell and Akash Paun at the Constitution Unit, UCL and the team leaders are as follows:

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The Constitution Unit and the rest of the research network is grateful to all the funders of the devolution monitoring programme.



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All devolution monitoring reports are published at: [www.ucl.ac.uk/constitution-unit/research/devolution](http://www.ucl.ac.uk/constitution-unit/research/devolution). Contact Akash Paun on [a.paun@ucl.ac.uk](mailto:a.paun@ucl.ac.uk) for further information.

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## Abbreviations and Acronyms

ACW	Arts Council of Wales
AM	Assembly Member
CBC	County Borough Council
CC	County Council
CCfW	Children's Commissioner for Wales
CoR	Committee of the Regions
CSIW	Care Standards Directorate for Wales
CWLS	Culture, Welsh Language and Sport
DAB	Digital Audio Broadcasting
EEAC	European and External Affairs Committee
EIN	Enterprise, Innovation and Networks
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
FAW	Football Association of Wales
FE	Further Education
GOWA	Government of Wales Act
HCW	Health Commission Wales
HMICA	Her Majesty's Inspectorate of Court Administration
ICT	Information and Communications Technology
JMC	Joint Ministerial Committee
MSP	Member of the Scottish Parliament
NAfW	National Assembly for Wales
NDA	Nuclear Decommissioning Authority
OFCOM	Office for Communications
ONS	Office of National Statistics
SCW	Sports Council for Wales
SI	Statutory Instrument

STV	Single Transferable Vote
TD	Teachta Dála (Member of the Lower House of the Irish Parliament)
TFO	Transfer of Functions Order
UN	United Nations
WAG	Welsh Assembly Government
WBQ	Welsh Bacculaureate Qualification
WEFO	Wales European Funding Office
WLGA	Welsh Local Government Association

## Summary and Introduction

Underlining yet again the extent to which the use of the term ‘settlement’ in the Welsh devolutionary context remains a misnomer – or ‘more aspirational than accurate’, according to one seasoned observer – constitutional developments continue apace in Wales. Two developments are particularly noteworthy. The first is the provision of extensive framework powers for the Wales in various pieces of legislation (as envisaged in the *Better Governance for Wales White Paper*<sup>1</sup>). The second is more unexpected, namely the emergence of another route by which the Measure making powers are transferred to the National Assembly. In addition to the Order in Council process established in the Government of Wales Act (GOWA) 2006, two bills currently before Parliament are set to amend Schedule 5 of the GOWA 2006 by adding ‘Matters’ under the various subject fields. But while doubtless innovative and interesting in their own right, neither development is unproblematic from the perspective of accountability and legitimacy.

In the case of the provision of framework powers, the danger is that this will further strengthen an already apparent trend towards executive dominance of the National Assembly – unless steps are taken to transfer these powers to the Assembly itself rather than allow them to remain with the Welsh Executive. In the case of the transfer of Measure-making powers via Acts of Parliament, the fact remains that there is no mechanism by which the Assembly might influence the contents of the ‘Matters’ being transferred: hardly a satisfactory state of affairs for a body that enjoys its own democratic mandate. The further layers of complexity added to the devolutionary dispensation by these and other related developments is yet another source of concern.

Authoritative voices have raised concerns about various aspects of the new arrangements that have been introduced by – and in the wake of – the GOWA 2006. Of particular note are the comments of Lord Ivor Richard, Chair of the Richard Commission on the Powers and Electoral Arrangements of the Assembly, who, at an Institute of Welsh Politics conference in Cardiff, highlighted what he termed the ‘Proustian complexity’ of the provisions the 2006 Act.<sup>2</sup> The convoluted nature of the

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<sup>1</sup> Wales Office, *Better Governance for Wales*, Cm 6582 (London: The Stationery Office, 2005). At: [www.walesoffice.gov.uk/2005/better\\_governance\\_for\\_wales\\_report.pdf](http://www.walesoffice.gov.uk/2005/better_governance_for_wales_report.pdf).

<sup>2</sup> Speech by The Rt Hon The Lord Richard QC, Institute of Welsh Politics, ‘The Future Of Welsh Politics’ Conference, Wales Millennium Centre, Cardiff, 20 September 2006.

Measure-making process was also a point at issue in an important recent conference organised by the *Cymru Yfory/Tomorrow's Wales* ginger group.<sup>3</sup>

As a codicil, readers of the Devolution Monitoring Reports will be aware that the banning of 'dual candidacy' – standing simultaneously in a constituency and on a regional list – was a major point of contention during the passage of the GOWA 2006. During the various debates, much was made by ministers of the negative impact of dual candidacy on public perceptions of the Assembly and voter turnout. Until now there has been no credible evidence of public attitudes on this matter. Recent research conducted on behalf of the Electoral Commission has found, however, that 'dual candidacy had little effect in deterring people from voting'.<sup>4</sup> The same research also suggests that the prospects for election turnout in 2007 appear, if anything, to be even worse than in 2003.

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<sup>3</sup> 'The Emerging Assembly', Tomorrow's Wales Conference, 20 November 2006, [www.tomorrow-wales.co.uk/conference](http://www.tomorrow-wales.co.uk/conference)

<sup>4</sup> The Electoral Commission, *Wales – Poll Position: Public Attitudes Towards Assembly Elections* (London, 2006).

## 1. Public Policy

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### 1.1 Introduction

At the beginning of the period covered in this Monitoring Report Lord Ivor Richard<sup>5</sup> made a thoughtful intervention<sup>6</sup> on the way that the new powers conferred on the National Assembly in the Government of Wales Act (2006) will, in his view, impact on policy and law-making after May 2007. He highlighted what he termed the ‘Proustian complexity’ of the provisions of the latest devolution statute by stating: ‘the procedure could work reasonably well if the administrations in Cardiff and London were of the same political persuasion. What cannot be dealt with in this way is a situation in which the Government in London and the Assembly Government in Cardiff differed strongly on policy’. In Lord Richard’s view the 2006 Act is a potential recipe for ‘considerable friction’ between the Welsh and UK tiers of government.

Elsewhere, the autumn saw the First Minister present two keynote speeches. In one he identified the key future policy challenges for Wales as demographics, globalisation and climate change.<sup>7</sup> In the other, he also reflected on the effect of post-1999 devolution on policy-making stating: ‘in the long run the evolution of our own tailor-made policies is going to prove of ... lasting significance ... the point is that Wales is not waiting for England to make a policy shift’.<sup>8</sup> Yet, in September, this assertion was thrown open to question in the wake of suggestions that the Welsh education minister was ‘bounced’ into policy announcements on modes of assessment in state-sector secondary education following a statement made the previous day by the English education minister.

The theme of home-grown policies was returned to in November when Welsh Labour unveiled its policy programme for the May 2007 Assembly elections. Announcing its prospective programme for the third Assembly the First Minister stated: ‘We want this

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<sup>5</sup> Chair of the Richard Commission on the Powers and Electoral Arrangements of the National Assembly for Wales 2002-04; see [www.richardcommission.gov.uk](http://www.richardcommission.gov.uk)

<sup>6</sup> Speech by Lord Richard, Institute of Welsh Politics, ‘The Future Of Welsh Politics’ Conference, op cit..

<sup>7</sup> Rhodri Morgan AM, ‘The Shape of Wales to Come’, North East Wales Institute of Higher Education (NEWI), Wrexham, 20 November 2006 [http://new.wales.gov.uk/docrepos/40371/688971/Futures\\_-\\_2Nov\\_\(English\).doc?lang=en](http://new.wales.gov.uk/docrepos/40371/688971/Futures_-_2Nov_(English).doc?lang=en)

<sup>8</sup> Speech by Rhodri Morgan AM, ‘Wales Can Do It’, Institute of Welsh Politics, ‘The Future Of Welsh Politics’ Conference, Wales Millennium Centre, Cardiff, 20 September 2006, <http://new.wales.gov.uk/about/first-minister/speeches/wales-can-do?lang=en>

election to be determined on Welsh issues in Wales'. The headline initiatives included an (arguably questionable)<sup>9</sup> commitment that: 'in essence every £1 of public money [Welsh Labour] plans on spending will only be allowed if it helps to fight child poverty'. Other measures included: the expansion of free childcare, increasing schools' provision of sport, and, the suspension of the right-to buy-council houses when necessary.<sup>10</sup> The focus on child poverty follows the assertion by the Children's Commissioner for Wales that it is the 'national disgrace of Wales';<sup>11</sup> a conclusion supported by recent analysis that found that 'one in four children in Wales still live in poverty'.<sup>12</sup> The opposition parties also targeted child poverty and children's welfare/rights in their initial policy programmes for next May's Assembly elections. For example, Plaid Cymru stated that it will double funding for childcare and help poor families; whereas, the Welsh Conservatives said that they will offer incentives to businesses offering staff childcare and flexible working arrangements.

The Queen's Speech on 15 November was the last under the current devolution arrangements. Referring to the Local Government Bill and Further Education and Training Bill, Peter Hain, Secretary of State for Wales, said that they 'contain extensive and significant framework powers for the Assembly'. He added: 'this Parliamentary session will see further law-making powers being delivered for Wales. And, once a new Welsh Assembly Government has been formed, Parliament will start considering requests from the Assembly for Orders in Council granting law-making powers to Wales over specific matters.'<sup>13</sup>

During the past quarter, opposition parties have forced the minority Assembly Government to alter its policies in a number of key areas. Notably, in late October, the Welsh Conservatives, Plaid Cymru and the Welsh Lib Dems united to vote down the executive's draft budget: an impasse that continued through to 13 December and a plenary vote of the National Assembly. Original opposition demands included more funding for education and childcare. Ultimately a deal between Welsh Labour and Plaid Cymru saw the budget passed in a revised state with changes including an annual (rather than one-off) £2m grant to help schools meet fuel bills, £9.6m more for

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<sup>9</sup> E.g. critics might argue how fisheries policy – or flood prevention policy – will proceed if this test is applied.

<sup>10</sup> Anon, 'Poverty at core of Labour policy', *BBC News Wales*  
<http://news.bbc.co.uk/1/hi/wales/6133740.stm>

<sup>11</sup> Children's Commissioner for Wales, *Annual Report*, (Swansea 2005), page 15.

<sup>12</sup> N. Thomas, and A. Crowley, 'Children's Rights and Well-being in Wales in 2006', *Contemporary Wales*, volume 19, (2007), p. 175.

<sup>13</sup> Anon, 'A new beginning for Wales', *icwales*, 15 November 2006, at:  
<http://icwales.icnetwork.co.uk>.

schools in general and an extra £1.7m to services for children with special educational needs. Another prominent example of opposition influence over policy occurred in late November with the publication of the Wales Art Review.<sup>14</sup> The latter, independent study was prompted when the executive's plans to downgrade the Arts Council of Wales (ACW) and directly-fund the nation's six biggest arts bodies were defeated in a plenary vote of the Assembly. Contrary to the Welsh government's earlier proposals, the Arts Review recommended a compromise such that a new strategy board should comprise members of the Assembly Government and ACW. The purpose of the new board will be to set priorities for the arts and to fund arts bodies. It is against this lively background of oppositional politics we turn to analyse policy-making over the past four months.

## 1.2 Culture, Welsh Language and Sport

On 21 September the Welsh Assembly Government issued a consultation on its revised Welsh Language Scheme.<sup>15</sup> According to the minister, this revision of the pre-existing 2002 Scheme: 'will help the public in Wales to use Welsh as part of their day-to-day lives'.<sup>16</sup> October saw the announcement of £500,000 support by the Assembly Government for the Welsh bid to host the 2009 Schools Games.<sup>17</sup> Also in October, the CWLS Committee heard of the launch of WAG's new Secondary School Sports programme, entitled '5 x 60'. The latter initiative was introduced to increase the percentage of secondary schools that offer 5x60 minutes of sport and physical activity per week by targeting children and young people who drop out of – or do not take part in – sport or physical activity. Currently just 24 per cent of Welsh secondary schools offer 5x60 minutes of sports provision per week. In response to the government's proposals, Laura Anne Jones AM (Welsh Conservatives) expressed opposition parties' concerns that the scheme would have a narrow focus. She said: 'that is the barrier to most people taking part in sport at school – that only rugby, football and cricket or netball are offered'. In response, sports minister, Alun Pugh AM stated that it was intended that a broad range of sports would be covered by the 5x60 scheme.<sup>18</sup> Also in October, the CWLS Committee was informed of the latest stage in the reform of public services when the minister stated that he 'considered

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<sup>14</sup> Wales Arts Review, *A Dual Key Approach to the Strategic Development of the Arts in Wales* (Cardiff, 2006). Downloadable from: <http://new.wales.gov.uk/walesarts/WARreport?lang=en>

<sup>15</sup> At: [http://new.wales.gov.uk/docrepos/40382/403822/403822131/4038221335/WLconsultation\\_e.pdf?lang=en](http://new.wales.gov.uk/docrepos/40382/403822/403822131/4038221335/WLconsultation_e.pdf?lang=en)

<sup>16</sup> WAG Press Release, 'Have your say on the Welsh Assembly Government's Welsh Language Scheme', 21 September 2006

<sup>17</sup> [www.ukschoolgames.com/about.htm](http://www.ukschoolgames.com/about.htm)

<sup>18</sup> CWLS Committee, Transcript, 11 October 2006

that certain elements of the Sports Council for Wales's operations were consistent with parts of the Governmental functions of the my Department'. These were noted as: policy, strategy planning, and research and evaluation. The minister continued, 'we have therefore been working with the Sports Council for Wales to integrate the capacities of both organisations and to develop new ways of working that will ensure effective policy development and effective delivery'.<sup>19</sup>

In the same month the committee heard the latest evidence in its Review of Football in Wales. This policy review has highlighted a number of key issues where reform is required including: the structure of football and governance issues relating to the game, football development, refereeing and officiating, equality issues of women's and girls' football, community football, funding, and resources. In presenting his evidence Huw Jones – Chief Executive of the Sports Council for Wales (SCW) – hinted at possible tensions between SCW and the Football Association of Wales (FAW) as being a potential obstacle to reforming the game in Wales. He stated: 'the difficulty at the moment is the reluctance of some organisations, particularly some football organisations'. He proceeded to highlight the need to change the relationship between the SCW and FAW: 'Our relationship...is not particularly strong. It is not strong partly because of attitude and approach'.<sup>20</sup>

### 1.3 Economic Development and Transport

On 12 September the Enterprise, Innovation and Networks Committee laid before the Assembly its *Review of Science Policy in Wales*.<sup>21</sup> The Review included the following recommendation that WAG 'should establish a full-time post of Chief Scientist, in charge of an Office of Science and Technology; to develop and coordinate policy development in these fields, across all departments'. Whilst rejecting this recommendation, the First Minister's Response to the Review said: 'we agree with the committee that fostering an interest in and passion for science at an early age, and retaining that enthusiasm, once captured, will be crucial to strengthen our science base in Wales. On education, we are already reviewing the curriculum from age 3–16, including science. There will be national consultation in spring 2007. At

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<sup>19</sup> CWLS Committee, *Future Relationship between the Welsh Assembly Government and the Sports Council for Wales and Future Policy Development for Sport*, 26 October 2006

<sup>20</sup> CWLS Committee, Transcript, 11 October 2006

<sup>21</sup> EIN Committee, *Review of Science Policy in Wales* (September 2006) Downloadable from: [www.wales.gov.uk/documents/cms/2/DocumentsLaid/37B1A02600BF4FD0000436C00000000/606d2dc8f8b45dc7c9854cfec2b0d5ae.pdf](http://www.wales.gov.uk/documents/cms/2/DocumentsLaid/37B1A02600BF4FD0000436C00000000/606d2dc8f8b45dc7c9854cfec2b0d5ae.pdf)

GCSE, we have already introduced (from September 2006) several new GCSEs in sciences to suit different aptitudes and abilities'.<sup>22</sup>

On 26 September the Economic Development minister presented WAG's Heads of the Valleys Strategy<sup>23</sup> to a plenary session of the National Assembly. This 15-year strategy and associated 3-year plan of action aims to improve the effectiveness of the £1 billion annual public sector spend in the economically depressed heads of the former industrialised valleys of south-east Wales. Whilst opposition parties broadly welcomed the strategy they also raised a number of concerns. Independent AM Trish Law stated: 'I do not share the First Minister's optimism that the £140 million investment by the Assembly Government over 15 years will lever in as much as £360 million from the private sector. I am curious to know where he gets that figure from'. For the Welsh Conservatives Alun Cairns AM asserted: 'my prime concern is that this 15-year programme follows another 10-year programme, which followed a previous 10-year programme – 'A Winning Wales', 'Wales: A Vibrant Economy', and now 'Turning Heads: A Strategy for the Heads of the Valleys 2020'. The longer the term of these targets, the more remote and less relevant they become to the people within those communities'.<sup>24</sup>

Earlier in 2006 the Nuclear Decommissioning Authority (NDA) announced the closure in 2010 of the ageing Magnox nuclear power station on Ynys Môn/ Anglesey. Published on 30 March, NDA's decommissioning strategy detailed how it would meet its socio-economic obligations.<sup>25</sup> The closure plans will also see the end of production by the major NW Wales employer, Anglesey Aluminium (jointly, the power station and aluminium factory employ approximately 1,500 people).<sup>26</sup> In response to the closure plans the Assembly Government announced its 'Môn a Menai Programme' [Ynys Môn/ Anglesey and Menai Programme] with the stated aim of 'developing a strong economic hub linking both sides of the Menai Straits'. According

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<sup>22</sup> WAG Cabinet Statement, *Response of WAG to The Enterprise, Innovation and Networks Committee's 'Review of Science Policy in Wales'*, 24 October 2006

<sup>23</sup> WAG, *Turning Heads: A Strategy for the Heads of the Valleys 2020* (WAG 2006). Downloadable from: [http://new.wales.gov.uk/docrepos/40382/4038231141/403821125/565049/HoV\\_TurningHeads\\_eng.pdf?lang=en](http://new.wales.gov.uk/docrepos/40382/4038231141/403821125/565049/HoV_TurningHeads_eng.pdf?lang=en)

<sup>24</sup> National Assembly for Wales Record of Proceedings, 26 September 2006

<sup>25</sup> Nuclear Decommissioning Authority, *Strategy*, 30 March 2006, at: [www.nda.gov.uk/documents/nda\\_final\\_strategy\\_published\\_7\\_april\\_2006.pdf](http://www.nda.gov.uk/documents/nda_final_strategy_published_7_april_2006.pdf)

<sup>26</sup> Anon, 'Gwynedd: Cynllun Gweithredu', *BBC News Wales* [http://news.bbc.co.uk/welsh/hi/newsid\\_6060000/newsid\\_6065200/6065248.stm](http://news.bbc.co.uk/welsh/hi/newsid_6060000/newsid_6065200/6065248.stm)

to the minister: 'effective transport links are key in greater integration of the economies of Anglesey and Gwynedd'.<sup>27</sup>

In 2001, the Welsh Assembly Government created Finance Wales – a body designed to provide commercial funding to Welsh businesses. WAG asserts that, since the organisation's inception in 2001, it has invested over £53 million and has 'leveraged' in over £150 million of private sector finding.<sup>28</sup> At its October 'Financing Growth' Conference in Newport 400 entrepreneurs and managers called on the Welsh government for a range of new economic development policies – including universal provision of ultra-speed broadband internet connections across Wales (penetration of broadband at speeds of 512 Kbps and upwards in Wales currently stands at 39 per cent)<sup>29</sup> and cutting property taxes to give Welsh businesses a competitive edge.<sup>30</sup> In October, the Assembly's Enterprise, Innovation and Networks Committee heard that WAG's [www.Sell2Wales.com](http://www.Sell2Wales.com) website now has over 150 public sector organisations registered, an average of 100 new contract notices are posted every month – and that, in the first 5 months of this financial year £1 billion worth of Assembly Government contracts had been advertised on the site.<sup>31</sup>

September 2006 saw the commencement of work on a £30m WAG project to restore the rail link between Ebbw Vale and Cardiff, closed in 1962, and provide hourly passenger services. The latter development is part of the regeneration of the area following the Corus steelwork closures in 2002. Also in respect of transport policy, November witnessed the launch of the Wales Cross Border Forum set up by WAG to improve cross-border policy coordination – following new powers granted to WAG in April giving it responsibility for all train services between Wales and England – as well as those within Wales.

#### 1.4 Education, Lifelong Learning and Skills

On 6 October Minister for Education, Lifelong Learning and Skills Jane Davidson, announced the end of formal assessment via coursework in GCSE mathematics from September 2007.<sup>32</sup> The changes followed a similar announcement the previous day

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<sup>27</sup> Ibid

<sup>28</sup> [www.financewales.co.uk](http://www.financewales.co.uk)

<sup>29</sup> Minister's Report, Enterprise, Innovation and Networks Committee, 18 October 2006

<sup>30</sup> David Williamson, 'Bold action urged for Wales', *Western Mail* (27 October 2006)

<sup>31</sup> Minister's Report, Enterprise, Innovation and Networks Committee, 18 October 2006

<sup>32</sup> For further details of the measures see WAG Press announcement of 6 October 2006: <http://new.wales.gov.uk/news/presreleasearchive/061006changes?lang=en>

by the UK/English education minister. This led to criticism of the manner and timing of the announcement. Peter Black AM, Liberal Democrat spokesman on education, said: 'this has all the hallmarks of a knee-jerk announcement'.<sup>33</sup> In a plenary debate, opposition AMs united in attacking the Welsh education minister for announcing the policy changes to the press without their knowledge. Welsh Conservative AM Lisa Francis said the minister had shown a 'distinct lack of respect' for the Assembly.<sup>34</sup> Similarly, Welsh Lib Dem AM Kirsty Williams said the minister was not meeting her 'democratic duty to bring this here to the chamber'. Plaid Cymru's Shadow Education Minister Janet Ryder AM said: 'we demand assurances that the minister listens to concerns raised by schools across Wales. Coursework was developed to aid research skills needed in higher education. It helped those children who independently produce high-quality coursework, but somehow fail in exam conditions'.<sup>35</sup>

Since 2001, the National Assembly for Wales has funded the development (and local pilot studies) of the new post-16 programme, the Welsh Baccalaureate Qualification (WBQ – or 'Welsh Bac').<sup>36</sup> The Welsh Bac is formed of two parts: the core – consisting of four components (Key Skills; Wales, Europe and the World; Work-related Education; and Personal and Social Education) and optional elements (comprising courses/programmes currently offered by existing qualifications, including: GCSE, VGCSE, AS/A levels, Vocational A levels, GNVQ, NVQ, BTEC). Following the earlier publication of the Final External Evaluation Report of the WBQ Pilot in mid-October,<sup>37</sup> the Education Minister announced that the WBQ will be introduced across Wales in post-16 education from September 2007. However, following the minister's announcement, attention centred on the reluctance of some of the UK's leading universities to recognise the Welsh Bac in place of A-levels.<sup>38</sup> Shadow education minister Janet Ryder (Plaid Cymru) said: 'in order to equip young people for the workplace and further studies we need a qualification that truly extends their learning ... too many queries have arisen from the external evaluation

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<sup>33</sup> Anon, 'Do the sums, Jane', *South Wales Echo* (7 October 2006)

<sup>34</sup> Anon, 'Assembly "sidelined" over GCSE cheating announcement', *Western Mail* (10 October 2006)

<sup>35</sup> A. Blake, 'Coursework axing prompts 'knee-jerk' claim', *Western Mail* (7 October 2006)

<sup>36</sup> See [www.wbq.org.uk/](http://www.wbq.org.uk/)

<sup>37</sup> D. Greatbatch, J. Wilmut, and W. Bellin, *External Evaluation of the Welsh Baccalaureate Qualification Pilot - A study conducted for the Welsh Assembly Government by the Centre for Developing and Evaluating Lifelong Learning, School of Education, University of Nottingham*. (2006) Downloadable from: <http://new.wales.gov.uk/docrepos/40382/4038232/403829/4038291/403829/wbq-report2006-e.pdf?lang=en>

<sup>38</sup> P. Rowland, 'Welsh Bac may not get you into uni', *Western Mail* (19 October 2006)



Following legislation passed by the National Assembly, Wales is the first part of the UK to make Schools Councils compulsory. These forums are comprised of pupils and aim to give them a greater and more direct say in the way schools are managed. In respect of secondary schools, two representatives from the school council will be able to sit on a school's board of governors. According to the Education Minister, 'many young people don't feel that school is an environment where they can have their own views heard and what we are doing with this legislation is making sure their views are heard'.<sup>43</sup>

Late November saw the announcement that, from September 2008, a revised A level schema will be introduced in Wales, one that will include 'A\* grade' for outstanding attainment. In early December, the Education Minister presented a new outline curriculum for 3-7 year olds; one that places emphasis on learning through play. Proponents argue that this method meets the needs of a broader cross-section of pupils in their formative years. The method, previously introduced in Northern Ireland, is thought to be better able to foster bilingualism through its emphasis on listening and discussion.

### **1.5 Environment, Planning and the Countryside**

In September, the Environment, Planning and Countryside Minister launched the start of work on the on the new Yr Wyddfa / Snowdon summit building. The project draws on £3m funding from the Welsh government – as well as other support, including £4m from the European Union's Objective 1 Programme. According to WAG, the new sustainable centre will be completed by spring 2008.

In respect of fisheries policy, in October the Assembly Government announced that the biggest threat to sea bass stocks comes from the illegal sale of bass by non commercially-licensed fishing boats. In response, Welsh government fisheries policy was amended in October with Wales-only legislation. Henceforth the minimum landing size for sea bass is to be standardised in Welsh waters out to 12 nautical miles at 37.5cm length. The revised policy replaces that which has been in place since 1997. The change is aimed at conserving fish stocks.

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<sup>43</sup> Anon, 'Pupils win right to school voice', *BBC News Wales*  
<http://news.bbc.co.uk/1/hi/wales/6133740.stm>

The Welsh Assembly Government's self-stated aim is to achieve at least 40 per cent recycling and composting of municipal waste by 2010.<sup>44</sup> In furtherance of this policy objective, in November, the Environment Minister Carwyn Jones announced WAG funding (a grant of £560,388) for the Wales Waste and Resources Research Centre run by Cardiff University. On other matters, in November, the Animal Welfare Act (2006) received royal assent and gave the Assembly Government new powers to promote animal welfare. It also clarified the responsibilities of animal owners and keepers (interestingly, this presents a further divergence in the criminal law applying in the constituent countries of the purportedly unified jurisdiction of 'England and Wales'). Later in the same month, the Environment minister said that WAG could use its enhanced legislative powers after May 2007 to develop policy lessening the use of environmentally damaging plastic bags as distributed by supermarkets and other outlets – as well as to relax planning permission requirements on small domestic wind turbines and solar panels in Wales.

## 1.6 Equality

Developments in September and October underlined the reality that whilst nominally a 'reserved matter', policy and law in respect of equality of opportunity in Wales is increasingly divergent from the approach taken at Westminster. The Minister for Equalities, Jane Hutt AM, announced that negotiations with Westminster had begun on a transfer of functions which will allow Welsh Ministers to make an order laying down specific responsibilities for Welsh public bodies in relation to gender equality. From a policy and law-making perspective, the procedural antecedents to this move are interesting. As a draft Assembly Government press release<sup>45</sup> explained:

The Minister's decision to ask for Wales to be given the power to make its own regulations paved the way for the removal of Welsh public bodies from the [England and Wales] Sex Discrimination (Public Authorities) (Statutory Duties) Order 2006 after concerns were raised by the [National Assembly's] Equality of Opportunity Committee that the revised order had been diluted in terms of Equal Pay [i.e. the requirements of the Equal Pay Act (1970) that men and women receive equal pay for work of equal value].

According to the minister:

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<sup>44</sup> WAG, *Wise About Waste: The National Waste Strategy for Wales* (WAG 2002)

Downloadable from:

[http://new.wales.gov.uk/topics/environmentcountryside/epg/waste\\_recycling/wise\\_about\\_waste\\_strategy?lang=en](http://new.wales.gov.uk/topics/environmentcountryside/epg/waste_recycling/wise_about_waste_strategy?lang=en)

<sup>45</sup> Draft WAG Press Release, *Further Progress in Addressing Gender Equality in Wales*, 11 October 2006

A transfer of functions will enable us to have our own specific gender equality duty which puts Wales at the same level with Scotland'. The director of the Equal Opportunities Commission Wales reflected wider views when she stated: 'it will be interesting to monitor the impact this has on the ground – and politically in London'.<sup>46</sup>

Within an international perspective, in 2002, the Welsh Assembly Government became one of the few administrations to adopt the social model of disability<sup>47</sup> as the basis for all its work on disability. This progressive approach to disability does not view *impairment* as the basis of inequality but rather *society's failure* to adapt adequately to the needs of all its citizens. In the wake of the Disability Discrimination Act (2005), and in common with most UK public bodies, the National Assembly was required to publish a proactive Disability Equality Scheme setting out how it will promote equality for disabled people in the exercise of devolved functions. On 13 October, consultation closed on the Welsh Assembly Government's draft scheme. The latter has key implications for the way that public policy is made. Under the title 'policy development' the draft scheme asserts that: 'we are mainstreaming disability equality into the way we make policy. A policy Integration Tool has been developed to make sure that staff develop and deliver policies that not only meet the Assembly Government's strategic agenda but do it in a way that fulfils our commitment to equality of opportunity. All strategic policies going out to consultation have to attach a completed Tool to the consultation document'.<sup>48</sup> On other matters, in November, WAG announced measures that will mean that 40 per cent of the estimated 10,000 disabled and elderly people that currently pay home care charges will no longer continue to do so. This follows a furore earlier in the year when WAG reneged on its 2003 manifesto pledge to abolish all home care charges for the disabled.

## 1.7 Health and Social Services

September saw the launch of public consultation on WAG's 'Mental Health Promotion Action Plan for Wales'. Key aims of the Action Plan include: 'improving the mental health and well-being of the population of Wales, reducing stigma and discrimination

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<sup>46</sup> EOC Wales Press Release, 'Equal Pay Initiative Opens Up New Era in Devolution', 12 October 2006

<sup>47</sup> For a discussion, see: C. Barnes, and G. Mercer, *Disability*, (Cambridge, 1991)

<sup>48</sup> Downloadable from:

[http://new.wales.gov.uk/topics/equality/equality\\_policy\\_and\\_consultation/disability-eg-scheme?lang=en](http://new.wales.gov.uk/topics/equality/equality_policy_and_consultation/disability-eg-scheme?lang=en)

associated with mental health problems; and promoting social inclusion for people experiencing mental health problems'.<sup>49</sup>

Following earlier controversy over management and service provision relating to the Welsh Ambulance Service NHS Trust (see September 2006 *Wales Devolution Monitoring Report*), on 12 October, the health minister announced £16 million funding to purchase 119 new Emergency Ambulances and 67 Patient Care Services Vehicles during 2006/07.<sup>50</sup> However, the Ambulance Service continued to be the focus of criticism for official figures released in November showed that between July and September just 54.2 per cent of ambulances reached emergency calls within the target-time of eight minutes. Moreover, December saw the publication of a highly critical report into the running of the ambulance service by the Wales Audit Office. The report concluded that: 'internal and external governance has been weak ... related to management capacity, we identified serious concerns about the culture of the organisation and the way people are managed. Processes have been badly designed'.<sup>51</sup> On other matters, quarterly figures released in October revealed that the number of people waiting over 8 months for inpatient or day-case treatment in Wales fell by 737 (a reduction of 10.5 per cent over the previous quarter). With regard to outpatients, the number of people waiting over 8 months for a first appointment fell by 5,870 (a reduction of 34.4 per cent).

At a plenary session of the National Assembly on 7 November the Welsh Conservatives tabled a motion demanding that the minority Assembly Government commission an independent review of so-called delayed transfers of care – or 'bed-blocking' in NHS Wales. According to WAG, delayed transfers were down from a high point of 1,116 in 2003. Commenting on the situation, Plaid Cymru's shadow health minister Helen Mary Jones AM said: 'each figure represents a patient suffering because they are in the wrong setting and a bed in a hospital can not be used. The present Labour Assembly Government's policies on reducing the number of delayed transfers of care are not working'. According to the latest figures for September there

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<sup>49</sup> Downloadable from:

<http://new.wales.gov.uk/docrepos/40382/4038231111/comms/consultations/2006/mental-health-plan-e?lang=en>

<sup>50</sup> For further details see WAG Press Announcement:

<http://new.wales.gov.uk/news/presreleasearchive/121006ambulance?lang=en>

<sup>51</sup> Wales Audit Office, *Ambulance Services in Wales*, (December 2006) p.14. Downloadable from [www.wao.gov.uk/assets/englishdocuments/Ambulance%20Inquiry.pdf](http://www.wao.gov.uk/assets/englishdocuments/Ambulance%20Inquiry.pdf)

were 731 patients in hospital who were ready to leave hospital but for the availability of subsequent care and/ or accommodation.<sup>52</sup>

In October, a petition signed by over 100,000 people was delivered to the Assembly Government. It registered opposition to a controversial Health Commission Wales (HCW) proposal to end the provision by NHS Wales of neurosurgery facilities in Swansea. According to HCW, a single service in Cardiff would safeguard – and allow the development of – a wider range of neurosurgical services for Wales. In November, the Health Minister asked the HCW to reconsider the decision. This prompted accusations from opposition parties that the health minister wished to delay the controversial decision until after next May's elections.

In its 2006 Annual Report published on 12 October, the body that regulates social care, the Care Standards Inspectorate for Wales (CSIW), set out an evaluation of policy delivery by service providers.<sup>53</sup> The report concluded that:

We are pleased to report that there are good quality services across Wales. There is significant evidence of improvement in a number of sectors, although there remain important areas of concern ... [for example,] there remains a gap between what service users have a right to expect and the findings in a significant number of [residential] care homes across Wales.

Areas singled-out as making positive progress included: adoption services and residential special schools. The latter were praised in relation to anti-bullying policies, staff and child relationships, and children's contact with their families.

In October, the voting down of the Assembly Government's draft budget by united opposition parties and independent AMs prompted the First Minister to frame the debate in terms of public services. Writing to Welsh Labour Party members he stated: 'the threat is real. And because of the Assembly's voting system, the future of our public services hangs on a thread ... there are six months remaining to save our public services ... that is why now, more than ever, we need your help to see off the Tories'.<sup>54</sup> As noted, opposition members combined to press for additional budget commitments, including greater resource allocations to upland farmers and the ambulance service. However, it was education and health that received sustained

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<sup>52</sup> Daniel Davies, 'Hospital Bed-Blocking Inquiry Demanded', *Western Mail* (7 November 2006)

<sup>53</sup> Care Standards Inspectorate Wales, *Annual Report 2005-06*, (2006). Downloadable from [www.csiw.wales.gov.uk/fe/default.asp?n1=5&n2=86](http://www.csiw.wales.gov.uk/fe/default.asp?n1=5&n2=86)

<sup>54</sup> Anon, 'Six months to save public services, warns Morgan', <http://icwales.icnetwork.co.uk> (26 October 2006)

attention. Plaid Cymru highlighted the fact that English spending per head on education and health has traditionally been less than in Wales. However, recent UK Treasury figures reveal that while in 1999-2000, identifiable spending on education was £755 per head in Wales compared with £695 in England – in 2005-06, the comparable figures were £1,170 in Wales and £1,147 in England. Likewise, in 1999 Wales spent £109 on health for every £100 in England – whereas the latest figures indicate that the figures per head are the same. According to Plaid leader Ieuan Wyn Jones AM: ‘what’s quite obvious from these figures is that there is a problem. Part of the reason that we’ve put down amendments to the Budget is that this year, schools in a lot of areas say they are facing a cut in their budgets rather than an increase’.<sup>55</sup>

In the autumn, the Welsh government announced its intention that a new law banning smoking in enclosed public places in Wales would come into force on 2 April 2007 (ahead of England, where the ban is expected in summer 2007). Once again, as a result, criminal law between Wales and England will diverge. The law creates three specific offences: failing to display no-smoking signs in premises covered by the law; smoking in a smoke-free place; failing to prevent smoking in a smoke-free place.<sup>56</sup>

In late November the Health minister announced Wales’s first Therapy Strategy. According to WAG, ‘this policy encompasses the whole spectrum of health and well-being including injury and ill health prevention, early intervention, acute care, rehabilitation, chronic condition management and long term care’.<sup>57</sup>

## 1.8 Local Government and Public Services

In October, the Local Government Minister announced that Welsh local authorities will receive a total of over £3.7 billion in funding from the Welsh Assembly Government in 2007-08. This marks a 4.3 per cent increase on the 2005-06 settlement and includes an extra £14 million for social care (including care provision for older people in their own homes).

Late November saw the Assembly Government’s announcement of its response to the Review of Local Service Delivery by Sir Jeremy Beecham.<sup>58</sup> The Beecham

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<sup>55</sup> Tomos Livingstone, ‘If you look at the Budget, the share for education is going down substantially’, *Western Mail* (7 November 2006)

<sup>56</sup> [www.smokingbanwales.co.uk/english/index.php?nID=19](http://www.smokingbanwales.co.uk/english/index.php?nID=19)

<sup>57</sup> WAG Press Release, ‘Therapy Strategy – A first for Wales’, 23 November 2006

<sup>58</sup> 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)

Review called for greater integration of public services. Arrangements to be implemented from 2007 include: new Local Service Boards (to match the number of councils in Wales – with a national monitoring unit in Cardiff Bay. These will cover both devolved and non-devolved services including the police), local service agreements with the Boards, new national Wales-wide standards for key public services, a customer care action plan, and, an efficiency programme to save £600 million a year in expenditure on public services. WAG will consult on its response to the Beecham Review in 2007. Opposition parties were lukewarm in their response. A Plaid Cymru spokesperson said WAG's response set out problems but made 'little progress on how they will be addressed'. Welsh Conservative local government spokesman. David Melding AM asserted that the Welsh government's response amounted to: 'too little too late' and stated that a Tory administration would give councils more autonomy to decide their own priorities.<sup>59</sup>

## 1.9 Social Justice and Regeneration

The latest data (circa 9 March 2006)<sup>60</sup> reveal that, on average over the period 2002-05, after housing costs, 28 per cent of children in Wales were living in households in relative income poverty. Published in October, WAG's policy document *Eradicating Child Poverty in Wales – Measuring Success*<sup>61</sup> sets out goals to be achieved by 2010 and 2020. The headline targets are: to halve child poverty by 2010 (compared with 1997 figures), and to eradicate child poverty by 2020. The new policy document spans a variety of policy areas and covers issues such as: childhood accidents, teenage pregnancy, poor health and, educational achievement at school. Whilst, as the Deputy Minister for Social Justice and Regeneration noted, there had been a 21 per cent reduction in child poverty since 1999, he asserted that 'a radical re-think of policy across the Assembly Government' was necessary to meet the new targets.<sup>62</sup> As noted, the following month the nature of the rethink became evident when Welsh Labour unveiled its policy programme for the May 2007 Assembly elections. According to First Minister Rhodri Morgan, Welsh Labour's approach would be one of 'proofing' its policies for impact on child poverty. He explained: 'as regards areas

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Downloadable from:

[http://new.wales.gov.uk/docrepos/40382/403823121/4sss0382213/528962/English\\_Report.pdf?lang=en](http://new.wales.gov.uk/docrepos/40382/403823121/4sss0382213/528962/English_Report.pdf?lang=en)

<sup>59</sup> Anon, 'Big shake-up in public services', *BBC News Wales*

<http://news.bbc.co.uk/1/hi/wales/6166784.stm>

<sup>60</sup> UK Govt Department for Work and Pensions, Households Below Average Income (HBAI) Statistics, see [www.dwp.gov.uk/asd/hbai.asp](http://www.dwp.gov.uk/asd/hbai.asp)

<sup>61</sup> WAG, *Eradicating Child Poverty in Wales – Measuring Success*, (October 2006). Downloadable from: <http://new.wales.gov.uk/about/departments/dsjr/publications/measuresuccess/?lang=en>

<sup>62</sup> WAG Press Release, *Assembly makes tackling child poverty a long-term target*, 23 October 2006, <http://new.wales.gov.uk/news/presreleasearchive/231006childpoverty?lang=en>

devolved to us like health, education, local government, the environment, transport, it's just to test the policies – do they contribute or do they actually frustrate the ambition of eradication of child poverty by 2020?'<sup>63</sup>

### **1.10 Conclusions**

The previous quarter marks an interesting period in Welsh policy-making. It was the final phase of 'normal' policy-making under the provisions of the 1998 Government of Wales Act before campaigning/ pre-election politics take over in the run up to the May 2007 elections. Developments in relation to the Gender Equality Duty and Review of Science Policy in Wales – as well as police service involvement in the new (post-Beecham Review) Local Service Boards – evidence the broadening of the 'policy-reach' of the Cardiff administration over that set out in the 1998 devolution statute. Policy developments in relation to smoking in public places, fisheries and animal welfare resulted in actual (and potential future) divergence in the criminal law applying in Wales compared to England. It was also a period in which oppositional politics impacted upon the executive's policy programme thereby underlining the fact that 'democratic' devolution has led to policy-making which is more responsive to political immediacies in Wales than its administrative predecessor.

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<sup>63</sup> Anon, 'Poverty at core of Labour policy', *BBC News Wales*  
<http://news.bbc.co.uk/1/hi/wales/6133740.stm>

## 2. The Legislative Process

*Marie Navarro: Cardiff Law School*

### 2.1 Primary Legislation

#### 2.1.1 Acts giving powers to the Assembly July – December 2006

In total this year there have been 24 Acts giving powers to the National Assembly for Wales. This is the highest total of such Acts in any one year since 1999, and is nearly double the average number. This report covers the period from August to December 2006 but also considers Acts – other than the Government of Wales Act 2006 (GOWA) – which received royal assent in July but were not included in the previous report because priority was given to discussing GOWA, one of the most important Acts regarding the government of Wales for centuries. From January to July 2006 the UK Parliament enacted 13 Acts (including GOWA) out of which six gave powers to the Assembly. In the August to December monitoring period Parliament enacted 19 Acts, out of which eleven gave powers to the Assembly.

Figure 1: Acts giving powers to the National Assembly for Wales enacted in 2006

January – July	<ul style="list-style-type: none"> <li>• <b>Childcare Act 2006</b></li> <li>• <b>National Lottery Act 2006</b></li> <li>• <b>Health Act 2006</b></li> <li>• <b>Commons Act 2006</b></li> <li>• <b>Commissioner for Older People (Wales) Act 2006</b></li> <li>• <b>Government of Wales Act 2006</b></li> </ul>
August – December	<ul style="list-style-type: none"> <li>• <b>Animal Welfare Act 2006</b></li> <li>• <b>Education and Inspections Act 2006</b></li> <li>• <b>Legislative and Regulatory Reform Act 2006</b></li> <li>• <b>National Health Service (Wales) Act 2006</b></li> <li>• <b>National Health Service (Consequential Provisions) Act 2006</b></li> <li>• <b>NHS Redress Act 2006</b></li> <li>• <b>Violent Crime Reduction Act 2006</b></li> <li>• <b>Emergency Workers (Obstruction) Act 2006</b></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Safeguarding Vulnerable Groups Act 2006</b></li> <li>• <b>Road Safety Act 2006</b></li> <li>• <b>Charities Act 2006</b></li> </ul>
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There were two Wales-only Acts passed during 2006: the Commissioner for Older People (Wales) Act 2006 c. 30, the National Health Service (Wales) Act 2006 c. 43, and the Government of Wales Act 2006. This is significant considering that only one Wales-only Act per year was foreseen at the onset of devolution.

Among the Acts giving powers to the Assembly in 2006 were two Acts giving the widest form of legislative discretion yet: framework powers. The Acts in question are the Education and Inspections Act 2006 and the NHS Redress Act 2006. It is presumed that these broad powers will transfer to the Assembly Ministers following the legal separation of the Assembly's legislative and executive functions with the coming into force of GOWA 2006. However in light of the (so far unique) provisions of the Higher Education and Training Bill considered later in this report, it may be that such powers will instead form some of the 'matters' under which the Assembly can make laws in Schedule 5 to GOWA 2006. Such powers fulfil the undertaking given in the White Paper of 2005 to improve the way in which powers are to be devolved to the National Assembly for Wales. A special section below is dedicated to the study of these powers.<sup>64</sup>

### **2.1.2 2006 Acts giving powers to the Assembly:**

#### **Animal Welfare Act 2006**

'The Bill will bring together and modernise most legislation concerning the welfare of animals in the control of man.'<sup>65</sup>

Nearly all the executive powers are vested in the Assembly in relation to Wales. This is because the Act refers to the 'appropriate national authority', meaning the Secretary of State in relation to England and the Assembly in relation to Wales consistently throughout the Act. There are parallel provisions for England which are

<sup>64</sup> This issue is also discussed in A. Paun and E. Lau, *Devolution and the Centre Monitoring Report: January 2007* (London: The Constitution Unit), at: [www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre\\_Sept06.pdf](http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Sept06.pdf), section 4.2.

<sup>65</sup> [www.commonleader.gov.uk/output/page767.asp](http://www.commonleader.gov.uk/output/page767.asp)

different from those of Wales at sections 15 and 16 which deal with each country separately.

### **Education and Inspections Act 2006**

Interestingly, at the end of the explanatory notes for this bill there is a table listing the sections applying to Wales. Despite what appears to be a growing convention as a result of pressure from the House of Lords, it is still a rare practice to see such tables, which we deeply regret at Wales Legislation Online. In this case, the table only lists the territorial application of the sections but not which authority is in charge of exercising the powers.

Under this Act the Assembly received one of its widest powers: a framework power. In parallel and as a consequence of the use of the framework powers for Wales there are many specific England only provisions. However the territorial application of this Act is rather complicated as in addition to the framework power, there are also provisions applying both to Wales only and to England and Wales, in what appears to be a non-logical order.

This Act is a very substantial one. It consists of 191 sections and 18 schedules. The last of the 10 Parts of the Act is crucial to the Assembly, and the explanatory notes describe it as follows:

15. Part 10 of the Act provides for a framework power which enables the National Assembly for Wales by regulations to make any provision that could be made by an Act of Parliament about any of the matters set out in section 178 of the Act, subject to certain limitations set out in section 179.<sup>66</sup>

There are Wales only provisions to be found at sections 156 (Removal of HMICA's duty to inspect performance of Assembly's functions relating to family proceedings), 175 (Miscellaneous amendments relating to Wales) and 178-180 (Framework power relating to Wales, Restrictions on framework power conferred by section 178, Functions to be exercisable by National Assembly for Wales).

### **Legislative and Regulatory Reform Act 2006**

The purpose of the Act is to enable provision to be made for the purpose of removing or reducing burdens resulting from legislation and promoting regulatory principles; to make provision about the exercise of regulatory functions; to make provision about

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<sup>66</sup> Explanatory note, paras. 6-15, available at [www.opsi.gov.uk/acts/en2006/2006en40.htm](http://www.opsi.gov.uk/acts/en2006/2006en40.htm)

the interpretation of legislation relating to the European Communities and the European Economic Area; to make provision relating to section 2(2) of the European Communities Act 1972; and for connected purposes.<sup>67</sup>

The general powers to remove or reduce burdens resulting from legislation and promoting regulatory principles are not vested in the Assembly *per se*, but the Minister of the Crown wishing to make an order has to secure the agreement of the Assembly before he or she can make any change in the Assembly's functions (section 11). According to section 13, the relevant Minister is also under a duty to consult the Assembly where the proposals, so far as applying in or as regards Wales, relate to any matter in relation to which the Assembly exercises functions (and where the Assembly's agreement is not required under section 11). The main Assembly power under this Act is at section 24: 'The Assembly may by order in accordance with this section specify regulatory functions exercisable only in or as regards Wales as functions to which sections 21 and 22 apply' (duty of regulators and code of practice). At section 27 is another example of a 'Henry VIII power' – that is, a power to amend Acts of Parliament by means of secondary legislation such as statutory instruments.

### **National Health Service (Wales) Act 2006**

This is the only Wales-only Act passed during this monitoring period. The Act consolidates the legislative foundation of the NHS in Wales. The NHS Act 1977, with its many amendments, is very complex and it is difficult to ascertain what its current amended provisions are. To reduce the risk of misunderstanding or misinterpretation of the law in this area, the Law Commission had drafted two Bills, the National Health Service Bill and the National Health Service (Wales) Bill, to provide separate provision about the health service in Wales from that in England.

This Act consolidates the NHS law in relation to Wales. The separate legislation and provisions in each Act show how since devolution the nature and structure of the NHS have deviated between the two countries. The National Health Service (Wales) Act 2006 is the very first piece of consolidation of Wales only legislation.

### **National Health Service (Consequential Provisions) Act 2006**

This Act makes consequential amendments following the enactment of the National Health Service (Wales) Act 2006. This is mainly a TFO type of legislation.

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<sup>67</sup> Long title, available at [www.opsi.gov.uk/acts/acts2006/60051--a.htm](http://www.opsi.gov.uk/acts/acts2006/60051--a.htm)

**NHS Redress Act 2006**

This Act is one of the two during this report period which give the Assembly framework powers. The Act provides for the establishment of a scheme to enable the settlement, without the need to commence court proceedings, of certain claims which arise in connection with hospital services provided to patients as part of the health service in England, wherever those services are provided. The Act establishes the parameters of the cases to which any such scheme can apply, states which bodies can be members of such a scheme, and gives the Secretary of State powers to set out in regulations the detailed rules that govern the schemes. Those powers include the power to place new duties on scheme members and the Commission for Healthcare Audit and Inspection (known as the Healthcare Commission) to consider whether cases or complaints fall within a redress scheme and, if they do, to take appropriate action.<sup>68</sup>

Section 17 of the Act is the framework section which gives a regulation-making power to the National Assembly for Wales. The broad framework power enables the National Assembly, through regulations, to make any provision that could be made by an Act of Parliament (subject to certain limitations) with regard to providing a mechanism for the out-of-court settlement of claims in tort arising out of services provided as part of the health service in Wales.<sup>69</sup>

**Violent Crime Reduction Act 2006**

The purpose of the Act is 'to make provision for reducing and dealing with the abuse of alcohol; to make provision about real and imitation firearms, about ammunition and about knives and other weapons; to amend the Football Spectators Act 1989 and the Football (Disorder) Act 2000; to amend the Sexual Offences Act 2003 and section 8 of the Crime and Disorder Act 1998; to amend section 23 of the Children and Young Persons Act 1969; to amend the Mobile Telephones (Re-programming) Act 2002; and for connected purposes'<sup>70</sup>.

There are no substantial Ministerial powers vested in the Assembly. Nonetheless the Assembly is the competent authority to commence two sections of the Act: sections 45 and 46 – which provide a power for members of school staff, further education

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<sup>68</sup> Explanatory note, para. 5, available at [www.opsi.gov.uk/acts/en2006/2006en44.htm](http://www.opsi.gov.uk/acts/en2006/2006en44.htm)

<sup>69</sup> Explanatory note, para. 7, available at [www.opsi.gov.uk/acts/en2006/2006en44.htm](http://www.opsi.gov.uk/acts/en2006/2006en44.htm)

<sup>70</sup> Long title of the Act, available at [www.opsi.gov.uk/acts/acts2006/60038--a.htm](http://www.opsi.gov.uk/acts/acts2006/60038--a.htm)

colleges and attendance centres to search pupils, students and persons attending the centre respectively for weapons – so far as they relate to Wales.

### **Emergency Workers (Obstruction) Act 2006**

The purpose of the Act is ‘to make it an offence to obstruct or hinder persons who provide emergency services; and for connected purposes.’<sup>71</sup> There are no Ministerial powers exercisable solely by the Assembly in relation to Wales in this Act but under section 5 the Secretary of State is under a duty to consult the Assembly before he can act.

### **Safeguarding Vulnerable Groups Act 2006**

The purpose of the Act is to make provision in connection with the protection of children and vulnerable adults.

This Act contains a single section – Section 56 – which clearly sets out the powers of the ‘Welsh Ministers’. From these provisions it is possible to see not only the powers given to the Welsh Ministers but also the powers exercisable together with the Secretary of State and the remaining powers in the Act which are exercisable by the Secretary of State in relation to both England and Wales. Interestingly in the same section is a general provision which gives the Assembly the same powers as regards subordinate legislation made by the Welsh Ministers under the Act as the UK Parliament has in relation to subordinate legislation made by the Secretary of State in relation to England, namely powers of affirmative and negative resolution. It would be desirable for this method of drafting to be replicated in each and every Act.

### **Road Safety Act 2006**

The Act makes provision for a range of road safety matters<sup>72</sup> including drink driving, speeding, new offences, penalties and enforcement, driver training, driver fatigue, driver and vehicle licensing, motor Insurance and other measures. The Assembly is given substantial powers under this Act.

### **Charities Act 2006**

This is a substantial Act reforming the regulating charities in the UK. It gives many powers to the Assembly in relation to Wales.

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<sup>71</sup> Long title of the Act, available at [www.opsi.gov.uk/acts/acts2006/20060039.htm](http://www.opsi.gov.uk/acts/acts2006/20060039.htm)

<sup>72</sup> Explanatory notes, available at [www.publications.parliament.uk/pa/cm200506/cmbills/113/en/06113x-.htm](http://www.publications.parliament.uk/pa/cm200506/cmbills/113/en/06113x-.htm)

The **Violent Crime Reduction Act 2006** and the **Emergency Workers (Obstruction) Act 2006** give very little power to the Assembly. In the latter Act there is only a duty on the Secretary of State to consult with the Assembly.

### **2.1.3 Acts with sections relating to devolution**

#### **The Commons Act 2006**

C. 26 gives some interesting examples of the granting of powers and there is a novel way in which some joint powers are described. In the Act the powers are vested in the 'appropriate national authority' meaning, defined in 61 as follows:

- In this Act –  
 'appropriate national authority' means –  
 (a) the Secretary of State, in relation to England; and  
 (b) the National Assembly for Wales, in relation to Wales;

Section 59 seems to imply that there is an option given to the Secretary of State either to act alone or jointly when there are no apparent substantive provisions in the Act specifically enabling the exercise of such joint powers. This is in contrast to the provisions of many TFOs and other post devolution Acts of Parliament:

#### **59 Orders and regulations**

- (3) A statutory instrument containing regulations under section 29(1) or an order under section 54 or 55 may not be made by the Secretary of State **(alone or jointly with the National Assembly for Wales)** unless a draft has been laid before and approved by a resolution of each House of Parliament.  
 [emphasis added]

There is also a wide Henry VIII power at sections 54 and 55 (Power to amend enactments conferring functions on national authorities).

#### **London Olympic Games and Paralympic Games Act 2006:**

During the period of this report, we have seen the best and clearest extent section or devolution section in an Act which applies to Wales (even clearer than the Safeguarding Vulnerable Groups Act 2006, described above). Interestingly this comes from an Act which one would expect to apply to London only:

- 41 Extent and application  
 (4) **In their application to things done in Wales, sections 19 to 30 shall have effect as if –**  
 (a) **a reference to the Secretary of State were a reference to the National**

**Assembly for Wales, and**

**(b) a reference to a resolution of each or either House of Parliament were a reference to a resolution of the National Assembly for Wales.**

(5) Section 31 shall apply in respect of anything done whether in the United Kingdom or elsewhere. [emphasis added]

Under the same Act we see the Assembly having classic parliamentary powers designed to hold the executive to account as regards its powers to make subordinate legislation. This is recognition of the legal separation of the Welsh Ministers from the Assembly following the implementation of GOWA 2006 in May 2007. As well as powers over certain subordinate legislation in existing Acts, the Assembly will be specifically granted by Parliament the powers of affirmative and negative resolution over the Welsh Ministers subordinate legislation in new Acts. Examples of such powers are to be found in sections 20 and 26 of this Act.

Interestingly the same provision refers to the orders as 'hybrid instruments'. It may be of interest to note that the Order which defined the area of the jurisdiction of the Cardiff Bay Development Corporation was a hybrid order in the House of Lords but not in the House of Commons.

**The Animal Welfare Act 2006** gives an example of a very broad Assembly power which is nonetheless not as flexible as a framework power. Section 12: Regulations to promote welfare provides:

- (1) The appropriate national authority may by regulations make such provision as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals.
- (3) Power to make regulations under subsection (1) includes power
  - (a) to provide that breach of a provision of the regulations is an offence;
  - (b) to apply a relevant post-conviction power in relation to conviction for an offence under the regulations;
  - (c) to make provision for fees or other charges in relation to the carrying out of functions under the regulations;
  - (d) to make different provision for different cases or areas;
  - (e) to provide for exemptions from a provision of the regulations, either subject to specified conditions or without conditions;
  - (f) to make incidental, supplementary, consequential or transitional provision or savings

**National Health Service (Wales) Act 2006** also gives very wide executive powers to the Welsh Ministers but also imposes important duties on them. The broadest power is in section 2 which provides:

*General power to provide services*

**2 Welsh Ministers' general power**

- (1) The Welsh Ministers may –
- (a) provide such services as they consider appropriate for the purpose of discharging any duty imposed on them by this Act, and
  - (b) **do anything else which is calculated to facilitate, or is conducive or incidental to, the discharge of such a duty.**
- (2) Subsection (1) does not affect –
- (a) the powers of the Welsh Ministers apart from this section,
  - (b) Part 6 and Chapter 1 of Part 7 (ophthalmic and pharmaceutical services). [emphasis added]

Sections 1 and 3 set out the extent of the duties imposed on the Ministers:

*The Welsh Ministers and the health service in Wales*

**1 Welsh Ministers' duty to promote health service**

- (1) The Welsh Ministers must continue the promotion in Wales of a comprehensive health service designed to secure improvement –
- (a) in the physical and mental health of the people of Wales, and
  - (b) in the prevention, diagnosis and treatment of illness.
- (2) The Welsh Ministers must for that purpose provide or secure the provision of services in accordance with this Act.
- (3) The services so provided must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.

**The Commissioner for Older People (Wales) Act 2006** c. 30 gives some of the widest powers to the Assembly since devolution. The Assembly is given many regulation-making powers and is also granted six Henry VIII powers at sections 4, 7, 14, 17, 18, 27 and 28. This Act is an example of framework-type powers even though the term does not appear in the Act.

Under sections 4 and 7 there is a distinction: the Assembly can amend the Act on its own but can only add to it with the consent of the Secretary of State for Wales. Oddly, there are several references<sup>73</sup> to 'the Assembly Cabinet' in the Schedule – a term which has never previously been used in any statute and is not in GOWA 2006.

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<sup>73</sup> Paragraphs 9 and 11 to Schedule 1.

In this Act there are also Westminster type procedures giving powers to the Assembly to affirm or reject Assembly Ministers SIs. The Auditor general may lay reports to the Assembly in Schedule 1 at paragraphs 9, 11, 12 and 13.

#### **2.1.4 Framework powers**

Major powers found in Acts enacted since 1 August this year are a reflection of the type of new powers which derive from the Government's *Better Governance for Wales* White Paper of 2005. These are the framework powers and such is their significance for the future of the devolutionary process that it is worth looking at them in some detail here.

As stated above, Part 10 of the **Education and Inspections Act 2006** applies only to Wales. It contains a framework power in section 178. The power is described in the explanatory note as:

The purpose of this section has its foundation in the principles set out in the Wales Office's White Paper: *Better Governance for Wales* (Cm 6582), which was presented to Parliament on 15th June 2005. The White Paper contains the Government's proposals for developing the devolution settlement in Wales. **It confirms that the Government intends immediately in drafting primary legislation relating to Wales 'to delegate to the Assembly maximum discretion in making its own provisions using secondary legislative powers'** (see paragraph 1.24). [emphasis added]

This section permits the National Assembly for Wales to make regulations applying to Wales in respect of: categories of maintained school; establishment, discontinuance and alteration of maintained schools; school admissions; the curriculum in maintained schools; attendance, discipline and exclusion; entitlement to education and training, and services to encourage, support or assist young people with regards to education and training; travel of persons receiving education and training; and food and drink provided for children.

698. *Subsection (1) (a) to (j)* permits the National Assembly for Wales to make regulations for a range of matters which are relevant to education and training in Wales. The scope of the powers is broad to allow the Assembly to determine arrangements that are most relevant to its policies and plans for education and training in Wales.

699. *Subsection (1)(a) and (b)* permits the Assembly to make provision about the organisation of maintained schools and *subsection (1)(c)* permits the Assembly to make provision about the admission of pupils to maintained schools.

700. *Subsection (1)(d)* permits the Assembly to make provision about the curriculum in maintained schools.

701. *Subsection (1)(e) and (f)* permits the Assembly to make provision about a range of matters relating to school attendance, discipline and behaviour and putting in place educational provision for excluded pupils.

702. *Subsection (1)(g)* permits the Assembly to make provision about entitlement to education and training and *subsection (1)(h)* permits provision to be made for services to encourage people to participate effectively in education and training, take advantage of employment opportunities and participate effectively in their communities.

703. *Subsection (1)(i)* permits the Assembly to make provision about travel for persons receiving primary, secondary, or further education or training, to and from schools or other places where they receive education or training.

704. *Subsection (1)(j)* permits the Assembly to make provision about food and drink consumed by children in schools and day care.

705. *Subsection (4)* establishes that regulations made by the National Assembly for Wales under this Section may include any provision that could be made by an Act of Parliament. *Subsection (5)* ensures that the provision made by the regulations could include the amendment or repeal of provisions of the Act relating to Wales.<sup>74</sup>

However the next section provides for some quite obscure exceptions to the previous framework power. The explanatory note explains this as follows:

#### **Section 179: Restrictions on framework power conferred by section 178**

706. This section places restrictions on section 178.

707. *Subsection (1)* places a number of restrictions on the National Assembly for Wales in exercising its power under section 178. The Assembly cannot:

- make any provision imposing or increasing taxation;
- give any of the provisions in the regulations retrospective effect;
- sub-delegate the power to legislate;
- create any new criminal offence, other than summary offences in relation to the matters mentioned in section 178(1)(e);
- make provision extending otherwise than to England and Wales; or
- make any provision which applies to England, without the consent of the Secretary of State.

708. *Subsection (2)* authorises the modification of existing delegated powers to legislate despite the restriction on the sub-delegation of power in *subsection (1)(c)*. *Subsection (3)* provides that 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 (1)(c)*. *Subsection (4)* authorises the modification of existing offences despite the restriction on the creation of new offences in paragraphs (d) and (e) of *subsection (1)*. *Subsections (5) and (6)* place restrictions on the powers in *subsections (1)(e) and (1)(h)* of section

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<sup>74</sup> [www.opsi.gov.uk/acts/en2006/06en40-j.htm](http://www.opsi.gov.uk/acts/en2006/06en40-j.htm)

178 so that the consent of the Secretary of State is required before the Assembly can make regulations about the specified matters (which are the general responsibility of the Home Office in relation to Wales). *Subsection (7)* places a restriction on the power conferred on the National Assembly by subsection (1)(i) the effect of which is that it cannot make regulations about matters for which the Department for Transport is currently responsible in relation to Wales.

Section 180 of the Act also deals with the problem of the lack of coherence in previous Transfer of Function Orders and Acts giving powers to the Assembly:

**Section 180: Functions to be exercisable by National Assembly for Wales**

709. Most of the functions of the Secretary of State under education legislation have, so far as they relate to Wales, been transferred to the National Assembly for Wales by Order in Council under section 22 of the Government of Wales Act 1998 (c. 38). Textual amendments to reflect this have not always been made to the legislation. Some legislation therefore continues to refer to the Secretary of State only, but references to the Secretary of State have to be read, in relation to Wales, as references to the National Assembly for Wales.

710. This section ensures that any functions conferred on the Secretary of State under the sections listed in *subsection (2)* so far as exercisable in relation to Wales are taken to have been transferred to the Assembly by such an Order.

**The NHS Redress Act 2006** gives the other example of framework powers. Section 17 of the Act gives a regulation-making power to the National Assembly for Wales. The broad framework power enables the National Assembly by regulations to make any provision that could be made by an Act of Parliament (subject to certain limitations) with regard to providing a mechanism for the out-of-court settlement of claims in tort arising out of services provided as part of the health service in Wales<sup>75</sup>.

## 2.2 Bills introduced into Parliament giving powers to the Assembly

The following bills which give powers to the Assembly in relation to Wales have been introduced in the new (2006-07) session of Parliament.

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<sup>75</sup> Explanatory note, para. 7, available at [www.opsi.gov.uk/acts/en2006/2006en44.htm](http://www.opsi.gov.uk/acts/en2006/2006en44.htm)

Figure 2: Bills currently before Parliament giving powers to the NAW

Public Bills	Private Bills
<ul style="list-style-type: none"> <li>• Consumers, Estate Agents and Redress Bill 2006-07</li> <li>• Concessionary Bus Travel Bill 2006-07</li> <li>• Disabled Persons (Independent Living) Bill 2006-07</li> <li>• Further Education and Training Bill 2006-07</li> <li>• Mental Health Bill 2006-07</li> <li>• Palliative Care Bill 2006-07</li> <li>• Corporate Manslaughter and Corporate Homicide Bill</li> <li>• Statistics and Registration Service Bill</li> <li>• Tribunals, Courts and Enforcement Bill 2006-07</li> <li>• Pensions Bill</li> <li>• European Union (Information, etc.) Bill</li> <li>• Bailiffs (Licensing) Bill</li> </ul>	<ul style="list-style-type: none"> <li>• Sale of Green Belt Land Bill</li> <li>• Samurai Swords Bill</li> <li>• Scotland (Oil and Gas Resources) Bill</li> <li>• European Communities (Deregulation) Bill</li> <li>• St George's Day Bill</li> <li>• Food Labelling Bill</li> <li>• Caravan Sites (Security of Tenure)</li> <li>• Passenger Car (Fuel Consumption and Carbon Dioxide Emissions Information) Bill</li> <li>• Registration of Off-Road Bikes</li> <li>• Corruption Bill</li> </ul>

### 2.2.1 *The Queen's Speech*<sup>76</sup>

**Bills** of particular interest and relevance to Wales in the November 2006 Queen's Speech are:

**The Legal Services Bill 2006-07**<sup>77</sup> does not give powers to the Assembly but in its interpretation section (section 197) refers to Measures or Acts of the National Assembly for Wales in its definition of enactment.

<sup>76</sup> A copy of the Queen's speech can be found at [www.commonleader.gov.uk/output/Page1744.asp](http://www.commonleader.gov.uk/output/Page1744.asp)

<sup>77</sup> [www.publications.parliament.uk/pa/pabills/200607/legal\\_services.htm](http://www.publications.parliament.uk/pa/pabills/200607/legal_services.htm)

There are references in several bills to 'Assembly Measures and Acts' following the enactment of the Government of Wales Act 2006. An example is Clause 7 of the **Concessionary Bus Travel Bill**.

**Further Education and Training Bill 2006** is of particular interest with its clause 26 under which the Assembly is given its first power to make Measures under new matters in a Field listed in Schedule 5 to GOWA 2006 not through an Order in Council but through an Act. Clause 26 '*Measure-making Powers for the National Assembly for Wales*'<sup>78</sup> adds six new matters into Schedule 5 to the GOWA 2006.

This is surprising as the procedure described in the June 2005 White Paper for giving powers to the Assembly to make Measures described only an Order in Council procedure involving the Assembly, Welsh Ministers and the affirmative resolution of both Houses of Parliament, while Acts of Parliament would give powers directly to Welsh Ministers. There is no indication that the Assembly will be involved in the process of getting Measure powers directly from Acts of Parliament. This will only involve Welsh Ministers. A procedure will need to be devised whereby the Assembly rather than the Assembly Ministers liaises with the UK Government and Parliament as the legislation is drafted and proceeds through Westminster. There is therefore an option given to Wales as to how the Assembly gets its Measure making powers, and built into the option is the choice of whether the Assembly itself is involved or not in the procedure.

The explanatory note is worth quoting as it describes the philosophy behind such new powers:

**TERRITORIAL APPLICATION: WALES**

19. The Bill contains provision amending the Government of Wales Act 2006 to confer legislative competence on the Assembly. The amendment will allow the Assembly to make Measures containing any provision that could be made by Act of Parliament, subject to the restrictions in the 2006 Act, in respect of certain matters in the field of education and training.

20. For the sake of completeness, we also include here a list of all the provisions that apply to Wales in the Bill or which affects Wales and England differently.

21. The Secretary of State's powers to direct removal of principals and senior post holders and to create and dissolve further education colleges will not be exercisable by the LSC in relation to Wales. These powers are currently

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<sup>78</sup> [www.publications.parliament.uk/pa/ld200607/ldbills/006/2007006.pdf](http://www.publications.parliament.uk/pa/ld200607/ldbills/006/2007006.pdf)

exercisable by the Assembly and will in future be exercisable by the Welsh Ministers.

22. Consent for colleges in Wales to form or acquire an interest in companies or charitable incorporated organisations for the purpose of conducting an educational institution would be obtained from the Welsh Ministers (in England it would be from the LSC).

23. Further education colleges in Wales will be required to have regard to guidance from the Welsh Ministers about consulting learners and employers.

24. Provision amending the requirement that industrial training boards demonstrate consensus for their levy proposals solely by reference to 'relevant organisations' would apply in Wales.

25. Provision generally requiring industrial training boards to submit levy proposals covering three years, rather than one, would also apply in Wales.

26. Provision enabling the Learning and Skills Council to operate loans and shared services would operate in Wales only with the consent of Welsh Ministers.

#### **Clause 26: Powers of National Assembly for Wales**

107. This clause makes amendments to Part 1 of Schedule 5 to the Government of Wales Act 2006 (GOWA 2006), so as to confer enhanced legislative competency on the National Assembly for Wales in specific subject areas. Section 94 of GOWA 2006 provides that a provision of an Assembly Measure is within the Assembly's competence if it relates to (or is incidental or consequential on provision that relates to) one or more of the matters specified in Schedule 5. The list of twenty fields in which the Assembly currently exercises functions is set out in Part 1 of Schedule 5 to GOWA 2006, and each field will be divided into matters. Assembly Measures may include any provision that could be made by Act of Parliament, subject to specific restrictions set out in Part 2 of Schedule 5 to GOWA 2006.

#### **Statistics and Registration Service Bill**

There is a reference to the Counsel General in the Bill at clause 6: Official statistics:

- (5) In this Part 'Welsh ministerial authority' means any of the following –
- (a) the Welsh Ministers;
  - (b) the First Minister for Wales;
  - (c) the Counsel General to the Welsh Assembly Government.

#### **Concessionary Bus Travel Bill 2006**

Under GOWA 2006, the Assembly will begin to act as a Parliament in relation to the consideration of certain subordinate legislation made by the Assembly Government. These are the affirmative and negative resolution procedures. Such provisions will also need to be prescribed in future Acts of Parliament. An early example of this is given by clause 11:

(6) An order may not be made by the Welsh Ministers under section 10 (whether **alone or concurrently** with the Secretary of State) unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales. [emphasis added]

The Bill also demonstrates that the use of concurrent and other forms of joint subordinate legislation made by London and Cardiff will continue as under the first devolution settlement.

### 2.3 White Paper and policy statements

#### Proposed Marine Bill<sup>79</sup>

DEFRA has issued an interesting policy statement, which shows a dramatic change in the way that certain government departments plan to legislate – or even *not* legislate – for Wales. The draft policy statement makes clear that in relation to the proposed Marine Bill the legislation is within a devolved field and the department therefore indicates that the proposed draft legislation will only apply to England. This is a novelty in the statute book, where major Acts have never applied to England only. To quote:

We will work closely with the National Assembly for Wales, the Scottish Executive, and the Northern Ireland Executive to consider what approaches may be suitable in each of their countries. **Where they have responsibility for the management of their territorial waters it will be for the devolved administrations to determine the need to bring forward any new legislation.** [emphasis added]

#### Strong and prosperous communities – The Local Government White Paper<sup>80</sup>

The Department for Communities and Local Government has issued a White Paper which, if its provisions are put into a Bill, may result in another Act adding to the list of matters in a Field in Schedule 5 to GOWA 2006 under which the Assembly can make Measures. The White Paper states<sup>81</sup>:

Wales

1.32 The *Better Governance for Wales* White Paper, published in June 2005, pledged that in future the Government would draft Parliamentary Bills in a

<sup>79</sup> [www.defra.gov.uk/ENVIRONMENT/water/marine/uk/policy/marine-bill/index.htm](http://www.defra.gov.uk/ENVIRONMENT/water/marine/uk/policy/marine-bill/index.htm)

<sup>80</sup> [www.communities.gov.uk/index.asp?id=1503999](http://www.communities.gov.uk/index.asp?id=1503999)

<sup>81</sup> Summary at [www.communities.gov.uk/index.asp?id=1503999](http://www.communities.gov.uk/index.asp?id=1503999)

way which gives the Assembly wider and more permissive powers to determine the detail of how policies should be implemented in Wales.

**1.33 In line with this policy, we intend to ask Parliament to provide the National Assembly for Wales with Framework Powers which will grant the Assembly enhanced legislative competence over a number of matters within the field of local government. This will allow the Assembly Government to propose and implement measures appropriate to the situation in Wales.**<sup>82</sup> [emphasis added]

## 2.4 Subordinate Legislation applying in Wales

Since the last report more than 1000 general SIs applying to England only, England and Wales and Wales only have been published on the OPSI website from SI 2006/1800 to 2006/2897. All are available from [www.opsi.gov.uk/](http://www.opsi.gov.uk/).

### 2.4.1 General Statutory Instruments made by the Assembly

Of these 1000 SIs, the Assembly has only made 38 general SIs since our last report. Most of these SIs amend previous Assembly subordinate legislation. There have also been 12 SIs made with central government's involvement. Of the 38 SIs, 19 arise from the implementation of EU Legislation. The non-EU related subordinate legislation mainly concerns housing and education.

The following SIs made by the Assembly are of particular interest:

- SI. 2006 No. 1852 (W.195) The Fire and Rescue Services (Charging) (Wales) Order 2006. Section 19 of the Fire and Rescue Services Act 2004 provides that the National Assembly for Wales may, by order, authorise a fire and rescue authority to charge a person of a specified description for any action of a specified description taken by the authority. This Order specifies the actions for which a fire and rescue authority may make a charge and specifies the persons who may be subject to the charge (article 2 and the Schedule)<sup>83</sup>.
- 2006 No. 2828 (W.250) The Supply Of Student Support Information To Governing Bodies (Wales) Regulations 2006. Section 45 of the Higher Education Act 2004 gives the National Assembly for Wales the power to make regulations providing for a student support authority to supply student support information of a prescribed description to a prescribed person for a prescribed purpose. These regulations enable a student support authority to supply information provided in

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<sup>82</sup> Available at [www.communities.gov.uk/embedded\\_object.asp?id=1504100](http://www.communities.gov.uk/embedded_object.asp?id=1504100)

<sup>83</sup> Extract from explanatory Notes available at [www.opsi.gov.uk/legislation/wales/wsi2006/20061852e.htm](http://www.opsi.gov.uk/legislation/wales/wsi2006/20061852e.htm)

connection with an application for student support either by the student concerned or his or her sponsors to governing bodies of institutions providing courses which are designated for the purposes of the student support scheme. The Regulations also enable student support authorities to supply to governing bodies information which is derived from the application, such as whether the student is eligible within the meaning of the student support scheme or the amount of student support payable to the student under that scheme. No information may be supplied under these Regulations without, in the case of information provided by the applicant or derived from the application, the applicant's consent or, in the case of information provided by the sponsor, the sponsor's consent.<sup>84</sup>

Three commencement orders have been made since July:

- 2006 No. 2826 (W.249) (C.97)The Traffic Management Act 2004 (Commencement No. 1) (Wales) Order 2006;
- 2006 No. 2797 (W.236) (C.93)The Clean Neighbourhoods and Environment Act 2005 (Commencement No. 2, Transitional Provisions and Savings) (Wales) Order 2006
- 2006 No. 2699 (W.231) (C.92) The Commissioner for Older People (Wales) Act 2006 (Commencement) Order 2006

#### **2.4.2 Non SI General Subordinate Legislation made by the Assembly**

The Assembly and the Welsh Assembly Government both continue to register and publish subordinate legislation not made by Statutory Instrument on their website.<sup>85</sup> The following pieces of subordinate legislation have been published during the current period:

- [Code Of Recommendations For The Welfare Of Livestock:Cattle \(2006 No. 38\)](#)
- [Criteria for Initial Teacher Training Accreditation by the Higher Education Funding Council for Wales \(Amendment\) 2006 \(2006 No. 75\)](#)
- [The National Assembly for Wales Employment Based Teacher Training Scheme \(Amendment\) 2006 \(2006 No. 74\)](#)
- [Education Maintenance Allowance Scheme 2006 \(2006 No. 63\)](#)
- [The Assembly Learning Grant \(Further Education\) Scheme 2006 \(2006 No. 62\)](#)
- [The Assembly Learning Grant \(Higher Education\) Scheme 2006 \(2006 No. 61\)](#)

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<sup>84</sup> Extract from explanatory Notes available at

[www.opsi.gov.uk/legislation/wales/wsi2006/20062828e.htm](http://www.opsi.gov.uk/legislation/wales/wsi2006/20062828e.htm)

<sup>85</sup> <http://new.wales.gov.uk/legislation/legislationinforce/210923/?lang=en>

- The Teacher Training Incentive Scheme 2006 (2006 No. 60)
- Specification for the Reinstatement of Openings in Highways 2006 (2006 No. 72) (English only)
- The Housing Revenue Account (Rent Rebate Subsidy Deductions) (Wales) Direction 2006 (2006 No. 71)
- The Home Energy Efficiency Scheme (Categories of Works and Maximum Amounts of Grant)(No.3) (Wales) Determination 2006 (2006 No. 67)
- The Directions to Local Health Boards as to the Statement of Financial Entitlements (Amendment) (No. 2) Directions 2006 (2006 No. 76) (English only)
- Directions To Local Health Boards And NHS Trusts In Wales 2006 (2006 No. 69)
- Directions to NHS Bodies on Counter Fraud Measures (Wales) (Amendment) (No 2) Directions 2006 (2006 No. 68)
- Directions to NHS Trusts and Powys Local Health Board 2006 (2006 No. 65)
- The Smiths Colliery (Suspension Of Public Rights Of Way) Order 1979 (Revocation) Order 2006 (2006 No. 77)

#### **2.4.3 Subordinate Legislation involving Central Government and the Assembly**

There are 12 general SIs which have been made by the Assembly and central government acting in various ways 'together'.

2 SIs have been made by the Secretary of State and the Assembly acting jointly:

- 2006 No. 2922 The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) (Amendment) (No. 3) Regulations 2006
- 2006 No. 2933 The Plant Protection Products (Amendment) (No.2) Regulations 2006

The following SIs have been made by the Secretary of State after consultation with the Assembly:

- 2006 No. 2930 Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006
- 2006 No. 2805 The Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006
- 2006 No. 2818 The Healthy Start Scheme and Welfare Food (Amendment No. 2) Regulations 2006

- 2006 No. 2603 (C. 88) The Health Act 2006 (Commencement No. 1 and Transitional Provisions) Order 2006
- 2006 No. 2471 The Race Relations Act 1976 (Statutory Duties) Order 2006
- 2006 No. 2169 The Human Tissue Act 2004 (Commencement No.5 and Transitional Provisions) (Amendment) Order 2006
- 2006 No. 1974 The Regulatory Reform (Registered Designs) Order 2006
- 2006 No. 1997 (C. 68) The Human Tissue Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2006.

The following SI has been made by the Secretary of State with the agreement of the Assembly:

- 2006 No. 1954 The Transport and Works (Model Clauses for Railways and Tramways) Order 2006

The making of the following SI, which gives powers to the Assembly, follows a rather original procedure:

- 2006 No. 2660 The Education (Inspectors of Education and Training in Wales) Order 2006 :

Whereas the National Assembly for Wales, having considered that the powers conferred by section 19(2) of the Education Act 2005<sup>[1]</sup> ought to be exercised, has advised the Secretary of State for Wales on a recommendation to be made to Her Majesty as to the exercise of that power. And whereas the Secretary of State for Wales has made a recommendation to Her Majesty in accordance with that advice:

Now therefore, Her Majesty, in pursuance of section 19(2) of the Education Act 2005, is pleased, in accordance with that recommendation, by and with the advice of Her Privy Council.<sup>86</sup> [emphasis added]

#### **2.4.4 Central Government Subordinate Legislation applying to Wales**

Since the last report, the UK government has made 64 general SIs under Acts which also give some powers in other provisions in the Acts to the Assembly. There are also other Acts which apply to England and Wales and which do not give any powers to the Assembly in relation to Wales as they deal with retained functions. There were 233 SIs made under such Acts since July. Therefore in total central government made 297 SIs which apply either to England and Wales or to Wales only under its retained powers.

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<sup>86</sup> [www.opsi.gov.uk/si/si2006/20062660.htm](http://www.opsi.gov.uk/si/si2006/20062660.htm)

## 2.5 Other Assembly matters

### 2.5.1 The Standing Orders Committee

The Standing Orders Committee has only met once since the last report. It took evidence from law academics in Universities in Wales as to the possible procedures to be followed for the legislative processes including the scrutinising of certain SIs post-2007. The Assembly received evidence from David Lambert and Marie Navarro, Richard Owen, Ann Sherlock and David Miers.<sup>87</sup>

There will be a meeting on the 11 December to consider thirteen different standing orders and procedures, which will then be sent to the full Assembly for its consideration. There is still no sign of the completed draft standing orders being generally published for comment but it is hoped that a complete set of draft standing orders will be published in the new year on which comments can be made before being sent to the Secretary of State for his decision on their contents. The Standing Orders will be analysed in the next report.

### 2.5.2 The Shadow Commission

The Shadow Commission has met on five occasions since the last review report.<sup>88</sup> In relation to the training and staff it was decided on 7 November that:

#### 6. Resources to deal with future staffing needs of the Third Assembly

6.4 It was agreed that:

Adrian Crompton should be invited to attend a future meeting after the Staff Preference Exercise has ended to discuss committee staffing issues further; The Shadow Commission endorsed the proposal by the National School of Government and agreed that APS should pursue the proposals.<sup>89</sup>

The issue of legal staff was considered on 17 October<sup>90</sup> and it was decided that more consideration will take place:

#### 7. Legal Staff

7.3 It was agreed that:

The most senior lawyer should be employed by the Assembly Commission;

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<sup>87</sup> All available from [www.wales.gov.uk/cms/2/StandingOrdersCommittee/AgendasPapersTranscripts](http://www.wales.gov.uk/cms/2/StandingOrdersCommittee/AgendasPapersTranscripts)

<sup>88</sup> The minutes of each meeting of the Shadow Commission can be found at [www.wales.gov.uk/keypubassemshadowcomm/minutes-e.htm](http://www.wales.gov.uk/keypubassemshadowcomm/minutes-e.htm)

<sup>89</sup> [www.wales.gov.uk/keypubassemshadowcomm/0906-minutes-e.htm](http://www.wales.gov.uk/keypubassemshadowcomm/0906-minutes-e.htm)

<sup>90</sup> [www.wales.gov.uk/keypubassemshadowcomm/0806-minutes-e.htm](http://www.wales.gov.uk/keypubassemshadowcomm/0806-minutes-e.htm)

The individuals in the existing team should be consulted as part of the preference exercise and be given the option of remaining as Commission employees;

Otherwise there should be flexibility as to whether legal staff should be seconded from Government or other parts of the public service in Wales, or employed directly by the Commission;

The overall legal staffing needs of the Third Assembly should be discussed further at a future meeting;

William Graham AM should take the lead in this area of work.

## **2.6 Conclusion**

2006 is the year which saw the most Acts giving powers to the Assembly since its establishment in 1999.

It is fascinating to see how soon after the enactment of the Government of Wales Act 2006, Acts and proposals for legislation are beginning to reflect the changes brought about by the new devolution settlement. The separation of Assembly and Welsh Ministers is reflected in Acts and Bills, and the Assembly is beginning to acquire the characteristics of a Parliament in relation to devolved matters in Wales. In parallel, the equivalent for the Secretary of State in Acts of Parliament is no longer the National Assembly for Wales but the Welsh Ministers collectively.

Surprisingly, there are now two different channels to give the Assembly Measure-making powers. Not only will the Assembly get such powers through the procedure of Orders in Council as anticipated but also directly from Acts of Parliament amending Schedule 5 by adding 'Matters' under the 20 subject fields. In the second procedure, the Assembly has no machinery for influencing the content of such matters. This was one of the major problems highlighted by the Richard Commission. This may also be the start of a process of the UK Parliament 'withdrawing' from Wales through the legislation it produces.

The broadest executive powers – framework powers – since devolution have been enacted within the timeframe of this report. It remains to be seen if the current framework powers will in the future remain with the Welsh Ministers as super-executive powers or if they will be transferred to the Assembly as Measure-making powers using a Transfer of Functions Order as provided for in Schedule 11, paragraph 31 to GOWA 2006. We believe that most such powers should transfer to

the Assembly in the future, thereby enabling the Assembly itself to decide the extent of the Executive powers at its control.

### 3. Economic Development and the Budget

*Professor Peter Midmore: University of Wales Aberystwyth*

#### 3.1 Introduction

The work of the Assembly in its autumn term with regard to enterprise, innovation and networks covered a number of areas relevant to the declared aim of its government; the pursuit of sustainable growth and improved prosperity. The short term reflection of this is in statistical reports of employment and unemployment. As the Labour Force Survey, the main measure of this, reports on a quarterly basis, two sets of data were considered by the EIN committee.<sup>91</sup> On this rather narrow basis, evidence of short-term economic progress is rather mixed. The first report shows employment and unemployment conditions which are slightly less favourable than in the UK as a whole; from the second, it appears that the position has become slightly more favourable. Of continuing concern, however, is the fact in West Wales and the Valleys (the Objective One area, soon to be covered by its successor, the Convergence Programme) the proportion of the working age population actively engaged in the labour force is substantially below the UK average and unemployment is higher; these averages conceal very severe pockets of entrenched economic difficulty, and associated deprivation. There have been significant improvements in both economic activity and a reduction in unemployment, but these have not been rapid enough to resolve the continuing discrepancy.

In the longer term, maintaining the volume of employment and improving wage levels in Wales depends on the growth of businesses able to withstand increasingly brisk competition in a more globalised economic environment. The EU's overarching economic strategy, known as the 'Lisbon Strategy',<sup>92</sup> aims for knowledge-intensive employment growth with investment in key skills and high technology providing a supporting framework. Therefore, the publication of the EIN committee's long-incubated Science Policy Review, and the Assembly Government's own policy statement in this area, may be considered a key issue of debate over the period of this report. The EIN committee also considered progress on two of its previous policy

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<sup>91</sup> For full details, see the ONS publication, *Labour Market Trends*, available at [www.statistics.gov.uk/statbase/Product.asp?vlnk=550](http://www.statistics.gov.uk/statbase/Product.asp?vlnk=550).

<sup>92</sup> The goal adopted by the EU Heads of Government summit in 2000 to make the EU 'the most competitive and dynamic knowledge-driven economy by 2010'. Relaunched in 2005, its principles on economic, social and environmental renewal underpin all EU policy actions.

reviews, relating to economic inactivity and energy policy, respectively. The Assembly Government meanwhile produced a consultation document on its proposals for the imminent new round of Structural Funds programmes, and after a considerable period of brinkmanship, the Assembly agreed to the Government's budget proposals.

### 3.2 Science Policy

The EIN committee's Review of Science Policy was published on 19 September<sup>93</sup> and debated in the plenary session the same day. The report contained 18 recommendations, based on the perception that that science is a key influence on economic growth and generator of prosperity and wellbeing, and that it plays a key role in economic development policy, in which the role of government was to ensure the integration between higher education and the private sector. The main recommendations were for the Assembly Government to appoint a Chief Scientist to be responsible for development and coordination of Science Policy, and establish a Science and Technology Advisory Council with members from leading science-based businesses and from the higher education sector. Other recommendations included the encouragement of science within education, and support for researchers to make greater use of the EU's research framework programmes.

The response from the Assembly Government<sup>94</sup> was disappointing to the committee. It made clear that the science brief is held by the First Minister, rather than being a cabinet member's responsibility. Thus, its rejection of the most important recommendations was at least authoritative, arguing firstly that the position of chief scientist was unnecessary since many existing officials held a science brief (for example, the Chief Medical Officer, the Chief Environmental Scientific Advisor and Director-Energy Wales; additionally there is access to the Chief Scientific Adviser to the UK Government); and secondly, that many Cabinet members had established their own advisory frameworks which included a science dimension. Subsequently, and following on from an earlier consultation which had paralleled the committee's own review, the Assembly Government also published a science policy<sup>95</sup> which was rather less radical, and consisted of a strategic focus on three main areas: health, the

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<sup>93</sup> Review of Science Policy in Wales, available at [www.wales.gov.uk/keypubasementinovnet/reports.htm](http://www.wales.gov.uk/keypubasementinovnet/reports.htm).

<sup>94</sup> See: EIN(2) 11-06 Paper 4: 'Consideration of the Welsh Assembly Government's Response to the Review of Science Policy in Wales', on the EIN committee pages at [www.wales.gov.uk](http://www.wales.gov.uk)

<sup>95</sup> WAG, *A Science Policy for Wales 2006*, (WAG 2006). Available at: <http://new.wales.gov.uk/docrepos/40382/4038231141/403821124158/science-policy-welsh?lang=en>.

low carbon economy, and enabling sustained social and economic renewal. These fit with the over-arching strategic priorities in various vision statements produced by the Assembly Government, but do not reflect the virtually unanimous standpoint of witnesses examined by the committee (and the committee itself) that a coordinated policy, drawing on a wide base of evidence, was the most glaring deficiency. Janet Davies' remarks reflected a cross-party consensus concerning the government-committee relationship:

It is somewhat distressing to find that so many of the committee's recommendations have been rejected, in whole or in part, particularly given the opinions that many leading scientists in Wales have expressed openly, and very vocally. It leaves me wondering why on earth we bothered to do this science policy review if the Government takes so little notice of it at the end of the day.<sup>96</sup>

Given this division over arguably the most important strategy for long-term future economic development, Science Policy may come more closely under scrutiny again in the near future.

### **3.3 Revisiting the Economic Inactivity and Energy Reviews**

Given the lengthy and ultimately disappointing effort devoted to the Science Policy Review, no further work on reviewing policy will be undertaken by the EIN committee in this Assembly. However, the EIN committee received reports and presentations from witnesses tracking the progress achieved as a result of its work on previous reviews: Economic Inactivity in Wales (published April 2005); and Energy Policy in Wales, which produced two reports, firstly on Renewable Energy (published January 2003), and secondly on Energy Efficiency (published April 2003).<sup>97</sup>

The first review, revisited on 5 October, uncovered considerable progress in terms of reporting, understanding and addressing the causes of disproportionately low levels of engagement by the working age population of Wales in the labour market, itself one of the fundamental reasons for lagging economic performance. This is a complex area of policy, since different aspects of it cross the Assembly's and the Westminster government's responsibilities. The major recommendation of the original review was

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<sup>96</sup> Enterprise, Innovation and Networks Committee, Transcript, 7 December 2006.

<sup>97</sup> EDT Committee, *Economic Activity in Wales*, (NAfW, 2005) available at [www.wales.gov.uk/keypubassemecodevtran/content/inactive-e.htm](http://www.wales.gov.uk/keypubassemecodevtran/content/inactive-e.htm). EDT Committee, *Review of Energy Policy in Wales – Renewable Energy* (NAfW, 2003) and EDT Committee, *Review of Energy Policy in Wales - Energy Efficiency*, (NAfW, 2003), available at [www.wales.gov.uk/keypubassemecodev/content/reports-e.htm](http://www.wales.gov.uk/keypubassemecodev/content/reports-e.htm).

to concentrate effort on individual circumstances and provide tailored support, and much of this comes from UK employment and welfare agencies.

Jobcentre Plus has collaborated with the Assembly Government in a number of pilot projects, notably Pathways to Work, a joint public-voluntary sector programme which provides work-focused interviews for all claimants for incapacity benefit. This seeks to address the problem that the Director of Jobcentre Plus, Linda Badman, summarised as follows:

The evidence is that long-term economic inactivity is actively bad for you, but work, even if you have a health problem or disability, is good for you.<sup>98</sup>

Energy policy also crosses a number of levels of governance, with the overarching framework of emissions trading within the EU, and proposals for a Climate Change Bill setting legal targets for carbon emissions currently being considered by the Westminster parliament. The EIN committee considered arguments questioning the economic and environmental impacts of the proposed Severn Barrage, which the Friends of the Earth witness, Neil Crumpton, described as a poor investment when compared with other opportunities to reduce emissions more quickly. Smaller tidal lagoons, together with underwater turbines in deeper waters could be constructed in a more cost-effective and environmentally friendly manner. Adoption of small scale technologies, discussed by Rod Edwards of Dulas Engineering, were hindered by over-restrictive planning controls and a lack of flexible local support. Other witnesses represented business users of energy, and their presentations emphasised the cost-efficiency savings being achieved by industrial users, and a need to provide greater emphasis on potential transport and domestic efficiency gains. Since emissions of greenhouse gases that originate in Wales are rising, and the issue is being taken increasingly seriously on a global political level, far-reaching economic consequences will ensue from a failure to adequately address these challenges with sufficient urgency.

### **3.4 The Convergence Programme**

The Convergence Programme succeeds the Objective One Programme in West Wales and the Valleys, and will run from 2007 to 2013, with an overall level of EU support of €1.85 billion. The Assembly Government published a consultation

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<sup>98</sup> Ibid.

document<sup>99</sup> outlining proposals during the summer recess, and the main consultation questions were discussed in the EIN committee early in the autumn session.<sup>100</sup> The main outlines of the programme conform to the overall economic strategy outlined in *Wales: A Vibrant Economy*<sup>101</sup>, and the Lisbon Strategy. Six overarching priorities are proposed, covering knowledge and innovation; a more attractive business environment; sustainable communities; employment and economic inactivity; skills workforce adaptability; and modernising public services. Under each of these priorities, more detailed themes for allocating the budget are identified.

Implementation is intended to be on a more strategic basis than the existing Objective One programme, which prompts concern about the potential centralisation of decision-making. Although there will still be potential for locally-developed projects (especially within the sustainable communities priority), these will primarily be expected to emerge from the Spatial Plan Area Groups, whose legitimacy is so far somewhat ambiguous. With general strategic priorities being decided centrally, the spread of resources across urban and rural parts of the Convergence region is also a concern. At present, opposition AMs are engaged in programme monitoring committees, but as the governance structure for all EU spending programmes has yet to be clearly identified (the suggestion by Andrew Davies is that 'the current arrangements are too bureaucratic'), this question will be decided in the light of the new arrangements for separation of Assembly and Executive after the May 2007 elections.

### 3.5 The Assembly Budget

Setting the Assembly expenditure for the coming financial year provides one of the major set-piece dramas for a minority administration. Broadly, the spending priorities are determined from pre-existing commitments, with minimal scope for discretionary projects. The major spending departments (health and social services; local government; education, skills and lifelong learning) account for 80 per cent of overall spending, and entrepreneurship innovation, networks just over 8 per cent.<sup>102</sup>

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<sup>99</sup> Available at: [www.wefo.wales.gov.uk/default.asp?action=newsdetail&ID=1762](http://www.wefo.wales.gov.uk/default.asp?action=newsdetail&ID=1762)

<sup>100</sup> Enterprise, Innovation and Networks Committee, Transcript, 20 September 2006

<sup>101</sup> WAG, *Wales: A Vibrant Economy*, (WAG, 2005). Available at:

<http://new.wales.gov.uk/about/departments/dein/publications/wave?lang=en>

<sup>102</sup> See Appendix A to the Plenary Business Agenda for 13 December 2006: 'Annual Budget Motion 2007-2008', at: [www.wales.gov.uk/cms/2/ChamberBusiness](http://www.wales.gov.uk/cms/2/ChamberBusiness)

The deficient allocation mechanism, the 28 year old 'Barnett Formula' providing the Assembly government with a per capita level of funding based on a fixed formula, neglects the disproportionate needs for public spending associated with lagging development; specifically in health, social services, local government and employment skills acquisition. Meeting these immediate needs diverts resources from longer-term ambitions, particularly, as discussed above, with regard to science policy through investments in higher education.

Initially, the separate minority parties combined to reject the draft budget, citing a range of objections. These included the imposition of an efficiency savings reduction imposed on schools, reduced funding of hill farming support payments, providing higher education funding comparable to competitor institutions elsewhere in the UK, the ambulance service, social, community and local government services funding, and rail infrastructure. The value of their additional package of proposed spending measures was £17.9 million.

This defeat of the governing party was instrumental in promoting a dialogue between it and the opposition party leaders, although compromise was difficult to reach pending the pre-budget report provided by the Chancellor of the Exchequer to the Westminster parliament. This provided an extra £9 million via the Barnett Formula as Wales' 'share' of additional public spending measures. Ultimately, the final budget (with £14.4 million of additional resources which partially met opposition demands) was approved in the last plenary meeting of the Assembly, as Plaid Cymru AMs abstained from voting on the budget motion. The impact of this compromise has raised media speculation about the prospect of a new form of coalition politics after the 2007 elections.<sup>103</sup>

### **3.6 Conclusion**

Debates over economic development policy in the autumn session have had some of the characteristics of a phoney war prior to the start of proper electioneering. Nevertheless, Assembly discussions have served to clarify a few major issues. These confirm indications that, with regard to the policies and spending of the Department for Entrepreneurship, Innovation and Networks, more must be done with less: under the Barnett Formula, scope for appropriate economic restructuring can

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<sup>103</sup> See, for example, comment in the *Western Mail*, 14 December 2006: 'End of the rainbow coalition as Plaid turns to Labour'.

only be achieved by restricting spending on more acute short term problems, and the operation of the electoral cycle works against such hard decisions. Whatever the character of the government after the 2007 elections, these will remain to be tackled, and the future of the devolution project may depend on how effectively they are resolved.

## 4. Intergovernmental relations

*Alan Trench: The Constitution Unit, UCL*

### 4.1. General

With royal assent for the Government of Wales Act in July 2006, the burden of work on the Act passed from London back to Cardiff. There have been some intergovernmental aspects to this, however, discussed below.

On the formal level, intergovernmental relations remain as low-key as ever. There have been no meetings of the plenary Joint Ministerial Committee, nor any publicised meetings of functional formats of the JMC. Some information has crept out (through answers to questions in the Scottish Parliament). In response to a question from Euan Robson MSP about 'joint parliamentary committees', Jack McConnell said:

Although, in the early days of devolution, such joint committees operated with some success in a number of policy areas, they were felt to be inappropriate for the Parliament's second term. However, given the commitment of the Parliament and this devolved Government to reduce poverty in Scotland, to further economic development and to address some major environmental challenges, which affect the responsibilities of the Governments at Westminster and in Scotland, it might be worth looking at resurrecting some of those joint committees or, indeed, other kinds of committee that are more appropriate for today. I am certainly happy to do so. The question whether a formal joint committee is required is another matter.<sup>104</sup>

The impression this gives – that the initiative not to use the Joint Ministerial Committee framework came from Scotland, not London (or Cardiff) – is somewhat at odds with that given by the UK Government.<sup>105</sup>

A written answer in the Commons unveiled the information that the JMC (Europe) has met 5 times in 2006, 9 times in 2005 and 11 times in 2004.<sup>106</sup> This falling-off is partly due to the lack of core EU business, following the demise of the EU's Constitutional Treaty.

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<sup>104</sup> Scottish Parliament Official Record, 16 November 2006, col 29399.

<sup>105</sup> See House of Lords Select Committee on the Constitution Session 2003-04, 16th Report, *Meeting with the Lord Chancellor*, HL Paper 193 (London: The Stationery Office Limited, 2004), QQ. 91-3.

<sup>106</sup> The question was put by Stewart Hosie MP to Geoff Hoon, the Europe Minister. See HC Deb, 6 December 2006, Column 482W.

A small spat in the press was triggered in September when Rhodri Morgan indicated that he had no records of when he last met Tony Blair. In the absence of meetings of the plenary JMC, this is not surprising, especially as Peter Hain serves as the main conduit between the UK Government and the National Assembly.<sup>107</sup> Such contact as there is between Messrs Morgan and Blair takes place informally and in the margins of other events (no doubt Labour Party conferences, amongst others).

There has been more activity in the British-Irish Council. A summit (plenary) meeting of the British-Irish Council took place in London on 2 June 2006, chaired by John Prescott MP (the UK Deputy Prime Minister) and Dermot Ahern TD (the Irish Foreign Minister). The Welsh Assembly Government was represented by Carwyn Jones AM, Minister for Environment, Planning and Countryside, at a meeting that generally attracted low profile attendance. Subsequently, there have been three sectoral meetings:

- on the environment in Guernsey on 26 June 2006, chaired by Ian Pearson (UK Minister of State for Climate Change and the Environment).
- on Indigenous, Minority and Lesser-Used Languages, held in Galway on 27 October 2006 and chaired by Alun Pugh AM (WAG Minister for Culture, Welsh Language and Sport).
- on the Misuse of Drugs, held in Belfast on 7 December 2006 and chaired by Noel Ahern TD (Irish Minister of State with responsibility for the National Drugs Strategy). The Welsh Assembly Government was not represented at this meeting.<sup>108</sup>

On 11 September Rhodri Morgan paid a visit to the Northern Ireland Assembly at Stormont, to extol the benefits of devolution (although without seeking to tell the Northern Ireland parties what to do).<sup>109</sup> The First Minister's visit follows one by Jack McConnell in May, and formed part of the general effort to urge the Northern Ireland parties to reach agreement before the stipulated deadline of 24 November for the resumption of devolution or dissolution of the Assembly.

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<sup>107</sup> See National Assembly Record of Proceedings - Answers to Written Questions, Written Questions answered between 7 and 14 September 2006. WAQ47751 (Leanne Wood), available at [www.wales.gov.uk/cms/2/RecordOfProceedings/3803150E000BB979000029780000000/4e4bd364f656b0ce630b7b252538381a.htm#\\_Toc146333962](http://www.wales.gov.uk/cms/2/RecordOfProceedings/3803150E000BB979000029780000000/4e4bd364f656b0ce630b7b252538381a.htm#_Toc146333962)

See also Anon, 'So Rhodri, when did you last meet the PM?', *Western Mail* (13 September 2006)

<sup>108</sup> Communiqués for each of these meetings are available at [www1.british-irishcouncil.org/documents/communiques.asp](http://www1.british-irishcouncil.org/documents/communiques.asp)

<sup>109</sup> See Anon, 'Rhodri talks up devolution', *Western Mail* (12 September 2006)

There has been no intergovernmental litigation, and no judgments of the Judicial Committee of the Privy Council on devolution issues.

#### 4.2 Implementation of the Government of Wales Act 2006

One major, and predictable, issue that has developed regarding implementation of the Government of Wales Act 2006 is that of how the UK Government and Parliament will approach requests from the National Assembly for legislative powers under the 'orders in council' route set out in Part 3 of the Act. In his important contribution to the debate, Lord Richard described the order in council mechanism as 'novel, complicated and interesting', and indicated that he considered it presented serious difficulties.<sup>110</sup> This issue has been simmering since Parliamentary debates on the Act, with MPs indicating their desire to be able to consider not just the areas in which the Assembly was seeking powers (which would limit them to discussing the constitutional implications of granting the request) but also to be able to discuss the use to which the Assembly intended to put the powers. Such an approach would both risk an intrusion by Westminster into devolved matters, which has generally been considered an inappropriate response following devolution (witness, for example, the Sewel convention or the Speaker's guidelines for questions in the House of Commons about devolved matters, both in relation to Scotland), as well as risking leading to confused accountability for such matters, and consequent public confusion about what devolution to Wales means.

The present debate was kicked off by Lord Elis-Thomas, who in an interview with the *Western Mail* suggested that there should be a convention, which might be dubbed the 'Hain convention', by which requests from the Assembly for legislative powers would automatically be put to Parliament, and the Government would use its influence (through the whips) to ensure that such a request was approved 'so long as it is within the agreed competence'.<sup>111</sup> Peter Hain has rejected this approach, but in his fullest statement on the subject (made when the Secretary of State for Wales gave evidence to the Commons Welsh Affairs Committee on the Wales Office's annual report for 2005-6) appeared to be thinking on his feet. He suggested that it would be appropriate for the Secretary of State to reject proposals which were 'not in

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<sup>110</sup> Lord Richard, Speech to Institute of Welsh Politics conference on 'The Future of Welsh Politics', Cardiff, 20 September 2006. This is to be published shortly in the Institute of Welsh Affairs magazine *Agenda*.

<sup>111</sup> See M. Shipton, 'Laws agreed by Assembly shouldn't be blocked by MPs, says Elis-Thomas', *Western Mail* (18 October 2006)

keeping with the principles of social justice and democracy', but also that Parliament should not be 'obstructionist' and should 'assist the Assembly on the basis of partnership'.<sup>112</sup> Both the lack of clarity about the approach to be taken by the Secretary of State (who of course has a discretion whether to submit an Assembly request for an order in council to Parliament) and by Parliament are regrettable.

Partly in an attempt to resolve some of these problems, the Commons Welsh Affairs Committee is holding a short inquiry into orders in council, which it appears will focus on Westminster procedures relating to them. This was due to take evidence from various witnesses (including Lord Elis-Thomas and Jane Hutt, Minister for Assembly Business) on 19 December 2006.

The UK Government's position that the Government of Wales Act 2006 resolves the question of Wales's constitutional position for a generation has come under some criticism.<sup>113</sup> The Government itself seems to appreciate that the Act may raise issues without providing a mechanism for resolving them, notably over the number of AMs. At a conference on the Act organised by Tomorrow's Wales – Cymru Yfory on 21 November 2006, Nick Ainger MP (Parliamentary Under-Secretary at the Wales Office) accepted that the number of AMs might need to be reviewed once the Assembly starts to exercise legislative powers, and that the UK Government's position was 'to suck it and see'.<sup>114</sup>

Despite the focus on orders in council, and the controversy attached to this, a different approach to extending the Assembly's legislative powers seems to be developing in Whitehall. Several bills announced in the Queen's speech deal with issues relating to Wales by directly amending the Assembly's legislative powers (set out in Schedule 5 to the 2006 Act). This applies in the areas of local government (see clause 165 of the Local Government and Public Involvement in Health bill, and Schedule 14) and further education and vocational training (see clause 26 of the Further Education and Training bill, amending Field 5). Others, such as the Mental Health bill, prefer to confer executive functions on the Welsh Ministers, but no legislative functions on the Assembly.

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<sup>112</sup> See Evidence of Rt Hon Peter Hain MP, Mr Alan Cogbill and Mr John Williams, 25 October 2006, QQ 28-31, available at [www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/1674/6102501.htm](http://www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/1674/6102501.htm). The quotations are from Q29.

<sup>113</sup> See e.g. A. Trench 'The Government of Wales Act 2006: the next steps in devolution for Wales' *Public Law*, pp. 687-696 (Winter, 2006)

<sup>114</sup> A podcast of the conference is available at [www.tomorrow-wales.co.uk/conference/Resources](http://www.tomorrow-wales.co.uk/conference/Resources)

This approach is to be welcomed. It will be interesting to see what sort of scrutiny such provisions attract, and indeed what procedures Westminster uses to scrutinise them. It avoids the incoherence of powers and problems of accessibility that was threatened if devolved powers stemmed partly from orders in council and partly from continued 'framework legislation' at Westminster, as the 2005 white paper *Better Governance for Wales* seemed to imply.<sup>115</sup> It also offers a route for the expansion of the Assembly's legislative powers that will be more rapid than the use of orders in council, as the volume of Westminster bills may lead to pressure from Whitehall to devolve legislative powers in fields where executive powers are already devolved. As Whitehall departments tend to have more bills before Parliament in any session than the Assembly is likely to have plans to legislate, this may accelerate the development of legislation. However, it does mean that the pressure to extend devolved competence comes from outside Wales, and that in a sense devolution is something done 'to' Wales, not 'by' it.

### **4.3 Finance: the Pre-Budget Review**

The Chancellor of the Exchequer, Gordon Brown, announced the Pre-Budget Review on 6 December 2006. According to the 'regional press notice' for Wales issued following the review, it would increase the funds available to the Assembly by £165 million.<sup>116</sup> This is a consequence of the working of the Barnett formula.

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<sup>115</sup> Wales Office, *Better Governance for Wales*, op cit.

<sup>116</sup> Available at [www.hm-treasury.gov.uk/media/579/73/pbr06\\_regionalpnwalespdf.pdf](http://www.hm-treasury.gov.uk/media/579/73/pbr06_regionalpnwalespdf.pdf)

## 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 Programme (West Wales and the Valleys)**

Consultation on the Convergence Programme for West Wales and the Valleys ended on 6 October, following a series of events across Wales and discussions in both the Europe and External Affairs and the Enterprise, Innovation and Networks committees. The main change resulting from the consultation is an increase in the number of priorities. The original three ERDF priorities have been restructured into five: research, development and innovation; entrepreneurship and business finance; transport and strategic infrastructure; energy and environment; and sustainable communities, while there are now four ESF priorities: young people (new); increasing employment; raising skills; and 'Making the Connections. Environmental sustainability, equal opportunities and ICT will be cross-cutting themes across the programme.

There now follows a period of negotiation between WAG and the European Commission with a view to the programmes being operational within the first half of 2007 should all go well. The European and External Affairs Committee will receive an update on progress at its meeting on 24 January.

##### **Competitiveness and Employment Programme (East Wales)**

The consultation for the Regional Competitiveness and Employment Programme for East Wales was launched by the First Minister on 1 December 2006, and will close on 26 January 2007. Documents and information on how to respond are available from the WEFO website<sup>117</sup> as are details of consultation workshops that will take place during the consultation period. The programme will receive a total of £97 million of European funding over the seven-year period.

##### **Ireland - Wales Cross Border Cooperation Programme**

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<sup>117</sup> [www.wefotest.wales.gov.uk/default.asp?action=page&ID=1832](http://www.wefotest.wales.gov.uk/default.asp?action=page&ID=1832)

Consultation on the successor to INTERREG IIIA was launched on 14 December 2006 and will last until 8 February 2007. The programme will receive £33.6 Million of ERDF funding to develop the knowledge economy in the region and support Irish-Welsh projects which address climate change, sustainable development and community regeneration. Events will be held in north and west Wales: details, along with the consultation documents are available from WEFO.<sup>118</sup>

### **State Aid**

The final UK Assisted Areas have been approved by the European Commission. Areas in east Wales eligible for 87(3)c differs from that in the draft proposal, as the original map was vetoed by the European Commission. Three wards in Flintshire have been removed and three in Cardiff added: the final map is available from the Assembly website.<sup>119</sup>

### **5.1.2 External relations**

#### **REGLEG**

The main event of the period was the Seventh Annual Conference of Presidents of EU Regions with Legislative Powers held on 16 – 17 November at Cardiff Coal Exchange. The Conference was the main and final act of the WAG's year as president of the organisation, with Cataluña taking over the role as of January 2007.

As has become the norm at the annual gathering, a declaration was adopted outlining the regions' viewpoint *vis-à-vis* a number of institutional and constitutional issues that are currently under debate within the EU. The main points of the 'Declaration of Cardiff' include:

- A call for the debate on the Constitutional Treaty to be brought to resolution, without losing the gains made by the regions in the Treaty regarding subsidiarity and the right of the CoR to appeal to the European Court of Justice;
- Call for the regions with legislative powers to be recognised in the proposed declaration to mark the 50<sup>th</sup> anniversary of the Treaty of Rome, and to be consulted on its content;
- An offer of support in furthering the 'better regulation' agenda at regional level and welcome the aim of reducing regulatory pressures on businesses and citizens;

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<sup>118</sup> [www.wefo.wales.gov.uk/default.asp?action=newsdetail&ID=1838](http://www.wefo.wales.gov.uk/default.asp?action=newsdetail&ID=1838)

<sup>119</sup> [www.wales.gov.uk/keypubmrs/content/06-046.pdf](http://www.wales.gov.uk/keypubmrs/content/06-046.pdf)

- Welcoming the formation of an inter-regional group for members representing regions with legislative powers within the structure of the CoR;
- A call for a greater role for the regions in implementing the Commission's Plan D for Democracy, Dialogue and Debate and for the addition of Decentralisation as a fourth dimension of the plan.

As yet, the final text of the declaration has not been published, but a copy of the final draft can be found in the EEAC papers.

### **Wales for Africa**

On 4 October, WAG launched *Wales for Africa: The Wales International Sustainable Development Framework*<sup>120</sup>. The Framework outlines how WAG aims to contribute to the UN Millennium Development Goals and to responses to disasters and emergencies overseas. This would appear a radical step in devolutionary terms as international developments falls clearly within the remit of the UK Government; however what the framework primarily aims to do is to coordinate the actions of those groups and organisations which are already involved in the field of international development, of which there are hundreds.

The Framework therefore concentrates upon those countries, all in sub-Saharan Africa, with whom Wales already has strong links: primarily Lesotho, Uganda, Ethiopia and Somalia. It also has as a key principle that actions will complement UK government international development policy, and be carried out in coordination with the Department of International Development and other agencies. Also, the terms of the devolution settlement mean that any action undertaken by WAG must have a benefit to Wales as well as the developing countries, leading to an emphasis on exchange of knowledge, skills and expertise.

#### **5.1.3 European and External Affairs Committee**

##### **Policy Review on European and Global Citizenship**

As part of its ongoing review, the committee received evidence from Oxfam Cymru, the British Council and South Wales Direct Information Centre. The review will come to a conclusion in the new year.

### **Functions of the EEAC**

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<sup>120</sup> <http://new.wales.gov.uk/topics/sustainabledevelopment/intdevelopment/walesforafrica/?lang=en>

At its 25 October meeting, the EEAC considered its response to a request from the Standing Orders Committee to outline what it believes the functions of the committee should be in the third Assembly. The Standing Orders Committee has already decided that a European and External Affairs Committee should be specifically provided for in the new standing orders.

EEAC members agreed that the committee's functions should remain broadly similar, though there could be a need to meet more regularly in view of the changes in the Assembly's powers and committee structure. It is envisaged that the EEAC will be responsible for considering and reporting on:

- EU legislation and policy proposals and any other EU issue;
- The Welsh Assembly Government's relations with the EU's institutions and the UK government on European and International issues;
- The Welsh Assembly Government's external affairs policy; its relations with other nations and regions; its membership of other European or International organisations;
- The National Assembly for Wales' methods and procedures for considering EU policy and legislation and its external relations;.
- The National Assembly' relations with the EU's Institutions and consultative bodies, and other bodies dealing with EU and international issues;
- The Welsh Assembly Government's implementation, transposition and enforcement of EU legislation and policy, taking the lead on overseeing the WAG's policy and procedures on the implementation of EU legislation in light of the general principle of better regulation;
- The budget related to European and External Affairs

## **5.2 Local Government**

Examining Welsh Assembly Government relations with local government points to the significance of its response to the Beecham review, a cornerstone of its local public service delivery reforms. These proposals illustrate policy innovation and raise the possibility of shifts in Assembly relations with local government. Other developments point to the difficult financial situation local government is likely to face over the coming years.

### **5.2.1 Building on Beyond Boundaries: responses to Beecham**

WAG's discussions with the public sector on *Beyond Boundaries* during the summer fed into its detailed response to the Beecham review, published on 21 November. The action plan *Making the Connections: Delivering Beyond Boundaries – Transforming Public Services in Wales* was presented as the first stage of WAG's response to Beecham and as a way of pursuing the Making the Connections agenda. It clearly builds on Beecham's recommendations in its intentions to better integrate public services; ensure greater consistency in public services, more effective performance management and more engaged leadership from WAG.<sup>121</sup>

The action plan envisages a central role for local government. Local Service Boards are to be established in each local authority area to promote collaboration and more joined up and integrated services, spanning devolved and non-devolved areas. The Assembly Government intends to develop Local Service Agreements with the boards in key areas. In addition, there will be incentives to the boards to pool resources and budgets and there will be a greater duty to cooperate. Local authorities will convene the board meetings. From this standpoint, the action plan establishes WAG and local authorities as strategic leaders.

Other aspects of the action plan's proposals signify potential shifts in central-local dynamics in Wales. Local Service Board members will include leaders and leading officials of existing local organisations and a senior Assembly Government official.<sup>122</sup> The Minister, Sue Essex, explained that having an Assembly official as a member was in order to create a 'vertical link', support the work of the boards and exchange information.<sup>123</sup> This proposal indicates that WAG is acting on Beecham's recommendation for more engaged leadership of public services on its part. It was presented as a move away from old-style bureaucracy to more active civil servant involvement on the local level.<sup>124</sup> Opposition parties raised concerns regarding a number of issues including accountability and suspicions of tendencies towards micro-management and centralising control. The minister vigorously dismissed these concerns during her plenary statement on 21 November.<sup>125</sup>

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<sup>121</sup> WAG, *Making the Connections: Delivering Beyond Boundaries – Transforming Public Services in Wales* (November 2006); National Assembly for Wales Record of Proceedings, 21 November 2006.

<sup>122</sup> LGPS Committee, LGPS (2)-17-06 (p.2) Welsh Assembly Government Response to the Beecham Review of Local Service Delivery, 6 December 2006.

<sup>123</sup> National Assembly for Wales Record of Proceedings, 21 November 2006.

<sup>124</sup> LGPS Committee, LGPS (2)-17-06(p.2) Welsh Assembly Government Response to the Beecham Review of Local Service Delivery, 6 December 2006.

<sup>125</sup> National Assembly for Wales Record of Proceedings, 21 November 2006.

The consultation in early 2007 and the process of establishing Local Service Boards during 2007-08 will be extremely interesting, particularly in terms of the direction for central-local dynamics. To date, the recommendations complement local government reforms since 2004. Many concur with local government's priorities and its own response to the Beecham review. On welcoming the action plan, Cllr Derek Vaughan, WLGA Leader, stated:

Local Service Boards should provide a pivotal role in coordinating public services locally; the WLGA has long argued that existing local partnerships needed financial teeth and, in particular, a duty of collaboration to ensure wider public sector commitment to joint-working. We are pleased that the Assembly Government has responded to our calls.<sup>126</sup>

WLGA has been a central in developing the proposals and in collating information on different models.<sup>127</sup> Its full engagement is likely to continue in developing the pilot process.

### **5.2.2 All-Wales local government performance data**

The first comprehensive data on local government performance compiled by the Local Government Data Unit on behalf of the Assembly Government was published on 31 October 2006. *The Performance of Local Public Services in Wales* report based on 2005/6 data on all statutory local authority services, was made publicly available at the request of the Minister, Sue Essex. On an all-Wales level, the findings identified improvements in performance in relation to 77 per cent of indicators. Behind these figures lay disparities in the performance of authorities for some indicators.<sup>128</sup>

It is argued that the public availability of this data will strengthen accountability.<sup>129</sup> It also reflects the emphasis by Beecham on the need to improve performance data and information to facilitate monitoring.<sup>130</sup> The data will thus complement the new Performance Wales unit's work in developing more accessible and coordinated

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<sup>126</sup> WLGA, Press Release, 'Councils committed to public services reform' (21 November 2006), at: [www.wlga.gov.uk/content.php?nID=7;ID=63;1ID=1](http://www.wlga.gov.uk/content.php?nID=7;ID=63;1ID=1).

<sup>127</sup> WAG, Local Government e-bulletin 08 (August 2006), at: <http://new.wales.gov.uk>.

<sup>128</sup> LGPS Committee, LGPS(2)-15-06(p.2), All-Wales local government performance data, 8 November 2006.

<sup>129</sup> Ibid

<sup>130</sup> LGPS Committee, Transcript, 21 September 2006.

performance information to support service improvement, as recommended by WAG's action plan.<sup>131</sup>

### **5.2.3 Financial settlements**

In the Assembly Government's final local government revenue and capital settlement for 2007-08 published on 20 December, local government received £3.7 billion funding, an average increase of 4.4 per cent over the 2006-07 revenue settlement after adjusting for transfers.<sup>132</sup> These processes are to change following the proposal to implement three-year revenue and capital settlements for local government from 2008-09 (confirmed at the Consultative Forum on Finance meeting in July 2006). This development is seen as a way of developing medium-term strategic planning for local authorities. Again, the Beecham review provided an extra impetus as it viewed three-year budget planning as 'vital' to promote more strategic and efficient delivery of public services. Greater financial clarity could encourage local authorities to collaborate with partners, for instance the private sector and community councils.<sup>133</sup>

### **5.2.4 Equal Pay and Back Pay**

The equal pay issue is a pressing and significant issue facing local government. Steve Thomas, Director of WLGA, stated that equal pay was 'the biggest financial problem facing councils in Wales. It is impossible to estimate what the cost of this will be, but it will certainly run into many millions of pounds'.<sup>134</sup> In practice, the job evaluation process, required by the Equality Act 2006, is being completed by most local authorities, but implementation by the April 2007 deadline will vary.<sup>135</sup> All authorities are also working on the more problematic issue of back pay and particularly liability. Here the situation varies between authorities.<sup>136</sup> Mike German stated that back pay was the trickiest issue facing public services in Wales for the next couple of years as there are no direct provisions for it in the local government settlement.<sup>137</sup>

Financially, 1.5 per cent of the annual budget has been set aside to deal with equal pay and the finance settlement for 2007-08 provided additional funding of £54 million

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<sup>131</sup> Record of Proceedings, 21 November 2006.

<sup>132</sup> WAG, Press Release, 'Final Settlement for Welsh Councils' (20 December 2006), at: <http://new.wales.gov.uk/news/presreleasearchive/201206budget?lang=en>

<sup>133</sup> LGPS Committee, Transcript, 4 October 2006.

<sup>134</sup> M. Shipton, 'Sharp cuts to council services may follow women's pay ruling', *Western Mail*, (6 October 2006).

<sup>135</sup> LGPS Committee, Transcript, 4 October 2006.

<sup>136</sup> Ibid

<sup>137</sup> LGPS Committee, Transcript, 23 November 2006.

over three years to implement equal pay.<sup>138</sup> Different sources of finance will be used including reserves, efficiency savings and local government has made a request to the Treasury for the freedom to borrow to deal with back pay.<sup>139</sup> It is, however, likely to impact on jobs and services. Overall, strong joint working is taking place between WAG, WLGA and the trade unions in order to secure a 'managed solution to these issues.'<sup>140</sup> The response of Sue Essex to the issue was: 'I do not know whether it will stay in that managed state, but I can certainly say that we are doing our best, as are the WLGA and the trade unions.'<sup>141</sup>

### **5.2.5 National Assembly Budget for 2007-08**

Local government in Wales became embroiled in the Assembly's budget controversy in December. This was not unexpected as the budget dispute focused on education funding, a large proportion of councils' budget. In the Welsh Assembly Government's announcement a week before the final deal, the budget proposed that school efficiency savings as part of 'Making the Connections' be decreased from 1 per cent to 0.3 per cent. This conflicted with the aim of securing public sector efficiency gains of 1 per cent, thus forcing local authorities to make additional 0.7 per cent savings from other services, with the potential for cuts in services across local government funding. On 6 December, Cllr Derek Vaughan stated:

It is difficult to believe that this budget 'compromise' is what politicians of any party would have intended. All have spoken of the need for more money to go into local government services and in light of these events we ask for reconsideration of the proposals and call for any new monies that may come from the Chancellor's budget statement today to be directed towards local authority services.<sup>142</sup>

In the final budget, the £9.3 million additional money from Gordon Brown and £2 million from the Assembly's reserves was directed to schools in the agreement between Labour and Plaid Cymru on spending plans for 2007-08. However, the earlier announcement by the WLGA leader was unusual considering the level of consensus visible in relations between WAG and local government on financial issues. It perhaps reflects the financial difficulties facing local government and a slight tension in relations between local government and WAG ahead of the elections.

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<sup>138</sup> LGPS Committee, LGPS(2)-15-06(p.3), Assembly Draft Budget, 8 November 2006.

<sup>139</sup> M. Shipton, 'Council leaders ask Brown for freedom to borrow', *Western Mail*, (23 November 2006).

<sup>140</sup> LGPS Committee, Transcript, 8 November 2006.

<sup>141</sup> LGPS Committee, Transcript, 23 November 2006.

<sup>142</sup> WLGA, Press Release, 'Assembly budget proposals bad news for local services' (6 December 2006) at: [www.wlga.gov.uk/content.php?nID=23;ID=67;1ID=1](http://www.wlga.gov.uk/content.php?nID=23;ID=67;1ID=1)

### 5.2.6 Forthcoming issues

- The Local Government and Public Involvement in Health Bill was published on 13 December, granting the Assembly enhanced legislative competence in the field of local government. In welcoming the publication of the Bill, Sue Essex said:

The Bill will enable the Assembly Government to bring forward proposals that will help local authorities improve their performance and strengthen local strategic planning. It will also enable us to encourage more collaborative working, and in light of this experience, to consider proposals for voluntary or directed mergers of local authorities.<sup>143</sup>

Watch this space.

- A local government policy statement for Wales to succeed *Freedom and Responsibilities* taking account of the reforms in local public services is to be published in March 2007. Consultation with local government actors to inform the content of the policy statement has been underway since September.
- The most recent date given for the publication of the Lyons Review is February 2007.<sup>144</sup>

### 5.2.7 Conclusion

The publication of the Welsh Assembly Government's *Making the Connections: Delivering Beyond Boundaries – Transforming Public Services in Wales* action plan signals a further step in the process of reforming local public service delivery in Wales. The Assembly Government is working closely with partners at the local level in developing its plans. While the situation in England has influenced proposals, engagement with actors in Wales is leading to innovation and proposals specifically designed for the needs of Wales. Clearly, local government is deeply involved in the development of the proposals and is likely to be central in their implementation. As identified in the previous report, a collaborative model of public service delivery in Wales is being developed. Other initiatives such as improving performance data and the shift to three-year revenue and capital settlements complement this agenda. As yet, however, the implications for Assembly-local government relations are unclear. Developments such as a new local government policy statement will clarify such issues. In the meantime, local authorities are having to prepare and face up to the

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<sup>143</sup> WAG, Press Release 'Local Government Minister Welcomes new Bill (13 December 2006), at: <http://new.wales.gov.uk>

<sup>144</sup> LGPS Committee, Transcript, 6 December 2006.

challenges of fulfilling the equal pay responsibilities and limiting the effects on public services.

## 6. Elections, Parties and Public Attitudes

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### 6.1 Elections

While the impact of the Blaenau Gwent by-elections has continued to be felt, both for their direct effect in the National Assembly and for what they suggested about the parties' longer-term electoral prospects, there were no parliamentary or Assembly by-elections during the time-period of this report. The major parties have continued to prepare for the National Assembly elections next May, with candidate selection (under the new rules imposed by the Government of Wales Act 2006, which bans 'dual candidacy', i.e. individuals standing for both constituency and list contests) being finalised, campaign teams being put in place, and private research being conducted by the parties into the state of public attitudes.

Five local government by-elections were held in Wales between August and November 2006. These elections saw wins for all three of the major parties, with both the Conservatives and the Liberal Democrats gaining a seat. These results did not show any dramatic trends, but fit in with the general picture of local elections over recent times, which have seen steady, if un-dramatic, gains for the opposition parties at the expense of Labour.

Figure 3: Local Government By-Elections, August-November 2006

<i>Ward</i>	<i>Council</i>	<i>Month</i>	<i>Winner</i>	<i>Change?</i>	<i>Swing</i>
Thornwell	Chepstow TC	August	Labour	Lab Hold	n/a
Llanbadarn Fawr	Aberystwyth TC	August	Lib-Dem	LD Gain	n/a
Ynyscedwyn	Powys CC	September	Labour	Lab Hold	n/a
Rossett	Wrexham CBC	September	Conservative	Con Gain	17.3%, LD to Con
St Mary's	Monmouth CC	October	Lib-Dem	LD Hold	5.8%, Con to LD

Source: [www.gwydir.demon.co.uk/byelections](http://www.gwydir.demon.co.uk/byelections)

## 6.2 Parties

As in any political (sub) system, much of what passes for political news in Wales is ephemeral and carries little long-term significance. The period of this report has, however, witnessed two developments that may well be significant for the future.

First, during the last few months there has been a spate of policy announcements from the various parties. These announcements have, on occasion, been interesting in themselves.<sup>145</sup> But their broader significance lies in the fact that they show a generalised policy debate beginning to develop in Wales. While Plaid and the Liberal Democrats have been active in this direction for some time, the two main UK parties appear to have now adjusted sufficiently to devolution to generate serious policy ideas for Wales. This is surely a welcome development.

Second, and most recently, there was a major controversy over the National Assembly's budget. The controversy was concluded only with the passage of an amended budget agreed by Labour and Plaid Cymru. This deal prompted a major and very public falling-out between Plaid and the Conservatives: two parties that had previously been co-operating together, alongside other opposition members, to wring further concessions from the Assembly Government.

The most pertinent elements of this story are easily summarised. First, on 5 December, both Labour and Plaid Cymru stepped back from the brink, when Labour's threat to treat a budget vote as a confidence issue led both the Conservatives and Liberal Democrat leaders to state unequivocally that they would be willing to join an alternative government formed by all opposition members.<sup>146</sup> Labour subsequently 'clarified' its position, stating that there was no prospect of the party surrendering power even in the event of the budget being voted down; Plaid also 'clarified' a comment from Ieuan Wyn Jones, that had appeared to suggest that it would also be willing to join the alternative 'grand coalition' government. Bilateral negotiations between the government and main opposition

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<sup>145</sup> Labour, for example, has promised to place its pledge to eradicate child poverty by 2020 at the centre of its policy agenda, and has also pledged to expand free childcare, increase school sports, and allow the suspension of the right to buy council houses 'when necessary' (see <http://news.bbc.co.uk/1/hi/wales/6133740.stm>). The Conservatives have also focused on improving childcare provision (as has Plaid Cymru) (see <http://news.bbc.co.uk/1/hi/wales/6141458.stm>), while also unveiling plans to regenerate seaside towns and improve the transport infrastructure in Wales, including the north-south road link, ([www.conservatives.com/tile.do?def=news.story.page&obj\\_id=133542](http://www.conservatives.com/tile.do?def=news.story.page&obj_id=133542)).

<sup>146</sup> The fullest account of these events has been provided by BBC Wales' political correspondent Vaughan Roderick in his Welsh language blog: [http://news.bbc.co.uk/welsh/hi/newsid\\_6210000/newsid\\_6217000/6217078.stm](http://news.bbc.co.uk/welsh/hi/newsid_6210000/newsid_6217000/6217078.stm)

party then led to the passage of the Assembly budget on 13 December, based on a deal that, according to Plaid, provided an additional £13 million for education in 2007-08.

The budget controversy can be interpreted in different ways. Some observers have viewed the Labour-Plaid deal as a portent of a Red-Green coalition after the next Assembly election. While it is hard to envisage a single issue that would be a 'deal breaker' in any coalition negotiations between the two parties (unlike the Liberal Democrats' demand for STV in local government elections, which any Labour leader would find very difficult to deliver), it is also true that Red-Green speculation conveniently ignores the very substantial levels of animosity that exists between Labour and Plaid at all levels. A second interpretation is that Plaid has damaged its credibility, by showing itself to be a perpetual party of opposition – unprepared to seize power even when the opportunity presents itself. A directly contrary view is that Plaid have cleverly avoided toppling the government at the most inauspicious point in the electoral cycle, while simultaneously putting some much-needed distance between themselves and the Tories, and have thus blunted one of Labour's likely campaign themes ('a vote for Plaid will let the Tories in').

Whatever credibility is given to these various interpretations, two conclusions can be drawn with some confidence. First, the budget controversy has shown that the prospects of Labour voluntarily surrendering power, even after a poor showing in next May's election, are remote indeed. Given that they would not want to continue as a minority government, Labour will almost certainly be looking for a coalition partner. Second, the increasingly cosy relationship that had developed between the three main opposition leaders in the Assembly has been significantly damaged. This makes little difference to the prospects of a post-election grand coalition – because this has always been a remote prospect, and crucially dependent on the precise arithmetic of the election result – but it will almost certainly impact upon the nature of any coalition negotiations.

### **6.2.1 Labour**

Following a long period in which the party had continued to suggest that it was on course to win a majority in the Assembly election, Labour appears to have begun the task of deflating expectations. Rhodri Morgan has made it clear that he will resign as Labour leader only if he feels that the voters have rejected him: a formulation that, of course, leaves the door wide-open to the possibility of blaming a host of other factors

for a disappointing performance, most obviously Tony Blair and the problems of the Labour government at the UK level. With a view to the election and its aftermath, Morgan made arguably his most substantively impressive speech during his career as First Minister at a meeting in Swansea on 1 December.<sup>147</sup> The speech, which may be considered as the sequel to his 2002 'Clear Red Water' speech, set out his 'Recipe for 21<sup>st</sup> Century Socialism'. Unlike its 2002 predecessor, however, the speech appears to have had little public impact; a fact that might itself be regarded as further evidence of the difficulties facing Labour.

Another increasingly obvious problem for Labour is the parlous financial position of the party. While it remains the best-funded party in Wales, Labour's advantage over its rivals in next May's election is likely to be much smaller than four years ago. With many seats likely to be electorally 'in play', this levelling of the financial playing field may yet prove to be highly significant.

### **6.2.2 Conservatives**

The Conservative party remains outwardly bullish about its prospects for next May's election. But any major breakthrough for the Welsh Conservatives still appears extremely unlikely. The constituencies that have been touted as possible Tory gains are ones in what is traditionally more favoured territory for the party. Moreover gains at the constituency level are likely to be at least partially offset by the loss of list seats. The only serious academic analysis of Tory weakness in Wales has suggested that hostility to the party is deeply engrained in Welsh society;<sup>148</sup> and many decades of suspicion are hardly likely to be overthrown in a few short years. Nonetheless, to the extent that some Conservative members do appear to have unrealistic expectations about next May's results, Nick Bourne and his associates may find themselves in an exposed position afterwards.

### **6.2.3 Liberal Democrats**

While they have made it clear that they will only consider going into coalition with other parties on the basis of the introduction of the Single Transferable Vote voting system for local government elections – and having done so in notably categorical terms – Mike German and his Liberal Democrat colleagues appear content to keep

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<sup>147</sup> Rhodri Morgan, Speech to Compass meeting on 1 December 2006, Swansea, at: [www.compassonline.org.uk/news\\_comments.asp?n=338](http://www.compassonline.org.uk/news_comments.asp?n=338)

<sup>148</sup> See: Richard Wyn Jones, Roger Scully and Dafydd Trystan, 'Why Do the Conservatives Always Do (Even) Worse in Wales?', *British Elections and Parties Review*, (2002) 12: 229-245.

as many options as possible open for themselves. Observers have noted that Liberals appear more measured in their criticisms of the governing party than the other opposition parties, while their reaction to Plaid's budget deal with Labour was also notably less hostile than that of the Tories. The smallest of the four main parties is likely to find itself in a strong bargaining position next May.

#### **6.2.4 Plaid Cymru**

Any assessment of the present state of Plaid depends very much on the point of comparison. Compared to its sister party in Scotland, which has recently experienced a surge in support both for itself and for its central policy objective of independence, Plaid's current performance does not look particularly impressive. But in comparison with the vaguely shambolic party that experienced successive electoral setbacks in 2001, 2003 and 2005, things look rather different. Plaid currently appears more focused and confident than at any time in its recent past. Yet the fact that Plaid's new-found confidence is based on notably low expectations is perhaps the most positive news for the Labour party in this Monitoring Report.

### **6.3 Public Attitudes**

Some important evidence on public attitudes in Wales came with the public launch in September 2006 of research funded by Electoral Commission.<sup>149</sup> This research had included both a large-scale survey (with a representative sample of 1000 respondents drawn from across Wales) and some qualitative focus-group work. The research examined both attitudes to devolution in general, and more specific public attitudes to voting in the devolved election in May 2007.

On the former, the Electoral Commission research drew conclusions that were strikingly consistent with those made in previous research on public opinion in Wales. While voters remain less than overwhelmingly impressed by the practical achievements of the devolved National Assembly – and while there is also growing evidence of resentment elsewhere in Wales at the perceived Cardiff-centricity of the NAW – support for devolution in Wales continues to grow, while levels of opposition to the principle of self-government for Wales are substantially lower than in the late-1990s. This is shown in Table 6.2, which gives responses on a standard question on constitutional preference that has been asked consistently in many surveys since

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<sup>149</sup> The Electoral Commission, *Wales – Poll Position*, op cit.

1997: the table includes figures from the previous major election surveys, plus the 2006 Electoral Commission figures.

**Figure 4: Constitutional Preferences 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	11.5
Parliament	19.6	29.9	38.8	37.8	42.1
Assembly	26.8	35.3	25.5	27.1	25.0
No elected body	39.5	25.3	24.0	21.2	21.3
<i>Weighted N</i>	<i>641</i>	<i>1173</i>	<i>1044</i>	<i>935</i>	<i>955</i>

It is striking that while support for independence for Wales continues to be modest, and subject only to trend-less fluctuation, public endorsement of the Parliament option has now topped two-fifths of respondents. Opposition to elected devolution is now very much the view of a minority, which is only about half the size of those who want devolution to be extended further. These findings are supported by those from other questions, which suggest that – while the exact form of devolution remains up for dispute – the fact of limited self-government for Wales is increasingly the ‘settled will’ of the populace.

However, the Electoral Commission’s research also found, notwithstanding the generally rising tide of support for devolution, that elections to the NAfW continue to be regarded by most people as less important than general elections; that attitudes to devolution are not strongly associated with individuals’ likelihood to vote in devolved elections; and that the prospects for election turnout in 2007 appear, if anything, to be even worse than in 2003. Interestingly, the research also found – directly contrary to the Government’s argument for the measure included in the GOWA – that ‘dual candidacy had little effect in deterring people from voting’.<sup>150</sup>

#### **6.4 Conclusion**

With only a few months until the third election to the National Assembly, electoral and post-electoral calculations are increasingly dominating the parties thinking and behaviour, to the exclusion of almost all other considerations. However, while the

<sup>150</sup> Ibid, p. 44.

parties continue to work themselves up into election mode, the electorate appears to remain resolutely unmoved by it all. Although there will be more policies to consider and more constituencies 'in play' than four years ago, on present prospects it appears very possible that even fewer will be turn out and vote next May. It is difficult to see this as saying anything positive about the National Assembly, or indeed the democratic process in the UK as a whole.

## 7. The Assembly and the Media

*Professor Kevin Williams: University of Wales Swansea*

### 7.1 Introduction

The last quarter of 2006 saw a significant number of comings and goings in the British media, culminating in the abrupt and unforeseen defection of BBC chairman Michael Grade to head up ITV. Grade's action brought forth a splenetic response from Assembly Member Leighton Andrews, who described its as 'disgraceful' but par for the course for 'one of the most self indulgent people in a self indulgent industry'.<sup>151</sup> Just under a month before his departure Grade had come to Cardiff to announce a new settlement between BBC Wales and S4C, described by a BBC press release as a 'significant milestone' in Welsh broadcasting. The new arrangements appear to help the Welsh language channel to meet the demand of filling more airtime which will be brought about by the switch off of the analogue signal. However, they also raise questions about the maintenance of the BBC's level of programming commitment to English speakers in Wales, especially in light of what may not be a favourable outcome to the negotiations for a new licence fee.

### 7.2 Comings and Goings

ITV Wales has been under pressure to water down its commitment to Wales over the last few years as the commercial network has attempted to downgrade its regional presence. Falling advertising revenue and declining audience share have reinforced the view of some ITV executives that they should scrap what they view as expensive regional production. The decision of ITV Wales managing director Roger Lewis to take up a post with the Welsh Rugby Union casts further doubts on the network's commitment to Wales. ITV vociferously denied that Lewis's departure would result in a further dilution of its service to Wales. Fears have been expressed that the digital switchover in 2009 will stop all differential programming for Wales as ITV will be in a position to change its licensing arrangements with OFCOM and shake off the present regulatory obligations to provide a Welsh service. In the wake of Lewis's departure ITV stressed its commitment to Wales and pointed out the investment the company had made in equipment, resources and plant in the last year.<sup>152</sup> The rapid

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<sup>151</sup> [http://Leightonandrews.typepad.com/Leighton\\_andrews\\_am/media/index/html](http://Leightonandrews.typepad.com/Leighton_andrews_am/media/index/html)

<sup>152</sup> M. Shipton, 'ITV Wales faces uncertain future', *Western Mail* (21 September 2006)

appointment of Elis Owen as Lewis's successor provides further re-assurance. Owen has a long and distinguished track record of making Welsh programmes in Wales for Welsh audiences. Grade's appointment to head up ITV could also help to sway the balance in favour of the continued commitment to regional programming in what has clearly been a divided ITV Board over the last few years.

In August Dafydd Hughes, one of the jolly WAG men, quit his post as head of the Creative Industries Support Service.<sup>153</sup> Hughes was the former chief executive of the umbrella body that used to oversee the Welsh language independent production sector, and his departure comes within eight months of the approval of the creative industries strategy. It has been left to caretaker head Rob Thomas to ensure a more commercially driven focus for the sector and to see that the Assembly provides the appropriate level of support. The companies the Assembly wants to support meanwhile have made some changes in order to maintain their competitiveness and creative edge in a highly volatile market. Tinopolis is perhaps the most ambitious of Wales' independent broadcasting companies. To ensure the success of its purchase of the TV Corporation the company has appointed one of the British broadcasting giants, John Willis, as the creative director of the Tinopolis group and specifically as chief executive of Mentorn, one of the subsidiary companies. Willis is a major figure in public service and commercial television on both sides of the Atlantic and he will provide Tinopolis with the credibility it needs on the programme making side. Complementing Tinopolis's business acumen with creative drive and an editorial track record is crucial to building network confidence in the company.

### 7.3 Bailing S4C out?

In October a deal was agreed between S4C and the BBC Trust to resolve the growing tension between the organisations.<sup>154</sup> Prior to this agreement, collaboration between the two broadcasters had been on the basis on informal understandings and interactions. The new Strategic Partnership signed by Michael Grade and S4C's boss John Walter Jones represents a significant development in Welsh broadcasting. Under the new agreement, the BBC will increase its total annual spend on Welsh language television by more than £3 million by 2009. This could mean that BBC's spending on Welsh language programme could exceed what it spends on its English

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<sup>153</sup> Anon, 'Welsh creative industries boss quits', *Western Mail* (9 September 2006)

<sup>154</sup> See R. Wyn Jones and R. Scully (eds.), *Wales Devolution Monitoring Report: January 2006*, at: [www.ucl.ac.uk/constitution-unit/research/devolution/Monitoring%20Reports/Jan06/Wales%20Jan06.pdf](http://www.ucl.ac.uk/constitution-unit/research/devolution/Monitoring%20Reports/Jan06/Wales%20Jan06.pdf)

language television service in Wales. The Partnership involves more than additional monies. It also foresees a shift in the editorial relationship. The BBC under the new agreement will work more closely with S4C to ensure that the programmes that it makes are fully aligned with S4C's editorial policy. These programmes will for the first time be available on demand via S4C's on-line service. In addition the new BBC Trust will work with the S4C Authority to assess the quality and effectiveness of the programming. The agreement is certainly a boost for the Welsh language channel as it struggles to cope with the realities of the new digital world.<sup>155</sup>

While the benefits of the agreement for S4C are clear, what it offers BBC is less apparent. The BBC can be seen as undertaking a public service in assisting the Welsh language in the on-demand world where there is a danger that Welsh language content will be marginalised in the tidal wave of English language media and programming. Hughie Mackay and Darren Ivey have shown that in multimedia households Welsh language output is being pushed to the margins by the variety of other channels on offer to the Welsh speaking audience.<sup>156</sup> Of more concern is the financing of the new settlement. Where is the additional money coming from? It is not clear whether there is any new money from the BBC to support the new commitment and if the additional resources have to be found from the BBC's English language output in Wales then the majority language community could be disadvantaged.

The settlement does draw attention to the centrality of the BBC to the media system in Wales. As the biggest employer of journalists in Wales and the largest spender on drama, it more than any other organisation plays a crucial role in representing Wales to the world and setting the agenda for political and cultural debate inside the country. BBC Wales has gone from strength to strength: network successes in the form of *Dr Who*, *Torchwood*, *Tribe* and *A Year At Kew* have seen BBC Wales treble its network income in the last three years. More than £50 million was generated by network commissions last year.<sup>157</sup> For BBC Wales Controller Menna Richards, the Welsh broadcaster is 'in the strongest position in its proud history'.<sup>158</sup> This strength has been recognised by Director General Mark Thompson who has praised BBC Wales's network contributions as 'sexy, modern and fantastic' and a 'benchmark' for

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<sup>155</sup> See R. Wyn Jones and R. Scully (eds.), *Wales Devolution Monitoring Report: May 2006*, at: [www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales\\_May06.pdf](http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_May06.pdf)

<sup>156</sup> H. Mackay, and D. Ivey, *Modern Media in the Home* (John Libbey Press, 2004)

<sup>157</sup> *BBC Annual Review*, 2006.

<sup>158</sup> Anon, 'Who's been a big help, says BBC Wales Boss' *South Wales Echo* (12 July 2006)

other BBC nations and regions to aspire to.<sup>159</sup> BBC Wales's success is a major boost for the so-called creative economy in Wales, attracting new talent and resources. Millions of pounds have been invested in skills required to sustain creative and media industries such as actors and costumiers, set builders and prop suppliers, stage electricians and designers. BBC Wales's success and the corresponding problems of other broadcasters and media means the organisation has established itself as the backbone of the creative economy in Wales and without its continued success in drawing in funds and attracting commissions the independent sector in Wales, which largely depends on the BBC, could suffer.

#### **7.4 Poor DABs**

As BBC Wales and other Welsh broadcasters move toward digital switchover, their plans for the brave new media order are becoming firmed up. DG Thompson in his visit to Cardiff spoke of the possibilities of delivering more localised news in Wales. Local television news from Mid or North Wales would be a way of redressing what some see as the Cardiff-bias or south Wales bias of the national news service. The digital world, according to Thompson, offers the chance for the BBC to 'broaden and make more relevant the news' it produces in Wales. However not everything in the digital world will enhance the capacity and ability of the Welsh audience to access additional Welsh produced content. Digital audio broadcasting (DAB) is being promoted heavily by the BBC with the advantages of improved sound quality and the possibility of seeing information about the programmes and music being broadcast. However the success of DAB could prove a mortal blow for Wales's two national radio stations – BBC Radio Wales and BBC Radio Cymru. In addition to the BBC's national multiplex not reaching certain parts of Wales – for example, N.E. Wales. Eastern Powys and parts of South Wales, Radio Cymru and Radio Wales are not available on this multiplex. They will only reach the Welsh audience where there is a local commercial multiplex. And of course in sparsely populated areas such as mid Wales there is no commercial incentive to run a multiplex.

#### **7.5 Trinity-Mirror versus the National Assembly – Round 2**

The failure of Trinity-Mirror's boss Sly Bailey to respond to the summons from the National Assembly to appear before its Culture Committee to account for jobs losses in its Welsh newspapers, and the threat to merge editorships of some of its local titles

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<sup>159</sup> K. Price, 'Director General praises "sexy" BBC Wales', *Western Mail* (25 November 2006)

in Wales,<sup>160</sup> took a new turn in August when Culture Minister Alun Pugh suggested that the Assembly might in future advertise jobs on its own websites. At present around £3 million worth of Assembly money finds its way into the Trinity-Mirror's Welsh papers every year.<sup>161</sup> Such advertising revenue is not insubstantial to titles such as the *Western Mail* whose circulation has gradually declined over the years. Since 1999 the paper – like its sister paper the *South Wales Echo* – has seen its circulation fall by about 28 per cent compared to a 12 per cent decline in the rest of Wales's regional newspapers. The latest half yearly ABC local and regional newspaper circulation figures make for sombre reading for Trinity Mirror. *Wales on Sunday*, the great regional newspaper success story of the 1990s, lost nearly 7 per cent of its sales in the first six months of 2006. Its circulation has fallen by nearly 31 per cent since the heady days of the late 1990s. The *Echo*, overtaken in January for the first time by the *South Wales Evening Post*, has fallen further behind and today the *Western Mail's* weekday circulation has officially fallen for the first time below 40,000 copies. Trinity Mirror's relationship with the Assembly therefore have to be put into the context that their Welsh newspapers are doing less well than their titles in other parts of the UK.

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<sup>160</sup> See *Wales Devolution Monitoring Report: January 2006*, op cit.

<sup>161</sup> BBC News 1 August 2006

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BBC News Online Wales <http://news.bbc.co.uk/1/hi/wales/default.stm>

British-Irish Council [www1.british-irishcouncil.org/](http://www1.british-irishcouncil.org/)

Care Standards Inspectorate Wales [www.csiw.wales.gov.uk](http://www.csiw.wales.gov.uk)

Communities and Local Government [www.communities.gov.uk](http://www.communities.gov.uk)

Conservative Party [www.conservative.com](http://www.conservative.com)

DEFRA [www.defra.gov.uk](http://www.defra.gov.uk)

Department for Work and Pensions' Households Below Average Income (HBAI) Statistics [www.dwp.gov.uk/asd/hbai.asp](http://www.dwp.gov.uk/asd/hbai.asp)

Finance Wales [www.financewales.co.uk](http://www.financewales.co.uk)

Leader of the House of Commons [www.commonleader.gov.uk](http://www.commonleader.gov.uk)

Leighton Andrews AM's Blog <http://leightonandrews.typepad.com/>

NAfW Chamber Business [www.wales.gov.uk/cms/2/ChamberBusiness](http://www.wales.gov.uk/cms/2/ChamberBusiness)

NAfW Committees [www.wales.gov.uk/keypubassemcommittees/index.htm](http://www.wales.gov.uk/keypubassemcommittees/index.htm)

NAfW Record of Proceedings  
[www.wales.gov.uk/keypubrecordproceedings/index.htm](http://www.wales.gov.uk/keypubrecordproceedings/index.htm)

Office of National Statistics [www.statistics.gov.uk](http://www.statistics.gov.uk)

Office of Public Sector Information [www.opsi.gov.uk](http://www.opsi.gov.uk)

O Vaughan i Fynwy (Vaughan Roderick's Welsh language blog)

[http://news.bbc.co.uk/welsh/hi/newsid\\_6180000/newsid\\_6182400/6182459.stm](http://news.bbc.co.uk/welsh/hi/newsid_6180000/newsid_6182400/6182459.stm)

The Richard Commission [www.richiardcommission.gov.uk](http://www.richiardcommission.gov.uk)

Smoking Ban Wales [www.smokingbanwales.co.uk](http://www.smokingbanwales.co.uk)

Tomorrow's Wales [www.tomorrow-wales.co.uk/](http://www.tomorrow-wales.co.uk/)

UK Parliament Publications [www.publications.parliament.uk/](http://www.publications.parliament.uk/)

UK School Games [www.ukschoolgames.com/](http://www.ukschoolgames.com/)

WAG Cabinet Statements

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/?lang=en>

WAG Legislation in Force

<http://new.wales.gov.uk/legislation/legislationinforce/?lang=en>

WAG Press Releases <http://new.wales.gov.uk/news/?lang=en>

WAG Mental Health Promotion Action Plan Consultation

<http://new.wales.gov.uk/consultations/currentconsultation/healandsoccarecurrcons/958389/?lang=en>

Wales Audit Office [www.wao.gov.uk](http://www.wao.gov.uk)

WEFO [www.wefo.wales.gov.uk](http://www.wefo.wales.gov.uk)

Welsh Baccalaureate Qualification [www.wbq.org.uk](http://www.wbq.org.uk)

WLGA [www.wlga.gov.uk](http://www.wlga.gov.uk)

**DEVOLUTION  
MONITORING  
PROGRAMME  
2006-08**

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**Wales Devolution Monitoring Report**

**April 2007**

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**Dr Richard Wyn Jones & Dr Roger Scully (eds.)**



Sefydliad Gwleidyddiaeth Cymru

Institute of Welsh Politics

**Cymru** mewn  **Wales** in a  
**Ewrop** Ranbarthol **Regional Europe**

## The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell and Akash Paun at the Constitution Unit, UCL and the team leaders are as follows:

- Scotland: **Peter Jones**  
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## Abbreviations and Acronyms

AM	Assembly Member
APS	Assembly Parliamentary Service
BME	Black Minority Ethnic
CAP	Common Agricultural Policy
CRE	Commission for Racial Equality
CSIW	Care Standards Inspectorate Wales
CSR	Comprehensive Spending Review
CWLS	Culture, Welsh Language and Sport
DARA	Defence Aviation Repair Agency
DG	Directorate General
DAB	Digital Audio Broadcasting
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
EU	European Union
FAW	Football Association of Wales
FE	Further Education
GOWA	Government of Wales Act
GVA	Gross Value Added
LGPS	Local Government and Public Services
Lib Dem(s)	Liberal Democrat(s)
MFL	Modern and Foreign Languages
MP	Member of Parliament
NHS	National Health Service
OFCOM	Office of Communications
OPSI	Office of Public Sector Information
PCSO	Police Community Safety Officers

PR	Proportional Representation
PSE	Personal and Social Education
RDP	Rural development Plan
SARC	Sexual Assault Referral Centres
SEN	Special Educational Needs
SI	Statutory Instruments
SJR	Social Justice and Regeneration
SPD	Single Programming Document
SSIW	Social Services Inspectorate Wales
WAG	Welsh Assembly Government
WEFO	Wales European Funding Office
WLGA	Welsh Local Government Association

## **Summary and Introduction**

Politics and governance during the period covered by this report were dominated by the imminent third election to the National Assembly for Wales. The Assembly that emerged after the election, on 3 May, would not only be potentially of a rather different political colour to its predecessor. It would also inherit the enhanced powers granted to the devolved institution under the 2006 Government of Wales Act.

However, the period covered by this report was not simply an interregnum. As is detailed in the chapters of the report, there continued to be important developments in a number of specific areas. More generally, the report observes the continuing development of a distinctive Welsh policy agenda and policy-making capacity. But it also demonstrates persisting problems in policy delivery; and in effective scrutiny of policy-making and government action – both inside and outside the National Assembly.

The next Devolution Monitoring Report will review the outcome of the National Assembly election, and consider its implications for politics and government in Wales.

## 1. Public Policy

*Paul Chaney, Cardiff University*

### 1.1 Introduction

The first quarter of 2007 was notable both for ongoing policy developments and for the parties' future aspirations for policy making in the third Assembly, when the legislature will gain qualified primary legislative powers. For Welsh Labour,<sup>1</sup> its manifesto policy promises included: a commitment to provide £450m investment in new social housing, making land available for affordable housing, ensuring that all children have an opportunity to use a sports or leisure facility or swimming pool free of charge at weekends, and securing higher standards of energy efficiency in all new buildings in Wales.<sup>2</sup> Plaid Cymru's pledges included: 'universal and affordable' childcare, a 'national living wage',<sup>3</sup> giving every 11-year-old a laptop computer, introducing first-time buyers' grants of up to £5,000, and taking over the student loan repayments of graduates for five years if they continue to live in Wales. The Welsh Liberal Democrats<sup>4</sup> stated their determination to target young voters, reduce class sizes and to cut crime – not least by promising that 'we will guarantee that the funding is there for communities to request up to 500 extra PCSOs (Police and Community Safety Officers) across Wales during the next Assembly term'.<sup>5</sup> The Welsh Tories stated that they would: give older people £100 to off-set council tax, introduce 'moves' to close the funding gap between Wales and England in respect of schools and higher education, introduce a code of practice to encourage recycling and limit wasteful product packaging by supermarkets, seek powers from Westminster to reform mental health services, and 'give local communities the power to decide their own priorities for public expenditure by promoting a Sustainable Communities Measure'.<sup>6</sup>

Evidence of the continuing development of a Welsh policy lobby focused on the Assembly was provided by the considerable number of election manifestos issued by civil society and business organisations; this marks a significant discontinuity over

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<sup>1</sup> [www.welshlabour.org.uk](http://www.welshlabour.org.uk)

<sup>2</sup> Welsh Labour, *Building a better Wales: Labour's policies for taking Wales forward*, (Cardiff, February 2007)

<sup>3</sup> An income threshold higher than the minimum wage, Plaid Cymru Manifesto launch, 28 March 2007

<sup>4</sup> [www.welshlibdems.org.uk/home\\_e.asp](http://www.welshlibdems.org.uk/home_e.asp)

<sup>5</sup> Eleanor Burnham AM's speech - A Safer Wales, Crime speech to the Welsh Liberal Democrat Spring Conference in Swansea, 11 March 2007

<sup>6</sup> [www.conservatives.com/tile.do?def=wales.index.page](http://www.conservatives.com/tile.do?def=wales.index.page)

the pre-1999 era of administrative devolution. Examples of the policy demands made by these organisations included calls for: 'all political parties in Wales to make [treating/preventing] cancer a priority';<sup>7</sup> greater measures to raise awareness of the challenges facing maternity services;<sup>8</sup> reductions in greenhouse gas emissions, including [those associated with] energy generation, businesses, homes and transport';<sup>9</sup> and the delivery of 'a much stronger focus on [policy] implementation – and on the levers and mechanisms which government can use – to bring about change in practice for older people'.<sup>10</sup>

Aside from such policy aims and aspirations, an insight into the developing trend of 'expert bureaucratic' (as opposed to the consultative, participatory mode) of policy development by the Assembly Government was revealed in the First Minister's written answer to a question posed in January by Leanne Wood AM (Plaid Cymru). She asked: '[H]ow many task and finish groups has the Welsh Assembly Government established for each year since 1999?' ('Task-finish' groups typically comprise a noted public figurehead accompanied by group of experts and practitioners). According to the First Minister, a total of 258 of these bodies had been engaged by the Assembly Government (up to July 2006). This marked an increase from 2 in 1999 and 15 in 2000 – to 48 in 2003 and 56 in 2004. The half yearly total for 2006 was 30.<sup>11</sup> On other matters, the availability of Welsh-based data to inform policy development has been an ongoing concern since the creation of the National Assembly. In March the Assembly Education and Lifelong Learning Committee was advised of a potentially significant development – namely, the scope of a Transfer of Functions Order that came into effect on 16 December 2006. This will give the National Assembly a right in law to be consulted on the making of the Census Order for the 2011 census and beyond, and the power to make regulations for administering the decennial Census in Wales.<sup>12</sup>

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<sup>7</sup> Macmillan Cancer Support, [www.macmillan.org.uk/abetterdeal](http://www.macmillan.org.uk/abetterdeal)

<sup>8</sup> The Royal College of Midwives (RCM), [www.politics.co.uk/press-releases/health/nhs/nhs-personnel/rcm-millennium-stadium-hosts-maternity-manifesto-launch-wales-\\$466855.htmMonday](http://www.politics.co.uk/press-releases/health/nhs/nhs-personnel/rcm-millennium-stadium-hosts-maternity-manifesto-launch-wales-$466855.htmMonday)

<sup>9</sup> The Stop Climate Chaos coalition, [www.wwf-uk.org/core/about/cymru\\_0000002337.asp](http://www.wwf-uk.org/core/about/cymru_0000002337.asp)

<sup>10</sup> [www.accymru.org.uk/en/3205.htm](http://www.accymru.org.uk/en/3205.htm)

<sup>11</sup> NAFW, Written Questions Answered between 4 and 18 January 2007. Downloadable from: [www.wales.gov.uk/documents/cms/2/RecordOfProceedings/3803150E000BB979000029780000000/0b26f949dbc68d93f1ee4b9200e4a489.pdf](http://www.wales.gov.uk/documents/cms/2/RecordOfProceedings/3803150E000BB979000029780000000/0b26f949dbc68d93f1ee4b9200e4a489.pdf)

<sup>12</sup> ELLS Committee, ELLS(2)-04-07 Paper 3: Preparations for the 2011 Census of Population (8 March 2007)

## 1.2 Culture, Welsh Language and Sport

In late January the Culture, Welsh Language and Sport (CWLS) Committee considered the final draft report of its Review of Welsh Football.<sup>13</sup> Throughout the review process, the game's governing body – the Football Association of Wales (FAW) – had declined to give direct evidence to the Review team. The final report recommended an overhaul of the way in which grass-roots football is managed. The report was critical of what it saw as a lack of strategy, vision and co-ordination in the management of the game. It stated that the FAW 'needs to modernise its governance structure and responsibilities particularly for football development'. Moreover, it continued: 'in the absence of any immediate commitment by the governing body to taking the recommendations in this report forward, serious consideration should be given by the Welsh Assembly Government and the Sports Council for Wales to future public investment in football in Wales'.<sup>14</sup> Reflecting on the report, Welsh Labour AM Ann Jones stated that 'the "blazer brigade" who control the FAW Council need to stand aside and the whole organisation needs to become more professional, streamlined and focused'.<sup>15</sup>

In respect of Welsh language policy, in early January the culture minister announced that the 2007 National Eisteddfod in Mold will receive Assembly Government funding of £470,000. This represents an increase of £62,000 over the previous year.<sup>16</sup> In late February the Welsh Assembly Government's Welsh Language Scheme was approved by the statutory regulator, the Welsh Language Board. The Scheme details how the Assembly Government will develop and deliver Welsh language and bilingual services to the public and its customers. According to WAG, the Scheme will 'ensure that departments throughout the Assembly Government treat both Welsh and English languages on a basis of equality'.<sup>17</sup> However, following a meeting between the First Minister and members of *Cymdeithas yr Iaith Gymraeg* (The Welsh Language Society) in mid-February, *Cymdeithas* were critical of Rhodri Morgan AM's 'foggy' answers in response to their call for a new Welsh Language Act giving greater

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<sup>13</sup> CWLS Committee, *Football in Wales: A Review*, (January 2007). Downloadable from [www.wales.gov.uk/documents/cms/2/DocumentsLaid/37B1A02600BF4FD0000436C0000000/1e1df849350e947500c8c9966abaa9fc.pdf](http://www.wales.gov.uk/documents/cms/2/DocumentsLaid/37B1A02600BF4FD0000436C0000000/1e1df849350e947500c8c9966abaa9fc.pdf)

<sup>14</sup> Anon, 'Funding threat to Welsh football', *The Western Mail*, (25 January 2007)

<sup>15</sup> Ibid

<sup>16</sup> WAG Press Release, *Culture Minister Alun Pugh Announces Extra Money to the National Eisteddfod*, (11 January 2007)

<sup>17</sup> WAG Press Release, *Welsh Assembly Government's Welsh Language Scheme 'far-reaching'*, (15 February 2007)

rights to Welsh speakers.<sup>18</sup> Further criticism of the Welsh government's existing language policy came on 20 March when the committee of independent experts which monitors the application of the European Charter for Regional or Minority Languages,<sup>19</sup> published a report that stated that much more needed to be done to promote the language in the face of increasing demand for Welsh-medium education.<sup>20</sup> The report's recommendations called on the government to 'develop further Welsh-medium education, [and] in particular, take steps to improve linguistic continuity in the transition from primary to secondary level in Welsh-speaking areas, and establish a co-ordinated approach to monitoring progress achieved in developing Welsh-medium education ... [and] take further measures to ensure that health and social care facilities offer services in Welsh'.<sup>21</sup> In response the Assembly Government refused to accept that not enough was being done in the field of education but it recognised that there were ways of doing more in respect of the language in the health sector.<sup>22</sup>

In March, the Education minister informed the Assembly's Education Lifelong Learning and Skills Committee about the latest work by the Welsh Medium and Bilingual Childcare Task and Finish Group, stating: 'from April 2008, the Childcare Act 2006 will place a duty on Local Authorities to secure sufficient childcare to meet the needs of parents in their area. In doing so, the Childcare Act specifically requires Local Authorities in Wales to have regard to the needs of parents in the area for the provision of childcare involving the use of the Welsh language. We are currently consulting on the draft regulations and guidance to implement the Childcare Act, which stipulate that there should be a specific assessment of the supply and demand for Welsh medium and bilingual childcare, and that Local Authorities should use every means reasonably practicable to match supply and demand'.<sup>23</sup>

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<sup>18</sup> Cymdeithas yr Iaith Gymraeg, *Ateb Niwlog Rhodri ar Fater Deddf Iaith*, (16 Chwefror 2007), [www.cymdeithas.org](http://www.cymdeithas.org)

<sup>19</sup> which came into force in the UK in July 2001

<sup>20</sup> The European Charter for Regional or Minority Languages is available online at <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>

<sup>21</sup> Council of Europe, *Recommendation RecChL(2007)2 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by the United Kingdom*, (14 March 2007) Downloadable from

[https://wcd.coe.int/ViewDoc.jsp?Ref=RecChL\(2007\)2&Sector=secCM&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=RecChL(2007)2&Sector=secCM&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

<sup>22</sup> WAG spokesperson quoted in Anon, 'Addysg Gymraeg: Ewrop yn beirniadu', *BBC Cymru'r Byd*, (20 Mawrth 2007) [www.bbc.co.uk/cymru](http://www.bbc.co.uk/cymru), 'Mae Llywodraeth y Cynulliad yn gwrthod derbyn nad oes digon yn cael ei wneud ym maes addysg, ond yn cydnabod bod modd gwneud mwy dros y Gymraeg yn y sector iechyd'.

<sup>23</sup> ELLS Committee, ELLS(2)-05-07 Paper 1: Minister's Report, (21 March 2007)

### 1.3 Economic Development and Transport

In late December 2006,<sup>24</sup> the executive agency of the Assembly Government, the Wales European Funding Office (WEFO) published a summary of the consultation responses it had received in respect of the Convergence Programme – the EU structural funds initiative that succeeds the Objective One funding programme in west Wales and the Valleys. The Convergence Programme will run from 2007 to 2013 and involve over £3bn of grant aid. Arguably, given the scale of the funding programme, there was a muted reaction from those outside government – with only 127 consultation responses received by WEFO. By category, the highest number of 35 responses came from economic development/ training organisations, followed by 19 by local authorities – and just 17 from voluntary/ community organisations. As the official analysis of the consultation responses concluded: ‘while there has been broad support for the priorities identified for the new Convergence Programme there has been a more mixed reaction to the financial proposals’.<sup>25</sup> The consultation responses showed that there was general backing for increasing the proportion of resources allocated to boosting employment and skills. However, other responses were contradictory. Some emphasised the importance of additional resources for developing transport and physical infrastructure in order to attract businesses – as well as a greater emphasis on ‘strategic sites and premises’. In contrast, others warned against significant investments in road building and underlined the need for a stronger emphasis on improving and safeguarding the environment.<sup>26</sup> On 28 March the European Commission gave its formal approval to the Assembly Government’s outline implementation strategy linked to the aid package.

In March the First Minister announced that the number of international trade missions sent out by Wales had increased from eight a year to 40 a year. The First Minister pointed to a past where, he claimed, there was a ‘lack of self-confidence [that] had too often made the Welsh look inward not outward.’ According to Mr Morgan, ‘devolution had been the largest leap of faith in Wales’ willingness to look outwards’.<sup>27</sup> Later in the same month an announcement by HM Revenue and Customs revealed that Welsh exports had increased from £8.3bn in 2004 to £9.3bn in 2006.<sup>28</sup>

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<sup>24</sup> Thereby missing the submission deadlines for the previous *Devolution Monitoring Report*.

<sup>25</sup> [www.wefo.wales.gov.uk/resource/post2006%20news%20-%20issue%2058964.pdf](http://www.wefo.wales.gov.uk/resource/post2006%20news%20-%20issue%2058964.pdf)

<sup>26</sup> All responses can be downloaded from: [www.wefo.wales.gov.uk/default.asp?action=page&ID=1816](http://www.wefo.wales.gov.uk/default.asp?action=page&ID=1816)

<sup>27</sup> WAG Press Release, *Trade missions win £20m a year*, (5 March 2007)

<sup>28</sup> [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

On transport matters, a 2004 consultation exercise found there was a demand for a daily air service between north and south Wales. On 21 February the Assembly Government announced public funding for an air link which will commence later in 2007.<sup>29</sup> To further this policy aim WAG has already invested £1.5m on developing a terminal building at RAF Valley, on Anglesey. The Welsh Assembly Government also revealed that it will subsidise the new service for three years. However, this policy has conflicting aims with 'Smarter Choices: Wales',<sup>30</sup> one of a number of documents constituting the forthcoming Wales Transport Strategy announced on the previous day by the Minister for Enterprise, Innovation and Networks. 'Smarter Choices' sets out a variety of 'methods and initiatives which reduce the negative impacts of travel [including ...] congestion, carbon emissions, [and overall damage to ...] the environment and health'.<sup>31</sup> Commenting on the new north-south air link, the director of Friends of the Earth Cymru was critical, stating: 'we're one of the most polluting countries in the world and our Government needs to be doing everything it can to face up to the crisis rather than putting money into making the problem worse'.<sup>32</sup> In March, the Minister for Enterprise, addressed this theme by announcing £101m of funding to 'improve transport infrastructure and to promote sustainable transport'. Thus the Transport Grant Settlement for 2007-08<sup>33</sup> included: £20m support for integrated transport and rail network improvements; a further £5.1m for the 'Safe Routes to School' programme associated with 55 schools across the country – and, £2m for eight 'Walking and Cycling' programmes.

In 2006 the Assembly Government published *A Science Policy for Wales*.<sup>34</sup> In a plenary session of the National Assembly on 14 March the First Minister presented an update on the policy. He advised AMs that WAG had set up a senior science advisory group to assist in addressing the main science-related issues in the work of the Assembly Government. Details were also given of Welsh Government funding for the development of science. This included £3m to encourage medical charities to contract for more research work in Wales and an annual science research budget of £1m, covering 25 projects researching environmental matters. For the opposition, Ieuan Wyn Jones AM (Plaid Cymru) was critical of what he saw as the disparate

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<sup>29</sup> WAG Press Release, *Preferred airline and airport operators announced for Anglesey Airport*, (21 February 2007)

<sup>30</sup> WAG, *Smarter Choices: Wales*, (February 2007) Downloadable from:  
<http://new.wales.gov.uk/topics/transport/IntegratedTransport/?lang=en>

<sup>31</sup> WAG Press Release, *A smarter choice for travel in Wales*, (20 February 2007)

<sup>32</sup> Quoted in: Gerry Holt, 'Just who is going to use this air link?' *South Wales Echo*, (22 February 2007)

<sup>33</sup> [http://new.wales.gov.uk/docrepos/40371/652032/TG\\_Annex1.doc?lang=en](http://new.wales.gov.uk/docrepos/40371/652032/TG_Annex1.doc?lang=en)

<sup>34</sup> WAG, *A Science Policy for Wales*, (November 2006). Downloadable from  
<http://new.wales.gov.uk/about/departments/dein/publications/science-policy-2006?lang=en>

nature of the science initiatives listed by the First Minister. He asserted: 'as much as I welcome the various elements that you have referred to in your statement, it strikes me that there is nothing that coordinates everything and therefore shows that we have a cohesive policy for science in Wales'.<sup>35</sup>

#### 1.4 Education, Lifelong Learning and Skills

In January, the Welsh state education inspectorate – Estyn – published its Annual Report for 2005-06.<sup>36</sup> According to the Chief Inspector of state education, 'most sectors have improved a great deal since they were last inspected and leadership has also generally improved'. However, it was noted that: 'some of the most difficult challenges [facing the education system] related to making sure that all learners grasped the basics of language, numbers and science... by the end of their time in compulsory education, only about 40 per cent of 16-year-olds have gained good GCSE or equivalent qualifications in Welsh or English, mathematics and science ... during recent years, these results have improved only slowly'.<sup>37</sup> Despite a significant budget commitment by WAG,<sup>38</sup> the standard of school buildings was also identified as a key issue. The Chief Education Inspector stated that 'inadequate buildings are a barrier to improving standards of achievement'.<sup>39</sup> According to the education minister, 'there is still much to do ... in particular we need to ensure that the benefits of improvement are enjoyed by all'. She continued: 'we have begun a revolution in education and lifelong learning in Wales. This report confirms that we remain on track to realise our ambition that Wales will be a country where everyone has the opportunity to learn and prosper'.<sup>40</sup> In the ensuing plenary debate on the Estyn report William Graham AM (Welsh Conservatives) responded to the Minister's comments stating: 'it is a sad reflection that Estyn should objectively report that there are sectors of education and training in areas of Wales where inspectors have seen very little excellence during the year. All is not wrong with our education service, but, as this report indicates, all is not right'.<sup>41</sup>

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<sup>35</sup> The Record of Proceedings, Plenary Session 14 March 2007

<sup>36</sup> Estyn, *The Annual Report of Her Majesty's Chief Inspector of Education and Training in Wales*, (January 2007). Downloadable from [www.estyn.gov.uk/annual\\_report.asp](http://www.estyn.gov.uk/annual_report.asp)

<sup>37</sup> [www.estyn.gov.uk/publications/The\\_Press\\_Statement\\_2005\\_06.pdf](http://www.estyn.gov.uk/publications/The_Press_Statement_2005_06.pdf)

<sup>38</sup> WAG Press Release, *£667m invested in school buildings*, (20 March 2007) stated that £667m had been provided by the Assembly Government for the improvement of school buildings in Wales since 2004.

<sup>39</sup> Reported in P Rowland. "Poor buildings hampering education" – report', *The Western Mail*, (24 January 2007)

<sup>40</sup> WAG Press release, *Improving standards welcomed by Minister*, (25 January 2007)

<sup>41</sup> Record of Proceedings, Plenary Session 20 March 2007

In January, the Minister for Education launched a consultation on revised arrangements for the school curriculum in Wales. According to WAG, 'these proposals support the Assembly Government's aims to ensure that the new school curriculum, assessment and qualifications arrangements will promote an approach that is more learner-centred, focuses on skills, builds on the Foundation Phase and links effectively with the 14-19 Learning Pathways programme'.<sup>42</sup>

In November 2006 the Assembly Government announced an independent review of the mission and purpose of Further Education (FE) in Wales. *Inter alia*, the review will give consideration to: the extent to which individual colleges should specialise in specific areas of training and education; the diverse nature of the FE sector; the extent to which FE colleges focus on employability skills, and the need for increased responsiveness to learners. At the beginning of February the ELLS Committee was informed of the consultation paper that will be sent to key stakeholders as part of the FE Review. The core question that will be put to consultees is: 'what improvements, in the context of high ambitions but a finite budget, would best ensure provision of fit for purpose, high quality education, learning and training post 14'?<sup>43</sup> The Review is to report to the National Assembly by autumn 2007.

In mid-February the ELLS Committee heard the results of an independent policy evaluation of the Assembly Government's Modern Foreign Languages (MFL) Strategy 'Languages Count'.<sup>44</sup> This strategy aims to increase participation in language learning across Wales. 126 schools took part in the pilot of the strategy in order to test out a variety of ways of teaching foreign languages at Key Stage 2 (7-11 years). The evaluation report highlighted pupil's enthusiasm for language learning at a younger age – as well as the fact that 'secondary schools reported that the pupils involved in the pilot entered Year 7 [the first year of secondary education] with an enthusiasm for MFL and [importantly] the knowledge and skills to make accelerated progress in addressing the Key Stage 3 curriculum [11-14 years]'. February also saw the continuing development of the Welsh Baccalaureate qualification, or 'Welsh Bac'. The Minister for Education, Lifelong Learning and Skills, announced that the Welsh Bac will be made available to learners at a further 45 centres across Wales from

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<sup>42</sup> <http://new.wales.gov.uk/topics/educationandskills/educationskillsnews/consult-new-school-curriculum?lang=en>, the closing date for consultation responses was 30th March 2007.

<sup>43</sup> Papers of the Education, Lifelong Learning and Skills Committee, 1 February 2007

<sup>44</sup> WAG, *Languages Count: The Welsh Assembly Government's National Modern Foreign Languages Strategy*, (April 2002). Downloadable from <http://new.wales.gov.uk/docrepos/40382/4038232/4038211/4038293/languagescount-e.pdf?lang=en>

September 2007 in the first phase of the roll-out, making the qualification available at a total of 76 centres across Wales.<sup>45</sup>

The first quarter of the year witnessed the publication of the consultation draft of the Welsh Assembly Government's strategy for developing school-based counselling services for children and young people. According to WAG, its goal is to: 'have counselling provision available to all school pupils giving them confidence that their needs will be heard and addressed. This will need to complement the range of approaches already available in schools that help to support the health, emotional and social needs of pupils and lead to a healthy school culture'.<sup>46</sup> It is intended that the final strategy will be issued in autumn 2007.

In terms of cross-party policy development, late March saw the publication of the third phase of the ELLS Committee Policy Review of Additional (hitherto 'Special') Educational Needs' (or SEN).<sup>47</sup> The Review made 47 recommendations including that the Assembly Government: 'sets up a new funding stream to help meet some of the costs to small employers of reasonable adaptations to support the employment of young people with additional needs', and 'develops a strategy to strengthen additional needs provision in the Welsh language in: further and higher education, work-based learning and supported employment placements'. Owen John Thomas AM (Plaid Cymru) said that it was incumbent on the incoming government after the May 2007 elections to address the issues set out in the review.<sup>48</sup>

## 1.5 Environment, Planning and the Countryside

Sections 55 and 56 of the Clean Neighbourhoods and Environment Act (2005) require the National Assembly for Wales to make regulations setting out offences in relation to the ownership of dogs. In January, the Environment Planning and Countryside (EPC) Committee heard details of the Assembly Government's proposed Wales-only regulations under the Act.<sup>49</sup> These will replace the pre-existing

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<sup>45</sup> The full list of the existing pilot centres can be found at [www.wbq.org.uk](http://www.wbq.org.uk)

<sup>46</sup> Quoted from WAG website:

[http://new.wales.gov.uk/topics/educationandskills/education\\_and\\_skills\\_consult/education\\_and\\_skills\\_consult/1255100/?lang=en](http://new.wales.gov.uk/topics/educationandskills/education_and_skills_consult/education_and_skills_consult/1255100/?lang=en)

<sup>47</sup> ELLS Committee, *Policy review of Additional Educational Needs, Phase 3: Transition*, (March 2007) Downloadable from:

[www.wales.gov.uk/documents/cms/2/DocumentsLaid/37B1A02600BF4FD0000436C0000000/a418a2221ff4ec27fb94740522d38822.pdf](http://www.wales.gov.uk/documents/cms/2/DocumentsLaid/37B1A02600BF4FD0000436C0000000/a418a2221ff4ec27fb94740522d38822.pdf)

<sup>48</sup> Interviewed on Post Cyntaf, BBC Radio Cymru, 19 March 2007.

<sup>49</sup> Environment Planning and Countryside Committee Papers, 'The Dog Control Orders (Miscellaneous Provisions) (Wales) Regulations 2007', 25 January 2007.

and bureaucratic system whereby local authorities regulated the control of dogs under the bye-law system.

In February the EPC Committee considered WAG's draft Strategic Action Plan for the Welsh Dairy Industry.<sup>50</sup> Its stated purpose is: 'to identif[y] ways in which all those working in the supply chain, including producers and processors can work in partnership with each other and the Welsh Assembly Government to respond to present challenges in a positive way'. Under the heading 'What would success look like?' the draft strategy states: '(i). Firstly, large, world class processing facilities producing both commodity products and high volumes of added value products' and '(ii). a strong vibrant niche processing sector, with many small scale and on-farm processors trading off niche attributes such as organic, Welsh identity, local provenance, and tradition'. The completed Strategic Action Plan is scheduled for later in 2007.

Also in February, the environment took centre stage with a series of Welsh Assembly Government initiatives to tackle – and adapt to the realities of – global warming. Thus, the environment minister published a consultation on responding to the impacts of unavoidable climate change, and the Enterprise Minister set out proposals for environmentally 'smart' transport choices. According to the First Minister, Welsh policy on environmental protection and sustainability had to be 'meaningful' and 'deliverable'. Notwithstanding this intervention, Rhodri Morgan refused to announce annual targets for Wales on greenhouse gas emissions, saying he 'remained to be convinced' that they would be good for the environment.<sup>51</sup> The opposition parties criticised this statement. For Plaid Cymru, Ieuan Wyn Jones said: 'you have responsibility in your office to lead on this and set a clear objective on this, and I was very disappointed to hear what you said .... you don't have a clear strategy for a way forward and you were excusing the lack of activity by your government in this area'.<sup>52</sup> For the Welsh Conservatives, party leader Nicholas Bourne said that Morgan's views were 'more in line with some of the more extreme thinking of the USA'.<sup>53</sup> In agricultural policy, on 28 March opposition parties combined in a plenary vote of the National Assembly to defeat the Assembly Government. Opposition parties

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<sup>50</sup> WAG, *Draft Strategic Action Plan for the Welsh Dairy Industry*, (2007). Downloadable from: [www.wales.gov.uk/documents/cms/2/EnvironmentPlanningAndCountrysideCommittee/N00000000000000000000000000000009/ba4bc499b34d5a31598fe518bb640d7b.pdf](http://www.wales.gov.uk/documents/cms/2/EnvironmentPlanningAndCountrysideCommittee/N00000000000000000000000000000009/ba4bc499b34d5a31598fe518bb640d7b.pdf)

<sup>51</sup> Anon, 'Wales committed to tackling climate change' *The Western Mail*, (13 February 2007), <http://icwales.icnetwork.co.uk>

<sup>52</sup> Ibid

<sup>53</sup> Ibid

successfully demanded an increase (to £25m per annum) in the overall budget of the *Tir Mynydd* economic aid programme that assists upland farmers.

## 1.6 Equality

In January, and further to the Local Government and Public Services (LGPS) Committee discussion of 4 October 2006, the committee heard from the Assembly Government minister on the Welsh local government performance indicators that have a direct impact on equality. The Committee was informed that these include: the number of pupils receiving a Teacher Assessment in Welsh (first language); the percentage of local authority employees from minority ethnic communities, and the percentage of those declaring that they are disabled under the terms of the Disability Discrimination Act (1995).<sup>54</sup>

In September 2002, the Assembly Government published its '*Black, Minority, Ethnic [BME] Housing Action Plan for Wales*'<sup>55</sup>. An ambitious policy, it required all local authorities in Wales to produce their own BME housing action plans. Despite its comprehensive scope and aims, February saw the publication of the Commission for Racial Equality Wales's (CRE) Report on race, housing and equality. According to the CRE, local authorities are 'guilty of "indirect discrimination" in the way they allocate homes'.<sup>56</sup> Under the Race Relations (Amendment) Act (2000), actions by most public bodies in Wales, Scotland and England that, whilst not deliberate in intent, nevertheless prevent equal outcomes for BME groups/ individuals are illegal. According to a CRE Wales spokesperson: 'if they [local authorities] fail to comply, we could get the chief executive into court, and if they defied a court order there is a theoretical possibility that they could be jailed for contempt of court'.<sup>57</sup>

Under the requirements of the Equality Act 2006, from 6 April 2007 the Welsh Assembly Government and the National Assembly for Wales, in common with most public bodies in Britain, will have a legal duty to promote equality between men and women. Accordingly, on 26 March the Welsh Assembly Government published its Gender Equality Scheme that sets out how it will meet its new statutory duty.<sup>58</sup> This

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<sup>54</sup> Papers of the Local Government & Public Services Committee, 'Report by the Minister for Finance, Local Government and Public Services', 18 January 2007.

<sup>55</sup> WAG, *Black, Ethnic Minority Housing Action Plan for Wales*, (September 2002)

<sup>56</sup> M Shipton, 'Councils guilty of bias over housing', *The Western Mail*, (9 February 2007).

<sup>57</sup> Ibid

<sup>58</sup> WAG, *Gender Equality Scheme*, (March 2007). Downloadable from:  
<http://new.wales.gov.uk/topics/equality/rightsequality/GenderEquality/GES/?lang=en>

new legal imperative has potentially major implications for the way that public policy is made, for it: re-emphasises the need for consultation in the development of policy, encourages the use of impact assessments in relation to any differential impact of policy on women and men, and is likely to see greater use of gender-budgeting (an audit technique that determines the relative spend on women and men respectively in relation to public policy). According to the Assembly Government Equalities Minister 'the real test of our Gender Equality Scheme will be whether we succeed in reducing the barriers to inclusion and make a positive difference to women and men's lives'.<sup>59</sup>

### 1.7 Health and Social Services

In the face of Welsh Conservative and Lib Dem abstentions, the third week of January saw an alliance of Welsh Labour and Plaid Cymru AMs win a vote (39-0) in the National Assembly thereby paving the way to the introduction of the Welsh Government's £23.5m policy proposal to abolish prescription charges in Wales. In essence, this policy debate centred on the relative merits of universal versus targeted social welfare provision. By way of a comparative context, in 2006 prescription charges in Wales decreased from £4 to £3 whereas the cost in England rose to £6.50. Prescriptions policy can be seen as Welsh Labour's implementation of its longstanding vision of, in its own words: 'the creation of a new set of citizenship rights ... which are, as far as possible: [services] free at the point of use; universal, and unconditional'.<sup>60</sup> Yet, according to the Association of the British Pharmaceutical Industry Association Cymru/Wales<sup>61</sup> it is possible that this proposal may lead to more demand for drugs.<sup>62</sup> Moreover, in their view, it 'may lead to a squeeze on the number of innovative medicines coming through'.<sup>63</sup> Also questioning the Welsh government's approach, the Welsh Lib Dems spokesperson Jenny Randerson AM memorably described the policy as: 'free Beecham's Powders for millionaires'. In less colourful terms, the Welsh Conservative leader Nicholas Bourne AM said: 'it was not a terribly good use of resources'.<sup>64</sup>

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<sup>59</sup> WAG Press Release, *Making Real Improvements in Achieving Equality between Men and Women*, (26 March 2007)

<sup>60</sup> Rhodri Morgan's 'Clear Red Water' speech to the National Centre for Public Policy at Swansea University, 11 December 2002

<sup>61</sup> [www.abpi.org.uk/wales/](http://www.abpi.org.uk/wales/)

<sup>62</sup> Quoted in Anon, 'Cynulliad: Presgripsiwn di-dâl', *BBC Cymru'r Byd*, (23 January 2007). "Yn ôl ABPI Cymru sy'n cynrychioli'r diwydiant fferyllo, mae'n bosib y bydd mwy o alw am gyffuriau" [http://news.bbc.co.uk/welsh/hi/newsid\\_6280000/newsid\\_6289700/6289721.stm](http://news.bbc.co.uk/welsh/hi/newsid_6280000/newsid_6289700/6289721.stm)

<sup>63</sup> Quoted in Anon, 'Free prescriptions give "fair play and justice"', *The Western Mail*, (23 January 2007)

<sup>64</sup> Ibid

In January 2003, the National Assembly voted for a ban on smoking in confined public spaces, but it lacked the legislative powers to enforce its will. In 2006, enabling primary legislation gave the Assembly the powers to legislate on the issue. On 30 January 2007 a plenary session voted in favour of Welsh legislation that introduced a complete ban on smoking in all enclosed public places in Wales from 2 April 2007. This development led the health minister to applaud what he called 'the single most important [post-devolution] public health measure'.<sup>65</sup> According to the Welsh Government, to raise awareness of the ban there has been approximately a 50 per cent increase in funding to the All Wales Smoking Cessation Service.<sup>66</sup> Overall, the cost of advertising the smoking ban is estimated at £4m. According to Tory AM Alun Cairns the money could be better spent on new medicines. He reportedly said this would be 'a more effective use of the £4m if health is the genuine motivation of those who support it.'<sup>67</sup>

Following a four month consultation period, at the end of February, the Assembly Government launched its Social Services Strategy for Wales, *Fulfilled Lives, Supportive Communities*.<sup>68</sup> This details plans for social services over the next 10 years. The Strategy focuses on key areas where the Assembly Government asserts reforms are needed, namely: leadership and accountability, commissioning, performance management, partnerships, and the workforce. The implementation programme will commence on 1 April 2008 and take several years to complete. According to the Strategy, effective implementation will depend upon collaborative action by the Assembly Government, local government and NHS Wales – together with service users, the professions, the workforce, service providers and community organisations. According to the Health Minister 'this truly is a strategy for improving the lives of our most vulnerable citizens by helping them remain independent, by supporting them and their carers and protecting them from harm.'<sup>69</sup> The shadow health minister Helen Mary Jones AM (Plaid Cymru) countered that the Strategy amounted to 'little more than a wish list'.<sup>70</sup> Lastly on health policy, and in furtherance of its strategy of developing locally-based healthcare, at the beginning of March the

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<sup>65</sup> WAG Press Release, *Landmark vote as Assembly approves smoke free regulations*, (30 January 2007),

<sup>66</sup> *Ibid.* £1.374 million investment compared with £984,000 in 2006.

<sup>67</sup> T Williams, 'Welsh pub smoking ban from April 2', *The Western Mail* (31 January 2007)

<sup>68</sup> WAG, *Fulfilled Lives, Supportive Communities: A Strategy For Social Services in Wales over the next Decade*, (February 2007). Downloadable from:

[http://new.wales.gov.uk/topics/health/publications/health\\_social\\_care\\_strategies/fulfilledlives/?lang=en](http://new.wales.gov.uk/topics/health/publications/health_social_care_strategies/fulfilledlives/?lang=en)

<sup>69</sup> Quoted in M Brindley, 'Personalised care revolution for social services in next 10 years', *The Western Mail*, (28 February 2007).

<sup>70</sup> S4C, *Newyddion*, 28.February.2007, 7.30pm

Assembly Government's NHS Wales Capital Investment Board approved plans for a new £64m community hospital in Cynon Valley.

## 1.8 Local Government and Public Services

Over the past quarter, much of the policy development in the Local Government and Public Services portfolio has centred upon ongoing restructuring aimed at partnership working and the pursuit of more effective local service delivery.

In 2005 the Local Government and Public Services (LGPS) Committee published its report on the Public Services Regulation and Inspection Regime in Wales. In mid-February 2007 the committee received a ministerial update on the implementation of the Welsh Assembly Government's response to this report.<sup>71</sup> According to the minister, subsequent policy work by WAG – including the Beecham Review (2006)<sup>72</sup> and 'Making the Connections' (2004)<sup>73</sup> – impact on a number of the report's key recommendations. For example the report called for 'good practice in sharing information amongst regulating and inspecting bodies'. In response, the Welsh government cites the case of 'the integration of CSIW [Care Standards Inspectorate Wales] and SSIW [Social Services Inspectorate Wales] from April 2007 [which it asserts] will deliver a range of joint working benefits... [including] a single reference point for all users and stakeholders, improved analysis of patterns and trends, greater capacity to provide high quality advice and promote qualitative service improvement and more integrated, targeted, streamlined processes combined with closer co-operation with other regulators and inspectors'.

February also saw the LGPS Committee receive an update on the Assembly Government's response to another of its policy reviews – the 2004 Inquiry into the Operation of New Political Management Structures in Local Government.<sup>74</sup> According to the local government minister several of the committee's recommendations were addressed in the statutory 'Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements' that was issued in July 2006.<sup>75</sup>

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<sup>71</sup> LGPS Committee, LGPS(2) 01-07: Paper 01 : Minister's Report , (18 January 2007)

<sup>72</sup> 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), Downloadable from:

[http://new.wales.gov.uk/docrepos/40382/403823121/40382213/528962/English\\_Report.pdf?lang=en](http://new.wales.gov.uk/docrepos/40382/403823121/40382213/528962/English_Report.pdf?lang=en)

<sup>73</sup> WAG, *Making the Connections: Delivering Better Services in Wales*, (October 2004). Downloadable from: <http://new.wales.gov.uk/about/strategy/makingtheconnections/?lang=en>

<sup>74</sup> See Papers of the Local Government and Public Services Committee, 28 April 2004.

<sup>75</sup> See Papers of the Local Government and Public Services Committee, 2 July 2006.



The original remit of the review was ‘to consider the issues surrounding youth homelessness in Wales; examine the provision of services for young homeless people by local authorities and the voluntary sector, (including the identification of good practice); explore the role of local authorities in applying relevant legislation to youth homelessness issues; and, to make recommendations’.<sup>81</sup> One of the review’s principal recommendations was that ‘the Welsh Assembly Government should ensure, through its homelessness strategy – and by monitoring the level and extent of service provision – that the extent and quality of service provided to young homeless people is consistent across Wales and that it is available where it is needed’.<sup>82</sup> Contributing to the committee discussion of the review, Welsh Labour AM Sandy Mewies highlighted the fact ‘that the Welsh Assembly Government would have to look very closely at decisions where young people are said to be “intentionally homeless”’ – for, he advised the committee, abuse or other circumstances mean that some have ‘very good reasons for being homeless’ – yet fall within the legal definition of ‘intentionally homeless’ (and are therefore ineligible for emergency state aid ineligible for emergency state aid).<sup>83</sup> Overall, the committee debate on the policy review illustrates the complexity of policy-making in the absence of primary legislative powers (for example, Janice Gregory AM (Labour) observed, ‘we cannot alter primary legislation ... the Welsh Assembly Government should explore with colleagues in Westminster gaining similar powers to Scotland for [developing policy in respect to those deemed to be] “intentionally homelessness”’. Similarly, Leanne Wood AM (Plaid Cymru) stated that trying to amend existing policy was difficult because ‘this gets into the sticky area of legislation’.<sup>84</sup> When subsequently debated in a plenary meeting of the Assembly Mark Isherwood AM (Conservative) stated: ‘the [SJR Committee’s] report is right to state that, at present, ‘there appears to be no co-ordinated approach to identifying these young people as potentially vulnerable before they present as homeless’. The Assembly Government welcomed the review.<sup>85</sup> Its response is awaited later in the year.

With regard to the under-reporting of sexual violence by both female and male victims, February saw the announcement of Assembly Government funding for five Sexual Assault Referral Centres (SARCs). These were described by the Social Justice Minister as: ‘one-stop-shops where victims of rape and sexual assault can

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<sup>81</sup> Ibid

<sup>82</sup> Ibid

<sup>83</sup> SJR Committee Transcript 18 January 2007,

<sup>84</sup> Ibid

<sup>85</sup> Record of Proceedings, Plenary Session, 7 February 2007

receive counselling and medical attention'.<sup>86</sup> In order to improve the way in which such crimes are investigated, victims will also be offered access to forensic examination to facilitate the provision of evidence to the police on an anonymous basis. The latter is a further example of the manner in which Assembly Government policy interrelates to non-devolved criminal justice matters.

February also saw the Minister for Social Justice and Regeneration launch the *National Strategic Framework for Community Development in Wales*.<sup>87</sup> According to WAG, 'community development is a process of change whereby people work together around common issues and aspirations in ways that enhance learning, encourage participation, and support the development of a culture of informed and accountable decision making'. The Minister for Social Justice and Regeneration asserted that: 'this Framework shows how co-operation and flexibility are essential in delivering change and I urge all individuals to make use of it in any future developments. It is vital that strong community development takes place to ensure long-term regeneration is successful in all our communities'.<sup>88</sup>

### 1.10 Conclusions

The creation of the National Assembly in 1999 was predicated upon promoting an inclusive and participatory mode of governance. The past quarter evidenced ongoing policy implementation in the wake of 'Making the Connections'<sup>89</sup> and the Beecham Review<sup>90</sup> both of which reasserted the need to develop effective services which, at a sub-national level, are citizen-centred and delivered through partnerships. Yet this continues to be a contested policy area with the official opposition calling for alternative approaches to achieve this aim. The outcome of the Assembly elections in May will determine the future trajectory of this key issue for citizen participation, local decision-making and service delivery.

Elsewhere, the last few months have again illustrated the complexity of policy making in the absence of primary legislative powers – a notable example being the Social

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<sup>86</sup> WAG Press Release, *Victims of sexual violence to benefit from Assembly Government funding*, 6 February 2007.

<sup>87</sup> WAG, *National Strategic Framework for Community Development in Wales*, (February 2007).

Downloadable From: <http://new.wales.gov.uk/topics/socialjustice/publications/?lang=en>

<sup>88</sup> WAG Press Release, *Minister launches new framework for Community Development in Wales*, 16 February 2007.

<sup>89</sup> WAG, *Making the Connections*. Downloadable from:

<http://new.wales.gov.uk/about/strategy/makingtheconnections/?lang=en>

<sup>90</sup> See for example: LGPS Committee, LGPS (2)-17-06 (p.2) Welsh Assembly Government Response to the Beecham Review of Local Service Delivery, 6 December 2006.

Justice and Regeneration Committee's debate on the Assembly Government's Youth Homeless Strategy. In addition, and again underlining a theme highlighted in earlier Devolution Monitoring Reports, WAG policy increasingly impacts upon the reserved area of criminal justice – this time in respect of WAG funding for five Sexual Assault Referral Centres (SARCs). The Welsh elections in May 2007 offer the prospect of potential discontinuities in the policy agenda should the devolved executive take on a different political complexion. Regardless of the outcome, the evidence of party election manifestos available at the time of writing suggests that the third Assembly will have a policy programme that, *inter alia*, may place a greater emphasis than witnessed hitherto on areas such as child poverty, childcare, sustainable development, and affordable housing.

## 2. The Legislative Process

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### 2.1 Primary Legislation

Since the last report in December there have been no acts passed giving powers to the Assembly. Of the bills currently before Parliament eight give powers to the Assembly in relation to Wales:

**Public Bills:**

Local Government and Public Involvement in Health Bill

Sustainable Communities Bill

Provision of Palliative Care Bill

Concessionary Bus Travel Bill

Disabled Children (Family Support) Bill

Tribunals, Courts and Enforcement Bill

Bilingual Juries (Wales) Bill

Land Use (Gardens Protection etc) Bill

**Private Bills:**

None.

It is interesting to note that some bills continue to provide for powers under the old system of conferring functions on 'the Assembly' without taking into account the coming into force of GOWA 2006, while others have already taken on board the legal division of Assembly and Assembly Government. In these cases, the bills vest powers directly in the Welsh Ministers with affirmative and negative resolution powers given to the Assembly in relation to statutory instruments.

**Bills vesting powers in the Welsh Ministers:**

Concessionary Bus Travel Bill

Tribunals, Courts and Enforcement Bill

Provision of Palliative Care Bill

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Two bills offer good examples of comprehensive ‘Wales clauses’ in primary legislation. This is what had been missing thus far, and in future this should be followed through systematically to guarantee a better understanding of what is devolved in relation to Wales.

**The Sustainable Communities Bill**<sup>92</sup> was published after its introduction on 8 January, and is a good example of how to devolve all the powers in an act to the Assembly, with exceptions, in one unique section. Drafting in this way removes the necessity to read through the entire act to ascertain the powers of the Assembly.

#### **9 Wales**

In its application to Wales, this Act shall have effect with these modifications—

(a) **for each reference to the Secretary of State there shall be substituted a reference to the National Assembly for Wales;**

(b) sections 2(7) (8) and (9) shall be omitted;

(c) in section 2(11) for the words “lay before each House of Parliament” is substituted the word “publish”;

and

(d) in section 7(5) for the words “lay the report referred to in subsection (4) before both Houses of Parliament” are substituted the words “publish the report”.

The second bill is the **Provision of Palliative Care Bill**.<sup>93</sup> Its scope is more limited (i.e. all the powers are not devolved) which demonstrates that such sections can accommodate any extent of powers to be devolved. This example even shows how it could apply to both law making bodies: the Welsh Ministers and the Assembly itself.

#### **8 Wales**

In its application to Wales—

(a) **sections 1, 2, 3 and 4 of this Act shall have effect as if for each reference to the Secretary of State there were substituted a reference to Welsh Ministers;** and

(b) **section 3 shall have effect as if for each reference to regulations there were substituted a reference to Assembly Measures.**

### **2.1.1 New Measure-Making Matters**

The **Local Government and Public Involvement in Health Bill** adds directly to the list of matters for which the Assembly can pass Measures without using an Order in Council in Schedule 5 to GOWA 2006. This Bill follows on from the Local

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<sup>92</sup> [www.publications.parliament.uk/pa/pabills/200607/sustainable\\_communities.htm](http://www.publications.parliament.uk/pa/pabills/200607/sustainable_communities.htm)

<sup>93</sup> [www.publications.parliament.uk/pa/cm200607/cmbills/040/2007040.pdf](http://www.publications.parliament.uk/pa/cm200607/cmbills/040/2007040.pdf)

Government White Paper of 2005, *Strong and Prosperous Communities*, and was recently laid before Parliament.<sup>94</sup>

Part 12 – Powers of National Assembly for Wales – Clause 165 and Schedule 14 follow the precedent of the Further Education and Training Bill 2006, which added matters relating to Further Education in the Field 5 Education. It does so by adding five new matters in respect of the field of Local Government under which the Assembly will be able to make Measures. An extract is provided as follows:

2 In Part 1, after the heading “Field 12: local government” insert—

**Matter 12.1**

Provision for and in connection with—

- (a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (b) the establishment of councils for new principal areas and the abolition of existing principal councils.

“Principal area” means a county borough or a county in Wales, and “principal council” means a council for a principal area.

**Matter 12.2**

Provision for and in connection with—

- (a) the procedure for the making and coming into force of byelaws,
- and
- (b) the enforcement of byelaws.

“Byelaws” means those of a class which may be confirmed by the Welsh Ministers (but the provision which may be made includes provision to remove a requirement of confirmation).

**Matter 12.3**

Any of the following—

- (a) the principles which are to govern the conduct of members of relevant authorities,
- (b) codes of conduct for such members,
- (c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),

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<sup>94</sup> [www.publications.parliament.uk/pa/cm200607/cmbills/016/07016.vi-ix.html](http://www.publications.parliament.uk/pa/cm200607/cmbills/016/07016.vi-ix.html)

- (d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct,
  - including in particular—
    - (i) the investigation and adjudication of such allegations and reports on the outcome of investigations,
    - (ii) the action that may be taken where breaches are found to have occurred,
- (e) codes of conduct for employees of relevant authorities.

For the purposes of this matter—

“relevant authority” has the same meaning as in Part 3 of the Local Government Act 2000, except that other than in paragraph (d) it does not include a police authority,

“member” includes a co-opted member within the meaning of that Part.

The wording of such powers might be disappointing because they do not amount to concise enabling powers as was envisaged in the White Paper 2005, such as the example of an Order in Council relating to ‘Welfare and education of Children’. They are far too detailed and too long to reflect what was expected from the White Paper 2005 and Schedule 8 to GOWA 2006. The main concern is that they continue to be drafted in terms of the executive powers given under the same legislation to the Secretary of State as regards England and then translated into legislative powers. It is suggested that they should be drafted differently to reflect the concept of the Assembly being a democratic body elected with the ability to pass primary legislation, which is by nature different from executive functions.

This raises the questions of how many such acts there will be per year giving law making powers to the Assembly, and of what the balance will be between such acts and Orders in Council, which are the other vehicle for enhancing the legislative competence of the Assembly. If there is a continuous stream of such acts each year, will Orders in Council only therefore be initiated by Assembly back-benchers?

## **2.2 Conversion of existing Framework powers**

Following the 2005 *Better Governance for Wales* White Paper, the government began to insert into certain bills executive ‘framework powers’, for the Assembly, which are wider than the classic specific executive powers used since 1999 to transfer functions to Wales. With the Government of Wales Act 2006 about to come

into effect, the government has begun to use a transitional procedure under the 2006 Act to convert existing framework powers into legislative powers. If this step were not taken, these powers would automatically become executive powers of the Welsh Ministers under Schedule 11 of GOWA 2006 rather than law making powers of the Assembly itself. It was always intended that such executive framework powers would only apply in the interim period between the White Paper in June 2005 and the election of the new quasi-parliamentary Assembly in May 2007.

By means of an Order in Council under section 162 of and paragraph 31(2) and (4) of Schedule 11 to GOWA 2006, the framework powers granted by Section 17 of the NHS Redress Act 2006 and clauses 178 and 179 of the Education and Inspection Act 2006 are to be converted into legislative powers of the Assembly. Specifically these framework powers will become new 'matters' listed under Fields 9 and 5 respectively of Schedule 5 to GOWA 2006, as shown below. (A draft of such an Order in Council entitled **National Assembly for Wales (Conversion of Framework Powers) (Legislative Competence) Order 2007**<sup>95</sup> has been published by the Assembly Government.)

#### Field 9 – Health and Health Services

##### *“Matter 9.1*

Provision for and in connection with the provision of redress (otherwise than by recourse to civil proceedings) in circumstances in which liability in tort arises, in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales, 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 connection with the diagnosis of illness, or the care or treatment of any patient.

##### *Interpretation—*

“the health service” means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006 (c.XXX) and under section 1(1) of the National Health Service Act 2006 (c.XXX).

“illness” includes mental disorder and injury or disability requiring medical or dental treatment or nursing.

“mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind.

“patient” includes a woman who is pregnant or breast-feeding or who has recently given birth.

“personal injury” includes any disease and any impairment of a person's physical or mental health.”.

#### Field 5 – Education and Training

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<sup>95</sup> Available at

[www.wales.gov.uk/cms/2/EducationLifelongLearningAndSkillsCommittee/AgendasPapersTranscripts/0c7881b8b84463fc64fe118204888dc9.pdf](http://www.wales.gov.uk/cms/2/EducationLifelongLearningAndSkillsCommittee/AgendasPapersTranscripts/0c7881b8b84463fc64fe118204888dc9.pdf)

*“Matter 5.1*

Provision for and in connection with the categories of school that may be maintained by local education authorities, the establishment and discontinuance of such schools, their change from one category to another and their alteration in other respects.

*Matter 5.2*

Provision for and in connection with the admission of pupils to schools maintained by local education authorities.

*Matter 5.3*

Provision for and in connection with the curriculum in schools maintained by local education authorities.

*Matter 5.4*

Provision for and in connection with school attendance, the behaviour of pupils at school, school discipline and the exclusion of pupils from school (including the duties of parents in connection with those matters).

*Matter 5.5*

Provision for and in connection with the making of arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education.

*Matter 5.6*

Provision for and in connection with entitlement to primary, secondary and further education and to training.

*Matter 5.7*

Provision for and in connection with the provision of services to encourage, enable or assist people to participate effectively in education or training or to take advantage of opportunities for employment or to participate effectively in the life of their communities.

*Matter 5.8*

Provision for and in connection with the provision of food and drink on school premises or provided for children at a place where they receive education or childcare.

*Matter 5.9*

Provision for and in connection with the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it.

*Exceptions—*

Regulation of use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.

Insurance of motor vehicles.

Road traffic offences.

Driver licensing.

Driving instruction.

Drivers' hours.

Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.

Public service vehicle operator licensing.

Registration of local bus services.

Provision and regulation of railway services.

*Interpretation—*

Expressions used in this Field and in the Education Act 1996 (c.56) have the same meaning in this Field as in that Act.”

Unlike the Further Education and Local Government Bills which depend on their becoming Acts before the Schedule 5 matters will take effect, probably later in the summer, in this case the provisions come into force on 3 May 2007. This means that as soon as the Assembly returns and without having to bid for an Order in Council, it will be able to make wide ranging laws in relation to Education and Health.

The same concerns that apply to the Local Government Bill apply to the wording of matters relating to primary and secondary education and health redress. The wording is far too precise, defining narrowly the legislative limits of the Assembly. It is notable that the exceptions to the matters are drafted in better terms than the devolved matters themselves. Is there really a need for interpretation sections in the list of powers?

### **2.3 Subordinate Legislation applying in Wales**

Since the last report around 1000 general SIs applying either to England only, to England and Wales, or to Wales only, have been published on the OPSI website from SI 2007/1 to 2007/116. They are all published on the Office of Public Sector Information website at [www.opsi.gov.uk/](http://www.opsi.gov.uk/).

#### **2.3.1 General Statutory Instruments made by the Assembly**

Of these 1000 SIs, the Assembly has only made 56 general SIs since our last report. There are also 13 SIs made with central government's involvement (see below). Of these Assembly SIs, around a half of the subordinate legislation deals with children and the rest deals with health, the environment, food and housing.

One of the SIs: No. 374 (W.34) The National Assembly for Wales (Date of First Meeting of the Assembly Constituted by the Government of Wales Act 2006) Order 2007 fixes the date of the first meeting of the Third Assembly as 9 May 2007.

The Assembly also made two commencement orders among the 28 SIs:

- No. 305 (W.24)(C.12) The Housing Act 2004 (Commencement No. 4) (Wales) Order 2007
- No. 204 (W.18) (C.9) The Health Act 2006 (Commencement No. 1 and Transitional Provisions) (Wales) Order 2007

### **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 not made by Statutory Instrument on their websites. The first complete year has been published and problems have been identified.

The website shows only 66 non-SI instruments made in 2006: this number is surprisingly low. From his experience in the Welsh Office as a Government lawyer, David Lambert, editor of Wales Legislation Online, had expected at least the same number of non-SI and local SIs as general SIs.

The website shows only one piece of non-SI subordinate legislation made in the whole year of 2006 in the field of local government. This is definitely a sign of a problem within WAG in terms of identifying and publishing non-SI legislation. The website also shows more such legislation made in the field of health than in highways and transport taken together. This might not show the true picture. The 2007 section of the website show only 9 non-SI pieces of subordinate legislation having been made since the 1 January 2007 by only four Ministerial Assembly Departments: Environment, Health, Housing and Transport.

Evidently, there must be concerns that not all the subordinate legislation which is not made by SI is being captured and published on WAG's website. The Law Society and Cardiff Law School have also brought WAG's attention to the absence of any comprehensive public list of non-SI subordinate legislation made between July 1999 and December 2005. WAG has appointed a specific person to tackle the issue of the backlog of legislation made between 1999 and 2006. A set of recommendations should be published later on this year. This decision is welcomed and Cardiff Law School through Wales Legislation Online will collaborate in this process.

### **2.3.3 Circulars**

WAG's website is now showing circulars at

<http://new.wales.gov.uk/legislation/legislationinforce/?lang=en>

They appear by individual years and by subject. That they are now available on the web is another important development to note. They go back to the year 2001.

### **2.3.4 Subordinate Legislation involving Central Government and the Assembly**

There were 13 general SIs which have been made by the Assembly and central government acting in various ways 'together'.

### **2.3.5 Central Government Subordinate Legislation applying to Wales**

Since the last report, central government has made 67 general SIs under acts which also give some powers in other provisions in the acts to the Assembly. This is more than the number of general SIs made by the Assembly in the same period. There are also other acts which apply to England and Wales and which do not give any powers to the Assembly in relation to Wales as they deal with retained functions. There were 195 SIs made under such acts since January: many concerning tax.

Of the SIs made by central government under retained parts of Acts giving powers to the Assembly, there is one new EU Designation Order which designates the Assembly as the authority responsible for implementing EU directives in relation to the prevention and remedying of land contamination:

- No. 193 The European Communities (Designation) Order 2007

The SIs mainly concern taxation issues and the employment of persons in devolved areas. These are generally retained matters, see for example:

- No. 289 The Pharmacists and Pharmacy Technicians Order 2007
- No. 195 The Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2007
- No. 171 The Returning Officers (Parliamentary Constituencies) (Wales) Order 2007
- No. 153 (C.7) The Emergency Workers (Obstruction) Act 2006 (Commencement) Order 2007
- No. 109 The Civil Partnership (Employee Share Ownership Plans) Order 2007

Other SIs concern gambling, the Assembly's elections, the Technology Strategy. Several are commencement orders.<sup>96</sup>

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<sup>96</sup> SIs 406(C.18); 309(C.13); 237(C.11); 153 (C.7); 74 (C.3) and 62(C.2).

## 2.4 Other Assembly matters

### 2.4.1 The Standing Orders Committee

The Committee on Standing Orders met on the 22 January 2007 to discuss the final draft of the Assembly's new Standing Orders which include the procedures for making petitions and Assembly Measures. The committee published its report, setting out proposed new standing orders for consideration by plenary, on 31 January 2007.<sup>97</sup>

The report on the Standing Orders was debated on 7 February 2007 and was accepted with no opposition at all, with 51 votes in favour, no abstentions or votes against. No major concerns were raised following publication of the committee's papers on the legislative provisions.

### 2.4.2 The Shadow Commission

The Shadow Commission has met on two occasions since the last review report.<sup>98</sup> The following extract from the minutes of the meeting on 16 January is very interesting and self explanatory:

#### 5. Legal Staff

5.1 Following the meeting on the 5th December Peter Jones presented a further paper on the legal support required for the Assembly Commission from May 2007. The difficulty of providing an accurate prediction of the workload was noted, and that as it would take considerable time to recruit or secure legal support then the decision surrounding the numbers of legal support required should not be left until after the elections. Peter explained that the format of the paper had been set out as possible scenarios linked to Assembly Measures, and had been set out to give a degree of flexibility.

Scenario one was the low initial take-up option that envisaged six Orders in Council and six Measures between May 2007 and May 2008, rising to eight and nine respectively by May 2008 to May 2009. 2 additional lawyers would be required by May 2007. The total number of Assembly lawyers required by 2009 would then be seven. Peter explained the risks of this option, such as the inability to recruit lawyers and insufficient resources leading to reputational risk. The risks could be managed by negotiating call-off contracts or seconding staff from WAG.

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<sup>97</sup> Committee on Standing Orders, *Report of the Committee on Standing Orders: Standing Orders of the National Assembly for Wales*, (January 2007). Downloadable from: [www.wales.gov.uk/cms/2/DocumentsLaid/37B1A026000BF4FD0000436C0000000/23869e1c4a8e1c80d44933cac4bc6115.pdf](http://www.wales.gov.uk/cms/2/DocumentsLaid/37B1A026000BF4FD0000436C0000000/23869e1c4a8e1c80d44933cac4bc6115.pdf)

<sup>98</sup> The minutes of each meeting of the Shadow Commission can be found at: [www.wales.gov.uk/keypubassemshadowcomm/minutes-e.htm](http://www.wales.gov.uk/keypubassemshadowcomm/minutes-e.htm)

Scenario two was the medium initial take-up option that envisaged eight Orders in Council and nine measures between May 2007 and May 2008, rising to ten and twelve respectively by May 2008 to May 2009. 3 additional lawyers would be required by May 2007. The total number of Assembly lawyers would be eight by 2009. The risks by choosing this option would be insufficient in-house resources, staff not fully employed as demand is lower than predicted and therefore becoming disillusioned. The risks could be managed by negotiating either call-off contracts or an exchange with WAG Legal Services.

Scenario three was the high initial take-up option that envisaged ten Orders in Council and fifteen measures between May 2007 and May 2008, rising to twelve and eighteen respectively by May 2008 to May 2009. 5 additional lawyers would be required by May 2007. The total number of Assembly lawyers would be nine by 2009. The risks by choosing this option would be insufficient in-house resources, staff not fully employed as demand is lower than predicted and therefore becoming disillusioned. The Assembly Commission would face public criticism of the costs involved. The risks could be managed by seconding staff elsewhere and providing training to enhance further drafting skills.

5.2 Peter explained that APS Legal Services were proposing to employ five further lawyers by May 2008 at a cost of £303,000. Call-off contracts should be put into place for 2007-08. Suitable secondments would also be arranged with WAG Legal Services whilst further support would be obtained by recruiting paralegals and trainee solicitors. It was noted that the position would be reviewed in July and December 2007, March 2008, and thereafter when needed.

5.3 The Shadow Commission thanked Peter for the clear paper, and emphasised the importance of considering the implications and risks in all options before any decision was made. It was noted that there are at present about 70 lawyers in WAG, which provides plenty of flexibility should the need for the secondment of WAG lawyers to the Assembly Commission be required. Peter explained that WAG are about to commence a recruitment exercise for lawyers, and that WAG are content for APS to be part of this. The Shadow Commission emphasised the importance of appointing policy officials who would assist Committees and Members with Bills, a situation similar to Scotland that has established a Bills Unit for this purpose. Dianne Bevan explained that use could be made of Committee staff that had both the resources and flexibility to apply skills in different areas.

5.4 The Shadow Commission expressed a preference for Scenario Two. The Shadow Commission agreed that it would be better to have too many lawyers as opposed to insufficient numbers initially.

5.5 The Shadow Commission agreed that:

- \* Scenario Two should be taken forward;
- \* That the opportunity for shared recruitment of lawyers with WAG should be taken forward;
- \* The recruitment of paralegals should be taken forward.

## **2.5 Overview of the legislative process during the second assembly**

### **2.5.1 From executive devolution to legislative devolution**

The second Assembly of 2003-2007 has paved the way for the third, which will be totally different to its predecessors in terms of architecture and powers. This second Assembly therefore marked a quiet transition from a system that failed in some aspects to make law answer the particular legislative needs of Wales, to the new system of legislative devolution with separate executive, which will have to be tested in practice.

From May, the kind of powers devolved to Wales will change considerably: there are now both executive and legislative powers devolved to Wales and to two separate bodies.

There are many other conclusions that can be drawn from the experience of the second Assembly.

### **2.5.2 Assembly involvement in Parliament legislative procedure – or lack of it**

The Assembly has still not been involved in the Parliamentary legislative process except as regards Wales-only legislation, and even then this has not always been so, as was seen with the Government of Wales Bill 2006, which involved WAG but not the Assembly in discussions with the UK Parliament.

This is despite the fact that:

48. In 2004 the House of Commons and the National Assembly for Wales each agreed procedures to allow for formal joint working between the Committee and committees of the National Assembly on issues of mutual interest. This procedure, known as 'reciprocal enlargement', allows the Committee to invite Assembly Members to attend and participate in the Committee's proceedings (but not to vote), and for the National Assembly's committees to invite members of the Welsh Affairs Committee to do likewise. On 13 July 2005 the House amended its Standing Orders 35 so that joint working could be a permanent feature of our work.

49. During the 2005-06 Session the opportunity did not arise to work jointly with the National Assembly for Wales, but we look forward to continuing this beneficial working arrangement in the future.<sup>99</sup>

This issue remains and questions are raised especially because the Government of Wales Bill, of all things, was not perceived as an opportunity for such a joint meeting!

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<sup>99</sup> Welsh Affairs Select Committee, *First Report 2006-07: Work of the Committee in 2005-06*, (26 February 2007) (HC 291)  
[www.publications.parliament.uk/pa/cm200607/cmselect/cmwelaf/291/291.pdf](http://www.publications.parliament.uk/pa/cm200607/cmselect/cmwelaf/291/291.pdf)

In the evidence taken on the 17 December 2006 by the Welsh Affairs Committee during its inquiry on Orders in Council<sup>100</sup> it was clearly highlighted that no procedures or conventions are yet in place to allow the Assembly to have timely scrutiny of Parliamentary Bills which will give Measure-making powers to the Assembly:

'Q69 Chairman: (Through an Interpreter) There is only one question remaining and it is the final question and it involves timetabling. To what extent do you envisage that there will need to be special arrangements? Do you envisage arrangements to co-ordinate the timetable of pre-legislative scrutiny by the Assembly and by Parliament?

Lord Elis-Thomas: (Through an Interpreter) I think this is something that I would like to consider further, Chairman, but in principle I would say that we do need to have a number of our staff in the Commission to be collaborating with officials here in Westminster in both Houses, and that does mean collaboration with those with responsibility for organising business on the Government side – on both Governments' sides – so that we can make the best possible use of time and the best possible use of parliamentary windows here. I listened to the earlier discussion and it is important that these orders are given due respect, and if there are people who are not supportive of devolution – as most of us are here in this room this afternoon and the gentleman after whom this room was named – it is important that people have the opportunity to feel that this does not undermine the United Kingdom. The way to do that is to show clearly that we can have procedures in place whereby what is contained within this Act can work on a practical and reasonable level, and that is why it is such an important question, but that is all to do with timetables of course. The window is here so that orders may be discussed. You could carry out the preparatory work required in pre-legislative scrutiny with our Committee and that is the means by which we could show people that it is possible for this new system to work up until the referendum is carried out – and neither you nor I, Chairman, know the date of that referendum as of yet.<sup>101</sup>

However the Welsh Affairs Committee First Report 2006-2007 clearly states:

49. During the 2005-06 Session the opportunity did not arise to work jointly with the National Assembly for Wales, but we look forward to continuing this beneficial working arrangement in the future. In particular, formal joint working is expected to form part of the standard scrutiny process for the examination of Orders in Council introduced under the Government of Wales Act 2006.

#### **Other links with the National Assembly for Wales**

50. Wherever possible, we consult with our colleagues at the National Assembly. We continued this practice during 2005-06. We took formal evidence from the Rt Hon Lord Elis-Thomas AM, National Assembly Presiding Officer and Rt Hon Rhodri Morgan AM, First Minister for Wales as part of our inquiry into *The Government White Paper: Better Governance for Wales*. We took evidence twice from Andrew Davies AM, Minister for Enterprise, Innovation and Networks in relation to two inquiries,

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<sup>100</sup> Available at [www.parliament.uk/parliamentary\\_committees/welsh\\_affairs\\_committee/welsh\\_affairs\\_committee\\_inquiry\\_page\\_orders\\_in\\_council.cfm](http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/welsh_affairs_committee_inquiry_page_orders_in_council.cfm)

<sup>101</sup> Ibid

*Energy in Wales and Future of RAF St Athan.* Evidence was also taken from Jane Hutt AM, David Melding AM and Jennifer Randerson AM in their representative capacity as the National Assembly for Wales All Party Military Academy Group as part of our inquiry into the future of RAF St Athan.

There is still no clear established involvement of the Assembly in the legislative process at Westminster even if a framework Bill giving the Assembly powers is under discussion. The Assembly might be involved in the scrutiny of draft Orders in Council but not in Bills adding directly to Schedule 5... Is this real progress?

### **2.5.3 *New website and improvement of information provision***

WAG has created its own website which was launched in 2006. It is considered superior to that of the Assembly, and has delivered significant improvements to the openness and transparency of devolution. Both WAG and APS are currently working on further improving their websites.

### **2.5.4 *The issue of non-SI legislation tackled***

Since May 2006, the Assembly non-SI subordinate legislation can be found on the WAG and APS websites. This is a major step forward for Wales, which now provides a better service than Scotland and Whitehall where there is no single comprehensive place to find such legislation. This development should demonstrate the wide variety of non-SI legislation made, highlighting to the general public and practitioners the range of legislative powers the Assembly already has.

### **2.5.5 *Drafting of Assembly's executive powers in Acts during the second Assembly***

After 8 years of devolution there is still no established drafting practice when it comes to referring to the Assembly in primary legislation. It still depends on each particular Act and the particular Parliamentary Counsel drafting the bill. The Assembly is more often referred to as 'the appropriate national authority' which means the Secretary of State in England and the Assembly in relation to Wales. This is a step forward but no great victory as it is not systematic and only applies to executive powers.

Yet another novel way of drafting for the Assembly will have to be created for the devolution of legislative powers. See discussion below on the Assembly powers post 2007.

There is still no sign of a custom of having one unique central section for Wales in England and Wales Acts. There was such one precedent in an Act and now two very good precedents in two new Bills (as discussed above) which shows that it is perfectly possible to have one unique comprehensive section in primary legislation which deals with all the powers which are applicable in the Act to Wales and which could also work in the new devolution settlement. Unfortunately such precedents are not followed through. One still needs to read through whole Acts to ascertain who does what in Wales or which section applies or not to Wales and if it does apply to Wales whether the power is devolved or not.

It is to be hoped that the precedent set by the Provision of Palliative Care Bill will be adopted as a new drafting custom as it does the job superbly both for executive and legislative powers vested in both Welsh Ministers and the Assembly.

### **2.5.6 Powers**

Even if 2006 has been particularly prolific and impressive in the amount of powers which have been vested in the Assembly, one can wonder if this was the beginning of a new trend or merely the last gasp before a halt.

Over the second Assembly session as a whole, there has been relatively little Wales-only legislation. There were very few powers granted to the Assembly that differed significantly to powers given to a Secretary of State in relation to England. This is probably the greatest failure of the concept of executive devolution. The only important exceptions were the framework powers which will be converted into legislative powers. The introduction of Measures under the new settlement should result in Welsh Ministers having different powers to UK ministers as they will not receive their powers from the same body.

## **2.6 Conclusion**

The second Assembly has followed in the steps of the first, inheriting many of the problems encountered in the 1999-2003 term. The last Assembly has in fact provided the means for a drastic change in the Welsh devolution settlement because it could not improve substantially the Assembly's legislative powers without legislative devolution.

### **2.6.1 What will the third Assembly bring?**

The new settlement which will come into force with GOWA 2006 raises many questions which should gradually find answers in the third Assembly. Here are some of the most important.

### **2.6.2 The emergence of new conventions between Westminster and the Assembly?**

Are Measures meant to replace Acts of Parliament giving powers to the Welsh Ministers? What is the new role of Westminster? Will Westminster refrain from passing any Act in devolved fields, as the precedent of the Marine Bill seems to imply? Will there be a Sewel type convention where Westminster/central government will ask the consent of the Assembly before legislating for Wales?

What will be the role of Parliament?

- To facilitate the Assembly's Measure-making ability
- To only make primary legislation for Wales in reserved areas
- Or to continue to legislate in some aspects of devolved fields by giving powers directly to Welsh Ministers

### **2.6.3 Different drafting: What will Acts of Parliament look like?**

There will be different styles, different sections applying to England only and Wales only, sections in the English only but others – if affected by Measures – possibly in English and Welsh. There will be sections repealed for England only or for Wales only, or amended for England only or for Wales only. We have seen England-only changes implying the need for changes to Welsh statute sections to keep coherence.

### **2.6.4 What will WAG's powers look like?**

There will be two main sources of WAG's powers: Acts and Measures. As Measures will be made differently to Acts, because there will be no Parliamentary Counsel in Wales and the legislation will be bilingual, WAG's powers will be drafted differently. For the foreseeable future the Welsh Executive will continue to receive powers directly from England and Wales Acts as well as from Assembly Measures

### **2.6.5 Will all WAG's powers under Assembly Measures be exercisable only by SI?**

To what extent will the Assembly keep control over subordinate legislation?

To what extent will the Assembly call the Executive to question?

Will all subordinate legislation made by WAG through SIs be subject to affirmative resolution in the Assembly?

### **2.6.6 How many sources of Measure-making powers will exist?**

It was implied by the *Better Governance for Wales* White Paper that there would only be one source conferring Assembly Measure-making powers – namely the Order in Council procedure – but by the end of 2006 three different sources had been used. The conversion of current framework powers into legislative powers should be a one-off and part of the transitional provisions in the 2006 Act. Therefore the Assembly would be left with two main sources of powers to make Measures: powers in Acts and powers in Orders in Council. It is not known whether one of the two methods will be used more than the other or if the Act route only a current phenomenon while waiting for the new Order in Council procedure to be effective from May 2007

### **2.6.7 The growing amount of England only legislation**

In parallel to the Assembly getting powers to make Measures, there will be a growing amount of legislation applying to England only as the recent examples of the Marine Bill and the Local Government Bill show.

### **2.6.8 The readiness of WAG and the Assembly for the post May era**

New staff have been appointed by WAG to draft Measures. The Standing Orders have been voted on in the Assembly and the Shadow Commission is in the process of appointing staff. Training has started both in WAG internally and by the National School of Governance in the Assembly. WAG seems to be ready for the task. There are still some concerns about the readiness of the Assembly and about the lack of new appointments of additional legal staff ready to draft Measures.

### **3. Economic Development and the Budget**

*Professor Peter Midmore, University of Wales Aberystwyth*

#### **3.1 Introduction**

In the final term of the current Assembly, little new or substantive was discussed with regard to economic development issues, as parties and their representatives geared up for the imminent election. One meeting of the Enterprise, Innovation and Networks Committee (arranged for 1 February 2007) was cancelled due to lack of material for discussion. Perennial disputes over interpretation of economic statistics continued, and the committee received a paper from a WAG economist setting out the scope of the sub-regional Gross Value Added (GVA) calculation, explaining its limits as a measure of economic progress, and more importantly, its use as the sole indicator which triggers Convergence Programme status for poorer regions.

With little of major consequence to consider apart from tidying-up activities, including production of a legacy paper for any future committee which may exist in the third National Assembly, most business regarding economic affairs revolved around announcements of new jobs attracted to Wales, and urgent questions relating to employment losses. Two emblematic examples of these were, respectively, success in attracting the Defence Academy to St Athan, and closure of the Burberry factory in the Rhondda.

The Metrix Consortium was the successful bidder for a joint services training facility to replace jobs lost as a result of the reorganisation of the Defence Aviation Repair Agency (DARA) at St. Athan. The announcement of this, made on 17 January, noted that initially 1,500 jobs would be created in the construction of the new Defence Academy. Once operational, from 2011-12 onwards, 3,000-4,000 people will work within it. This will eventually rise, in the second phase of development, to 4,500-5,500. Roughly the same number of jobs was lost as a result of the DARA closure, although because this new development involves trainees as well as staff, the level of local consumption expenditure will be higher. In contrast, the Burberry closure involved the loss of 300 jobs in Treorchy, as production has switched to lower labour cost countries, and despite offers to donate premises to the workforce, and of supply contracts for Harrods, workers ceremonially marched into the factory for the last time accompanied by brass bands. The closure coincided almost exactly with the last

days of the second National Assembly itself. Although there are some plans for a worker-owned business on the site, at present the future of the factory is uncertain.

Further issues considered in this section include discussions of the use of GVA figures to evaluate economic policy success, progress on the EU's Convergence Programme for West Wales and the Valleys, and brief reviews of two discussions which revisited earlier Committee Reports on Energy and Science Policy, respectively.

### 3.2 Gross Value Added

In its first statement of devolved economic policy published in 2000, *A Winning Wales*,<sup>102</sup> the Assembly Government set out as one of its aspirations that by 2010 the level of GVA per capita should have reached 90 per cent of that of the UK as a whole. Whether that was, or was not, a target of policy is a matter of some political disagreement, not least because the current First Minister (then Minister for Economic Development) is on record as describing it as such, in a plenary session of the first National Assembly.

In terms of relative economic performance, Wales continues to lag behind the rest of the UK on a number of different measures. For example, another of the broad objectives of the Assembly Government's economic strategy has been to increase employment levels. Unemployment, as measured by the preferred international definition, was 5.2 per cent in Wales in January 2007, compared with 5.5 per cent in the UK as a whole. However, in terms of economic activity rates, only 76.2 per cent of the working age population was in the labour force in January, compared with 78.9 per cent in the UK. The percentage of people claiming Jobseekers' Allowance was also slightly higher in Wales than in the UK.<sup>103</sup>

The Assembly Government's currently preferred measure of economic performance, Gross Domestic Household Income, provides a better picture. The most recent figures are for 2005, and these show more rapid growth in Wales than in the UK as a

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<sup>102</sup> WAG, *A Winning Wales: The National Economic Development Strategy of the Welsh Assembly Government*, (Cardiff, 2002). Downloadable from:

[www.wales.gov.uk/themesbudgetandstrategic/content/neds/awinningwales-0302-e.pdf](http://www.wales.gov.uk/themesbudgetandstrategic/content/neds/awinningwales-0302-e.pdf).

<sup>103</sup> See Enterprise, Innovation and Networks Committee, EIN(2) 04-07 Paper 2b : Quarterly Statistical Report, (21 March 2007)

[www.wales.gov.uk/cms/2/EnterpriseInnovationAndNetworksCommittee/AgendasPapersTranscripts?month=200703](http://www.wales.gov.uk/cms/2/EnterpriseInnovationAndNetworksCommittee/AgendasPapersTranscripts?month=200703).

whole. On a per capita basis, Welsh households earn 89 per cent of the UK level; in fact, if London and the South East are excluded from the calculation, Welsh households earn 95 per cent of the UK average.<sup>104</sup> The overall performance of the Welsh economy has been relatively good; growth in employment, incomes and GVA have all been more rapid than overall in the UK, but since other areas start from a higher absolute position, closing the gap has been stubbornly difficult. In their session dealing with the technical construction of GVA statistics, the committee was told by Julian Revell from the economic and labour market statistics department in the Assembly Government, that 'in general, the economy is a big, difficult and fast-moving thing, and so, measuring it is difficult. Therefore, it makes sense to look at a range of measures when you are trying to judge how it is doing.'<sup>105</sup>

Over the lifetime of the second National Assembly, its Government may be judged to have been reasonably successful in terms of its management of the economy, particularly considering the lack of a range of policy instruments (for instance, it cannot affect taxes or monetary policy) and the deficiency of appropriate up-to-date information to guide use of the policy levers that it can control. Achievements include some real progress in addressing poor participation of working age people in the labour force, and restructuring the economy to contain more high-skilled and better-paid jobs. However, precisely because of the lack of detailed information on economic performance, progress cannot be definitely ascribed to policy actions: the continued boom in the UK's overall performance may well be the overriding influence.

### 3.3 The Convergence Programme

One clear success, paradoxically, was to secure Convergence Programme funding for a further round from 2007-2013. Substantial additional expenditure on economic development will be possible, but only because the EU budget settlement was achieved in December 2005, the last date on which 2001 GVA data could be used. If the budget settlement had come later, the poorer Welsh region would have grown sufficiently to slip above the threshold below which regions qualify.

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<sup>104</sup> Office for National Statistics, *Regional household income*, statistics release 27 March 2007: [www.statistics.gov.uk/](http://www.statistics.gov.uk/).

<sup>105</sup> Committee Transcript, Enterprise, Innovation and Networks Committee, 14 February 2007.

Another of the Assembly Government's achievements over the Spring of 2007 was to become the first region in the UK, and one of the first in the EU as a whole, to submit its Convergence Programme strategy and budget (known as a Single Programming Document, or SPD). The European Commission gave its approval 'on all items of substance' for the Regional Development Fund component of the Programme on 26 March 2007. Once Social Fund components are also agreed, expenditure may start being committed under the new framework. Thus the hiatus between the end of the Objective One programme and the new programme's commencement will be minimised.

Along with the Commission's approval, the values of particular grant headings in the West Wales and the Valleys Convergence Programme were announced in the final plenary session on 28 March 2007 by Rhodri Morgan. The First Minister noted that the forecasts of the match-funding requirements in the 2000-06 Objective One programme had been 'spot on', such that no project which qualified for funding had been rejected for lack of resources. Consequently, 'There is no need to seek additional resources from the Treasury and I will not be doing so.'<sup>106</sup>

Since the issue of match-funding had been the cause of his predecessor's demise, this was clearly controversial. In essence, the Assembly Government argues that its economic policy is now so closely aligned with European Programmes (especially the Lisbon Agenda to promote high-quality, science-based employment) that existing resources are sufficient to deliver them without overstressing the Barnett Formula allocation. Plaid Cymru estimate that to fund the previous programme required using £450m from the block grant, reducing the scope for health and education spending. According to Ieuan Wyn Jones, at least 'Alun Michael went to the Treasury to ask for money, although he was rejected. This First Minister has given up without even firing a shot.'<sup>107</sup>

Arguably, a change in the rules over European spending reduces the need for match-funding, although it remains disputed whether total resources for the Assembly delivered via the block grant are sufficient. According to Mike German, since its formula has no regard for the rather greater relative needs of Wales, 'many of us believe that the Welsh block is not appropriate'.<sup>108</sup> Funding for the Assembly

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<sup>106</sup>Record of Proceedings, Plenary Session, 28 March 2007.

<sup>107</sup> Ibid

<sup>108</sup> Ibid

Government, in terms of its volume and its appropriate and efficient use in providing public services thus seems to provide a set-piece challenge by opposition parties in the coming election.

### 3.4 Committee Inquiries

The Enterprise, Innovation and Networks Committee held no new inquiries in the spring of 2007, although there were two update meetings on previous inquiries carried out over the term of the second Assembly.

The first provided an update on the committee's Energy Policy Review,<sup>109</sup> and received evidence from the Welsh Energy Research Centre and Unity Power plc, on clean coal technology. Despite the demise of the industry in the 1980s, Wales still has considerable recoverable reserves of coal. Changes in technology and concerns about security of domestic energy supply are making their exploitation a potential prospect for the future. Current forms of high efficiency coal-based electricity generation use integrated gasification, so turbines are driven by ignited gas rather than steam. Although there are considerable costs of eliminating flue gasses and particulates, modern coal-based power generation is half as efficient again, in thermal terms, as large generating sets such as those at Aberthaw.

However, the sequestration and storage of carbon dioxide emissions still presents enormous problems, and compared with problems of burying nuclear waste, is on a gigantic scale of billions of tonnes of gas. According to the Welsh Energy Research Centre's director, Nick Syred, 'If you attempt sequestration on a large scale, you cannot guarantee that the carbon dioxide will stay down there ... and you only need 0.1 per cent leakage to cause problems.'<sup>110</sup> Thus, although Wales' economy was once dominated by the extraction of coal, there is some way to go before it is so again.

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<sup>109</sup> Enterprise, Innovation and Networks Committee Papers, 8 March 2007. The original Energy Policy reports can be accessed at [www.wales.gov.uk/keypubassemecodev/content/reports-e.htm](http://www.wales.gov.uk/keypubassemecodev/content/reports-e.htm).

<sup>110</sup> Ibid

The other Inquiry revisited by the committee concerned science policy, on which the responsible minister, Rhodri Morgan, made statements both in a plenary session and to the committee itself.<sup>111</sup>

In the plenary session, the First Minister noted how unusual it was to have policy development occurring within both the Assembly Government and the relevant committee at the same time. Previous Monitoring Reports have noted the (effectively, total) disregard of the committee's discussion of, and recommendations on, science policy. However, far from his personal appearance being a gesture of reconciliation, Rhodri Morgan simply reinforced his previous stance on the science policy question. In effect, the Assembly Government's strategy is to identify catalytic areas for intervention, such as in clean energy generation, neuroscience, and computational mathematics, where substantial returns can be made. But despite additional funding, and an advisory group consisting of the scientists employed by the Assembly Government and the heads of two independent research stations in Wales, there is still a clear mismatch between public science (for example, in health, agriculture) and research science (where basic issues at university level are likely to yield greater progress over a longer timescale). The Assembly Government has no intention to carry out the study which the Enterprise, Innovation and Networks Committee wanted to undertake itself, that is to objectively assess the stature of Welsh University research activity. Nor does it intend to appoint a Chief Scientist to coordinate policy in this area, despite the focus of the Lisbon Agenda.

### **3.5 Conclusion**

Past monitoring reviews of the Assembly's work on economic development issues can be consolidated with this one to form two notable conclusions. First, despite some thoughtful and innovative contributions from Assembly Members both in committee and in plenary sessions, the overall effect was obscured by rivalrous partisan discourse. Second, despite the same party being in power in both Cardiff and Westminster, details of coordination between the two administrations are often overlooked. Consultation on the structure of the Post Office network suggested that widespread closures would be of considerably greater economic impact in Wales than in England, leaving the Assembly Government appearing weak. More

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<sup>111</sup> Record of Proceedings, Plenary Session, 14 March 2007, and Committee Transcript, Enterprise, Innovation and Networks Committee, 21 March 2007. The original Science Policy report can be accessed at [www.wales.gov.uk/keypubasementinovnet/reports.htm](http://www.wales.gov.uk/keypubasementinovnet/reports.htm).

especially, civil service reorganisation, in progress over the spring of 2007, has been removing jobs from areas to which the Assembly Government is attempting to relocate its own functions, with net or negligible benefit as a result. The third National Assembly, despite its somewhat enhanced powers, will need to coordinate its policies more closely with the Westminster government, although on some of the possible electoral outcomes, it may be more difficult to achieve.

## **4. Intergovernmental relations**

*Alan Trench: The Constitution Unit, UCL*

### **4.1 General**

Even by the standards of low-key intergovernmental relations that have prevailed since 1999, the period since the January 2007 report has been remarkably quiet. This is not surprising, given political conditions in both Cardiff and London – with National Assembly elections approaching in May, the main concerns in Wales (related elsewhere in this report) have been pre-election campaigning and policy announcements. Meanwhile, the London agenda has been dominated by the impending end of Tony Blair's premiership and a great deal of activity regarding Northern Ireland. (The attempts to re-establish devolved power-sharing government in Belfast have also taken up much of Peter Hain's time since January.) The forthcoming National Assembly elections have also had an impact on the UK Government's agenda, as the UK Government has been taking care to avoid any announcements or actions that might affect the elections, even before the Assembly was dissolved and the pre-election period formally started.

As well as a lack of action from the Joint Ministerial Committee, there have been no meetings of the British-Irish Council (whether summit meetings or functional ones) since December 2006. However, there was a little-reported meeting between Tony Blair, Jack McConnell and Rhodri Morgan at Downing Street in January, apparently to discuss election issues (not government matters).

There has been no intergovernmental litigation, and no judgments of the Judicial Committee of the Privy Council on devolution issues. However, it is worth noting that a couple of Scottish cases which potentially might be or become 'devolution issues' are under consideration, one in the House of Lords on appeal from the Court of Session, one in the Inner House (appellate part of the Court of Session).

### **4.2 Implementation of the Government of Wales Act 2006**

A good deal of work remains underway to ensure that the provisions of the Government of Wales Act 2006 (GOWA) can duly come into effect after the new National Assembly is elected. Much of this is largely technical and uncontroversial in

nature, but two areas of activity are worth noting. One relates to the Assembly's legislative powers, the other to the new standing orders to take effect when the National Assembly first meets after the elections. Regarding legislative powers, there are plans to entrench the approach that has developed over the last few months and which was noted in the last monitoring report – for Westminster legislation relating to Assembly functions normally to extend the Assembly's legislative powers, by directly amending Schedule 5. To this end, there are plans to amend the UK Government's Devolution Guidance Note (number 9) on *Post-Devolution Primary Legislation Affecting Wales*.<sup>112</sup> DGNs are now formally issued by the Department for Constitutional Affairs, with the Wales Office taking particular responsibility for DGN 9, which was last revised in November 2005 following the publication of the white paper *Better Governance for Wales*.<sup>113</sup>

A further legislative issue that has arisen relates to areas where 'framework powers' were conferred on the National Assembly in Westminster legislation made in the 2005-06 session. This relates to provisions for arranging redress for harm arising from diagnosis or treatment under the NHS (in the NHS Redress Act 2006), and for the general management of education and training, including matters such as establishing or closing schools, school admissions and exclusions, and the curriculum (under the Education and Inspections Act 2006). The problem is that these powers will transfer to WAG, not the National Assembly, under GOWA – strengthening the powers of the executive and weakening the elected Assembly. The Wales Office has decided that these need to be converted into appropriate legislative powers of the National Assembly, by making an order under section 162 and Schedule 11 of GOWA to make 'transitional arrangements' for the new Act. The relevant order, The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007, SI 2007 no. 910,<sup>114</sup> was made on 21 March and comes into effect on 3 May, adding several new fields to fields 5 (Education and Training) and 9 (Health and Health Services) in Schedule 5 to the 2006 Act.

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<sup>112</sup> Department for Constitutional Affairs, *Devolution Guidance Note 9: Post-Devolution Primary Legislation Affecting Wales*, (Last update, November 2005). Downloadable from:

[www.dca.gov.uk/constitution/devolution/guidance.htm#9](http://www.dca.gov.uk/constitution/devolution/guidance.htm#9)

<sup>113</sup> Wales Office, *Better Government for Wales: The White Paper*, (2005). Downloadable from:

[www.parliament.uk/commons/lib/research/notes/snpc-03717.pdf](http://www.parliament.uk/commons/lib/research/notes/snpc-03717.pdf)

<sup>114</sup> Downloadable from: [www.opsi.gov.uk/si/si2007/20070910.htm](http://www.opsi.gov.uk/si/si2007/20070910.htm)

These approaches to conferring legislative powers on the National Assembly are technically and legally imaginative, and resolve a number of administrative and political problems. But they raise other difficulties, not least of accountability, and also make one wonder why this approach was not more fully canvassed when GOWA was in Parliament. Instead, a large amount of work has been spent over the last few months either doing something quite different to what Parliament was led to believe would happen, or (in the case of the NHS Redress and Education and Inspection Acts) unpicking what was done at Westminster a year ago.

Regarding the Assembly's standing orders, these have been drafted by the Assembly's standing orders committee chaired by Jenny Randerson AM, and remitted to the Secretary of State who (under GOWA) is responsible for making them. The issue has been how he exercises those functions, given the rather sketchy nature of many of the proposed standing orders (of which a number of outside observers have been privately critical). Peter Hain made those standing orders on 22 March, as adopted by the Assembly.<sup>115</sup> A conscious decision appears to have been made not to revise or seek to improve on the Assembly's own draft, provided it complied with the various (and detailed) statutory requirements for standing orders and was not otherwise unlawful or improper. The National Assembly will be free to revise standing orders once it has met, so long as a two-thirds majority of AMs agree to do so.

### 4.3 Parliamentary committee inquiries

The Commons Welsh Affairs Committee has yet to publish its report on the making of Legislative Competence Orders once GOWA comes into effect. A report has apparently been largely agreed, but publication has been delayed until after the May elections. Presumably it will appear shortly after the elections.

In February, the Commons Constitutional Affairs Select Committee announced it is to carry out an inquiry on the subject *Devolution: A Decade On*. (This is the committee responsible for scrutinising the work of the Department of Constitutional Affairs, which has general responsibility for devolution matters within Whitehall; it should not be confused with either the Select Committee on the Constitution in the Lords, or the

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<sup>115</sup> Wales Office Press Release, *Peter Hain Makes New Standing Orders for National Assembly for Wales*, (22 March 2007). Downloadable from: [www.walesoffice.gov.uk/2007/pn\\_20070322.html](http://www.walesoffice.gov.uk/2007/pn_20070322.html). The standing orders themselves are available at [www.walesoffice.gov.uk/2007/leg\\_SO\\_March2007.pdf](http://www.walesoffice.gov.uk/2007/leg_SO_March2007.pdf)

Commons Public Administration Select Committee, both of which have broader cross-departmental remits.) The call for evidence identifies eight major questions, focussing on UK-wide issues and matters at the 'London end' of devolution (notably aspects of intergovernmental relations and the 'English question'), and asks for submissions by 16 April 2007.<sup>116</sup> While three members of the committee sit for Welsh constituencies (Siân James MP, Jessica Morden MP and Julie Morgan MP), none sit for Scottish seats (although the chairman, Alan Beith, is MP for Berwick, on the English side of the Anglo-Scottish border). The committee will start to take evidence after the May elections, and aim to issue a report before the start of the summer recess in July. This implies a relatively quick inquiry, despite the breadth of the questions raised in the call for evidence.

#### **4.4 Finance: the Budget and the Comprehensive Spending Review**

The Chancellor of the Exchequer, Gordon Brown, issued his Budget on 21 March 2007. According to the 'regional press notice' for Wales issued following the Budget, it would increase the funds available to the Assembly Government by £1001m, as a consequence of spending increases for UK Government departments announced in the Budget.<sup>117</sup> That figure includes the consequentials relating to education spending for the next 3 years, as the education part of the Comprehensive Spending Review was announced as part of the overall budget. The CSR itself has been pushed back to October 2007, however, and health spending (another major area for determining the consequential payments to Wales) will not be finalised until then. Only at that point will the financial resources available to the National Assembly become clear. Whether the CSR will determine what support comes to Wales to enable WAG to use the EU Convergence Funds similarly remains to be seen.

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<sup>116</sup> Available at [www.parliament.uk/parliamentary\\_committees/conaffcom/cfcpn11\\_070221.cfm](http://www.parliament.uk/parliamentary_committees/conaffcom/cfcpn11_070221.cfm)

<sup>117</sup> Available at [www.hm-treasury.gov.uk/media/751/BB/bud07\\_regpn\\_wales.pdf](http://www.hm-treasury.gov.uk/media/751/BB/bud07_regpn_wales.pdf)

## 5. Relations with Europe and Local Government

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

### 5.1 Europe

#### 5.1.1 Structural Funds

In a surprise statement at the very last plenary meeting of this Assembly, the First Minister announced that final agreement had been reached with the European Commission Directorate General for Regional Affairs on the ERDF Convergence Programme for West Wales and the Valleys. The ERDF comprises £856m of the total £1.42bn of European Convergence funds. While the ERDF and ESF Programmes were submitted at the same time in January,<sup>118</sup> negotiations on the latter continue with the Commission with WAG confident of agreement within the next few weeks. Meanwhile, the East Wales Competitiveness Programme and the Wales-Ireland Cross-border Programme were both submitted in early March and the start of negotiations is imminent.

On 27 March, the appointment of ten members of the All-Wales Programme Monitoring Committee was announced.<sup>119</sup> Along with the ten appointees the committee, which will monitor both the Convergence and regional Competitiveness Programmes, will include eleven sectoral and three WAG representatives. The Chair will be a WAG representative.

#### 5.1.2 Rural Development Plan

It is not expected that the Assembly's Rural Development Plan (RDP) will be formally submitted until July at the earliest. The reason for the delay is twofold: the continuing debate within the Assembly regarding budget allocations within the plan, and a disagreement between the European Commission and Parliament regarding the issue of 'voluntary modulation'. Voluntary modulation would allow individual member states to divert up to 20 per cent of farmers' direct payments into rural development projects and the policy was adopted by the Council and Commission at the initiative of the UK government. An assumption of some voluntary modulation in Wales is built

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<sup>118</sup> WAG Press Release, *Plans to invest £3 billion in West Wales and the Valleys submitted to the European Commission*, (23 January 2007)

<sup>119</sup> WAG Press Release, *Key EU Funds Monitoring Committee Named*, (27 March 2007)

into the RDP budget. The European Parliament has overwhelmingly rejected the proposal twice, claiming it could lead to a 're-nationalisation of the CAP',<sup>120</sup> and while its view is not binding on the Council the matter has now been deferred until July. The RDP cannot therefore be finalised until then.

European funding for the RDP comes from European Agricultural Fund for Rural Development and the Convergence Fund.

### **5.1.3 EEAC Legacy Report**

The EEAC's legacy paper<sup>121</sup> discussed at its February meeting makes several suggestions for changes that its post-election successor committee should consider. If implemented these recommendations could change quite substantially the way European and especially EU matters are dealt with by the National Assembly in future. The most significant suggestions are that:

- There should be a review of how the scrutiny and monitoring of EU issues is dealt with by the Assembly's committees. Currently, subject committees have responsibility for scrutiny of EU legislative and policy proposals within their own fields. The new committee structure and responsibilities expected in the Third Assembly raises questions regarding the feasibility of continued 'mainstreaming' of EU scrutiny work should the pressure of domestic work increase as expected;
- 'Future agendas should be focused on fewer items... so that some items can be considered over a number of meetings for more in depth inquiries'. The committee should focus only on items which have a significant impact on Wales;
- Participation of external stakeholders should be improved in order to strengthen the committee's work, making greater use of video-conferencing and e-democracy technology. This would contribute to the committee's aim of developing a dialogue on European and international matters within Wales;
- Links with other European scrutiny committees and with the European institutions should be developed, and opportunities for joint working explored.<sup>122</sup>

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<sup>120</sup> European Parliament Press Release, *Parliament rejects voluntary modulation proposal for a second time*, (14 February 2007) [www.europarl.europa.eu/news/archive/default\\_en.htm](http://www.europarl.europa.eu/news/archive/default_en.htm)

<sup>121</sup> EEAC, EUR(2) 02-07 Paper 4: Legacy Paper 2003-2007, (28 February 2007)

<sup>122</sup> Ibid

#### **5.1.4 Review of European and Global Citizenship Education**

As reported in previous monitoring reports, the EEAC has over the past year been conducting a policy review into European and Global Citizenship Education. Such a review is a first for the EEAC and arose from its consideration of the European Commission's White paper on Communications in early 2006. The review looked at how citizenship education is conducted in Wales and elsewhere and ways in which this teaching can be strengthened. The report was published on 28 March.<sup>123</sup> Among its key recommendations are:

- That the revised framework for Personal and Social Education (PSE) should incorporate best practice from the 'Wales, Europe and the World element of the Welsh Bac and the 'Education for Sustainable Development and Global Citizenship – Strategy for Action';
- That WAG considers examples of good practice in teaching citizenship identified in the report by the European Commission's Office in Wales and in the Eurydice report;
- That all secondary schools should deliver PSE using specially trained and resourced teachers, and that WAG takes the lead in facilitating such training, providing resource packs and supporting teachers;
- That the review of the school curriculum in Wales currently underway should 'pay particular attention to the need to develop political understanding amongst young people and to teach them about the roles, policies and positioning of political parties, as well as political processes at all levels of governance';
- That WAG should commission high-quality teaching materials in Welsh and in English, in a variety of media, to inform young people about the European Union and to stimulate debate;
- That the European Commission should make more funds available to its regional offices to translate material into languages such as Welsh, which are not official EU languages. WAG should support the Commission's representation in Wales to this end.<sup>124</sup>

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<sup>123</sup> EEAC, *European and Global Citizenship Education*, (March 2007)  
[www.wales.gov.uk/cms/2/DocumentsLaid/37B1A026000BF4FD0000436C0000000/d81d36719c2a607c16d005b43645d6e9.pdf](http://www.wales.gov.uk/cms/2/DocumentsLaid/37B1A026000BF4FD0000436C0000000/d81d36719c2a607c16d005b43645d6e9.pdf)

<sup>124</sup> Ibid, pp. 29-31

The report will be submitted to the relevant Ministers and Committee Chairs for Education, Lifelong Learning and Skills and Local Government and Public Services. A copy will also be sent to Margot Wallström, EU Commissioner for Institutional relations and Communication Strategy.

## 5.2 Local Government

During the final session of the Assembly's second term, a number of developments have continued the strategic direction taken in relations between local government and the Assembly Government. This session saw the publication of *A Shared Responsibility*,<sup>125</sup> the local government policy statement. It emphasises the shift towards understanding relations between local government and the Assembly within the broader framework of Welsh public services. The period also saw the Local Government Bill proceed through Parliament, the publication of the Lyons Report, and further developments in equal pay. These issues will influence the agenda and present challenges for the new Assembly Government following the May elections.

### 5.2.1 The Local Government Bill

The Local Government and Public Involvement in Health Bill is the result of the *Strong and Prosperous Communities*, the Local Government White Paper<sup>126</sup> for England published by the UK Government in October 2006. The White Paper announced that central government intended to enhance the Assembly's legislative competence in local government matters. Perhaps of most significance (and certainly of most media interest around the time of publication) were the new powers to reorganise local government. The bill is innovative in that rather than using framework powers, due to the new Government of Wales Act 2006 the Assembly is provided with measure-making powers.<sup>127</sup> As a result, it has been referred to as 'probably the first big, important Bill...to start implementing the structures that the Government of Wales Act 2006 brought into play'.<sup>128</sup> The new legislative competences resulting from the Local Government Bill will enable the Assembly to adopt Assembly Measures in those areas where provisions will be included under the

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<sup>125</sup> WAG, *A Shared Responsibility*, (March 2007). Downloadable from: <http://new.wales.gov.uk/about/departments/dlqc/localgovculturepubs/localgovpubs/LGPolicyStatement07/?lang=en>

<sup>126</sup> Department for Communities and Local Government, *Strong and Prosperous Communities Local Government White Paper*, (October 2006). Downloadable from: [www.communities.gov.uk/index.asp?id=1137789](http://www.communities.gov.uk/index.asp?id=1137789)

<sup>127</sup> LGPS Committee, LGPS(2)-1-07 (p.5) Local Government Bill – Welsh Provisions in the Bill Paper – Appendix 1, (18 January 2007).

<sup>128</sup> LGPS Committee, Committee Transcript, (18 January 2007).

field of local government in the new Act. They include structure and boundaries, byelaws, conduct of members, community planning and partner authorities and best value.<sup>129</sup> The bill therefore recognises divergence in local government policy between Wales and England, particularly in respect of local government organisation, partner organisations in the public services in Wales, and institutional differences. In addition, the Assembly Government has requested that provisions be included to transfer other legislative competences to the Assembly.<sup>130</sup> At the time of writing, it was not entirely clear if they had been fully successful.

### **5.2.2 'A Shared Responsibility': the Local Government Policy Statement**

The Local Government Policy Statement was formally launched at the last meeting of the Local Government Partnership Council on 8 March. *A Shared Responsibility* provides a framework for the range of developments affecting local government such as those included in WAG's action plan *Making the Connections – Delivering Beyond Boundaries: Transforming Public Services in Wales*.<sup>131</sup> The Policy Statement explains the essential contribution of local authorities to the public service reform agenda in Wales and covers issues such as: performance management and appraisal; maintenance of minimum standards; community leadership; and the delivery of cross-boundary services. The policy paper was the result of extensive pre-publication consultative briefings and 'policy gateway' workshops. It offered few surprises, sought to build on the 'Sue Essex legacy' of partnership, and included sizeable sections on the already well-trailed Local Service Boards.

WLGA Leader Derek Vaughan welcomed the Assembly Government's commitment to the Welsh way of reform:

Welsh local government continues to be committed to public service reform and in particular, a distinctive Welsh approach, the Assembly Government's White Paper balances Welsh solutions to Welsh challenges, whilst incorporating key elements of the UK Government's local government proposals for England.<sup>132</sup>

In particular, local government welcomed the proposed 'duty of collaboration' on public bodies to engage in local partnerships and ensure joint working, and the introduction of a wider public scrutiny model with the potential to enhance councillors'

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<sup>129</sup> Op cit, LGPS(2)-1-07 (p.5)

<sup>130</sup> Ibid

<sup>131</sup> WAG, *Making the Connections – Delivering Beyond Boundaries: Transforming Public Services in Wales*, (November 2006)

<sup>132</sup> WLGA, Press Release, *WLGA Welcomes Assembly Government's restated commitment for Welsh way of reform*, (8 March 2007). Downloadable from: [www.wlga.gov.uk/content.php?nID=7;ID=84;1ID=1](http://www.wlga.gov.uk/content.php?nID=7;ID=84;1ID=1)

influence in their areas. Meanwhile, local authorities' Performance Incentive Grants will be replaced with Local Area Agreements. Although nominally linked to improved performance, the Performance Incentive Grants had become a vital addition to local authorities' budgets and were used to part fund local services. Local government regards the loss of this grant as a real cut in funding. Although the new grant will be distributed via Local Service Boards, it could be used for non-local government services.

The policy statement also explained that the Welsh Assembly Government intended to implement a rolling evaluation of their local government policy programme. A feasibility study on this will report at the end of May.<sup>133</sup>

### **5.2.3 Implications of the Lyons Report**

27 March saw the long-awaited publication of the 'Lyons Report'<sup>134</sup> into local government. Though local government policy is a devolved matter, financial arrangements for local government including local taxation and business rates are non-devolved. Its relevance to Wales was therefore significant. Some of the issues that the new Assembly could take forward include the key recommendation that the council tax benefit system should be reformed (a non-devolved issue), and the potential implications arising from proposals on business rates. Other proposals such as the periodic revaluations of properties and new council tax bands were cases of England following Wales' lead.

Responses to the report in England were muted. The local government Minister Phil Woolas immediately rejected Lyons' most significant proposals by reasserting the government's decision not to undertake council tax revaluation during this parliament. He also rejected the introduction of a tourist tax and the suggestion that central government should part with its right to cap local authority spending. Sir Simon Milton, Vice-Chair of the Local Government Association was concerned by the government's lack of engagement with several of the key proposals on finance.<sup>135</sup> In Wales, Sue Essex welcomed the proposals for reforming the tax benefit system and explained that some of the recommendations would be for the new Assembly to

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<sup>133</sup> WAG, Local Government e-bulletin #15 (March 2007), at: [www.newwales.gov.uk](http://www.newwales.gov.uk)

<sup>134</sup> Lyons Inquiry into Local Government, *Final Report – Place Shaping: A Shared Ambition for the Future of Local Government*, (March 2007)

<sup>135</sup> *PublicFinance.co.uk*, *Lyons stays upbeat despite muted response to report (30 March 2007)*.  
Downloadable from: [www.publicfinance.co.uk/news\\_details.cfm?news\\_id=30264](http://www.publicfinance.co.uk/news_details.cfm?news_id=30264)

debate.<sup>136</sup> While local government concurred with proposals to reform the council tax benefit system and local supplementary business rates, there was disappointment on the rejection of the return of business rates to local control. Derek Vaughan, WLGA Leader put forward this argument:

Pressure on all Council Tax payers could be relieved if responsibility for setting business rates reverted to local council control. It is right that businesses pay their fair share for local services. Furthermore, we need to explore new ways of funding council services, other than through the Council Tax.<sup>137</sup>

#### **5.2.4 Equal Pay**

Equal pay remains the most serious immediate financial issue facing Welsh local government. A substantial amount of work is being done with trades unions on tackling equal pay issues in local authorities in Wales, working closely with Sue Essex and Jane Hutt. Some authorities are making good progress, and in March Neath Port Talbot Council was the first council to reach a settlement with its employees.<sup>138</sup> However, it is expected that further settlements will be reached in the next twelve months with an estimated liability in excess of £300m.<sup>139</sup> Future settlements may result in substantial borrowing, reserve raiding or a significant readjustment of local service provision, capital works or staffing levels. The Welsh Assembly Government brought forward regulations to amend the capital finance regulations coming into force in March 2007. The intention was to establish that local authority financial statements do not have to include back pay liability in their accounting until the liability is payable, which might be over a period of years rather than in a single year.<sup>140</sup>

#### **5.2.5 Conclusion**

The Assembly Government post-2007 will face a quite different context to its relationship with local government compared with 2003. The Local Government Bill provides greater autonomy to develop Assembly Measures in the area of local government. At the same time, the *A Shared Responsibility* policy statement makes policy commitments that could require such legislative initiatives. The shift from the focus of *Freedom and Responsibility in Local Government* policy statement in 2002

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<sup>136</sup> WAG Press Release, *Sue Essex Welcomes the Lyons Report*, (21 March 2007)

<sup>137</sup> WLGA Press Release, *More help needed for council tax payers, says WLGA*, (21 March 2007).

Downloadable from: [www.wlga.gov.uk/content.php?nID=7;ID=93;1ID=1](http://www.wlga.gov.uk/content.php?nID=7;ID=93;1ID=1)

<sup>138</sup> Anon, 'Welsh cleaners win pay out', *The Western Mail*, (9 March 2007).

<sup>139</sup> Ibid

<sup>140</sup> LGPS Committee, LGPS (2)-01-07(p.1) Report by the Minister for Finance, Local Government and Public Services (18 January 2007).

on central-local government relationships to the emphasis in *A Shared Responsibility* on central-local relationship in the context of Welsh public service reforms underlines the change in recent years in the relationship between local government and the Assembly Government. The statement will not only guide the new Assembly Government's approach to local government in a changing public service system but also looks forward to the local elections in 2008. Central government responses to the Lyons report will also be on the agenda of the new Assembly Government. A greater and potentially more immediate challenge, however, will be the equal pay issue.

## 6. Elections, Parties and Public Attitudes

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### 6.1. Elections

Six local government by-elections were held in Wales between December 2006 and March 2007. These elections saw some interesting local results, notably Labour comfortably holding a seat in Rhondda Cynon Taff during March despite a challenge from Plaid Cymru. This result did not bode well for Plaid Cymru's National Assembly election campaign in the south Wales valleys. Overall, however, the results do not show any very clear trends.

Figure 1: Local Government By-Elections, December 2006-March 2007

<i>Ward</i>	<i>Council</i>	<i>Month</i>	<i>Winner</i>	<i>Change?</i>	<i>Swing</i>
Kinmel Bay	Conwy UA	December	Conservative	Con Gain from Ind	16.0% Ind to Con
Llanfihangel Ysgeifiog	Ynys Mon UA	January	Independent	Ind Gain from PC	24.6% PC to Ind
Penyffordd	Flintshire UA	February	Independent	Ind Gain from Lab	8.3% Lab to Ind
St Cattwg	Caerphilly UA	March	Labour	Lab Gain from Ind	3.8% Lab to PC
Treorchy	Rhondda Cynon Taff UA	March	Labour	Lab Hold	10.0% PC to Lab
St David Within	Powys UA	March	Independent	Ind Hold	n/a

Source: [www.aldc.org/news/](http://www.aldc.org/news/)

Although there were no parliamentary or Assembly by-elections during the time-period of this report, the major parties continued to prepare for the National Assembly elections next May, with candidate selection finalised, and active campaigning being begun by each of the parties, along with private research being conducted by the parties into the state of public attitudes.

## 6.2. Parties

Seemingly interminable pre-manifesto policy ‘consultations’ and announcements, followed, eventually, by the launches proper; regular rumours (of wildly varying degrees of plausibility) about possible upsets in various constituencies; speculation about possible post-election scenarios: such have been the order of the day for the Welsh political class during the period of this report. This activity has had little obvious impact on the electorate at large; nor has it distracted the London media from an obsession with the prospects in Scotland. But for those involved it has been breathless stuff.

The party manifestos offer some interesting pointers for the months and years ahead.

### 6.2.1 Labour

At least four interesting facts emerge from a perusal of the Labour manifesto. First, Labour is the only party to have its Welsh leader (or any leader) on its cover, underlining Rhodri Morgan’s dominance of the Welsh political scene. The degree of personalisation that characterises Labour’s campaign rhetoric – ‘Rhodri Morgan’s Labour Party’ – is particularly remarkable given that Morgan has made clear he will not serve a full third term if returned as First Minister.

Second, though not trumpeted in the manifesto, the divergence between Labour in the National Assembly and Labour at Westminster (Brownite or Blairite) remains readily apparent. Witness one un-remarked example: ‘We will end competitive tendering for hospital cleaning contracts to ensure that hospital cleaning staff are employed directly by the NHS...’<sup>141</sup> New Labour it is not.

Third, the manifesto remains modest in its ambitions for a third term. Morgan himself has sought to make a virtue of this modesty, and it could be argued that the manifesto reflects a public spending environment that will be more constrained in the next four years than in the recent years of plenty.<sup>142</sup> A less charitable interpretation is that Welsh Labour is simply running out of ideas. With Assembly Government ministers bogged down in running their departments, and Welsh Labour’s own policy-generating mechanisms remaining under-developed, innovative policy proposals are thin on the ground (the section on education, in particular, being the best evidence

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<sup>141</sup> Welsh Labour, *Building a Better Wales: Welsh Labour Election Manifesto*, (April 2007) p. 10.

<sup>142</sup> Anon, ‘Rhodri: Our manifesto’s not very exciting,’ *The Western Mail*, 10 April 2007.

for this interpretation). The contrast between Welsh Labour's prospectus and Scottish Labour's self-proclaimed 'policy rich' manifesto is certainly striking.

Finally, it is notable that the manifesto specifically rules out the introduction of a proportional electoral system for local government. Given that this issue is almost certainly a deal-breaker for any Labour-Liberal Democrat coalition, and given also that Westminster would need to be involved to deliver any such reform, the decision to rule out PR in this way may well resonate for many years to come.

### 6.2.2 Conservatives

The Conservatives, a party whose Welsh leadership, if not membership, were Cameronian *avant la lettre*, has produced a manifesto whose proposals will stick in the craw of 'drier' sections of the party. Marketisation and privatisation have apparently been all but abandoned in the name of localisation and professionalisation. Particularly striking is the 'mood music' on Wales and Welshness. This is clearly a party that has taken to heart the message that the Tories have suffered historically from having been perceived as the English party. The change in stance on devolution itself is also underlined: '...despite our fears in 1997. We freely acknowledge that devolution has not weakened Britain. Our task is now to use devolution imaginatively to make Britain stronger.'<sup>143</sup>

Nevertheless, tensions between the leadership's position and that of many (if not most) of the party's members can clearly be read between the lines of a manifesto somewhat plaintively entitled *Vote Welsh Conservatives for a Change*. So, for example, while the Government of Wales Act 2006 is condemned as 'badly flawed' there is no commitment to seek its replacement. And while the Conservatives 'believe that in a number of areas the needs of Wales require the further development of devolution', the list that follows is distinctly underwhelming, culminating with a pledge to 'petition the Queen to establish a Welsh order of chivalry'.<sup>144</sup> With an eye to future arrangements for post-election coalition or collaboration, neither does the manifesto include a commitment to introducing a proportional electoral system for local government despite earlier suggestions that this would be the case. The manifesto does, however, commit the party to 'possible

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<sup>143</sup> Welsh Conservatives, *Vote Welsh Conservative for a change*, (April 2007), p. 35.

<sup>144</sup> Ibid

referendums on the form of election' for local government, itself a seismic shift in the party's thinking on this subject.

### **6.2.3 *Plaid Cymru***

Like its campaign in general, Plaid Cymru's 2007 manifesto is a slickly produced affair. It is also very much more tightly focused than its predecessors for 1999 and 2003. While those were certainly worthy and serious documents, they hardly lent themselves to the sound-bite world of contemporary political campaigning. In contrast, the 2007 effort is focused around seven specific policy pledges. In response to the usual conundrum facing those parties that are committed to changing the constitutional status quo – whether to stress what they would do with the powers already available, or talk about what they could do with further powers – Plaid has clearly emphasised the former in its headline pledges. Should Plaid Cymru's efforts fail to pay off on 3 May one may confidently predict there will be pressure within the party for a more expansive vision at future elections. It should also be noted that the manifesto includes a specific pledge to seek powers to introduce the Single Transferable Vote system for local government elections.

### **6.2.4 *Liberal Democrats***

By contrast to Plaid Cymru's effort, the Welsh Liberal Democrat's manifesto – by far the longest of the manifestos – remains wedded to an older, much more discursive style of presentation. Here a formidable list of policies and priorities are listed, with little apparent effort to differentiate between the more eye-catching and those that are, perhaps, less scintillating. Indeed, if the slickness of the various party manifestos is an indicator of the likely results on 3 May – which is almost certainly not the case! – then the Welsh Liberal Democrats trail behind the other two opposition parties.

## **6.3 Public Attitudes**

No major surveys were reported on public attitudes to devolution during the period covered by this report. However, both the Economic Social Research Council and the Electoral Commission confirmed their intention to fund detailed post-election research into voting patterns, attitudes towards devolution and attitudes to the electoral process. Selected findings from this research will be presented in future monitoring reports.

There was one published opinion poll on voting intentions for the National Assembly election reported. In a telephone poll conducted in March-April by NOP for ITV Wales, the following voting intention figures were given for those indicating that they were 'Certain to Vote' (percentages listed, with change from 2003 result in brackets):

Figure 2: NOP poll for ITV Wales, April 2007

<i>Party</i>	<i>Constituency Vote</i>	<i>List Vote</i>
Labour	36 (-4)	35 (-1.5)
Conservative	23 (+3)	24 (+5)
Lib-Dems	15 (+1)	15 (+2)
Plaid Cymru	20 (-1)	20

ITV Wales reported that these figures projected to a final election outcome of 25 seats for Labour (down 5 on the 2003 result), 14 for the Conservatives (up 3), 12 for Plaid Cymru (unchanged) and 7 for the Liberal Democrats (up 1), with 2 Independents retaining their seats.

The findings of the poll surprised many observers, as the parties' private polling had been widely rumoured to be showing Plaid Cymru, and not the Conservatives, in a clear second place. While NOP are a widely-respected market research company, two notes of caution may be worth entering regarding these findings. The first is that number of respondents in the 'Certain to Vote' category in the poll was small – around 500 respondents. The second is that while NOP's final poll – conducted just over a week before the election – in 2003 was very close to the actual result, polls conducted by the company at an earlier stage in both 1999 and 2003 have born little resemblance to the final outcome.

The only other major survey reported in Wales during the period covered by this report was a telephone poll of approximately 1000 people conducted in late February by ICM for BBC Wales. This survey did not enquire into voting intention, but confirmed that the prospects for turnout at the election were poor, and that public knowledge of the major political figures in the NAW was low.

## 7. The Assembly and the Media

*Professor Kevin Williams, University of Wales Swansea*

### 7.1 Licence Fee

The six-year licence fee settlement announced at the beginning of 2007 was not what the BBC wanted. The fee will be increased by 3 per cent in the next two years, by 2 per cent in the following three years and by up to 2 per cent in the last year. This is less than the BBC asked for. Rejecting the BBC's bid, Culture Secretary Tessa Jowell has stymied the Corporation's future spending plans. According the BBC Director General there is a projected shortfall of £2bn.<sup>145</sup> It seems painful choices will have to be made if the BBC is to realise its ambitions, including the development of digital services and relocating key departments to Manchester, as well as improvement in the quality of the output. Job cuts and privatisation of services have already been picked out by the broadcasting unions as possible consequences.<sup>146</sup> The BBC nations and regions must feel particularly vulnerable in the new cost cutting climate presaged by Thompson's remarks. Commitments made by the BBC to spend more on the service it provides to S4C<sup>147</sup> may not be funded by additional monies promised by the centre, thereby further stretching the capacity of the Corporation to serve Wales in the English language.

BBC Wales's commitment to fully serve the Welsh nation is becoming increasingly difficult in a more problematic financial and commercial environment. That is not to underestimate BBC Wales's success in winning network commissions. This has had a real impact on Wales's development as a centre of production, providing better prospects for emergence of an independent production sector and generating a profile for Wales in the international media market and beyond. The development of network production in Wales has to some extent been facilitated by the decision of the BBC to devolve more network programme spend to the nations and regions. The Corporation has committed itself to attaining 17 per cent of network spend in 'the nations' (Scotland, Wales and Northern Ireland) – an increase of almost 6 per cent from the present spend. However, cutbacks might have an impact on the amount spent in Wales, and the BBC's plans for a major production and commissioning

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<sup>145</sup> Hannah Jones, 'Where your TV licence fee goes', *The Western Mail* (20 January 2007).

<sup>146</sup> Campaign for Press and Broadcasting Freedom, 'BBC licence fee settlement – Not Good Enough' *Newsletter* (18 January 2007).

<sup>147</sup> See Devolution Monitoring Report, January 2007.

centre in Salford could clip the wings of the ambitions of Scotland, Wales and Northern Ireland. It is hoped that BBC Wales's network track record will act as a countervailing pressure. Assembly Members have called on the Welsh Assembly Government (WAG) to do something to ensure that the impact of any shortfall in funding on Wales is minimal and Culture Minister Alun Pugh has pledged to exert 'continuous pressure on the BBC to ensure it meets its charter obligations' to the nations and regions.<sup>148</sup>

## 7.2 The Culture Committee Comments

Not every AM is fully appreciative of the extent of the BBC's commitment to keeping a distinctive Welsh communicative space alive. In the deliberations of the Culture, Welsh Language and Sport Committee on film and broadcasting in January, Liberal Democrat AM Eleanor Burnham was critical of what she called the 'monopolistic tendencies' of BBC Wales.<sup>149</sup> Burnham's concern about the BBC's influence over the reporting and representation of contemporary Wales has to be balanced against the Corporation's role in supporting the political and cultural life of the nation. The Culture Minister preferred to describe the BBC's position as 'dominant' and stated that ITV Wales was, he believed, extending the reach of its news and current affairs operation and challenging the BBC. The impact of the way in which the BBC has scooped up much of the 'talent' in Wales and established itself as the largest, most reliable and trusted source of news in the country is a matter worth discussing. However, Mrs Burnham seemed more concerned to support the extension of S4C's editorial control over what the BBC produces for the Welsh language channel for free.

The committee's discussion of broadcasting and film highlighted the frustration of Welsh politicians that they have very little influence over what is a matter of crucial importance to their ability to set the political agenda and explain their actions and publicise their policies. With the May Assembly elections approaching anxieties have been heightened about the extent to which voters know what is going on in the Assembly and Cardiff Bay. The Culture Minister regretted that programmes such as ITV Wales' political slot, *Waterfront*, had been 'shunted into graveyard slots'.<sup>150</sup> Anxieties that the digital world will further diminish the ability of Welsh politicians to reach the Welsh public sparked the committee to request more information about

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<sup>148</sup> Transcript of the Committee for Culture, Welsh Language and Sport, 25 January 2007.

<sup>149</sup> Ibid

<sup>150</sup> Ibid

how other countries with difficult terrain have solved their problems of TV reception and the exact areas of Wales that will not receive Welsh TV and radio following the digital switchover.

### 7.3 Local services

One consequence of the BBC retrenchment might be the weakening of the commitment to develop local television. The expansion of community based radio and television is regarded as one of the welcome benefits of new media technology. Dissatisfaction about local radio provision in Wales has been expressed by WAG, as well as the OFCOM Advisory Group and the Advisory Committee for Wales, over the past few years.<sup>151</sup> While the majority of commercial radio stations in Wales are owned by media groups located outside Wales, community radio stations are seen in some quarters as a better way to represent local communities and interests. OFCOM's award of several community radio licences in Wales since the beginning of the year, including Radio Tircoed serving a community outside Swansea, BRFM, based in Brynmawr and Blaenau Gwent and Bro Radio in Barry and much of the Vale of Glamorgan can be seen as enhancing local representation and participation.<sup>152</sup> The Minister announced that £0.5m will be available from the Assembly to support community radio and details of how organisations can apply are at present being worked out.

Local radio provision needs to be seen in the context of the problems that national, all Wales radio stations face in rolling out their services in the digital world. BBC Radio Wales and Radio Cymru cannot be received on DAB (digital audio broadcasting) in certain parts of Wales.<sup>153</sup> As they are only available where there is a local commercial multiplex – and there are at present only two of these in Wales, around Cardiff and Swansea – expanding coverage is problematic. The decision of OFCOM to advertise a new licence for north-east Wales and west Cheshire<sup>154</sup> is to be welcomed but the dependence of the BBC on the launch of new commercial multiplex operators to provide its national service to all parts of Wales remains a matter of concern for WAG and AMs.

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<sup>151</sup> See David Barlow 'Radio Regulation and Public Participation in Wales: Active Citizens or Manipulated Consumers' *Cyfrwng – Media Wales Journal* Number 4, 2007, p25

<sup>152</sup> Anon, 'Community radio stations on the air', *The Western Mail*, (14 February 2007); Peter Collins, 'Community radio stations looking to go on air by Christmas', *South Wales Echo* (19 March 2007).

<sup>153</sup> See Devolution Monitoring Report, January 2007.

<sup>154</sup> OFCOM Press Release, [Ofcom advertises new local digital radio multiplex licence for Northeast Wales and West Cheshire](http://www.ofcom.gov.uk/latest/?sector=Broadcasting%20-%20Radio), (7 February 2007). Downloadable from: [www.ofcom.gov.uk/latest/?sector=Broadcasting%20-%20Radio](http://www.ofcom.gov.uk/latest/?sector=Broadcasting%20-%20Radio)

#### 7.4 How Green is our Valleywood?

Since its launch last July Wales's new film agency has announced its involvement in more than 30 low budget Welsh film projects.<sup>155</sup> Recently approved by WAG as a delegated lottery distributor, the Film Agency for Wales has emphasised its role in bringing together novice filmmakers with more experienced producers and directors. As part of the Creative Business Wales strategy of Enterprise Minister Andrew Davies, the agency is seen as having a key role to play in attracting film production companies to film and work in Wales. However, a question mark has appeared over the agency's ability to deliver by the failure of Valleywood to materialise as a viable venture.

Dragon International Studios first promised in 2002 to build state-of-the-art television and film production facilities on a 760 acres site outside Bridgend. The first stage of the development was supposed to be completed towards the end of 2004. According to the company, several factors have led to delays in the building work, including the discovery of a rare dormouse on the proposed site and heavier than usual rainfall in early 2006.<sup>156</sup> So far not one brick has been laid and the grant aid of £2.4m set aside for the development by WAG remains untouched. Some are beginning to question the future of Valleywood. Late 2007, we are told, is now the revised date for the completion of the first stage of the complex.

#### 7.5 Jammed?

The decision to suspend the BBC's online education service, BBC Jam, in March raises serious questions not only about the capacity and ability of the BBC to deliver its Charter obligations to promote learning for schools but also about the direction of the new Trust in its governance of the Corporation.<sup>157</sup> BBC Jam was launched at the beginning of 2006 providing on-line resources for school learners between the ages of 5 and 16 in support of the national curriculum requirements in the UK. At the time of its suspension it had 173,000 registered users, employed just under 200 staff, a number of them in Wales, and had partnerships with 25 external collaborators who were sub-contracted to provide services in particular areas. One such external partner is Wales's leading independent company Tinopolis, whose contracts with the

<sup>155</sup> Claire Hill, 'Welsh Film Industry in the spotlight' *The Western Mail* (24 March 2007).

<sup>156</sup> Abby Alford, 'Whatever happened to Valleywood?' *South Wales Echo* (30 January 2007).

<sup>157</sup> Anon, 'Blow to Tinopolis as BBC suspends Jam', *The Western Mail*, (15 March 2007).

BBC amount to about £1m.<sup>158</sup> The decision to suspend the service, estimated to spend £150m within the first five years on the provision of online resources, was implemented at short notice. School children were only given six days warning that they would lose the service. Closure was precipitated by complaints from commercial operators who claimed that BBC Jam had had a detrimental impact on their business. The European Commission called for a review of the service to ascertain whether it is damaging commercial interests.

For those who have followed the development of BBC Jam the suddenness of the decision came as a surprise. The BBC's original proposals for the service were put forward in 2000 and it was not until late 2003 that the go-ahead was given. The three year period of scrutiny involved the European Commission examining the proposal in some detail and the green light was only given after the British government set down a number of conditions. Since it has started operating BBC Jam has commissioned over 50 per cent of the content of its service from the independent sector. However from the outset some commercial firms have resented the BBC's privileged position in the development of the digital curriculum. In response to these commercial concerns, the government ring-fenced £530m for schools to spend on commercial e-learning products during the first five years of the service.<sup>159</sup> While the decision to suspend the service raises some questions about the BBC's relationship with the private sector, the more 'worrying' aspects of what has happened relate to the BBC's new governing body and its priorities.

The BBC Trust took control of the governing of the Corporation on 1 January with Janet Lewis-Jones appointed the Trust member for Wales and chair of the BBC Audience Council Wales. Fearing unilateral action from the European Commission, which has since the beginning of the year sought action from the BBC and the British government in response to unknown complaints from unnamed companies, the BBC Trust without warning closed down the service. The eagerness of the Trust to shut down BBC Jam and call for new proposals from the management for the online service which will be subjected to a Public Value Test – part of which will involve a 'market impact assessment' – is an indication of the emphasis they place on commercial interests. According to David Puttnam, 'the early signs are that the judgement calls of the Trust may become neurotically weighted toward the

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<sup>158</sup> Ibid

<sup>159</sup> David Puttnam, 'No Jam Tomorrow' *The Guardian* (26 March 2007).

commercial impacts, at the expense of true public interest.<sup>160</sup> The decision to suspend not only has had an impact on the school children who were using the service, but puts at risk the smaller media companies who have entered into contracts with the BBC to support the service.

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<sup>160</sup> Ibid

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ABPI Wales [www.abpi.org.uk/wales/](http://www.abpi.org.uk/wales/)

Age Concern Cymru [www.accymru.org.uk/en/3205.htm](http://www.accymru.org.uk/en/3205.htm)

Association of Liberal Democrat Councillors [www.aldc.org](http://www.aldc.org)

BBC Cymru'r Byd [www.bbc.co.uk/cymru](http://www.bbc.co.uk/cymru)

Cymdeithas yr Iaith Gymraeg [www.cymdeithas.org](http://www.cymdeithas.org)

Communities and Local Government [www.communities.gov.uk](http://www.communities.gov.uk)

Estyn [www.estyn.gov.uk](http://www.estyn.gov.uk)

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<http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>

European Parliament Press Releases  
[www.europarl.europa.eu/news/archive/default\\_en.htm](http://www.europarl.europa.eu/news/archive/default_en.htm)

Her Majesty's Treasury [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

Her Majesty's Revenue and Customs [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

HoC Constitutional Affairs Committee Inquiry – Devolution: A Decade On  
[www.parliament.uk/parliamentary\\_committees/conaffcom/cfcpn11\\_070221.cfm](http://www.parliament.uk/parliamentary_committees/conaffcom/cfcpn11_070221.cfm)

House of Commons Welsh Affairs Committee Inquiry Page: Orders in Council  
[www.parliament.uk/parliamentary\\_committees/welsh\\_affairs\\_committee/welsh\\_affairs\\_committee\\_inquiry\\_page\\_orders\\_in\\_council.cfm](http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/welsh_affairs_committee_inquiry_page_orders_in_council.cfm)

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NAfW Answers to Written Questions  
[www.wales.gov.uk/cms/2/RecordOfProceedings/3803150E000BB9790000297800000000](http://www.wales.gov.uk/cms/2/RecordOfProceedings/3803150E000BB9790000297800000000)

NAfW Documents Laid <http://www.wales.gov.uk/keypubdocuments/index.htm>

NAfW Culture Welsh Language and Sport Committee  
[www.wales.gov.uk/keypubassemcultwelsport/index.htm](http://www.wales.gov.uk/keypubassemcultwelsport/index.htm)

NAfW Education Lifelong Learning and Skills Committee

[www.wales.gov.uk/keypubassembledlearnskills/index.htm](http://www.wales.gov.uk/keypubassembledlearnskills/index.htm)

NAfW Enterprise, Innovation and Networks Committee

[www.wales.gov.uk/keypubasementinovnet/index.htm](http://www.wales.gov.uk/keypubasementinovnet/index.htm)

NAfW European and External Affairs Committee

[www.wales.gov.uk/keypubasemeuropeancomm2/index-e.htm](http://www.wales.gov.uk/keypubasemeuropeancomm2/index-e.htm)

NAfW Local Government and Public Services Committee

[www.wales.gov.uk/keypubassemlocgovpubsvs/index-e.htm](http://www.wales.gov.uk/keypubassemlocgovpubsvs/index-e.htm)

NAfW Social Justice and Regeneration Committee

[www.wales.gov.uk/keypubassemstregen/index.htm](http://www.wales.gov.uk/keypubassemstregen/index.htm)

NAfW Record of Proceedings

[www.wales.gov.uk/keypubrecordproceedings/index.htm](http://www.wales.gov.uk/keypubrecordproceedings/index.htm)

NAfW Shadow Commission

[www.wales.gov.uk/keypubassemshadowcomm/](http://www.wales.gov.uk/keypubassemshadowcomm/)

OFCOM

[www.ofcom.org.uk](http://www.ofcom.org.uk)

Office for National Statistics

[www.statistics.gov.uk/](http://www.statistics.gov.uk/)

Office of Public Sector Information

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Public Finance Magazine

[www.publicfinance.co.uk](http://www.publicfinance.co.uk)

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<http://new.wales.gov.uk/topics/educationandskills/>

WAG Legislation in Force

<http://new.wales.gov.uk/legislation/legislationinforce/>

WAG Local Government

[www.wales.gov.uk/localgovernment](http://www.wales.gov.uk/localgovernment)

WAG Press Releases <http://new.wales.gov.uk/news/>

WAG Social Justice and Regeneration

<http://new.wales.gov.uk/topics/socialjustice/>

WAG Strategy Publications

<http://new.wales.gov.uk/about/strategy/strategypublications/>

Wales Office [www.walesoffice.gov.uk](http://www.walesoffice.gov.uk)

Wales Legislation Online [www.wales-legislation.org.uk](http://www.wales-legislation.org.uk)

WEFO [www.wefo.wales.gov.uk](http://www.wefo.wales.gov.uk)

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Welsh Liberal Democrats [www.welshlibdems.org.uk/home\\_e.asp](http://www.welshlibdems.org.uk/home_e.asp)

Welsh Local Government Association [www.wlga.gov.uk](http://www.wlga.gov.uk)

The **Constitution** Unit

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# DEVOLUTION MONITORING PROGRAMME 2006-08

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**Wales Devolution Monitoring Report**

**September 2007**

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**Dr Richard Wyn Jones & Dr Roger Scully (eds.)**



Sefydliad Gwleidyddiaeth Cymru

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## The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell and Akash Paun at the Constitution Unit, UCL and the team leaders are as follows:

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All devolution monitoring reports are published at: [www.ucl.ac.uk/constitution-unit/research/devolution](http://www.ucl.ac.uk/constitution-unit/research/devolution). Contact Akash Paun on [a.paun@ucl.ac.uk](mailto:a.paun@ucl.ac.uk) for further information.

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# **Wales Devolution Monitoring Report**

**September 2007**

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**Dr Richard Wyn Jones & Dr Roger Scully (eds.)**

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## Abbreviations and Acronyms

AM	Assembly Member
BIC	British-Irish Council
CAP	Common Agricultural Policy
DAB	Digital Audio Broadcasting
DfES	Department for Education and Skills
DG	Directorate General (of the European Commission)
ECHR	European Convention on Human Rights
EIN	Enterprise, Innovation and Networks
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
GOWA	Government of Wales Act
HEFCW	Higher Education Funding Council for Wales
HEI	Higher Education Institution
ICT	Information and Communications Technology
JMC	Joint Ministerial Committee
LCO	Legislative Competence Order
LSB	Local Service Board
NHS	National Health Service
OFCOM	Office for Communications
RSL	Registered Social Landlord
RTB	Right-to-buy
SEN	Special Educational Needs
SI	Statutory Instrument
SL	Subordinate Legislation
TFO	Transfer of Functions Order
WAG	Welsh Assembly Government
WASC	Welsh Affairs Select Committee
WLGA	Welsh Local Government Association

## **Summary and Introduction**

This is the sixth Wales 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 2007. Two particularly notable events occurred in Wales during this time period.

The first of these was the third election to the National Assembly for Wales, held on 3 May 2007. This election produced an Assembly without a majority party. The second, more prolonged event followed directly from the first – a period of negotiations between the main political parties about the formation of a government. These negotiations began formally shortly after the election, and continued until early July, when final agreement was reached on a coalition between Labour and Plaid Cymru.

But while the chapters in this Monitoring Report consider the likely consequences for Wales of the 2007 election and the government that it has helped to produce, the analysis here also points to other important developments. Perhaps the most consequential is the implementation of the 2006 Government of Wales Act. With the enhanced powers granted devolution by the Act coming into force in a devolved institution where Plaid Cymru are now part of the government, devolution in Wales has clearly now entered into a new, and very interesting era.

Richard Wyn Jones and Roger Scully  
Aberystwyth, 10 August 2007

## 1. Public Policy

*Paul Chaney, Cardiff University*

### 1.1 Introduction

It is, perhaps, an ironic development that the 2007 election results and the existence of a minority government meant that the implementation of the Government of Wales Act (2006)'s provisions for the replacement of the Assembly as corporate body (predicated on co-working between parties) with a formal parliamentary structure for the third Assembly onwards (with a clear legal separation of executive and legislative branches) coincided with a pressing need for cooperation between a minority government and elements of the opposition parties in order to develop and implement key areas of public policy. To this end, and speaking at the beginning of the third Assembly, the Assembly Government's Business and Finance Minister, Jane Hutt AM, said 'we will demonstrate that a minority government is a listening government. We are not lecturing, we are reaching out, we are working together'.<sup>1</sup>

However, despite such assertions, it was clear that the minority government did not offer the prospect of a stable platform for the delivery of public policy over the next four years – a fact that led to protracted inter-party negotiations over the formation of a coalition. This raises interesting challenges, not least because, as the academic literature on public policy asserts, political ideologies 'have characteristics that appear desirable in policy-making in that they allow political actors to credibly commit themselves to certain policies, thereby fostering rule-based behaviour and predictability'.<sup>2</sup> Whilst this may be a general rule, the politics of establishing a coalition government, which dominated the period between May and July, underlined the difficulty of securing a policy programme agreed between parties that have fundamental ideological differences. Such differences are particularly, though not exclusively, to be found in constitutional matters. Specifically, in contrast to the unionist position of Welsh Labour, the Welsh LibDems and Tories, Plaid Cymru fought the 2007 election with a manifesto that stated 'our long term vision is of an independent Wales standing shoulder to shoulder with the nations of the world'.<sup>3</sup> Thus, it is no surprise that the past quarter has seen often fraught inter- and intra-

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<sup>1</sup> Quoted in Anon, <http://news.bbc.co.uk/1/hi/wales/6728417.stm> (6 June 2007)

<sup>2</sup> T. Slembeck, *Ideologies, Beliefs, And Economic Advice – A Cognitive-Evolutionary View On Economic Policy-Making*, (Department of Economics, University of St. Gallen, Discussion Paper no. 2000-12, 2000) p. 2.

<sup>3</sup> Plaid Cymru, '*Make a Difference*', (Plaid Cymru National Assembly Election Manifesto 2007), p. 36.

party discussions centring on at least two principal options for government: a 'rainbow' coalition of Plaid, the Welsh LibDems and Welsh Tories, or a coalition between Welsh Labour and Plaid. Drafted in May, the prospective 'Rainbow' coalition's document, *All-Wales Accord: An Agreement Establishing An All-Wales Government*, set out seven 'thematic pillars' for a policy programme for the next Assembly term:

1. A set of measures to promote that nation's constitutional development, the achievement of a bilingual society in a country that is unified while culturally diverse.
2. A new focus on encouraging an enterprising, innovative economy and a highly-skilled work-force.
3. Concerted action on climate change, energy efficiency and sustainable development.
4. A forward-looking programme of investment in healthcare and well-being.
5. Major commitments on social justice, including childcare, affordable housing, council tax and student debt.
6. A range of actions to promote Wales in the international context.
7. A deep commitment to developing a new style of governing.<sup>4</sup>

The subsequent policy programme set out in *One Wales*<sup>5</sup> – the document that finally sealed the coalition agreement reached in late June between Plaid Cymru and Welsh Labour – offers both continuities and contrasts with the *All-Wales Accord*. Founded on what the document calls the 'principles of social justice, sustainability and inclusivity', it presents a policy agenda described as 'ambitious but deliverable, radical yet realistic'. The agreement includes important constitutional pledges that should lead to the establishment of a full Welsh Parliament by 2011 (these include the creation of a constitutional convention and a Plaid and Welsh Labour commitment to campaigning for a 'yes' referendum vote). On health, the agreement promises a moratorium on existing proposals for changes at community hospital level, reviewing NHS Wales reconfiguration, and an end to private sector involvement. In education, *One Wales* states the intention of initiating a pilot scheme for state provision of laptop computers for children, offering extra assistance for those with student debt, maintaining existing fee levels in Wales up to and including 2009/10, and maintaining the current level of resource throughout the four-year Assembly term. On the environment, a Climate Change Commission for Wales will

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<sup>4</sup> Ieuan Wyn Jones, Nick Bourne, and Michael German, *The All-Wales Accord Agreement Establishing An All-Wales Government* (May 2007), p. 3, at: [www.peterdcox.me.uk/pcox.nsf/dx/Rainbow.pdf/\\$file/Rainbow.pdf](http://www.peterdcox.me.uk/pcox.nsf/dx/Rainbow.pdf/$file/Rainbow.pdf)

be established 'to assist with the development of new policies and the creation of consensus on climate change'. *One Wales* also promises a new Assembly Measure 'to confirm official status for both Welsh and English linguistic rights in the provision of services – and the establishment of the post of Language Commissioner'. In respect of criminal justice the coalition's policy programme asserts that 'we will consider the evidence for the devolution of the criminal justice system within the contexts of (a) devolution of funding and (b) moves towards the establishment of a single administration of justice in Wales'.

It is an understatement to say that the present marks an interesting time for public policy. Plaid began 2007 with the publication of *Labour's Failure to Deliver*, an eight-page indictment of Labour's policy record and what it called 'broken promises, failures and incompetence'.<sup>6</sup> In contrast, late June saw a leaked election briefing written by a special adviser to Welsh Labour reportedly assert that Plaid was variously 'a shambles which could not run a cockle stall, let alone a country', and 'leaderless, rudderless, and hopeless'.<sup>7</sup> Accordingly, the deep historical enmity between Welsh Labour and Plaid makes this coalition government an intriguing prospect – with a key question for public policy being whether constitutional differences will ultimately undermine attempts to deliver a joint policy programme founded on both parties' purportedly 'socialist' agendas.

Away from the party political dimension, the National Assembly's new powers to frame primary legislation for Wales mean that constitutional and governance developments also have significant implications for public policy. The academic literature on policy 'delivery analysis' distinguishes between 'hard' and 'soft' policy enforcement responses.<sup>8</sup> Policies backed by legal duties are characterised as the former type; as one analyst asserts: 'policy is all very well, but without an enforcement or compliance capability, the delivery of public policy is unlikely and uncertain'.<sup>9</sup> Whilst Wales-only lawmaking by the Assembly is nothing new (hitherto achieved via secondary legislation), the provisions of the Government of Wales Act (2006) (GOWA) increase WAG's capacity for 'hard' policy enforcement responses.

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<sup>5</sup> Labour and Plaid Cymru Groups, *One Wales: A progressive agenda for the government of Wales*, (2007). Downloadable from: <http://images.icnetwork.co.uk/docs/icWales/712C7161-B97B-1FFF-DC292029BEB06DA3.pdf>

<sup>6</sup> Plaid Cymru, *Labour's Failure to Deliver*, (January 2007), at: [www.plaidcymru.org](http://www.plaidcymru.org)

<sup>7</sup> M. Shipton, 'Labour: Plaid couldn't run a cockle stall', *Western Mail*, (27 June 2007)

<sup>8</sup> See C. Hood, *Administrative Analysis: An Introduction to Rules, Enforcement and Organizations*, (Brighton, Sussex: Wheatsheaf Books, 1986).

<sup>9</sup> W. Parsons, *Public Policy*, (Cheltenham: Edward Elgar Books, 1995) p.513.

Framework powers contained in Westminster Acts, an established feature of the post-1999 devolution arrangements, may delegate to the National Assembly the right to pass new Assembly Measures (the term denoting new primary legislation for Wales drafted by the Assembly) in areas where it *already* has competence.<sup>10</sup> In addition, the Assembly Government's legislative and policy programme will be developed through the use of Legislative Competence Orders (LCOs) and the resulting Assembly Measures will extend the scope of devolved policy-making and, importantly, place distinct legal duties on those charged with implementing policy, not least service providers in the public sector and beyond.<sup>11</sup> These will be monitored by the growing number of Wales-specific inspectorates such as the Wales Audit Office,<sup>12</sup> the Care and Social Services Inspectorate Wales<sup>13</sup> and, Public Services Ombudsman for Wales.<sup>14</sup> An example of the new, legally grounded – or 'hard' – policy enforcement responses is the Assembly Government's commitment to introduce a new legal duty on all public bodies to demonstrate their commitment to tackling child poverty. Overall, at the outset of the third Assembly (prior to the founding of the coalition government), WAG announced its intention to implement nine such Assembly Measures.<sup>15</sup> It should be noted that, under the provisions of the GOWA (2006), setting the legislative agenda is not the sole preserve of the executive. Under Standing Orders 22.47 and 23.99 *Y Llywydd* / the Presiding Officer holds periodic Legislative Ballots to decide the name of an Assembly Member who may submit proposals for legislation either through a Legislative Competence Order or an Assembly Measure.<sup>16</sup>

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<sup>10</sup> As official guidance states: under Part 3 of the Government of Wales Act (2006), in the matters within which it already has legislative competence, the National Assembly can make its own legislation, known as 'Assembly Measures', which have similar effect to an Act of Parliament. In addition, Section 95 and Schedule 5 of the Act set out the extent of the Assembly's legislative competence by listing devolved 'Fields' and 'Matters' within each Field. The Assembly's legislative 'reach' may be extended to add further 'Matters' - this may be done either by an Act of Parliament, or by a Legislative Competence Order (LCO), the latter must be approved by the National Assembly for Wales and both Houses of Parliament.

See: [www.assemblywales.org/bus-home/buslegislation/bus-legislation-leg-process.htm](http://www.assemblywales.org/bus-home/buslegislation/bus-legislation-leg-process.htm)

<sup>11</sup> For a consolidated list of the current areas where the Welsh Assembly Government may legislate and develop policy see: [www.assemblywales.org/bus-home/buslegislation/business-legislation-schedule-5.htm](http://www.assemblywales.org/bus-home/buslegislation/business-legislation-schedule-5.htm)

<sup>12</sup> [www.wao.gov.uk](http://www.wao.gov.uk)

<sup>13</sup> [www.csiw.wales.gov.uk](http://www.csiw.wales.gov.uk)

<sup>14</sup> [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)

<sup>15</sup> For details of Assembly Measures in progress see: [www.assemblywales.org/bus-home/buslegislation/bus-legislation-meas-in-prog.htm](http://www.assemblywales.org/bus-home/buslegislation/bus-legislation-meas-in-prog.htm)

<sup>16</sup> For details of Legislative Ballots see: [www.assemblywales.org/bus-home/buslegislation/business-legislative-ballots.htm](http://www.assemblywales.org/bus-home/buslegislation/business-legislative-ballots.htm). Backbench and opposition AMs' proposals for Assembly Measures require the backing of two-thirds of the National Assembly.

In addition to enhanced legislative powers, and mirroring a pre-existing feature of devolved policy-making in Scotland,<sup>17</sup> the GOWA (2006) and the Assembly's Standing Orders make provision for another potentially significant development for the way that public policy is made – namely, the Assembly's new Petitions Committee. This development is broadly consonant with the academic literature on the 'horizontal dimension' of the policy process, which emphasises the participation of a broad range of social groups and interests in policy-making.<sup>18</sup> In the case of the Petitions Committee it opens up the prospect of further citizen engagement with the devolved policy agenda. Under this new mechanism a petition calling for action on specified issues may be submitted if it contains ten signatures and refers to devolved matters. According to official guidance, *Y Llywydd* / the Presiding Officer 'is free to refer petitions to any committee, but the assumption is that they will be referred to the Petitions Committee in the first instance'.<sup>19</sup> In turn, the cross-party Petitions Committee may then: '(i) refer the petition to the Assembly Government, any other committee of the Assembly or any other person or body for them to take such action as they consider appropriate; (ii) report to the Assembly; or (iii) take any other action which the committee considers appropriate'.<sup>20</sup>

Overall, it should be noted that the protracted inter-party negotiations culminating in July's confirmation of a Welsh Labour-Plaid Cymru coalition government mean that the past quarter is atypical in respect of public policy development; it was characterised by an extended period of minority government with fewer policy outputs than normal owing to a preoccupation with securing an executive with a working majority. As a result there has also been limited committee work undertaken in the National Assembly. Furthermore, it is the case that some of the pre-coalition government policy statements and proposals reported here may be subsequently amended in light of the coalition agreement. Notwithstanding this, we now turn to examine developments against the First Minister's assertion that his government's priority is: 'driving ahead with the implementation of a progressive policy agenda and making maximum use of the new powers available to this Assembly, and not the previous Assembly, through the Government of Wales Act 2006'.<sup>21</sup>

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<sup>17</sup> See [www.scottish.parliament.uk/s3/committees/petitions/index.htm](http://www.scottish.parliament.uk/s3/committees/petitions/index.htm)

<sup>18</sup> See for example. H. K. Colebatch, *Policy*, Second Edition, (Buckingham: Open University, 2002)

<sup>19</sup> 'Role of the Committee and Approach to its Work', Papers of the Petitions Committee PET(3)01-07, (4 July 2007).

<sup>20</sup> Standing Orders of the National Assembly for Wales, Standing Order 28.9

<sup>21</sup> Rhodri Morgan AM, Questions to the First Minister (OAG (3)0128(FM)), *Record of Proceedings*, (3 July 2007).

## 1.2 Health and Social Services

WAG has announced that it will legislate in the fields of charges for home care and other non-residential social services and patients' legal rights through an NHS Wales Redress Measure. The latter will simplify ways that the public can seek redress from the state healthcare provider. Thus, the health minister told the Assembly: 'Ministers need to be able to set out some basic rights and arrangements in legislation. That is why I am seeking regulation-making powers in this Measure, so that we can develop better arrangements for settling low-value clinical negligence claims without the need for legal action'.<sup>22</sup> WAG's NHS Wales redress proposals secured broad cross-party support in an Assembly debate in July. Jenny Randerson AM (Welsh LibDem) presciently noted the wider significance of the redress Measure by noting that, in light of the cross-party consensus: 'the proposals will be an interesting test of how totally reasonable requests for [LCO] powers are viewed in Westminster'.<sup>23</sup>

Speaking in a plenary meeting of the Assembly on 6 June the First Minister asserted that 'the most important bread-and-butter issue in the [May 2007] election campaign concerned hospital closures'.<sup>24</sup> Public concern over proposed hospital closures and the downgrading of some units, together with opposition parties' dissatisfaction with a claimed lack of consultation on hospitals restructuring, led to Rhodri Morgan asking health minister Edwina Hart to conduct a review of the hospital reconfiguration programme to determine 'what had gone wrong and whether there could be some alternative approaches'. He continued that a 'full rethink process ... will be able to look for different ideas and approaches to the public, to persuade people to get on board, and to listen to alternative ways forward'.<sup>25</sup> In July, Ms Hart announced further restructuring in NHS Wales. Specifically, she proposed that seven health trusts enter into discussions over creating three larger bodies – with a possible extension of this policy in the future. The minister asserted that by 'streamlining the management of these trusts the benefits of joint working will mean more robust management, greater strategic direction and better care for patients'.<sup>26</sup> The shadow health minister, Jonathan Morgan AM (Welsh Conservatives), welcomed the move as an

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<sup>22</sup> Edwina Hart AM, Record of Proceedings, 3 July 2007.

<sup>23</sup> Record of Proceedings, 3 July 2007

<sup>24</sup> Record of Proceedings, 6 June 2007.

<sup>25</sup> Record of Proceedings, 6 June 2007.

<sup>26</sup> WAG Press Release, 'Health minister announces consultation on major reorganisation of NHS Trusts' (18 July 2007): [www.cwmtaf.wales.nhs.uk/publications/meetings/integrationboard/files/20070807/5b.pdf](http://www.cwmtaf.wales.nhs.uk/publications/meetings/integrationboard/files/20070807/5b.pdf)

endorsement of Tory policy. He also expressed concern about how the proposed mergers will address the level of debts facing some Welsh health trusts.<sup>27</sup>

In June, the WAG-sponsored agency, Health Commission Wales, announced plans to improve access to child and adolescent mental health services in south Wales (consultation on the north Wales proposals will continue until 6 August).<sup>28</sup> Subject to endorsement in the consultation process, the proposals will see a WAG-funded, purpose-built unit open in late 2009 in Bridgend in order to provide a 24-hour, seven-day service.<sup>29</sup>

In order to minimise the risk of avian flu, the National Assembly's Legislation Committee affirmed The Animals and Animal Products (Import and Export) (Wales) (Imports of Captive Birds) Regulations 2007. These amend previous regulations in order to extend the current European Union ban on the import into Wales of captive birds from outside the European Union.

On other matters, WAG's policy on NHS Wales nurses' pay was revised in July, when it was announced that nurses will get a one-off pay increase of 2.5 per cent rather than a staged increase. This brings Welsh pay scales in line with those in Scotland.

### 1.3 Education, Culture and the Welsh Language

The advent of a coalition government with Plaid Cymru AM Rhodri Glyn Thomas as minister responsible for the Welsh language raises the prospect of future measures to deliver both the Plaid manifesto commitment to 'extend Welsh medium provision from nursery level up to further and higher education, and ensure a balance between vocational and academic courses', and the undertaking in *One Wales* to further develop policy to promote language rights for citizens.<sup>30</sup> However, the First Minister's comments on the shortcomings of the Welsh Language Act 1993 suggest that further discussion between the coalition partners will be necessary before the details of Welsh language policy are finalised. Speaking in June Rhodri Morgan stated that 'the individual [citizen] does not have enough rights under th[e present] system. We are anxious to explore ways of extending the rights of the individual. However, the point

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<sup>27</sup> Conservative Party Press Release, 'Government finally listens over NHS bureaucracy' (19 July 2007), at: [www.conservatives.com/tile.do?def=news.story.page&obj\\_id=137633](http://www.conservatives.com/tile.do?def=news.story.page&obj_id=137633)

<sup>28</sup> See [www.wales.gov.uk/healthcommission](http://www.wales.gov.uk/healthcommission) for details of the proposals

<sup>29</sup> WAG press release, 'Improvements to children's mental health services unveiled', (19 June 2007).

<sup>30</sup> Plaid Cymru, *Change for the Better. It's time to make a difference!* (Cardiff: Plaid Cymru, 2007), p.5.

is: does that require a new Act, or could we simply amend the existing legislation? [...] if you can do so quicker and more easily without a new Act, then that is what we should go for'.<sup>31</sup>

Future legislation under LCOs has also been promised in respect of reform of the 14-19 curriculum (notably, in order to prepare young people for their working lives). Further to the publication in March 2007 of the Education, Lifelong Learning and Skills Committee's Policy Review of Additional [hitherto 'Special'] Educational Needs' (or SEN),<sup>32</sup> WAG has announced its intention of seeking enhanced legislative powers in relation to additional learning needs to enable a substantial restructuring of the statementing system in special education.

On other matters and in response to a question from Leanne Wood AM (Plaid Cymru) during a plenary debate on 13 June, the Minister for Education, Culture and Welsh Language gave an insight into future policy on addressing the stigma of mental health issues in the education system. According to the minister, Carwyn Jones, WAG is 'at present developing guidance for schools on promoting the emotional and mental health of pupils. The opportunity for discussing mental health issues is also being considered as part of the personal and social education curriculum'.<sup>33</sup>

In July, referring to a £40m funding gap in higher education between Wales and England – as highlighted by the Higher Education Funding Council for Wales (HEFCW)<sup>34</sup> – the (then) opposition AM Janet Ryder (Plaid Cymru) asked the First Minister, 'will you commit your Government to looking at the HEFCW report and to starting to address the funding gap that your funding body has proved exists'?<sup>35</sup> According to the First Minister the budget for higher education is £432m. He proceeded to note: 'universities, or students attending those universities, have many other funding streams. I understand that tuition fees will raise an additional £70m, and student support will provide between £80m and £90m for those attending university. Some of these funding streams do not have comparable streams in

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<sup>31</sup> Record of Proceedings, 6 June 2007.

<sup>32</sup> Education, Lifelong Learning and Skills Committee's Policy Review of Additional [hitherto 'Special'] Educational Needs' (March 2007) Downloadable from:  
[www.assemblywales.org/a418a2221ff4ec27fb94740522d38822.pdf](http://www.assemblywales.org/a418a2221ff4ec27fb94740522d38822.pdf)

<sup>33</sup> Record of Proceedings, 3 June 2007

<sup>34</sup> See for example: HEFCW, *The Funding Gap: 2004/05* (2006)

[http://194.81.48.132/FinanceAssurance\\_Docs/The\\_Funding\\_Gap\\_2004\\_05\\_-\\_main\\_content.pdf](http://194.81.48.132/FinanceAssurance_Docs/The_Funding_Gap_2004_05_-_main_content.pdf)

England'. According to HEFCW figures published in March 2007,<sup>36</sup> 'the average increase for formula funding allocations for Welsh HEIs on their 2006/07 grants is 3.84% in cash terms. The maximum increase for an individual HEI is 5.87%'.

#### 1.4 Economy and Transport

At the outset of the third Assembly the executive stated its intention to legislate in the area of transport policy. This, it is intended, will see the development of integrated systems and the creation of a 'green public transport system'.

In respect of housing, *Better Homes for the People of Wales* was the first National Strategy for Wales. It was initially approved by the National Assembly on 12 July 2001 and updated in October 2006. This revision highlighted the need to 'promote the diversity of housing supply by giving people better access and more choice over affordable housing that meets their needs'.<sup>37</sup> In late June, and building on its manifesto commitments in this area, the minority Welsh Labour administration announced that it would shortly be publishing revised plans for its Homebuy scheme.<sup>38</sup> The latter is operated by Registered Social Landlords (RSLs) and is intended to assist people who would otherwise require social housing. Currently, under the scheme, a RSL can provide an equity loan for an agreed percentage (up to 50 per cent) of the purchase price of a property. In an associated move aimed at increasing the supply of affordable housing WAG also announced that it will use its new law-making powers to give local authorities the option to apply to Welsh Ministers to temporarily suspend their obligations in respect of the right-to-buy scheme (RTB) in areas of high housing need for up to five years. Set out in the Housing Act 1980, the RTB was introduced by the first Thatcher government and allows tenants to purchase their council home. WAG figures released in June showed that sales remained comparatively strong in Wales – thereby diminishing the available stock of council housing. According to WAG, there were 1,206 RTB claims in the first quarter of 2007, representing a decrease of 279 from the previous quarter, but an increase of 126 from the same quarter the previous year.<sup>39</sup>

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<sup>35</sup> Rhodri Morgan AM, Questions to the First Minister (OAQ(3)0117(FM)), Record of Proceedings, 3 July 2007

<sup>36</sup> HEFCW Press Release, 'Higher education to receive £424 million in next academic year', (27 March, 2007)

<sup>37</sup> WAG *Better Homes for People in Wales: A National Housing Strategy for Wales - Action Plan*, (Cardiff: WAG, 2006), p.6. See <http://new.wales.gov.uk/dsjr/publications/housing/1389812/plan?lang=en>

<sup>38</sup> <http://new.wales.gov.uk/topics/housingandcommunity/housing/private/buyingandselling/homebuy/?lang=en>

<sup>39</sup> WAG Statistical Release 83/2007, 20 June 2007.

On 26 June WAG announced plans for a draft Assembly Measure that will place a duty on every local authority in Wales to introduce a code of conduct for behaviour on school buses. This policy proposal will amend the Education and Inspections Act 2006 such that a school's behaviour policy can include pupil conduct outside the school premises including, specifically, school buses. However, members of Stuart's Campaign (an organisation set up following the death in 2002 of a 12 year old pupil, Stuart Cunningham-Jones, when a school bus carrying 75 pupils crashed near Cowbridge, Vale of Glamorgan) had demanded one seat for every child equipped with safety belts, and improved supervision of pupils onboard school buses. According to one member of Stuart's Campaign, WAG's policy outline 'fails to get going on many of the key proposals on school transport accepted by all parties in the Assembly last year ... this is deeply disappointing'.<sup>40</sup>

### **1.5 Sustainability and Rural Development**

In June WAG announced its plans for a LCO to legislate on environmental protection and waste management, and to develop and integrate policy on litter and other environmental matters with that on sustainable waste management. According to the Sustainability and Rural Development Minister, Jane Davidson AM, 'we have made a great deal of progress in recycling, from 7 per cent in 2000 we now recycle almost 25 per cent of our waste and are aiming for the target of 40 per cent [in] 2009/10... We will want to use all the methods at our disposal to increase our recycling activity in Wales'.<sup>41</sup>

On 20 June the Welsh Conservatives won majority support for their motion (NDM3618) on environmental measures. With the help of the Welsh LibDems and Plaid Cymru, they won backing for their demand that the Welsh Assembly Government 'draw up a programme of action in order to achieve annual carbon-equivalent emissions reductions of 3 per cent per year by 2011 and set up an independent body to monitor the Government's progress; publish and implement a Renewable Energy Strategy with the aim of achieving a renewable energy target of 20 per cent by 2015, with a greater emphasis on the diversity of technologies available; and, review the TAN8 planning guidance policy to ensure it promotes the full range of renewable energy sources'.<sup>42</sup>

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<sup>40</sup> Anon, 'Behaviour rules for school buses', 26 June 2007,

<http://news.bbc.co.uk/1/hi/wales/6238568.stm>

<sup>41</sup> WAG Press Release, 'Opportunity to improve Wales' environment', (18 June, 2007).

<sup>42</sup> Record of Proceedings, 20 June 2007. TAN8 can be accessed on the following link:  
<http://new.wales.gov.uk/about/departments/dsrd/epcpublications/PlanPubs/TAN/TAN8?lang=en>

In October 2006, as part of a joint initiative between the UK government and the devolved administrations – namely, the Independent Committee on Radioactive Waste Management – WAG promised a public policy consultation on future radioactive waste management and, specifically, measures to deal with the UK's estimated 470,000 cubic metres of higher activity radioactive wastes. Details of this consultation (Managing Radioactive Waste Safely: a Framework for Implementing Geological Disposal) were announced by WAG on 25 June.<sup>43</sup> In a further inter-governmental policy initiative, the Minister for Sustainability and Rural Development, Jane Davidson AM launched 'The Manual for Streets'. This policy document updates guidance to service providers on street design in residential areas. According to WAG 'it reflects the Welsh Assembly Government's commitment to sustainability and social justice, improving the quality of the built environment in Wales'.<sup>44</sup>

The past quarter also saw £1.5m of funding announced by WAG in furtherance of a scheme to create an all-Wales open access coastal path by 2013. The Countryside Council for Wales<sup>45</sup> administers the scheme on behalf of WAG. The latest funding was aimed at giving local councils and national parks greater resources to improve public access to the Welsh coast.

## 1.6 Equalities

The 2007 Assembly elections saw the publication by an alliance of twenty equality organisations of *An Equality Manifesto for Wales*.<sup>46</sup> This is significant in that it sets out the agenda for promoting equality in public policy during the third Assembly as seen by statutory equality bodies like the Commission for Racial Equality, and representative organisations such as Wales Women's National Coalition and, Stonewall Cymru. Inter alia, the manifesto called on the Assembly Government to: 'identify the equality outcome for every pound of the £14bn the Assembly spends each year; bring forward at least two proposals for legislation per year via the new Order in Council route, which are designed to make a real difference to the lives of the people whom we represent. For example, a measure to enhance independent living for older and disabled people, including people from ethnic minority and

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<sup>43</sup> See [www.defra.gov.uk](http://www.defra.gov.uk)

<sup>44</sup> WAG Press Release, 'Manual for Streets encourages more sustainable communities', (20 June 2007), copies of the Manual downloadable from: [www.dft.gov.uk/pgr/sustainable/manforstreets](http://www.dft.gov.uk/pgr/sustainable/manforstreets)

<sup>45</sup> [www.ccw.gov.uk/Splash.aspx](http://www.ccw.gov.uk/Splash.aspx)

<sup>46</sup> 'Who are you talking to?', (Equality Manifesto for Wales, 2007), downloadable from: [www.eoc.org.uk/Default.aspx?page=19483](http://www.eoc.org.uk/Default.aspx?page=19483)

lesbian, gay and bisexual communities; [and ...] use performance indicators to measure equality in Assembly processes and outcomes’.

At the beginning of June the Welsh Tories highlighted equality issues when they criticised WAG’s legislative programme for the third Assembly. Nick Bourne AM told a plenary debate: ‘I am disappointed that there is nothing on flexible working for carers. I am also disappointed that there is nothing to promote childcare, which is important to get more people into the workplace. Childcare enables women – and it is usually women whom this affects – to get out to work’.<sup>47</sup> On other matters, and in order to address the current under-representation of women who presently constitute fewer than 3 per cent of fire-fighters in Wales, July saw WAG link-up with Wales’ three Fire and Rescue Services to promote a positive action initiative to encourage more women to consider taking up such a career.<sup>48</sup>

The Commissioner for Older People (Wales) Act received royal assent in 2006. In July the Deputy Minister for Health and Social Services announced that the Welsh Commissioner for Older People – effectively a statutory ‘champion’ of older peoples’ rights – will be appointed later this year. The post is the first of its type in the UK. In the same month WAG announced £9m in ‘minority’ ethnic achievement in education grants for Welsh Local Education Authorities. These are aimed at supporting all such pupils – including asylum seekers, gypsy travellers and the children of migrant workers (particularly those for whom English, or Welsh, is an additional language).

### **1.7 Social Justice and Public Service Delivery**

Further to its 2007 election manifesto commitment, in June the minority Welsh Labour administration stated its intention to introduce an Assembly Measure aimed at tackling child poverty and assisting vulnerable children. The proposed duty will require all public bodies to demonstrate their commitment to tackling child poverty. Linked to this agenda, a recent report by a policy research charity announced that mixed progress was being made on child poverty. It found that following devolution in 1999, child poverty in Wales has fallen from 36 per cent in the late 1990s (significantly higher than the UK average) to 28 per cent (just under the UK average). Over the same period, pensioner poverty was also down markedly, and particularly among single pensioners, with the overall rate falling from 26 per cent to 20 per cent.

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<sup>47</sup> Record of Proceedings, June 6, 2007.

<sup>48</sup> See: [www.southwales-fire.gov.uk/SWFSCMS/Homepage.htm](http://www.southwales-fire.gov.uk/SWFSCMS/Homepage.htm) , [www.nwales-fireservice.org.uk/](http://www.nwales-fireservice.org.uk/) , [www.mawwfire.gov.uk/](http://www.mawwfire.gov.uk/)

The report showed that, in common with the rest of the UK, the improvements were made in the period prior to 2003/04.<sup>49</sup>

In mid-June WAG announced that the European Commission had approved its procurement project that is designed to provide public sector bodies in Wales with an integrated, high bandwidth, high availability information and communication technology (ICT) network. This development is part of WAG's better value for money initiative aimed achieving economies of scale.<sup>50</sup>

## 1.8 Petitions

As noted above, the Assembly Petitions Committee offers a new mechanism by which citizens and organisations may influence the policy agenda. In July, Val Lloyd AM (Welsh Labour) was elected as chair of the cross-party Committee. The first petitions considered by the Committee were: a request that the Welsh Assembly Government complete the Children's Hospital for Wales (5,994 signatures of support), a demand that all the residents of Glyndulais residential home, Crynant are able to remain in their home for as long as they so desire (33 signatures of support) and, a call to re-open the railway station at Carno on the cross-border Aberystwyth to Shrewsbury line (800 signatures of support).

## 1.9 Conclusion

The past quarter is particularly significant because of the arrival of new policy 'machinery' stemming from the Government of Wales Act 2006. The latter includes the prospect of policy developments backed by the legal weight of Assembly Measures as well as mechanisms to boost participation in the policy process such as the Petitions Committee. In terms of substantive policy developments, when weighed against the First Minister's assertion that his government's priority is: 'driving ahead with the implementation of a progressive policy agenda and making maximum use of the new powers available to this Assembly', arguably, the emerging post-*One Wales* agenda is broader in vision than that presented in the respective election manifestos of either coalition partner. Whether these policy aims are translated into policy outcomes will, in large measure, depend upon the stability of the coalition. Major questions remain as to whether constitutional – and other – differences between the

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<sup>49</sup> P. Kenway and G. Palmer, *Monitoring poverty and social exclusion in Wales*, (2007) downloadable from: [www.jrf.org.uk/knowledge/findings/socialpolicy/2096.asp](http://www.jrf.org.uk/knowledge/findings/socialpolicy/2096.asp)

<sup>50</sup> WAG Press Release, 'EC Go-ahead for new Wales network', (19 June 2007)

coalition partners – as well as the effect of dissident anti-coalition voices in both parties – will ultimately undermine attempts to deliver a joint policy programme.

## 2. The Legislative Process

*Marie Navarro,<sup>51</sup> Cardiff Law School*

### 2.1 Primary Legislation

2006 saw the enactment of the highest number of Acts transferring power to the Assembly or the Welsh Ministers in a single year.<sup>52</sup> However, the increase in the powers devolved to Wales from Westminster by means of primary legislation seems to have slowed in 2007, nearly to a halt. This might be a sign that the transformation of devolution, with the introduction of Legislative Competence Orders (LCOs) in particular, will become the norm in the future for devolving powers to the Assembly, instead of vesting executive powers in the Welsh Ministers directly through Acts.

#### **2.1.1 Bills giving powers to the Welsh Ministers:**

The Rating (Empty Properties) Bill gives power to the Welsh Ministers to change the formulae for the chargeable amount to be applied to unoccupied hereditaments by amending the Local Government Finance Act 1988. This gives WAG the power to make orders and is subject to affirmative resolution in the Assembly. The same power is vested in the Secretary of State in relation to England and subject to the same control by Parliament.

The Telecommunications Masts (Planning Control) Bill (a private bill introduced by members) would vest powers in the Secretary of State by amending an Act contained in the TFO 1999 under which the powers in that Act are devolved to the Assembly. Consequently, by virtue of the Government of Wales Act 2006, the powers in clause 1 would be exercisable by the Welsh Ministers.

The Historic Counties, Towns and Villages (Traffic Signs and Mapping) Bill (another private bill) would give powers to the Welsh Ministers to determine historical boundaries and designate places as a 'historic county, town or village'.

In all the three Bills the powers devolved to the Welsh Ministers would be the same as those exercisable by the Secretary of State in England.

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<sup>51</sup> Research Associate, Editor of Wales Legislation Online, [www.wales-legislation.org.uk](http://www.wales-legislation.org.uk)

<sup>52</sup> See previous *Wales Devolution Monitoring Reports*, at [www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales\\_April07.pdf](http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_April07.pdf).

### **2.1.2 Bills giving powers to the National Assembly for Wales**

There have been no new bills introduced that give powers to the Welsh National Assembly

Two bills currently before Parliament which give Measure-making powers to the Assembly (the Further Education and Training Bill, and the Local Government and Public Involvement in Health Bill, discussed in the previous report<sup>53</sup>) have recently been the subject of research papers in the House of Commons. These documents reveal the reasons why this route was chosen instead of the LCO procedure to give powers to the Assembly.

In the case of the Local Government Bill, the research paper explains that the decision was taken to amend directly Schedule 5 in the GOWA 2006 due to the fundamentally-different plans in Wales compared to those proposed for England.<sup>54</sup> It was consequently easier to give broad powers to the Assembly to amend the existing statutory provisions.

In a press release, Sue Essex, the Welsh Assembly Government's Local Government and Public Services Minister, welcomed the Bill:

The Bill will enable the Assembly Government to bring forward proposals that will help local authorities to improve their performance and strengthen local strategic planning. It will also enable us to encourage more collaborative working, and in the light of this experience, to consider proposals for voluntary or directed mergers of local authorities.

The Bill will also allow us to simplify procedures for making and confirming local authority bye-laws in Wales and to consider a more local approach to dealing with instances of misconduct by local authority members.

There is scope in this Bill to give yet further powers to the National Assembly. I will be discussing with the Secretary of State amendments to the Bill that would give Wales further powers but, as I have made clear, The Assembly Government has no intention of seeking amendments relating to local government electoral arrangements.<sup>55</sup>

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<sup>53</sup> M. Navarro, 'The Legislative Process' in Jones and Scully (eds.), *Wales Devolution Monitoring Report: April 2007* (London: The Constitution Unit), at:

[www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales\\_April07.pdf](http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_April07.pdf)

<sup>54</sup> The Local Government and Public Involvement in Health Bill Research Paper 07/01 (2007)

[www.parliament.uk/commons/lib/research/rp2007/rp07-001.pdf](http://www.parliament.uk/commons/lib/research/rp2007/rp07-001.pdf)

<sup>55</sup> Welsh Assembly Government, 'Local Government Minister welcomes new Bill', Press release, 13

In the case of the Further Education Bill, the research paper notes that the government has given a different justification for using the direct amendment to Schedule 5 procedure, namely timing.<sup>56</sup> During committee proceedings on the bill, Parliamentary Under-Secretary of State for Wales, Nick Ainger, explained:

He asked why the primary legislative route had been taken rather than the Order in Council procedure. The answer is simple. It is a question of timing. At the moment, the National Assembly for Wales is conducting an independent review of further education in Wales. That review will be reporting in the autumn. If, as my right hon. Friend the Member for Islwyn wanted, we were to wait until the report was completed and thus have far more detail about what was to be placed in a framework power or an Order in Council, there would be considerable delay.<sup>57</sup>

In relation to the scope of the powers, Nick Ainger was asked why the powers transferred did not include those over the awarding of foundation degrees, favoured by the Liberal Democrats

Wales is a small country with only 25 FE colleges. Its further and higher education consortia have a good reputation for working together. They enable education institutions to provide a wide range of opportunities for learners through the sharing of resources, such as staff, equipment and infrastructure. The current evidence base suggests that delivery should continue to be via consortia arrangements between further and higher education providers.

The FE colleges in Wales are not demanding degree-awarding powers. If there is a clear recommendation that degree-awarding powers be given to FE institutions in Wales and the Assembly agrees with it, there will be the option to bring that forward as an Order in Council, but there is not anywhere near as much pressure in Wales as there is in England for FE institutions to have degree awarding powers. That is why the measure has not been included in the clause.<sup>58</sup>

It may be the case that Wales-only Bills will be replaced altogether by using legislation with a broader territorial application to insert Measure-making matters directly into Schedule 5. However, some disquiet was aired in committee about this procedure being used, with concerns raised about the scrutiny of these procedures and the role of the Welsh Affairs Select Committee (WASC). This point was also

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December 2006.

<sup>56</sup> The Further Education and Training Research Paper 07/35 (2007)

[www.parliament.uk/commons/lib/research/rp2007/rp07-059.pdf](http://www.parliament.uk/commons/lib/research/rp2007/rp07-059.pdf)

<sup>57</sup> PBC Deb, 14 June 2007, col. 138.

<sup>58</sup> *Ibid*, col. 140.

made by WASC itself in its twelfth recommendation of its recent report on LCOs (see below).

## 2.2 House of Commons Welsh Affairs Committee Report

The WASC Report on Legislative Competence Orders was published on 9 May 2007.<sup>59</sup>

The recommendations made were as follows:

1. We welcome the opportunities provided for working jointly with Assembly committees in the scrutiny of proposed LCOs, subject to the comments elsewhere in this Report concerning their anticipated number and timing, whilst of course we acknowledge the Welsh Affairs Committee's primary responsibility to inquire into Government policy as it affects Wales. [...] (Paragraph 18)
2. While we welcome the opportunity for this Committee to scrutinise proposed LCOs, we agree with the Parliamentary Under Secretary of State for Wales' comment that there is a balance to be struck, and that this Committee needs to consider the effect it could have on its existing programme of inquiries. (Paragraph 19)
3. We also note that in conducting pre-legislative scrutiny of LCOs, we may need to draw on additional legal advice. (Paragraph 20)
4. We agree with the Parliamentary Under Secretary of State and with the Business Minister that, in cases where a proposed Order raises complex legal issues, has wide implications or is politically controversial, it may be appropriate for it also to be scrutinised by the Welsh Grand Committee, following its scrutiny by the Welsh Affairs Committee or by another committee of the House. (Paragraph 23)
5. We recommend that the UK Government and the National Assembly give further consideration to the means by which the timetables of the National Assembly, the House of Commons and the House of Lords can be most effectively co-ordinated for the consideration of LCOs. We agree with the House of Lords Select Committee on the Constitution that pre-legislative scrutiny in the Commons and the Lords should be concurrent rather than consecutive, and that the work of one House should complement rather than duplicate the work of the other. (Paragraph 26)
6. We note that it is a matter for the Assembly, and in particular for the originator of the proposed Order, how to take into account any differing and possibly competing recommendations contained in reports following the pre-legislative scrutiny of a proposed Order. (Paragraph 27)

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<sup>59</sup> House of Commons Welsh Affairs Committee Report, *Legislative Competence Orders in Council* (May 2007), at: [www.publications.parliament.uk/pa/cm200607/cmselect/cmwelaf/175/175.pdf](http://www.publications.parliament.uk/pa/cm200607/cmselect/cmwelaf/175/175.pdf)

7. We fully support the view of the witnesses before this Committee that the presumption should be that proposed LCOs should be subject to pre-legislative scrutiny. (Paragraph 33)

8. If there have been substantive changes between the proposed Order and the draft Order laid before Parliament, we would expect the Government to allow sufficient time for further parliamentary scrutiny if this Committee or others wished to conduct it. (Paragraph 37)

9. We re-iterate our view that the debate of draft Orders should be undertaken on the floor of the House. (Paragraph 41)

10. We recommend that the authorities of the National Assembly explore the possibility of making appropriate arrangements to represent the interests of the originator of a draft Order as it passes through its Parliamentary stages. (Paragraph 43)

11. The Parliamentary Under Secretary of State estimated that there would be 'four or five' LCOs annually 'evenly paced throughout the year', which he described as 'manageable'. He also described as 'unattainable' estimates he had seen of up to 30 LCOs a year. We agree with both these assessments, and would be very concerned if anything approaching the upper estimate was proposed. The Parliamentary Under Secretary also indicated that pre-legislative scrutiny was expected to take between three and six months; 'certainly six months would be the maximum time'. If there are to be four or five LCOs a year, this timeframe seems to us reasonable as far as Westminster is concerned. (Paragraph 44)

12. We are concerned that to continue to add Matters by primary legislation could therefore be a device for a general, rather than a specific, extension of Assembly powers, which at the same time negates the opportunity for specific and detailed pre-legislative scrutiny either by a committee of the National Assembly or by the Welsh Affairs Committee. (Paragraph 49)

13. We are pleased to note the Presiding Officer's comment that a consolidated list of Fields will be published on the Assembly's website and will be updated regularly. (Paragraph 53)

14. We agree with the Presiding Officer's comment that the process by which the legislative powers of the National Assembly are enhanced should be as open and transparent as possible, and that this should be borne in mind as practice and procedure develops. (Paragraph 54)

Recommendations 6 and 10 show that some aspects of the LCO procedure remain to be decided upon. Nonetheless it is fair to say that a combination of GOWA 2006, Assembly Standing Orders and this parliamentary report have clarified most of the procedural details.

It is interesting to note that the involvement of Parliament at the pre-legislative stage is optional, with the Secretary of State for Wales having discretion over whether and when to table a draft LCO for pre-legislative scrutiny by MPs.<sup>60</sup>

Recommendation 12 shows that the Committee want the LCO procedure rather than Acts of Parliament to be the normal route by which primary legislative powers are devolved.

WASC also left open the possibility of creating ad hoc committees if at any stage there were too many LCOs for it to consider.<sup>61</sup>

WASC are in favour of imposing quite extensive controls on the LCO process, involving both Chambers concurrently and even the Welsh Grand Committee when the order is complex or of considerable political interest. The result of the report is that an LCO, at the pre-legislative scrutiny stage, could be the subject of reports by up to five committees at Westminster and Cardiff Bay:

- Welsh Affairs Select Committee (potentially through joint proceedings with AMs) or ad hoc committee of MPs
- Lords Constitution Committee
- Welsh Grand Committee
- Ad hoc pre-legislative scrutiny committee in the Assembly
- Assembly subject committee

## **2.3 Manifesto Commitments for new legislation**

### **2.3.1 Coalition Agreement: One Wales:**

The most significant commitment in the *One Wales* Labour-Plaid coalition agreement was that a referendum would be held on creating a full Parliament for Wales before the end the term of the present Assembly:

There will be a joint commitment to use the Government of Wales Act 2006 provisions to the full under Part III and to proceed to a successful outcome of a **referendum for full law-making powers** under Part IV as soon as practicable, at or **before the end of the Assembly term**.

Both parties agree in good faith to campaign for a successful outcome to such a referendum. The preparations for securing such a successful outcome will

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<sup>60</sup> Ibid., para. 14.

<sup>61</sup> Ibid., para. 16

begin immediately. We will set up an all-Wales Convention within six months and a group of MPs and AMs from both parties will be commissioned to set the terms of reference and membership of the Convention based on wide representation from civic society. Both parties will then take account of the success of the bedding down of the use of the new legislative powers already available and, by monitoring the state of public opinion, will need to assess the levels of support for full law-making powers necessary to trigger the referendum.<sup>62</sup>

Additionally, the new government details its legislative proposals, and its plans to lobby the UK Parliament for legislation in non-devolved areas. For example there is a proposal to extend the scope of devolution to include some aspects of criminal law and building regulations (see below).

### **2.3.2 Main legislative proposals**

In *One Wales*, the coalition government commits to pushing forward legislation in a range of policy areas. Among other things, the government pledges to:

- 'Seek legislative competence in relation to mental health'<sup>63</sup>
- 'Bring forward legislation for vulnerable children'<sup>64</sup>
- 'Draw up a Charter for Patients Rights and legislation on NHS redress'<sup>65</sup>
- 'Seek the powers, and then bring forward legislation, to create a more level playing field in relation to charges for domiciliary care services'<sup>66</sup>
- 'Seek further powers to legislate in the fields of vulnerable children, looked-after children and child poverty'
- 'Review the Carers Strategy and prepare legislation on the rights of carers'<sup>67</sup>
- 'Draw down legislative power to the Assembly in order to suspend the Right to Buy in areas of housing pressure'<sup>68</sup>
- 'Aim to provide local authorities with the power to control the conversion of full-time dwellings into second homes in areas of housing pressure'<sup>69</sup>
- 'Lobby the Westminster government to provide greater discretion to charitable organisations in disposing of land below market value for affordable housing purposes'<sup>70</sup>

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<sup>62</sup> Labour and Plaid Cymru Groups, *One Wales*, op cit, p.6

<sup>63</sup> Ibid. p.10

<sup>64</sup> Ibid. p.10

<sup>65</sup> Ibid. p.11

<sup>66</sup> Ibid. p.11

<sup>67</sup> Ibid. p.12

<sup>68</sup> Ibid. p.16

<sup>69</sup> Ibid. p.16

<sup>70</sup> Ibid. p.17-18

- ‘Place a statutory duty on each local authority to prepare a delivery plan for affordable housing, consistent with their housing strategy, to include target numbers’<sup>71</sup>
- ‘Produce a plan to confront homelessness over a decade, seeking new powers under the Government of Wales Act 2006, where such powers are necessary to the development and implementation of a Welsh strategy’<sup>72</sup>
- ‘Pursue legislation on improved school transport’
- ‘Provide a government-guaranteed right, backed up with new money, to education and accredited training until the age of eighteen, including a broader-based baccalaureate, incorporating vocational and academic learning opportunities, with a legislative framework’<sup>73</sup>
- ‘Bring forward legislation on Additional Learning Needs’<sup>74</sup>
- ‘Legislate to establish a duty on public agencies to make and demonstrate their contribution to ending child poverty’<sup>75</sup>
- ‘Consider the evidence for the devolution of the criminal justice system within the contexts of (a) devolution of funding and (b) moves towards the establishment of a single administration of justice in Wales’<sup>76</sup>
- Pursue the devolution of building regulations to the Assembly’<sup>77</sup>
- ‘Seek enhanced legislative competence on the Welsh Language. Jointly we will work to extend the scope of the Welsh Language Legislative Competence Order included in the Assembly government’s first year legislative programme, with a view to a new Assembly Measure to confirm official status for both Welsh and English, linguistic rights in the provision of services and the establishment of the post of Language Commissioner’<sup>78</sup>
- ‘Consider enshrining the concept of *artistic freedom* in Welsh law, subject to the Assembly’s new powers’<sup>79</sup>

## 2.4 First Minister’s Statement on the Legislative Programme for 2007/8

Prior to the formation of the recent coalition government, on Wednesday 6 June the First Minister unveiled his Government’s legislative programme for the coming year.<sup>80</sup>

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<sup>71</sup> Ibid. pp. 17-18

<sup>72</sup> Ibid. p.18

<sup>73</sup> Ibid. p.22

<sup>74</sup> Ibid. p.33

<sup>75</sup> Ibid. p.28

<sup>76</sup> Ibid. p.29

<sup>77</sup> Ibid. p.32

<sup>78</sup> Ibid. p.34

<sup>79</sup> Ibid. p.35

He proposed nine pieces of legislation, divided into LCOs on the one hand and Measures on the other. The programme also set out a timetable for the introduction of legislation.

The First Minister underlined the point that the Assembly already has certain enabling powers to make Measures without recourse to the new LCO mechanism:

We already have, through framework clauses in Westminster England-and-Wales legislation, the capacity to enact Assembly Measures in some key areas. When we enact a Measure, it has the same force as primary legislation. Therefore, this Government intends to bring forward three such Measures for your scrutiny as part of our first legislative programme.<sup>81</sup>

The three Measures proposed by Rhodri Morgan are:

- An NHS Redress draft Measure to give great rights to patients through a new NHS redress system (*published in July 2007*<sup>82</sup>)
- A Transport Measure to integrate systems, creating a green public transport system and extending an existing safer routes to school scheme (*published for consultation in June 2007*<sup>83</sup>)
- An Education Measure to reform the 14-19 curriculum (*due to be published in the autumn*)

Because of the limited powers currently available to the Assembly to make Measures, the First Minister also announced the drafting of no less than six LCOs to extend the scope of the Assembly's legislative powers.

The First Minister planned to introduce three LCOs prior to or shortly after the summer recess, to extend the powers of the Assembly in the following areas:

- Additional learning needs
- Environmental protection and waste management
- Affordable housing

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<sup>80</sup> Record of Proceedings (6 June 2007): [www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=57220&ds=7/2007#rhif6](http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=57220&ds=7/2007#rhif6)

<sup>81</sup> Ibid.

<sup>82</sup> Welsh Assembly Government, Proposed NHS Redress (Wales) Measure 2007 (3 July 2007) at: [www.assemblywales.org/ms-ld6697-e.pdf?langoption=3&ttl=MS-LD6697%20-%20Proposed%20NHS%20Redress%20\(Wales\)%20Measure%202007](http://www.assemblywales.org/ms-ld6697-e.pdf?langoption=3&ttl=MS-LD6697%20-%20Proposed%20NHS%20Redress%20(Wales)%20Measure%202007)

<sup>83</sup> Welsh Assembly Government, Proposals for a Learner Travel (Wales) Assembly Measure, (26 June 2007), at: <http://new.wales.gov.uk/consultations/currentconsultation/transcurrcons/1523880/?lang=en>

It was further planned to introduce three additional LCOs before the end of the year, on:

- The Welsh Language
- Vulnerable children and child poverty (to enable a Consolidation Measure)
- Charges for homecare and other non-residential social services

## **2.5 Legislative Competence Orders<sup>84</sup>**

The first draft LCO was introduced on 11 June 2007. The Proposal for a Government Legislative Competence Order relating to Education and Training (Additional Learning Needs) inserts one new 'matter' in the education 'field' of GOWA Schedule 5, in which the Assembly's legislative competence is delineated.

The second draft LCO, relating to environmental protection and waste management, was introduced on 19 June. This order inserts two new matters in the environment field of GOWA Schedule 5.

## **2.6 First Draft Measure**

The first draft Measure, on NHS Redress,<sup>85</sup> was introduced in the Assembly on 3 July and described by the First Minister as follows:

A national health service redress Measure will open the way to simplifying the ways in which patients can seek redress from the national health service when things go wrong, thereby making the system more coherent and more accessible. It will establish new rights, new processes and new outcomes for users of NHS services when something has gone amiss. It is our intention that this Measure be introduced for scrutiny by the Assembly before the summer recess.<sup>86</sup>

Despite this clear declaration of policy goals by Rhodri Morgan, the draft Measure was striking in that it contains no substantive provisions itself. The only achievement of the draft Measure is to give overall powers to WAG to make subordinate legislation to provide for a new NHS Redress system, in effect giving carte blanche to WAG to create and put in place such a system. There is no obligation on WAG to consult and only the first set of Regulations to be made under the Measure will be subject to affirmative resolution procedure. All the subsequent regulations are only subject to negative resolution procedure.

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<sup>84</sup> LCOs in progress can be found together with their explanatory memoranda at: [www.assemblywales.org/bus-home/buslegislation/bus-legislation-lco-in-prog.htm](http://www.assemblywales.org/bus-home/buslegislation/bus-legislation-lco-in-prog.htm)

<sup>85</sup> Welsh Assembly Government, Proposed NHS Redress (Wales) Measure 2007, op cit.

In such circumstances, Assembly Members face the problem of having to scrutinise and vote on a draft Measure without having a clear idea about the use to which the powers contained in the Measure will be put by ministers. Consequently, it would be a sensible step to establish a convention whereby the first set of Regulations to be made under wide enabling Measures should be introduced and debated as part of the consideration of the draft Measure. It is to be hoped that this precedent will not be followed in future draft legislation.

The first Measure Scrutiny Committee was created to look at the draft Measure and to carry out pre-legislative scrutiny. The committee will report to plenary for the agreement on the general principle of the draft Measure. They have launched consultation, asking for views on the following questions:<sup>87</sup>

- Why is a redress scheme required?
- Does the proposed measure achieve the policy objective?
- What are the views of stakeholders who will have to work with a redress system?
- What will be the practicalities of making the system work and does the proposed measure make provision for these?
- Is it appropriate that so much be done by regulations, i.e. the details of any scheme or schemes will be decided by Welsh Ministers?
- Would it be better for the assembly to seek the power from Westminster to introduce a 'no-fault scheme'?

In Westminster terms, the committee combines the work of the Merits of Statutory Instruments Committee of the House of Lords, the Joint Select Committee on Statutory Instruments, the Select Committee on Delegated Powers and Regulatory Reform in the House of Lords, and the Regulatory Reform Committee in the House of Commons. The committee's approach to its scrutiny role sets an impressive precedent for future such committees to follow.

Jonathan Morgan AM, Chair of the Committee, stated:

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<sup>86</sup> Rhodri Morgan, Oral Statement to the Assembly (3 July 2007), at:

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/cabinetstates2007/1516865/?lang=en>

<sup>87</sup> See Proposed NHS Redress (Wales) Measure Committee, Consultation Document (20 July 2007), at: [www.assemblywales.org/nhsr\\_stage\\_1\\_consultation\\_letter.pdf](http://www.assemblywales.org/nhsr_stage_1_consultation_letter.pdf)

This is one of the first tests of the Assembly's new powers, so it is very important that we as a Committee scrutinise the proposed legislation very carefully. Therefore, we need to hear the views of as many individuals and organisations as possible. I urge anyone with an interest in this issue to visit our website and make their views known.<sup>88</sup>

## 2.7 First Assembly Ballots<sup>89</sup>

The first ballot for backbench Assembly Members to introduce legislative proposals took place on 26 June. There were two ballots: one for a Measure and one for an LCO.

The Measure ballot was won by Jenny Randerson (Liberal Democrat) who will be able to introduce a draft Measure for healthier school meals in Wales. The LCO ballot was won by Ann Jones (Labour) who will be able to introduce a draft LCO enabling Measures to be made for domestic fire safety.

## 2.8 Assembly Committees and the legislative process

The following Assembly committees have been established, including four subject based Scrutiny Committees. Those particularly relevant to the legislative processes are set out in bold.

### Current Assembly Committees:

Audit Committee

Business Committee

Communities and Culture Committee

Enterprise and Learning Committee

Equality of Opportunity Committee

European and External Affairs Committee

Finance Committee

Health, Wellbeing and Local Government Committee

### **Petitions Committee**

Standards of Conduct Committee

### **Subordinate Legislation Committee**

Sustainability Committee

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<sup>88</sup> National Assembly for Wales, 'Committee seeks public views on new legislation to speed up NHS compensation process', press release (20 July 2007), at: [www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=55911&ds=8/2007](http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=55911&ds=8/2007)

<sup>89</sup> National Assembly for Wales, News, see [www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=53476&ds=7/2007](http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=53476&ds=7/2007)

Sub-Committees:

Rural Development Sub-committee

Legislative Committees:

**Legislative Committee for the Additional Learning Needs LCO**

**Legislative Committee for the Environmental Protection and Waste Management LCO**

**Legislative Committee for the Proposed NHS Redress Measure**

**Legislative Committee for the Vulnerable Children LCO**

### **2.8.1 The Petitions Committee**

As published on the Assembly's website:

The National Assembly is introducing a new petitions system. For the first time, members of the public will not only be able to petition the National Assembly and ask for action to be taken in those areas of policy for which the Assembly is responsible, but the Assembly will be required to act on the petition, if it is within the powers of the Assembly. There is no age limit on who can submit petitions – but the policy area must be within the responsibilities of the National Assembly.

An open consultation to invite you to give your ideas about how this new system can work best has been launched. Ideas are being sought on how petitions can be submitted, and what information and advice would be needed by those submitting a petition [...]

The Presiding Officer, Lord Dafydd Elis Thomas said: 'I find the idea of the public petitioning the Assembly very exciting and I am keen for the system to be as open, responsive, effective and efficient as possible. I welcome all views on how the system can work and how we should proceed and I look forward to receiving the petitions.'<sup>90</sup>

It is interesting to note that consultation is being invited to decide on the procedures to be followed. Results of the consultation are not, at time of writing, available on the Assembly website.

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<sup>90</sup> National Assembly for Wales, News, [www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=52921&ds=7/2007](http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=52921&ds=7/2007)

The Petitions Committee was established on 26 June along with nine other Committees. Its remit is defined as 'to consider petitions referred by the Presiding Officer in accordance with Standing Order 28.8'.<sup>91</sup>

The Committee considered the following petitions at its first meeting on 4 July:

- The Closure of Glyndulais Residential Home in Crynant, Neath Port Talbot County Borough
- No more Procrastination Over the Children's Hospital for Wales
- Carno Station: Re-opening

### **2.8.2 Subordinate Legislation Committee<sup>92</sup>**

The remit of the Subordinate Legislation Committee is as follows:

The Subordinate Legislation Committee was established in June 2007 in accordance with Standing Order 15.1. The Committee's remit is set out in Standing Orders 15.2 to 15.7. The Subordinate Legislation Committee considers the technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and to report on whether the Assembly should pay special attention to the instrument or draft on any of the grounds set out in Standing Order 15.2. The Subordinate Legislation Committee may also undertake limited policy scrutiny of Assembly Measures without questioning the policy itself. Additionally, the Committee may report on the matters set out in Standing Order 15.3 or 15.6.<sup>93</sup>

The committee has already met twice and produced a report on its new remit.<sup>94</sup> The committee's first task in terms of legislation was to finish the consideration of four SIs made under the previous system of devolution by the second Assembly. It then considered eleven new SIs:

- The Bovine Products (Restriction on Placing on the Market) (Wales) (No. 2) (Amendment) Regulations 2007
- The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2007
- The National Health Service (General Ophthalmic Services) (Amendment) (Wales) (No 2) Regulations 2007

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<sup>91</sup> [www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-pc-home/bus-committees-third-pc-intro.htm](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-pc-home/bus-committees-third-pc-intro.htm)

<sup>92</sup> Information relating to the Committee can be found at: [www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home.htm](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home.htm)

<sup>93</sup> [www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home/bus-committees-third-sleg-intro.htm](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home/bus-committees-third-sleg-intro.htm)

<sup>94</sup> [www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm?act=dis&id=53522&ds=7/2007](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm?act=dis&id=53522&ds=7/2007).

- The Fire and Rescue National Framework (Wales) 2005 (Revisions) Order 2007
- The Animals and Animal Products (Import and Export) (Wales) (Imports of Captive Birds) Regulations 2007
- The Animals and Animal Products (Import and Export) (Wales) (Laboratories, Circuses and Avian Quarantine) Regulations 2007
- The Products of Animal Origin (Third Country Imports) (Wales) (Amendment) Regulations 2007
- The Street Works (Inspection Fees) (Wales) (Amendment) Regulations 2007
- The Traffic Management (Guidance on Intervention Criteria) (Wales) Order 2007
- The Plant Health (Import Inspection Fees) (Wales) (Amendment) Regulations 2007
- The Plant Health (Plant Passport Fees) (Wales) Regulations 2007

Only one SI was reported upon by the committee: The Traffic Management (Guidance on Intervention Criteria) (Wales) Order 2007. The Committee commented on inconsistencies between the Welsh and the English versions of the instrument, but concluded that these changes did not require corrective legislation.<sup>95</sup>

## **2.9 Subordinate Legislation applying in Wales:**

Since the last report about 900 general SIs applying to England only, to England and Wales, or to Wales only have been published (from SI 2007/900 to 2007/1899).<sup>96</sup>

Of these 900 SIs, only 45 were made by the Assembly, partly because of the election-related break in Assembly activity between 1 April and 12 June.

### **2.9.1 Subordinate Legislation involving Central Government and the Assembly**

There were 15 general SIs which have been made by the Assembly and central government acting 'together' in various ways. The vast majority of joint SIs were made by the UK government after consultation with the Assembly or the Welsh Ministers. The legislation made after consultation with the Assembly relates mainly to the field of health. Two of them were also commencement orders: SIs 1021 and

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<sup>95</sup> Subordinate Legislation Committee, Report (SLC(3) 01-07), Annex 1. At: [www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm?act=dis&id=53522&ds=7/2007](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm?act=dis&id=53522&ds=7/2007)

1369. Three were made by the Secretary of State jointly with the Assembly and are all EU related matters: SIs 971, 1062 and 1871.

### **2.9.2 Central Government Subordinate Legislation applying to Wales**

Since the last report, central government has made 79 general SIs under acts which also give other powers in the acts to the Assembly. This is nearly twice the number of general SIs made by the Assembly in the same period. The SIs mainly concern elections, energy, security, police and terrorism, gambling discrimination and the employment of persons in devolved areas. These are generally retained matters, and include one new EU designation order which designates the Assembly as the authority responsible for implementing EU directives in relation to persistent organic pollutants, dangerous substances, preparations and chemicals.<sup>97</sup>

### **2.9.3 Continuing Implementation of the Government of Wales Act 2006**

Thirteen SIs have been made so far to implement the Government of Wales Act 2006:

- No. 374 (W.34) The National Assembly for Wales (Date of First Meeting of the Assembly Constituted by the Government of Wales Act 2006) Order 2007
- No. 726 The Government of Wales Act 2006 (Transitional Provisions) (Finance) Order 2007
- No. 848 The Government of Wales Act 2006 (Designation of Receipts) Order 2007
- No. 910 The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007
- No. 1117 The National Assembly for Wales (Diversion of Functions) Order 2007
- No. 1118 The National Assembly for Wales Commission (Crown Status) Order 2007
- No. 1169 The National Assembly for Wales (Transfer of staff to Assembly Commission Scheme) Order 2007
- No. 1171 The Government of Wales Act 2006 (Transitional Provisions) (Assembly General Subordinate Legislation) Order 2007
- No. 1182 The Government of Wales Act 2006 (Local Government (Contracts) Act 1997) (Modifications) Order 2007

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<sup>96</sup> They are all published on the Office of Public Sector Information website at [www.opsi.gov.uk](http://www.opsi.gov.uk)

<sup>97</sup> The European Communities (Designation) (No.2) Order 2007, SI 1349 (2007), at: [www.opsi.gov.uk](http://www.opsi.gov.uk)

- No. 1269 The National Assembly for Wales (Transfer of Property, Rights and Liabilities) Order 2007
- No. 1270 The Government of Wales Act 2006 (Transitional Provisions) Order 2007
- No. 1353 The National Assembly for Wales Commission (Crown Status) (No. 2) Order 2007
- No. 1388 The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007

Of these, one – SI 374 – was made by the Assembly, and one – 848 – by the Treasury.

Two of other three were made by the Orders in Council SIs 1118 and 1353, and 910 after approval by the Assembly. All the others were made by the Secretary of State for Wales.

SIs 910, 1117, 1171, 1182, 1270 and 1388 relate to powers of the Assembly and of the Welsh Ministers.<sup>98</sup>

SIs 1118, 1169, 1269 and 1353 relate to the Assembly Commission including provision for the separation from the civil service and the resulting status of its staff.

## **2.10 Conclusion:**

The words of the Queen<sup>99</sup> at the opening of the third Assembly on 5 June 2007 provide a clear summary of the challenges ahead for the new Assembly:

In the months since I came here to mark the opening of this spectacular new building, there have been further notable milestones for Wales. The Government of Wales Act 2006 opens the way to a new era for devolution, with significant changes in the way in which the National Assembly for Wales works. The Welsh Assembly Government will govern, while the National Assembly for Wales will provide the necessary scrutiny and monitoring of its policies and their implementation. Equally historic are the new powers giving the National Assembly for Wales the opportunity to make its own legislation on devolved matters, such as health, education, social welfare and local government. It is now for you to ensure that policies and legislation meet the needs and aspirations of the people of Wales more closely than ever before.

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<sup>98</sup> SIs 910, 1117, 1118 were discussed in our last report. See Navarro op cit.

<sup>99</sup> National Assembly for Wales (5 June 2007) [www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=51963&ds=7/2007](http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=51963&ds=7/2007)

By grasping these challenges and by promoting accountability and responsive governance, you have the potential to strengthen democracy and public engagement with decision making, and to enhance the effectiveness of public institutions in Wales. As part of this, you are leading the way in making the business of the Assembly more accessible for all, through broadcasting and information technology. I remarked last year on the open, welcoming design of this splendid building, and your creative use of technology complements the building perfectly. However, it is your own approach to your role as Assembly Members that will do the most to enhance the reputation of the Assembly for open, modern democracy.

The First Minister concluded his first legislative proposals statement with:

These proposals focus on the bread-and-butter issues of housing, education, health, social services, child poverty and the environment. That is no accident. **Our object must surely be not to create more laws, but better laws for Wales**, and to focus our efforts on bringing about improvement in those aspects of daily life that impact most directly on our fellow citizens.<sup>100</sup> (emphasis added)

The First Draft Measure as introduced by WAG is very disappointing, and contradicts the government's intentions as outlined in the two statements. Because of its lack of substance, it fails to promote accountability and responsive governance. If the provisions of the draft were in a parliamentary bill, there is every likelihood that it would receive an adverse report from the Select Committee on Delegated Powers and Regulatory Reform in the House of Lords.<sup>101</sup>

By contrast, in launching wide consultation and carrying out a programme of extensive scrutiny, the first pre-legislative committee of the Assembly is setting a good precedent in terms of how proposed laws should be considered. The committee's work (rather than WAG's draft) seeks to strengthen democracy and public engagement with law making in Wales.

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<sup>100</sup> National Assembly for Wales [www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=53427&ds=2007/6#rhif6](http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=53427&ds=2007/6#rhif6)

<sup>101</sup> Their remit includes reporting 'whether the provisions of any Bill inappropriately delegates legislative power or whether their subject the exercise of legislative power to an inappropriate level of parliamentary scrutiny.'

### 3. Economic Development and the Budget

*Professor Peter Midmore, University of Wales Aberystwyth*

Following the May elections, legislation, policy delivery and debate on economic issues in the Assembly have so far been limited, although some important processes have been set in motion. The new Enterprise and Learning Committee has the remit to exercise scrutiny over the new, separate executive branch of the Assembly with regard to economic development and regeneration, social enterprise, transport and lifelong learning. At the time of writing, it had yet to meet, elect a chair, or establish a work programme. The Minister appointed to cover the economy and transport brief, Brian Gibbons, used his first plenary question to set out the priorities for the new term: ‘... to promote sustainable, equitable and economic growth so that Wales will be a more prosperous, fair, and inclusive country. We are addressing economic inactivity, delivering more and better jobs, improving transport networks and creating an environment that stimulates business growth, tourism and a better quality of life’,<sup>102</sup> which is clearly consistent with the previous Assembly Government’s economic development policy document, *Wales: A Vibrant Economy*.<sup>103</sup> However, some indications of the likely direction of economic policy-making have already emerged from plenary debates and questions which have tested the openness of the minority Labour Welsh Assembly Government originally established after the elections.

The manifestos of each of the elected parties in Wales offer few hostages to fortune with regard to economic development for the coming term. In terms of their actual content, there is also a high degree of overlap in terms of emphases; for example, Labour, the Conservatives and Plaid Cymru all seek to promote greater levels of public procurement from within Wales, and to offer support for Welsh firms to win contracts. Key elements of the manifestos also cover improvement of skills and innovation, simplification of the bureaucracy which the commercial sector of Wales faces in order to access support and advice, and science and technology as a mainspring for future economic development.

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<sup>102</sup> Assembly Record of Plenary Proceedings 20 June 2007

<sup>103</sup> See

<http://new.wales.gov.uk/docrepos/40382/4038231141/4038211251/403821125/4038211251/wave>

Only one party, Plaid Cymru, made a specific pledge on business taxation, in an attempt to emulate the success of the Irish economy, which is based on low business taxes. Its manifesto sought to extend the rate relief scheme to reduce local taxation of businesses by up to half, and to explore the scope for cutting corporation tax as well.<sup>104</sup> In an opposition-led debate, Plaid Cymru therefore proposed a motion which, recognising the need for businesses to invest to promote expansion and economic growth, sought to extend the existing business rate relief scheme to promote this end. After a largely consensual debate, albeit with some echoes of previous conflicts within plenary sessions and Assembly committees,<sup>105</sup> the government agreed that the matter should be kept under review and supported the motion; it was therefore passed unanimously.

Another opposition-led debate initiated by the Liberal Democrats raised the party's manifesto pledge to seek a new, needs-based budgetary funding settlement to replace the Barnett Formula, a 'temporary' expedient introduced in 1978 to distribute public spending resources on a population basis between England and other constituent parts of the United Kingdom. Consequently, their motion sought to establish an independent commission to investigate the Barnett formula. The arguments against the existing budget convention are threefold: that it depends primarily on the level of expenditure in England, and consequently does not take the (possibly differing) needs of Wales into account; that the use of population as a ratio for allocation ignores the deterioration of Wales' relative position in terms of overall economic performance (the Gross Value Added per head in the Wales economy has declined from 85.3 per cent of the UK average in 1978,<sup>106</sup> to 78.1 per cent in 2005<sup>107</sup>); and that as a purely mechanical formula, it provides no incentive for the improvement of efficiency in public spending.

In the same way as in the tax debate discussed previously, after analytical and probing contributions from parties outside government, Jane Hutt, Minister for the Budget and Business Management, conceded that although in previous Assemblies

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<sup>104</sup> *Make a difference! Plaid Cymru's 2007 Manifesto*. Available at: [www.plaidcymru.org/content.php?nID=44;catID=7;IID=1](http://www.plaidcymru.org/content.php?nID=44;catID=7;IID=1).

<sup>105</sup> For example, Andrew Davies (Minister for Social Justice and Public Service Delivery) thought it necessary to remind David Melding (Conservative economics spokesman) that "Wales is the only part of the United Kingdom, or the nations and regions, where, since 1999, the growth in jobs in the private sector has exceeded that in the public sector." Assembly Record of Plenary Proceedings 20 June 2007

<sup>106</sup> Welsh Office (1998). *Digest of Welsh Historical Statistics 1974-1996*. Cardiff: Stationery Office, p. 26.

<sup>107</sup> National Assembly for Wales (2006). *Regional and Local Gross Value Added*. Cardiff: National Assembly for Wales (Members' Research Service), p. 1, available at: [www.cynulliadcymru.org/06-082.pdf](http://www.cynulliadcymru.org/06-082.pdf).

the Labour Party had seen no requirement for a review, changing circumstances indicated that it was now appropriate, and that such an independent commission would be established; further, that it would 'review not only Assembly funding and finance, including an important study of the Barnett formula, but, going further than that, it will also consider tax-varying powers, including corporation tax'.<sup>108</sup>

This cautious, conciliatory approach reflects the subsequent agreement between Labour and Plaid Cymru to enter a coalition, and as a result reallocation of roles and responsibilities is certain to occur. The two parties' *One Wales* accord repeats this commitment to review funding and revenue powers for the Assembly, and sets out four major priorities for economic development: job creation; encouragement of private enterprise; tourism promotion; and development of skills.<sup>109</sup> These priorities will be reinforced through a number of commitments, such as to 'spatial evenness' in investment support and government activity, for facilitation of the ability of small, locally-based enterprises to compete for public procurement contracts, remission of local business taxes, restructuring of support for tourism to allow it to serve new markets, and improved links between education and enterprise development.

As a consolidation of the manifesto commitments of Labour and Plaid Cymru, *One Wales* provides a reasonably coherent and constructive document, but in terms of the challenges likely to emerge in the future, it contains few clues as to how the coalition will tackle practical realities of government. For example, tourism support in Wales has been disproportionately meagre, in comparison to its importance in the overall economy. To realise its full potential contribution would require a significant increase in resources, but with a stringent spending review in progress in the Westminster government, scope for achieving such enhanced support will (mostly) imply a shift from other forms of economic development spending. However, the Assembly has only ever existed in conditions of economic growth in Britain. A potential future recession may test the institution of devolved government significantly, particularly as the resulting economic problems will have considerable spatial variability, and the parties within the new coalition government draw on different geographic constituencies. It may be an advantage that this government can draw on a potentially more talented set of individuals to construct an administration

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<sup>108</sup> Assembly Record of Plenary Proceedings 20 June 2007

<sup>109</sup> The full text of the agreement is available from:  
[www.plaidcymru.org/content.php?nID=44;catID=6;pubID=158;IID=1](http://www.plaidcymru.org/content.php?nID=44;catID=6;pubID=158;IID=1).

for the next term. It will certainly test their leadership and management skills across a range of destabilising and potentially detrimental economic challenges.

## 4. Intergovernmental relations

*Alan Trench, The Constitution Unit, UCL*

### 4.1 General

The period since late March has been a curious one. On the one hand, there has been a hiatus in many issues – caused in Wales by the election campaign, unclear result, and protracted coalition negotiations, and in London by the Labour leadership campaign and change of Prime Minister. However, despite this a great deal has in fact happened, and the two changes of government open the door to a different sort of intergovernmental relations starting to develop.

From a UK point of view, the election of a minority SNP administration in Scotland has drawn greater attention and spurred more debate, with Welsh issues playing a much less prominent role in the general media debate as well as thinking within Whitehall. A particular source of controversy was the failure of Tony Blair, the outgoing UK Prime Minister, to congratulate Alex Salmond after he became First Minister of Scotland – although Blair had apparently congratulated Rhodri Morgan after he was re-elected as First Minister in Wales, and Rev Ian Paisley and Martin McGuinness after their appointments as First Minister and Deputy First Minister in Northern Ireland.<sup>110</sup>

One major issue has been the formation of the new Assembly coalition government. Formally, of course, this is nothing to do with the UK Government. However, it appears that Peter Hain, and indeed Gordon Brown, was kept closely informed of the progress of negotiations, and at least implicitly endorsed the outcome. The coalition was of course formed despite considerable opposition within the Labour party, including that of several former and serving UK Government ministers, in particular Paul Murphy, former Secretary of State for Wales, Don Touhig, former Parliamentary Under-Secretary of State for Wales, and Dr Kim Howells, also a former junior minister at the Wales Office and now a Foreign and Commonwealth Office minister. It also appears that both Brown and Hain disliked the idea of a coalition with Plaid Cymru, and only agreed as there was no other way to keep Labour in office.<sup>111</sup> That a

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<sup>110</sup> The latter produced a remarkable occasion, and even cheesier photograph, when the UK Prime Minister and Irish Taoiseach visited the First Minister and Deputy First Minister for tea at Stormont.

<sup>111</sup> D. Williamson, 'Brown opposed Plaid coalition' *Western Mail* (21 July 2007)

decision by the Labour Party in Wales needed consent of the British Party's leadership says a good deal about the nature of party politics under devolution.<sup>112</sup>

#### **4.2 The Brown government: Cabinet and machinery of government changes**

In the UK Government reshuffle following Gordon Brown's appointment as Prime Minister, which took place on 28-29 June, Peter Hain remained Secretary of State for Wales, but also became Secretary of State for Work and Pensions. Nick Ainger was replaced as Parliamentary Under-Secretary of State for Wales by Huw Irranca-Davies, the former Welsh whip. (Wayne David became the new Welsh whip.) While there had been some speculation that Brown's changes to the machinery of government would include a merger of the Scotland, Wales, and Northern Ireland Offices, to create a 'department of nations and regions', this did not happen. Instead, each of the territorial offices retains its own identity and ministerial team, with the Scotland and Wales Secretaries remaining part-time. The only change was to promote David Cairns, the junior minister at the Scotland Office, from Parliamentary Under-Secretary to Minister of State. It is not clear whether Cairns's extra seniority is a reflection of his personal standing; the fact that his Secretary of State (Des Browne) is also Secretary of State for Defence and will consequently have little time to deal with detailed matters relating to Scotland; or the added difficulty of Scottish issues now that the SNP is in office.

Brown made significant changes to the machinery of government (removing science and research from the Department of Trade and Industry, adding it to the further and higher education functions of the Department for Education and Skills to create a Department for Innovation, Universities and Skills with a remit that extends to both England-only matters (further and higher education) and reserved ones (science and research). The other part of the former DfES has become a Department for Children, Schools and Families, with a remit that mostly relates only to England but which touches on some devolved matters too.

#### **4.3 Formal intergovernmental meetings**

The only formal meeting to have happened (or at least be publicly announced) was a summit meeting of the British-Irish Council (BIC), which took place on 16 July 2007 in Belfast. The First Minister was still convalescing from his heart treatment, so the

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<sup>112</sup> See further M. Laffin *et al*, 'The Parties and Intergovernmental Relations' in A. Trench (ed.), *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007 forthcoming).

Welsh Assembly Government was represented by Ieuan Wyn Jones, the recently-appointed Deputy First Minister. Also attending were Gordon Brown from Scotland, Alex Salmond from Scotland, Rev Ian Paisley, Martin McGuinness and numerous other ministers from Northern Ireland, Bertie Ahern and Dermot Ahern (the Foreign Minister) from the Republic of Ireland, and representations of the Jersey, Guernsey and Isle of Man governments.<sup>113</sup> This was the first occasion on which Gordon Brown has met the new heads of government of the devolved administrations, and follows a previous summit (chaired by John Prescott) in June 2006.

The meeting appears to have been a useful one, and the communiqué promises invigorated action on a number of matters and a new area of work regarding energy (initiated by Scotland). However, the BIC is designed to be largely a forum for discussion and sharing of experience (this meeting focussed, apparently, on transport). It would therefore appear not to be a suitable forum for negotiation between the various governments in the United Kingdom on issues of disagreement. There have been suggestions coming from the new Scottish administration that they would like to see greater use of the JMC framework, as well as (mainly journalistic) suggestions of a more thorough-going revival of the BIC. Whether that happens is likely to emerge in the next few months.

#### **4.4 Legislative powers and related issues at Westminster**

The most notable development has been the publication, on 5 June, of the report of the Commons Welsh Affairs Committee on *Legislative Competence Orders in Council*.<sup>114</sup> The committee took evidence on this in December 2006, and had delayed publication of its report until after the Assembly elections. The report makes a number of recommendations about intra-mural practice at Westminster regarding Legislative Competence Orders (LCOs), and indicates a clear intention for the committee to look at the proposed use of legislative powers by the National Assembly when considering proposed order (despite evidence from Cymru Yfory/Tomorrow's Wales pointing out the risks of this). It is hard not to regard the report as a missed opportunity, as it avoids several hard issues, notably the relationship between the use of LCOs to extend the Assembly's legislative powers and direct amendment of Schedule 5 to the Government of Wales Act 2006 (the danger is that one set of Schedule 5 amendments will be scrutinised closely and

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<sup>113</sup> The communiqué is available at [www3.british-irishcouncil.org/documents/belfast\\_summit.asp](http://www3.british-irishcouncil.org/documents/belfast_summit.asp)

<sup>114</sup> House of Commons Welsh Affairs Committee Second Report of Session 2006–07

couched in restrictive terms, while the other avoids detailed scrutiny but can be couched much more broadly). It also avoids discussing how such arrangements would work if different parties held office in London and Cardiff (as is now to a degree the case).

A revised version of Devolution Guidance Note 9, on Post-Devolution Primary Legislation for Wales, was issued in June, and is now available from the Ministry of Justice website.<sup>115</sup> This sets out guidelines for dealing with Wales issues in Westminster legislation, including the application of 'framework powers'. The principles it adopts would appear to be somewhat more restrictive than those previously canvassed by some officials.

#### **4.5 Judgment of the Judicial Committee of the Privy Council in a 'devolution issue' case**

The Judicial Committee of the Privy Council gave judgment in a Scottish 'devolution issue' case on 22 May 2007, that of *DS v. Lord Advocate*.<sup>116</sup> The case has a bearing on the status of legislation passed by any devolved legislature.

The case concerned the legislation passed at Holyrood to permit the disclosure of an accused's sexual history in trials for sexual offences, and whether this was compatible with the right to a fair trial protected under Article 6 of the European Convention on Human Rights (ECHR). If it was not compatible, it would be beyond the legislative competence of the Scottish Parliament and therefore void.<sup>117</sup> Legislation passed by the National Assembly will similarly be void if it is incompatible with the ECHR, although (of course) criminal justice is not a devolved matter in Wales, and the key interpretative provision in issue (section 101 of the Scotland Act 1998 (discussed by Lord Hope in paras. 19-24 of the judgment) does not have a parallel in either Part 3 or Part 4 of the Government of Wales Act 2006. The Committee found unanimously, but after detailed consideration of the language and

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*Legislative Competence Orders in Council* HC 175 (London: The Stationery Office, 2007). Available from [www.parliament.uk/parliamentary\\_committees/welsh\\_affairs\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm)

<sup>115</sup> Devolution Guidance Note 9: Post-devolution Primary Legislation Affecting Wales. Downloadable from: [www.justice.gov.uk/docs/dgn09.pdf](http://www.justice.gov.uk/docs/dgn09.pdf)

<sup>116</sup> Privy Council Appeal No 12 of 2006; available at [www.privy-council.org.uk/output/Page535.asp](http://www.privy-council.org.uk/output/Page535.asp)

<sup>117</sup> The provisions in question are set out in section 10 of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, which inserted section 275A into the Criminal Procedure (Scotland) Act 1995. This allows evidence about the accused's character and conduct to be introduced, if the accused seeks to question the complainer about his or her sexual behaviour. It parallels provisions also in force in England and Wales.

effect of the provisions and the reasons why they were passed, that the provisions in question were permitted under the ECHR.

Given the legislative differences between Scotland and Wales, the most relevant part of the judgment is probably the *obiter dicta* remarks by Baroness Hale of Richmond concerning the threshold to be reached by any attempt to challenge on ECHR grounds legislation which had been passed by an elected devolved legislature (paras. 89-92 and 96 of the judgment). She notes in para. 92:

... that we can only rely on the Convention rights *as interpreted in Strasbourg* as a basis for invalidating the act of a democratic legislature, for it is only incompatibility with those rights which gives us a ground for doing so. The legislature can get ahead of Strasbourg if it wishes and so can the courts in developing the common law. *But it is not for us to challenge the legislature unless satisfied that the Convention rights, as internationally agreed and interpreted in Strasbourg, require us to do so.* (emphasis added)

This suggests both that the threshold for interfering with devolved legislation should be a high one, and that it is not for the UK's courts to apply their own human rights standards when dealing with devolved legislation, but simply to apply the Convention rights as interpreted by the Strasbourg court.

#### **4.6 UK Government Green paper on The Governance of Britain**

The UK Government published a green paper on *The Governance of Britain* on 3 July.<sup>118</sup> The report sets out the proposals of the Brown Government for constitutional reform, mainly focussed on such 'Westminster' issues as reform of the House of Lords, the relationship of Parliament and the Executive, and use of various forms of the Royal prerogative. The green paper is much sketchier about devolution-related issues, understandable given that (quite apart from Scottish considerations) the paper was published at a delicate stage in negotiations to form the coalition in Wales. The report does discuss aspects of 'Britishness', including a 'statement of British values' and a possible British bill of rights. Extensive consultation is promised, but with the various peoples of the UK, not their governments – a possible cause for concern, if the statement of values or bill of rights are to be binding on the devolved administrations as well as UK Government.

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<sup>118</sup> Secretary of State for Justice and Lord Chancellor *The Governance of Britain* Cm 7170 (London: The Stationery Office, 2007), available from [www.justice.gov.uk/publications/governanceofbritain.htm](http://www.justice.gov.uk/publications/governanceofbritain.htm)

#### 4.7 Finance

One of the larger surprises during the coalition negotiations was the announcement by Jane Hutt, then Minister for Assembly Business and Budget, of the Labour minority administration's intention to establish a commission to look at the Barnett formula and other issues of territorial funding and finance.<sup>119</sup> This had been a manifesto commitment of Plaid Cymru, also accepted by Conservatives and Liberal Democrats as part of the *All-Wales Accord*, and was announced during a debate on funding and financial powers of the National Assembly initiated by the Liberal Democrats. Labour had previously offered an examination of the Barnett formula by the Assembly Finance Committee during the negotiations. While the announcement came as a surprise to other parties in the debate (and may well have been intended to ease negotiations with Plaid Cymru over an important issue), it had apparently also been discussed with Peter Hain beforehand.

The establishment of the commission is unlikely to be straightforward, and it is notable that no details about such matters as the name of the chairman or woman or the detailed terms of reference have yet been issued. In particular, the commission will need a sizeable research budget, as much of the data that will be needed to assess the current levels of public spending in Wales and the level of need in Wales do not, in fact, exist, and the commission will need to develop such data for itself. That will also have a bearing on the membership of the commission, if not the identity of the person chairing it.

The commission will also raise complex intergovernmental issues. The UK Government is rumoured to be likely to announce a review of the Barnett formula, probably as part of the Comprehensive Spending Review due in the autumn. That would impose timing constraints on the Welsh commission, as it will need to ensure it reports in time for its recommendations and findings to be taken into account for the UK Government's processes. Moreover, as the issues from a Scottish point of view (largely, extending fiscal autonomy) are significantly different from those for Wales, building an alliance with Scotland will be difficult.

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<sup>119</sup> *Assembly Record* 20 June 2007, p 106-9

## 5. Relations with Europe and Local Government

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### 5.1 Europe

#### 5.1.1 WAG

Rhodri Morgan, as First Minister, has retained responsibility for the 'Europe and Wales in the World' brief that he held during the second Assembly. The *One Wales* agreement between Labour and Plaid Cymru contained several commitments regarding WAG's international agenda over the next four years, including:<sup>120</sup>

- Supporting the campaign for Wales to become a fair trade nation.
- Enhancing Wales's role in key European organisations and networks such as the Committee of the Regions, the Regions with Legislative Power and the Conference of Peripheral & Maritime Regions.
- Continuing to make a contribution to the achievement of the United Nations Millennium Development Goals, with support for the Wales for Africa programme and its international development fund.
- Developing a more strategic approach to putting Wales on the world map, bringing greater coherence to the breadth of the Assembly government's overseas activities and representation, and working with other Welsh interests outside government to maximise the impact and benefit to Wales.
- Developing and promoting the Wales 'Brand' in the context of a coherent marketing and public diplomacy framework.
- Working actively within the re-affirmed Memorandum of Understanding, signed with Patagonia (Chubut Province) in March 2007.

#### 5.1.2 Committee

On 26 June, the following were elected members of the Committee on European and External Affairs: Sandy Mewies (Labour), Christine Chapman (Labour), Jeff Cuthbert (Labour), Val Lloyd (Labour), Nerys Evans (Plaid Cymru), Rhodri Glyn Thomas (Plaid Cymru), Nick Bourne (Conservative), David Melding (Conservative) and Michael German (Liberal Democrat). Five (Mewies, Cuthbert, Thomas, Bourne and German) of the nine were members of the same committee during the second Assembly. The Committee met briefly on 12 July, when Sandy Mewies was re-elected as chair. It is

likely that Rhodri Glyn Thomas will be replaced by another Plaid member in the autumn, following his elevation to Minister for Heritage in the new Cabinet.

### 5.1.3 On the horizon

As reported in the April Monitoring Report, European Commission approval is still awaited for the Wales ESF Programme under the Structural Funds: the ERDF programme having been approved in April.<sup>121</sup> The other major issue in the pipeline is the Rural Development Plan which will be launched during the summer, the clash over voluntary modulation between the European Parliament and Commission now having been resolved.

On 30 May 2007, DG Regional Policy published its *Fourth Report on Economic and Social Cohesion*.<sup>122</sup> Published every three years, this is the first such report since the big eastward enlargement of May 2004 and maps the economic, social and territorial situation of the enlarged Union of 27 Member States for the first time. The document reports that cohesion is generally improving across the Union, though significant economic disparities remain. As well as providing analysis of the current situation across the EU's 286 regions and a first assessment of the impact of the 2000-06 programme period, it also looks forward to the challenges ahead. The report also asks several questions to act as starting points for debate on the future of cohesion policy which will form the basis of a Cohesion Forum to be held in Brussels on 27-28 September 2007.

Two major reviews take place during 2008 which will have an impact on Wales and which WAG is therefore likely to engage with: the CAP 'health-check' and the budget review. The mid-term budget review was agreed at the European Council of December 2005, and will look at the future of both EU revenue and expenditure. Already, the European Parliament has made its position known in calling for the immediate abolition of the UK rebate and other anomalies, to be followed in 2013 by the replacing of national contributions.<sup>123</sup> The CAP mid-term review, or 'health-check' as it has been termed by Commissioner Fischer Boel will look at a number of issues: those likely to be on the agenda include the possibility of capping the total subsidy

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<sup>120</sup> Labour and Plaid Cymru Groups, *One Wales*, op cit

<sup>121</sup> *Wales Devolution Monitoring Report: April 2007*, op cit.

<sup>122</sup> DG Regional Policy, *Fourth Report on Economic and Social Cohesion*, (May 2007). Downloadable from: [http://ec.europa.eu/regional\\_policy/sources/docoffic/official/reports/cohesion4/index\\_en.htm](http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/cohesion4/index_en.htm). The main points are summarised in the Commission Communication available from the same site.

<sup>123</sup> EurActive.com, *Parliament Opens Debate on Future EU Budget*, (14 March 2003) [www.euractiv.com/en/agenda2004/parliament-opens-debate-future-eu-budget/article-162449](http://www.euractiv.com/en/agenda2004/parliament-opens-debate-future-eu-budget/article-162449)

available to a single farm, increasing the level of compulsory modulation from its current 5 per cent, and decoupling the remaining 10 per cent of payments that remained production-linked after the reforms of 2003.

## 5.2 Local Government

The Assembly's third term signals a new period in relations between local government, the Assembly Government and the National Assembly. While the overall implications are as yet unclear, local government seems fully aware of the policy and financial challenges they face during this next term.

### 5.2.1 *The implications of the Government of Wales Act 2006*

Implementing the new Government of Wales Act 2006 following the May election creates new institutional arrangements for Assembly–local government relations. Duties relating to the Local Government Partnership Council are transferred to the Welsh Assembly Government. As a result, the Partnership Council for Wales will be composed of relevant Welsh Ministers, Deputy Welsh Ministers and members of local councils and authorities in Wales. Local government representation will be appointed by the Minister, after consultation with relevant local government associations. An annual report will be published after each financial year and the practice of using working groups will continue.<sup>124</sup>

Over the summer, in conjunction with the relevant bodies, a draft Local Government Scheme and draft Standing Orders are being prepared as required by the Act. The new scheme will reflect the public service reform agenda and the Local Government Policy Statement, *A Shared Responsibility*.<sup>125</sup> Appointments to the Partnership Council will be made over the summer and its first meeting will be held in November.<sup>126</sup> Under the new arrangements, the Council can potentially be an effective forum for joint discussions and decision-making between the Assembly Government and local government, particularly in the context of the idea of engaged leadership proposed in the Beecham review.<sup>127</sup>

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<sup>124</sup> Local Government Partnership Council, Issues Paper – Implications of the Government of Wales Act on the Partnership Council (PC26 (2)), (16 November 2006); Local Government Partnership Council, 26th Partnership Council Minutes, (16 November 2006).

<sup>125</sup> WAG, *A Shared Responsibility*, (March 2007) Downloadable from: <http://new.wales.gov.uk/dsjr/publications/localgov/sharedresponsibility/policy?lang=en> see also WAG, Local Government e-bulletin # 17 (May 2007), at: [www.new.wales.gov.uk](http://www.new.wales.gov.uk)

<sup>126</sup> Ibid.

<sup>127</sup> Local Government Partnership Council, Issues Paper (PC26 (2)), op. cit.

On the parliamentary side, scrutiny of local government issues is the responsibility of the Health, Wellbeing and Local Government Committee chaired by Jonathan Morgan. The committee's remit includes health, social services, local government and public service delivery.<sup>128</sup> Areas suggested for review over the coming 12-18 months include workforce planning in health and social services, local government progress on the Beecham Agenda and local government's performance on the equal pay issue.<sup>129</sup> The committee has a substantial portfolio and two of the Assembly's largest budget areas. The committee will undoubtedly face a challenging task of balancing these key issues.

### **5.2.2 Political leadership and the third term**

The 2007 Assembly Election has brought about significant political changes. With regards to the local government portfolio, in Rhodri Morgan's minority government cabinet announced on 31 May, Andrew Davies took up the seemingly retrograde appointment of Minister for Social Justice and Public Service Delivery. The establishment of a Labour-Plaid Cymru coalition cabinet on 20 July saw Brian Gibbons appointed as Minister for Social Justice and Local Government and Andrew Davies as Minister for Finance and Public Service Delivery. This ministerial structure allows Davies to retain his interest in promoting more collaborative team-working between local authorities. The relevant Deputy Ministers are Gwenda Thomas for Social Services, and Jocelyn Davies for Housing.

Departmental changes have also taken place. The Local Government Finance and Policy Divisions now form part of the Department for Social Justice and Local Government. Given the centrality of local government to implementing the WAG's response to the Beecham agenda of transforming public services, there are likely to be strong connections with the Department for Public Services and Performance.

Because these are recent developments, it is difficult to assess the overall significance of these changes for relations with local government. In the one speech Andrew Davies delivered when responsible for local government, at the WLGA Annual Conference on 7 June, he emphasised the need to consider local government's central role in delivering effective public services. He called for a new style of government: 'We need vision, change and most importantly leadership.

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<sup>128</sup> Health, Wellbeing and Local Government Committee, HWLG (3) 01-07 (p1), *Role of the Committee and Approach to its Work*, (11 July 2007).

<sup>129</sup> Health, Wellbeing and Local Government Committee, Committee Transcript, (11 July 2007).

That's what people expect of the Welsh Assembly Government – and of local government as well. I have no doubt that developing this new style of government demands a radical change in culture'.<sup>130</sup>

### **5.2.3 The Policy Challenges – One Wales and local government**

Policy developments and activities that were well underway prior to the election have continued during the prolonged period of establishing a 'stable government'. Progress is being made with developing the Local Service Boards (LSBs), with the 6 pilot areas selected (Wrexham, Gwynedd, Caerphilly, Carmarthenshire, Cardiff and Neath Port Talbot) and the appointment of WAG senior officials who will engage with the boards. Within the 'Making the Connections' unit, a 'Citizen First Wales' Team has been established to work on implementing the ambitions of a 'Citizen Centred' public service delivery, and is working with local authorities and the WLGA. Another issue to be addressed at a ministerial level is how the Spatial Plan, LSBs and Regional Boards work together and complement one another, particularly in a context of proliferating partnerships, overlapping membership and contrasts in regional organisational structures.<sup>131</sup>

Derek Vaughan, the leader of WLGA, welcomed the establishment of stable government and broadly endorsed the *One Wales* accord.<sup>132</sup> However, he argued, 'there are key service pressures that need more prominence if local councils are to have the tools and the resources for the difficult job ahead'.<sup>133</sup> On 9 July, WLGA launched a 'Let Government Commence' manifesto outlining local government's view on the challenges of the Third Assembly. It called for five themes to be given greater priority and 'strong national leadership' by the Assembly Government: waste management; surplus school places; social care; affordable housing; and sustainability and climate change.<sup>134</sup> The manifesto acknowledged that public concerns regarding reforms in local services are understandable, but they can be a 'damaging form of populism' that can detrimentally affect public service improvement and budget planning. Increasingly, across Wales, local authorities face high public pressure particularly regarding proposals for school re-organisation and addressing

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<sup>130</sup> WAG Press release, *Focus on delivery*, (7 June 2007). Downloadable from:

<http://new.wales.gov.uk/news/ThirdAssembly/LocalGovernment/2007/1543822/?lang=en>

<sup>131</sup> WAG, Local Government e-bulletin # 16 (April 2007) and e-bulletin # 17 (May 2007), at: [www.newwales.gov.uk](http://www.newwales.gov.uk).

<sup>132</sup> Labour and Plaid Cymru Groups, *One Wales*, op cit

<sup>133</sup> WLGA, Press Release, *Let government commence* (9 July 2007), Downloadable from: [www.wlga.gov.uk/content.php?nID=23;ID=109;IID=1](http://www.wlga.gov.uk/content.php?nID=23;ID=109;IID=1).

<sup>134</sup> WLGA, *Let Government Commence: The political and service challenges of the Third Term* (9 July 2007), Downloadable from: [www.wlga.gov.uk/uploads/publications/2954.pdf](http://www.wlga.gov.uk/uploads/publications/2954.pdf).

surplus school places or moving to fortnightly waste collection. Local government concerns were also made in the context of the anticipated results of the Comprehensive Spending Review bringing lower levels of public expenditure over the next three years. In response to these challenges, Meryl Gravell, WLGA Presiding Officer, stated, 'We want to work with the Assembly in this regard to deepen the collaboration agenda not only across local government but with the public and private sectors'.<sup>135</sup>

#### **5.2.4 Conclusion**

There is likely to be a strong element of continuity in relations between local government and the Assembly from the Second to the Third term as a result of political dynamics and the emphasis on improving collaboration and local public service delivery. However, there are suggestions of a more substantial cultural change, in the emphasis on national leadership and in local government's approach to collaboration with the public and private sectors, set against budget constraints and a raft of significant policy challenges.

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<sup>135</sup> WLGA Press Release, op cit.

## 6. Elections, Parties and Public Attitudes

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### 6.1 Elections

The major electoral event during the period covered by this report was the third election to the devolved National Assembly for Wales was held on 3 May 2007. As with the previous two elections, this used a two-ballot, semi-proportional voting system to elect 60 AMs. The main results from the election are summarised in Table 6.1.

Table 6.1: Vote Shares and Seats (Change from 2003), 2007 Election

Party	1 <sup>st</sup> Vote	2 <sup>nd</sup> Vote	Seats
Labour	32.2% (-7.8%)	29.6% (-7.0%)	26 (-4)
Plaid Cymru	22.4% (+1.2%)	21.0% (+1.3%)	15 (+3)
Conservatives	22.4% (+2.5%)	21.5% (+2.3%)	12 (+1)
LibDems	14.8% (+0.7%)	11.7% (-1.0%)	6 (-)
Others	8.3% (+3.6%)	16.3% (+4.5%)	1 (-)
Turnout = 43.5% (+5.3%)			

As is clear from the table, the election left no party in overall control of the NAW. The election saw a large fall in Labour support from the corresponding election four years previously. However, with none of the opposition parties able to advance substantially, Labour was able to retain its status as much the largest party in the devolved chamber.

Further interesting points emerge from a detailed examination of the results. A first is that Labour's vote share in 2007 constituted the party's worst performance at any Westminster or devolved election in Wales since the general election of 1918.<sup>136</sup> Although Labour held onto many constituencies, its decline in support left many of its

<sup>136</sup> Indeed, given that – partly due to the peculiar circumstances of the 1918 UK election – Labour did not stand candidates in one quarter of all the Welsh seats, 2007 was in reality Labour's worst ever result in a devolved or parliamentary election in Wales. 2007 was also the first year that Labour's vote share in Wales had not been higher than its vote share in Scotland at a devolved or UK election since 1924.

AMs looking vulnerable: of the twelve most marginal constituency seats in the new Assembly, ten are held by Labour members.

Another notable feature of the election result was the high degree of uniformity in Labour's performance. Prior to the elections, most observers had anticipated a 'patchwork quilt' of results, with no very clear patterns emerging. Yet for the Labour party at least, this was not true. Labour's vote share fell back in all five regions of Wales on the second vote; and in 39 of the 40 constituencies on the first vote.<sup>137</sup> Wales has long been a country renowned for its internal divisions and differences. But on one thing at least, in 2007, it was united. Across the north and the south, the east and the west, in both urban and rural parts of Wales, Labour was in decline.

With Labour in decline, but with none of the major opposition parties managing to enthuse a large swathe of the electorate, increasing numbers of voters turned towards independent candidates and to the political fringes. An independent candidate finished in the first four (thus beating at least one main party candidate) in 5 constituencies in 2003; but in 11 in 2007. And the share of the list vote going to 'others' rose substantially, with the far-right British National Party – which, like many extremist parties is often used as an outlet for protest votes – gaining 5.1 per cent of the list vote.

## **6.2 Parties**

While it would be too much to claim that the 2007 election and its aftermath indicated Welsh devolution to be coming of age, it is perhaps not too fanciful to see it as an 'end of the beginning', with the Welsh political sub-system created under devolution beginning to bed down, at long last. The election campaign was more intellectually serious than in 1999 and 2003: all four main parties produced manifestos that displayed at least some aspects of a distinctly Welsh policy agenda.

The following discussion will examine each of the major parties, looking in turn at their experiences in the election itself, and in the crucial period after the voters had delivered their verdict.

### **6.2.1 Labour**

#### *The election*

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<sup>137</sup> The only seat where Labour's vote share increased was Cardiff Central, where it rose by 2.0%.

Although hardly helped by the fortunes of the UK-wide party (fighting an election in the dog days of the Blair government, with issues like Iraq and the 'Cash for Honours' affair continuing to rumble in the background), or by its concentration on Scotland and the English local elections, Welsh Labour fought a poor campaign. Expectations were absurdly over-inflated; coordination from the centre appeared weak; and the essentially nostalgic central message of the campaign seems to have fallen on largely fallow ground. The 'Welsh Labour' brand appealed to 'classic Labour' values. This *may* have helped shore up the party's traditional base in the Valleys constituencies, but its broader resonance appears both geographically and socially limited. Furthermore, though the Valleys loom large symbolically – for both Labour partisans and their Plaid Cymru opponents – their real importance is limited and declining. While Labour can take comfort from the failure of other parties to advance in the Valleys, it faces a considerable danger of being pushed out of north Wales in the next Assembly election; it was wiped out in the constituency battle in the Mid and West Wales region; and it now faces substantial challenges in the metropolitan conurbations of south Wales. All this should surely give the party pause for thought. But it may be that Labour's results, while poor, were not quite bad enough to force the party into undertaking the inevitably painful and divisive process of rethinking its stance and programme.

#### *The post-election interregnum*

Labour's election campaign was poor, but its performance during the post-election interregnum often bordered on the inept. It seems extraordinary that a party long privately conceding defeat in key constituencies (such as Cardiff North and Clwyd West) had not done more to prepare the ground for a post-election situation in which it had fallen far short of an overall majority. But this is precisely what occurred. It is also extraordinary that leading Labour figures saw fit to both insult (describing as 'inedible' and 'unpalatable') and ignore (through Rhodri Morgan going on a post-election break) potential coalition partners in the immediate aftermath of the election. And it is inexplicable that Labour did not do more immediately after the election to try to secure a coalition with the Liberal Democrats, before the prospect of a Rainbow coalition involving the other 3 main parties began to solidify.

In defence of Rhodri Morgan, however, it may be suggested that much of Welsh Labour's problem is cultural, even psychological. Labour has long been the

hegemonic party in Welsh politics: its dominance in terms of votes<sup>138</sup> being underpinned and reinforced by innately disproportional electoral systems. And large and influential sections of the Welsh Labour party remain resolutely 'in denial' about the implications of devolution and its semi-proportional electoral system. Working with this sort of party behind him, Morgan would have found it difficult to have moved faster even had he attempted to. Only when faced with the realistic prospect of losing power did his party accept (reluctantly) the necessity of compromising with erstwhile enemies.

By this time, Plaid Cymru was the only available partner. The agreement reached with Plaid was strongly endorsed at a specially convened party conference; this result represented an unambiguous victory for Labour's devolutionist wing. But while the constitutional balance of power between UK and Welsh devolved government remains as it is, and different electoral systems remain in place at both levels, the internal party tensions of the past few weeks and months are likely to be recurring feature of Welsh Labour party politics. The many Welsh Labour parliamentarians who remain utterly unreconciled either to coalition with Plaid or devolution retain a significant capacity for mischief making. Rhodri Morgan's recent health problems add another potentially destabilising element to this already combustible mixture.

### **6.2.2 Plaid Cymru**

#### *The election*

Plaid Cymru had most reason to congratulate itself following the election campaign. But although 2007 did bring undoubted electoral successes for the party, it would not be unrealistic to describe these as important tactical victories amidst an accompanying strategic failure. Without question, Plaid (and notably election co-ordinator Adam Price MP, and outgoing Chief Executive Dafydd Trystan) ran the best campaign at both national and local levels. In consequence, Plaid succeeded in almost all its key targets seats, and fought particularly effective defensive campaigns where its representatives faced possible difficulties. Among the latter cases, Labour was pulverised in the (redrawn) Arfon constituency, while in Ceredigion, Plaid's overwhelming defeat of a strong Liberal Democrat candidate undoubtedly contributed to the latter party's post-election trauma.

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<sup>138</sup> Labour has won at least a plurality of the vote in Wales at every election since the general election of 1922.

But the successes of the party's campaign should not mask its broader strategic failure: failing to find a political message that could translate widespread dissatisfaction with the Labour party into support for its candidates. Despite the heavy fall in Labour support, across Wales Plaid only saw a modest rise in its vote. The contrast with Plaid's Scottish sister party is stark. The SNP largely defined the agenda in Scotland's devolved election. Plaid benefited from Labour's difficulties, but could not dominate the Welsh election in the same way. While devolution has changed many things, the party's decades old conundrum remains unresolved: how to advance a programme that appeals throughout Wales?

### *The post-election interregnum*

The contrast between Plaid and Labour's post-election behaviour could not have been more marked. Plaid's leadership was determined to keep as many options as possible on the table. The only possibility that had been explicitly disavowed prior to the election was Plaid serving in government under a Conservative First Minister; this formulation still permitted Tory-Plaid cooperation in various forms. The stance of the leadership – along with the behaviour of the other parties – made Plaid central to all coalition negotiations, and ultimately enabled Plaid effectively to choose between alternative coalition agreements. Both agreements allowed for the implementation of large parts of the party's election manifesto and, more generally, bore the stamp of the party's strong negotiating team. (According to one close observer, Plaid greatly benefited from the experience of leader Ieuan Wyn Jones in the parliamentary negotiations surrounding parliamentary ratification of the Maastricht Treaty in the early 1990s.)

Whether the party made the right choice in opting for the role of junior partner in a Labour-led government, rather than leading a Rainbow government, will be debated by Plaid activists for many years to come. The party leadership's ultimate decision to go for the 'Red-Green' deal was endorsed overwhelmingly by activists in a special conference. But this does not mean that no reservations persist within the party: for instance, the former leader, Dafydd Wigley, used a high profile speech at the National Eisteddfod in August to voice concerns about the extent to which the commitments of the coalition agreement were deliverable. More generally, party members and supporters at all levels will have to adjust their ways of thinking and operating substantially now that Plaid is, for the first time in its more than 80-year existence, a party of government.

### **6.2.3 Conservatives**

#### *The election*

The Conservatives had a good election campaign, and they were very close to a very good result. (Conservative challengers lost to Labour AMs by 83 votes in Vale of Glamorgan, 92 in Vale of Clwyd, 511 in Delyn, 1,119 in Clwyd South, and 1,192 in Gower). With strong financial support from a buoyant UK party, the Welsh Tories ran strong local campaigns in key constituencies, although their national campaign never quite matched the slickness of Plaid Cymru. Although disappointment will persist at the failure to increase the party's representation in the National Assembly by more than one seat, or to displace Plaid as the second largest party, wiser heads will surely point to the party's overall progress in a country that has historically been difficult territory for Conservatism.

Indeed, the fact that the Welsh party provided one of the brighter spots in a mixed night for Conservatives across Britain was a major triumph for the Welsh party leadership. Without doubt, Nick Bourne's dominance of the Welsh party has been further entrenched, allowing him to continue to try to reposition the party in Wales as a more obviously Welsh party. But the Tories image as the English party in Wales has very deep roots, and will not easily be displaced.

#### *The post-election interregnum*

In the post-election horse-trading, the Conservatives were both canny and lucky. They were canny in playing their hand well: past efforts to maintain cordial relations with their potential coalition partners in Plaid Cymru and the Liberal Democrats were continued with the Tories contributing positively towards the negotiation of the 'Rainbow' deal between the three parties. But they were also lucky that the deal collapsed for reasons that could not be blamed on them. Holding power in Wales alongside Plaid Cymru – indeed, under the leadership of a Plaid Cymru First Minister – would surely have created substantial and public divisions in the Conservative party, significant sections of which remain unreconciled to devolution. As matters transpired, the Conservatives emerged from the coalition negotiations in a stronger formal position (as the official opposition in the National Assembly), and being able credibly to claim that they had worked in good faith for an alternative, non-Labour government.

However, the Conservatives' luck may run out. The party leadership has managed to paper over persisting internal divisions on devolution in recent years. But part of the Labour-Plaid coalition agreement is a commitment to hold a referendum on enacting Section 4 of the 2006 Government of Wales Act: the granting of primary legislative powers to the NAW. Any such referendum would be likely to bring Tory divisions fully into the open. A multi-option referendum, where abolition of the Assembly is one option, would be supported by many party activists (and possibly some of its Welsh MPs), but would be doomed to failure and would also cut right across the entire political strategy of the Bourne leadership. Given the party leadership's strident and fundamental criticism of the status quo, any decision to oppose further constitutional change would inevitably open the party to ridicule. But could the party really stomach campaigning for primary legislative powers for Wales? While media speculation has inevitably focused on the divisions a referendum could open up within Labour, its repercussions for the Welsh Conservatives might be equally momentous.

#### **6.2.4 Welsh Liberal Democrats**

##### *The election*

The Liberal Democrats ended up winning the same number of seats in 2007 as in both 1999 and 2003. Why should results no worse than previously have prompted descriptions such as 'disastrous'? What makes such language plausible – even to LibDems – is the failure of election campaign to provide reasonable hope for future progress. Despite a strong local candidate and campaign, the party was comprehensively defeated in its key target seat of Ceredigion – by a margin sufficient to indicate that the party may struggle to retain the Westminster seat at the next UK general election. And despite confident noises in the months prior to the election, the Lib-Dem performance in Wrexham and Swansea was ultimately disappointing. But even more alarming was exposure of the party's chronic weakness across much of Wales. In Ynys Môn, for example, the BNP won more list votes than the Liberal Democrats.

##### *The post-election interregnum*

But if the election results were bad, the post-election period proved even worse for the Liberal Democrats. Of the four main parties, the LibDems have been the most damaged, even discredited, by the coalition negotiations. For the party apparently to reject the Rainbow deal that had been negotiated by its leadership made the LibDems look merely silly; for them then to try to reverse their position, and resurrect

the Rainbow deal once it was all-too-late, smacked of a particularly highly developed brand of incompetence.

Perhaps most worrying for the party's future prospects that, in the absence of commanding leadership in the Welsh (or indeed UK-wide) party, the Welsh Liberal Democrats appear to be behaving as an increasingly loose collection of local parties rather than a coherent national force. Attitudes towards the prospective coalition deal seem to have been almost wholly determined by local electoral circumstances, rather than issues of principle or policy. Forcing Plaid into bed with Labour was the earnest hope of Ceredigion Liberals looking to the next Westminster election; most Brecon and Radnor Liberals seem to have concluded that a deal with the Conservatives would have made it more difficult for them to squeeze the constituency's residual Labour vote in subsequent elections; and so on. No party is immune from such considerations, of course, and differences of opinion within parties are axiomatic. But with the same old faces returned to the Assembly, the party's MPs wholly unable to offer leadership, and little to distinguish the party programmatically in the crowded centre-left of Welsh politics, it is very difficult to see where the party goes next. It is not an exaggeration to suggest that the Welsh Liberal Democrats face an existential crisis.

### **6.3 Public Attitudes**

The 2007 election allowed for some insights into public attitudes towards devolution. The most important evidence will be provided by the detailed post-election survey, funded by the Economic and Social Research Council of the United Kingdom, which will explore factors shaping voting behaviour and opinions on devolution in Wales.<sup>139</sup> Findings from this survey will be available in late-2007, and will be presented in a future Monitoring Report.

Other signs did indicate some growth in interest in devolution among the Welsh public. First and foremost, more of them bothered to participate in the 2007 election than had done so in 2003. Turnout, at 43.5 per cent, remained far lower than it has typically been for UK general elections, but was nonetheless more than 5 per cent higher than four years previously. There were also hopeful signs from the Welsh news media. While the London media largely ignored both the Welsh election and its aftermath, this seemed both to have a galvanising effect on sections of the

conventional Welsh media and also stimulated an efflorescence of Welsh election-based blogs.

Finally, a poll conducted immediately prior to the election for the BBC found an increasing proportion of the Welsh public perceiving the devolved institution as being important. When asked 'Which level of government do you think presently has most influence over Wales?', the number opting for 'Welsh Assembly Government' was, at 40.3 per cent, higher than in any previous survey or poll, and higher than the number opting for the 'UK Government'.<sup>140</sup> This was the first survey or poll that had ever shown the perceived influence of devolved government as being greater than that of London.

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<sup>139</sup> This survey is being conducted by the National Centre for Social Research and the Institute of Welsh Politics.

<sup>140</sup> The data are taken from a telephone poll conducted by ICM for the BBC between 27-30 April 2007. The question offered respondents four possible answers: Welsh Assembly Government, UK Government in Westminster, Local Councils, and European Union.

## 7. Assembly and the Media

*Professor Kevin Williams, University of Wales Swansea*

Media relations with the Assembly have been on election footing since April. The long drawn out coalition talks have maintained this state of affairs. Consideration of how the media and broadcasting impact on policy has disappeared as parties and politicians jockey for position in the new Assembly. The election campaign was characterised by a lack of fractiousness in the relations between the Welsh press and broadcasters and the political parties. The *Western Mail's* political editor, Martin Shipton, heaped praise on the spin doctors of all four main parties in Wales, attributing what he saw 'better coverage of the election' to the return to a more civilised and professional relationship between journalists and politicians.<sup>141</sup> The low profile of the National Assembly elections of 2007 highlighted – again – the lack of indigenous media to bring the campaign to all parts and people of Wales as well as the failure of the national UK media to report fully on what is happening in Wales.

The poverty of coverage of Wales was drawn attention to in the BBC Wales' Annual Review,<sup>142</sup> the first since the introduction of the new governance arrangements. The new Audience Council for Wales 'felt that despite BBC Wales's best efforts, there was still some considerable work to be done before Wales was adequately *reflected* rather than perfunctorily *represented* in Network output'.<sup>143</sup> The Council reiterated what was a constant refrain from its predecessor, the Broadcasting Council for Wales, namely 'Network television News' continued inadequate reflection of the reality of devolution'. The failure of the London-based press to give anything but cursory coverage to the elections is an example of the limited way in which Wales is reported at UK level. This would not be such a problem if Wales – like Scotland – had its own press. A small step was taken to redress this 'democratic deficit' with the announcement of the launch date for *Y Byd*, a Welsh language daily newspaper, which will also appear online. Financial support from the Assembly we were informed was part of the coalition negotiations between Plaid and Labour.<sup>144</sup> *Y Byd* will enhance the ability of Welsh speakers to learn more about Wales and the world. However, meaningful democratic politics would still appear a long way off unless the

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<sup>141</sup> M. Shipton, 'What happened to the art of spin-doctoring?', *The Western Mail* (26 April 2007)

<sup>142</sup> BBC Audience Council Wales, 'Wales Annual Review 2006/7', (BBC Publications: 2007)

<sup>143</sup> BBC Audience Council Wales, 'Wales Annual Review 2006/7', (BBC Publications: 2007), p.13;

M. Shipton, 'BBC network criticised over Wales coverage' *The Western Mail* (16 July 2007).

<sup>144</sup> D. Partridge, 'All hail the prints of Wales', *The Guardian* (23 July 2007).

provision of indigenous print media for the four-fifths of the people of Wales who are monoglot English speakers is improved.

The review also highlighted a number of points mentioned in the previous Monitoring Reports. Concerns were expressed about the suspension of BBC Jam, the pioneering online service in English and Welsh, which was closed down following anonymous complaints to the European Commission from other parts of the industry about its alleged detrimental impact on their business.<sup>145</sup> Matters of reception were also taken up – again – as the Council supported the development of Freesat to tackle the lack of access to digital television in many parts of Wales.<sup>146</sup> The lack of availability of Digital Audio Broadcasting (DAB) in Wales<sup>147</sup> was also mentioned with the Trust having placed this issue high on its agenda. With the Radio Wales and Radio Cymru not accessible on DAB for more than half the Welsh population there is a likelihood of the ‘democratic deficit’ worsening in the digital era. The content of the first review issued by the Audience Council for Wales under the BBC Trust was familiar to those who followed the deliberations of the Broadcasting Council. The National Trustee for Wales, who chairs the Council, failed to appear in the media to present the review. Reports in *The Western Mail* stated she had to pull out of an interview with them ‘because of a decision made by senior officials in London’<sup>148</sup> over the Queen’s interview huff story.<sup>149</sup>

The future of broadcasting in Wales was the theme of a seminar held in Cardiff in June by OFCOM on broadcasting in the nations and regions of the UK. Addressed by all the big-wigs of British broadcasting, the conference drew attention to the fragile state of regional broadcasting. Michael Grade, ITV’s executive chairman, was blunt in his remarks about ITV’s commitment to broadcasting in Wales and the other nations and regions of the UK. Forget about support from the ITV network – production quotas and positive discrimination are dead. That was his stark message. Losing money – and ITV lost £200m in revenue last year and an estimated half a billion pounds since the start of the decade – means that dishing out ‘money like sweets’

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<sup>145</sup> Wyn Jones, Richard and Roger Scully (eds), *Wales Devolution Monitoring Report: April 2007* (London: The Constitution Unit)

<sup>146</sup> Wyn Jones, Richard and Roger Scully (eds), *Wales Devolution Monitoring Report: September 2006* (London: The Constitution Unit)

<sup>147</sup> Wyn Jones, Richard and Roger Scully (eds), *Wales Devolution Monitoring Report: January 2007* (London: The Constitution Unit)

<sup>148</sup> M. Shipton, ‘BBC network criticised over Wales coverage’ *The Western Mail* (16 July 2007)

<sup>149</sup> For background on this story, see ‘BBC apologises for ‘misrepresenting’ Queen’, *The Guardian* (12 July 2007), at: [www.guardian.co.uk/uk\\_news/story/0,,2124778,00.html](http://www.guardian.co.uk/uk_news/story/0,,2124778,00.html)

is no longer an option.<sup>150</sup> OFCOM research shows that ITV spends £100m on news in the nations and regions but recoups only £15m in direct revenues.<sup>151</sup> Grade singled out ITV Wales and the West as having the 'highest regional costs of the network' and he stated that without the urgent development of 'a robust and sustainable economic framework of our national regional services', ITV could 'embrace the model of Channel 4 and become a centralised broadcaster providing the same programmes across the UK'. The digital switchover, according to OFCOM, is likely to provide a 'strong incentive' to replace regional with network programmes because of the considerable expense. Greg Dyke has warned that ITV needs to be 'much bigger than it is' to survive.<sup>152</sup> He suggests a merger with a European or US group as the solution to its resource problem which would have further implications for regional and national-regional programming.

BBC Director General Mark Thompson was more positive about Wales, particularly Cardiff's role as a centre for network drama production. The success of *Dr Who* and *Torchwood* has produced a 'critical mass' of people 'working right at the top of the creative industries'. The result, Thompson said, is that 'we are looking to bring more major, long-running drama series to Wales' to 'build on the talent and expertise we have got here'.<sup>153</sup> However, the cost cutting exercise that has been embarked on in the wake of the poor licence fee settlement is the context within which such praise and promises are made and have to be understood. The potential threat to the representation and reporting of Wales from ITV and BBC problems is something the new National Assembly will have to address with some urgency and vigour.

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<sup>150</sup> D. Williamson, 'ITV boss lays out tough options', *The Western Mail* (30 June 2007)

<sup>151</sup> S. Thompson, 'Ofcom: ITV local news under threat', *Broadcast* (6 July 2007)

<sup>152</sup> Y. MacKenzie, 'Mixed response to Dyke's ITV warning', *Broadcast* (20 July 2007)

<sup>153</sup> D. Williamson, 'ITV boss lays out tough options', *The Western Mail* (30 June 2007)

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## Internet Resources

BBC News Online Wales: <http://news.bbc.co.uk/1/hi/wales/>

British-Irish Council: [www3.british-irishcouncil.org](http://www3.british-irishcouncil.org)

Care and Social Services Inspectorate Wales: [www.csiw.wales.gov.uk](http://www.csiw.wales.gov.uk)

Countryside Council for Wales: [www.ccw.gov.uk/Splash.aspx](http://www.ccw.gov.uk/Splash.aspx)

Department for Environment, Food and Rural Affairs: [www.defra.gov.uk](http://www.defra.gov.uk)

Equal Opportunities Commission: [www.eoc.org.uk/Default.aspx?page=19483](http://www.eoc.org.uk/Default.aspx?page=19483)

Health Commission Wales: [www.wales.gov.uk/healthcommission](http://www.wales.gov.uk/healthcommission)

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[www.jrf.org.uk/knowledge/findings/socialpolicy/2096.asp](http://www.jrf.org.uk/knowledge/findings/socialpolicy/2096.asp)

Mid and West Wales Fire and Rescue Service: [www.mawwfire.gov.uk/](http://www.mawwfire.gov.uk/)

Ministry of Justice: [www.justice.gov.uk](http://www.justice.gov.uk)

National Assembly for Wales: [www.new.wales.gov.uk](http://www.new.wales.gov.uk)

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Office of Public Sector Information: [www.opsi.gov.uk](http://www.opsi.gov.uk)

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Wales Audit Office: [www.wao.gov.uk/](http://www.wao.gov.uk/)

WLGA: [www.wlga.gov.uk](http://www.wlga.gov.uk)