

The **Constitution** Unit

DEVOLUTION MONITORING PROGRAMME 2006-08

Wales Devolution Monitoring Report

January 2008

Prof Richard Wyn Jones & Prof Roger Scully (eds.)



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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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WALES OFFICE



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Abbreviations and Acronyms

| | |
|-------|---|
| AM | Assembly Member |
| CALRE | Conférence des Assemblées législatives régionales d'Europe (Conference of the European Regional Legislative Parliaments) |
| CoR | Committee of the Regions |
| CSR | Comprehensive Spending Review |
| D-G | Director General |
| EEC | European Economic Community |
| ERDF | European Regional Development Fund |
| ESF | European Social Fund |
| ESG | Expenditure Sub-Group |
| EU | European Union |
| FSB | Federation of Small Businesses |
| GoWA | Government of Wales Act |
| GVA | Gross Value Added |
| HCW | Health Commission Wales |
| JMC | Joint Ministerial Committee |
| LCO | Legislative Competence Order |
| MEP | Member of European Parliament |
| MP | Member of Parliament |
| NAfW | National Assembly for Wales |
| NBAR | National Behaviour and Attendance Review |
| NHS | National Health Service |
| PFI | Private Finance Initiative |
| RSG | Revenue Support Grant |
| SNP | Scottish National Party |
| WAG | Welsh Assembly Government |
| WAS | Welsh Ambulance Service |
| WASC | Welsh Affairs Select Committee |
| WCVA | Wales Council for Voluntary Action |
| WEFO | Wales European Funding Office |
| WLGA | Welsh Local Government Association |

Summary and Introduction

After a long period during which party politics in Wales was distinctly frenetic – due first to election campaigning and later to post-election deal-making and deal-breaking – the period of this report has been one of settling down. Party politics became distinctly quieter, although we can expect things to move back up a gear once campaigning starts in earnest for the May 2008 local government elections.

Perhaps the most striking aspect of the past few months has been the relative ease with which the Labour-Plaid Cymru coalition in Cardiff has bedded-down. Despite the historic enmities between the two parties, and the vigorous debate within Labour about the wisdom of entering into coalition with Plaid, inter-party relationships within the Assembly government have thus far been, by all informed accounts, genuinely cordial and positive. Though one can expect tensions between the parties at other levels – most obviously at Westminster – to spill-over into the National Assembly arena at some points in the future, every sign at present suggests that the current coalition will prove sustainable for the whole four-year term of this Assembly. Cynics can, with some fairness, suggest that the current disarray among the Welsh Liberal Democrats means that neither side has any other viable option except to co-operate with each other. But there does seem to be more to it than this. At ministerial level, and even among most backbenchers in the Assembly, there appears to be genuine (if wary) mutual respect. While such talk is clearly premature, it is nonetheless indicative of the current mood (in Cardiff Bay at least) that there has already been some discussion in the margins of the Assembly that the coalition could continue beyond 2011.

Given that the LCO process – a mechanism introduced by the 2006 Government of Wales Act that allows for the transfer of ‘Measure-making powers’ to the National Assembly via Orders in Council at Westminster – is still in its infancy, it is too soon to pass definitive judgement on its efficacy. Especially given that both sides of the Cardiff-London relationship are still clearly ‘feeling their way’. Nonetheless, the experience so far will have done little to temper the views of those who have previously been critical of the new arrangements.

With the LCO system obviously an interim arrangement, and with the Labour-Plaid coalition agreement having committed both parties to attempt to secure a referendum on primary powers proper by 2011, the initial meetings of the ‘One Wales

Convention' chaired by Sir Emyr Jones Parry (also a product of the coalition agreement) take on particular significance. As of yet the exact role of the Convention remains unclear. Supporters of primary powers will however have been buoyed by the latest data on public attitudes towards Wales' constitutional future. The ESRC-funded survey, conducted by the Institute of Welsh Politics (Aberystwyth) and the National Centre for Social Research, was carried out in the period immediately after the National Assembly election. It showed that while there continues to be no substantial trend in support for Independence for Wales (it remains at 12 per cent), support for strengthening devolution continues to grow, and now stands at 44 per cent. 28 per cent support the constitutional status quo. At the same time opposition to the principle of devolution has continued to decline, and now stands at 17 per cent.

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

Despite the 2001 *de facto* separation of the executive from the legislative branch of devolved government, it remains relatively commonplace for the mass media to conflate the two – and for reference to be made to ‘the Assembly’ / ‘Y Cynulliad’ as being responsible for devolved public policy and law. At the commencement of the third Assembly *Y Llywydd* / Presiding Officer, Dafydd Elis Thomas AM, called for a more informed understanding of the ‘ownership’ of public policy initiatives. He stated:

We all have a responsibility for clarity regarding our roles and responsibilities. How can we expect the public to hold us to account and fully participate in Welsh democracy when there is so much confusion between the legislature, the Assembly, and the Executive, the Government? Is it not time that we now refer to ourselves and each other in clearer terms to enable us to move on and take Wales forward as the Assembly and, the Welsh Government?¹

On related matters, the policy programme set out in *One Wales* – the document that finally sealed the coalition government agreement reached in late June between Plaid Cymru and Welsh Labour – has major implications for the future scope and development of devolved policy making.² The key issue is whether public policy will continue to be underpinned by the present cumbersome and opaque legal processes founded on executive devolution, or whether the National Assembly will gain full primary legislative powers giving it the scope to pass laws to enforce public policy in any area not reserved to either the Westminster parliament or the European Commission.³ This is a salient issue because *One Wales* states:

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 [current] Assembly term.⁴

¹ ‘Lord Dafydd Elis-Thomas calls for better communication with the people of Wales’, NAFW Press release (18 September, 2007)

² Inter alia, it contains a pledge to consider the evidence for the devolution of the criminal justice system.

³ And not hitherto added to the schedule of devolved legislative competencies in the wake of GoWA, 2006.

⁴ *One Wales: A Progressive Agenda for the Government of Wales*, p 6, at: wales.gov.uk/about/strategy/strategypublications/strategypubs/onewales/?lang=en

Accordingly, late September saw the Counsel General, Carwyn Jones AM (Welsh Labour), call for a debate on this matter. He said: 'in a situation where the Assembly is able to exercise primary legislative powers, I think it's inevitable that the question will surface as to whether it's sustainable for the single jurisdiction of England and Wales to be retained'. He underlined the need for a debate on 'the establishment of a single administration of justice in Wales' by concluding that: 'the many facets of the legal community in Wales need to play a central role in informing the Welsh Assembly Government's consideration of those matters'.⁵ This is a timely intervention since contemporary academic legal analysis concludes that the current legal powers of the National Assembly will 'start areas of separate "Wales-only legislation" leading to the creation of a Wales statute book different to that applying to Wales and England'.⁶ Whilst critics of this development may be vocal, the tenets of good governance (*inter alia* – democratic legitimacy and accountability) suggest that this is the way ahead for devolved policy-making in Wales.

Mid-October saw the publication of the UK Comprehensive Spending Review (CSR).⁷ It revealed that Assembly government spending will go up from £14bn to £16bn by 2010. However, debate centred upon whether this level of funding will be adequate for the realisation of the coalition government's ambitious policy programme. Such speculation was fuelled by Welsh ministers' refusal to publish a breakdown of the costs of the *One Wales* initiatives. According to Jenny Randerson AM (Welsh LibDems), 'it is inconceivable [that it] has not been costed ... they know they can't afford it'. The CSR also revealed tensions between the two governing parties. Secretary of State for Wales Peter Hain MP (Welsh Labour) said: 'in real terms this means a 2.4 per cent above inflation increase in funding each year for the next three years – amounting to a 16 per cent increase in Welsh spending power'.⁸ In contrast, Plaid Cymru MP Adam Price said it was the 'worst financial settlement for Wales since devolution ... the people of Wales will be £700m worse off than they should have been had the (UK) government stood by its budget promise'. Shadow

⁵ 'Counsel General urges debate over changing legal landscape', WAG Press Release, (21 September 2007)

⁶ M. Navarro and D. G. Lambert (2007) 'Some effects of the Government of Wales Act 2006: The Welsh Journey from Administrative Decentralization Passing Through Executive Devolution to Quasi-Legislative Devolution in less than Eight Years', in P. Chaney, E. Royles, and A. Thompson. (eds) *Contemporary Wales: An Annual Review Of Economic, Political and Social Research*, (2007), Cardiff, University of Wales Press pp. 13-39.

⁷ '2007 Pre-Budget Report and Comprehensive Spending Review'. Downloadable from UK Treasury website: www.hm-treasury.gov.uk/pbr_csr/pbr_csr07_index.cfm

⁸ 'Spending Announcement Provides 16 Per Cent Budget Boost for Wales, Says Peter Hain', Wales Office Press Release, (October 10, 2007): www.walesoffice.gov.uk/2007/10/10/spending-announcement-provides-16-per-cent-budget-boost-for-wales-says-peter-hain

Welsh Secretary Cheryl Gillan (Welsh Conservative) said the spending announcement will 'place significant pressure on the Labour-Plaid coalition and its ability to deliver its policy commitments'.⁹ The autumn budget revealed an increase in spending on public services; however, the increase was not as great as seen in previous years. According to WAG, an extra £1.2bn has been allocated for health services over the next three years. Furthermore, the plans include £120m to be spent on childcare, and £155m on transport. Not all were happy with the spending plans. According to the Welsh Local Government Association, the 'settlement again sees local government at the bottom of the pile when it comes to public finances in Wales. We expected a tough settlement but today's unacceptable outcome ... will place huge pressures on local authorities who are already squeezing everything possible from the system'.¹⁰

In November Plaid Cymru announced a range of potential policy initiatives in its 'alternative Queen's speech'. The coalition government partner set out a series of proposals that, in specific areas, confirmed, or, more significantly, moved beyond the coalition government's policy programme. Such measures included draft UK parliamentary Bills to devolve control over water resources to the National Assembly – as well as proposals to create an independent Welsh civil service, and to replace the minimum wage with what the party claim is a more comprehensive welfare measure, a 'living wage'.¹¹

1.2 Health and Social Services

Late September saw the health minister, Edwina Hart AM (Welsh Labour), announce an independent review of the Health Commission Wales (HCW), an executive agency of the Welsh Assembly Government.¹² HCW is responsible for giving guidance, support and facilitation to NHS Wales in relation to acute services commissioning. The agency was at the centre of controversy over decisions it made on the availability of some new medicines and treatments. According to David Melding AM (Welsh Conservatives) 'in the general health community in Wales there is a view that the commissioning role of this organisation is far too reactive ... given

⁹ BBC Online, 'Rise in Welsh spending slows down', 9 October 2007, at: news.bbc.co.uk/1/hi/wales/7035508.stm

¹⁰ 'Punitive Assembly Government budget will lead to cuts in key frontline services, says WLGA', WLGA Press Release (November 5, 2007): www.wlga.gov.uk/content.php?nID=23;ID=126;IID=1

¹¹ The 'living wage' was also a key pledge in Plaid Cymru's 2007 election manifesto, see: BBC News,

'Plaid Cymru pledges "living wage"', at: <http://news.bbc.co.uk/1/hi/wales/6502603.stm>.

¹² Health Commission Wales: <http://new.wales.gov.uk/topics/health/hcw/?lang=en>

the advances in modern medicine we are not quite up to the pace in Wales'.¹³ The autumn saw the health minister also announce a further review, this time in relation to NHS Wales' pay and conditions policy. This followed concerns about the uneven implementation of the pay policy introduced under the 'Agenda for Change' initiative that was introduced in October 2004.¹⁴ The review follows WAG's announcement in July that nurses in Wales would receive a 2.5 per cent pay rise, thereby bringing Wales in line with pay scales in Scotland. This received cross-party support. Then Shadow health minister Jonathan Morgan AM (Welsh Conservatives) said: 'I am pleased the health minister has responded positively to concerns and decided to implement the pay increase in full'.¹⁵ The HCW and NHS Wales pay reviews are scheduled to be completed by early 2008.

On 17 October 2006 the National Assembly unanimously passed the following motion: 'we call on the Welsh Assembly Government to develop and present for consultation ... a wide-ranging strategy to improve the quality of food consumed in Wales'. Accordingly, eleven months on from the resolution, 25 September saw WAG launch the consultation draft of its Quality of Food Strategy.¹⁶ The final Strategy will be published in 2008. On other matters, in late November WAG announced its intention to seek an LCO to give it new powers to legislate to regulate care costs for vulnerable people. At present there is wide variation in the amount charged by the 22 local authorities in Wales (with maximum weekly costs ranging from £16.20 in Rhondda Cynon Tâf to £150 in Powys; some local authorities have no maximum tariff). Gwenda Thomas AM (Welsh Labour), deputy minister for social services, said WAG was concerned to secure a 'fairer and more consistent approach to charging'.¹⁷

Back in May 2005, WAG revealed its Healthcare Standards for Wales; these set out 32 standards that all healthcare organisations in Wales are expected to meet.¹⁸ Late November saw the publication of Healthcare Inspectorate Wales' report on the progress made against the Healthcare Standards. This identified a number of areas of concern including the amount of dignity and respect patients are afforded when

¹³ 'Pay and treatment reviews for NHS', reported in anon (26 September 2007):

<http://news.bbc.co.uk/1/hi/wales/7014732.stm>

¹⁴ Department of Health: Agenda for Change:

www.dh.gov.uk/en/Policyandguidance/Humanresourcesandtraining/Modernisingpay/Agendaforchange/index.htm

¹⁵ 'WAG to offer nurses full pay rise', reported in M. Brindley, *Western Mail* (6 July 2007)

¹⁶ 'Quality of Food: How to get Involved':

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

¹⁷ 'Vulnerable care charges "unfair"', at: news.bbc.co.uk/1/hi/wales/7113918.stm

¹⁸ www.hiw.org.uk/page.cfm?orgId=477&pid=15775

admitted to hospital – and the complex governance structure of NHS Wales. In addition, the report highlighted areas of good practice including measures in relation to child protection and patient nutrition. In respect of the latter the report stated: ‘many [health] Trusts across Wales have invested considerable time and resources to improving the quality and choice of food available to patients’.¹⁹ Following the report the health minister ordered every NHS Wales organisation to publish a Healthcare Standards Improvement Plan.

In June 2006, a full public inquiry was launched into the service delivery standards of the Welsh Ambulance Services NHS Trust (WAS). In November 2007 inspectors concluded that WAS ‘has improved dramatically ... life-or-death emergency response times have improved and a new fleet of ambulances and rapid response vehicles has been introduced’. Notwithstanding this, in the same month the health minister announced an official review to examine whether the ambulance service is responding to all the [2006] Wales Audit Office report’s recommendations and ‘whether the Trust’s plans for further modernisation are robust and deliverable’.²⁰

1.3 Education, Culture and the Welsh Language

The state education inspectorate Estyn’s National Curriculum autumn assessment figures reported that, when compared to last year, key stage one (ages 3-7 years) and two (ages 7-11 years) results showed that fewer pupils met expected standards across a range of subjects.²¹ However, children aged 14 years did better in English and Welsh than in 2006. The inspectorate report revealed the persistence of the gender attainment gap. Data showed that girls outperformed boys in all three age groups and every subject area. The greatest difference between the sexes was 16.5 percentage points for 14-year olds studying Welsh. Shadow Education Minister Alun Cairns AM (Welsh Conservatives) stated: ‘it’s alarming that the trend hasn’t started to converge after so much effort, so much resources and so much political priority had been given by Rhodri Morgan and the Labour Party’. In response, a Welsh Assembly Government spokesperson said: ‘a slight dip in performance is to be expected once in a while, if results get better every year we simply face criticism that things must be getting easier’.²²

¹⁹ Healthcare Inspectorate Wales: Healthcare Standards:

www.hiw.org.uk/Documents/477/All%20Wales%20Report%2006%2D07%20%2D%20Final.pdf

²⁰ ‘Minister announces review into the ambulance service’s progress’, see M. Brindley, *Western Mail* (29 November 2007)

²¹ Estyn: www.estyn.gov.uk The consultation closed on 31 December 2007.

²² ‘Fewer pupils meeting standards’ BBC Online, (4 September 2007), at: news.bbc.co.uk/1/hi/wales/6978155.stm

In March 2006, the Minister for Education, Lifelong Learning and Skills made a commitment to undertake a national review of school behaviour and attendance. September 2007 saw the publication of WAG's 'National Behaviour and Attendance Review Steering Group's Interim Report'.²³ This policy development document is designed to inform the second stage of the review. *Inter alia*, the report found that: 'large numbers of existing professionals have received little or no training for their roles in managing attendance or behaviour'; 'that although there is adequate guidance on managing exclusions from the Welsh Assembly Government, in practice, the implementation processes vary considerably from [local] authority to authority'; and that 'although some excellent alternative curriculum and out-of-school provision exists, this too, tends to vary from authority to authority. In some parts of Wales, there are presently too few places available'. The Steering Group's final report is scheduled for early 2008.

In mid-November, the Further Education and Training Act (2007) gave the National Assembly framework powers to pass primary legislation – or Assembly Measures – relating to further education and training. This will allow WAG to legislate in respect of the recommendations from the Independent Review of Further Education in Wales – the Webb Review – that was published on 11 December.²⁴ The latter identified the need for policies that address the requirements of: 'the large numbers of people that do not have literacy or numeracy skills'; 'employers who do not find the education system responsive enough to their needs'; and 'young people who are gifted and/or talented'. WAG will respond to the Review's recommendations in its draft Skills and Employment Strategy due to be published for consultation in early 2008.

1.4 Economy and Transport

The coalition government's *One Wales* policy agenda states that 'we will support the aim to halve child poverty by 2010 and eradicate child poverty by 2020'. In furtherance of this, in late September, Huw Lewis AM (Welsh Labour) was appointed as the chair of a new independent expert group on child poverty. This will provide 'evidence-based advice and feedback' to the Assembly Government on progress towards its cross-cutting child poverty targets. Notwithstanding the urgency of the

²³ 'National Behaviour and Attendance Review', at: www.nbarwales.co.uk

²⁴ 'Report of the Independent Review of the Mission and Purpose of Further Education in Wales in the context of the Learning Country: Vision in to Action', at: new.wales.gov.uk/topics/educationandskills/policy_strategy_and_planning/127035/webb-report?lang=en

problem, it was announced that further appointments to the group will not be made until early spring 2008.²⁵

In September, the NAFW Enterprise and Learning Committee began hearing evidence following its earlier decision made on 11 July to undertake an inquiry into planning for future railway provision in Wales. Committee chair Gareth Jones AM (Plaid Cymru) told the Committee that the decision to hold the inquiry had been taken 'in the wake of the publication of the UK Government's White Paper on providing sustainable railways²⁶ – and the Department for Transport and the Welsh Assembly Government's assessment of the planning needs for railways in Wales over the next 20 years'.²⁷ The inquiry will report in 2008.

On 21 November, the Enterprise and Learning Committee debated the terms of reference for its inquiry into the economic contribution of higher education.²⁸ Committee chair Gareth Jones AM (Plaid Cymru) stated: 'we are acknowledging that there is good practice out there ... what we feel is ... that there are certain key areas that could be improved and in which more could be done, certainly in regeneration terms and in other aspects of economic impact'.²⁹

1.5 Environment, Sustainability and Housing

Following the floods of summer 2007 the Environment Minister, Jane Davidson AM (Welsh Labour), announced that a new policy framework for flood and coastal risk management will be issued in spring 2008. It will be developed by a partnership between WAG, and representatives of public and private bodies – including the Environment Agency Wales and local government. Proposals for the new policy include using playing fields and low-lying areas as storage ponds in the event of flooding – rather than trying to prevent the influx of water through the construction of traditional flood barriers. According to the minister the new strategy will involve 'working with nature, rather than against it'.³⁰

²⁵ 'Minister appoints Huw Lewis AM to chair child poverty group', WAG Press Release, (26 September 2007)

²⁶ 'Delivering a Sustainable Railway', Department for Transport. See:

www.dft.gov.uk/about/strategy/whitepapers/whitepapercm7176/multideliversustainrailway?page=31

²⁷ Transcript of the NAFW Enterprise and Learning Committee, 19 September 2007, at:

www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?ds=9%2F2007&submit=Submit

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ 'Eye on Wales', BBC Radio Wales (18.30 24 September, 2007)

In the wake of the foot-and-mouth outbreak in Surrey in August, the Welsh Assembly Government spent £7m on a range of policy measures to prevent the spread of the disease to Wales – including animal movement restrictions and information campaigns. On 12 October, the Rural Affairs Minister, Elin Jones AM (Plaid Cymru), announced that meat exports from Wales would resume after a precautionary ban.³¹ At the same time she condemned an apparent U-turn by the UK Treasury which announced that, contrary to initial indications, it expected the Assembly Government, and not the UK Government, to pay for the animal health measures in Wales.³²

December saw Elin Jones announce the publication of the first (draft) Fisheries Strategy for Wales.³³ The strategy aims to look at the long-term future of fisheries. According to WAG, the fishing industry brings around £200m into the Welsh economy and supports about 3,000 direct and indirect jobs. Amongst the draft strategy's aims are: the 'development and management of fisheries at sustainable levels as a part of a healthy and productive ecosystem' and to 'further the partnership working already established between policy makers and those in the industry'. The consultation period on the Strategy ends on 7 March 2008.

The September meeting of the NAFW Sustainability Committee saw the committee outline the terms of reference of its inquiry into Carbon Reduction. It will focus on the following topic areas: residential carbon reduction; carbon reduction by transport, industry and public bodies, and from electricity generation (including renewable energy); as well as reduction in relation to rural land use management. Each topic will be examined in turn with the relevant Welsh Minister being scrutinised at the end of each topic. The committee's final report and recommendations will be published in 2008 and will set out future actions that could be taken by both the Welsh Assembly Government and the National Assembly for Wales in order to make more rapid progress on carbon dioxide emission targets.³⁴

³¹ BBC Online, 'Farm outbreak restrictions lifted', (7 October 2007), at: <http://news.bbc.co.uk/1/hi/wales/7048738.stm> *bbc*

³² BBC Online, 'Row over foot-and-mouth-aid cash', (11 October 2007), at: <http://news.bbc.co.uk/1/hi/wales/7038724.stm>

³³ 'First Fisheries Strategy for Wales Published'. Downloadable from: <http://new.wales.gov.uk/consultations/currentconsultation/envandcouncurrcons/1878951/?lang=en>

³⁴ Scoping Paper for the Committee's Carbon Reduction Scrutiny Inquiry - Annex A. See: www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-sc-home/bus-committees-third-sc-agendas.htm?act=dis&id=58420&ds=10/2007

Following on from commitments made in *One Wales* (and also in WAG's Environment Strategy published in May 2007³⁵), in an Oral Statement to the National Assembly on 17 October, the Minister for Environment, Sustainability and Housing announced that WAG would be setting up the first Climate Change Commission in the UK. The latter is a multi-interest policy forum aimed at informing WAG's climate change policy and the Climate Change Bill introduced at Westminster in November 2007. The commission met for the first time on 10 December and will continue to meet on a quarterly basis. According to WAG 90 per cent of the Welsh government's energy supplies are currently derived from renewable sources and it aims to increase this to 100 per cent by 2010.

One Wales states: 'our ambition is to ensure that all households, in all communities and irrespective of their means, can afford a decent home'. In mid-October the First Minister re-affirmed this commitment, stating: 'our aim is to ensure that housing is affordable in the areas of most severe pressure'. In early December the Deputy Minister for Housing, Jocelyn Davies AM (Plaid Cymru) presented an LCO to the National Assembly. If successful, this will enable NAFW to pass an Assembly Measure such that the right to buy (the mechanism under the 1980 Housing Act that allows council tenants to purchase their home) could be suspended in areas of severe housing pressure.

1.6 Equalities

In September, the NAFW Equality Committee announced the initial stages of its inquiry into issues affecting migrant workers. Although precise figures on the number of migrant workers in Wales are difficult to determine, data sources show that there were approximately 17,020 new migrant workers registering for a National Insurance number in Wales in 2006-07 compared to 16,440 in 2005-06. Of these, 8,990 (53 per cent) were from the new EU accession or 'A8' countries.³⁶ The committee's report will be published in 2008.

In September, the committee announced a further inquiry into the Accessibility of Polling Stations in Wales. Under the sub-heading 'Scope for law making' the terms of reference paper for the inquiry provides a good illustration of the complexity facing

³⁵ 'Environment Strategy for Wales, WAG:

wales.gov.uk/about/strategy/strategypublications/environment_strategy/?lang=en

³⁶ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, Poland and Slovenia.

policy makers in the absence of direct primary legislative powers for the National Assembly – and, as such, it is worth reproducing in some detail, albeit in edited form:

The framework around polling station accessibility is essentially provided by primary legislation, for example, the Electoral Administration Act (2006),³⁷ [...] the Representation of the People Act (1983) as amended and the Political Parties, Elections and Referendums Act (2000). Additionally, the National Assembly for Wales has previously passed secondary legislation providing for the reimbursement of costs associated with temporary ramps through the National Assembly for Wales (Returning Officers' Charges) Order 2002 which has been amended by the National Assembly for Wales (Returning Officers' Charges) Order 2006. Schedule 7 of the Government of Wales Act 2006 (Acts of the Assembly) refers to electoral matters under Field 12 (Local Government), so measure-making powers could be sought. However, there are exceptions set out in Field 12, including electoral registration and administration, so careful consideration would have to be given to any recommendation that such powers be sought.³⁸

The committee will report in 2008.

In mid-December the Enterprise and Learning Committee published its interim report into approaches to, and treatment of, dyslexia in Wales. This highlighted the need for early identification of the condition and the screening of every child in Wales at age 6 or 7 years – and, for these services to be made available in both English and Welsh.³⁹ The committee's final report is due to be published in April.

1.7 Social Justice and Public Service Delivery

Early October saw the publication of the annual Statistical Bulletin from the Local Government Data Unit. This examines the effectiveness of public service delivery by Welsh local government. It presents a mixed picture. Areas identified where improvements are needed included: attendance levels in secondary education (these have remained more or less static for several years and fell slightly during 2006-07) and, in health, the rate of delayed transfers of care ('bed-blocking'). However,

³⁷ Electoral Administration Act 2006, Chapter 22:
www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060022_en.pdf

³⁸ 'Scoping paper for the Committee's inquiry into the accessibility of polling stations in Wales', Papers of the NAW Equality Committee, 27 September 2007, at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-eoc-home/bus-committees-third-eoc-agendas.htm?act=dis&id=59094&ds=10/2007

³⁹ 'Interim report and recommendations from the Dyslexia Rapporteur group on Dyslexia Support in Wales, Enterprise and Learning Committee': www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=67984&ds=12/207

improvements in public service delivery were noted in respect of: a decline in the amount of household waste that local authorities dump in landfill sites; an increase in waste recycling; improvements in the energy efficiency of public buildings and social housing; a reduction in the proportion of children who leave school without a qualification; and an increase in independent living scheme places for vulnerable adults.⁴⁰

Policy outcomes in respect of 'bed-blocking' was further criticised in November. Citing a range of WAG strategic policy documents that aim to reduce this problem (including *Designed for Life* – the current 10 year strategy for health and social care services) a Wales Audit Office evaluation report stated: 'performance against Assembly Government targets to reduce the number of delayed transfers of care has been variable – although there have been reductions in the numbers of delayed transfers of care since 2003, there have been recent increases particularly in the Cardiff and Vale and Gwent health and social care communities'.⁴¹

Illustrating the manner in which the Assembly Government's policy agenda overlaps with the nominally wholly reserved area of criminal justice, in late October, Social Justice Minister, Brian Gibbons AM (Welsh Labour), announced consultation on a draft framework that will help Community Safety Partnerships⁴² take a more co-ordinated approach to tackling problems of alcohol-related crime, disorder and anti-social behaviour in the evening and night time economy.⁴³

Generally reflecting the earlier provisions of GoWA 1998, section 74 of GoWA 2006 sets out the nature of the formal partnership between WAG and the 30,000 'third sector' – or voluntary – organisations in Wales. According to the Wales Council for Voluntary Action these contribute an annual Gross Value Added to the economy of over £3bn.⁴⁴ On 13 November 2007, a plenary session of the National Assembly agreed 'The Third Dimension – A Strategic Action Plan for the Voluntary Sector

⁴⁰ Local Authority Performance 2006-7 is downloadable from the Local Government Data Unit website www.dataunitwales.gov.uk

⁴¹ Delays in hospital 'compromise patients' independence', Welsh Audit Office. Downloadable from: www.wao.gov.uk/news/news_1735.asp

⁴² There are 22 Community Safety Partnerships in Wales, one in each local authority area. Designed to coordinate policy on tackling crime, they comprise a variety of organisations including: the police, local authorities, the Fire and Rescue Service, NHS Wales, voluntary organisations, businesses, and community groups. See:

<http://new.wales.gov.uk/topics/housingandcommunity/safety/partnerships/?lang=en>

⁴³ 'Crime Reduction', WAG:

<http://new.wales.gov.uk/topics/housingandcommunity/safety/crimereduction/?lang=en>

⁴⁴ 'Third Sector in Wales 2007', Cardiff, WCVA: www.wcva.org.uk

Scheme'.⁴⁵ This new strategy reflects the priorities of both coalition government partners. According to the Deputy Minister for Regeneration, Leighton Andrews AM (Welsh Labour), the strategy was concerned with 'championing the sector's interests at the highest level and across the whole of government with particular focus on promoting social enterprise and encouraging greater third sector involvement in the delivery of quality public services'. The strategy addresses eight main areas: 'valuing voluntary action, strengthening communities, facilitating 'citizen voice', accelerating social enterprise, personalising public services, strengthening public/third sector engagement, improving third sector support services, enabling raised performance and growth'. However, in the plenary debate not all were happy with the strategy. For the Welsh Conservatives, David Melding AM linked WAG's plans for the third sector to the current funding levels for public services and local authorities. He asserted: 'I do not think that we can just rely on the voluntary sector to pick up the slack after what is a harsh settlement for local government from the Welsh Assembly Government'.⁴⁶

1.8 Petitions

The past quarter provides the first insights into the way that NAW/ WAG respond to policy proposals forwarded from the Petitions Committee. Accordingly, the following example outlines the workings of this new policy-making mechanism. As reported in the previous Devolution Monitoring Report, on 4 July the Committee considered a petition calling for the re-opening of a rural railway station at Carno in west Wales. It agreed that it should be formally referred to the National Assembly's Enterprise and Learning Committee for further consideration. In December the Petitions Committee discussed the formal responses that it had received on the 'Carno petition' from the Enterprise Committee, the Minister for the Economy and Transport and Network Rail. In its submission, the Enterprise Committee 'wished to express its support for the Carno Station Action Group'. In a qualified, yet supportive response, the Minister for the Economy and Transport stated that ongoing Welsh rail policy (The Cambrian Line Infrastructure Enhancement Project) 'provides passive provision for a single platform station in the locality of Carno. The optimum site for a new station within the locality is not known. A technical feasibility study would need to be completed ... [however

⁴⁵ 'The third dimension: A Strategic Action Plan for the Voluntary Sector Scheme'. WAG: www.assemblywales.org/hom-pdfviewer?url=chamber-agenda-third_dimension

⁴⁶ The Record of Proceedings, 13 November 2007

...WAG believes that...] with careful timetable planning, the Cambrian Line will be able to serve local, regional and national markets.⁴⁷

New petitions considered by the committee over the past quarter include those calling for: the banning of plastic disposable carrier bags in Wales on environmental grounds;⁴⁸ the immediate appointment by WAG of a Chief Scientific Advisor;⁴⁹ and a comprehensive review of screening systems for a range of cancers.⁵⁰

1.9 Conclusion

Notwithstanding the changes in policy making processes seen in the wake of the GoWA (2006), the evidence of the past quarter suggests that the absence of full legislative devolution in Wales has perpetuated the complexity of policy-making in the National Assembly, a consistent theme spanning the first three Assemblies. For example, the continuing opacity of WAG's powers was demonstrated by the Equality Committee's 'Inquiry into the Accessibility of Polling Stations in Wales', whilst the cumbersome way in which Assembly Measures are developed was illustrated by the creation of dedicated legislative committees for successive LCOs. These issues raise serious questions about the accountability of contemporary governance (because of the complexity of the division of powers between Westminster and Cardiff) – as well as the capacity of just over 40 backbench AMs to offer effective scrutiny of WAG policies because, individually, they are required to attend numerous cross-party committees (at the time of writing there are 14 policy committees and 5 legislative committees).

Despite these concerns, the *One Wales* policy programme has seen the introduction of several new strategies including on the voluntary sector and on areas that have hitherto lacked an indigenous all-Wales policy framework – such as the Quality of

⁴⁷ Petition ref P-03-58: Petition: Carno Station: Re-Opening - Responses from the Minister for the Economy and Transport and Network Rail to the report by the Enterprise and Learning Committee', NAW: www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-pc-home/bus-committees-third-pc-agendas.htm?act=dis&id=67320&ds=12/2007

⁴⁸ Petition ref P-03-063: Banning Plastic Bags - Response from the Proposed Environmental Protection and Waste Management Legislative Competence Order (LCO) Committee, NAW, 20 September 20, at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-pc-home/bus-committees-third-pc-agendas.htm

⁴⁹ Petition ref P-03-075: Petition: Royal Society of Chemistry Calling for the Immediate Appointment by the Welsh Assembly Government of a Chief Scientific Advisor - Response from the Welsh Assembly Government to the report of the Enterprise, Innovation and Network Committee on Science Policy: www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-pc-home/bus-committees-third-pc-agendas.htm?act=dis&id=67333&ds=12/2007

⁵⁰ Petition - Cancer Screening Vigil 2007: Petition to Review Screening Systems for Cancer Regimes: www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-pc-home/bus-committees-third-pc-agendas.htm?act=dis&id=64172&ds=12/2007

Food Strategy and the Fisheries Strategy. Policy development work also continued with the initial work of the Climate Change Commission, several policy reviews in the area of health, the Enterprise and Learning Committee's 'Inquiry into the Economic Contribution of Higher Education', and the publication of the Review of Further Education in Wales. Overall, the past quarter is significant in that longstanding political adversaries Welsh Labour and Plaid Cymru have managed to oversee national policy development in a coalition government. Nevertheless, key challenges remain for the future delivery of all *One Wales*' policy proposals – not least because of intra/inter-party tensions over the substance and priorities of the coalition government's policy agenda – and ongoing budgetary constraints.

2. The Legislative Process

Marie Navarro,⁵¹ Cardiff Law School

2.1 Primary Legislation

There were 10 Acts in 2007 giving powers to the Assembly in relation to Wales. This is significantly lower than the 24 such Acts passed in 2006, and marginally below the average of 12 a year since 1999. Most new Acts give powers to the Welsh Ministers. Acts conferring powers directly on the Assembly under the Government of Wales Act 2006 are too new to enable a pattern to emerge yet, but this will be monitored in future reports.

2.1.1 Acts giving powers to the Welsh Minister or the Assembly (2007)

No Acts in 2007 giving powers to WAG or the Assembly were passed before mid-July. The ten Acts mentioned above received Royal assent between the end of July and November. They are as follows:

Rating (Empty Properties) Act 2007 c.9

Mental Health Act 2007 c.12

Concessionary Bus Travel Act 2007 c.13

Tribunals, Courts and Enforcement Act 2007 c.15

Consumers, Estate Agents and Redress Act 2007 c.17

Statistics and Registration Service Act 2007 c.18

Offender Management Act 2007 c.21

Further Education and Training Act 2007 c.25

Serious Crime Act 2007 c.27

Local Government and Public Involvement in Health Act 2007 c.28

Out of these ten Acts eight gave substantial powers to the Welsh Ministers. The other two – the Consumers, Estate Agents and Redress Act 2007 c.17 and the Offender Management Act 2007 c.21 – only gave ‘shared powers’ to Wales. These two Acts retained the powers at central government level but required the ‘English’ Secretaries of State to consult or secure agreement of the Welsh Ministers in relation to the law they make which applies to Wales.

⁵¹ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk

Two Acts in the list also gave powers to the Assembly to make Measures. They are the Further Education and Training Act 2007 c.25 and the Local Government and Public Involvement in Health Act 2007 c.28. These were discussed at length in the previous monitoring report.

All the Acts which gave powers to the Welsh Ministers to make subordinate legislation also gave powers to the Assembly to annul ('negative resolution') or to agree ('affirmative resolution') some of the subordinate legislation that WAG may propose. Such Assembly powers are less extensive and less systematic than the corresponding powers kept by the UK Parliament in relation to central government's subordinate legislation, but affirmative and negative resolution procedures are nonetheless present in each Act giving powers to WAG.

From these Acts, it is interesting to see that primary legislation in its application to Wales is now following the traditional pattern of distinguishing between legislature and executive; the powers of both WAG and the Assembly now reflect a traditional separation of executive and legislative power. WAG makes the subordinate legislation subject to annulment or agreement by the Assembly under certain provisions. The presence of affirmative and negative resolution procedures shows that the Assembly is now treated as a proper legislature in charge of controlling the most important subordinate legislation and receiving reports from the executive. The nature of WAG's executive powers corresponds to those of Secretaries of State. It was only because of the peculiar executive nature of the Assembly in the previous Government of Wales Act 1998 that executive powers wider than those normally given to Secretaries of State were devolved on rare occasions to the Assembly. Such broader executive powers were called 'framework powers' and were introduced by the White Paper 2005 to give better flexibility to the old Assembly in its executive form. Under the structure of the 2006 Act, these powers were too wide to remain as executive powers. Thus they are now devolved as legislative Measure-making powers in the form of matters which are added in Schedule 5 to the Government of Wales Act 2006. This change has also had the welcome effect of making it easier to understand the powers of the devolved institutions.

2.1.2 Bills introduced in Parliament affecting the powers of the Welsh Ministers:

In summer 2007 for the first time the UK Government published its legislative programme in draft, to help promote better governance in the United Kingdom.⁵² This is a new constitutional development, and it will be interesting to see what benefits it will bring to the legislative process in London. Some of the 23 proposed bills will first be published in draft, and will be subject to public consultation and to scrutiny by pre-legislative committees. For some of the Bills the government indicated in its document that it will be working closely with the devolved administrations. The exact phrase used was either *'The Government is working closely with the Devolved Administrations on the responsibilities they have in this area'* or *'the Government will work closely with the Devolved Administrations on matters which may have an impact on their responsibilities.'* This is a new procedure; such intentions had not previously been publicly stated.

The full list of bills in the draft legislative programme is reproduced below. Those involving close work between central government and the devolved administrations (including WAG and the Assembly in Wales) are shown in bold.

Children in Care Bill

Child Maintenance and Other Payments Bill

Climate Change Bill

Constitutional Reform Bill

Coroners Bill

Counter Terrorism Bill

Criminal Justice and Immigration Bill

Crossrail Bill (ENGLAND ONLY BILL)

Education and Skills Bill

Employment Simplification Bill

Energy Bill

European Communities (Finance) Bill

Health and Social Care Bill

Housing and Regeneration Bill

Human Tissues and Embryos Bill

Local Transport Bill

⁵² 'The Governance of Britain, The Government's draft legislative programme', at: www.cabinetoffice.gov.uk/reports/governance.aspx

National Insurance Contributions Bill

Pensions Bill

Planning Reform Bill (ENGLAND ONLY PART)

Planning Gain Supplement Bill

Regulatory Enforcement and Sanctions Bill

Sale of Student Loans Bill (ENGLAND ONLY BILL)

Unclaimed Assets Bill

2.1.3 Bills introduced giving powers to the Welsh Ministers in Wales

The following twelve Bills introduced in Parliament following the November 2007 Queen's Speech would give powers to the Welsh Ministers:

Alcohol Labelling Bill

Children and Young Persons Bill

Climate Change Bill

Disabled Persons (Independent Living) Bill

Dormant Bank and Building Society Accounts Bill

Education and Skills Bill

Health and Social Care Bill

Housing and Regeneration Bill

Human Fertilisation and Embryology Bill

Local Transport Bill

Planning Bill

Regulatory Enforcement and Sanctions Bill

Sale of Student Loans Bill

The Local Transport Bill and the Children and Young Persons Bill give examples of what is hoped to be a developing good practice of drafting clear clauses for Wales: for example in the Local Transport Bill most references in previous legislation to the 'Appropriate National Authority' is replaced simply by the term 'Welsh Ministers', which is straightforward and easy to read and avoids the use of joint powers. In the Children and Young Persons Bill there are many parallel provisions for England and then for Wales which are separated into two clearly expressed provisions. There is also a remarkably clear commencement section. These two Bills demonstrate clear drafting legislation of devolved powers in Wales. It is regrettable that not all Bills are drafted so well.

The Education and Skills Bill is another good example of clearly devolving powers to both WAG and the Assembly, as well as providing clear provisions for England only at the same time.

The Marine Bill⁵³ has been published in draft with the following territorial extent provisions:

It is proposed that the Bill will apply to England, Wales, Scotland and Northern Ireland. However, discussions are ongoing regarding the extent to which each Devolved Administration will be involved in each of the areas of the Bill.

2.1.4 Bills giving powers to the Assembly in Wales

Two new bills give Measure-making powers to the Assembly adding to the list of matters in Schedule 5. They are:

The Education and Skills Bill

The Local Transport Bill

The Education and Skills Bill would add another area of legislative competence to Schedule 5 in the Field of Education by means of a Matter 5.10 A (there is already a Matter 5.10). Future consolidation LCOs will be necessary to comprehensively define the area of competence in the education Field in the same way as draft LCOs set out a comprehensive list of exemptions from the legislative competence of the Assembly by setting out a table at the end of Schedule 5.

The following matter is proposed:

'Matter 5.10A

The inspection of education or training provided (whether or not at a school) for children who are not above compulsory school age.'

The Local Transport Bill demonstrates how unnecessarily complicated Schedule 5 may become. The titles and the parts of the provisions contained in the bill have been reproduced to show that Matter 10.1 could probably have said: 'Trunk road charging schemes in Wales', repeating the title of the part in the Bill itself. Sometimes it is difficult to understand the benefits of such complicated drafting, especially when the purpose of the Matters is surely to enable the Assembly to make clear and

⁵³ Marine Bill: www.commonleader.gov.uk/output/page2174.asp

comprehensive legislation under clear powers. Too much detail here could undermine the whole purpose of having Matters inserted in Schedule 5.

The provisions are as follows:

‘PART 7

MISCELLANEOUS PROVISIONS

Trunk road charging schemes in Wales

Section 109 Powers of the National Assembly for Wales

In Part 1 of Schedule 5 to the Government of Wales Act 2006 (c. 32) (Assembly Measures), in field 10 (highways and transport) insert—

“Matter 10.1

Provision for and in connection with—

- (a) the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;
- (b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

This does not include provision about traffic signs, apart from provision about the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000.

Interpretation of this field

In this field—

‘motor vehicle’ has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) applies as it applies for the purposes of the Road Traffic Acts;

‘road’ has the same meaning as in the Road Traffic Regulation Act 1984; ‘Welsh trunk road’ means a road for which the Welsh Ministers are the traffic authority (within the meaning of section 121A of the Road Traffic Regulation Act 1984).’

In the *Western Mail* there has been a lot of interest about the nature of the Assembly’s new powers in the LCOs proposed so far. Nowhere have comments been made on the complexity of the legislative powers being granted to the Assembly in primary legislation. LCOs are getting all the attention but Parliament continues to be willing, though in complex terms, to devolve further primary law making powers to the Assembly quietly through bills. This procedure for adding Matters of competence through bills is the first choice of government and LCOs are

now established as the route for transferring powers only when no Bill could carry the demands from Wales. A total of 43 Matters in Schedule 5 are now either proposed or in force. Only 13 originate in LCOs meaning that Parliament was content to devolve or propose 30 Matters to the Assembly. This contrasts with the view often expressed in the press that Parliament will refuse to agree to give legislative competence to the Assembly.

2.2 Parliamentary consideration of draft LCOs

2.2.1 *Welsh Affairs Committee's Pre-legislative Scrutiny of the first LCO and lessons learnt so far*

Reading the transcripts from the Welsh Affairs Select Committee (WASC) – of their consideration of the first LCO relating to further educational needs – is fascinating, and shows the emergence of conventions as to the role of the committee itself, as well as the role of the Wales Office.

First it has become clear than the use of LCOs is supplementary to the use of Acts of Parliament, to be utilised when it is not possible to give powers to the Assembly through bills (this is especially clear from the evidence session with the Under-Secretary of State for Wales and WAG minister Jane Hutt, detailed below).

The committee also expressly asked why WAG did not go through the 'clearance process' with Whitehall before publishing this first draft LCO. This indicates that there is a vetting process which has been established before WAG can even publish draft LCOs. Jane Hutt replied that this will not happen again.

The committee expressed concerns about the timing of the scrutiny of the LCO which, it was suggested, should take place at the same time as scrutiny in the Assembly.⁵⁴ WASC also reminded the Wales Office to write to it about the publication of draft LCOs so that the committee can, if possible, start its work with the Assembly in a joint pre-legislative scrutiny committee.⁵⁵ Jane Hutt suggested such joint scrutiny for future LCOs.

⁵⁴ Welsh Affairs Committee, evidence session from Huw Irranca-Davies MP, Parliamentary Under-Secretary of State, Uncorrected Evidence, at: www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/uc44-i/uc4401.htm

⁵⁵ Welsh Affairs Committee, evidence session from Ms Jane Hutt AM, Minister for Children, Education, Lifelong Learning and Skills, Uncorrected Evidence, at *ibid*.

Reading the transcript of the committee's deliberations reveals that some Members of WASC seem to find it difficult to accept a differentiation between the law in England and that of Wales, even though such divergence can be considered a natural consequence of devolution. The committee was reminded of that by Huw Irranca-Davies and Jane Hutt. Some MPs have been playing the role of protector of the integrity of England and Wales as a single jurisdiction, asking to be convinced that there was a Welsh-specific need justifying the separate competence of the Assembly.

Another interesting point in WASC's debate was the amount of discussion on the scope of the LCO. On this same basis the second LCO (relating to environmental protection) was severely criticised by the committee because of its unclear potential breadth. The length of the debate of the first LCO and the intervention of Jane Hutt and Huw Davies demonstrate the difficulty of defining precisely an area of competence. This is unique to Wales. In Scotland and Northern Ireland no one has to explain the exact scope of the competencies of devolved bodies; it is only what they cannot do which is listed, and it is much easier to define exceptions than the precise scope of powers. Jane Hutt explained that WAG designed the Matters to be broad enough to allow a real exercise of powers, and to ensure that small omissions in the powers specified would be overcome by the broad wording. The committee insisted on the need for clarity, and for narrowing the definitions (which could be detrimental to the exercise of power, and could mean that another LCO would be necessary to cover omissions).

Defining any scope of competence is a difficult exercise, especially in the context of this interim system of Welsh legislative devolution. A balance has to be found between clarity and practicality, where the matters have to be broad enough to give the Assembly some space for manoeuvring without giving the Assembly undefined legislative powers. It will be interesting to see how future debates proceed, and if the scope of matters will expand or reduce.

Finally, MPs on the committee were very interested to know what will be the number and provisions of Measures that the Assembly would pass once competence is devolved. This shows that they have not yet accepted the idea of deciding only whether to let the Assembly legislate within a particular area, and not making this contingent on the use to which the legislative competence will be put in Cardiff. They are still trying to scrutinise future Measures, which was not part of the system put in

place in the 2006 Act. The Under Secretary of State for Wales insisted that he was reluctant to speculate about future Measures and that the LCO is equivalent to signing a blank cheque.

The 2005 White Paper *Better Governance for Wales* first proposed the LCO procedure to replace the Wales-only Acts of Parliament and to give Wales a faster procedure to get the legislative competence it needs. In passing the 2006 Act Parliament accepted the principle that primary legislation could be different in Wales. Given this background, MPs ought now to focus in their scrutiny on the extent of the competence being transferred not the law that might in future be made under it.

Devolution is a constantly changing process and Westminster and WASC will become accustomed to its new role of facilitating the Assembly's new powers. MPs will come to be more inclined to sign blank cheques to the Assembly in the spirit of the philosophy of devolution set out in the 2006 Act.

2.2.2 Wales Office's role and decision making:

The evidence from Huw Irranca-Davies helped clarify the processes which are being developed by the Wales Office in scrutinising LCOs, and in deciding whether to introduce them to Parliament.

The Wales Office first considers whether it is appropriate for the Assembly to have legislative competence in the area in question, or whether it is better to retain the power at central government level. If it is decided that it is appropriate for the subject area to be devolved, then the Wales Office considers three criteria: first, the scope of the LCO; secondly, does it have a justifiable purpose; and thirdly, the appropriateness of the wording of the LCO to meet the specific purpose.

The draft LCO and the explanatory notes made by WAG have to satisfy these three tests and answer the following questions: Is the description of the purpose for which the powers are sought clear? Are these powers for a purpose? (This implies that Wales cannot apply for powers just for having them ready in the future if ever they decide to use the power). Is the particular order too narrow to enable the Assembly to efficiently legislate in the area? The Under Secretary of State also stated that the Wales Office role is to scrutinise the scope and *vires* of the draft LCOs.

In relation to framework powers (the alternative to LCOs) – i.e. clauses in Bills which directly add Matters to Schedule 5 of the Government of Wales Act – Mr Davies explained that the Government had decided to provide a special explanatory memorandum to accompany future such framework clauses. The Secretary of State for Wales will also give an annual statement detailing each framework power, while the Wales Office is offering briefing sessions (conducted jointly with WAG) to each House on this process.

WASC published its report on the first LCO on 21 December.⁵⁶ The committee recommended a change in the definition of powers in the Order, with subsequent powers for the Welsh Assembly Government to amend it by statutory instrument at a later stage. It favoured a narrower evolving definition rather than a fixed wider one. The committee also highlighted the omission of higher education and recommended that it be included in the Order, demonstrating that it is not opposed to wider LCOs.

2.2.3 The Emergence of new principles in the consideration of draft LCOs:

New principles are slowly emerging following each of the steps in the passage of the first LCO.

In summary:

- There is a need and a will to synchronise scrutiny in the Assembly and Westminster, and even a possibility of joint scrutiny in the future.
- There has to be a clearance process of WAG draft LCOs by Whitehall before they are published.
- The Wales Office uses three criteria to accept LCOs for putting before Parliament: a devolved field, a justifiable purpose and the appropriateness of scope of the LCO to meet WAG's particular purpose.
- Parliament is slowly adapting to the changes and its new role in relation to LCOs and the way in which this new phase of devolution operates. Everyone has to remember that devolution works two ways and that England and Secretaries of State can also learn from Wales as was the case with the Children's' Commissioner for Wales.

⁵⁶ Welsh Affairs Committee, *The proposed Legislative Competence Order in Council on additional learning needs*, Second Report of Session 2007-08, HC 44, at: www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/44/44.pdf.

- The Wales Office has created new conventions for the framework powers in Bills with a special explanatory memorandum for each and an annual legislative statement to Parliament.

2.3 The House of Lords scrutiny of the First LCO

As to the House of Lords' scrutiny of LCO No1, the Members' research document entitled *The National Assembly for Wales: Legislation and legislative competence since May 2007*⁵⁷ states at page 3 that 'The House of Lords Constitution Committee has conducted a detailed legal examination of the proposed LCO and, with the exception of a few technical drafting points, has cleared the proposed LCO.'⁵⁸

An extract reproduced below shows the methodology which will be used by the Lords Constitution Committee to scrutinise draft LCOs. Principles for such scrutiny are emerging:

Pre-legislative Scrutiny

7. The process by which LCOs are passed is somewhat complex

[...]

8. The first phase involves the Welsh Assembly Government and the Secretary of State agreeing on the scope of the powers sought and preparing the text of the proposed LCO. An explanatory memorandum is also prepared by the Welsh Assembly Government.

9. The second phase is a period of pre-legislative scrutiny by an *ad hoc* committee in the National Assembly and, generally at the invitation of the Secretary of State, by the House of Commons Welsh Affairs Committee and the Constitution Committee. The *ad hoc* committee and the Welsh Affairs Committee may meet together to consider the proposal and take evidence. The Counsel General or the Attorney General also have a role in relation to proposed LCOs: under section 96 of the 2006 Act, they may refer to the Judicial Committee of the Privy Council (subsequently the Supreme Court of the United Kingdom when it begins to sit) "for decision the question whether a matter which a proposed Order in Council under section 95 proposes to add to Part 1 of Schedule 5 relates to a field listed in that Part".

⁵⁷ Available at www.assemblywales.org/07-098.pdf

⁵⁸ Lords Constitution Committee, *Scrutiny of Welsh Legislative Competence Orders*, 2nd Report of Session 2007–08, HL 17, at: www.publications.parliament.uk/pa/ld200708/ldselect/ldconst/17/17.pdf

10. The three committees mentioned above will consider the proposed LCO simultaneously. It is for the other two committees to explain their criteria when undertaking such scrutiny, but the Constitution Committee will apply the usual yardstick of concerning itself with “matters of principle affecting a principal part of the constitution”. The overarching question will be whether, from a constitutional point of view, the request for legislative competence is within the overall letter and spirit of the devolution settlement.

11. In assessing proposed LCOs, the Constitution Committee will have regard to the terms of the proposed LCO in question, the explanatory memorandum and the formal requirements of Part 3 of the 2006 Act (in particular sections 94 and 95) and Schedule 5 to the Act. In relation to scrutiny of proposed LCOs, it needs to be borne in mind that LCOs contain only enabling provisions. It is the manner in which the National Assembly subsequently chooses to use those enabling powers to make Measures that is more likely to give rise to questions relating to the legislative competence of the Assembly— but those questions will be for the courts rather than Parliament to determine, as Parliament’s formal role in the Welsh legislative process ceases at the point that an LCO is approved by both Houses.

12. The Constitution Committee’s consideration of proposed LCOs will include consideration of the following questions.

(a) Does the proposed LCO appear to confer legislative competence that risks falling foul of the “general restrictions” defined by Parts 2 and 3 of Schedule 5 to the 2006 Act? The restrictions relate to: (a) altering functions of Ministers of the Crown; (b) criminal offences punishable by fines over level 5 or more than two years imprisonment; and (c) amending certain Acts of Parliament.

(b) Does the proposed LCO and any envisaged Measure described in the explanatory memorandum appear to apply beyond Wales or extend beyond England and Wales? In the 2006 Act, sections 94(4)(b) and (6)(b) impose territorial restrictions on the National Assembly’s legislative competence.

(c) Does the “matter” set out in the proposed LCO properly fall within the “field” under which it is to be placed in Schedule 5? To take an example: should a request for legislative competence to require smoke detectors and fire alarms to be fitted in domestic dwellings fall under “Field 7: fire and rescue services and promotion of fire safety” or “Field 18: town and country planning”, both, or neither? The 2006 Act is, to all intents and purposes, a written constitution for Wales and it is therefore important that there be clarity about the legal base for any legislation.

(d) Do the provisions of the Measure envisaged in the explanatory memorandum accompanying the proposed LCO properly “relate to” a

“matter” set out in the proposed LCO or another matter specified in Schedule 5, as required by section 94(4)(a)? As indicated above, at the pre-legislative stage of proposed LCOs the Constitution Committee will not have before it the text of any Measure.

Therefore, it will only be possible to consider whether there are any obvious problems in respect of what is said about planned Measures in the explanatory memorandum.

(e) Does what is proposed appear to be incompatible with the Convention rights set out in the Human Rights Act 1998, contrary to section 94(6)(c) of the 2006 Act? The proposed LCO itself— being merely enabling in character—is unlikely to affect Convention rights; but consideration may be given as to whether the manner in which the power may be exercised in making a Measure is likely to have any significant human rights implications that ought to be flagged up at the outset.

(f) Does what is proposed appear to breach European Community law, contrary to section 94(6)(c) of the 2006 Act? Similar constraints on the depth of scrutiny apply here as they do in relation to Convention rights.

(g) Have the necessary procedural requirements been followed in the making of the proposed LCO?

(h) Will Measures made under the proposed LCO significantly affect the institutional structure of government in Wales?

(i) Are there any other constitutional implications that ought to be drawn to the attention of the House and the Secretary of State?

13. Finally, because the Joint Committee on Statutory Instruments will not be involved at this pre-legislative stage, we shall attempt to bring any technical drafting points to the attention of the House and the Secretary of State.

14. At the time of making this report, we had considered one LCO: the National Assembly for Wales (Legislative Competence) Order 2007 (Additional Learning Needs). We concluded that this LCO did not raise any matters of constitutional principle.

The Members’ research document also reports on the following:

‘The Constitution Committee has scrutinised the proposed LCO. It has reached the conclusion that no matters of constitutional principle arise from this proposed LCO, though the Committee did highlight a few technical drafting points. The Constitution Committee made a recommendation to the Welsh Assembly Government in relation to the explanatory memorandum that accompanied the proposed LCO:

'The Memoranda from the Welsh Assembly Government that accompany the proposed LCOs are important in enabling everyone who is required to consider the LCO to understand fully its scope and context. We consider that it would aid clarity if in future a copy of Schedule 5 to the 2006 Act – showing paragraphs that are in force and those proposed by the LCO – were to be annexed to each memorandum, with footnotes indicating the source of each amendment.'

2.4 WAG's Legislative Programme

2.4.1 Draft Measures

As a reminder the three expected Measures were:

- an NHS Redress draft Measure to give greater rights to patients through a new NHS redress system (*already introduced*)
- a Transport Measure aiming at integrating systems, creating a green public transport system and extending an existing safer routes to school scheme (*consultation period started*)
- an Education Measure seeking to reform the 14-19 curriculum (*no signs of it yet*)

After the publication in draft of the NHS Redress Measure before the summer, no further draft primary legislation has been introduced in the Assembly but the one relating to school transport has been published in draft to be subject to consultation.

The NHS Redress draft Measure is well under way in its legislative process and has been subject to extensive scrutiny. Not only was the draft Measure subject to pre-legislative scrutiny but it was also subject to scrutiny by three different Assembly committees. No one can say that that particular draft Measure has not been scrutinised at length. The quality of the draft and the quality of the scrutiny will be discussed below.

The School Transport Measure, referred to as the Learner Travel Measure, having been published for consultation is now being promised to be laid in January. WAG

explains the delay in its laying by the fact that the idea and proposals were subject to consultation.⁵⁹

It is a very good start for the Assembly legislative process that the Assembly is choosing the longest and best road for its legislation.

2.4.2 Legislative Competence Orders

LCOS introduced so far:

Following the minister's statement on the Legislative Programme for 2007/08 the legislative plan in relation to the LCOs was:

Three LCOs should be introduced prior to the summer recess:

- Additional learning Needs. (*already introduced, see below*)
- *Two weeks after the first LCO*, a second one would be introduced, this time 'a wide-ranging Order in relation to environmental protection and waste management.' (*already introduced, see below*)
- A third LCO on affordable housing will be introduced *before the final week of this term* if political consensus is achieved with the Lib-Dem or Plaid, otherwise it will be brought before the Assembly *in the autumn*.

After the summer and before the end of the year, three additional LCOs will be introduced:

- A Welsh Language LCO *in the autumn* to allow political debate
- A widely framed LCO relating to vulnerable children and child poverty, for Consolidation Measure
- An LCO on Charges for Homecare and other non-residential social services.

The order of LCOs three and four have been changed, and five LCOs have been introduced so far.

The two new ones since the last report are:

- The **National Assembly for Wales (Legislative Competence) (No-4) Order 2008**.⁶⁰ It relates to the charging for Non-Residential Social Care (Domiciliary Care). The Order inserts Matter 15.9 under the Field Social Welfare.

⁵⁹ The draft LCO was published for consultation in June 2007 at:
<http://new.wales.gov.uk/docrepos/40382/40382313/631927/ConsultationOnTheLearnerTravel?lang=en>

⁶⁰ Available at www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=66926&ds=12/2007

- The **National Assembly for Wales (Legislative Competence) (No-5) Order 2008**⁶¹ was laid on 3 December. It contains proposals for Affordable Housing and it inserts Matter 11.1 to the Field Housing.

From the point of view of enabling the Assembly Government to implement comprehensive policy objectives, the width of the proposed LCOs so far published is to be welcomed (with reservations on the drafting of the Environment LCO⁶²) and their scope is in the spirit of the White Paper 2005:

‘There is a range of possibilities [...]

a) something very specific, such as the functions of the Ombudsmen in Wales [...]

b) **something rather wider, such as the protection and welfare of children.** This would be a limited policy area, but one cutting across a range of the Assembly’s functions, such as education, local government and social care [...]

c) **something considerably wider, such as the structure of the NHS in Wales [...]**⁶³

The draft LCOs published so far are only at level one and two (something very specific and something wider); we haven’t seen so far an example of something considerably wider yet – it would be fascinating to see how such a wide LCO would be perceived both in Cardiff and in London.⁶⁴

2.4.3 The involvement of Civic Society in LCOs

Civil society is getting involved with the three LCOs discussed in the last report, providing evidence in both written and oral form. There were: 14 responses for the Proposed Additional Learning Needs LCO; 10 responses for the Proposed Environmental Protection and Waste Management LCO, and; 23 responses for the Proposed Vulnerable Children and Child Poverty LCO.

2.5 Private Members’ Legislation: Second and Third Assembly Ballots⁶⁵

The first ballot for Assembly Members who are not part of the government to pass laws for Wales under the Assembly’s new powers took place on Tuesday 26 June

⁶¹ Available at www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=67564&ds=12/2007

⁶² The use of the word ‘including’ is confusing and there have been conflicting interpretations as to whether the words coming after ‘including’ were limitative or simply illustrative.

⁶³ Para. 3.18 of the White Paper 2005, *Better Governance for Wales*.

⁶⁴ LCOs in progress in the Assembly can be found together with their explanatory memorandum at: www.assemblywales.org/bus-home/bus-legislation/bus-legislation-lco-in-prog.htm

⁶⁵ See www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=53476&ds=7/2007

2007, and a second one took place on 3 October. There were two further ballots on 12 December. On each occasion there were two ballots: one for a Measure and one for an LCO.

On 3 October, the Measure ballot was won by Jenny Randerson AM who plans to introduce a draft Measure for healthier school meals in Wales. The LCO ballot was won by Ann Jones AM who plans to introduce a draft LCO enabling Measures to be made for domestic fire safety.

On 12 December, the Measure ballot was won by Dai Lloyd AM who proposed an Impact Assessments for the Selling off of Playing Fields Measure, which would place a duty on local authorities to consider the impact on surrounding communities, in terms of health and social inclusion – before selling any playing fields'. The LCO ballot was won by Helen Mary Jones who proposed a Carers LCO to make provision for the establishment of a statutory requirement for health bodies and providers of social services to identify carers, and to inform carers of their rights; and to make further provision in relation to referral pathways for carers.

Following the June ballots, Mike German's proposed Measure, entitled *Proposed School Closures (Consultation and Categories) Measure* was rejected on the principles by a vote in plenary on 7 November. Mike German was therefore refused leave to introduce the draft Measure. The principle of Jenny Randerson's *Proposed Healthier School Meals Measure* was accepted and she was accordingly granted leave to bring forwards a draft on the same day.

So far it is notable that there are far fewer proposals for Measures than proposals for LCOs, a disappointing figure given that Measure-making should be the primary role of the new Assembly. The list of entries made by AMs so far is available at:

www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots.htm

2.6 Communities and Culture Committee inquiry into civil society

The committee started an inquiry into the Funding of Voluntary Sector Organisations in Wales. It issued a call for evidence on three central issues:

- 'the ease or difficulty of obtaining funding from the Welsh Assembly Government or relevant national funding bodies.

- the ease or difficulty in complying with constraints or conditions placed on funding.
- issues related to the duration or timing of funding.¹⁶⁶

This inquiry will be very important for the future of the involvement of civil society in the legislative process in Wales. It is all very well to encourage civil society to participate in the new democratic processes, but for such participation to be effective it needs to be financially supported. Civil society needs to adapt to the new demands in Wales, and often have to convince their central offices in London why they need further funding and training.

2.7 Conclusion

New constitutional principles are emerging in relation to the operation of the new devolution settlement in Wales, following the coming into force of the Government of Wales Act 2006. After a fast start, the speed of laying new draft legislation before the Assembly has slowed down, almost to a halt. Most attention has been on the LCOs which are not the major and most important source of legislation produced in Wales. LCOs are empty from substantial legal provisions, there are only designed to allow the Assembly to make Measures on the topic, instead of Parliament. And in terms of substantial primary legislative provisions there have only been two draft Measures.

The Assembly has carried out very thorough scrutiny both of the LCOs and draft Measure which were laid before it. Hopefully there will be more 'made in Wales legislation this year' and they will be more substantive pieces of legislation which will not only delegate powers to WAG.

⁶⁶ See www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=64483&ds=12/2007

3. Economic Development and the Budget

Professor Peter Midmore, University of Wales Aberystwyth

3.1 Introduction

The *One Wales* agreement between Labour and Plaid includes a commitment to the development of a prosperous society. This will be achieved through the creation of jobs, stimulation of enterprise, promotion of tourism and enhanced employment skills. Such uncontroversial objectives are shared broadly, across all parties represented in the Assembly. A Conservative opposition debate⁶⁷ on the need for enhanced innovation and skills to improve overall economic performance in Wales concluded, not only with consensus on, but also unanimous acceptance of, a Liberal Democrat amendment on strengthened support for adult learning. More interestingly, it also signalled a turn away from longstanding debates about the GVA per capita performance measure, and whether it represents a target or an aspiration: according to David Melding: 'Although there will be significant points of difference between us ... there are key areas of agreement ... I see no value in spending time criticising [the *One Wales* document] just for the sake of it.'⁶⁸

Nevertheless, opposition parties were keen to explore some of the more bizarre consequences of the role of Plaid Cymru as junior government partner. It was more or less inevitable that previous critiques of economic development policy by Ieuan Wyn Jones would be compared with his current responsibility for defending what is, essentially, the same policy. In the event, Kirsty Williams got in first, commenting on his reply to the very first question asked of him in his role as Minister for Economic Development and Transport: 'for a moment, I thought that we were back in January of this year and that I was listening to Andrew Davies telling me what was happening in the Welsh economy'.⁶⁹ The Plaid leader deflected the question in much the same way as his predecessor would have done. Nevertheless, while the policy of the coalition is to raise GVA per head, it will use other indicators for the lifetime of the agreement, particularly aiming to raise the rate of employment among working age adults to 80 per cent. There are further indications of a shifting framework of policy: the enthusiasm for the Lisbon Agenda (the overall strategy agreed by the EU in 2000, aiming to rebase the European economy on knowledge production) appears to

⁶⁷ Assembly Record of Plenary Proceedings, 17 October 2007.

⁶⁸ *Ibid.*, p. 90.

⁶⁹ Assembly Record of Plenary Proceedings, 19 September 2007, p. 22.

be more genuine, with greater emphasis on innovation and skills in the economic development budget.

3.2 European Structural Funds

Although there has been novelty both in coalition politics and in the new arrangements for scrutiny and separation of legislature and executive following the Government of Wales Act 2006, old issues revealing the fault lines of the devolution settlement and continued economic dependence remain prominent. Half of Wales continues to receive aid from the EU for its lagging regions: the Convergence Programme, successor to the Objective One Programme, will provide funds for a variety of economic development activities from 2007-13, in West Wales and the Valleys. Formal announcement of the legal adoption of the two programmes (derived from Regional Development and Social Funds, respectively) occurred on 25 September,⁷⁰ at the same time as the rather smaller Ireland-Wales Territorial Cooperation Programme; the Regional Competitiveness and Employment Programmes for East Wales were adopted slightly later. The difference in value between the programmes is substantial: the Convergence Programme area will receive £1426m of EU spending, whereas the rest of Wales will get just £92m from regional development and social funding, and the Cross-Border Programme shares €52.7m of grant aid between Wales and Ireland. There are, of course, requirements for match-funding, and questions about whether the resources available are adequate without distorting other spending priorities. The previous Structural Funds Programme which ran from 2000-06 reported considerable achievements, including total investment (including grants and matched funding) of almost £3.9bn, and an additional 40,500 jobs.⁷¹ Alongside that, however, is the continuing poor economic performance of Wales as a whole (with only 77 per cent of UK average GVA per head in 2006), and West Wales and the Valleys in particular (65 per cent of UK average in 2005). It is also notable, given the imbalance between Convergence areas and elsewhere, that the position of Powys – which did not benefit from Structural Funds in the 2000-06 period – has declined (to 70 per cent of UK average in 2005) so that it had a poorer performance than Gwynedd – which did benefit from the EU's largesse and, in 2005, had a GVA per head of 71 per cent of the UK average.⁷²

⁷⁰ Assembly Record of Plenary Proceedings, 25 September 2007, pp. 37-41.

⁷¹ See EL(3) 07-07 Paper 2, submitted by WEFO to the Enterprise and Learning Committee meeting of 17 October 2007.

⁷² ONS First Release, Regional, sub-regional and local gross value added: at: www.statistics.gov.uk/pdfdir/gva1207.pdf.

It is possible to argue that, in the absence of Structural Funds support, the situation would have been significantly worse. Nevertheless, in this final period of significant support before the focus of European regional policy shifts eastwards from 2014 onwards, it will have to become rather more efficient if the employment activity targets of the *One Wales* programme are to be achieved (from current employment levels, this requires an increase of over 80,000 net new jobs⁷³). The present approach is to use Convergence funding to support significantly fewer projects which will have greater impact and be more closely aligned to employment-creating objectives (expressed through Strategic Frameworks). This means that local authority influence will be smaller, and exerted through the four relevant Spatial Plan Area Groups (for North Wales, Central Wales, Pembrokeshire and Swansea Bay) in coordination with WEFO-organised Spatial European Teams. Unlike in the past programme, there will be no bottom-up local amounts of match-funding for specific areas; although there was concern expressed by Conservative AM Alun Cairns that local authorities' access to European funding will be more difficult, Bob Macey, Chief Executive of WEFO asserted that programmes 'are open to all partners, but the projects that come forward must deliver against that European agenda as negotiated with the European Commission.'⁷⁴

3.3 The Budget and the Comprehensive Spending Review

The Government of Wales Act 2006 provided a new framework for examination of the budget process, with scope for taking evidence on spending proposals, and making of a report, by the Finance Committee, to the annual plenary session which takes the final decision on them. The first iteration of this process did not run smoothly, since the Westminster Government was engaged in its own triennial Comprehensive Spending Review, delays in the announcement of which compressed the timetable for scrutiny. With only modest scope for increases in public expenditure in the UK as a whole, the Barnett formula which governs Welsh spending provides for annual spending growth of just 1.8 per cent in real terms over the next three years.⁷⁵ In terms of total spending, only the Departments of Children, Education and Lifelong Learning and of Health and Social Services will receive more than this average allocation. In some areas (particularly the Economy and Transport Department) spending will be virtually at a standstill.

⁷³ Based on the August-October Labour Force Survey, this is available at: www.statistics.gov.uk/pdfdir/lmsuk1207.pdf.

⁷⁴ Record of Proceedings, Enterprise and Learning Committee, 17 October 2007, p. 39.

⁷⁵ Assembly Record of Plenary Proceedings, 10 October 2007, pp. 57-78.

The Finance Committee had time to take evidence on the Draft Budget on just two occasions, firstly to hear the case for it from the responsible minister, Andrew Davies, and secondly to determine the reaction of its main clients, the Welsh Local Government Association and representatives of Welsh NHS Trusts.⁷⁶ Concerns which emerged relate to the transparency of the process of prioritisation of resources for specific objectives, and the overall anomalies which are caused by the Barnett formula itself, which does not take into account qualitative differences in spending needs of Wales, compared to those of England. The evidence of the local authorities and the NHS trusts articulated concerns which relate to cost pressures far outweighing changes in general price levels. NHS Trusts have concerns about rising costs of drug therapies. Similarly, according to Steve Thomas of the WLGA, local authority costs do not 'run at the same rate as inflation in the average basket of shopping from Tesco';⁷⁷ in particular, rising adult social services demands imply a 6.7 per cent increase in costs. In further evidence, Councillor Derek Vaughan suggested that 'leaders in councils across Wales are so concerned about the rise of only 2.2 per cent that they are starting to ask whether we will be in a position to implement some new initiatives',⁷⁸ i.e. commitments under the *One Wales* agreement. In fact, Anglesey (the poorest performing economy in Wales) and Conwy will receive a 1.1 per cent increase, and Powys (the poorest performing economy outside the Convergence area) will receive only 1.0 per cent. In the past, efficiency gains have helped to offset the impact of rising purchase costs, but the likelihood now is of substantial rises in local taxes, poorer service provision (for example, raising the threshold levels at which homecare for the elderly is provided), and probably a combination of the two. In the plenary debate on the draft budget proposals, opposition parties expressed significant concerns that manifesto commitments included in the *One Wales* agreement (in particular, top-up child bond payments, assistance for first time home buyers, and free prescriptions) would be delivered at the cost of poorer core service provision.

3.4 Committee Inquiries

A further impact of the Government of Wales Act has been to reshape the committee structure, so that cross-cutting scrutiny of cognate areas of government activity can be examined in overview. The relevant committee for economic development is that

⁷⁶ Record of Proceedings, Finance Committee, 8 and 13 November 2007.

⁷⁷ Record of Proceedings, Finance Committee, 13 November 2007, p. 13.

⁷⁸ *Ibid.*, p. 21.

covering Enterprise and Learning, which, given the emphasis on skills and innovation in economic policy objectives, appears to be a well-suited combination. However, with fewer committees covering wider areas of concern, the attention given specifically to economic development has been diluted. Nevertheless, in the important area of conducting inquiries and producing reports, the new cross-cutting role is amply reflected in the Enterprise and Learning Committee's inquiry into the economic impact of higher education. Unsurprisingly, universities in Wales and the funding body for higher education emphasised the economic benefits they provide through direct and 'multiplier' benefits (the multiplier ratio is estimated as being favourable, particularly because higher education is a kind of invisible export).⁷⁹

Most interest, however, centres on the critical contribution that academic research can make to stimulating business activity, and both the Confederation of British Industry and the Federation of Small Businesses made the point that gaining access to the higher education sector can be problematic and requires government assistance.⁸⁰ Especially for the small businesses which have most potential for employment growth through innovation, Non Rhys of the FSB identified a 'cultural gap' between small businesses and the academic sector.⁸¹ Work on this inquiry continues in the spring.

In parallel, the Finance Committee commenced an inquiry into the use of private finance for public projects, in particular the PFI scheme, to determine the balance between benefits, costs and risks, and the consequences for policy development and implementation. Lower usage of PFI has been a characteristic of the differentiation of the Labour administrations in Cardiff Bay from those of Westminster, epitomising the 'clear red water' between them,⁸² although there are also enthusiasts who identify scope for transcendence of spending constraints in improving the capital stock for public service provision.⁸³ The inquiry has so far taken evidence from two PFI projects: Penweddig School and Baglan Moor Hospital.⁸⁴ Both have positive experiences from the transfer of project risks to private investors, but both also were initiated at a time when capital spending constraints (now less onerous) precluded

⁷⁹ Record of Proceedings, Enterprise and Learning Committee, 28 November and 5 December 2007.

⁸⁰ Record of Proceedings, Enterprise and Learning Committee, 12 December 2007.

⁸¹ *Ibid.*, p. 19.

⁸² A. Beddow and D. Cohen, 'Allocating health (and social care) expenditure in Wales', *International Journal of Public Sector Management*, Volume 16 Number 5, 2003, pp. 337-345.

⁸³ Batcup, M. 'Welsh investment vehicle', *Agenda*, Winter 2007, pp.36-38

⁸⁴ Record of Proceedings, Finance Committee, 18 October 2007.

public sector financing. This inquiry will also take further evidence in the spring before a report is completed.

3.5 Conclusion

Recent turbulence in global financial markets, particularly the reduction in liquidity arising from the credit crunch, has made an economic slowdown much more likely, with some economists expecting a recession to begin in 2008. Although house prices are expected to stabilise, the volume of sales is also likely to weaken, and there are some signs of general inflation quickening. In these circumstances, increasing the recent rate of growth of employment in order to meet the *One Wales* employment target is going to be difficult. While the budget adopted will maintain the most high profile public services, erosion of local authority services, higher council tax bills, and declines in Welsh aggregate demand will almost certainly test the cohesion of the *One Wales* coalition.

4. Intergovernmental relations

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4.1. General

There have been two major issues in relations between Cardiff and London since the last monitoring report, which covered the period up to July 2007. One has been the acquisition of legislative powers by the National Assembly, and the other has been finance and the Comprehensive Spending Review. Lurking behind both (particularly the former), and applying more generally have been party-political tensions, notably within the Labour Party. The differences of view between the pro- and anti-devolution wings of the party have shaped and to an extent been played out in debates about the powers the National Assembly should have. For anti-devolutionists, who also often have a visceral opposition to Plaid Cymru and the 'One Wales' coalition formed in the summer, there has been a sustained behind-the-scenes effort to limit the growth in the Assembly's powers, as a proxy for opposing the coalition with Plaid. For this group (which comprises a large proportion of the Welsh MPs at Westminster, as well as some AMs in Cardiff Bay), the vote in favour of the coalition was merely an unsuccessful tactical engagement rather than a strategic defeat that determines the outcome of a larger conflict. A further element in this mix during the autumn of 2007 was the personal political ambitions and uncertainties of Peter Hain, who, as Secretary of State for Wales, sought both to maintain support from his 'constituency' of Welsh Labour MPs as well as to see the National Assembly develop. Other developments in intergovernmental relations need to be understood against this political backdrop.

As far as London's interest in territorial politics is concerned, this has been dominated by issues arising from the SNP administration in Edinburgh and its concern with independence. The reaction to the SNP has remained relatively low-key (though aspects of this are discussed below); for its part, the SNP have taken two initiatives of note. One has been to rename what in law is the Scottish Executive as 'The Scottish Government' (rather like what happened in Wales, when the executive side of the National Assembly renamed itself the 'Welsh Assembly Government' in 2002). The other has been to publish a white paper on independence and the constitutional position of Scotland in the modern world, and to launch a 'national conversation' on these issues. This has in turn prompted a response from the Unionist parties in the Scottish Parliament, who are to establish a separate 'Scottish Constitutional

Commission' to review devolution but not to consider independence as an option.⁸⁵ It remains unclear how this will affect the parallel debates in Wales.

4.2. Formal intergovernmental meetings

There have been no meetings of the plenary Joint Ministerial Committee or summits of the British-Irish Council since July. Nor have there been any publicised meetings of functional JMCs (although the European Union format continues to meet without publicity).

This non-event is itself worth noting, as there have been continued public calls and behind-the-scenes pressure from the Scottish Government for greater use of formal channels for intergovernmental relations. These have not borne fruit, because of reluctance in London.

4.3. Informal intergovernmental meetings

An interesting development was the visit of Rhodri Morgan to Edinburgh to meet Alex Salmond, Scottish First Minister, on 7 December. Salmond's invitation was made some months previously, but the First Minister had felt unable to accept it earlier. The meeting was a private one, but appears to have involved some blunt exchanges of view; it will not have created a harmonious alliance between the two devolved governments. This is scarcely surprising, given the differences of party politics and territorial interest between the two, however, and the very fact that a channel of formal communication between the two has been opened is notable.

The First Minister balanced his visit to Alex Salmond with one to his party counterpart, Wendy Alexander, and suggested that the Assembly Government would co-operate with the Scottish Parliament's proposed Scottish Constitutional Commission, which had been voted on a few days earlier. Such co-operation would relate to technical matters particularly on finance, given the proposed Assembly Commission on finance and fiscal matters.⁸⁶ Morgan appears to have been trying to maintain a balance between finding common ground with other parts of the UK, where that exists, and aiding party colleagues; but given how polarised in party-political terms the constitutional debate in Scotland is becoming, this is difficult.

⁸⁵ For more details, see *Scotland Devolution Monitoring Report: January 2007*, particularly section 5.2.

⁸⁶ See D. Fraser 'Funding "will be next step in UK devolution"' *The Herald* (Glasgow), (8 December 2007).

4.4. Legislative powers and related issues at Westminster

As discussed in section 2 above, five legislative competence orders (LCOs) are now formally under consideration, as proposed LCOs receiving pre-legislative scrutiny in the National Assembly. These relate to

- Additional Learning Needs
- Environmental Protection and Waste Management
- Vulnerable Children
- Domiciliary Care
- Affordable Housing.⁸⁷

The proposed LCO on climate change appears to have been held up due to a behind-the-scenes dispute between Cathays Park and Whitehall about its scope.⁸⁸ There have similarly been reported disagreements about the scope of LCOs relating to housing.⁸⁹ Process has also given rise to problems: tetchiness (if nothing more) about the level of detail about the Assembly's legislative intentions that would be required before LCOs could be introduced at Westminster, as well as decisions by the Assembly Government to introduce draft LCOs into the Assembly before reaching a conclusion in negotiations with the UK Government.⁹⁰ Given that no LCOs have in fact yet been passed at Westminster, this suggests that even the most controllable part of the process, between two executive arms of government that are already well used to working with each other and which have substantially similar political outlooks, is not working smoothly even at this early stage.

Following the UK Government's statement of its legislative programme for the 2007-08 session, in the Queen's speech delivered on 6 November, 10 Downing Street issued a press statement (drafted by the Wales Office) drawing attention to three bills – the Education and Skills Bill; Planning Reform Bill; and Local Transport Bill – which it said would be used to confer additional powers on the National Assembly by adding 'matters' to Schedule 5 of the Government of Wales Act 2006.⁹¹ Each of these concern areas where the Assembly Government already has executive

⁸⁷ Details available at www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders.htm

⁸⁸ See M. Shipton, 'Climate change law row', *Western Mail*, (24 September 2007)

⁸⁹ M. Shipton, 'Assembly housing plans delayed by Whitehall', *Western Mail*, (14 November 2007)

⁹⁰ M. Shipton, 'Fears over interference in Welsh lawmaking', *Western Mail*, (18 October 2007); T. Livingstone, 'Hain seeks to defuse power transfer tensions', *Western Mail*, (29 November 2007); T. Livingstone, 'Anger over right to buy plans', *Western Mail*, (5 December 2007)

⁹¹ Available at www.pm.gov.uk/files/pdf/31.Wales.pdf

functions, and devolution of legislative powers is therefore something contemplated by the latest (June 2007) version of Devolution Guidance Note 9 on *Post-Devolution Primary Legislation for Wales* (discussed in the last *Wales Devolution Monitoring Report*). However, several other bills mentioned in the Queen's Speech also concerned devolved executive functions but were not on that list – specifically, the Homes and Communities Agency Bill, the Health and Social Care Regulator Bill, the Vulnerable Children and Young People Bill and the Climate Change Bill. No explanation has been offered publicly for why these are not similarly being used to confer legislative powers on the Assembly (though arguably some of these may fall within the scope of proposed or planned LCOs). Private information suggests that this is because the Assembly Government did not press for this to happen; it was aware of the possibility, and had it chosen to argue a case the Whitehall departments involved might have been willing to accede to its requests.

4.5. Machinery of government matters

There have been no major changes to departmental structures or the machinery of government in Whitehall since the summer, but there have been important developments on the civil service side. The most significant has been the appointment of a senior official as 'Director-General, Devolution' in the UK Government, with a brief to improve the UK Government's strategic approach and co-ordination in handling its relations with the devolved administrations. The individual appointed, Jim Gallagher, is from the Scottish Executive, where he formerly headed the Finance and Justice Departments, though for the last couple of years he has been on a secondment as Professor of Government at the University of Glasgow. Gallagher took up his post in September 2007, and there have been suggestions that although creating such a post had been under consideration for some months the timing of his appointment was caused by the publication of the Scottish Executive's white paper on independence and related matters.⁹²

Gallagher's appointment has been followed by other changes within Whitehall, including the establishment of a Cabinet committee on the Constitution (CN), chaired by Jack Straw. The committee was similarly established over the summer, appears to meet fairly regularly (unlike many such committees), and is largely concerned with devolution matters although its formal remit is 'To consider constitutional affairs and

⁹² Scottish Executive, *Choosing Scotland's Future: A National Conversation. Independence and responsibility in the modern world.* (Edinburgh: Scottish Executive, 2007). Available from www.scotland.gov.uk/Publications/2007/08/13103747/0

citizenship.’ Another senior official has been appointed at Director level in Cabinet Office to service that committee and deal with practical co-ordination of devolution issues across Whitehall. There are now about half a dozen staff in the Ministry of Justice and Cabinet Office working on the co-ordination of devolution, compared with about one and a half a year ago (and in addition to staff in the Wales and Scotland Offices).

4.6. UK Government green paper on The Governance of Britain, and a British bill of rights.

In his appearance before the Commons Liaison Committee on 13 December, Prime Minister Gordon Brown was asked about devolution generally, and specifically about his suggested British bill of rights (raised in the UK Government’s green paper on *The Governance of Britain* published in July 2007, and discussed in the last *Wales Devolution Monitoring Report*). His response was to maintain a hard line, saying:

Where the powers have not been devolved to the Scottish Parliament or to the Welsh Assembly or indeed to the Northern Ireland Assembly, these are powers that Westminster continues to hold and acts in a way that is consistent with that. So the future of the issues that I am dealing with - there may be some but most of them are entirely within the province of the UK Parliament and have not been devolved.⁹³

4.7 Finance: the UK Comprehensive Spending Review

On 9 October, the UK Government announced its Comprehensive Spending Review. In the ‘regional press notice’ for Wales, the Treasury claimed the CSR would result in an average annual increase of 2.4 per cent in spending by the National Assembly, and a total increase of £4.3bn over 3 years in the Assembly’s budget. However, the UK Government’s attempt to claim the settlement as favourable was rejected by many, noting that this was a very tight settlement for all spending departments. As health and education in England had done better than they might (and better than some other departments), the impact of slowing growth in public spending as transmitted through the Barnett formula for Wales was mitigated. There is reason to consider that, at least compared with Scotland and Northern Ireland, Wales has done relatively well (its increase in public spending will be in the order of 1.9 per cent per year, compared with 1.4 per cent in Scotland and Northern Ireland). However, there

⁹³ House of Commons, *Minutes of Evidence taken before Liaison Committee: The Prime Minister Thursday 13 December 2007*, Uncorrected Transcript to be published as HC 192-I, Q. 45. Available at www.publications.parliament.uk/pa/cm200708/cmselect/cmliaisn/uc192-i/uc19202.htm For a discussion of the hazards of this approach, see A. Trench ‘Brown’s brave quest to define Britishness could backfire’ *The Herald* (Glasgow), (13 July 2007)

can be little doubt about the constrained financial situation that will face the Assembly over the next three years.

What was not evident from public statements regarding the CSR are the difficult second-order issues that arose, which occasioned some hard bargaining between Cathays Park and the Treasury. These concerned devolved commitments to Treasury-specified levels of capital spending, the use of accumulated surpluses from underspending in previous years (end-year flexibility), spending on the 2012 London Olympics, and the baseline for calculating increases in public spending. The Treasury has been concerned for some time about relatively low levels of capital spending by the devolved administrations, and has sought to increase these. In the 2004 Spending Review it tried to impose overall minimal levels of capital spending on all spending departments (including the devolved administrations), but this attempt broke down rapidly in the face of concerted opposition from spending departments. In 2007 it tried again, and simply imposed these limits unilaterally. In Scotland's case, the quid pro quo was an agreement to release accumulated underspends, which had accrued as balances in Scotland's favour with the Treasury, and it appears a similar deal was reached with Wales. (The practical impact of this is reduced, however, by the fact that Wales's tighter finances mean its underspends are modest – Scotland's, by contrast, add up to about £1.2bn). Little of this was apparent from the published documents for the CSR; the new edition of the Statement of Funding Policy is substantively very similar to its predecessor, the capital and current spending targets are described as 'indicative', as they were in previous Spending Reviews, and there is no mention of the deal about underspends and capital spending, though in the Scottish case this is implicit in at least one Scottish Government press statement. Perhaps the worst of these issues for Wales relates to the 2012 Olympics, which is treated as spending on all-UK matters – not on ones for the benefit of England (or London) only. As a result it does not attract any Barnett consequential. In November 2007, Tessa Jowell, the UK Government's Olympics Minister and Minister for London, confirmed the estimated cost as totalling £9.325bn – yet much of that (as much as 90 per cent) is for regeneration, which in any other circumstance would attract a Barnett consequential.⁹⁴ In addition, allocations from the National Lottery to the various distribution funds (including the Arts Council of Wales and Sports Council

⁹⁴ For the costs of the London Olympics, see '2012 chiefs face costs criticism', BBC News (14 November 2007), available at http://news.bbc.co.uk/1/hi/uk_politics/7094992.stm and '2012 Olympics budget "on track"', BBC News (10 December 2007), available at news.bbc.co.uk/1/hi/uk_politics/7135824.stm

Wales) have been reduced to help cover the cost. In many respects, it would seem that the Olympics illustrate the UK's system of devolution financing at its worst.

No steps have been taken to advance the proposed commission on Assembly finances, taxing and borrowing powers announced by Jane Hutt in June 2007 and reported in the last monitoring report. This commission has yet to be established, and as of December 2007 no chairperson had been named. However, indications of its resources were given with the Assembly Government's budget, which suggested that £1.5m over three years will be available for this commission and that chaired by Sir Emyr Jones Parry to set up the All Wales Convention. Given the prior claims on resources that the Jones Parry commission and Convention may be able to make, the fact that the work of the Convention is expected to involve extensive public campaigning (which is expensive) raises questions about the sorts of resources available to the finance commission. A putative half-share would be £750,000 over three years, or £250,000 per year. If the Commission is to undertake the sort of serious research work that would be necessary to make a convincing case to UK Government ministers, this may well not be adequate – even if there is some sharing of the cost with parallel work in Scotland or Northern Ireland.

5. Relations with Europe and Local Government

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5.1 Europe

In European matters Wales was the first in the UK to formally have their Structural Fund Programmes approved; the NAFW's Parliamentary Service's European and International Team are currently drafting a European and International Strategy for Wales; and part of this is NAFW's participation in the Committee of the Regions Subsidiarity Monitoring Network.

5.1.1 Structural Funds

EU approval of the ERDF and ESF Programmes for the 2007-13 Structural Funds for the West Wales and the Valleys programmes was formally given by the European Commission on 8 and 9 August respectively. The West Wales and Valleys programme was the first in the UK to gain approval and can now, according to the First Minister, Rhodri Morgan, 'get on' with completing the region's transformation into an innovative and dynamic economy.⁹⁵ The ERDF programme for East Wales was legally adopted on 13 August 2007 and the ESF programme was legally adopted in early October.⁹⁶ At the launch of the Welsh ESF Programmes on 20 September, the First Minister announced that the West Wales and the Valleys Convergence Programme was the first region in the UK to be legally adopted by the European Commission. With match funding from public and private sectors, the programmes (both ERDF and ESF) will total around £3bn of investment in Wales.⁹⁷ Danuta Hübner, Commissioner for Regional Development Policy, said '[W]ith the priority put on innovation and a knowledge-based economy, both Welsh programmes will be able to make Wales a vibrant, entrepreneurial region at the cutting edge of sustainable development'.⁹⁸

In terms of broader European issues, on 12 September 2007 the European Commission launched a consultation and discussion paper on the EU budget

⁹⁵ Welsh Assembly Government Press Release, *Landmark EU Approval Welcomed by First Minister* (1 August 2007)

⁹⁶ Welsh Assembly Government Statement, *Commission adoption of new Structural Fund Programmes for Wales (2007-2013)* (25 September 2007)

⁹⁷ Welsh Assembly Government Press Release, *Wales leads the way again on EU funds* (20 September 2007)

⁹⁸ *Ibid.*

review.⁹⁹ In addition to the Common Agricultural Policy ‘health check’, previously discussed in the September 2007 *Wales Devolution Monitoring Report*, the budget review includes a consultation on the future of EU regional policy.¹⁰⁰ This consultation process is based upon the questions regarding the long-term prospects of regional policy included in the Fourth Cohesion Report published in May 2007. The First Minister reported to the European and External Affairs Committee on 23 October 2007 that ‘the Assembly Government is presently considering its response’ on these issues.¹⁰¹

5.1.2 National Assembly for Wales: European and International Strategy

The National Assembly for Wales’ Parliamentary Service’s European and International Team is currently developing a European and International Strategy for Wales for 2007-11. Members of the European and External Affairs Committee and other Assembly Members now have an opportunity to make an input into this Strategy.¹⁰² The European and International Relations Strategy draft document focuses on the Assembly’s existing international relationships and makes recommendations on how to expand its international programme. The two purposes of this programme are to:

- ‘Look outwardly to Europe and beyond to develop co-operative partnerships that assist the Assembly in its aim of heralding devolution and widening engagement in the democratic process; and
- Raise the profile of the Assembly and Wales at the European regional level and internationally as an example of participative parliamentary democracy’.¹⁰³

The aim is to further develop the NAFW’s engagement within the EU through continuous dialogue with EU institutions, the European Parliament and the European Commission, membership of the Committee of the Regions, and through other organisations such as CALRE. In addition, the National Assembly will work together with WAG, for instance in promoting the parliamentary element to Welsh bilateral links when required.

⁹⁹ Commission of the European Communities (2007), *Reforming the Budget, Changing Europe. A Public Consultation Paper in the View of the 2008/2009 Budget Review* SEC(2007) 1188 final.

¹⁰⁰ For the key questions see European Commission Press Release *Commission assesses impact of funding for regions, launches debate on next round of cohesion policy* (30 May 2007)

¹⁰¹ EUR(3) 03-07 (p2): 23 October 2007 Minister’s Report

¹⁰² EUR(3)-04-07: Transcript

¹⁰³ European and External Affairs Committee EUR(3) 04-07 (p3) (23 October 2007), National Assembly for Wales: European and International Relations Strategy.

5.1.3 Committee of the Regions Subsidiarity Monitoring Network

At the last European and External Affairs Committee meeting on 27 November 2007,¹⁰⁴ it was recommended that the NAFW apply to become a member of the Committee of the Regions' Subsidiarity Monitoring Network. The NAFW participated in both pilots for this network (November 2005 and October 2006), which were regarded as successful. On the network's website,¹⁰⁵ members can access up-to-date information on European Commission proposals and on how proposed legislation will affect regions (as well as local authorities). By becoming a member, the NAFW would 'have access to information between CoR and its partners and the potential to participate in co-ordinated "consultations";¹⁰⁶ it would also facilitate NAFW's networking opportunities with regional assemblies and regional actors.

5.1.4 Conclusions

The future of the Structural Funds and the EU's Regional Policy are important to Wales and the response of the First Minister and the WAG to the consultation process will be examined with great interest particularly with regard to the implications for whether Wales will be eligible as a recipient of funding post 2013. One can also look forward to the NAFW's European and International Strategy, which will provide a focus for the National Assembly's external relations during the third term.

5.2 Local Government

In the first months of the third term, and during consultation on the draft budget in particular, something of a change in relations between the Assembly and local government has taken place, from the previously positive partnership to a level of disagreement unseen post-devolution. However, it is too early for the degree of change and its overall implications to be fully assessed.

5.2.1 The Local Government Settlement

It was accepted that the delayed 2007 UK Comprehensive Spending Review would put pressure on the Assembly Government's budget and lead to a tougher local government settlement. However, the Assembly Government's draft budget

¹⁰⁴ The scheduled meeting for 11 December 2007 was cancelled; the next meeting to take place is scheduled for 7 February 2008.

¹⁰⁵ <http://subsidiarity.cor.europa.eu>

¹⁰⁶ EUR(3) 04-07 (p4): 27 November 2007, Title: Committee of the Regions Subsidiarity Monitoring Network

proposals published on 5 November 2007 prompted an angry reaction from local government. It was deemed 'punitive', treating local government as a poor relation rather than an equal partner.¹⁰⁷ The Revenue Support Grant (RSG) (the central funding mechanism for local authorities used in conjunction with the introduction of three-year revenue and capital settlement from 2008/09) proposed increases of 2.3 per cent (£85m) for 2008/2009, 2.6 per cent (£100m) for 2009/10 and 2.9 per cent (£111m) for 2010/11.¹⁰⁸ For individual local authorities, the 2008-09 RSG increases announced on 14 November ranged from 1.1 per cent to 3.6 per cent, with a number of authorities in north and rural Wales receiving budget settlements below 1.5 per cent, well below inflation.¹⁰⁹ The WLGA suggested that the overall strategic intention behind the settlement was to diminish local government and its services.

The timing of the draft budget meant that there was only a six-week consultation period before the final local government settlement was due to be published. In this short period, however, a number of voices supported local government. In its scrutiny of the draft budget, the Finance Committee's report stated that it had 'grave concerns that the current local government settlement is inadequate to safeguard core services and asks the Minister to review the total funding'.¹¹⁰ The local government settlement also formed the focal point of the plenary debate on the draft budget on 11 December.¹¹¹

The WLGA highlighted a number of issues regarding spending pressures and contrasted the local government budget allocation with the increased funding for Assembly Government departments. It also pointed to a shortfall of £120m between the draft budget allocation and the figures produced by the Expenditure Sub-Group (ESG) report. As in the past seven years, the ESG report was produced by local government and WAG officials in partnership, and had been endorsed by Andrew

¹⁰⁷ Finance Committee, FIN(3)-06-07 : Paper 1 : Welsh Local Government Association Written Evidence to National Assembly for Wales Finance Committee on the Welsh Assembly Government Draft Budget (13 November 2007) pp. 9-10

¹⁰⁸ WAG, Local Government Finance Report 2007-08 (Provisional Settlement - Councils) :

new.wales.gov.uk/topics/localgovernment/finandfunding/publications/financereport0708/?lang=en

¹⁰⁹ WAG, Provisional Local Government Revenue and Capital Settlement 2008-09, Settlement Tables A-F new.wales.gov.uk/ds/jlg/publications/localgov/1787070/provlg0809tables-e.xls?lang=en; see WLGA Press Releases 'An appalling result for council tax payers in North and Rural Wales says WLGA' (14 November 2007) and 'North and Rural Wales councils speak out over punitive budget settlement increases' (11 December 2007) Downloadable from: www.wlga.gov.uk/content.php?nID=7;lID=1

¹¹⁰ Finance Committee, FIN(3)-09-07 : Paper 1 - Report from the Finance Committee - GEN-LD6847 - Draft Budget Proposals - 2008-09 (6 December 2007) para 30.

¹¹¹ The Record of Proceedings, 11 December 2007: www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=68595&ds=12/2007

Davies and Brian Gibbons.¹¹² The level of shortfall in the draft budget suggested that this partnership mechanism had broken down.

In terms of the implications, WLGA argued that the settlement would result in reduced frontline services and staffing.¹¹³ Higher council tax increases up to (and possibly above) the capping limit of 5 per cent set by WAG was likely to be considered.¹¹⁴ As a result, as central delivery agents, local government questioned their ability to deliver many of the new *One Wales* policy initiatives.¹¹⁵ The issue of new responsibilities points to a broader re-assessment of relations. In December 2003, WAG committed (in the so-called Essex-Jones agreement) to ensuring that 'new initiatives and new responsibilities must be fully funded before they are passed on to local government'.¹¹⁶ It was unclear whether the budget took account of this statement. A high-level meeting on 14 November confirmed that the principles continued to apply but that it was appropriate to revisit the agreement.¹¹⁷ In order to protect frontline services, the WLGA proposed alternatives to the draft WAG budget by calling for increasing local government RSG funding for 2008-09 to 3 per cent by transferring £26.4m from other budget lines, and through the reserve allocation for 2009-10 and 2010-11. It argued that this could be achievable without pulling back from key *One Wales* commitments. With regards to those authorities facing below inflation increases, a call was made for a 1.5 per cent minimum increase.¹¹⁸

The Welsh Assembly Government's response to local government was robust. Appearing before the Finance Committee, Andrew Davies argued that additional resources amounted to a 3.2 per cent as opposed to a 2.3 per cent increase for local government for 2008/09.¹¹⁹ The minister attempted to downplay the gravity of local government's response: 'at this time of year, it seems to be part of the annual pantomime for there to be talk of very high council tax levels for the following spring when the budget is announced'.¹²⁰ He also argued that compared to England, WAG funding to local government had been consistently higher. Furthermore, council tax is

¹¹² Op cit, Finance Committee, FIN(3)-06-07 (13 November 2007)

¹¹³ Finance Committee, FIN(3) 06-07 Transcript (13 November 2007); see WLGA, Press Release, *Emergency meeting warns of job losses across the board in education* (28 November 2007), Downloadable from: www.wlga.gov.uk/content.php?nID=7;ID=137;IID=1

¹¹⁴ *ibid*

¹¹⁵ Op cit, Finance Committee, FIN(3)-06-07 (13 November 2007)

¹¹⁶ *ibid*

¹¹⁷ Finance Committee, [FIN\(3\)-08-07: Paper 1a : reply to issues highlighted in Finance Committee meeting held on 8 November \(28 November 2007\)](#)

¹¹⁸ WLGA Press Release, *WLGA budget proposes alternative to Welsh councils funding crisis* (4 December 2007) Downloadable from: www.wlga.gov.uk/content.php?nID=7;ID=142;IID=1

¹¹⁹ Finance Committee, [FIN\(3\)-05-07: Transcript](#) (8 November 2007)

¹²⁰ *ibid*

proportionately lower in Wales than in England.¹²¹ In the plenary debate on 11 December, Andrew Davies made similar arguments. He also recognised WLGA's alternative proposals but while committing to consider all constructive alternative proposals argued that he was not prepared to cut the budget as proposed.¹²²

5.2.2 Growing strains?

There have also been signs of strain in Assembly Government–local government relations in policy areas such as waste. This was likely to be a key issue as the 'One Wales' programme recommended increased targets for recycling and composting with direct implications for local government in Wales. There seemed to be strain in this area on publishing a WAG report on 13 September on the current funding and needs of waste management in Wales. It illustrated vast contrasts in the costs of waste collection across Wales and argued that the most cost-effective method was by the community recycling sector rather than local government.¹²³ In response, WLGA called for better dialogue with the WAG, and pointed to inaccuracies in the data on which the report was based.¹²⁴ Subsequently, on 15 October at a meeting to discuss new recycling and composting targets, Jane Davidson called on local government to consider a target of recycling and composting 70 per cent of municipal waste by 2025.¹²⁵ WLGA's response was to emphasise local government's commitment to addressing the waste problem, particularly through greater regional collaboration. It argued, however, that the target was extremely challenging, and questioned whether it was realistically achievable given the finances available for local authority waste management.¹²⁶ The draft budget also raises doubts on local government's ability to invest in achieving such ambitious targets.

5.2.3 Local Government and Public Involvement in Health Act 2007

The Act received Royal Assent on 30 October conferring new powers on the Welsh Assembly Government, allowing it to introduce Assembly Measures to implement aspects of the public service reform agenda associated with local government as

¹²¹ *ibid*

¹²² *Op cit*. The Record of Proceedings (11 December 2007)

¹²³ WAG Press Release, *Report shows huge variation in waste collection costs* (13 September 2007)
Downloadable from:

new.wales.gov.uk/news/ThirdAssembly/Environment/2007/1752261/?lang=en

¹²⁴ WLGA Press Release, *Assembly Government report a wasted opportunity says WLGA* (13 September 2007) Downloadable from: www.wlga.gov.uk/content.php?nID=7;ID=114;IID=1

¹²⁵ WAG Press Release, *Dramatic new targets for rubbish recycling* (18 October 2007) Downloadable from:

new.wales.gov.uk/news/ThirdAssembly/Environment/2007/1743155/?lang=en

¹²⁶ WLGA Press Release, *Need for ambition but realism on waste, says WLGA* (18 October 2007)
Downloadable from: www.wlga.gov.uk/content.php?nID=7;ID=121;IID=1

outlined in *A Shared Responsibility* published in March.¹²⁷ On 7 November, Brian Gibbons as Minister for Social Justice and Local Government listed the legislation as one of his priorities for the next six months.¹²⁸ The Welsh Assembly Government is likely to consult on proposed legislation. In the current climate, local government will be vigilant with respect to the implications of such legislative proposals, particularly with regards to additional legal duties and additional resource implications.

5.2.4 Conclusion

A very positive relationship developed between the Assembly and local government during the first two terms of devolution, 1999-2007. It remains extremely early in the new coalition government's existence to adequately assess changes in relationships. The third term presents a new context and, to date, WAG has not been clear about its approach to relations with local government. However, the current budget round created a feeling that there was no adequate recognition within WAG of local government's role which perceived itself as being treated as an inferior partner. The overall budgetary context can be seen as one of the key reasons for this. Local government's capacity to increase its own resources through council taxes can also be seen as a contributory factor. However, it could be argued that the developments during the first few months suggest a new direction for relationships between the Assembly Government and local government. For the first time since devolution, a coalition government has formed a clear majority and in such a context external partnerships are possibly less important. This new situation could create a new balance to the partnership, requiring reconfiguration of the rules of the game.

Whatever the longer term effects of the past few months, the final budget will undoubtedly affect Assembly Government–local government relations in the short term. Its effects will certainly remain high on the political agenda in the run up to the forthcoming local elections in May.

¹²⁷ WAG, *A Shared Responsibility*, (March 2007) Downloadable from:

<http://new.wales.gov.uk/docrepos/40382/DeptLGandC/1287263/asharedresponse.pdf?lang=en>

¹²⁸ Health, Wellbeing and Local Government Committee, HWLG (3)-07-07, Evidence from Minister for Social Justice and Local Government, Brian Gibbons AM, 7 November 2007

6. Elections, Parties and Public Attitudes

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6.1. Elections

Despite considerable media speculation throughout the summer and early autumn of 2007, no UK general election was held during the months covered by this report. Seven local government by-elections were held in Wales between August and December 2007. Only two of these contests saw seats change hands, with one Conservative gain from the Liberal Democrats in Pembrokeshire during September, and one seat going from Tories to Lib-Dems in November. Overall, the results failed to show any very strong trends, although (very much in line with the strong showing by Independents and minor parties during the 2007 National Assembly election) Independent candidates tended to perform well.

Figure 6.1: Local Government By-Elections, August-December 2007

| <i>Ward</i> | <i>Council</i> | <i>Month</i> | <i>Winner</i> | <i>Change?</i> | <i>Swing</i> |
|-------------------------|-----------------------|--------------|---------------|---------------------|---------------------|
| Blaina | Blaenau Gwent CBC | August | Independent | Ind. Hold | 11.9% Lab to Ind |
| Mochdre | Conwy CBC | September | Labour | Lab Hold | 8.5% PC to Lab |
| Moriah | Caerphilly CBC | September | Labour | Lab Hold | 18.8% Lab to Ind |
| Pembroke St. Michael | Pembrokeshire CC | September | Conservative | Con Gain from LD | 29.8% LD to Con |
| Llandybie | Carmarthenshire CC | November | Independent | Ind Hold | 3.4% Lab to Ind |
| Rhiw | Conwy CBC | November | Lib-Dem | LD Gain from Con | 20.7% Con to LD |
| Treharris | Merthyr Tydfil CBC | December | Independent | Ind Hold | 9.6% Ind to LD |

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

6.2. Parties

After a long period during which party politics in Wales was distinctly frenetic – due first to election campaigning and later to post-election deal-making and deal-breaking – the period of this report has been one of settling down. Party politics became distinctly quieter, although we can expect things to move back up a gear once campaigning starts in earnest for the May 2008 local government elections.

6.2.1 Labour

For Wales' largest (and long hegemonic) party, the most striking aspect of the past few months has been the relative ease with which it has been able to work in coalition with Plaid Cymru in Cardiff. Despite the historic enmities between the two parties, and the vigorous debate within Labour about the wisdom of entering into the coalition, inter-party relationships within the Assembly government have thus far, by all informed accounts, been genuinely cordial and positive. Though one can expect tensions between the parties at other levels – most obviously at Westminster – to spill over into the National Assembly arena at some points in the future, every sign at present suggests that the current coalition will prove sustainable for the whole four-year term of this Assembly. Cynics can, with some fairness, suggest that the current disarray among the Welsh Liberal Democrats (see below) means that neither side has any other viable option except to co-operate with each other. But there does seem to be more to it than this. At ministerial level, and even among most backbenchers in the Assembly, there appears to be genuine (if wary) mutual respect.

Many Welsh Labour MPs remain deeply hostile to the coalition agreement with 'the nationalists'. There thus remains scope for internal Labour divisions between the 'London' and 'Cardiff' branches of the Welsh Labour Party. But another significant line of difference has also been observable within the party in recent months. This concerns disagreements over the correct interpretation of the May 2007 election result. Interestingly, divisions appear to be largely generationally-based, rather than corresponding with more traditional cleavages such as left and right or pro- and anti-devolution factions. Some prominent younger members of the party, most notably Eluned Morgan MEP and Huw Lewis AM, have given notably downbeat assessments of Labour's performance and called for radical measures in response.¹²⁹ By contrast, more experienced and senior members have tended to be more sanguine. Paul

¹²⁹ For Eluned Morgan's views see news.bbc.co.uk/2/hi/uk_news/wales/7011770.stm. See also Huw Lewis AM, 'Winning for Wales: Remaking the Welsh Labour movement for Government' (August 2007) available at www.wales2020.com/current

Flynn MP, for example, has interpreted the poor Labour performance in the National Assembly election as primarily a response by the public to the disastrous – in Flynn’s view – decision of Tony Blair to hang on to the premiership until after the devolved elections.¹³⁰ And First Minister Rhodri Morgan has identified parallels between May 2007 and Labour’s results in Wales in the 1983 UK general election, when the Conservatives won 13 of the 36 Welsh seats but fell away substantially in subsequent elections.¹³¹

In general, the views of the older generation appear to be winning out within the Welsh Labour Party. The implications of these views are, of course, much more comforting for Labour. There has certainly been little public sign of the intensive, intra-party post mortem that occurred following the 1999 Assembly elections, or the resulting changes in organisation, party image and personnel. This is, in many respects, surprising, given that this relatively complacent view fails to account for some quite obvious features of recent electoral politics in Wales: such as why Labour’s vote share fell by so much more in Wales in 2007 than it did in Scotland, and why Labour’s general election vote share fell by far more in Wales between 1997 and 2005 than in either Scotland or England. But only time will tell whether or not the voice of experience also turns out to have been the voice of wisdom.

6.2.2 Plaid Cymru

The unveiling of official figures on party spending during the 2007 National Assembly election campaign provided further illustration of the extent to which Plaid Cymru has developed as a serious political party and electoral machine since the advent of devolution.¹³² For most of its history, Plaid has lived a distinctly hand-to-mouth existence. That it was able to out-spend its main rivals during the campaign – if only by a relatively modest amount – is testament to a remarkable transformation in its financial status and organisational strength. Another sign of the party’s maturation during the period of this report was Plaid’s decision to reverse its previous policy and nominate party members to the House of Lords.¹³³ Given that this issue has proven highly contentious in the past, the U-turn in the party’s stance was accomplished with remarkably little dissent.

¹³⁰ see paulflynnmp.typepad.com/my_weblog/2007/08/the-deadly-fail.html

¹³¹ Rhodri Morgan extended reverie on the parallels with 1983 may be found on Vaughan Roderick’s podcast for Radio Cymru on the 21 December 2007.

¹³² For details see www.electoralcommission.org.uk/your-area/walescampaignexpend.cfm

¹³³ ‘Plaid sign up for the Lords for the Lords’, *Wales on Sunday* (11 November 2007): icwales.icnetwork.co.uk/news/politics-news/2007/11/18/plaid-sign-up-for-the-lords-for-the-lords-91466-20122388/

More redolent of continuity than change, however, have been the recent travails experienced by Plaid in its Gwynedd heartland. The decision of the Plaid-led County Council to push through a programme of school closures and administrative consolidations has been presented by opponents as threatening the vitality of Welsh-speaking communities, and led directly to several long-standing members abandoning the party and form a new political entity called 'Llais y Bobl' (which translates as 'People's Voice' – but should not be confused with 'People's Voice', the vehicle of ex-Labour dissidents in Blaenau Gwent).¹³⁴ It remains to be seen what impact Llais y Bobl might have on Plaid's control of the council in May. Further ahead, the Labour Party will hope that Plaid splits might help it to an otherwise unlikely win in the Arfon seat at the next UK general election.

In government Plaid ministers have sought to portray an image of quiet competence; bank-bench support has hitherto remained solid, surviving even a very tight financial settlement and budget. Compared to the trail-blazing of the nationalists' Scottish sister party, Plaid's very quiet revolution as a junior partner in government can appear less than inspiring. And party strategists will certainly be considering the resonance with the public that the actions and achievements of Plaid ministers can have. But Plaid's strategic goals seem clear. First, demonstrable competence in government aims to 'decontaminate' Plaid's image: with each week that passes it becomes more difficult to imagine their opponents credibly reviving their old lines of attack that often depicted Plaid as a collection of wild-eyed romantics and language zealots. Secondly, of course, there is the prize of a referendum on primary powers and the prospect of the National Assembly becoming something much closer to a full legislature. Some senior Labour figures at Westminster continue to rail in semi-public fashion against the referendum pledge. But given the centrality of that pledge to the coalition agreement, buttressed by endorsement from Welsh Labour's special conference in July 2007, Labour could not renege on the referendum without both severely damaging its future credibility as a coalition partner in Cardiff Bay and generating deep internal divisions. Nonetheless, Plaid's decision to form a coalition with Labour remains a significant gamble, given the ebbing popularity of Labour at the UK level.

¹³⁴ 'Plaid man quits over school closure plan', *Daily Post* (11 February 2008)
www.dailypost.co.uk/news/in-depth/gwynedd-school-closures/2007/11/16/plaid-man-quits-over-school-closure-plan-55578-20114694/

6.2.3 Conservatives

Nick Bourne could have been forgiven for spending the holiday season in rather self-congratulatory mood. All in all, he had an excellent 2007. Bourne completed the year as Leader of the Official Opposition in the Assembly. And Jonathan Morgan's earlier announcement that he would not seek nomination as Tory candidate for Cardiff North in the next Westminster election, but rather remain in the Assembly, effectively means that an acceptable succession has been secured, although there is no immediate pressure on the Conservative leader to stand aside (and, presumably, move on to the Lords).¹³⁵ Meanwhile, although the party's three Welsh MPs make little attempt to disguise their disdain for devolution in general, and Bourne's strategy of repositioning the Tories in Wales as a more avowedly Welsh and devolution-friendly party, they have (by their own admission) no alternative strategy.¹³⁶ And all the while, the steadily improving prospects of the Conservatives across the UK continue to bolster Tory support, at least in those parts of Wales where there is some tradition of Conservative strength.

But the limits of Bourne's strategy may be in sight. The establishment of the All-Wales Convention will almost certainly require the Welsh Conservatives to finally decide where they stand on the question of the extension of primary powers to the Assembly. Thus far the party – *qua* party – has studiously avoided this issue: witness, for example, its manifesto for the last National Assembly election. Given the Welsh party leadership's denunciations of the constitutional status quo, to argue now for its maintenance would strain credulity and credibility. And yet there appears no immediate prospect of the Welsh Tories crossing the Rubicon and advocating the implementation of Part 4 of the 2006 Government of Wales Act. What position can the Welsh Conservatives possibly take, then? One obvious possibility would be for the Tories to guarantee that any future Conservative administration in London will allow a referendum on the issue, but without the party being committed to take a united position. (In short, this would be very similar to the position taken by the Labour government on the divisive issue of EEC membership in the 1970s, where party members and even ministers were allowed to take opposite sides in the referendum). This would offer a route out of an intractable party management

¹³⁵ 'Tory AM won't stand for Parliament', *Western Mail* (9 June 2007):

<http://icwales.icnetwork.co.uk/news/wales-news/2007/06/09/tory-am-won-t-stand-for-parliament-91466-19268723/>

¹³⁶ See, in particular, Stephen Crabbe MP, 'The Devolution Experiment is leading to socialism and separatism,' *ConservativeHome* (24 October 2007), Available at

<http://conservativehome.blogs.com/platform/2007/10/stephen-crabb-m.html>

problem; guaranteeing a referendum would also have the tactical benefit of causing embarrassment to Welsh Labour MPs, and the possible strategic benefit of undermining one of the main planks of the One Wales coalition agreement. There have been no official suggestions as yet that such a move is in the offing. But it is hard to envisage that the Welsh Conservatives will content themselves with the role of passive bystanders as the constitutional debate proceeds. Some kind of Conservative initiative is predictable, even if its exact nature is not.

6.2.4 Liberal Democrats

At the Assembly level, at least, the Welsh Liberal Democrats remain in a rather sorry state. Long-rumoured tensions within the six-strong Assembly group surfaced in embarrassing fashion in December.¹³⁷ And while the announcement that Mike German would remain as leader until after the forthcoming council elections has meant that the leadership question has been temporarily 'parked', it has yet to be resolved.¹³⁸

When German does eventually step down, a very obvious potential leadership candidate is Kirsty Williams, AM for Brecon and Radnor. Indeed, given the nature of the Welsh party, it is likely that Williams would best the Cardiff Central AM Jenny Randerson – the only other credible candidate – should both end up in a race for the leadership. In this context, Williams' Institute of Welsh Politics annual lecture delivered in November takes on a particular interest.¹³⁹ The lecture served to underline her strengths as a future leader as well as illustrating the extent of the challenges that she and her party face. Capable, energetic and engaging, there is little doubt that Kirsty Williams would present a 'voter-friendly' public face for the Welsh Liberal Democrats. But while the lecture lambasted the 'cosy consensus' that dominates devolved politics in Wales, the alternative proffered was little more than another version of that very same centre-left, patriotic consensus. And while there is nothing necessarily wrong with centre-left patriotism, the problem for the Liberal Democrats is that the centre-left of Welsh politics is a very crowded place.

¹³⁷ 'AM 'silent' over leaflet poking fun at colleague', *Western Mail* (6 December 2007): icwales.icnetwork.co.uk/news/politics-news/2007/12/06/am-silent-over-leaflet-poking-fun-at-colleague-91466-20209619/

¹³⁸ 'Lib-Dem leader German prepares to step down', *Western Mail*, (15 October 2007): icwales.icnetwork.co.uk/news/wales-news/2007/10/15/lib-dem-leader-german-prepares-to-step-down-91466-19951516/

¹³⁹ 'Breaking through the Consensus' kirstywilliams.org.uk/speeches/000006/breaking_through_the_consensus.html

More than six months after the Assembly election the question remains: what, beyond acting (potentially at least) as a 'hinge' party in any future coalition negotiations, are the Welsh Liberal Democrats for? It may be considered that this question is particularly germane for those party members who argued in the post-election period that the party should remain aloof from any governing coalition in order to 'renew itself' in opposition. From the outside at least, and Williams's best efforts notwithstanding, the Welsh Liberal Democrats do not seem to be a party busily engaged in renewing itself, but rather gives every impression of being mired in regret at missed opportunities.

6.3. Public Attitudes

The most important evidence available for several years on public attitudes in Wales was presented in autumn 2007. An ESRC-funded survey, conducted by the Institute of Welsh Politics and the National Centre for Social Research, was carried out in the period immediately after the National Assembly election. In addition to exploring voting patterns in the election, the survey also probed extensively into public attitudes towards devolution. A detailed presentation of the survey's results was given at the National Assembly in November; this report will summarise the most salient findings.

One question asked in this year's survey was the now-standard one probing respondents' preference as to how Wales should be governed. Findings from the 2007 survey on this question, along with findings in previous major surveys conducted during the past decade, are presented in Figure 6.2. This shows that while there continues to be no substantial trend in support for independence for Wales, support for strengthening devolution continues to grow and is now well above two in five. At the same time, the trend of declining opposition to the principle of devolution has also continued: the proportion of survey respondents choosing this option is now well below one in five, and little more than the proportion favouring independence. Opposition to devolution has actually fallen more substantially in Wales over the last decade than it has in Scotland, and opposition in Wales now is lower than it was in 1997 in Scotland.¹⁴⁰ This decline has been most noticeable among groups who were most likely to oppose devolution in the referendum. This includes those who see themselves as primarily British (rather than Welsh) in terms of national identification, and also women.

¹⁴⁰ In Scotland, the proportion of respondents choosing the No Devolution option in the standard constitutional preference question was 18.1 per cent in their 1997 post-referendum survey; by 2006 (the most recent year for which figures were available) this had declined to 9.0 per cent.

Figure 6.2: Constitutional Preferences in Wales 1997-2007

| <i>Constitutional preference</i> | 1997 | 1999 | 2001 | 2003 | 2006 | 2007 |
|----------------------------------|------|------|------|------|------|------|
| Independence | 14.1 | 9.6 | 12.3 | 13.9 | 11.5 | 12.2 |
| Parliament | 19.6 | 29.9 | 38.8 | 37.8 | 42.1 | 43.8 |
| Assembly | 26.8 | 35.3 | 25.5 | 27.1 | 25.0 | 27.5 |
| No elected body | 39.5 | 25.3 | 24.0 | 21.2 | 21.3 | 16.5 |
| <i>N of respondents</i> | 641 | 1173 | 1044 | 935 | 955 | 837 |

The trends shown in Figure 6.2 are supported by the similar implications that can be drawn from responses to other survey questions. Figure 6.3 presents results from a pair of questions that have been asked in several surveys – probing respondents' perceptions both of the level of government that has the most influence in running Wales, and of the level of government that they believe should have the greatest influence. As is shown, perceptions of the actual importance of the Assembly have been steadily rising. Nonetheless, there remains a stark disparity between how people think things are and how they would like them to be. And the proportion desiring the devolved level of government to have greatest influence has now reached the same level in Wales as in Scotland.

There is no longer any serious question over whether the majority of the Welsh people support some degree of self-government. They do. If devolution was the 'settled will' of the Scottish people in 1997, it certainly is so for the Welsh ten years on. What remains at issue is how much more self-government the public would be willing to support.

Figure 6.3: Most Influence over 'the way Wales is run'

Does Influence

| <i>Response</i> | <i>2001</i> | <i>2003</i> | <i>2007</i> |
|-------------------|-------------|-------------|-------------|
| NAfW | 17.0 | 22.4 | 35.6 |
| UK Govt | 64.4 | 57.9 | 53.2 |
| Local Councils | 15.5 | 15.0 | 5.4 |
| EU | 3.2 | 4.7 | 5.9 |
| <i>Weighted N</i> | <i>1033</i> | <i>917</i> | <i>827</i> |

Ought to Influence

| <i>Response</i> | <i>2001</i> | <i>2003</i> | <i>2007</i> |
|-------------------|-------------|-------------|-------------|
| NAfW | 56.2 | 56.0 | 74.3 |
| UK Govt | 26.3 | 29.1 | 17.7 |
| Local Councils | 16.5 | 13.8 | 7.7 |
| EU | 1.0 | 1.2 | 0.2 |
| <i>Weighted N</i> | <i>1033</i> | <i>917</i> | <i>857</i> |

One factor that academic analysis has consistently shown to be important in explaining public attitudes to devolution is national identity: those seeing themselves as Welsh are more likely to support independence or a parliament than British identifiers.¹⁴¹ Given the trends in attitudes to devolution, one might expect there to have been substantial changes in the national identity profile of Wales; this expectation would fit with the idea that nearly a decade of devolved institutions and government might have made the people of Wales feel more Welsh in some respect. Figure 6.4 reports trends in national identity since 1997 on the 'Moreno' measure, which allows for respondents to choose between degrees of Welsh and British identity. What we see here, contrary to expectations, is little or no trend, beyond a modest increase in the proportion of exclusively 'Welsh' identifiers. Although the people of Wales have undoubtedly become more Welsh in their desired centre of governance in the last decade, this has not translated into – or been caused by – their having become more Welsh in national identity.

¹⁴¹ See Richard Wyn Jones and Roger Scully, 'A Settling Will? Wales and Devolution, Five Years On', *British Elections and Parties Review* (2003) 13: 86-106.

Figure 6.4: National Identities (%) in Wales, 1997-2007

| <i>NATIONAL IDENTITY</i> | <i>1997</i> | <i>1999</i> | <i>2001</i> | <i>2003</i> | <i>2007</i> |
|---------------------------|-------------|-------------|-------------|-------------|-------------|
| Welsh, Not British | 17.2 | 17.7 | 24.5 | 22.7 | 25.1 |
| More Welsh than British | 25.7 | 20.7 | 23.5 | 28.1 | 21.4 |
| Equally Welsh and British | 34.3 | 38.3 | 29.4 | 30.2 | 33.8 |
| More British than Welsh | 10.4 | 7.8 | 11.2 | 8.9 | 9.8 |
| British, Not Welsh | 12.4 | 15.5 | 11.3 | 10.0 | 9.9 |
| <i>N of respondents</i> | <i>660</i> | <i>1173</i> | <i>1045</i> | <i>929</i> | <i>840</i> |

6.4. Conclusion

The period of this report has been a relatively quiet one for partisan and electoral politics in Wales. After the excitement of the election and coalition negotiations, things have settled down. But there are at least two issues that we can be certain will be of importance. First, how will the governing coalition in Cardiff continue to work, and what impact will this have on public support for the political parties. And second, how will the debates over the future governance of Wales continue to proceed? These matters will define much of the substance of Welsh politics over the months and years ahead.

7. Assembly and the Media

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7.1 Introduction

Broadcasting matters in the nations of the Britain in the last months of 2007 were dominated by the noises made by Scotland's First Minister about devolving broadcasting to Holyrood. Motivated – at least superficially – by the long-running dispute over calls for a wholly Scottish produced version of the BBC Six O'clock News, and a decline in the share of UK broadcasting income spent in Scotland, the SNP government announced plans for a broadcasting commission to review the future of the industry in Scotland. Under the direction of a former BBC Scotland Head of News and Current Affairs, the commission will analyse the state of broadcasting in Scotland and make proposals for change. Scottish broadcasters and journalists have chipped in with the usual complaints about London's metropolitan bias. However, it is the threat of potential job cuts and declining output, following plans to make good the estimated £2bn shortfall from the BBC licence fee settlement, that weighs heavily on the future of Scottish broadcasting. With the brand new £130m headquarters for BBC Scotland at Pacific Quay, one of the most advanced broadcasting facilities in Europe, it is not difficult to see the importance of the need for continued and expanding investment in Scottish broadcasting.

Alex Salmond's calls for the devolution of broadcasting have not been echoed to any significant extent in Wales. Rhondda Labour MP Chris Bryant issued his vision of the future of broadcasting in Wales.¹⁴² Bryant warns that 'if we do not take stock now – and make significant policy changes – there is a real danger that we shall by default lose the enormously rich broadcast mix we now enjoy'.¹⁴³ He makes a number of recommendations for change but insists that broadcasting should remain a reserved matter. Partial devolution is, however, advocated in his proposal that scrutiny of S4C's budget should be become a matter for the National Assembly. Like others before him he draws attention to the limited public scrutiny the channel is subjected to. The House of Commons Culture, Media and Sport Select Committee, he notes, has neither the time nor the Welsh language competence to devote to examining how S4C accounts for its annual spend of getting on for £100m of public money.

¹⁴² C. Bryant, *Broadcast Wales: The future of Broadcasting in Wales* www.broadcastwales.org.uk

¹⁴³ Ibid

Bryant also echoes the suggestion posited last year by University of Cardiff academics Justin Lewis and James Thomas¹⁴⁴ that S4C should become an all-Wales channel in the sense of offering output in Welsh and English. Supporting the notion of broadcasting subsidies, he makes the point that the cost per head of Welsh programming per hour for S4C is nearly twice as much as it is for Welsh programming as a whole. More financial support is provided to Welsh language than English language television in Wales. Drawing attention to the extent of S4C's subsidy as well as making demands for broadening the channel's reach to make it more inclusive of Wales as a whole has regularly featured in the discourse of non-Welsh speaking MPs and commentators. What was new about Bryant's call is the response it received. For example newly appointed Heritage Minister, Plaid Cymru's Rhodri Glyn Thomas, did not rule out the possibility of S4C becoming a bilingual channel.¹⁴⁵ After the analogue switch off S4C will no longer re-broadcast Channel 4 output and have more time to fill. Capturing the broader audience in Wales beyond only fluent Welsh speakers will become more significant in such circumstances. The minister believes there is a need for 'more programmes through the medium of English about Wales'. While the S4C authority chair said the channel has a 'duty to welcome non-Welsh speakers', the chief executive insists that 'no money earmarked for Welsh programmes should be used to produce English medium programmes'.¹⁴⁶

7.2 BBC cuts

The provision of the English language TV services for Wales is potentially threatened by the re-structuring announced by BBC Wales in November as part of the Corporation's plan to make so-called efficiency savings of 3 per cent per annum over the next five years. In a period which will see the switch-off of the analogue service and the growth of the digital market, the extent of the savings is considerable. In Wales a potential total of up to 155 job losses over five years is envisaged. It will also bring to an end BBC 2W which had attempted to provide some sort of regular, scheduled programming for the English speaking audience in Wales. The axing of 2W is explained by the digital switchover. The digital service 'will not be able to sustain two different versions of BBC Two' and as a result the BBC Wales digital-only service will disappear as one service will carry BBC Two Wales across all digital

¹⁴⁴ James Thomas and Justin Lewis, 'Coming out of a mid-life crisis'? : The past, present and future audiences for Welsh Language Broadcasting, *Cyfrwng: Media Wales Journal* Vol 3, 2006

¹⁴⁵ Adrian Browne, 'Digital S4C "could be bilingual"', BBC News, (30 October 2007), news.bbc.co.uk/go/pr/fr/-/1/hi/wales/7067729.stm

¹⁴⁶ Ibid

platforms providing the 'very best of both network and BBC Wales television'.¹⁴⁷ However the cost of generating material for 2W, highlighted by the growing number of repeats in recent years, as well as audience discontent at losing certain kinds of network shows, must also have been considerations.

The Heritage Minister expressed concern about the future of public service broadcasting in Wales if these cuts are fully carried out and in particular their effect on public debate in Wales. His worries were shared by the only Welsh MP on the Culture, Media and Sports Committee, Adam Price of Plaid Cymru, who described the cuts as 'devastating' and expressed the view that 'the quality of news programmes may be compromised'. Secretary of State for Wales, Peter Hain, while acknowledging the 'challenging times ahead', was 'confident that BBC Wales would be able to maintain its commitment to quality news and current affairs output in English and Welsh'. His confidence rests on the recent successful track record of BBC Wales in attracting network commissions. The announcement of a reported additional £20-40m to be spent in the nations and regions of the United Kingdom promises 'very significant' opportunities for BBC Wales to offset the production losses coming from the proposed 'efficiency savings'.¹⁴⁸

While Controller Menna Richards rightly points to the 'huge progress made over recent years' by BBC Wales in winning network commissions, the competition will be much harder in the future.¹⁴⁹ There will be pressure to address what has been described as BBC Scotland's '£21m commissions crisis'.¹⁵⁰ The temporary freezing of commissions from RDF, the company that provided footage for a promo that misrepresented the Queen, reinforced the sense of crisis in Scottish broadcasting. RDF owns virtually all the major independent production companies north of the border. Senior figures in the Scottish broadcasting industry have articulated the need to redress the imbalance, pointing out that the BBC spends only 4 per cent of its budget in Scotland while in terms of population it should be around 9 per cent.¹⁵¹ This has become the goal for the SNP administration; according to the Scottish First Minister 'it is not acceptable that the networks which purport to serve the whole of the

¹⁴⁷ *Challenges and opportunities for BBC Wales*

www.bbc.co.uk/pressoffice/pressreleases/stories/2007/10-October/18/Wales.shtml

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ Steven Vass, '£21m commissions crisis at BBC Scotland' *The Sunday Herald* (8 July 2007).

¹⁵¹ Magnus Linklater, 'This is the English Broadcasting Corporation' *The Times* (25 July 2007)

UK should marginalise the creative community in Scotland'.¹⁵² Pressure seems to have had some effect with the BBC D-G, at the official opening of Pacific Quay in September, promising to increase the Scottish contribution to the BBC's TV networks. The danger for BBC Wales is that such political pressure may result in a flow of resources away from Wales to Scotland. Some in Scotland have already intimated that the decision to locate Doctor Who in Cardiff was as much political as anything else. The Scottish Conservative Culture spokesman asks 'are the commissioners seriously saying that Cardiff was selected as the location for Doctor Who because drama standards were higher in Wales than elsewhere?'¹⁵³ Politics plays an important role in all commissioning decisions but it is the success BBC Wales has made of the series that has enabled it to gain more network commissions.

7.3 Trusting the BBC?

Unease at the way in which the BBC is responding to a partially devolved political system was taken up by the newly formed BBC Trust, which in November announced a review of the reporting of the UK's nations on network news. This was, according to Trust chair Sir Michael Lyons, a response to feedback from audience councils, public meetings and audience research which indicates the matter is of interest to viewers. In July the Audience Council for Wales had criticised network news coverage of the National Assembly.¹⁵⁴ Under the stewardship of Professor Anthony King the Review will examine allegations that the non-English nations have been inadequately covered since devolution.¹⁵⁵ Research will be carried out by academics at Cardiff University, where the chair of the Trust's editorial standards committee is based.¹⁵⁶ The review is scheduled to be completed in the summer of 2008.

Since the announcement of the review some have observed that network news has carried more stories from and about Scotland, Northern Ireland and Wales and has been far more careful to tell the viewer when stories relate to England only. However, we should also be concerned about the way in which stories from around Wales are covered. Metropolitan bias is seen in many parts of Wales not as a matter of London-centrism but Cardiff-centrism. Some of the critics who complain about the London bias of the BBC seem oblivious to what sort of Wales is represented and reported on Welsh TV screens. BBC Wales has made strenuous efforts to redress this criticism

¹⁵² Maggie Barry, 'Salmond Blast at "lack of TV Backing"' *Mirror* (9 August 2007)

¹⁵³ Ted Brocklebank, 'Out TV talent has been abandoned' *The Express on Sunday* (12 August 2007)

¹⁵⁴ R. Wyn Jones and R. Scully (eds), *Wales Devolution Monitoring Report: September, 2007*

¹⁵⁵ Karen Price, 'Media Experts welcome probe into BBC News' *Western Mail* (18 November 2007)

¹⁵⁶ *Ibid*

by rolling out a community strategy across the country and the morning flagship news strand on Radio Wales is anchored from Cardiff and Bangor. In spite of these developments Chris Bryant still believes that the 'news output still seems dominated by the metropolitan hub in Cardiff'.¹⁵⁷ A commitment to local news is recognised by BBC Wales in its plans for the future – new posts are envisaged to deliver a local multimedia broadband service MyLocalNow to the diffuse communities that constitute Wales.¹⁵⁸ This is contingent on BBC Trust approval.

7.4 Happy Anniversary S4C

S4C celebrated twenty-five years of serving the Welsh-speaking community in November. The channel has come a long way since its inception as a bulwark to support the language and culture of Welsh speaking Wales. Since 1982 S4C has helped to put Welsh broadcasting on the map as one of the first dedicated minority language broadcasters in Europe. It has also played its part in helping to develop a strong independent broadcasting production sector in Wales. In the run-up to its anniversary the channel commissioned a report to assess its contribution to the Welsh economy.¹⁵⁹ The report estimates that S4C generated £87m of added value for the Welsh economy, roughly equivalent to the funds it gets from the Department of Media, Culture and Sport to operate the channel.

However, the channel during its history has undergone some major strategic changes. Corporate and commercial considerations have become increasingly important in the channel's calculations. At the same time viewing figures have steadily dwindled. A rise in S4C's peak time share of viewers last year cannot hide the trend of continuous decline. Research into the channel's audience reveals that S4C's audience share dropped by 60 per cent from 1995 to 2004. According to one of the research's authors, 'all terrestrial broadcasters have seen a decline in viewers following the emergence of digital TV but S4C has seen the biggest drop'.¹⁶⁰ Claims for more resources, including increased output from the BBC under the recently agreed strategic partnership, have to be seen in this context. Subsidy is not only a matter of financial support from the Department of Culture, Media and Sport. OFCOM chief, Ed Richards, highlighted the need for S4C to address the 'upheaval' that digital

¹⁵⁷ Bryant, op cit

¹⁵⁸ *Challenges and opportunities for BBC Wales* op cit

¹⁵⁹ DTZ and The Welsh Economy Research Unit, Cardiff University *The Economic Impact of S4C on the Welsh Economy 2002-2006* (September 2007) www.s4c.co.uk/abouts4c/corporate/e_econrep.shtml

¹⁶⁰ Quoted in Price, Karen 'Crisis of "too-Welsh" S4C' *Western Mail* (7 April 2006)

television will bring to the current model.¹⁶¹ So far, the radical response that many such as Chris Bryant see as necessary has not been forthcoming.

¹⁶¹ Speech to the Institute of Welsh Affairs, (19 November 2004)

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NAfW Health Wellbeing and Local government Committee:
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NAfW Record of Proceedings: www.assemblywales.org/bus-home/bus-record-of-proceedings.htm

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Welsh Local Government Association: www.wlga.gov.uk

The **Constitution** Unit

DEVOLUTION MONITORING PROGRAMME 2006-08

Wales Devolution Monitoring Report

May 2008

Prof Richard Wyn Jones & Prof Roger Scully (eds.)



Sefydliad Gwleidyddiaeth Cymru

Institute of Welsh Politics

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

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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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WALES OFFICE



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Wales Devolution Monitoring Report

May 2008

Prof Richard Wyn Jones

&

Prof Roger Scully (eds.)

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Abbreviations and Acronyms

| | |
|-------|--|
| AM | Assembly Member |
| CAP | Common Agricultural Policy |
| EEAC | European and External Affairs Committee |
| EIB | European Investment Bank |
| EU | European Union |
| GoWA | Government of Wales Act |
| GVA | Gross Value Added |
| IPPR | Institute for Public Policy Research |
| LCO | Legislative Competence Order |
| LHB | Local Health Board |
| LSB | Local Service Board |
| MP | Member of Parliament |
| NAfW | National Assembly for Wales |
| OPSI | Office of Public Sector Information |
| RSPCA | Royal Society for the Prevention of Cruelty to Animals |
| SCDI | Scottish Council for Development and Industry |
| WAG | Welsh Assembly Government |
| WASC | Welsh Affairs Select Committee |
| WEFO | Wales European Funding Office |
| WLGA | Welsh Local Government Association |

Summary and Introduction

This is the eighth Devolution Monitoring Report to be produced by the team led by the Institute of Welsh Politics at Aberystwyth University. The report covers events between January and early May 2008.

The resignation of Peter Hain as Secretary of State for Wales in January 2008 was the event that attracted probably the greatest amount of public attention during the period covered by this report. It was particularly ironic that Hain went just as the 2006 Government of Wales Act, the content and political progress of which he had masterminded, was bearing fruit. This fruit included the passage of the first 'Legislative Competence Order' provided for in the Act, giving much greater powers to the National Assembly in a specified area; and also further progress toward the establishment of the All Wales Convention, the work of which is intended to foreshadow the Referendum on devolving primary legislative powers that was anticipated in the 2006 Act.

The period covered by this report saw the coalition government of Labour and Plaid Cymru – a political alliance difficult to imagine only 12 months previously – continuing to function relatively smoothly. But early 2008 also witnessed local elections that produced further erosion of the Labour Party's once dominant position in Welsh political life. With the retirement of First Minister Rhodri Morgan also beginning to loom ever larger on the political horizon, Wales continues to live in politically interesting times.

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

A potentially significant development for public policymaking was the publication in March of the report of the Establishing Committee of the All-Wales Convention.¹ The Report outlines the terms of reference for the Convention that is due to commence work this summer with the purpose of creating a national debate on full law-making powers for the National Assembly and assessing the levels of support for any future referendum on the creation of a Welsh parliament. If successful, such a process offers the potential for progress in relation to what the European Commission identifies as the principles of 'good governance', namely: openness, participation, accountability, effectiveness and coherence.² Arguably, this follows because of the greater clarity about the nature of devolved policymaking competencies that will be achieved should the Welsh legislature gain primary legislative powers following a successful referendum outcome.³

A further noteworthy development occurred in April with the publication of the 'One Wales Delivery Plan'.⁴ This sets out the level of progress made in respect of all the 228 policy commitments published in the 2007 coalition government policy programme, One Wales. According to the First Minister, the Delivery Plan 'is an essential piece of business planning, to ensure that the "government machine" delivers. This is also a document that will allow the people of Wales to see precisely what we will be doing over the next three years.'⁵ The Delivery Plan reveals that variable progress is being made on the One Wales commitments. Some, such as the abolition of the internal market in NHS Wales (see below), are recorded as being complete. Other, arguably more challenging, objectives have seen less progress. For example, in respect of legal rights for citizens in relation to the Welsh language (commitment # 189), the Delivery Plan records: 'under policy consideration. To be dealt with in Assembly Measure(s) to follow the Welsh Language LCO'.

¹ <http://new.wales.gov.uk/about/strategy/allwalesconvention/?lang=en>

² See: Commission of the European Communities (2001) European Governance: A White Paper, Brussels, COM (2001) 428 final.

³ In other words, instead of the present opaque, incremental and complex constitutional arrangements based upon executive ministerial powers (latterly augmented by the passing of Assembly Measures) clarity will be enhanced by the National Assembly having general legislative competence in areas other than those noted as being reserved to Westminster (as presently the case with the Scottish Parliament).

⁴ <http://new.wales.gov.uk/about/strategy/1wales/plandelivery/?lang=en>

⁵ <http://new.wales.gov.uk/news/presreleasearchive/080408launch/?lang=en>

Unfortunately, the absence of quantifiable policy targets in respect of some commitments, as well as the sometimes generalised and conditional nature of some of the Plan's entries, serves to undermine its utility.⁶

April also saw the First Minister give a keynote speech on his government's policy record that defended WAG's universal entitlement approach to aspects of social welfare provision. He noted:

Some of the weaker-minded commentators sometimes accuse us of government-by-gimmick or even call us a give-away-government... [this reveals] their failure to recognise that the clearest linking purpose between a wide range of our most imaginative policies – free prescriptions, free breakfasts in primary schools, reduced price bus travel for 16–18 year olds to name just three – is the way in which they all contribute directly to making work pay. One of the major stumbling blocks for anyone who has had to settle for a life on welfare benefits is the anxiety that, on taking up work, new expenses will erode the differential between what can be earned in employment and what can be obtained through the social security system.⁷

On specific policy initiatives a further notable development was the announcement that on 10 December 2007 the Welsh Assembly Government (WAG) cabinet had considered the possibility of introducing a Welsh honours system.⁸ Referring to the proposals, Plaid Cymru backbencher Leanne Wood AM observed: 'We cannot have an elitist system. If we are to have an honours system in Wales, let's have one owned by the people of Wales rather than the Establishment'.⁹ This is striking for it relates to policy outside the usual matters covered in Schedule 5 of the Government of Wales Act 2006 and, if implemented, effectively offers the prospect of separate arrangements from the British honours system centred on the crown. We now turn to explore more 'traditional' areas of devolved policymaking.

⁶ For example, the comments on progress in relation to WAG's commitment of support for the "dot.cym campaign" (i.e. for domain name status for Wales on the Internet based on 'Cymru') offer little insight into progress against concrete measures for securing policy outcomes (in this case the Delivery Plan states: 'preparatory work in 2008-09 leading to a possible application if feasible for implementation').

⁷ Downloadable from: <http://new.wales.gov.uk/news/presreleasearchive/2153556/?lang=en>

⁸ See Cabinet Minutes, December 10, 2007:

<http://new.wales.gov.uk/about/cabinet/CabinetMeetings/frommay2007/minutes/2007/10Dec07/?lang=en>

⁹ Reported in T. Livingstone, (2008) Honours flummery that Wales can do without, *Western Mail*, January 31 2008.

1.2 Health and Social Services

On 25 January 2008, the cross-party Proposed Vulnerable Children LCO Committee published its report on anticipated legislation in this area. Inter alia, the report recommended 'the establishment of a statutory monitoring group to monitor the implementation of the United Nations Convention on the Rights of the Child within Wales, and report regularly to the Assembly'.¹⁰ WAG will respond to the Report later in 2008. Also in January the Assembly's Health, Wellbeing and Local Government Committee agreed the terms of its inquiry into the presumed consent of organ donation.¹¹ The National Assembly does not currently have legislative competence in relation to this matter. However, the Assembly Parliamentary Legal Service advised the Committee that it could seek an LCO to allow the National Assembly to legislate on organ donation. The Assembly's Petitions Committee has already received two submissions calling for presumed consent to apply in NHS Wales, and Health Minister Edwina Hart (Labour) has agreed to undertake public consultation on the issue.

January saw the commencement of the cross-party Children and Young People Committee's inquiry into advocacy services for children and young people. Policy development in this area stems from 'Telling Concerns', the critical report by the Children's Commissioner for Wales published in 2004.¹² The latter highlighted the fact that despite earlier public papers on advancing the needs and concerns of children, it was still the case that public policy making and service delivery often overlooked issues and viewpoints relating to children. The origins of the committee's inquiry also relate to 'A Study of Advocacy Services for Children and Young People in Wales' commissioned by WAG in 2005.¹³ This concluded that there was:

A need for some fresh thinking about a regional or a national-based children's commissioning body that can connect and integrate advocacy provision across key service areas and generate more independence for advocacy.

¹⁰ National Assembly for Wales (Legislative Competence) (No. 3) Order 2007 Committee Report January 2008, downloadable from: www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=71999&ds=1/2008

¹¹ (i.e. that organs are available for transplantation without consent from an appropriate person, unless the deceased have previously registered their unwillingness for their organs to be available for transplantation in the event of their death).

¹² Children's Commissioner for Wales, 'Telling concern: Report of the Children's Commissioner for Wales' Review of the operation of Complaints and Representations and Whistleblowing procedures and arrangements for the provision of Children's Advocacy Services. Downloadable from: www.childcom.org.uk/publications/Telling_Concerns.pdf

¹³ WAG, A Study of Advocacy Services for Children and Young People in Wales - A Key Messages Report Downloadable from: <http://tinyurl.com/3khzruk>

It concluded that the 'pressing need for change seems hard to refute'.

The government's Delivering Emergency Care Strategy was launched in February.¹⁴ This is designed to ease the pressure on NHS Wales' unscheduled care system. Such pressure is due to the fact that the majority of patients using hospital accident and emergency units are not 'true' emergencies. In response, the strategy sets out plans for Urgent Care Centres to be set up to deal with such non-life-threatening cases. The strategy also sets out measures for better sharing of information to improve the transition of care, as well as the use of new technology to link rural and remote Minor Injury Units with accident and emergency units in order to provide more effective clinical decision-making.

In March Edwina Hart announced that visitors, patients, and staff will be able to park free at most NHS hospitals in Wales by the end of 2011. According to the minister, 'car parking charges fall heavily on people frequently attending NHS hospitals, whether they are patients, staff or visitors... They are at best an inconvenience and at worst an unfair expense'. Approximately £5.4m was collected by NHS Wales trusts from hospital parking charges in 2006/07. Whilst patients' groups and the British Medical Association welcomed the move, opposition AM Jenny Randerson AM (Welsh Liberal Democrats) raised concerns that the reduction in revenue would be 'taken out of front-line care, as the government has not announced that it will be giving any extra [funding to cover the shortfall]'.¹⁵ Also in relation to state hospitals, the health minister announced in late March that over the next six months crisps, chocolate and sugary drinks will be removed from vending machines in NHS Wales hospitals. This policy initiative is aimed at tackling a situation where almost a fifth of 6 to 13-year-olds, 6 out of every 10 men, and half of women in Wales are overweight or obese, the highest rates in the UK.

In terms of health care provision, in February the Health Minister set out plans for an Epilepsy Care Plan.¹⁶ According to WAG this is the first time such a dedicated plan has been outlined in any UK country. Epilepsy is the most common neurological condition in Wales and affects between 20,000 and 30,000 people. The strategy

¹⁴ WAG: Delivering Emergency Care Services: An Integrated Approach for Delivering Unscheduled Care in Wales. Downloadable from:

<http://new.wales.gov.uk/dhss/publications/health/strategies/1971764/decsstrategie.pdf?lang=en>

¹⁵ Quoted in anon <http://bbc.co.uk/1/hi/wales/7273649.stm>, March 3 2008

¹⁶ WAG, 'Service Development and Commissioning Directives for Epilepsy'. Downloadable from: <http://new.wales.gov.uk/consultations/currentconsultation/healandsoccarecurrcons/serviceepilepsy/?lang=en>

includes measures to: 'Reduce the incidence of epilepsy, help people to self-manage their condition and provide more care closer to people's homes – thereby reducing the likelihood of hospital admission'. Consultation on the Epilepsy Care Plan will close on 21 May.

In April 2003, as part of a reorganisation of NHS Wales designed to bring decision-making closer to communities, WAG abolished Wales' five health authorities and created 22 local health boards (LHBs) that mapped onto local council territorial boundaries. In an apparent partial reversal of this move, April saw the health minister announce a three-month consultation exercise on a revised policy that will streamline health administration by cutting the number of LHBs to a total of eight.¹⁷ According to the minister, the proposals are intended to 'improve patient care and the patient experience' and, to put in place 'administrative arrangements for the NHS that are effective'.¹⁸ The policy also proposes that the internal market in NHS Wales be replaced with direct funding from WAG (or an NHS Board for Wales). In theory, the internal market was supposed to secure greater efficiency through competition between LHBs; yet in reality the evidence suggests that LHBs seldom commissioned from hospitals outside their respective areas. Thus the anticipated competition gains were less than predicted, whilst administrative costs covered 22 LHBs as opposed to the previous five health authorities. The apparent government U-turn has attracted strong criticism from opposition parties. Jonathan Morgan AM (Welsh Conservatives) observed that the post-2003 introduction of 22 LHBs was a 'catastrophic mistake... Edwina Hart [AM] has been forced to try and repair the damage caused to the NHS by her colleague Jane Hutt [AM – former health minister]'. Jenny Randerson AM (Welsh LibDems) was wary of the new proposals, describing them as being part of 'the Labour-Plaid government's centralising agenda'.¹⁹ The deadline for responses to the NHS Wales reorganisation policy proposals is 25 June.

1.3 Education, Culture and the Welsh Language

In January WAG announced details of its proposed Learning and Skills (Wales) Measure 2008. This law will give statutory support to WAG's Learning Pathways policy aimed at changing provision for learners between the ages of 14 and 19. The latter has six elements: 'individually tailored learning pathways; wider choice and

¹⁷ WAG, 'Proposals to change the structure of the NHS in Wales: Consultation Paper'. Downloadable from:

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

¹⁸ WAG, 'Consultation on proposed changes to NHS structure', WAG Press Release, 2 April 2008

¹⁹ Reported in anon 'Minister unveils NHS boards cull', April 2 2008. Downloadable from: <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7327153.stm>

flexibility; the learning core; support for learners through a learning coach; personal support and careers advice and guidance'.²⁰ The policy emphasises the need to meet individual learning needs. According to WAG, personal support aims to 'ensure access for all learners to services or people to support them in developing solutions to the personal, social, emotional and physical problems which become obstacles to them realising their potential'. Key policy objectives are to: reduce the number of young people leaving full time education with no qualifications; increase attendance, reduce exclusion and improve retention; and improve the numbers of those progressing to further learning (full-time or work-based) at 16 years. The government claims that the draft Measure is 'designed to ... ensure equality of opportunity in all key elements of Learning Pathways for learners in learning settings in Wales'.²¹

Building on pilots carried out in 42 schools, work is continuing towards the September launch of phase one of WAG's Foundation Phase policy for early years education (3-7 years). According to the government, this:

Places great emphasis on children learning by doing. Young children should be given more opportunities to gain first hand experiences through play and active involvement rather than by completing exercises in books... The emphasis will be on ... the development of skills and their application.²²

Initial details of the policy were set out in the strategy document 'The Learning Country' (2001), and it marks a potentially significant step in increasingly distinctive education policy framework applying in Wales. However, the cost of £107m related to higher staff-to-pupil ratios associated with the initiative has led the Welsh Local Government Association (WLGA) and Association of Directors of Education in Wales²³ to raise concerns over a funding shortfall. This follows a claim that that only £41m of the sum announced by the government is new money.²⁴ Referring to what has been seen as a tight budgetary settlement for local government one WLGA official said: 'There's a possibility if the Foundation Phase policy is funded in full there will be problems for other measures and there could be staff job cuts'. In response, education minister Jane Hutt AM asserted: 'We recognise that there is a need to

²⁰ WAG, 'A Fair Future for our Children', Cardiff, WAG. Downloadable from:

<http://new.wales.gov.uk/about/strategy/strategypublications/strategypublications/1133404/?lang=en>

²¹ WAG, 'Proposals for a Learning and Skills (Wales) Measure 2008', Cardiff, WAG. Downloadable from: <http://tinyurl.com/5yka8w>

²² See http://new.wales.gov.uk/topics/educationandskills/policy_strategy_and_planning/early-wales/foundation_phase/foundation_phase_faqs/?lang=en

²³ See www.wlga.gov.uk/english/adew/

²⁴ BBC Wales, 'Education scheme cash 'shortfall'', 21 January, 2008

http://news.bbc.co.uk/welsh/hi/newsid_7300000/newsid_7307500/7307506.stm

recruit 2,000 additional staff into these positions [teachers/classroom assistants]; the money's there ... and the skilled teachers and the support will come through'.²⁵

In January, WAG published details of updated subject orders forming part of the revised national curriculum in Wales. This will be implemented in stages from September.²⁶ According to WAG:

The purpose of these changes is to identify the skills for each subject and the range of contexts, opportunities and activities through which these skills should be developed and applied. The content has also been updated to ensure relevance to the twenty-first century and manageability for learners and teachers.

Accompanying these policy changes, the document Making the Most of Learning – Implementing the Revised Curriculum²⁷ sets out guidance in the following areas: focusing on the learner, planning learning and teaching and assessing learning. In a separate development, April saw the education minister announce publication of the strategy for developing school-based counselling services.²⁸ This will receive funding of £6.5m over the next three years. This policy development stems from a recommendation in the Children's Commissioner for Wales' 2004 Clywch Inquiry Report,²⁹ and is a commitment in the 2007 One Wales coalition government agreement.

In February the culture and heritage minister Rhodri Glyn Thomas AM (Plaid Cymru) announced that WAG would make available £600,000 in subsidy over three years for a new Welsh language news service. A recent review commissioned by Bwrdd yr Iaith Gymraeg (The Welsh Language Board) concluded that 'there is a pressing need to develop the sector to ensure its survival, although support for a daily newspaper would carry significant risks'.³⁰ Others have questioned whether the level of announced subsidy is sufficient to realise the plans for a Welsh language daily. In response, the culture minister pointed to the case of Northern Ireland where an Irish

²⁵ Interview broadcast on 'CF99' S4C television, 30 January, 2008

²⁶ Using its powers under Section 108 of the Education Act (2002)

²⁷ WAG, 'Making the most of learning – implementing the revised curriculum', page 2. Downloadable from: <http://tinyurl.com/52v2jh>

²⁸ WAG, 'School-based Counselling Services in Wales a National Strategy'. Downloadable from: <http://new.wales.gov.uk/topics/educationandskills/publications/guidance/counsellingservicesstrategy/?lang=en>

²⁹ 'Clywch: Report of the Examination of the Children's Commissioner for Wales into allegations of child sexual abuse in a school setting'. Downloadable from: www.childcom.org.uk/publications/clywch.pdf

³⁰ Welsh Language Board, 'A Review Of The Welsh Language Print Media: An Independent Review Commissioned From Dr Tony Bianchi'. Downloadable from: www.bwrdd-yr-iaith.org.uk/cynnwys.php?cid=&pid=109&nID=2845&langID=2

language paper has received £200,000 in state aid over three years. This, he said, 'proves that it can be done'.³¹ Also on Welsh language policy, following the Development Plan for a higher education network – The Federal College – to deliver Welsh-medium provision in universities that was announced in November 2007, WAG declared in February that £1.3m in funding would be made available via the Higher Education Funding Council for Wales for Welsh-medium postgraduate scholarships and academic fellowships. There was also a promise that 'further action in planning for the Federal College [is] to be published in 2008'.³²

Also in February the state education inspectorate, Estyn, published its annual report on education and training.³³ It concluded: 'Standards within most areas of education and training in Wales have improved over the past year, but the rate of improvement is slowing down in many sectors'.³⁴ In response, the Jane Hutt AM announced WAG's School Improvement Strategy.³⁵ According to the government, this offers:

vision and an implementation schedule for putting school effectiveness based on tri-level reform into action. Tri-level reform is the whole of the education community (schools, local authorities and the Assembly Government) working collaboratively and in alignment.

This 'systems thinking' approach is based upon work by Professor Michael Fullan,³⁶ and, according to the minister, it will 'very substantially address' concerns about lower performing schools raised by Estyn.³⁷ Lastly in relation to education policy, 9 April saw a constitutional milestone with the first Order in Council signed by the Queen. This gives the National Assembly powers to draft primary legislation for Wales to help people with additional learning needs.

1.4 Economy and Transport

In January 2008 the Assembly Government launched its draft skills and employment strategy 'Skills that Work for Wales'.³⁸ It also announced a consultation process on

³¹ S4C Television, Newyddion, 5 February 2008, 21.00

³² WAG, 'One Wales Delivery Plan 2007-2011, Chapter 5, (WAG: Cardiff 2008). Downloadable from: <http://new.wales.gov.uk/about/strategy/strategypublications/strategypubs/1walesdeliveryplan/?lang=en>

³³ ESTYN Annual Reports. Downloadable from: www.estyn.gov.uk/annual_report.asp

³⁴ 'Standards of Education and Training in Wales improve, but the rate of improvement is slowing down', Estyn Press release, 26 February 2008. Downloadable from: www.estyn.gov.uk/press_releases/pr186_01_Annual_report_06_07.pdf

³⁵ WAG, 'School Effectiveness Framework'. Downloadable from: <http://tinyurl.com/3q4m6f>

³⁶ See: www.michaelfullan.ca

³⁷ Quoted in A. Wightwick, 'Postcode lottery' of Welsh school success', February 27, 2008, Western Mail

³⁸ WAG, 'Skills That Work for Wales: A skills and employment strategy'. Downloadable from: http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/skillsthatwork/?lang=en

how to increase business-relevant skills levels and determine the future form and functioning of a Wales Employment and Skills Board.³⁹

Section 113 of the UK government's Local Transport Bill 2007-08 gives powers to the National Assembly in respect of the 'provision for and in connection with the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads'.⁴⁰ Whilst not ruling out the future introduction of road charging, the Minister for the Economy and Transport, Ieuan Wyn Jones AM (Plaid Cymru) stated: 'There's no prospect whatsoever of introducing charges on the existing network'.⁴¹ On economic development matters, in February, the minister said that: 'Businesses, especially in [what he termed] "unfashionable" areas had trouble in securing money before developing'. In response, he announced that WAG would be drawing on European Investment Bank funding in order to set up a £150m fund to support small businesses in deprived/rural areas.⁴² In respect of transport policy, on 15 April the Deputy First Minister laid before the Assembly the draft of the Learner Travel (Wales) Measure 2008. Inter alia, this will increase entitlement to school transport for young children. Underlining the complexity and shortcomings of the present devolution settlement, the draft Measure does not cover bus regulation and safety - both issues that were raised in its consultation phase⁴³ - because they currently fall outside the Assembly's powers. The minister has said he will be making 'the strongest possible case' for an LCO to gain the necessary powers in this area.

1.5 Environment, Sustainability and Housing

The coalition government's policy agenda One Wales committed WAG to: 'aim to achieve annual carbon-equivalent emissions reductions of 3 percentage points per year by 2011 in areas of devolved competence'. In March the cross-party Sustainability Committee published the first report of its Inquiry into Carbon Reduction in Wales.⁴⁴ The report's recommendations included the suggestion that

³⁹ WAG, Proposals for a Learning and Skills (Wales) Measure 2008

http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/learningskillsmeasure/?lang=en

⁴⁰ Downloadable from: <http://services.parliament.uk/bills/2007-08/localtransport.html>

⁴¹ 'Road pricing 'only on new roads', January 20, 2008. See:

<http://news.bbc.co.uk/1/hi/wales/7198652.stm>

⁴² Quoted in Anon, 'Hwb o £150m i fusnesau bach', 7 February 2008:

http://news.bbc.co.uk/welsh/hi/newsid_7230000/newsid_7232500/7232581.stm.

⁴³ WAG, Proposals for a Learner Travel (Wales) Assembly Measure:

<http://new.wales.gov.uk/consultations/closed/transclocons/learnertravel/?lang=en>

⁴⁴ The inquiry focuses on residential carbon reduction as well as carbon reduction by transport, industry, public bodies and electricity generation: www.assemblywales.org/generic_report_introduction.pdf

'building regulations are devolved to the Welsh Assembly Government as a matter of urgency in order that stricter energy efficiency measures can be implemented'.⁴⁵

In mid-February the Minister for Environment, Sustainability and Housing, Jane Davidson AM (Welsh Labour), launched WAG's Renewable Energy Route Map.⁴⁶

The minister asserted that:

Wales is fortunate to have considerable natural renewable energy resources, which if sensitively but extensively exploited could make Wales self sufficient in renewable electricity within 20 years, with half of this from marine, a third from wind and the rest from biomass and micro-generation.⁴⁷

Friends of the Earth Cymru responded, saying: 'We particularly welcome the commitment to raise the target for renewable energy, and the recognition of the key role that wind energy must play if we are to reach any targets at all'.⁴⁸ Consultation on the strategy closes on 13 May. On related matters, in March, WAG announced that it had completed agreements with three companies that will allow them to seek planning permission to develop wind farms in woodlands that are managed by Forestry Commission Wales⁴⁹ on behalf of the Assembly Government. In respect of agricultural policy, on 8 April the Rural Affairs minister, Elin Jones AM (Plaid Cymru), announced that Wales would be the first UK country to introduce badger culling in an attempt to reduce incidences of bovine tuberculosis (TB). According to WAG:

The incidence of TB has increased dramatically over the past decade with 7,905 cattle slaughtered in Wales because of the disease in 2007 compared with less than 700 in 1997. The cost of compensation has risen from £1.8m in 2000/01 financial year to £15.2m in 2007/08.⁵⁰

However, those opposed to the policy, including animal welfare charities, asserted that culling badgers goes against the conclusions of the UK government-appointed Independent Scientific Group on the matter.⁵¹

⁴⁵ National Assembly for Wales, 'Residential Carbon Reduction in Wales, 1st report of the Sustainability Committee's Inquiry into Carbon Reduction in Wales. Downloadable from:

www.assemblywales.org/sc_carbon_reduction_household_final_report_published_version.pdf

⁴⁶ WAG, Renewable Energy Routemap for Wales. Downloadable from:

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

⁴⁷ WAG, 'Route to low carbon future for Wales mapped out', press release 19 February 2008. See:

<http://new.wales.gov.uk/news/ThirdAssembly/Environment/2008/2137370/?lang=en>.

⁴⁸ Quoted in Anon, 'Clean, green' energy plans out', 19 February 2008, at:

<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7251549.stm>,

⁴⁹ www.forestry.gov.uk/wales

⁵⁰ WAG, 'Comprehensive Plan to eradicate bovine TB announced'. See:

<http://new.wales.gov.uk/news/presreleasearchive/2131604/?lang=en>

⁵¹ www.rspca.org.uk

1.6 Equalities

Following on from the 2004 cross party Mainstreaming Report,⁵² a critical evaluation of WAG's approach to equalities and developments in the law on equalities such as the gender equality duty in the Equality Act (2006), in February WAG published its 'Inclusive Policy Making Tool'.⁵³ This is designed to assist policymakers in considering equality and human rights when developing or revising public policy. According to WAG: 'It will help to identify how a new or revised policy could affect people in different ways (intentionally or unintentionally) and what action is needed to remove any adverse effects'. The policy tool focuses on: age, disability, faith/religion, gender, race, sexual orientation and human rights. Worryingly, it does not refer to the Welsh language.

In December 2004 WAG commissioned research on the accommodation needs of Gypsy-Travellers in Wales in order to inform future policy development.⁵⁴ This stemmed from a series of recommendations in the National Assembly's cross-party Equality of Opportunity Committee's report 'Service Provision for Gypsies and Travellers'. In furtherance of policy in this area, in March Social Justice Minister, Brian Gibbons AM (Welsh Labour), announced grant funding of £1.5m in 2008/09 in order that local authorities can set up new Gypsy Traveller sites in Wales. The announcement follows the £1.7m refurbishment grant scheme for Gypsy Traveller sites that was launched last December.

1.7 Social Justice and Public Service Delivery

The National Assembly adopted the Wales Spatial Plan in 2004. It sets out an economic development agenda for the next 20 years. The past quarter has seen public consultation on WAG's 'Wales Spatial Plan Update 2008: People Places Futures'.⁵⁵ The aim of the policy is:

Making sure that decisions are taken with regard to their impact beyond the immediate sectoral or administrative boundaries; [and] that there is co-ordination of investment and services through understanding of roles and interactions between places.

⁵² National Assembly for Wales, 'Report on Mainstreaming Equality in the work of the National Assembly - LD3118'. See www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=18572&ds=2006/6

⁵³ WAG, *Inclusive Policy Making Guidance*, at: <http://new.wales.gov.uk/topics/equality/publications/inclusivepolicy/?lang=en>

⁵⁴ WAG, *Accommodation needs of Gypsy-Travellers in Wales* See: <http://new.wales.gov.uk/topics/housingandcommunity/research/accomneedsgypsy/?lang=en>

⁵⁵ WAG, *People, Places, Futures: The Wales Spatial Plan 2008 Update Consultation*. See: <http://wales.gov.uk/about/strategy/spatial/news/january2008/?lang=en>

The consultation process closed on 24 April and WAG will publish its response later in the year.

In March WAG published the results of a survey that asked 7,500 households in Wales about their experience of 10 public services, including education, health and local government. This revealed that between 70-90 per cent of the Welsh public had positive views about the public services that they use.⁵⁶ However, the survey also revealed concerns over the accessibility of information about services and the standard of complaint handling. On other matters, 'Tackling Domestic Abuse: the All Wales Strategy' was published in March 2005.⁵⁷ In February, Brian Gibbons announced the extension of policy on domestic abuse with the launch of a helpline set up to assist male victims of domestic violence. The Dyn Cymru helpline⁵⁸ is funded by WAG and will provide basic support and information to heterosexual, gay, bisexual, and transgender men who experience domestic abuse.

1.8 Conclusion

The past quarter is characterised by a series of new policy outputs by the coalition government and, in a UK context, evidence of distinctiveness in Welsh policymaking (e.g. the Epilepsy Care Plan, the phased abolition of NHS Wales car parking charges, Learning and Skills (Wales) Measure 2008 etc). The April publication of the One Wales Delivery Plan provides some detail on the progress made against the coalition government's 228 policy commitments for the third Assembly.

The past months have also seen the government trying to reconcile its ideological commitment to locally-based management in the public sector with the need to secure efficient administrative structures. Thus the proposals for 8 new Local Health Boards to replace the existing 22 represents a potential U-turn and offers the prospect of further major structural upheaval in NHS Wales just five years after the abolition of local health authorities. On other matters, it is noteworthy that reports by the Children's Commissioner for Wales have acted as a spur to policy development over the past few months (e.g. in relation to advocacy services for children and young people and in-school counselling support). Finally, as noted, the publication of

⁵⁶ WAG, 'Living in Wales Survey'. See:

<http://wales.gov.uk/topics/improvingservices/peoplefirst/research/surveyresults06/?lang=en>

⁵⁷ WAG, 'Tackling Domestic Abuse: The All Wales National Strategy'. See:

<http://new.wales.gov.uk/topics/housingandcommunity/safety/publications/domesticabusestrategy?lang=en>

⁵⁸ The Dyn Prosiect/Y Cynllun Dyn. See: www.allwalesunit.gov.uk/media/pdf/e/3/Dyn_Wales_-_Dyn_Cymru_Helpline_Summary.pdf. Tel: 0808 801 0321

the report of the Establishing Committee of the All-Wales Convention offers the prospect of progress towards securing a positive referendum result to create a Welsh parliament – an outcome that will deliver a constitutional settlement more in line with the principles of good governance. As such, this represents an opportunity to secure a major advance over the present opaque, incremental and complex policymaking arrangements based on the provisions of the Government of Wales Act 2006.

2. The Legislative Process

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2.1 Primary Legislation:

There have only been 3 UK Acts passed so far in 2008. None of these has given powers to the Assembly or to the Welsh Ministers, and there has been an observable slow down in the number of powers devolved to the Welsh Ministers and the Assembly in Wales.

2.1.1 *Acts giving powers to the Welsh Ministers or the Assembly*

None.

2.1.2 *Bills introduced in Parliament affecting the powers of the Welsh Ministers or of the Assembly:*

There have been no new Bills since December 2007 proposing to give powers to the National Assembly for Wales or the Welsh Ministers.

The increasing number of proposals for LCOs conferring new powers on the Assembly could explain the fall in primary legislation achieving the same. Nonetheless, it is surprising to see bills in supposedly devolved areas that do not give legislative powers to the Assembly in Wales. For example, both the Health and Social Care Bill and the draft Marine Bill give only executive powers directly to the Welsh Ministers. The Football Spectators and Sports Grounds Bill 2007-08 gives no powers to Wales at all. Consequently, opportunities for legislative devolution are being missed.

Therefore, it can be inferred that devolution under the new system remains highly pragmatic, and the devolution of powers, and their form (legislative and/or executive), depends on each particular bill. Significantly, it also appears that an equivalent to the Sewel Convention does not apply to Wales.

2.2 Parliamentary consideration of proposals for LCOs⁶⁰:

So far the Secretary of State has agreed that four proposals for LCOs be presented to Parliament for pre-legislative scrutiny and/or an affirmative resolution procedure.

⁵⁹ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk

⁶⁰ For vocabulary in relation to 'proposed' and 'draft' LCOs see below paragraph 4.1. I refer to proposals for LCO as a generic term as the two others terms have precise procedural legal definitions.

Of note is the pre-legislative and legislative procedure through which the first two LCOs passed. This involved pre-legislative scrutiny by the Commons Welsh Affairs Select Committee (WASC) and Lords Constitution Committee, followed by debates in Commons delegated legislation committee and on the floor of the House of Lords. A further novelty was the joint scrutiny conducted by WASC and an Assembly Committee.

2.2.1 House of Commons' Pre-legislative Scrutiny:

The National Assembly for Wales (Legislative Competence) (Education and Training) LCO:

Two House of Commons committees scrutinised the first proposal for an LCO on children with special needs: the Welsh Affairs Select Committee at the pre-legislative scrutiny stage; and a delegated legislation committee⁶¹ chaired by Hywel Williams at the affirmative resolution procedure stage.

National Assembly for Wales (Legislative Competence) (No 4) Order 2008 (Domiciliary Care)

The first joint committee meeting between WASC and the Assembly⁶² took place on 17 January in Cardiff. The joint committee was composed of: Dr Hywel Francis MP in the Chair; Mrs Siân C. James MP; Hywel Williams MP; Joyce Watson AM; Peter Black AM; Irene James AM; Dai Lloyd AM; and Jonathan Morgan AM. At the end of the meeting it was decided that the two committees 'will be meeting separately on 31 January to take further evidence in connection with this proposed Order'.⁶³

WASC published its report on the proposal for the LCO on 5 March,⁶⁴ making a handful of drafting changes which did not appear in the final draft of the order.

The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (previously entitled the National Assembly for Wales (Legislative Competence) (No.3) Order 2007).

⁶¹ Draft National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008: www.publications.parliament.uk/pa/cm200708/cmgeneral/deleg6/080318/80318s01.htm

⁶² Minutes of evidence taken before Welsh Affairs Committee (enlarged by the proposed domiciliary care LCO Committee, National Assembly for Wales):

www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/uc257-i/uc25702.htm

⁶³ Ibid.

⁶⁴ 'Welsh Affairs- Fourth Report':

www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/257/25702.htm

WASC is currently calling for evidence on the proposed LCO. A second joint committee scrutiny of the LCO is to take place on 5 May. It remains to be seen if this joint form of pre-legislative scrutiny will become the normal form of such scrutiny for every proposed LCO in the future.

2.2.2 Welsh Affairs Select Committee Scrutiny:

In order for WASC to be involved in scrutinising a proposed LCO at the pre-legislative scrutiny stage, the procedure adopted is that the Secretary of State for Wales must send it a letter inviting the committee to do so. There are currently two proposed LCOs waiting to be referred to Parliament by the Secretary of State for Wales:

- National Assembly for Wales (Legislative Competence) (No.2) Order 2007 (Environmental Protection and Waste Management)
- National Assembly for Wales (Legislative Competence) (No.5) Order 2008 (Affordable Housing)

The proposed Environmental Protection and Waste Management LCO will be redrafted to reduce its scope and remedy the legal uncertainties it would currently create. The new draft will need to be debated and approved in the Assembly before being submitted to the Secretary of State for Wales and Parliament.

The proposed affordable housing LCO has proven politically controversial and it will be very interesting to follow its developments in the future.

2.2.3 House of Lords Scrutiny:

The pre-legislative scrutiny by the House of Lords of proposed LCOs has so far been very straightforward and unproblematic. The Constitution Committee is considering all the draft LCOs for the House of Lords and so far as found that no LCO raised 'matters of constitutional principle'.

2.2.4 First LCO made by the Queen

The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 was made on 9 April 2008.⁶⁵ This is the first Legislative Competence

⁶⁵ Available at: www.opsi.gov.uk/si/si2008/uksi_20081036_en_1.

Order to be made. It completed its process in 10 months and the timetable for the Order making was summarised as follows by the Wales Office:⁶⁶

- Proposed Order published in National Assembly for Wales 11/6/07
- National Assembly for Wales Committee report laid 28/11/07
- House of Lords Constitution Committee considered the Order 4/12/07
- Welsh Affairs Committee report published 21/12/07
- Draft Order approved by National Assembly in plenary 5/2/08
- Draft Order approved by House of Lords 12/3/08
- Draft Order approved by House of Commons 18/3/08
- Order approved by Her Majesty in Council 9/4/08

It remains to be seen if future proposals for LCOs will go through the process faster. There are already clear indications that some will definitely take much longer if, for example, the Secretary of State for Wales waits a while before inviting WASC to start its pre-legislative scrutiny, or if committees in the Assembly or in Parliament take longer for their scrutiny.

2.3 The Secretary of State for Wales' review of the LCO process:

As discussed in previous monitoring reports, the Secretary of State for Wales has a major administrative and statutory role in the LCO procedure. According to the *Western Mail*, the new Welsh Secretary Paul Murphy announced that he will carry out an informal review of the entire LCO process.⁶⁷ It will be interesting to see how this initiative develops and what conclusions it reaches.

2.4. Law made in Wales

A comprehensive new Assembly webpage to track Welsh LCOs and Measures:

The Assembly's website now includes an important new page that shows all the legislative instruments with which the Assembly is currently involved, be they LCOs or measures. It also offers a free electronic update service providing details of which stage in the legislative process each of these has reached.⁶⁸ The Assembly should be congratulated for this initiative; it is exactly what was needed in order that the public be able to follow the legislative process ushered in by the Government of Wales Act 2006. The great value of this page is that it is the only place where details

⁶⁶ Wales Office News Release, 'Paul Murphy hails historic day for Welsh devolution', (9 April 2008): www.walesoffice.gov.uk/2008/04/09/paul-murphy-hails-historic-day-for-welsh-devolution/

⁶⁷ T. Livingstone, 'Murphy to examine transfers of power', *Western Mail*, (12 March 2008)

⁶⁸ Available at: www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm.

can be found of both the scrutiny carried out by Westminster and the scrutiny undertaken by the Assembly. The page also provides links to various relevant documents.

So far, one LCO has been passed and there are ten proposals for others, including six 'proposed LCOs' introduced before the Assembly. There have been eight draft Measures so far, including three formally introduced before the Assembly.

2.4.1 Legislative Competence Orders:

In order to understand the procedure for an LCO it is important to distinguish its two main phases:

- At the pre-legislative scrutiny stage, i.e. before it is approved by plenary and while amendments are permitted, it is called a 'proposed LCO'
- At the scrutiny stage in the Assembly, i.e. before a second vote in plenary, it is called a 'draft LCO'; there is no further possibility of amendment.

Every LCO starts as a 'proposed LCO', then it becomes a 'draft LCO' and finally becomes an LCO made by the Queen on the advice of Her Privy Council after following the affirmative resolution procedure in Westminster.

The Assembly refers to a 'Revised LCO' if at the end of the pre-legislative scrutiny stage modifications have been suggested to the proposed LCO. A revised LCO still needs to be approved by plenary before it can proceed to the next stage in the Assembly as a draft LCO to be formally approved by the Assembly in plenary at this second stage. It is subsequently sent to the First Minister, who sends it on to the Secretary of State for Wales to lay before Parliament for the affirmative resolution procedure.

Hereon, 'proposals for LCOs' is used as a generic term to describe LCOs at any stage. Figure 2.1 shows the stages reached by each LCO proposal, with that reached by the end of April 2008 in italics. The first column shows the order in which they were so introduced.

Figure 2.1: Proposals for Legislative Competence Orders

| LCO No. | Source | Purpose | Status |
|----------------|----------------------------------|---|--|
| 1 | WAG | Additional learning needs | Made on 9 April <i>In Force</i> |
| 2 | WAG | Environmental protection and waste management | Pre-legislative scrutiny by Committee in Cardiff: completed <i>Being Redrafted</i> |
| 3 | WAG | Vulnerable children | Pre-legislative scrutiny: completed by Committee in Cardiff Report: January 2008 >Revised Order <i>WASC pre-legislative scrutiny</i> Joint pre-legislative scrutiny WASC / Assembly |
| 4 | WAG | Domiciliary care | Pre-legislative Scrutiny Committee: completed report March 2008 Joint pre-legislative scrutiny WASC/Assembly WASC Pre-legislative Scrutiny: completed report March 2008 <i>Draft LCO to be laid</i> |
| 5 | WAG | Affordable housing | <i>Pre-legislative Scrutiny Committee: to report at end April</i> |
| 6 | AM- Ballot 2 Jonathan Morgan | Mental health reform. | Pre-legislative scrutiny by Committee in Cardiff Committee to report |
| 7 | AM- Ballot 1 Ann Jones | Domestic fire safety | Pre-legislative scrutiny by Committee in Cardiff <i>Committee to report</i> |
| 6 | AM- Ballot 2 Jonathan Morgan | Mental health reform. | Pre-legislative scrutiny by Committee in Cardiff Committee to report |
| N/A | WAG | Welsh language | <i>Being negotiated with Whitehall</i> |
| N/A | AM- Ballot 3 Helen Mary Jones | Carers | Leave to introduce draft granted. <i>Being drafted</i> |
| N/A | AM- Ballot 4 Huw Lewis | Bus and coach services | Leave to introduce draft to be granted. |
| N/A | AM- Ballot 5 Peter Black | Local government electoral arrangements | <i>Leave to introduce draft to be granted.</i> |

New 'Proposed LCOs:

The two new proposed LCOs since the last report are:

- The National Assembly for Wales (Legislative Competence) (No.6) Order 2008 (Relating to the Provision of Mental Health Services)⁶⁹, laid on 18 February 2008. Its effect would be as follows:

The following Matter be inserted under Field 9 Health and Health Services in Schedule 5 to the *Government of Wales Act 2006* to enable the Assembly to legislate on this issue by way of an Assembly Measure:

Provision for and in connection with:

- a) the assessment by the health service in Wales of persons who are or may be mentally disordered persons,
- b) duties on the health service in Wales to provide treatment for mentally disordered persons,
- c) independent mental health advocacy for persons who are or may be mentally disordered persons.

This matter does not include assessment of, treatment or advocacy for persons detained, liable to be detained or liable to recall under the Mental Health Act 1983 (or any statutory modification or re-enactment thereof).

- The National Assembly for Wales (Legislative Competence) (No.7) Order 2008 (Relating to Domestic Fire Safety)⁷⁰ was laid on 20 February 2008. Its text notes:

The LCO would add the following matter to field 11 of Schedule 5:

Matter 11.1

Provision for and in connection with a requirement that a sprinkler system be installed in new residential premises.

Interpretation of this Matter

'New residential premises' means –

- (a) premises constructed for residential use;
- (b) premises converted to residential use;
- (c) premises converted to use as a single residence by physical subdivision of one or more existing residential premises; and
- (d) premises converted to use as a single residence by physical incorporation of more than one existing residential premises.

A 'sprinkler system' means any automatic fixed system intended to extinguish control or contain fires by means of water propelled under

⁶⁹ National Assembly for Wales (Legislative Competence) (No.6) Order 2008 (Relating to the Provision of Mental Health Services): www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2008-6.htm

⁷⁰ National Assembly for Wales (Legislative Competence) (No.7) Order 2008 (Relating to Domestic Fire Safety): www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2008-7.htm

pressure through pipework and spray heads which operate when a predetermined temperature is reached.⁷¹

New proposals for LCOs:

There is another WAG proposal for an LCO relating to the Welsh Language in the pipeline. The Assembly's website indicates that it has not been published yet but that it is expected to be published in draft before the summer recess. As discussed below, individual AMs have also proposed a number of LCOs following the regular Members' ballots.

The redrafting of LCOs:

The Assembly Standing Orders make provision for a 'reconsideration stage' of a proposed LCO if amendments are required following the pre-legislative scrutiny stage. So far, the pre-legislative scrutiny process has meant that two Proposed LCOs will have to be redrafted: LCO No. 2 on the environment; and LCO No. 3 on vulnerable children. While there is no sign yet of a redraft of LCO No. 2, LCO number 3 has been redrafted and renamed a 'revised LCO'. This shows the extent of the amendments which can be made to proposed LCOs, which can include the redrafting of existing proposed Matters and the inclusion of new fields and new matters.

The proposed amendments to LCO No. 3 are quite impressive in their extent and consequences. The revised LCO proposes to amend three fields at the same time and this is indicated in the LCO's new title: The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.⁷²

The revised LCO proposes to amend Field 5 Education and Training, Field 15 Social Welfare and Field 16 Sport and Recreation. It inserts a Matter 5.18 to Field 5: education:

Matter 5.18

The provision of any of the following for children or young persons—

- (a) facilities for social or physical training;
- (b) educational activities.

In this matter "children" and "young persons" have the same meaning as in field 15.'

It inserts seven Matters to Field 15 Social Welfare

⁷¹ Member Proposed Legislative Competence Order: Domestic Fire Safety Draft Explanatory Memorandum, Paragraph 33 of Explanatory Notes to the LCO: <http://tinyurl.com/3grss6>

⁷² The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008: <http://tinyurl.com/48gm5l>

Matter 15.1

Functions of public authorities relating to—

- (a) safeguarding children from harm and neglect;
- (b) safeguarding and promoting the well-being of vulnerable children;
- (c) reducing inequalities in well-being between children or young persons.

This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.

Matter 15.2

Adoption services and special guardianship support services.

Matter 15.3

Fostering.

Matter 15.4

Social care services for any of the following—

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after—
 - (i) who have attained the age of 25, and
 - (ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

Matter 15.5

Co-operation and arrangements to safeguard and promote the well-being of children or young persons.

This matter applies to—

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;
- (b) police authorities and chief officers of police for police areas in Wales;
- (c) the British Transport Police Authority;
- (d) local probation boards for areas in Wales;
- (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
- (f) youth offending teams for areas in Wales;
- (g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
- (h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

Matter 15.6

Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

Matter 15.7

Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; the functions of such an office or body, including in particular—

- (a) reviewing the effect on children or young persons of the exercise by any person of functions related to their well-being;
- (b) reviewing and monitoring—
 - (i) advocacy services;
 - (ii) arrangements for dealing with complaints and representations made by, or on behalf of, children or young persons in respect of persons with functions related to their well-being or persons providing them with social care services;
- (c) examining cases of particular children or young persons;
- (d) considering, and making representations about, any matter affecting the well-being of children or young persons.⁷³

It inserts one Matter to the Field 16: Sport and Recreation:

Matter 16.1

The provision of recreational facilities and activities for children and young persons.

In this matter “children” and “young persons” have the same meaning as in field 15.

This is the first case of a single LCO amending three different fields at the same time. Once again, it will be fascinating to follow the development of this ‘revised LCO’ and of this approach in the drafting of proposed LCOs. The revised LCO is now being scrutinised by WASC in London before it can become a draft LCO after approval by plenary. This will be developed in September’s *Wales Devolution Monitoring Report*.

The redrafting also simplified the Table of Exceptions at the end of Schedule 5. What the proposed order offers is a table of exceptions per subject field, which is much more comprehensive. For any given list of devolved Matters there is a corresponding list of exceptions to be read in conjunction. This is a much more intuitive way of setting out Matters and their exceptions in a comprehensive manner.

The involvement of Civic Society in LCOs:

Civil Society continues to engage with the LCO process, providing evidence in both written and oral form. T

⁷³ Ibid.

Figure 2.2: Civil Society Responses to Legislative Proposals

| LCO Number | Source | Purpose | Civil Society Responses |
|------------|----------------------------------|---|-------------------------|
| 1 | WAG | Additional Learning Needs | 14 responses |
| 2 | WAG | Environmental Protection and Waste Management | 10 responses |
| 3 | WAG | Vulnerable Children | 23 responses |
| 4 | WAG | Domiciliary Care | 20 responses |
| 5 | WAG | Affordable Housing | 12 responses |
| | WAG | Welsh Language | 11 responses |
| 7 | AM- Ballot 1 Ann Jones | Domestic fire safety. | Consultation still open |
| 6 | AM- Ballot 2 Jonathan Morgan | Mental Health reform. | Consultation still open |
| | AM- Ballot 3 Helen Mary Jones | Carers. | N/A |
| | AM- Ballot 4 Huw Lewis | Bus and Coach Services | N/A |
| | AM- Ballot 5 Peter Black | Local Government Electoral Arrangements | N/A |

2.4.2 Draft Measures so far:⁷⁴

Three Measures have been proposed so far by the Welsh Assembly Government. These relate, respectively, to NHS Redress, Learner Travel, and Learning and Skills (specifically, on the 14-19 curriculum). The first two have been introduced and received support in principle, while the third was undergoing consultation.

In addition, a total of five Measures have been proposed by individual AMs. These are on the subjects of: healthier school meals (introduced by Jenny Randerson, Liberal Democrat); School Closures (Mike German, Liberal Democrat); Impact Assessments for the Selling off of Playing Fields (Dai Lloyd, Plaid Cymru); Recycling (Nerys Evans, Plaid Cymru); and Youth Services (Peter Black, Liberal Democrats). Of these only the first, on healthier school meals, had been agreed to on principle by the time of writing. Mike German's Draft Proposed School Closures (Consultation and Categories) Measure was rejected, while the other three were yet to be introduced.

⁷⁴ Full details of all proposed Measures can be found at: www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm

2.4.3 Assembly Ballots⁷⁵:

There were two more rounds of Assembly Member Ballots since the last *Wales Devolution Monitoring Report*, on 20 February and 16 April 2008.

LCO Ballots

The first LCO Ballot was won by Huw Lewis AM, who was thus able to introduce a 'proposed LCO' relating to bus and coach services in Wales.⁷⁶

The second LCO Ballot was won by Peter Black AM, whose draft LCO related to local government electoral arrangements.⁷⁷

Measure Ballots:

The first Measure Ballot was won by Nerys Evans AM, whose draft Measure related to Recycling.⁷⁸

The second Measure Ballot was won by Peter Black, whose draft Measure related to Youth Services.⁷⁹

2.4.4 Private Member Measures

No new drafts published since last report.

2.4.5 Assembly Members bids for future ballots:

Thus far, there have been many fewer proposals for Measures than for LCOs entered into the ballots. There were only two proposals for Measures in the last ballot, giving a 50 per cent chance of success. Meanwhile, there were 16 names in the hat for the LCO ballot with a total of 11 different proposals. The full list of entries made by AMs so far is available on the Welsh Assembly website.⁸⁰

⁷⁵ 'First AMs get chance to pass new laws': www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=53476&ds=7/2007

⁷⁶ Proposed Provision of Bus and Coach Services Legislative Competence Order, at: <http://tinyurl.com/44hb8w>

⁷⁷ Proposed Local Government Electoral Arrangements Legislative Competence Order, at: <http://tinyurl.com/4b55sn>

⁷⁸ Proposed Recycling Measure www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots/business-measures-ballot-26-06-07/business-measures-mb-31.htm

⁷⁹ Proposed Youth Services Measure www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots/business-measures-ballot-26-06-07/business-measures-mb-23.htm

⁸⁰ Available at: www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots.htm

2.5 The All Wales Convention

The Establishing Committee for the All Wales Convention met between December 2007 and March 2008 before publishing its report in which the intended remit of the Convention, when it begins operation in the summer, was described as follows:

Broadly, we expect that the Convention will inform the Welsh public about the powers currently available to the Assembly (or ' the system of government in Wales') and also assess the implications of moving towards full law making powers, considering the arguments for and against a move in this direction.

The Convention will aim to give the widest possible cross section in Wales, the opportunity to share their views on this subject, so that the question of full law making powers can be explored thoroughly with a full appreciation of people's views and concerns.⁸¹

The First Minister and Deputy First Minister accepted the recommendations in the report, and will outline in due course what steps need to be taken to implement those recommendations. The setting up of the Convention was a commitment made as part of the One Wales agreement between Labour and Plaid Cymru in summer 2007. Its purpose is to create a national debate on full law-making powers for the National Assembly and assess the levels of support for any future referendum.⁸²

⁸¹ WAG Wales Convention: <http://new.wales.gov.uk/about/strategy/allwalesconvention/?lang=en>

⁸² 'Plans for all-Wales convention signed off':
<http://new.wales.gov.uk/awcsub/awchome/newsandevents/news/pressreleases/signedoff/?lang=en>

3. Economic development and the Budget

Professor Peter Midmore, University of Wales Aberystwyth

3.1 Introduction

While the Assembly Government's economic development strategy (*Wales: A Vibrant Economy*⁸³) was constructed during the previous administration, it continues to serve as an analytic foundation and a strategic perspective for the One Wales coalition agreement. Its main objectives focus on closing the gross value added (GVA) per capita gap between Wales and the rest of the United Kingdom, firstly by increasing the participation of the working age population in the labour market, and secondly by improving the quality of employment so that the earnings of those in work improve. Much of the preoccupation of Assembly transactions relating to economic development revolved around the latter. In plenary session, there was an opposition debate on the continuing relative decline of GVA against overall UK performance. The Enterprise and Learning Committee (which embraces scrutiny of both economic development and education) neatly covered both of its major responsibilities by continuing work on a review of the economic contribution of higher education in Wales, and also considering the Assembly Government's proposals for a skills and employment strategy, where responsibility is shared with the UK Government. In relation to Assembly Government spending, plans were marginally revised through the approval of a supplementary budget motion to approve changes before the end of the financial year.

3.2 The relative performance of the Welsh economy

The Office for National Statistics produced its annual estimates of Gross Value Added (GVA) for Wales in December 2007; at a provisional £14,396 per head in 2006, it was 77.3 per cent of the United Kingdom average, the lowest of all regions, and a slight decline relative to 2005.⁸⁴ This continued poor performance of the measure provided the occasion for a plenary debate on a Conservative-proposed motion to note concern; since a target of 90 per cent of the UK average GVA was set by the initial Labour administration in Wales, this has been a continual and well-rehearsed theme of opposition debate. In essence, the Conservative argument was

⁸³ WAG, *Wales: A Vibrant Economy, The Welsh Assembly Government's Strategic Framework for Economic Development*, (November 2005). See http://new.wales.gov.uk/docrepos/40382/4038231141/403821124153/wave_en.pdf?lang=en.

⁸⁴ *Regional, sub-regional and local gross value added*, National Statistics First Release, 14 December 2007, www.statistics.gov.uk/pdfdir/gva1207.pdf.

that lack of urgency in supporting the private sector had delayed productivity improvements, and the heavy reliance on public sector employment in Wales would be increasingly difficult to sustain in the more challenging economic circumstances to come over the next few years.

Amendments were proposed by both the governing coalition and the Liberal Democrat group. The former reversed the sense of the motion, and congratulated the One Wales government on its economic development, transport infrastructure and skills and employment strategies (particularly with the aim of increasing employment of working age people to 80 per cent of the total); the latter wanted to refocus economic development support on small and medium sized companies, and extend broadband quality and availability.

In fairness, the size of the reduction in proportionate GVA per head in Wales between 2005 and 2006 was miniscule and far less than in previous years, so that within the limits of statistical error, as the government suggested, the position may indeed have been stabilised. However, even though Ieuan Wyn Jones noted that other indicators (employment, unemployment rates and exports) were all positive, the uncomfortable fact remains that if overall GVA per head is static, then the other ingredients in the recipe (particularly productivity and the evenness with which incomes are distributed in the working population) must have deteriorated. Alun Cairns attempted to exploit any potential discomfiture, recalling that Plaid Cymru Members must defend 'everything that they criticised leading up to the Assembly elections'.⁸⁵ Whilst the tone of debate was more measured than on previous occasions, the desire to extract maximum political advantage was still evident within each of the party groupings.

3.3 The economic contribution of higher education in Wales

Skills, innovation and competitiveness are the key themes of economic development policy within the EU; its Lisbon Strategy, agreed in 2000 and re-launched at the Gothenburg in 2005, identifies knowledge infrastructure and continuous learning as vital elements in promoting economic transformation. It is of particular relevance in Wales, since the Convergence Programme focusing on the West Wales and the Valleys region is governed by the Lisbon Strategy. This aims (among other things) to:

⁸⁵ Assembly Record of Plenary Proceedings, 23 January 2008, p. 111. See: www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=71961&ds=1/2008

increase employment rates; encourage innovation, information technology, research and development; and provide greater support to small businesses. The role of higher education institutions in contributing to these goals throughout Wales are the subject of the current, ongoing inquiry, which began in November 2007.

The Enterprise and Learning Committee's terms of reference are to consider: the engagement of higher education with business; their impact on their local and regional economies (particularly through use of European Structural Funds); embedding of entrepreneurship in educational programmes; improvement of skills (including collaborations with further education); and wider impacts including community work, cultural contributions, student and graduate mobility and improving access and participation.⁸⁶

According to Universities UK, the indirect and induced impact of universities on incomes in the economy as a whole is almost one and a half times their direct impact; on employment, it is responsible for about as many jobs outside of universities as those which exist within it.⁸⁷ However, although higher education is itself relatively big business within Wales, the main focus of attention is not on the impacts of direct spending, but the contribution it makes to the quality of the business environment through the creation of knowledge and its transfer to the regional economy.

Over the course of the Spring session of the Assembly, the Enterprise and Learning Committee took evidence from the Universities of Cardiff, Swansea, Aberystwyth, UWIC, Newport, Lampeter, Trinity College Carmarthen, the Open University, and the National Union of Students. All of the conventional higher education establishments emphasised their spending impacts, their contribution to the supply of skilled workers to the economy, the application and commercialisation of high technology expertise in terms of spin-off activities (particularly through the Assembly Government funded programmes, the Knowledge Exploitation Fund and Knowledge Technology Partnerships), and their cultural importance. The newer universities and Trinity College made more of directly commercially-relevant consultancy, and also more of their impact on domestic students, through reaching out to marginal groups

⁸⁶ Enterprise and Learning Committee (28 November 2007). See www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=66645&ds=11/2007.

⁸⁷ University of Strathclyde, *The Economic Impact of UK Higher Education Institutions*, report for Universities UK, London, 2006.

traditionally under-represented in higher education. The evidence of the Open University concentrated exclusively on this function. The student evidence, and a separate paper from Dylan Jones-Evans,⁸⁸ emphasised the importance of embedding entrepreneurship within university education in order to promote the skills necessary to develop innovative and rapidly growing new business activity.

Perhaps it is unsurprising that higher education representatives should dwell entirely on the positive dimension. While most committee members seemed somewhat in awe of the senior academics marshalled by each institution to tell them how good they were, only Kirsty Williams asked the obvious questions (in this instance in relation to supporting entrepreneurship and spin-out activities):

... the Welsh Assembly Government has already chucked a bucketload of money at this but that we have not received value for money on what was spent in previous years. Given that we have already spent loads of money that has not resulted in masses of businesses being created ... why would this committee want to recommend your idea that we should chuck even more money in?⁸⁹

In a later session she continued:

... What has struck me as slightly curious as we have gone along is that every educational institution that has come before us to date... talks about its wonderful links with industry and how much the institution is contributing to individual businesses. Yet, the representatives of business that have come before this committee have been critical, and, in the case of the Federation of Small Businesses, highly critical, of the ability of academic institutions ... to truly understand the problems of business and engage in a way that is useful to them.⁹⁰

In fact, only evidence from Swansea University ventured a critique of constraints on enhanced contribution by the higher education sector to economic development in

⁸⁸ National Assembly for Wales, 'Evidence to the Committee inquiry into the economic contribution of higher education - Cardiff University'. See www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=70357&ds=1/2008.

⁸⁹ Record of Plenary Proceedings, Enterprise and Learning Committee, 23 January 2008, p. 14. See: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=72628&ds=1/2008

⁹⁰ Record of Plenary Proceedings, Enterprise and Learning Committee, 20 February 2008, p. 13. See: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=76490&ds=2/2008

Wales. Their evidence⁹¹ suggested that while the higher education sector was performing well in terms of providing skilled graduates, collaborating in research with industry, and capitalising on its expertise commercially, it was not effective on a strategic level. To improve its performance, it should be attracting and anchoring companies into high-tech clusters, particularly through creation of science park jobs. The barriers to achieving this were the relatively small size of Welsh universities and a consequently lower critical mass of research quality, an adverse subject mix (for instance, only small proportions of engineering and medicine), and fragmented, disjointed and over-managed funding support for knowledge transfer in Wales.

The role of higher education in achieving improved productivity and wage levels is part of a broader process of examining skills development across the labour force; in that respect, collaboration with its poor relation, further education, in order to improve economic performance is also part of the review. Further education colleges provide foundation degrees which, to an extent, overlap with university provision, and in future sessions the Enterprise and Learning Committee will engage more directly with these questions. It is anticipated that the report of the inquiry will be completed before the Assembly's summer break.

3.4 The Skills That Work for Wales strategy

Sir Adrian Webb chaired an independent review of the further education sector, which published its report in December 2007.⁹² Following this, and recognising the relatively poor skill status of the Welsh labour force, the Assembly Government published a consultation on its skills strategy.⁹³ In view of its terms of reference and on-going work on the higher education inquiry, the Enterprise and Learning Committee discussed a response to the consultation, and the strategy itself was debated in plenary session.

In brief, *Skills That Work for Wales* proposes refocusing the resources for vocational training and business support on targeted skills, with financial contributions from

⁹¹ National Assembly for Wales, 'Inquiry into the Economic Contribution of Higher Education in Wales', written evidence by Swansea University. See: <http://tinyurl.com/3o36hn>

⁹² *Promise and Performance: Report of the Independent Review of the Mission and Purpose of Further Education in Wales in the Context of the Learning Country* (The Webb Review), Cardiff: Welsh Assembly Government, 2007. See: <http://wales.gov.uk/topics/educationandskills/educationskillsnews/promise-and-performance-review?lang=en>

⁹³ *Skills That Work for Wales: A skills and employment strategy*. Cardiff: Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government, 2007. See: http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/skillsthatwork/?lang=en

businesses (and possibly individuals). It would make provision more demand-led, relying on Sector Skills Councils to provide guidance, and reform both the framework of qualifications and the institutional structures which provide them. It departs somewhat from the underlying Webb Review, placing major emphasis on Modern Apprenticeships as a vehicle for skills improvement (rather than Foundation Degrees), and centralising the existing role of Sector Skills Councils (while the Webb review suggested that 'critical outcomes can be delivered only by enhanced governance, national and local, that drives priorities, overcomes barriers and spans boundaries'⁹⁴). In Wales, further education colleges have no powers of their own to award foundation degrees, but must seek accreditation from universities. This contrasts with England, an anomaly which provoked concern from committee members. In the light of probing questions as to the relationship between the Webb Review and the skills strategy, the Deputy Minister for Skills, John Griffiths, conceded that '*Skills That Work for Wales* is really a preliminary response to Webb'⁹⁵, and further work on developing an action plan would take place in the summer of 2008. The committee also explored the strategy's targets (over the long term, the aim is to increase the proportion of the working age population in employment to 80 per cent), but failed to elicit any kind of commitment to precise dates from the deputy minister.

In plenary session, the Assembly discussed a government motion welcoming the outcome of the Webb Review and endorsing the skills strategy; to an extent, the debate repeated several of the themes raised in committee. Some members were perplexed at being asked to adopt a strategy which, at the time of debate, was still open for consultation. A key additional point, however, was that the substantial extra funding required for achieving the main enhancements required by the strategy was, on current budgetary allocations, not available. While additional resources can be deployed from European funding sources, the rate of progress in approving applications has so far been particularly slow; as late as January 2008, none of the applications for funding had been approved.⁹⁶

Discussion of the Enterprise and Learning Committee's draft response to the skills strategy took place after the plenary session. The response made a number of

⁹⁴ Webb Review, op cit., p. 6.

⁹⁵ Record of Plenary Proceedings, Enterprise and Learning Committee, 27 February 2008, p. 16. See: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=77612&ds=2/2008

⁹⁶ M. Shipton, 'Bidders await decisions on Convergence aid', Martin Shipton, *Western Mail*, (4 February 2008). See: <http://icwales.icnetwork.co.uk/news/politics-news/2008/02/04/bidders-await-decisions-on-convergence-aid-91466-20431221/>

recommendations, including (among others) raising the ambition concerning the level of improved skills, more robust targets and timescales, and provision of statutory powers for Further Education Colleges to award Foundation Degrees. However, agreement on the response initially foundered, not on the recommendations of the report, but on the critical tone which coloured the original draft. Members of opposition parties were keen to stress 'lack of detail in the consultation document' and 'the absence of a strong and positive steer';⁹⁷ others, particularly Labour Members, were inclined to be less critical. As the report is to be debated in plenary, and lack of unanimity would undermine the strength of its recommendations, a compromise expression on the overall reaction of the committee to its scrutiny of the minister was adopted, albeit with some reluctance.

3.5 The second supplementary Budget motion

Ostensibly a technical exercise, the supplementary budget identified approximately £200m of additional resources from inter-departmental transfers and 'end-of-year' flexibility. The most significant element was an additional allocation of £83m to reduce NHS waiting lists. As standing orders require, the supplementary budget was scrutinised by the Finance Committee. While supporting the motion and seeking no changes, this committee was concerned about the ease of interpretation of supplementary budgets, and more particularly, the large amounts of discretionary funds which remain unallocated at the end of financial years. Other members noted the difficulties of the agricultural sector resulting from the foot-and-mouth disease outbreak and contrasted the struggle to provide an adequate compensation package (due to funding constraints) with these hitherto unused resources.

3.6 Conclusion

The implications of the Government of Wales Act on subject-specific business in the Assembly are becoming clear. There were only two opportunities to question the Minister of Economy and Transport over the whole session, and although the Higher Education inquiry evidence sessions of the Enterprise and Learning Committee took up most of the time available, progress is slow and other key areas of debate (especially with regard to school education) have been neglected as a result. Some further progress in constructive dialogue between parties has occurred, probably as a result of the changed alliances in defending and opposing coalition politics in the

⁹⁷ *Skills that Work for Wales: Committee's draft response to the Welsh Assembly Government's consultation - Annex 1.* See www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=78384&ds=4/2008.

Assembly. While these are welcome, resources and opportunities to improve the relative economic position of Wales have not been sufficient, and an assessment of the quality of both policymaking and scrutiny must conclude that the economic justification for devolved powers has not yet been fully vindicated.

4. Intergovernmental relations

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4.1 General

The overall intergovernmental and constitutional agenda at UK level has continued to be dominated by debates about Scotland. Issues relating to Wales have had little visibility on the broader UK-wide agenda, even as far as the 'All Wales Convention' is concerned, with the exception of Peter Hain's resignation as Secretary of State for Wales and its implications. Beyond this, main areas of activity affecting Wales have related to general incremental changes in the machinery for intergovernmental relations, and the issue of the acquisition of legislative powers – important for Wales, but less so further afield.

4.2 New Secretary of State for Wales, and machinery of government issues

Peter Hain resigned as Secretary of State for Wales on 24 January, in the midst of a row about the financing of his campaign for the Labour deputy leadership and failure to declare donations properly to the Electoral Commission. He was replaced in that position (but not as Work and Pensions Secretary) by Paul Murphy, who thus returned to the office he held between 1999 and 2002. Reaction to Murphy's appointment was generally favourable, particularly from Rhodri Morgan and Elfyn Llwyd MP, despite Murphy's well-known reputation as a 'devo-sceptic' (that said, the Liberal Democrats have been more hostile).⁹⁸ Murphy has described himself as a 'devo-realist', and since his appointment, or re-appointment, he has been at pains in various statements, interviews and speeches (such as his St David's Day lecture at Cardiff University on 6 March) to emphasise his general support for devolution and his pragmatic approach to the issues it raises.

The appointment of a new Secretary of State did not trigger broader changes at Cabinet or ministerial level relating to devolution. Huw Irranca-Davies remains parliamentary under-secretary at the Wales Office. It appears that part of the reason for Murphy's appointment (and for Wales being his only responsibility, rather than combining it with other portfolios or creating a 'department of nations and regions') was a desire on the part of Gordon Brown to avoid large-scale changes to the machinery of government following Hain's snap resignation. However, such changes

⁹⁸ See 'Paul Murphy returns as Welsh Secretary', *Western Mail*, 25 January 2008.

may follow in due course. Murphy has been given various additional responsibilities to purely Welsh ones, including 'digital inclusion' and working to re-establish the Joint Ministerial Committee.

4.3 Formal intergovernmental meetings

There have been no meetings of the plenary Joint Ministerial Committee in the period covered by this report nor publicised ones of its functional committees. However, this is likely to change shortly. The UK Government has now decided to revive the JMC framework, and Paul Murphy has been tasked with setting up the revived committee.⁹⁹ This is being approached in a slow, painstaking way, with Murphy undertaking a round of meetings with the devolved administrations about how the new framework would work. The suggestion is that there will be two sets of meetings: the plenary JMC, and a functional version (dubbed 'JMC Domestic' by some) to deal with practical policy matters. At that point a 'first' meeting was expected in the spring, and a plenary one by the autumn. As of the end of April no meetings had taken place. Whether Gordon Brown would chair plenary meetings is unclear – the implication of press coverage is that this would fall to Jack Straw instead. If not chaired by the UK Prime Minister, it would lose much of its symbolic value as a manifestation of 'Britishness', even if the risks of political embarrassment to the UK Government would also be reduced. The 'domestic' format was suggested by the Scottish Government back in the early autumn, and might itself take various forms (or have changing ministerial attendance) depending on the substantive issues under consideration.

A summit meeting of the British-Irish Council took place in Dublin on 14 February 2008.¹⁰⁰ The Welsh Assembly Government was represented by First Minister Rhodri Morgan, Deputy First Minister Mr Ieuan Wyn Jones, and Minister for Social Justice and Local Government Dr Brian Gibbons. Paul Murphy, the new Secretary of State for Wales, represented the UK Government. The meeting reviewed progress of its work to date and developed plans for further future work, including a summit to be held in Scotland in September.

⁹⁹ See 'Devolution forum revived as rows grow', *Western Mail*, 6 March 2008.

¹⁰⁰ The meeting's communiqué is available at www3.british-irishcouncil.org/documents/dublin_summit2.asp

4.4 Legislative powers and related issues at Westminster

The accretion of legislative powers by the National Assembly through Legislative Competence Orders (LCOs) continues. As of 30 April, ten were at various stages of consideration, and one (The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008, SI 2008 No. 1036) had been formally approved by the Privy Council. Most of these remain either under consideration at the National Assembly, however, or by the Secretary of State. Only two are before the Westminster Parliament and have been considered by the Commons Welsh Affairs Committee:

- the draft National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (formerly known as the National Assembly for Wales (Legislative Competence) (No. 3) Order 2008), which is concerned with vulnerable children, and
- the National Assembly for Wales (Legislative Competence) (No. 4) Order 2008, which concerns the provision of domiciliary care.

The committee has yet to report on the vulnerable children LCO, but its report on the domiciliary care LCO, published on 5 March, is particularly worthy of note for two reasons.¹⁰¹ First, it is a very detailed consideration of the LCO (the substantive part of the report runs to 28 pages), covering the principle of conferring the powers specified, the Assembly Government's policy and the practical issues arising from both of these. Such detailed consideration clearly involves a huge degree of effort, and it has to be questionable whether such work can be maintained if the volume of LCOs increases (the scrutiny of the LCO by the Lords Constitution Committee was, by contrast, limited to a brief consideration of whether it raised any issue of 'constitutional principle', dealt with by a letter from that committee's chairman to the Secretary of State rather than by formal report). Second, the committee was critical of the approach taken by the Assembly Government to handling the LCO, saying:

We also note the haphazard approach to processing proposals for Legislative Competence Orders in Council. The failure on the part of the Welsh Assembly Government to follow the anticipated procedures for these proposals, which were described during the progress of the Government of Wales Act 2006, has created significant problems. The Wales Office, the Welsh Assembly Government and the National

¹⁰¹ House of Commons Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008*, Fourth Report of Session 2007–08 HC 257 (London: The Stationery Office Limited, 2008).

Assembly for Wales should seek to coordinate the procedures more effectively in future.¹⁰²

(One might note that the 'anticipated procedures' were set out by the Wales Office and the committee itself, not the Assembly Government. In reality, its concern is that its own expectations have not been met rather than that the Assembly Government has not lived up to its word.) Beyond this, it is becoming clear at Westminster that the process of dealing with LCOs is in fact unduly cumbersome. In evidence to the Commons Justice Committee on 8 May (for its inquiry 'Devolution: A Decade On'), Rhodri Morgan admitted that the system 'creaks a bit', while Lord Elis-Thomas (hitherto a staunch defender of the system) suggested that the detailed scrutiny carried out by the Welsh Affairs Committee was part of the problem and that the Justice Committee, taking a lighter-touch approach, might be more suited to undertaking this task.¹⁰³ Apparently, discussions are underway behind the scenes between the various parties to simplify the present system.

As noted above, several LCOs remain with the Secretary of State for submission to Parliament. Behind the scenes, several more are under negotiation between Cathays Park and Whitehall (and have been for many months now). It remains unclear to what extent the change of Secretary of State will affect these sorts of processes.

In addition to the various LCOs underway, three Westminster bills add 'matters' to Schedule 5 to the Government of Wales Act 2006:

- The Education and Skills bill will confer powers on the Assembly relating to school inspections (Field 5.10A)
- The Local Transport bill will confer powers relating to road charging (Field 10.1)
- The Planning bill will confer various powers on the Welsh Ministers regarding planning control and development plans, by the Assembly Government and by local authorities in Wales (Fields 18.1-18.3).

As these do not attract the same detailed level of scrutiny as that required for LCOs, there is an emergent difference in the impact of the two routes – which is apparently also becoming the source of some (as yet private) concern at Westminster.

¹⁰² Ibid, para. 76.

¹⁰³ See 'Give creaking Welsh law-making system time, says Rhodri' and 'Committee is "not operating as expected"', *Western Mail*, 9 May 2008.

4.5 The broader UK constitutional debate

The broader constitutional debate about the Union, mainly focussed on Scotland, has moved on somewhat since January. The Scottish Government's 'National Conversation' was re-launched on 26 March, though the range of activities remains limited and it essentially remains a blog of ministerial statements with public comments.¹⁰⁴ The re-launch has two main features: an attempt to involve civil society more actively in the Conversation, and the proposal that there should be a 'multi-option' referendum covering 'enhanced devolution' as well as the status quo and independence. (The white paper *Choosing Scotland's Future* provides for that referendum to be held during the present Parliament, probably in 2010 or 2011.¹⁰⁵)

There has been much activity on the side of the unionist Scottish Constitutional Commission. That was given the go-ahead by Gordon Brown in an interview for BBC TV Scotland's 'The Politics Show' on 19 February. The implication, however, was of a take-over of the process by the UK Government in London. What has been established is in fact an independent commission, though it is resourced and supported by the UK Government rather than the Scottish Parliament (under whose aegis it also operates). Its chairman is Sir Kenneth Calman, Chancellor of Glasgow University, formerly Vice-chancellor of Durham University and chief medical officer in both the (English) Department of Health and the Scottish Office. His appointment was announced on 25 March. The Commission's membership was announced on 28 April, when it held its first meeting at Holyrood.¹⁰⁶ Although initially expected to report by the autumn, the objective appears now to be to produce an interim report by November and a final one in the spring of 2009.

¹⁰⁴ See A. Salmond 'National Conversation with Scotland's institutions', speech in Edinburgh, 26 March 2008. Available at www.scotland.gov.uk/News/This-Week/Speeches/First-Minister/nationalconversation

¹⁰⁵ Scottish Executive, *Choosing Scotland's Future: A National Conversation. Independence and responsibility in the modern world*. (Edinburgh: Scottish Executive, 2007). Available from www.scotland.gov.uk/Publications/2007/08/13103747/0

¹⁰⁶ Apart from Sir Kenneth, the members are: Colin Boyd, former Lord Advocate, member of the House of Lords (Labour); Rani Dhir, Director Drumchapel Housing Co-operative; James Douglas-Hamilton, former Scottish Office Minister and MSP, member of the House of Lords (Conservative); Professor Sir David Edward, retired judge of the European Court of Justice; Murray Elder, member of the House of Lords (Labour); Audrey Findlay, former Leader of Aberdeenshire Council, now convener of the Scottish Liberal Democrats; Jamie Lindsay, former Scottish Office Minister, member of the House of Lords (Conservative); John Loughton, Celebrity Big Brother contestant and President of the Scottish Youth Parliament; Murdoch MacLennan, chief executive, Telegraph Media Group; Shonaig Macpherson, chair of the National Trust for Scotland and of the SCDI (Scottish Council Development and Industry); Iain McMillan, director, CBI Scotland; Mona Siddiqui, Professor of Islamic Studies at the University of Glasgow; Matt Smith, Scottish Secretary, Unison, and Jim Wallace, former deputy first minister and leader of the Scottish Liberal Democrats, and a member of the House of Lords.

Part of the Labour agenda for the Commission (the transfer of devolved powers back to Westminster) is strongly opposed by the Liberal Democrats, whose Scottish leader Nicol Stephen has asked Sir David Steel to reconvene his commission (which first reported in 2006) to create pressure for further change in devolution without such 'undevolution' of powers. That view also appears to be shared by Sir Kenneth Calman himself.¹⁰⁷

A cause for concern, particularly in Wales, has to be the fact that the Commission is supposed to have a UK-wide remit, and a brief that includes financial issues, but has no Welsh members, and indeed an approach in which UK-wide issues appear only sporadically and for what look very much like partisan reasons.

Beyond this, the UK Government continues work on its broader constitutional reform agenda. Relevant to Wales are aspects of the work on 'Britishness', notably the 'British statement of values' and a 'British Bill of Rights'. On 26 March, in a speech to a seminar at the Institute for Public Policy Research (IPPR), Michael Wills (Minister of State at the Ministry of Justice) suggested that the statement of values (intended inter alia to 'combat the separatist nationalists in Scotland and Wales') should be developed by a consultative process culminating in a 'citizens' summit' of some 500 people selected randomly but to be representative of the broader population.¹⁰⁸ This would then go to Parliament for a final decision, but such wider public involvement would 'enhance representative democracy'. Wills notably did not offer to consult the devolved legislatures or administrations in this process. However, it remains unclear what such a statement might mean, what effect it might have, or how it might relate to the 'British Bill of Rights' which is also still on the UK Government's agenda.

¹⁰⁷ See 'No case for Holyrood to lose powers – devolution review chief', *The Scotsman*, 26 April 2008.

¹⁰⁸ M. Wills, 'The politics of identity'. Speech to Institute for Public Policy Research, London, 26 March 2008. Available at www.justice.gov.uk/news/sp260308b.htm

5. Relations with Europe and local government

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5.1 Europe

In January Margot Wallström, Vice President of the European Commission, visited Wales and spoke alongside the First Minister at a Wales Forum on Europe. Ms Wallström also spoke and took questions at a special session of the National Assembly for Wales. This visit was followed by a further high-profile EU visit in February when Iztok Mirošič, the Slovenian Ambassador to the UK, briefed the European and External Affairs Committee (EEAC) on the Slovenian's Presidency priorities. It is hoped that visits like these will raise the awareness of EU issues among a wider Welsh audience.

In February the EEAC agreed upon the priority areas for the committee's work programme for 2008; this programme was further confirmed at a meeting in April. The rationale for the areas of priority is their (potential) consequence for Wales and matters devolved to Wales.

5.1.1 EU Presidency briefing

The Slovenian Ambassador to the UK, Mr Iztok Mirošič, attended the European and External Affairs Committee meeting on 7 February. Mr Mirošič held a presentation in which he outlined the priorities for the Slovenian Presidency of the EU. He believed that the EU faces two major challenges for 2008: the 'ratification and implementation of the treaty of Lisbon, and strengthening the EU's role globally'.¹⁰⁹ These challenges will influence the five main areas on which the Slovenian Presidency will focus, which include 'the future of the EU and the ratification and implementation of the reform treaty ... [and] the successful launch of the new Lisbon strategy cycle'.¹¹⁰ The Ambassador also discussed other areas of mutual interest with the First Minister, such as convergence funding and language rights.¹¹¹

¹⁰⁹ The Committee on European and External Affairs Minutes, Thursday 7 February 2008, page 5. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?ds=2/2008

¹¹⁰ Ibid.

¹¹¹ European and External Affairs Committee, Minister's Report, EUR(3)-02-08 Paper 1 – First Minister's Report. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=75942&ds=2/2008

5.1.2 European Commission's Annual Legislative and Work Programme for 2008: areas of priority for the European and External Affairs Committee

At the EEAC meeting on 7 February the committee agreed upon this year's work priorities for the year. Based on the European Commission's Annual Legislative and Work Programme for 2008,¹¹² the Member's Research Service highlighted the possible areas which were seen to be both of strategic importance and relevance to devolved matters for Wales. The committee members then decided upon four priority areas from the Commission's Annual Legislative and Work Programme: subsidiarity; the future of regional policy; the CAP health check; and the Lisbon Strategy.¹¹³ Two of these priority areas and their implications for Wales are examined in more detail below.

Subsidiarity

The Treaty of Lisbon provides national parliaments within the European Union with a greater scope to participate in the EU policy process; a new clause in the Treaty sets out their rights and duties. Of significance here for Wales is the duty for national parliaments to consult their devolved administrations. Article 3b (3) in the Treaty of Lisbon reproduces Article 5 of the Treaty Establishing the European Community with one significant addition for the devolved administrations in the UK. It 'includes regional and local government within the sphere of subsidiarity'¹¹⁴. Although the article does not prescribe how it should be applied below the national level, it does not disregard sub-national levels of government.

The reason for an EEAC inquiry into the issue of subsidiarity would 'be to work with counterparts at the Scottish Parliament, Northern Ireland Assembly, House of Lords and House of Commons in developing formal agreements between Westminster and the devolved administrations following ratification of the Treaty'¹¹⁵. The Scottish Parliament's European Committee has shown an interest in developing a subsidiarity protocol between the devolved legislatures and Westminster. An agreement would further support consultations on European legislative proposals as well as ensuring

¹¹² The Annual and Legislative Work Programme 2008 can be found on the European Commission's website: http://ec.europa.eu/atwork/programmes/docs/clwp2008_en.pdf

¹¹³ European External Affairs Committee *Forward Work Programme* EUR(3)-03-08(p.2). www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=81261&ds=4/2008

¹¹⁴ European External Affairs Committee *EEAC Work Programme, February 2008* EUR(3)-03-08(p2) Annex. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=81262&ds=4/2008

¹¹⁵ Ibid.

that the National Assembly for Wales could effectively feed into the process of subsidiarity.

Future of Regional Policy

In September 2007 the European Commission launched a consultation on the future of EU Regional Policy. The initial results of the European Commission's consultation will be published in the 5th Progress Report on Economic and Social Cohesion,¹¹⁶ due in the second quarter of 2008. The Progress Report will be followed by a Green Paper on European Territorial Cohesion in September 2008. What is of interest here is that the Welsh Assembly Government has taken a different opinion on the future of EU regional policy to the UK Government. This was expressed by First Minister Rhodri Morgan at the EEAC meeting on 28 February:

The British Government's attitude is that regional policy should be concentrated entirely on the new accession countries that are 'really poor', and that it should not be devoted to the less well off areas of relatively rich countries like the UK. We take the view that there is still a role for regional policy throughout the EU, not only in terms of protecting our turf - we do not expect to get convergence funding in 2014, but we damn well expect the same sort of transitional post-convergence funding that Ireland benefited from when it stopped receiving convergence funding. The British Government's inclination is to ask: 'Do you really need that?', and we say: 'Yes, we do'.¹¹⁷

The First Minister also stated that Wales has achieved a step towards getting the UK Government 'to recognise, in its official stance with Europe, that not everybody in the UK at governmental level, namely us, agrees that there should not be any transitional arrangements'.¹¹⁸

5.1.3 JEREMIE

On 17 April the Deputy First Minister and Minister for Economy and Transport, Ieuan Wyn Jones, updated the European and External Affairs Committee with regards to the JEREMIE¹¹⁹ scheme. The JEREMIE scheme was set up in 2005 in order to help improve access to finance for small and medium-sized firms, e.g. through micro-

¹¹⁶ European Commission progress Report on Economic and Social Cohesion:

http://ec.europa.eu/regional_policy/conferences/4thcohesionforum/all_contrib_en.cfm?nmenu=3

¹¹⁷ The Committee on European and External Affairs Minutes, Thursday 28 February 2008, page 6.

www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=77252&ds=2/2008

¹¹⁸ The Committee on European and External Affairs Minutes, Thursday 28 February 2008, page 7.

www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=77252&ds=2/2008

¹¹⁹ Joint European Resources for Micro and Medium Enterprises.

credit, under the regional programmes for 2007-2013.¹²⁰ The JEREMIE scheme will cover the whole of Wales and is a partnership between Finance Wales and the European Investment Bank. The Welsh European Funding Office (WEFO) has confirmed the scheme in principle; it is currently 'subject to confirmation of match funding from the European Investment Bank (EIB) and completion of State Aid notification'.¹²¹

5.1.4. Conclusions

The difference of opinion between the UK government and the Welsh Assembly Government with regards to the future of EU regional policy highlights the importance of the strengthening of the subsidiarity principle in the new Treaty currently being ratified. It will be interesting too to follow the co-operation between the centre and the devolved administrations if the Treaty is ratified and comes into effect.

5.2 Local government

The previous report discussed the tensions in Assembly Government-local government relations. The publication of the final local government settlement together with developments during the past few months suggest tensions will continue, and they could become even more difficult following the local government elections.

5.2.1 Local government settlement and council tax

Two key changes made between the draft and final Assembly Budget were additional local government funding and education funding for the 'foundation phase'. The final local government settlement for 2008-09 was £3.8bn, which included an additional £4.7m in revenue support funding. This additional allocation ensured that no local authority received increases of less than 2 per cent (in contrast to the below 1.5 per cent provisional settlements for some authorities). The average increase across local authorities was 2.4 per cent.¹²² Introducing the Budget, Andrew Davies, Minister for Finance and Public Service Delivery, stated that they had listened to local

¹²⁰ European Union Regional Policy, Inforegio, Panorama, No 25, March 2008, page 6.

http://ec.europa.eu/regional_policy/sources/docgener/panora_en.htm

¹²¹ European and External Affairs Committee *Update on JEREMIE and JESSICA Financial instruments* EUR(3)-03-08 (p1): 17 April 2008. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=81240&ds=4/2008

¹²² WAG Press Release, *More money for services* (22 January 2008) Downloadable from: new.wales.gov.uk/news/ThirdAssembly/LocalGovernment/2008/2137496/?lang=en

¹²² The Record, (29 January 2008) Downloadable from: www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080129qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20572kb%29

government representatives.¹²³ Brian Gibbons, Minister for Local Government and Social Justice, argued that the settlement was ‘a good and fair deal for both local government and council tax payers in a challenging period’.¹²⁴ He also argued that it ‘lays to rest any accusations that the Welsh Assembly Government is short-changing local government within the overall context of the comprehensive spending review settlement’.¹²⁵

The reaction of WLGA and opposition Assembly Members was less positive. While the WLGA welcomed the cap at 2 per cent, as the average rise for councils was well below inflation, it called the final budget ‘little more than an exercise in window dressing’ and the worst settlement since devolution.¹²⁶ Concerns were once again voiced regarding the implications for frontline services and council tax levels. Cllr Meryl Gravell also stated: ‘Our key priority will be protecting frontline services and the proposals of the “One Wales document” will need to be judged on whether they satisfy this benchmark’.¹²⁷ Debates within the Assembly drew attention to a number of issues. Jenny Randerson highlighted that of the additional £4.7m, £2.5m was directly from the local government and social justice portfolio, resulting in cuts in other areas within this portfolio. The further £2.2m was from Assembly Government reserves and would have to be repaid. Another issue raised was reform of the local government funding formula.¹²⁸

In March 2008, it was announced that the average council tax increase across Wales was 3.8 per cent, the lowest council tax rises in over a decade. According to Steve Thomas, WLGA Chief Executive, the situation demonstrated that councils were ‘fully in tune with their communities needs’.¹²⁹ The announcement coincided with the release of a WLGA survey showing that local government had ensured £94m in

¹²³ The Record, 22 January 2008. Downloadable from: <http://tinyurl.com/53zy98>

¹²⁴ WAG Press Release, *More money for services* (22 January 2008) Downloadable from: new.wales.gov.uk/news/ThirdAssembly/LocalGovernment/2008/2137496/?lang=en

¹²⁵ The Record, 29 January 2008 Downloadable from: www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080129qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20572kb%29

¹²⁶ WLGA Press Release, *Assembly final budget tinkering at the edges says WLGA* (16 January 2008) Downloadable from: www.wlga.gov.uk/english/press-releases/assembly-final-budget-tinkering-at-the-edges-says-wlga-150108/

¹²⁷ Ibid.

¹²⁸ The Record, (22 January 2008); The Record, (29 January 2008).

¹²⁹ WLGA Press Release, *Fair scrutiny needed across all senior public sector salaries, says WLGA* (17 April 2008) Downloadable from: www.wlga.gov.uk/english/press-releases/fair-scrutiny-needed-across-all-senior-public-sector-salaries-says-wlga

efficiency savings during 2007, 'proving that local government is the most committed part of the Welsh public service for delivering better outcomes for local people'.¹³⁰

5.2.2 Improvement Agreements and National Minimum Standards

In the past few months, tackling the 'postcode lottery' in public service performance and variability across local authorities has become a WAG priority.¹³¹ Renewed emphasis on performance and service improvement is being developed through the already extant Improvement Agreements and the establishment of National Minimum Standards. A new system of Improvement Agreements and associated Improvement Agreement Grants (IAGs) is being introduced for the 2008/09 financial year as a successor to Policy Agreements and Performance Incentive Grants. This system will be more focussed on assessing service improvement, and 'addressing local areas of underperformance and priorities for change'.¹³² The idea of national minimum standards builds on local government annual performance figures. There are likely to be a set of five to six standards that all providers should meet; these are expected to be implemented by April 2009.¹³³ Reflecting the emphasis in statements on working with local government to develop the improvement agenda, a Task and Finish group with representatives from WLGA, the Society of Local Authority Chief Executives and Senior Managers (SOLACE) and local authorities was tasked with producing a report for the Improvement Board by April on these proposals.¹³⁴ The Local Government Policy Division intends to engage with individual local authorities to negotiate Improvement Agreements following the May elections.¹³⁵

These proposals suggest a new approach to service improvement, seen as a means to 'redirect the national uniformity of policy agreements back toward the local level'.¹³⁶ At the same time, as Andrew Davies explained, the emphasis is on incentivising local authorities: 'we are looking at, for example, funding in particular

¹³⁰ WLGA Press Release, 'Welsh Council Tax Increases by Average 3.8%', 6 March 2008, at: www.wlga.gov.uk/english/press-releases/welsh-council-tax-increases-by-average-38

¹³¹ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08 Transcript, 20 February 2008, Downloadable from: <http://tinyurl.com/6qmxsg>

¹³² Welsh Assembly Government, Local Government E-Bulletin #22 (February 2008) at: new.wales.gov.uk/topics/localgovernment/ebulletin/ebulletin22/?lang=en

¹³³ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08-(p1) Ministerial Scrutiny Sessions (20 February 2008) at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=74935&ds=2/2008

¹³⁴ Welsh Assembly Government, Local Government E-Bulletin #23 (March 2008) at: <http://new.wales.gov.uk/topics/localgovernment/ebulletin/23/?lang=en>

¹³⁵ Ibid

¹³⁶ Welsh Assembly Government, Local Government E-Bulletin #22 (February 2008) at: new.wales.gov.uk/topics/localgovernment/ebulletin/ebulletin22/?lang=en

service areas to be paid against performance and agreed performance standards in each local authority. So, again it is a matter of both the carrot and the stick'.¹³⁷

In parallel, the WLGA highlighted improvements in local government performance. It drew attention to inspectorate reports of improved standards in social services and education.¹³⁸ Furthermore, WAG's 'Living in Wales' survey identified that up to 90 per cent were highly satisfied with the level of service provided by their local council.¹³⁹ As a result, WLGA Chief Executive Steve Thomas stated: 'Despite mounting financial pressures, rising public expectation....councils have shown quality leadership, embracing the efficiency agenda more than any other area of the Welsh public sector'.¹⁴⁰

5.2.3 Local Service Boards

The Local Service Boards (LSBs) model established following the Beecham report is a WAG priority to integrate public service delivery and facilitate collaboration across public services.¹⁴¹ Building on pilot projects established in 2007, the model is being expanded across Wales with the first wave of local delivery agreements for 2008-09 being agreed by LSBs by the end of April 2008 and other boards being established and developing agreements for 2009-10. Three aspects promoted during the forthcoming period include: pooling resources and budgets; greater emphasis on connections between the local service board and the Wales spatial plan processes to develop a regional approach; and a new model of 'engaged leadership' that entails senior level WAG presence on the LSBs.¹⁴²

Brian Gibbons signalled a more robust approach to local government on collaboration and improvement on the *Politics Show* on 13 April 2008. He called for closer working to improve services and proposed that council numbers could be

¹³⁷ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08 Transcript (20 February 2008) Downloadable from: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=76477&ds=2/2008 or op. cit. 12

¹³⁸ WLGA Press Release, *Councils rise to the challenge as social services improve across Wales* (8 January 2008) at: www.wlga.gov.uk/english/press-releases/councils-rise-to-the-challenge-as-social-services-improve-across-wales/; WLGA Press Release, *Local government delighted by continued improvement in education standards* (26 February 2008) at: www.wlga.gov.uk/english/press-releases/local-government-delighted-by-continued-improvement-in-education-standards/

¹³⁹ WLGA Press Release, *Welsh councils top public services delivery poll* (5 March 2008) at: www.wlga.gov.uk/english/press-releases/welsh-councils-top-public-services-delivery-poll/

¹⁴⁰ Ibid.

¹⁴¹ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08 Transcript (20 February 2008). www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=76471&ds=2/2008

¹⁴² Ibid.

reduced if targets were not realised: 'It could mean restructuring...the big challenge for local government is with the existing structures, working jointly with health, with other external organisations, working jointly across organisational boundaries'.¹⁴³ In response, Steve Thomas, WLGA Chief Executive, pointed to current collaboration and argued that talk of reorganization was 'not really a show-stopper...there are ways of delivering some functions that don't have to be delivered in 22 different ways'. He even suggested that 'there are plenty of people in local government who would agree with reorganization'.¹⁴⁴

5.2.4 Assembly Government – local government relations and the election

While the Welsh Assembly Government was more robust in its approach to local government over the past few months, local government made public its attitude towards the deterioration in relations. At the meeting of the WLGA's 70-strong Council on 22 February, leaders of local authorities highlighted that, in contrast to the positive relationship since devolution, relations with WAG were now increasingly fragile as local government was not being listened to and was 'being treated shamelessly by the WAG'.¹⁴⁵ The tight budget settlement and its implications for local service delivery were the main points of contention. As a result of 'centralisation in a devolved system', a WLGA report recommended investigating the Scottish model, in which there is a concordat between government and local authorities.¹⁴⁶

The local government election on 1 May 2008 resulted in further diversification of the political complexion of local government; this could potentially exacerbate already difficult relations. In particular, Labour now only has overall control of 2 of the 22 local authorities while its One Wales coalition partner, Plaid Cymru, lost overall control of Gwynedd Council. Given the rise of the independents, and depending on the outcome of local coalition negotiations, Labour could lose its longstanding leadership of WLGA. Questions can be raised regarding how WAG will negotiate with other parties at the local government level, both locally and collectively at a national level through the WLGA. Notably, the success of independents and particularly 'independent parties' either directly opposed to or at least positioning themselves as alternatives to Labour or Plaid Cymru (notably in the South Wales valleys and in Gwynedd) could add another dimension to central-local relations. Interestingly, on

¹⁴³ D. Williamson, 'Gibbons threat to cut number of councils if they fail to improve', *Western Mail* (14 April 2008)

¹⁴⁴ D. Williamson, 'No shock in merging county councils', *Western Mail* (15 April 2008).

¹⁴⁵ A. Wightwick, 'You just don't understand us anymore and it might just spell D-I-V-O-R-C-E, councils tell WAG', *Western Mail* (23 February 2008).

¹⁴⁶ *Ibid.*

taking the post of Permanent Secretary at the Assembly Government, Dame Gillian Morgan identified 'ensuring that the Assembly Government and Wales' 22 councils co-operate effectively' as one of her goals, stating further that 'local government is fundamental'.¹⁴⁷

5.2.5 Conclusion.

Newly elected councils across Wales face an extremely tight financial year in 2008-09 and a number of challenges. The current Welsh Assembly Government's policy agenda for local government is clearer, with an emphasis on increasing performance, improvement and collaboration across public services. The recent election result creates a more mixed political context for Assembly Government-local government relations. This could lead to further tensions, to moves to formalise relations or to a greater effort on both sides to cooperate and a redirection towards renewed 'partnership'.

¹⁴⁷ D. Williamson, 'People are our best asset but they're an asset in short supply', *Western Mail*, (5 May 2008).

6. Elections, Parties and Public Attitudes

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6.1 Elections

The major electoral event during the period covered by this report came on its very last day. Elections were held for all the seats in all 22 Welsh unitary local authorities on 1 May 2008, for seats last fought four years previously. The elections constituted the largest test of the public mood towards Wales' parties outside of a National Assembly or UK general election. An outline of the final results is given in Figure 6.1 below.

Figure 6.1: Summary Results of 2008 Local Authority Elections in Wales

| | Seats Won | Change Since 2004 | Councils Won* | Change Since 2004 |
|-------------------------|--------------|----------------------|------------------|----------------------|
| Labour | 342 | -124 | 2 | -6 |
| Conservatives | 174 | +63 | 2 | +1 |
| Lib-Dems | 162 | +21 | 0 | - |
| Plaid Cymru | 205 | +31 | 0 | -1 |
| Independents/ Others | 381 | +9 | 0 | - |

Source: http://news.bbc.co.uk/1/hi/uk_politics/wales/default.stm

* Eighteen councils are now under 'No Overall Control' by a single party, compared with twelve in 2004.

The clear loser in the local elections in Wales, as in England, was the Labour Party. Labour's results in 2004 had been poor. Yet the party still lost more than a quarter of the seats it was defending from 2004. There was no such obvious single winner; rather, all the other major parties, as well as several groups of independents, had cause for some celebration. That said, there were also reasons to temper the celebrations in all cases.

In line with a very strong performance in England, the Conservatives made the greatest number of gains in seats. Nonetheless, the Tory advance remained, for the greater part, restricted to those limited parts of Wales that have historically been areas of reasonable strength for them: British Wales, in Balsom's terminology. Outside these relative bastions, the rebuilding of Welsh Conservatism continues to prove hard going. Plaid Cymru also made significant net gains, and comfortably

retained their position as the second party of Welsh local government in terms of councillors. But local problems in Gwynedd contributed to the party losing their majority in the one local authority they had previously controlled; the party also suffered twin embarrassments, with Party President Dafydd Iwan losing his council seat in Gwynedd, and Plaid's prospective Westminster candidate, Penri James, being ousted in Ceredigion, Plaid's key target seat for the next general election. The Liberal Democrats made solid, if unspectacular, progress overall. But after a very difficult year for their party in Wales, any success for them was welcome.

Perhaps the most important implication of the local election results, however, is that the Labour Party's long-standing dominance of local government across much of Wales has now been pretty much eliminated. This may not prove to be permanent: unlike in Scotland, Wales does not yet have in place a proportional voting system for local government elections that guarantees political balance in its local authorities. But even so, this development is surely of great importance. Coming on top of the party's historically low vote share in the 2007 National Assembly election, it leaves Labour's long-standing hegemony in Welsh electoral politics looking distinctly sickly.

6.2 Parties

As of this writing, the dust has yet to settle on the local election results. While the complexion of the ruling groups in most of the 18 local authority areas under No Overall Control is becoming clearer, it may be several more weeks before matters are finalised. Given the bewildering sequence of events following last summer's Assembly election, close observers of the Welsh political scene will naturally be wary about predicting the final outcome of coalition negotiations. Nonetheless, it currently appears that the smallest of the four major parties, the Liberal Democrats, may be the major gainers with a role in the administration of some 13 of the 22 Welsh local authorities, with Labour featuring in around 9, Plaid Cymru in about 8 and the Conservatives in some 7. Various groups of Independents – a veritable moveable feast in the Welsh political context – can be expected to feature in the administration of about 15 authorities.¹⁴⁸

The practical consequences of this large-scale experiment in coalition politics will make for interesting viewing in coming years. It will also be interesting to note what effect these developments at the local level will have at the national and UK levels.

¹⁴⁸ G. Thomas, 'Independents rule Welsh councils'. See: <http://news.bbc.co.uk/1/hi/wales/7400330.stm>

Will the experience of various types of coalition politics by an ever greater number of party activists make it easier, or more difficult, to achieve agreement on coalition arrangements at higher political levels? Moreover, could the normalisation of coalition make it easier for Labour and the Conservatives to agree to demands for PR for local government as part of Assembly or Westminster coalition agreements? Conversely, will the increasing stake of both Liberal Democrats and Plaid in the current system of local government mean that they become less committed to change than in the past?

Of more immediate interest will be the ways in which the political parties interpret the election results. Of particular significance, of course, is Labour's reaction. The most interesting and thoughtful post mortem to emerge so far has come from former Secretary of State for Wales, Peter Hain. In an interview with Adrian Masters on BBC Wales's Politics Show, Hain blamed Labour's particular problems in Wales on two factors.¹⁴⁹ Weak organization was the first, with Hain citing an absence of strong local campaigning (apart from a few notable exceptions). But secondly, he also drew attention to the rapid changes taking place in Welsh society; changes to which the Labour Party in Wales has failed to adequately respond. These changes mean that Welsh voters, especially younger voters, have different aspirations from previous generations. Labour, Hain opined, has yet to respond adequately to this development. While calls to target more aspirational voters tends to be regarded as code for more New Labour-type policies, the Neath MP was adamant that this was not his aim: 'I don't want the London template just transplanted into Wales, that wouldn't work, but the old Welsh Labour template won't work either.'

But while Hain's analysis of the problems faced by Welsh Labour was bold and impressive, the content of the 'progressive modern left-wing politics' which he advocated, and 'which Labour ought to lead' was less clear. It will be interesting to see how the thinking of one of Welsh Labour's most astute political minds develops, now that he is free from the constraints of office. But it remains open to doubt whether the intellectual capital needed to underpin the renewal of the party can be generated by Hain, any other individual, or, indeed, the various Labour-leaning think tanks. Ideas Wales was another addition to the ranks of the latter in February,¹⁵⁰ but its website currently shows little beyond a statement of aims. With the website of

¹⁴⁹ 'Hain: Welsh Labour has lessons to learn'. See <http://this-is-sparta.blogspot.com/2008/05/hain-welsh-labour-has-lessons-to-learn.html>

¹⁵⁰ IdeasWales: www.ideaswales.org.uk/ See also M. Shipton, 'Labour goes in search of bright ideas' *Western Mail*, (1 Feb 2008): <http://icwales.icnetwork.co.uk/news/politics-news/2008/02/01/labour-goes-in-search-of-bright-ideas-91466-20422619/>

another putative Labour-linked think-tank (Wales 20:20) appearing largely inactive, Labour's ability to rejuvenate itself intellectually remains in considerable doubt.¹⁵¹

6.3 Public Attitudes

There were no new major surveys or other substantial sources of information about Welsh public attitudes published during the timeframe of this report. However, an ICM poll conducted for the BBC in February 2008 did include a question about a referendum on 'turning the National Assembly into a full, law-making Welsh Parliament'. Results showed a narrow lead (49 per cent to 42 per cent, with 9 per cent 'don't knows') for the 'Yes' camp. The All-Wales Convention, being established by the Assembly Government under the leadership of Sir Emyr Jones-Parry, is widely expected to conduct some more detailed research into public attitudes and their potential implications for a referendum.

The period of this report also saw publication of further findings from the Economic and Social Research Council (ESRC)-funded 2007 post-election survey, conducted by the Institute of Welsh Politics and the National Centre for Social Research. The previous report in this series presented detailed figures on public attitudes to the governance of Wales. These data provide some fascinating additional information.

First, we now have available information regarding the constitutional preferences of the supporters of the different political parties in Wales. Figure 6.2, below, displays this information: it shows the percentage support given to each of the four main constitutional options among supporters of each party. While the fairly low numbers of respondents in individual cells in the table mean that we must interpret this information with caution, what is nonetheless striking is the degree of commonality of attitudes. Conservatives are the most likely still to oppose devolution outright, and Plaid partisans are much the most likely to support independence. Yet a plurality of identifiers with every party support the same constitutional option, a Parliament for Wales (with the marginal exception of the Liberal Democrats, amongst whom support for a Parliament ties with support for an Assembly). While the picture is doubtless rather different for die-hard party activists, these results do support a general finding that has consistently emerged from recent survey data on the general public: namely, that rather than Wales' constitutional status becoming a line of increasing division,

¹⁵¹ Wales 20:20. www.wales2020.com/

there has in fact been something of a homogenisation of attitudes across Wales during the last decade.

Figure 6.2: Constitutional Preferences by Party Identification, % (Wales 2007)

| | <i>Cons</i> | <i>Labour</i> | <i>Lib Dems</i> | <i>Plaid</i> |
|---------------|-------------|---------------|-----------------|--------------|
| Independence | 5.8 | 9.3 | 11.8 | 25.4 |
| Parliament | 38.5 | 44.3 | 38.2 | 47.7 |
| Assembly | 26.3 | 29.6 | 38.2 | 14.6 |
| No Devolution | 26.9 | 12.6 | 7.9 | 11.5 |
| Don't Know | 2.6 | 4.2 | 3.9 | 0.8 |

Weighted N of respondents = 674

Also now published are results from questions that probe beyond the basic constitutional preferences of individuals, and ask them where responsibility for some specific matters should be vested. Survey respondents were asked about which level of government 'ought to make most of the important decisions for Wales' for four key policy areas: Welfare Benefits, the National Health Service, Schools, and Defence and Foreign Affairs. Results are presented in Figure 6.3 below. These show not only clear majority public support for the devolved level of government to have control over areas where they already make many decisions – on schooling and healthcare – but also a similar level of public endorsement for those powers to extend to an area like welfare benefits. The latter is striking, as it is a policy area that currently remains very much reserved to Westminster. However, majority public support for the empowerment of the devolved level of power is not uncritical or universal, and a very substantial majority have no desire to extend it as far as defence and foreign policy.

Figure 6.3: Desired Level of Government Decisions for Wales, % (2007)

| | <i>Benefits</i> | <i>NHS</i> | <i>Schools</i> | <i>Defence/Foreign</i> |
|---------------------|-----------------|------------|----------------|------------------------|
| WAG | 59.5 | 61.9 | 56.7 | 21.6 |
| UK Govt | 22.7 | 26.1 | 18.5 | 74.1 |
| Local Councils | 16.8 | 11.6 | 24.7 | 1.3 |
| EU | 1.0 | 0.4 | 0.1 | 2.9 |
| <i>Weighted N =</i> | 859 | 867 | 866 | 852 |

6.4 Conclusion

In his analysis of the local election results, John Osmond declared that 'Labour's near century-long domination of Welsh local politics came to an end on May Day 2008'.¹⁵² This almost certainly over-states the case. The more rural areas of the country have never known Labour dominance at local government level. Even in metropolitan Wales, Labour has regularly faced serious, sustained and sometimes successful challenges. In short, the party's strength at the local level has never matched its sustained domination of Welsh representation at Westminster. Moreover, it is the latter that has underpinned the party's dominant position in Welsh politics more generally.

Labour's domination of Wales's Westminster representation remains intact – at the very least until the next UK general election – in large part due to the quite spectacularly disproportionate workings of the first-past-the-post system in the Welsh context. Moreover, Westminster remains the dominant level in Welsh political life: not only in formal terms through the preservation of parliamentary sovereignty, but also because Westminster (and, indeed, Whitehall) are veto-players in the post-2006 Act Welsh legislative process. Important vestiges of Labour hegemony therefore still remain. While Welsh Labour is clearly down, it is not yet out.

Nonetheless, reversing or even halting the current decline presents a huge challenge to the party. A few local battles like Montgomeryshire (Con/LD) and Ceredigion (Plaid/LD) notwithstanding, Labour will be the party defending territory in the next general election in Wales. It will also have to do so against different opponents in different places, making the construction of a coherent and effective response difficult. Welsh Labour is further hampered by lacklustre organisation, under-developed and under-resourced policymaking structures, and an absence of credible, authoritative and appealing leadership given Rhodri Morgan's imminent departure and the forced resignation of Peter Hain. Even more fundamentally, there appear deep philosophical disagreements within Welsh Labour about how to proceed. Some appear to regard Rhodri Morgan's attempt to put 'clear red water' between Welsh and British Labour as a populist over-reaction to the Alun Michael period. And given the poor 2007 and 2008 results, they now seem to believe it is time to cleave closer to British Labour (the UK party's current travails apparently notwithstanding). Others

¹⁵² J. Osmond, 'The Welsh results examined "Anyone but Labour"', Open Democracy website: www.opendemocracy.net/ourkingdom/2008/05/07/the-welsh-results-examined-anyone-but-labour

see no alternative to Morgan's attempt to stress Welsh distinctiveness. But the content of that distinctiveness – what exactly constitutes a 'progressive policy agenda' in early twenty first century Wales? – remains deeply problematic.

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The **Constitution** Unit

DEVOLUTION MONITORING PROGRAMME 2006-08

Wales Devolution Monitoring Report

September 2008

Prof Richard Wyn Jones & Prof Roger Scully (eds.)



Sefydliad Gwleidyddiaeth Cymru

Institute of Welsh Politics

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

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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 at The Constitution Unit, UCL and the team leaders are as follows:

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Wales Devolution Monitoring Report

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Abbreviations and Acronyms

| | |
|-------|--|
| AM | Assembly Member |
| DGN | Devolution Guidance Notes |
| EU | European Union |
| GOWA | Government of Wales Act |
| GVA | Gross Value Added |
| HCW | Health Commission Wales |
| HE | Higher Education |
| HEFCW | Higher Education Funding Council for Wales |
| JRF | Joseph Rowntree Foundation |
| LCO | Legislative Competence Order |
| LHB | Local Health Board |
| LSB | Local Service Board |
| NAfW | National Assembly for Wales |
| NFI | National Fraud Initiative |
| TFOs | Transfer of Functions Orders |
| WAG | Welsh Assembly Government |
| WASC | Welsh Affairs Select Committee |
| WLGA | Welsh Local Government Association |
| WPI | Wales Programme for Improvement |

Summary and Introduction

Devolution in Wales between May and September 2008 continued to live with the consequences of the 2006 Government of Wales Act. The devolved Assembly and Assembly Government Ministers were already receiving enhanced powers under the Act and the process it created for devolving further powers was also being worked through in a number of policy areas. This process made abundantly clear the complexities and potential difficulties inherent within the current constitutional 'settlement'. Moreover, the current arrangements were being operated in relatively 'easy' political circumstances. The more challenging context likely to emerge in the event of a Conservative government taking office in London became an ever-greater probability throughout the period covered by this report.

1. Public Policy

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1.1 Introduction

A central tenet of the political discourse on ‘devolved’ policy-making in the UK has been the need to foster an inclusive and participatory democracy.¹ Allied to this, the academic literature highlights the effect of ‘communication distortions’ on participation in public policy-making.² In other words, citizens’ levels of awareness of the structures and processes of policy-making shape their propensity to participate in formal decision-making by lobbying, responding to consultation exercises, submitting petitions, etc. Accordingly, the mass media have a central role in informing individuals and organisations on policy matters in the devolved context, and beyond. Over recent years a major concern has been the lack of public knowledge regarding devolved policy and law-making.³ Published in June, ‘The BBC Trust Impartiality Report: BBC Network News and Current Affairs Coverage of the Four UK Nations’⁴ examined the BBC’s ‘commitment to informing citizens and its commitment to sustaining democracy’. Its findings confirmed that the publicly-funded Corporation has been: ‘failing to meet its core purpose of helping inform democracy’. Analysis of a (somewhat limited) sample output of network news and current affairs programmes in 2007 found that 19 per cent of reports relating to devolution were ‘vague and confusing’ and of the 136 GB or UK-wide network reports about health and education policy – none covered devolved policy. After almost a decade of devolved governance, the BBC Trust Report makes a series of recommendations to address these significant failings. Tellingly it admits, ‘it may be that this Review should have taken place several years ago’.⁵ It concludes that henceforth: ‘BBC management should monitor its own performance in connection with serving the nations and regions’. Given the London-centric focus of some BBC managers in relation to news

¹ See, for example, P. Chaney and R. Fevre, ‘Ron Davies and the Cult of Inclusiveness: Devolution and Participation in Wales’, *Contemporary Wales* 14, pp 21-49, ISSN 0951-4937, (Cardiff: University of Wales, 2001).

² See, for example, M. Whipple, ‘The Dewey-Lippmann Debate Today: Communication Distortions, Reflective Agency, and Participatory Democracy’, *Sociological Theory*, 23, 2, 156-178 (2005).

³ See, for example, D. Barlow, P. Mitchell, and T. O’Malley, *The Media in Wales: Voices of a Small Nation*, (Cardiff: University of Wales Press, 2006).

⁴ BBC, ‘The BBC Trust Impartiality Report: BBC Network News and Current Affairs Coverage of the Four UK Nations’ (June 2008):

http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/impartiality/uk_nations_impartiality.pdf

⁵ *Ibid*, pg 88.

and current affairs witnessed hitherto – and almost a decade of failure in reporting devolved policy-making – it remains to be seen whether self-regulation is the best way to address the issues highlighted in the Report.

July marked the first anniversary of the Welsh Labour–Plaid Cymru Coalition Government’s policy programme ‘One Wales’ – and saw the announcement of five proposed Assembly Measures as part of the WAG’s 2008-09 legislative programme.⁶ Marking the ‘One Wales’ anniversary, First Minister Rhodri Morgan AM (Welsh Labour) took the opportunity to highlight WAG’s investment in health by referring to the recent announcement of funding for two new hospitals in south-east Wales. Contradicting critics who complained that little headway was being made on WAG’s policy agenda Deputy First Minister Ieuan Wyn Jones AM (Plaid Cymru) also cited progress on securing the ‘One Wales’ commitment to a referendum on full law-making powers for the National Assembly during its present term. In response, both the Welsh Liberal Democrats and Welsh Conservatives criticised several aspects of WAG’s performance, including what they claimed was a general dearth of policy outcomes. Both opposition parties expressed concerns over education policy; according to Welsh Liberal Democrat leader Michael German AM: ‘there are major issues surrounding the introduction of the foundation phase in education, funding of further education, funding of higher education and the backlog in building repairs’.⁷ We now turn to look at specific policy developments over the past quarter.

1.2 Health and Social Services

Designed For Life (2005) is WAG’s ten-year health strategy.⁸ It sets out targets in relation to healthcare provision. For example, it states that by March 2008 nobody should wait more than 22 weeks for treatment. NHS Wales’ hospital waiting list data

⁶ These are in the following areas: Child Poverty – a duty on public agencies to demonstrate their contribution to ending child poverty, Additional Learning Needs – to extend the range of individuals who may appeal to the Special Educational Needs Tribunal for Wales, charging for non-residential social care – to establish a fairer and more consistent approach to charging for specified services levied by local authorities, better local services – a Measure for local government which will require local partners to co-operate in effective and joined-up community planning and service delivery, and Affordable Housing – a Measure giving local authorities the power to apply to Welsh Ministers to designate areas of housing pressure where the Right to Buy may be suspended for a limited period.

⁷ BBC News, Reported in Anon, ‘Lab-Plaid partners ‘delivering’’, <http://news.bbc.co.uk/1/hi/wales/7493203.stm> (7 July 2008)

⁸ WAG, ‘Designed For Life Creating World Class Health and Social Care for Wales in the 21st Century’ (Cardiff: WAG, May 2005): <http://new.wales.gov.uk/topics/health/publications/health/strategies/designedforlife?lang=en> Note: WAG is currently consulting on its future public health strategic framework for Wales aimed at securing ‘a concerted drive to improve health and reduce health inequalities by 2020’. The Strategic Framework is expected to be published by April 2009. See: <http://new.wales.gov.uk/topics/health/ocmo/framework/?lang=en>

released at the end of April shows that this target had been met; the total number of people waiting for a first outpatient appointment fell from 5,565 in February to zero in March. The number of people waiting for admission to hospital for treatment was also down from 2,838 to five in the same period. Weighed against this progress, data released in May revealed that other targets – such as those relating to delayed transfers of care (bed blocking), bowel cancer screening and heart surgery – had not been met. According to Jonathan Morgan AM (Welsh Conservatives) ‘heart disease, coronary disease, and cancer are very important, big health issues in Wales and if you cannot get that right then how on earth can people be confident that the NHS will be delivered in the right way’.⁹

Established in 2003, Health Commission Wales (HCW)¹⁰ has a budget of approximately £0.55bn. The Commission funds treatments normally unavailable via the NHS – such as specialised care relating to transplants and eating disorders. In June a report commissioned by health minister Edwina Hart AM (Welsh Labour) highlighted significant shortcomings in the structures, funding arrangements and operational practices of HCW and recommended its replacement with an independent body. Speaking about the proposed successor body the minister highlighted the need for a more participatory approach to HCW’s functions; she stated: ‘I am convinced that substantially-increased engagement by members of the lay public in these profoundly difficult decisions will lead to improved transparency and public confidence in both the processes and outcomes’.¹¹

Over the past few months major structural reform of NHS Wales continued to dominate health policy. In June, the National Assembly’s Health, Well-being and Local Government Committee published its response to WAG’s restructuring proposals (see May 2008 Devolution Monitoring Report).¹² The Committee concluded that the Health Minister should consider a range of issues before deciding on WAG’s final policy – including the accountability of ministers, the management of community health services and the integration of health and social care services. The Committee also said that future health bodies should have strong links with the communities that

⁹ BBC News, Quoted in Anon, ‘Health plan ‘missing key targets’’, <http://news.bbc.co.uk/1/hi/wales/7391477.stm> (9 May 2008).

¹⁰ WAG, ‘Health Commission Wales’: <http://new.wales.gov.uk/topics/health/hcw/?lang=en>

¹¹ BBC News, Reported in Anon, ‘Health body ‘should be scrapped’’, (10 June 2008) <http://news.bbc.co.uk/1/hi/wales/7446048.stm>

¹² WAG Health Wellbeing and Local Committee, ‘Inquiry to the Assembly Governments consultation Proposals on the structure of the National Health Service in Wales’ (June 2008): http://www.assemblywales.org/hwlg_3_nhs_reorganisation_final_report_-_e.pdf

they serve. In mid-July, the Health Minister responded to the consultation responses by announcing an 'outline plan' for thoroughgoing reorganisation of NHS Wales. Under the proposed reforms all NHS Wales trusts and the 22 local health boards (LHBs) would be replaced by a total of seven health organisations. Further consultation on the draft proposals is scheduled for September. Commenting on these developments, Jonathan Morgan AM (Welsh Conservatives) said that WAG's 'announcement vindicates the position Welsh Conservatives took back in 2003 – that the creation of 22 LHBs was unnecessary, bureaucratic and expensive'.¹³

Late June also saw the health minister announce a review of mixed wards in hospitals, with the aim of securing single sex wards in the future.¹⁴ In the interim NHS Wales' hospitals are being asked to provide separate washing facilities for men and women. There have also been further health policy developments following the publication of the final report of the Palliative Care Planning Group. This concluded that 'palliative care services in Wales are delivered by a wide network of providers and, although there are many examples of good services across Wales, not all patients can access them. This is largely due to geography and under-staffing in services'.¹⁵ In addition to staffing issues the report highlighted the need for improvements in bereavement counselling for families. In response the health minister announced in July further investment in palliative care with £1m allocated in 2008-09, £2m in 2009-10 and £5m in 2010-11. According to the minister this funding will be distributed on advice from the Palliative Care Implementation Group, a body that has been established in response to the recommendations in the Palliative Care Planning Group Report. In the same month the health minister accepted the recommendations of a WAG commissioned report¹⁶ that patients in north Wales should continue to use regional specialist neurosurgery centres in England for planned and emergency care, and receive follow-up treatment provided by centres in north Wales. This policy decision comes after opposition to the earlier suggestion that north Wales patients should travel to receive specialist neurosurgery care in south Wales (a roundtrip journey time of up to nine hours by road). Responding to the announcement Jenny Randerson AM, Welsh Liberal Democrat health

¹³ BBC News, Quoted in Anon, 'Proposals to streamline the NHS', (16 July 2008)

<http://news.bbc.co.uk/1/hi/wales/7510011.stm>

¹⁴ BBC News, Quoted in Anon, 'Ysbytai: Wardiau un rhyw', (25 June 2008):

http://news.bbc.co.uk/welsh/hi/newsid_7470000/newsid_7473500/7473500.stm

¹⁵ Pi Associates (Europe) Ltd, 'Palliative Care Baseline Review' (May 2008):

<http://new.wales.gov.uk/docrepos/40382/dhss/reportsenglish/palliative-care-review-e1.pdf?lang=en>

¹⁶ WAG, *Report of the Welsh Neuroscience External Expert Review Group: Recommendations for North Wales*':

<http://new.wales.gov.uk/topics/health/publications/health/reports/neurosciencesnorth/?lang=en>

spokeswoman, said: 'the big question now is how the minister will pay for these improved services in north Wales'.¹⁷

1.3 Education, Culture and the Welsh Language

In March 2006, the then Education Minister announced a National Review of Behaviour and Attendance (NBAR).¹⁸ Inter alia, it was tasked with: 'exploring ways in which parents, children, young people and the community as a whole can be more effectively supported and engaged in the promotion of positive behaviour and attendance in school', and identifying potential new legislation that would assist in these matters. In May, the NBAR Steering Group published its final report. It identified eleven 'issues that warrant much greater consideration' and policy responses by WAG. These include the significant numbers of pupils with low levels of literacy or numeracy (amongst whom there is a greater tendency for the development of behavioural and/or attendance problems during either the primary or secondary phase) and the fact that 'large numbers of existing professionals have received little or no training for their roles in managing attendance or behaviour'. Teachers' unions and the Children's Commissioner for Wales welcomed the report. Opposition education spokesperson, Alun Cairns AM (Welsh Conservatives), responded to the report saying that 'schools need clear guidance as to how to best tackle issues relating to pupil behaviour and truancy'. Welsh Liberal Democrat education spokesperson, Kirsty Williams AM, highlighted the need for 'smaller class sizes, better trained teachers and a more stimulating curriculum' in order to tackle the problem. She continued, saying WAG: 'must look at the root causes of truancy and bad behaviour. It has been found a third of all pupils who play truant do so because they are being bullied'.¹⁹ In early 2009, WAG is due to publish an action plan that responds to the issues raised in the NBAR report.

In June, the National Assembly's cross-party Rural Development Sub-Committee announced an inquiry into provision of rural education in Wales and the reorganisation of rural schools.²⁰ Specifically, the inquiry will focus on a range of issues including the educational context of rural schools and whether there are any

¹⁷ BBC News, Quoted in Anon, 'New Welsh neurology unit planned', (16 July 2008): <http://news.bbc.co.uk/1/hi/wales/7509149.stm>

¹⁸ WAG, 'National Behaviour and Attendance Review (NBAR) Report' (March 2006): <http://new.wales.gov.uk/dcells/news/educationskillsnews/2233020/nbarreport?lang=en>

¹⁹ D. Williamson, 'Report's call for early action on bad behaviour welcomed', *Western Mail*, (16 May, 2008).

²⁰ National Assembly for Wales, Rural Development Sub-Committee: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-rd-home.htm>

wider social and educational issues associated with rural school reorganisation, such as the impact on rural communities, families and children, and how this is taken into consideration as part of the decision-making process. According to Alun Davies AM (Welsh Labour), Chair of the Sub-Committee, 'this is a vital social and political issue for everyone in Wales'. On other matters, following earlier concerns over funding, it was announced in June that a year's postponement would apply in some areas of Wales with regard to the introduction of the play-based Foundation Phase (3-7 years) education policy. Amongst its objectives, the policy aims to secure a ratio of one teacher for every eight pupils. The new policy was due to be implemented nationwide in September 2008. All children aged five to seven are scheduled to be included in the scheme within the next four years.

In late June, the Education Minister announced a two-stage review of higher education (HE). Phase one will report in September 2008 and will focus on student finance arrangements and the extent to which it is targeted to widen access and encourage take up of priority subjects. It will also examine options to tackle graduate debt. Phase two will be completed in February 2009 and will review the purpose and role for HE including an examination of the current and future demands and needs of learners, the economy and society. According to the minister: 'it is time to refresh the [HE] strategy in light of ... new agendas [such as the One Wales²¹ policy programme and the Report of the Independent Review of the Mission and Purpose of Further Education in Wales, the 'Webb Review' of December 2007²²] and ensure we respond to the many challenges and opportunities faced by higher education in Wales'.²³ Yet Welsh Conservative AM Andrew Davies was critical stating: 'I am extremely concerned at the tight timescale involved in this review ... and the obvious impotency of the Assembly Government to act on many of the factors which lead to student debt'.²⁴

Official statistics estimate that domestic violence will affect one in four women and one in six men in their lifetime, and that some 77 per cent of the victims of domestic

²¹ WAG, 'One Wales, A Progressive Agenda for the Government fo Wales':

<http://wales.gov.uk/about/strategy/strategypublications/strategypubs/onewales/?lang=en>

²² WAG, 'Promise and Performance (Webb Review):

<http://wales.gov.uk/topics/educationandskills/educationskillsnews/promise-and-performance-review?lang=en>

²³ WAG Press Release, 'Minister announces Task and Finish group to review higher education in Wales':

<http://new.wales.gov.uk/news/presreleasearchive/2335853/?lang=en>

²⁴ BBC News, Quoted in Anon, 'Student financing under review', (26 June 2008):

<http://news.bbc.co.uk/1/hi/wales/7475095.stm>

violence are women.²⁵ The cross party Communities and Culture Committee is currently conducting an inquiry into this issue.²⁶ Inter alia, its aim is to examine the delivery of WAG's strategy for tackling domestic abuse and to assess the adequacy of support provided to victims, including support provided to witnesses in the criminal justice system. The Committee is due to issue its report and policy recommendations in December 2008.

The National Assembly's Broadcasting Committee was created on 5 March to investigate and report on the future of public service broadcasting in Wales in both English and Welsh and to examine: 'the impact of digital switchover and the creation of new delivery platforms on the production and availability of programming and digital content from Wales and in Wales'. Over the past months the Committee has taken evidence from individuals representing a wide range of organisations. The Committee's Inquiry comes at a key time when the BBC's record of reporting on the devolved structures and processes of governance has been severely criticised (see Introduction above). In June, the Committee heard evidence from BBC Director General Mark Thompson. Recognising the shortcomings he said that: 'clearly there are a number of areas where we can and must make significant improvement'.²⁷ In early July, the Committee published its report 'The Future of Public Service Broadcasting in Wales'.²⁸ The report makes 28 recommendations around three main themes: maintaining plurality of provision, strengthening mechanisms for holding public service broadcasters to account for their services in Wales, and requiring the Welsh Assembly Government to produce a comprehensive communications strategy (to include policies for broadcasting, creative industries, language, culture and broadband). The Committee's key recommendation is: 'that the National Assembly should establish a standing committee on communications, which should be responsible for scrutinising the work of Welsh Ministers in relation to broadcasting and related cultural and creative industries; the development of broadband, IPTV²⁹ and associated technologies'. Whilst rejecting a call for wholesale devolution of

²⁵ Home Office, *Crime in England and Wales 2006-07* (London: Home Office 2008)

²⁶ National Assembly for Wales, Call for Evidence – Committee Inquiry into Domestic Abuse: http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-ccc-home/cc_inquiries/domestic_abuse.htm

²⁷ National Assembly for Wales, Broadcasting Committee: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-bcc-home/bus-committees-third-bcc-agendas.htm>

²⁸ National Assembly for Wales, Broadcasting Committee, 'The Future of Public Service Broadcasting in Wales: <http://www.assemblywales.org/cr-ld7148-e.pdf>

²⁹ Internet Protocol Television. The term used for television and/or video signals that are delivered to subscribers or viewers using Internet Protocol (IP). The technology that is also used to access the Internet. Typically used in the context of streamed linear and on demand content, but also sometimes for downloaded video clips.

broadcasting (currently a non-devolved matter) to WAG, the report stated 'it is necessary to create new means and mechanisms of accountability whereby UK broadcasters should be accountable to Welsh-based structures for their decisions and policy directions'. WAG's response to the report is due later in the year.

Mid-June saw the announcement by the then heritage minister, Rhodri Glyn Thomas AM (Plaid Cymru), that free access for children and pensioners will be introduced to all heritage sites managed by WAG's historic environment service Cadw.³⁰ On other matters, funding for the voluntary (or 'third') sector from the Assembly Government has increased over the past four years; from £79 million in 2002-03 to £174 million in 2006-07. In January, WAG published a strategic action plan for the third sector to deliver over the next four years.³¹ May 2008, saw the publication of the Communities and Culture Committee Report on 'The Funding of Voluntary Sector Organisations in Wales'.³² Its aims included an examination of the policy directions issued to relevant funding bodies and of the procedures for monitoring outcomes of WAG funding. Amongst the policy recommendations in the Report were calls that WAG: 'should review its code of practice on funding in order to enable third sector organisations to plan their activities more strategically' and, 'review its staff procedures to maintain accessible channels of communication between relevant departments and the third sector'. Elsewhere, with regard to Welsh language policy, an LCO giving WAG powers to legislate on the status to the Welsh language, the creation of the office of language commissioner, and additional rights to Welsh speakers was expected in the spring. However, statements made by Rhodri Glyn Thomas AM (Plaid Cymru) in June indicate that the process is taking longer than anticipated due to the complexity of drafting the LCO. He said that the drafting of the LCO should be completed by the end of the year.³³

1.4 Economy and Transport

Early May saw the launch of WAG's Transport Strategy.³⁴ Amongst its aims the Strategy lists: 'reducing greenhouse gas emissions and other environmental impacts

³⁰ WAG, CADW: <http://new.wales.gov.uk/topics/cultureandsport/historic/cadw/?lang=en>

³¹ WAG, *The Third Dimension – A Strategic Action Plan for the Voluntary Sector Scheme*: <http://new.wales.gov.uk/topics/housingandcommunity/voluntarysector/publications/thethirddimension/?lang=en>

³² National Assembly for Wales Communities and Culture Committee: *The Funding of Voluntary Sector Organisations in Wales*: http://www.assemblywales.org/voluntary_sector_report_eng.pdf

³³ BBC News, Quoted in Anon, 'Iaith: Gohirio mwy o ddeddfu?', (20 June 2008): http://news.bbc.co.uk/welsh/hi/newsid_7460000/newsid_7466300/7466364.stm

³⁴ WAG, *One Wales: Connecting the nation – Wales Transport Strategy*: <http://new.wales.gov.uk/topics/transport/wts/wts/?lang=en>

from transport; integrating local transport; improving access between key settlements and sites; enhancing international connectivity; and increasing safety and security’.

In June, plans were announced for an investment of £52m in the south Wales rail network. According to WAG the existing infrastructure is failing to keep up with the demands of a rising number of passengers. Deputy First Minister Ieuan Wyn Jones AM (Plaid Cymru) said that the investment plans ‘will improve the provision in the capital’s railway stations and strengthen the rail service for the valleys, including increasing the number of seats available on trains’.³⁵ Also on transport policy, data released on 9 May, the first anniversary of WAG’s £2.4m three-year policy of subsidising a north/south air link, showed that 14,000 passengers had used the service, more than double the projected figure.

In terms of economic policy, information released by the Office for National Statistics revealed a mixed picture. The latest data shows that whilst per capita income, as measured by Welsh Gross Value Added (GVA),³⁶ is just 77 per cent of the UK average,³⁷ total employment was up 20,000 over the previous year and up 27,000 over the previous quarter (with 1,360,000 people in employment, the highest number on record). Also in regard to the labour force, June saw the announcement of a three-year WAG policy initiative, ‘Modern Apprenticeship World Class Skills’.³⁸ Based on £40m of European Structural Fund money and some match funding from the Welsh government its aim is to create 14,000 training places that will improve workforce skills.

Recent figures on tourism in Wales show that: tourism provides employment for approximately 100,000 people, tourist spending amounts to approximately £3 billion per annum, and 11.29 million trips to Wales were made by UK residents and 959,000 by overseas tourists in 2005.³⁹ In 2007, WAG appointed consultants to assess policy and practice relating to ‘the contribution of cultural tourism to Wales both

³⁵ BBC News, Reported in anon, ‘£52m: Gwella gwasanaeth trên’, (2 June 2008): http://news.bbc.co.uk/welsh/hi/newsid_7430000/newsid_7431800/7431838.stm

³⁶ GVA (Gross Value Added) is the preferred official measure of wealth – superseding Gross Domestic Product (GDP).

³⁷ National Statistics, ‘Regional GVA’: <http://www.statistics.gov.uk/cci/nugget.asp?ID=420>

³⁸ WAG Press Release, 12 June 2008:

<http://new.wales.gov.uk/news/ThirdAssembly/Education/2008/2371866/?lang=en>

³⁹ Assembly Members’ Research Service: Topic Brief – Tourism, <http://www.assemblywales.org/hom-pdfviewer?url=tourism>

economically and culturally'. In May, the resulting report⁴⁰ found that: 'there is a lack of clarity in the roles and responsibilities of the different organisations involved in cultural tourism. There is a need for better partnership working at all levels'. Amongst a number of key policy recommendations the report asserted that: 'an Integrated Policy and Action Planning process is long overdue that would require all public sector bodies to produce integrated strategies and action plans for cultural tourism'. Responding to the report the then Culture and Heritage Minister Rhodri Glyn Thomas AM (Plaid Cymru) said tourists should have a 'genuinely Welsh [experience] in its content, spirit and sense of place'.⁴¹ WAG's response to the report is due later in the year. Mid June saw Ieuan Wyn Jones AM (Plaid Cymru), Minister for Economy and Transport, launch a consultation process (ending 29 August) on the future setting of local speed limits on Welsh roads.⁴² The consultation will examine a range of matters including the imposition of 20 mph speed limits in appropriate locations (e.g. in the vicinity of schools) and 50 mph speed limits on lesser quality rural roads.

1.5 Environment, Sustainability and Housing

Published in June a Joseph Rowntree Foundation (JRF) report on Welsh rural housing⁴³ asserted that some rural areas will 'lose the next generation of young people without big changes in policy'. Strikingly, the report found that mean house price was now more than five times the average household income in all rural local authority areas. Other findings highlighted the shortage of social housing in rural areas and a significant increase in rural homelessness. Reflecting on existing housing policy JRF called WAG's plans to build 6,500 affordable homes across Wales by 2011 'ambitious' yet, crucially, judged them to be inadequate. The report said that at least three times that number was needed. In response the Deputy Minister for Housing, Jocelyn Davies AM (Plaid Cymru), announced that a network of specialist 'housing enablers' will be developed across all rural areas to increase the supply of affordable housing. It was also announced that unspecified amounts of funding would be made available to develop Community Land Trusts in order to expand the supply of affordable homes in rural areas for local people. The JRF underlined the need for government intervention as, despite the dearth of affordable

⁴⁰ WAG, 'Review of Cultural Tourism in Wales':

http://new.wales.gov.uk/topics/tourism/aboutvisitwales/strategypolicy/cultural_tourism_review/?lang=en

⁴¹ BBC News, Reported in Anon, 'Maximise' cultural tourism call', (26 May 2008):

<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7419272.stm>

⁴² WAG Consultation, 'Setting Local Speed Limits':

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

⁴³ Joseph Rowntree Foundation, 'The Commission on Rural Housing in Wales':

<http://www.jrf.org.uk/ruralhousingwales>

rural housing, there are 18,000 vacant homes in rural areas. Shadow Housing Minister Mark Isherwood AM (Welsh Conservatives) stated that the JRF report was 'worrying reading...affordability blights many lives and deprives many communities of their young people who are forced to move away because of high house prices and the lack of suitable properties'.⁴⁴ In keeping with this issue, in late June, the deputy minister welcomed the publication of an independent review of affordable housing that was commissioned by WAG in October 2007.⁴⁵ Amongst the review's recommendations is the creation of a new regulatory framework for housing associations in Wales. WAG's response to the review will be announced later in the year. The National Assembly's Rural Development Sub-Committee added to the policy debate on this topic with the publication of its report 'Poverty and Deprivation in Rural Wales' in July. This was critical of WAG's policies and said that they were failing to address the issue of rural poverty. Inter alia, it called for an extension of free and reduced cost public transport schemes in rural areas and a significant increase in WAG's current target of 6,500 affordable homes to be built by 2011. The government's response to the report is due in the autumn.⁴⁶ It was also in July that the housing minister announced a policy consultation exercise on the proposed changes to the planning system aimed at making rural communities more sustainable. Amongst the proposals are: that all new housing developments will have to contribute towards the provision of affordable homes and that local planning authorities will be enabled to develop policies for 'low impact development schemes, where people live and work on the land and are self-sustaining in food, energy and waste'.⁴⁷

Earlier in May, with regard to fisheries policy, Rural Affairs Minister Elin Jones AM (Plaid Cymru) approved measures⁴⁸ to further restrict scallop fishing and protect vulnerable parts of the sea bed by extending the period when scallop fishing in Cardigan Bay is prohibited (between 1 June and 31 December) and prohibiting the use of bottom-towed fishing gear on fragile reef structures off the Llŷn Peninsula (where scallop fishing is also prohibited). In June, WAG also announced that Wales

⁴⁴ BBC News, Quoted in anon, 'Lost generation' in rural Wales', (4 June 2009):

http://news.bbc.co.uk/1/hi/wales/north_west/7433947.stm

⁴⁵ WAG, *Affordable housing in Wales: an independent report to the Minister for Housing*:

<http://new.wales.gov.uk/topics/housingandcommunity/housing/publications/essexreview/?lang=en>

⁴⁶ WAG Rural Development Sub-committee, 'Poverty and Deprivation in Rural Wales (July 2008):

http://www.assemblywales.org/poverty_and_deprivation_in_rural_wales.pdf

⁴⁷ Welsh Assembly Government Consultation on Meeting Housing Needs in Rural Areas:

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

⁴⁸ WAG Fisheries:

<http://new.wales.gov.uk/topics/environmentcountryside/foodandfisheries/fisheries/?lang=en>

would be the first country in the UK to use its powers under the Animal Welfare Act (2006) to ban the use of electric shock collars for dogs and cats. These devices are controlled by a handset and allow handlers give animals an electric jolt if they 'misbehave'. Opposition AM Kirsty Williams (Welsh Liberal Democrats) welcomed the development saying that 'pain and fear are not humane methods by which to train an animal'.⁴⁹

1.6 Equalities

Over the last quarter the cross-party Assembly Equality of Opportunity Committee has been gathering evidence as part of its Inquiry into Issues affecting Migrant Workers in Wales. This aims to scrutinise WAG 'on the work it is undertaking to support migrant workers and their families, public service providers and local communities with high proportion of migrants within the population'.⁵⁰ At its June meeting the Committee discussed the problems faced by overseas migrants who are over-represented in low skill occupations and who face barriers to securing employment appropriate to their skills and qualifications.⁵¹ The Inquiry is due to report in the autumn. In the meantime the Equalities Minister, Brian Gibbons AM (Welsh Labour), launched WAG's Refugee Inclusion Strategy.⁵² The Strategy's aims are to 'provide a clear strategic framework for all those working towards refugee inclusion in Wales; and co-ordinate the work of the Welsh Assembly Government and its partner organisations to maximise impact and resources'. Details of the specific measures to be taken for refugees in relation to health, housing, education, etc. have yet to be finalised. According to the minister, WAG is 'currently developing an Implementation Action Plan which sets out the resources, targets and outcomes for each action point in the strategy so that we can monitor progress effectively'.⁵³

⁴⁹ BBC News, Quoted in Anon (26 June 2008):

<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7473597.stm>

⁵⁰ National Assembly for Wales Equality of Opportunity Committee: [http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home/bus-committees-third-eoc-agendas.htm?act=dis&id=87611&ds=6/2008](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home/bus-committees-third-eoc-inquiry/bus-committees-third-eoc-mw.htm)

⁵¹ National Assembly for Wales, The Committee on Equality of Opportunity (4 June 2008):

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home/bus-committees-third-eoc-agendas.htm?act=dis&id=87611&ds=6/2008>

⁵² WAG Refugee Inclusion Strategy:

<http://new.wales.gov.uk/topics/housingandcommunity/communitycohesion/publications/refugeeinclusion/?lang=en>

⁵³ WAG Press Release, 'Minister launches refugee strategy with a call for continued compassion':

<http://new.wales.gov.uk/news/presreleasearchive/2310770/?lang=en>

1.7 Social Justice and Public Service Delivery

In February 2005 WAG launched its Child Poverty Strategy.⁵⁴ The 2007 coalition government's 'One Wales' policy agenda returned to this matter and stated: 'we will support the aim to halve child poverty by 2010 and eradicate child poverty by 2020'. Mid June saw further policy development in this area as WAG announced a consultation period in relation to its strategy 'Taking Action on Child Poverty'.⁵⁵ According to WAG the initiative aims to: 'introduce new legislation to introduce a duty on public agencies in respect of child poverty, to provide free childcare places and other early years' services...[and] introduce a strategy to support vulnerable children'. Despite a plethora of such policy initiatives significant work remains to fully address this issue, as evidenced by a report by the Joseph Rowntree Foundation published in December 2007.⁵⁶ It concluded that: 'more needs to be done...child poverty still affects one in four children'. The consultation period on 'Taking Action on Child Poverty' ends on 30 September. On other matters, the Wales Audit Office report 'National Fraud Initiative (NFI) in Wales 2006/2007: Summary of Findings'⁵⁷ was presented to the National Assembly in mid-May. It concluded that the 2006-07 NFI exercise had been the most successful since the scheme began in 1996. For the period 2006-07 the total value of fraud and overpayments reported under the scheme increased by 73 per cent, from £2.6 million as reported in 2004-05 to £4.5 million in 2006-07.

1.8 Conclusion

Overall, the past quarter has seen a plethora of policy initiatives such as WAG's Transport and Refugee Inclusion Strategies. It has also been characterised by a number of policy reviews (e.g. WAG's two reviews of higher education), inquiries (e.g. NAFW Equalities Committee's inquiry into Issues affecting Migrant Workers in Wales) and policy consultation exercises (e.g. WAG's consultation on sustainable rural communities). However, successful policy development on these – and other – issues requires the participation of citizens, the public and private sectors, civil and civic society. The decade-long failings of the BBC in reporting devolved policy-

⁵⁴ WAG, 'A Fair Future for our Children: The Strategy of the Welsh Assembly Government for tackling child poverty':

<http://new.wales.gov.uk/about/strategy/strategypublications/strategypubs/1133404/?lang=en>

⁵⁵ WAG, 'Taking Action on Child Poverty',:

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

⁵⁶ Joseph Rowntree Foundation, 'Combating Child Poverty in Wales: are effective education strategies in place?' (December 2007): <http://www.jrf.org.uk/knowledge/findings/socialpolicy/pdf/2162.pdf>

⁵⁷ Wales Audit Office, National Fraud Initiative in Wales 2006/07: Summary of Findings (16 May 2008) http://www.wao.gov.uk/assets/englishdocuments/NFI_2006-07_eng.pdf

making – as confirmed in the BBC Trust Report on BBC news coverage of the four UK nations – can be viewed as a significant ‘communication distortion’ on levels of participation in public policy-making. Although impossible to quantify, by contributing to an information/public awareness deficit it has undoubtedly set back the aspiration espoused during the devolution campaign of the 1990s that constitutional reform would further inclusive and participatory policy-making. A further worrying development is the claim by some Welsh MPs that the work associated with LCOs is taking too much of the time of the Welsh Affairs Select Committee; a problem that would be swiftly addressed if the National Assembly were to be granted full law-making powers. This would also provide better governance by improving clarity on ‘policy ownership’⁵⁸ and thereby enhancing democratic accountability.

⁵⁸ i.e. which tier of government/politicians – is/are responsible for policy scope/aims.

2. The Legislative Process

One Year of operating under GOWA 2006

Marie Navarro⁵⁹, Cardiff Law School

2.1 Primary Legislation

There have been five UK Acts enacted in July 2008 which give powers to the National Assembly or to Welsh Ministers. This follows the observed slow-down in the number of powers devolved by Acts to the Welsh Ministers and the Assembly in Wales.

2.1.1 Acts giving powers to the Welsh Ministers or the Assembly

There are a few powers given to Welsh Ministers under the **Criminal Justice and Immigration Act 2008** (c. 4). They are in PART 8 ANTI-SOCIAL BEHAVIOUR:

Premises closure orders, and are contained in the following sections: Section 119 Offence of causing nuisance or disturbance on NHS premises, Section 120 Power to remove person causing nuisance or disturbance and Section 121 Guidance about the power to remove etc.

Quite a few powers are transferred to Welsh Ministers in the **Sale of Student Loans Act 2008** (c. 10). The Act shows a clear and comprehensive 'Wales' section which provides:

9 Wales

(1) The Welsh Ministers may enter into arrangements under which rights of theirs in respect of student loans are transferred to another person.

(2) In subsection (1) "student loans" means loans made by the Welsh Ministers in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998.

(3) The provisions of this Act apply in relation to arrangements made under subsection (1) ("Welsh transfer arrangements") as to arrangements made under section 1(1).

⁵⁹ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk

(4) In connection with Welsh transfer arrangements references to the Secretary of State are to be read as references to the Welsh Ministers, except in...

Many powers are devolved to Welsh Ministers in the **Regulatory Enforcement and Sanctions Act 2008** (c. 13); it contains various sections specifically concerning Wales, in parallel with equivalent English sections. This shows another clear way of drafting legislation with specific applications to Wales. There is a particular section for Parliamentary and Assembly Procedure (s.61). The Act does not give legislative competence to the Assembly, but it does subject some of the subordinate legislation made by Welsh Ministers to the National Assembly's affirmative and negative resolution procedures, as well as imposing requirements on the Welsh Ministers to lay documents and reports before the Assembly.

Similarly, the **Health and Social Care Act 2008** (c. 14) and the **Housing and Regeneration Act 2008** (c. 17) give many different powers to Welsh Ministers and no further legislative competence to the Assembly. They also subject some of the subordinate legislation made by Welsh Ministers to the Assembly's affirmative and negative resolution procedures and impose requirements on Welsh Ministers to lay documents and reports before the Assembly.

2.2 Parliamentary consideration of proposals for LCOs⁶⁰

2.2.1 *The Welsh Affairs Select Committee pre-legislative scrutiny*

The Committee published the following reports:

- 23 July 2008: **Fourth Special Report: The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008: Government Response to the Committee's Fifth Report of Session 2007-08** [HTML version \(browsable\)](#) [PDF version](#)  HC 993

- 10 July 2008: **Sixth Report The provision of cross-border health services for Wales: Interim Report**
[HTML version \(browsable\)](#) [PDF version](#)  HC 870

⁶⁰ For vocabulary in relation to 'proposed' and 'draft' LCOs see below paragraph 4.1. I refer to proposals for LCO as a generic term as the two other terms have precise procedural legal definitions.

-26 June 2008: **Fifth Report The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008** [HTML version \(browsable\)](#) [PDF version](#)  HC 576

-19 June 2008: **Third Special Report The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008: Government Response to the Committee's Fourth Report of Session 2007-08** [HTML version \(browsable\)](#) [PDF version](#)  HC 715

2.2.2 The House of Lords scrutiny of LCOs

The pre-legislative scrutiny by the House of Lords of proposed LCOs continues to be very straightforward and unproblematic. The Constitution Committee is considering all the draft LCOs for the House of Lords and so far has found that no LCO raised 'matters of constitutional principle'.

2.2.3 Second LCO made by the Queen on the Privy Council

The second LCO, the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008, SI. 2008/1785, was made on 9 July.⁶¹ (See below for the progress of each individual LCO.)

2.3 The review of the LCO Process by the Wales Office, WASC and WAG

2.3.1 The Secretary of State for Wales' review of the LCO process

Devolution Guidance Note 16. Orders in Council under section 95 of the Government of Wales Act 2006 was issued in July 2008.⁶² The note seeks to assist UK Government officials involved with Orders in Council by: 'setting out the new legislative arrangements in Wales; setting out the principles to be applied when considering requests for enhanced legislative competence; and, explaining the procedures governing this process'. The note sets out seven principles to be followed by UK officials in dealing with LCOs which are:

- i. Deepen not broaden the settlement

⁶¹ OPSI, National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008, SI. 2008/1785: http://www.opsi.gov.uk/si/si2008/uksi_20081785_en_1.

⁶² Ministry of Justice, 'Devolution Guidance Note 16': <http://www.justice.gov.uk/docs/dgn16.pdf>

- ii. Allow scope for policy divergence
- iii. Ensure the case for powers is made
- iv. Clearly defined scope
- v. Appropriate breadth of matters
- vi. Ensure coherence of law
- vii. Respect UK powers and interests

The document addresses many of the concerns that have arisen in relation to the LCO process and makes clear that Whitehall should agree to enhanced legislative competence to the Assembly when it fulfils these seven principles. The document also makes it clear that Whitehall should agree to any LCO proposal both before it is published and at stage 3 (see below). The document describes the following stages for making an LCO:

- Stage 1: Agreeing the proposed Order
- Stage 2: Pre-Legislative Scrutiny
- Stage 3: UK Government and Welsh Assembly Government clearance of the draft Order
- Stage 4: Formal approval by the National Assembly for Wales
- Stage 5: Parliamentary approval
- Stage 6: Approval by her Majesty in Council and coming into force⁶³

This document makes progress in taking the devolution settlement forward and it can be argued that it embodies the long lost Rawlings principles, i.e. clear and sound principles on which to devolve functions to Wales. It is designed to inform UK officials. The Welsh Ministers issued similar guidance for their own officials (see 2.3.3 below).

Review of framework powers in primary legislation

There is also the Devolution Guidance Note 9 which deals with framework powers and which is less detailed and equally supportive of appropriate Bills giving powers to the National Assembly to make Measures by adding to the list of Matters in Schedule 5 of the 2006 Act.⁶⁴

⁶³ Ibid. Paragraph 30.

⁶⁴ Ministry of Justice, 'Devolution Guidance Note 9':
<http://www.justice.gov.uk/guidance/devolutionguidancenotes.htm#nine>

2.3.2 House of Commons' Pre-legislative Scrutiny: The WASC report

The Welsh Affairs Select Committee published a 'Memorandum on the Review by the Secretary of State of the procedure for Legislative Competence Orders in Council'.⁶⁵

The Committee made the following recommendations:

Conclusions and recommendations

1. We conclude that the select committee is the most effective option for the pre-legislative scrutiny of LCOs. (Paragraph 6)
2. We recommend that pre-legislative scrutiny of LCOs at Westminster continues to follow the rigorous, evidence-gathering process of the select committee. We strongly recommend that all proposed Orders continue to be referred to the Welsh Affairs Committee for pre-legislative scrutiny. Making this the standard process will help with the orderly and adequate allocation of time and resources. (Paragraph 7)
3. We propose that all Members of the House be informed that an LCO is being sought by the Assembly and that, as a matter of course, full information about any draft LCO be provided to all Welsh MPs before the Committee starts its deliberation and that they be invited to submit any views for consideration by the Committee. (Paragraph 11)
4. We would not recommend a "one size fits all" approach to our scrutiny, and we retain the option of pursuing pre-legislative scrutiny in other ways. (Paragraph 13)
5. We propose that members of the relevant committee of the National Assembly for Wales be offered a standing invitation to attend and sit in on any of our scrutiny meetings. (Paragraph 14)
6. We do not consider that there will normally be any benefit of having joint scrutiny meetings in the sense of taking evidence jointly, but we do consider that there may well be LCOs where the subject matter would make it appropriate for holding a joint meeting of the

⁶⁵ House of Commons Welsh Affairs Committee, 'Review by the Secretary of State of the procedure for Legislative Competence Orders in Council': <http://www.parliament.uk/documents/upload/Review%20of%20LCOs%20by%20the%20Secretary%20of%20State%20-%20Memorandum%20by%20the%20Welsh%20Affairs%20Committee.pdf>

two committees at the end of their separate scrutiny, to consider their respective recommendations. (Paragraph 14)

7. We believe that the Chairman of the Welsh Affairs Select Committee should regularly liaise with the Chair of the relevant Assembly Committee. (Paragraph 15)

8. The Welsh Affairs Committee must play a significant part in the pre-legislative scrutiny of LCOs, and we are committed to making the process work as effectively as possible. (Paragraph 16)

9. It is not clear that there is any real advantage in having a proposed LCO referred to an Assembly Committee and to the Welsh Affairs Committee simultaneously. (Paragraph 18)

10. Our considered view now is that scrutiny by the Welsh Affairs Select Committee should normally take place after the Assembly committee has completed its scrutiny. (Paragraph 19)

11. There would be considerable merit, when appropriate, for there to be a joint meeting of the two committees to discuss their findings together. (Paragraph 20)

12. We urge the Wales Office and the Welsh Assembly Government to work together to bring a greater predictability to the timetable of this process. (Paragraph 21)

13. We urge the Assembly and the Wales Office to find ways of giving a proper focus to legislative work, aiming at producing a reasonable number of high-quality Orders each year rather than allowing volume to swamp the system here and in the Assembly as seems to be happening at the moment. (Paragraph 23)

14. If the level of LCOs coming forward from the Assembly settles down at something of the order of the four or five per year originally envisaged, this will enhance scrutiny, facilitate better planning and avoid the danger that issues over capacity could become an obstacle to effective working. (Paragraph 25)

15. We propose that a clause be added to each LCO, making it legally clear – if there is any subsequent doubt – that the power is intended to provide the power that has been requested and outlined by the Assembly. The power to do something that had not been anticipated has not been transferred unless it is absolutely certain that it falls within the powers transferred. (Paragraph 29)

16. Clarity is absolutely important and we believe that the process is proposed here would be to the benefit of both Assembly and Parliament, and indeed would be likely to enhance mutual confidence and avoid the danger of theoretical arguments over how a power might be used in ways that had not been anticipated, possibly leading sometimes to an extended wrangle over whether a particular LCO should be approved or not. (Paragraph 31)

17. We believe that the best way of ensuring effective and thorough pre-legislative scrutiny of LCOs is for their automatic referral to the Welsh Affairs Committee, along with the other improvements identified in this paper. (Paragraph 32)

18. We recommend that the current system of scrutiny by the Welsh Affairs Committee on behalf of the House of Commons be confirmed as standard practice, with the procedural modifications we have proposed. We also recommend that the Secretary of State undertakes to review the situation again in a year's time. (Paragraph 32)

2.3.3 WAG's guidance

In July 2008, the WAG published the 'Guidance to Welsh Assembly Government Departments on Liaison with the UK Government over Parliamentary Bills, Legislative Competence Orders, and Assembly Measures' to complement the guidance published by the Wales Office on the LCOs procedure.⁶⁶

2.4 Law made in Wales

Carwyn Jones, Counsel General and Leader of the House published on 26 June 2008 a 'Progress Report on the Welsh Assembly Government's 2007-08 Legislative Programme':⁶⁷

⁶⁶ 'Guidance to Welsh Assembly Government Departments on Liaison with the UK Government over Parliamentary Bills, Legislative Competence Orders and Assembly Measures': <http://new.wales.gov.uk/legislation/guidance/guidance/?lang=en>

⁶⁷ WAG, 'Written – Progress Report on the Welsh Assembly Governments 2007-08 Legislative Programme': <http://new.wales.gov.uk/about/cabinet/cabinetstatements/2008/2379329/?lang=en>

'This statement provides a progress report on the Welsh Assembly Government's 2007/08 legislative programme in advance of the First Minister's statement on the Government's legislative programme for 2008/09, which is being made in plenary on 15 July'.

2.4.1 First Minister's Statement on the Assembly Government's Legislative Programme 2008-2009

In July, the First Minister disclosed WAG's legislative programme which included five Measures and four LCOs. It is interesting to note that the balance in the numbers of LCOs and Measures has shifted and that there will now be more Measures than LCOs. It shows that the settlement is working and that the legislative competence of the Assembly has already sufficiently increased to allow so many Measures proposals (see below).

The First Minister also declared that:

I think that we, as an Assembly—as a scrutiny and legislative body—and as a Government, and civil servants, stakeholders out there who will be directly affected by the legislation and the lawyers who are going to be advising us on how to write these laws, all need to learn the game. That is why I emphasised that we are in our apprenticeship or foundation-degree stage, as an Assembly. We are completing year 1 and, today, we are kicking off year 2 and we are learning the game. We are still in our infancy as a legislative body. Therefore, the faster that we move up that learning curve, the stronger—not the weaker—the case will be for a referendum on full legislative powers. It should be based on the successful use of the powers in the Government of Wales Act 2006, not on the lack of success of using those powers.

2.4.2 Law made in Wales under the 2006 Act procedures

In summary, so far two LCOs and one Measure have been made. There have been discussions as to the number of LCOs which would be manageable, both for the Assembly and for the Welsh Affairs Select Committee, as was reported in the Western Mail on 18 and 21 August (see below for my interpretation of the numbers at 2.5.2).

2.4.3 Legislative Competence Orders

The table below sets out the proposals for LCOs in the order they are officially announced or published in draft and the various stages they have reached. In italics

is shown the current stage of each proposal for an LCO when writing this report at the end of August.

Figure 2.1: Proposals for Legislative Competence Orders

| Number LCO | Source | Purpose | Status |
|------------|----------------------------------|---|---|
| 1 | WAG | Additional Learning Needs Matter 5.17 | Made on the 9 th of April In Force SI. 2008/1036 |
| 2 | WAG | Environmental Protection and Waste Management Matters 6.1-2 | Pre-legislative scrutiny by Committee in Cardiff – completed <i>Being Redrafted</i> |
| 3 | WAG | Vulnerable Children Matter 5.18 Matters 15.2-8 Matter 16.1 | Pre-legislative scrutiny by Committee in Cardiff – completed Report January 2008 = <u>REVISED order</u> Second Committee Report on Revised Order Joint pre-legislative scrutiny WASC / Assembly WASC Pre-legislative Scrutiny– completed <i>Awaits Formal Approval by the Assembly</i> |
| 4 | WAG | Domiciliary Care Matter 15.1 | Made on the 10 th of July In Force SI. 2008/1875 |
| 5 | WAG | Affordable Housing Matter 11.1 | Pre-legislative Scrutiny Committee– completed = <u>REVISED order</u> <i>WASC pre-legislative scrutiny of Revised Order</i> |
| | WAG | Welsh Language | <i>Being negotiated with Whitehall – To be drafted</i> |
| 7 | AM- Ballot 1 Ann Jones | Domestic fire safety. Matter 11.2 | Pre-legislative Scrutiny Committee– completed Report June 2008 <i>Secretary of State</i> |
| 6 | AM- Ballot 2 Jonathan Morgan | Mental Health reform Matter 9.2 | Pre-legislative scrutiny by Committee in Cardiff Report June 2008 <i>Secretary of State</i> |
| | AM- Ballot 3 Helen Mary Jones | Carers. | Leave to introduce draft granted. <i>- Withdrawn- WAG should reintroduce it as a Government LCO.</i> |
| | AM- Ballot 4 Huw Lewis | Bus and Coach Services | Leave to introduce draft granted. <i>Being drafted.</i> |
| X | AM- Ballot 5 Peter Black | Local Government Electoral Arrangements | <i>Leave to introduce draft refused. Failed.</i> |
| | AM- Ballot 6 Janet Ryder | Flags and motifs on vehicle registration plates | <i>Leave to introduce proposed LCO to be granted</i> |

The redrafting of LCOs:

There is no formal procedure for the pre-legislative scrutiny Committees, either in Westminster or Cardiff Bay, to reconsider an amended proposed order which has been redrafted prior to its formal introduction as a draft order to the Assembly. There is no vote in plenary at the end of the pre-legislative stage either (as was wrongly implied in my last report). Reports are tabled from the relevant Assembly Committee and WASC. This is one aspect of the procedure for making LCOs which could and should be improved in the future.

2.4.4 Draft Measures so far

The Assembly has made one Measure which has been approved by Her Majesty in Council (the NHS Redress Measure) and two further draft Measures are at stage two: the Learner Travel Measure and the Healthier School Meals Measures. Another Measure was formally introduced just before the summer recess: the Playing fields (community involvement in disposal decisions) Measure.

The table below shows the various proposals for Measures. The first column shows the order in which the drafts have been introduced before the Assembly. In italics is shown the stage each proposal for a Measure has reached at the time of writing this report at the end of August.

Figure 2.2: Various Proposals for Measures

| Number | Source | Purpose | Status |
|--------|--------|--|--|
| 1 | WAG | An NHS Redress draft Measure intends to give greater rights to patients through a new NHS redress system | Pre-legislative Scrutiny Complete at Stage Stage 1 – Agreement on the Principle of the Measure- completed Stage 2 – Detailed Scrutiny of the Measure- completed Stage 3 – Detailed Scrutiny of the Measure in Plenary Stage 4 – Approval of final draft of the Measure- completed <i>- Royal Assent July 2008</i> |
| 3 | WAG | Learner Travel | Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 28 September 2007 <u>NO</u> Pre-legislative Scrutiny by Committee Introduced 15 April Stage 1 – Agreement on the Principle of the Measure- completed |

| | | | |
|---|---------------------------------|---|--|
| | | | <i>Stage 2 – Detailed Scrutiny of the Measure- in progress</i> |
| 5 | WAG | Learning and Skills Measure will seek to reform the 14-19 curriculum | Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 28 April 2008 – Introduced on 7 July 2008 <i>Awaits stage 1.</i> |
| 2 | AM- Ballot 1 Jenny Randerson | Draft Measure for healthier school meals in Wales | Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 29 February 2008 - Introduced on 14 March Stage 1 – Agreement on the Principle of the Measure- completed <i>Stage 2 – Detailed Scrutiny of the Measure- in progress</i> |
| X | AM- Ballot 2 Mike German | Draft Proposed School Closures (Consultation and Categories) Measure | <i>Rejected on Principle by Plenary – Failed.</i> |
| 4 | AM- Ballot 3 Dai Lloyd | Draft Measure on Impact Assessments for the Selling off of Playing Fields | Leave to introduce proposed Measure granted- Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 13 June 2008 - Introduced on 18 July 2008 <i>Awaits stage 1</i> |
| | AM- Ballot 4 Nerys Evans | Draft Measure on Recycling | Leave to introduce proposed Measure granted- <i>To be drafted</i> |
| X | AM- Ballot 5 Peter Black | Draft Measure on Youth Services | <i>Rejected on Principle by Plenary – Failed</i> |

2.5 The first year of operation of GOWA 2006

The Assembly is still in its infancy as a legislative body, with only one year's experience operating the interim and incremental legislative powers of the Government of Wales Act 2006. The purpose of the interim legislative system is to 'both permit the National Assembly to develop the capacity to deal with enhanced powers and allow Parliament and the National Assembly to develop a balance between them which provides the best possible legislative framework for Wales and the UK'.⁶⁸

⁶⁸ Ministry of Justice, 'Devolution Guidance Note 16': <http://www.justice.gov.uk/docs/dgn16.pdf>, para. 12

It is considered that by 2010 the sphere of competence of the Assembly and WAG will have grown sufficiently for them to be able to show that they can successfully use their powers to the extent that there would be a strong case for asking the people of Wales and Westminster to give them the full legislative powers of Part IV of Schedule 7 to the 2006 Act.

The last few months in particular have shown a growing wish amongst Whitehall and Westminster that the new provisions of the Government of Wales Act should work efficiently.

2.5.1 The growing sphere of competence of the Assembly

The legislative process put in place by GOWA 2006 and the 'Interim system' described in the 2005 White Paper are in constant evolution.

The competence of the Assembly is listed as 'Matters' in Schedule 5 of the 2006 Act. This gives at any given time the spectrum of areas of legislative competence which reflects the evolutionary and incremental nature of the current settlement.

Schedule 5 started in May 2007 with six Matters in Field 13: National Assembly for Wales. One year later there are proposals for 48 Matters under 10 Fields. Out of those 29 are already in force. This means that in the first year of operation half of all Fields are in the process of being constituted. The empty Fields are:

- Field 1: Agriculture, fisheries, forestry and rural development
- Field 2: Ancient monuments and historic buildings
- Field 3: Culture
- Field 4: Economic development
- Field 7: Fire and rescue services and promotion of fire safety
- Field 8: Food
- Field 14: Public administration
- Field 17: Tourism
- Field 19: Water and flood defence
- Field 20: Welsh language

In relation to Field 20, Welsh language, discussions are currently taking place with Whitehall which mean that more than half of the Fields would be populated to some extent (either in operation or prospectively) by the end of 2008.

2.5.2 The achievements of the first year, the law produced by the Assembly

In the first year there were 12 proposals, however one was rejected out of principle and failed at an early stage. So there have been 11 viable proposals for LCOs resulting in two LCOs being made and seven going through the process either in the Assembly or Westminster. Of those seven formally introduced, five come from WAG and two from AMs. Out of the 12 informal LCOs, six were proposed by WAG, six from Ballots of AMs.

There have also been eight proposals for Measures of which two proposals were rejected on principle at an early stage. Of the remaining six viable proposals one Measure has already been formally made, four are proceeding through the Assembly, and one is expected to be formally introduced soon. Of the eight proposals three came from WAG and five from Ballots of AMs. It is interesting to note that currently there are fewer proposals for Measures coming from the Government than from AMs, but these are still early days.

In one year two LCOs and one Measure were made in the first year of GOWA's operation.

As regards the speed of the new procedures, the two LCOs took on average 10 months from start to finish (eight Months Assembly Formal Approval, two months Westminster) and the Measure took 11 months. There are indications that the time taken is getting less.

It is noteworthy that overall there are more opportunities for elected representatives to introduce draft legislation for debate by ballot in the Assembly than there are in Westminster. The extent of this is shown by the larger number of proposed Measures which have come before the Assembly from Assembly Members than from the Executive. This would be inconceivable at Westminster.

2.5.3 The problems of the interim system

The disparate range of matters and the risk of Executive Devolution to come back disguised in Narrow Legislative Devolution

As regards legislation, the 2005 White Paper, *Better Governance for Wales*, contemplated two different ways through which the Assembly could obtain powers to make Measures. The first was by means of Acts of Parliament 'in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales',⁶⁹ the second by Orders in Council 'to permit the Assembly to develop the capacity to deal with enhanced legislative powers',⁷⁰ by giving the Assembly 'powers, in specified areas of policy, to modify – i.e. amend, repeal and extend – the provisions of Acts of Parliament in their application to Wales or to make new provision'.⁷¹

'The decisions as to how wide a policy area such a power would cover...would be a Matter for Parliament....There is a range of possibilities: a) something very specific such as the functions of the Ombudsmen in Wales. b) something rather wider such as the protection of welfare of children. c) something considerably wider such as the structure of the NHS in Wales'⁷²

The intention is 'to permit the Assembly to develop the capacity to deal with enhanced legislative powers'.⁷³ This seems to suggest that in all cases the Assembly would have sufficient powers 'in specified areas of policy' to make such legislation as it considers necessary. By the examples given in Part III of the White paper (para. 3.18) it seemed that the Assembly would be given subject areas, whether specific, wider or very wide.

With some exceptions, the Matters which are either in operation or which are provisional in Schedule 5 do not seek to give the Assembly subject areas whether specific, wider or very wide powers to make law, and therefore do not reflect the

⁶⁹ The Stationary Office, *Better Governance for Wales* : <http://www.official-documents.gov.uk/document/cm65/6582/6582.asp>, para. 3.12

⁷⁰ Ibid. para. 3.13

⁷¹ Ibid. para. 3.16

⁷² Ibid. para. 3.18

⁷³ Ibid. para. 3.13

intentions in the White Paper. Nonetheless more recent examples are getting closer to such aspirations (see the LCO relating to the Welfare of Children).

Generally, however, the Matters seem to be expressed in the same terms as the sections of Acts of Parliament which were included in TFOs for executive powers to the old Assembly under GOWA 1998. An example of this are Matters 5.1-5.10 which are now in operation. These Matters are expressed in the same way as if they were sections in an Education Act of Parliament and are very differently expressed to Field 5 in Schedule 7 to GOWA 2006:

Education and training

5 Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

Exception—
Research Councils.

Other examples are the proposed Matters 7.1 (Fire) and 18.1-18.3 (Planning) in Schedule 5 to GOWA 2006. We would have thought that the aim of giving legislative powers to the Assembly should be to enable legislation to be made by the body in relation to wider subjects than fire sprinklers in HMOs and land plans.

This aspect of the appropriate breadth of Matters is referred to in DGN 16 (principle v. paragraph 24). It remains to be seen whether the operation of the new DGN 16 will mean wider Matters will be drafted and accepted in the coming years by Whitehall and Parliament.

The danger of this approach of drafting and requesting only narrow matters is the danger of repeating the problems created by the series of Transfers of Functions Orders, particularly the first one in 1999. It was never possible to understand the extent of the Assembly's executive powers under the TFOs without examining every section of every Act covering the functions which were transferred. In doing so it was always necessary to understand whichever provisos were contained in the TFO in relation to the exercise of a particular section. Consideration of Wales Legislation Online shows the complexity of this approach to the exercise of powers. In acknowledging the issue the purpose of the White Paper was to remedy the problems.⁷⁴

⁷⁴ Ibid. para 3.5

The principle set out in DGN 16 at paragraph 24 is that 'Orders should not give the National Assembly powers over the whole of any of the fields listed in Schedule 5 in one go, nor should subjects normally be imported wholesale from Schedule 7 into Schedule 5 unless a clear case for doing so is made. Defining Matters to be added to Schedule 5 should be approached on a case by case basis, from the standpoint of what the Matter is intended to cover'.⁷⁵ This interpretation has meant that the Assembly's bid for an LCO for 'Environmental Protection' has been lost somewhere within the Whitehall machinery.

However, paragraph 24, principle v. of DGN 16 encourages the use of wider subject area Matters and paragraph 17 considers that where the Assembly is able to make a case for consolidating a variety of disparate legislation Whitehall should support the proposal and make a favourable case to Parliament.

The inherent complexity of the system

There is a more fundamental problem however with the operation of the interim procedure. The need to constantly make a detailed robust case for new powers by reference to the seven principles in the DGN 16 involves a considerable amount of time and debate in the Assembly and WAG, which might better be devoted to considering the nature of the laws the Assembly should be making (i.e. the contents of potential Measures under the sought Matters). This would be avoided if the Assembly already had full competence in these Fields under Part 4 and Schedule 7.

There is also an inherent complexity in the system in that a wide number of bodies consider bids for LCOs without in some cases taking account of the views of the other bodies. That the practice has not been synchronised is a problem which is referred to in the Memorandum by the Welsh Affairs Select Committee on the Review by the Secretary of State of the procedure for Legislative Competence Orders in Council.⁷⁶

⁷⁵ Ministry of Justice, 'Devolution Guidance Note 16':
<http://www.justice.gov.uk/docs/dgn16.pdf>, para. 12

⁷⁶ House of Commons Welsh Affairs Committee, 'Review by the Secretary of State of the procedure for Legislative Competence Orders in Council':
<http://www.parliament.uk/documents/upload/Review%20of%20LCOs%20by%20the%20Secretary%20of%20State%20-%20Memorandum%20by%20the%20Welsh%20Affairs%20Committee.pdf> para. 17

Part of the problem stems from the lack of a structured path, or order, for the different bodies to follow when undertaking pre-legislative scrutiny of the proposed LCOs. DGN 16 has now set out a formal procedure (summarised in Annex 1) of the DGN which should ensure that the process is coherent and that all those involved are aware of each other's views. This is a challenge when considered in the context of the number of bodies concerned; each of whom had, until DGN 16, been working to a different timetable.

The question of the number of LCOs which is 'manageable'

The Presiding Officer's predictions that the amount of legislation initiated in Wales each year under GOWA 2006 would be up to 18 have been accurate. So far in the first year there have been a total of 20 proposals for LCOs and Measures (12 and 8 respectively).

The number of LCOs per year is referred to in paragraphs 21 to 25 of the WASC's memorandum; they refer both to the lack of predictability on when proposed LCOs are likely to be referred to the Committee, resulting in some disruption to the Committee's general programme,⁷⁷ and also to the possible number of proposed Orders. They consider that the number could be as high as 11 but consider they could best handle four or five a year.⁷⁸

In his response to the Memorandum the Secretary of State for Wales wrote to the Chair of the WASC on the 21st July expressing his hopes that the improvements set out in DGN 16 would go a long way to ensuring that there is greater structure in the referral of draft Orders to Parliament and that this would be assisted by a regular dialogue between officials in WASC and in the Wales Office.

In effect WASC is being asked, in looking at draft LCOs, to consider giving powers to the Assembly which would otherwise be in Bills. Such Bills would comprise at least three separate readings in the Houses of Parliament before becoming Acts. There is therefore bound to be considerable pressure placed on the Committee's overall workload in being asked to do this in addition to their other work of looking at general matters affecting Wales.

⁷⁷ Ibid. para. 21

⁷⁸ Ibid. paras 22 and 25.

No direct point of entry of the Assembly in London

Bills giving powers to WAG

There still remains the unresolved problem, referred to in both the Richard Commission Report and the 2002 report of the Assembly's internal review on the operation of the GOWA 1998, that no machinery exists whereby the Assembly can liaise directly with the Wales Office, Whitehall or Parliament regarding the formulation of proposals in draft Bills giving powers to WAG. With the extensive legislative powers available to the Assembly in Schedule 7 of GOWA it is possible that there would be less need for Bills to give such powers to WAG.

LCOs

There seems to continue to be a problem that neither the Assembly as a whole nor individual AMs or Assembly Committees can liaise directly with the Wales Office or Whitehall in relation to their own proposals for LCOs. Para. 39 to 41 of DGN 16 emphasise that the Wales Office and Whitehall will only liaise with the Assembly Government which leaves the individual AM and Assembly Committee to have to liaise with WAG only and with nobody else.

3. Economic Development and the Budget

Professor Peter Midmore, Aberystwyth University

3.1 Introduction

During the National Assembly for Wales' summer term discussions on economic development began, increasingly, to be influenced by the economic downturn: reductions in overall levels of economic growth associated with diminishing global liquidity, and cost-inflationary pressures arising from high world commodity prices, especially oil. These more difficult economic circumstances led to a familiar exchange between government and opposition in Plenary Session. First Minister Rhodri Morgan, asked about current Welsh economic performance, suggested that it was showing 'commendable resilience', particularly through a countercyclical increase in employment. When challenged on issues such as rising unemployment, the state of the housing market and relatively low GVA figures in Wales his response was to cite other indicators which give an alternative perspective, including relatively much larger growth in household incomes than elsewhere in the United Kingdom.⁷⁹ Apart from an apparently seamless transition for Plaid Cymru from critic to defender of the positive interpretation of economic data, much the same discourse journey is still being travelled.

However, consensus of a kind has emerged on an appropriate response to economic difficulties. Much discussion and policy announcement related to softer dimensions of economic development, particularly the development of higher skills levels (since low skills are related both to poor productivity and to economic inactivity, the key elements of relatively poor Welsh performance), and greater technological innovation. All of these issues combine into a focus on the Enterprise and Learning Committee's on-going review of the Economic Contribution of Higher Education, the discussion of which forms the bulk of this term's report. However, exceptions were provided. Firstly, an opposition plenary debate on regeneration, using the example of private sector engagement with improved physical infrastructures in Cardiff Bay to suggest frameworks for the Heads of the Valleys and Barry (but the motion was

⁷⁹ Assembly Record of Plenary Proceedings, 10 June 2008, pp. 8-10:
<http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080610qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20589kb%29>.

dismissed as opportunism by the government, as the latter area is a target seat for Conservatives in the coming election). Secondly, Ieuan Wyn Jones, as Minister for Economic Development, announced the simplification of Business Investment Support in the form of a new flexible Single Investment Fund, providing a unified framework for application for funds and support, which was broadly welcomed by all parties.

3.2 Skills that Work for Wales

Following a consultation by the Assembly Government on skills strategy⁸⁰ the Enterprise and Learning Committee produced a report on the approach, and the Deputy Minister (John Griffiths) duly responded with a debate in plenary session.⁸¹ Key issues which emerge relate to weak representation of Wales on the UK-wide Commission for Employment and Skills, a low aspiration for standard skill levels set as a benchmark relative to other parts of the United Kingdom, and tardiness in relation to implementation of the Webb Review's recommendations, particularly with regard for resources in relation to improvement and coordination of the learning networks which that report proposed.⁸² Of these, the setting of the intermediate skills benchmark at level 2 rather than level 3 is the most revealing since John Griffiths' response indicated a desire for training needs to be market-led by employers, which opposition parties seized on as leading to a perpetuation of low-skill, low-wage conditions in Wales and with inescapable conclusions for economic welfare and development. It is clearly the strain on budgetary resources which prevents greater engagement with the skills agenda. On final publication of the Action Plan document (on 9 July 2008) the contents related to: integration of vocational (apprenticeship) training into the Welsh baccalaureate system, improved cost recovery (fees for employers and trainees), measures to improve all basic literacy and numeracy skills, collaboration with the Westminster Department for Work and Pensions to integrate

⁸⁰ WAG, *Skills That Work for Wales: A skills and employment strategy*, Cardiff: Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government, 2007: <http://new.wales.gov.uk/docrepos/40382/4038232/403829/Consultations/1901302/skills-for-wales-cons-e.pdf?lang=en>.

⁸¹ Assembly Record of Plenary Proceedings, 4 June 2008, pp. 92-114: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080604qv.pdf?langoption=3&ttitle=The%20Record%20%28PDF%2C%20899kb%29>.

⁸² WAG, *Promise and Performance: Report of the Independent Review of the Mission and Purpose of Further Education in Wales in the Context of the Learning Country* (The Webb Review), Cardiff: Welsh Assembly Government, 2007: <http://wales.gov.uk/topics/educationandskills/educationskillsnews/promise-and-performance-review?lang=en>

the employment service with skills development programmes' prioritisation of key economic sectors and their skills needs, development of employment-related foundation degrees and of national research centres in higher education, engagement with employers to determine their needs are being met, and promotion of integration across all providers of 14-19 education and training. The Action Plan will be supported by a proposed Assembly Measure on Learning and Skills, introduced on 7 July 2008 and currently being assessed for its broad principles prior to more detailed scrutiny.⁸³

3.3 The Economic Contribution of Higher Education in Wales

The Inquiry of the Enterprise and Learning Committee into university activity and its effect on the overall economy has been lengthy (taking over seven months to complete and stretching over three Assembly terms) and extraordinarily wide-ranging in scope. In its final evidence-gathering phases it has concentrated on higher education's contribution to knowledge economy activities, examining the processes surrounding technological spin-outs of ideas generated by academic research and their commercialisation, and also the concept of "spin-in", in which businesses locate close to universities to gain advantage from their scientific facilities or to benefit from a local supply of graduate skills. These sessions involved discussions with Universities, small and medium enterprises (one a highly technological provider of producer services to the chemical industry, another a specialist manufacturer of textile equipment), Finance Wales and technology venture capitalists. Alongside this, and aligning the inquiry to the parallel issues of graduate skills, a number of relevant Sector Skills Councils gave evidence in a protracted additional session. Two examples of collaborations between higher and further education were explored; the first was that between the University of Glamorgan and Merthyr Tydfil College (with significant emphasis on the regeneration dimension), and the second between Bangor University and Coleg Menai. In the final meeting of the summer term the Committee took evidence again from Higher Education Wales (the organisation representing university heads) and the Higher Education Funding Council for Wales before going into private session to discuss its report and recommendations.⁸⁴

⁸³ WAG, 'Proposed Learning and Skills (Wales) Measure':
<http://www.assemblywales.org/ms-ld7133-e-a..pdf>.

⁸⁴ NAFW, Enterprise and Learning Committee, 10 July 2008:
<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els->

The final few public exchanges in this Committee exemplified the clear limits of the devolution settlement with regard to finance, education and economic development. In relation to the funding gap between Welsh and English higher education,⁸⁵ David Melding asked whether there was any way to close it other than charging fees to students. In reply, Amanda Wilkinson, the Director of Higher Education Wales, suggested that

It is our major problem and, in terms of some of the competitive issues that have been discussed ... from our point of view, if that funding gap is not closed in the fairly immediate future, there will be serious questions for us.⁸⁶

The funding gap issue had been raised in an earlier plenary debate, initiated by the Liberal Democrats. The Assembly Government sought to deflect criticism by asking from where the necessary additional resources to close the gap would be obtained, suggesting that it would either come from a rise in student fees (following Conservative Policies) or a reduction in service provision (following Liberal Democrat Policies), but was curiously ambiguous on the question of how the problem might be resolved: Alun Davies argued that "It is important to think afresh about the way in which we fund higher education, and move forward globally, ensuring that our higher education has the support that it needs to compete at that level".⁸⁷ The painful issue has been postponed until the report of a task and finish group, which will explore options open to higher education institutions in terms of funding opportunities. However, public spending pressures of all kinds are a consequence of the capitation-based Barnett funding formula; in the case of higher education the extra resources which flow into English universities are not reflected in the block grant allocation, since English students pay top-up fees, and so it requires additional Welsh spending on student support to maintain fees at their pre top-up level.

[agendas/el20080710qv.pdf?langoption=3&ttl=EL%283%29-20-08%20%3A%20Transcript%20%28PDF%2C%20199kb%29](http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080521qv.pdf?langoption=3&ttl=EL%283%29-20-08%20%3A%20Transcript%20%28PDF%2C%20199kb%29)

⁸⁵ On the basis of student numbers and subject mix, Welsh universities would have received £70 million extra if funded by the Higher Education Funding Council for England: see *The Funding Gap 2005/06*, Cardiff: Higher Education Funding Council for Wales, 2007: http://www.hefcw.ac.uk/The_Funding_Gap_2005_06.pdf

⁸⁶ NAFW, Enterprise and Learning Committee, 10 July 2008, p. 28: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas/el20080710qv.pdf?langoption=3&ttl=EL%283%29-20-08%20%3A%20Transcript%20%28PDF%2C%20199kb%29> .

⁸⁷ NAFW, Assembly Record of Plenary Proceedings, 21 May 2008, pp. 78-106: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080521qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20668kb%29> .

3.4 Conclusion

The thorough and detailed examinations of the economic contribution of higher education to the Welsh economy, and of improving skills and its legislative prerequisite, provide evidence that devolution has achieved some progress in policy development in this area. As a whole, discussions on economic development in Committee are less partisan and more forensic than in plenary session. However, some problems remain. Most policy decisions – particularly in enterprise and education – are about the most efficient means of distributing a restricted budget, and therefore many potential actions to restructure and reorient economic development processes are ruled out. It remains to be seen how effectively Enterprise and Learning Committee members deal with the mass of information and views collected during an inquiry of unprecedented length and breadth. From discussions and comments within the scrutiny sessions it seemed as though they mostly accepted, at face value, the highly positive accounts of the economic benefits of higher education without really following up on the question of why if higher education is so good performance of the overall economy is still so weak. Other factors, including the level and quality of investment and development of denser networks of economic interaction, need to be explored if the further devolution of legislative power is to be made best use of in the future.

4. Intergovernmental relations

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4.1. Introduction and background

The period from May to September has been relatively quiet. Headlines include the first meeting of the plenary Joint Ministerial Committee for over five and a half years, and various developments regarding legislative powers for Wales. As well as the work of the All Wales Convention, the UK constitutional debate continued. In Scotland, the Calman Commission began taking evidence but has done so mostly in private.⁸⁸ It launched what it called its 'summer of listening' on 1 July. The National Conversation had a somewhat higher profile, with the Scottish Government using the summer to hold cabinet meetings outside Edinburgh and tying its visits to Dumfries, Pitlochry, Inverness and Skye to public events about constitutional matters. Meanwhile, the UK Government's political difficulties have led to speculation about a Cabinet reshuffle in the autumn, and with it the creation of a combined ministry bringing together responsibilities for Scotland, Wales and Northern Ireland with English regional issues.⁸⁹ Both Plaid Cymru and the Conservatives promptly declared their support for retaining a dedicated Wales Office.⁹⁰

4.2 Meeting of the Joint Ministerial Committee

The most important headline event was the first meeting of the Joint Ministerial Committee since October 2002. This was held in London on 25 June 2008. The meeting was chaired by the Lord Chancellor and UK Secretary of State for Justice, Jack Straw, although it was described as a 'plenary' meeting (Straw was 'representing' the Prime Minister). The Welsh Assembly Government was represented by the First Minister and Deputy First Minister, Rhodri Morgan and Ieuan Wyn Jones. (Northern Ireland and Scotland were also represented by their First Ministers and Deputy First Ministers, respectively Peter Robinson and Martin McGuinness, and Alex Salmond and Nicola Sturgeon. The UK Secretaries of State for Scotland, Wales and Northern Ireland were also in attendance.) According to the

⁸⁸ Minutes of the meetings of the Commission and its various 'panels' are available at www.commissiononscottishdevolution.org.uk/papers.php

⁸⁹ M. Withers, 'Wales Office is facing the axe', *Wales on Sunday* (27 July 2008).

⁹⁰ M. Withers, 'Plaid and Tories defend "doomed" Wales Office' *Western Mail* (28 July 2008).

'joint press statement', the meeting generally reviewed the role of the JMC and relations between administrations.⁹¹ It agreed on the holding of a further meeting probably of a 'JMC Domestic' under the chairmanship of Paul Murphy in the autumn, and on the review of the Memorandum of Understanding. It also discussed a number of substantive issues including financial matters, the (Westminster) Marine Bill, and renewable energy.

The meeting appears to have been relatively low-key (there had been concern among Whitehall officials that it might degenerate into argument, and there had been concerns on the Scottish side about some aspects of the protocol, including the charring by the Justice Secretary not the Prime Minister). The fact that a meeting happened at all can be regarded as a form of progress; the fact that it went smoothly and did what it was supposed to do – discuss substantive issues where there are differences between governments – even more impressive. The question is whether this initiative is in fact sustained, and what common ground can be found between the devolved governments.

4.3 British-Irish Council sectoral meeting

A sectoral meeting of the British-Irish Council on social inclusion took place in Cardiff on 20 May 2008, chaired by Dr Brian Gibbons.⁹² Dr Gibbons also presented a paper on the Assembly Government's work on child poverty. Stephen Timms MP, Minister of State for Employment and Welfare Reform, represented the UK Government.

4.4 Legislative Consent Orders and other legislative matters

One legislative consent order (LCO) has been made, the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008 No. 1785), conferring legislative powers on the Assembly regarding charging by local authorities for social care services (in field 15 of Schedule 5 to the 2006 Act).

Further LCOs currently before Parliament are the National Assembly for Wales (Legislative Competence) (No. 5) Order 2008 (concerning affordable housing), and

⁹¹ This statement is available at www.scotlandoffice.gov.uk/our-communications/release.php?id=3676

⁹² The communiqué is available at <http://www3.british-irishcouncil.org/documents/socinc3.asp>

the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (concerning vulnerable children).

The Ministry of Justice has issued a new Devolution Guidance Note, Number 16, on *Orders in Council under section 95 of the Government of Wales Act 2006*.⁹³ This replaces interim guidance issued in 2007, and clarifies procedures for handling LCOs (see para 2.3.1 of this report).

As regards procedure, the DGN confirms the present practice – of discussion between Assembly Government and UK Government (involving both the Wales Office and line departments), with subsequent pre-legislative scrutiny carried out in both Westminster and Cardiff Bay, followed by formal tabling and Parliamentary consideration of a revised Order.

Nothing in the DGN addresses a serious gap that has arisen from the two ways in which legislative powers are conferred on the Assembly, by LCO and by Westminster legislating to transfer powers directly. LCOs require the support of the Assembly as a whole, but this is not the case if matters are added by an Act of Parliament. Indeed, Devolution Guidance Note 9. on *Post-Devolution Primary Legislation Affecting Wales* says expressly (in para. 17) that powers conferred by Act do not need the approval of the Assembly, while LCOs of course do.

The Secretary of State for Wales also held a ‘review’ of processes for making LCOs under the new arrangements.⁹⁴ This confirmed the existing procedures, including the detailed pre-legislative scrutiny of LCOs and the role of the Commons Welsh Affairs Committee in that process (something which the Committee itself pressed for in its memorandum to the review).⁹⁵ The Committee’s memorandum also complained about the volume and quality of the LCOs being sought, saying there should only be four or five LCOs a year, as they had previously envisaged, and that there should be:

⁹³ Available at www.justice.gov.uk/guidance/devolutionguidancenotes.htm#sixteen. See also Wales Office news release, ‘Paul Murphy welcomes new guidance for devolution’, 16 July 2008: <http://www.walesoffice.gov.uk/category/news-releases/page/2/>

⁹⁴ Wales Office news release, ‘Paul Murphy announces outcome of scrutiny review’, 22 July 2008: www.walesoffice.gov.uk/2008/07/22/paul-murphy-announces-outcome-of-scrutiny-review/

⁹⁵ House of Commons Welsh Affairs Committee, ‘Review by the Secretary of State of the procedure of Legislative Competence Orders in Council. Memorandum by the Welsh Affairs Select Committee’: www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacsoslco.cfm

a proper focus to legislative work, aiming at producing a reasonable number of high-quality Orders each year rather than allowing volume to swamp the system here and in the Assembly as seems to be happening at the moment. (para. 23)

The Committee's views prompted a brusque response from Lord Elis-Thomas, the Presiding Officer, who pointed out that fewer LCOs were presently under consideration at Westminster than had been predicted, with only four LCOs actually before Parliament so far (although seven more were at various stages of consideration by the Assembly).⁹⁶

4.5 UK Government's 'Draft Legislative Programme'

The UK Government's practice of announcing its legislative programme in advance of the November Queen's speech has become more established. The Draft Legislative Programme was published for consultation on 14 May, and consultation closed on 18 August.⁹⁷ The document notes that:

In many cases, a bill may also apply in part to a devolved matter in Scotland, Wales and Northern Ireland. In other cases, the exact extent may not yet be known and discussions with the devolved administrations may still be continuing. The Government remains committed to respecting the devolution settlements. (p.10)

In relation to many bills affecting devolved matters, it also notes that, 'The Government will work closely with the Welsh Assembly Government in relation to their responsibilities in this area.'

The Draft Legislative Programme also states the need for consultation with the devolved administrations about the bills proposed – although it appears that little or no consultation had taken place by the time of publication about many of the bills noted in the draft programme. One notable provision is the proposed 'NHS constitution', set out in the NHS Reform Bill. This will, apparently, apply only to

⁹⁶ M. Shipton, 'Lord Elis-Thomas hits out over MPs' claims', *Western Mail*, (18 August 2008): <http://www.walesonline.co.uk/news/politics-news/2008/08/18/lord-elis-thomas-hits-out-over-mps-claims-91466-21551452/> and also T. Livingstone, 'MPs fear Welsh law orders are swamping Westminster', *Western Mail* (25 July 2008): <http://www.walesonline.co.uk/news/politics-news/2008/07/25/mps-fear-welsh-law-orders-are-swamping-westminster-91466-21403348/>

⁹⁷ Office of the Leader of the House of Commons, 'Preparing Britain for the future: the Government's draft legislative programme 2008-09 Cm 7372' (London: The Stationery Office, 2008): www.official-documents.gov.uk/document/cm73/7372/7372.pdf

England.⁹⁸ Another is the 'Bill of Rights and Responsibilities' (no longer a 'British Bill of Rights', it should be noted); as discussed in previous reports, this is to apply across the UK but the UK Government has rejected the idea of directly consulting the devolved administrations or legislatures on the Bill.⁹⁹ This view has been criticised by the Joint Committee on Human Rights at Westminster.¹⁰⁰

4.6 Finance

The Assembly Government named Gerald Holtham, a City economist and former Director of the think-tank the Institute for Public Policy Research, to chair its commission to consider financial matters, including the Barnett formula and taxing and borrowing powers on 8 July.¹⁰¹ Holtham's background and expertise mean that he is likely to be a very effective chairman of the commission. However, it is still not clear how the commission will be composed or when it will be able to start work. Opposition politicians welcomed his appointment, but regretted the slow pace of progress to date.

⁹⁸ Ibid, p. 62.

⁹⁹ Ibid, p. 65. See A. Trench in R. Wyn Jones and R. Scully (eds.), 'Wales Devolution Monitoring Report' May 2008, para. 4.5 and A. Trench in R. Wyn Jones and R. Scully (eds.), 'Wales Devolution Monitoring Report' January 2008, para 4.6 for previous discussion of this issue.

¹⁰⁰ House of Lords and House of Commons Joint Committee on Human Rights, 'A Bill of Rights for the UK?', Twenty-ninth Report of Session 2007–08 HL Paper 165-I, HC 150-I (London: The Stationery Office, 2007), particularly chapter 3.

¹⁰¹ BBC News, 'Economist heads funding inquiry' (8July 2008): http://news.bbc.co.uk/1/hi/wales/wales_politics/7495463.stm

5. Relations with Europe and Local Government

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5.1 Europe

Europe Day was celebrated at the European Commission Offices in Cardiff Bay. The First Minister, Rhodri Morgan, attended and held a speech at the reception for VIPs, AMs, and people from all levels and sectors of society. A second reception by the European Commission Representation in Wales was held in Llandudno on 7 May. On 1 July, Slovenia handed over the Presidency of the European Union to France. The French Presidency has four key priorities – energy and the climate, migration issues, agriculture, and security and defence – as well as to continue with the ratification of the Lisbon Treaty.¹⁰²

5.1.1 Treaty of Lisbon

The UK Government has ratified the Treaty of Lisbon through a Parliamentary Bill. The European Union (Amendment) Bill was approved by the House of Commons on 11 March and was passed to the House of Lords. As of 15 August 2008, 23 Member States had ratified the Treaty. Ireland rejected the Treaty in a referendum on 12 June. The Treaty has to be ratified by all Member States before it can come into effect.

5.1.2 Subsidiarity

The Irish 'no' meant that the Lisbon Treaty, according to the First Minister Rhodri Morgan, has been 'thrown out the window'.¹⁰³ The uncertainty of the future of the Treaty has consequences for Wales, especially with regard to the subsidiarity provisions in the Treaty.¹⁰⁴ However, the First Minister continued:

'if the 27 EU Governments, in responding to the Irish 'no' vote, go for plan C ... they could say, "Can you take the bits out of the treaty that

¹⁰² 'French Presidency of the Council of the European Union Work Programme 1 July – 31 December 2008' pg 4:

http://www.ue2008.fr/webdav/site/PFUE/shared/ProgrammePFUE/Programme_EN.pdf

¹⁰³ Committee on European and External Affairs EUR(3)-05-08 Transcript:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=90897&ds=6/2008>

¹⁰⁴ Previously discussed in *Wales Devolution Monitoring Report*, May 2008, pg 49:

http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_May08.pdf

do not require the big five-act play, and simply implement it without those?”. At least then, we would get something out of this huge process of trying to make the European Commission, Council, Parliament, and so on, work more efficiently. Probably about 30 or 40 per cent of what was in the treaty that was rejected by the Irish people could be implemented without having to have these big treaty negotiations. We think that subsidiarity could be part of such a package, if that is the strategy that they go for’.¹⁰⁵

At the European and External Affairs Committee meeting on 17 July, the Committee noted the scoping paper¹⁰⁶ with regard to a subsidiarity inquiry and agreed to proceed with the inquiry in the autumn.¹⁰⁷

5.1.3 Mock EU Council Meeting

The Welsh Assembly Government in partnership with the European Commission Office in Wales has invited secondary schools in Wales to participate in a mock EU Council Meeting. The First Minister will host the event on 9 September and it will take place in the Welsh Assembly Government’s Siambwr Fach (Debating Chamber) in Cardiff Bay. It is hoped that this will become an annual event¹⁰⁸ and that it will raise interest in, and the profile of, EU politics in Wales. It should also provide an opportunity to learn about the EU among young people.

5.1.4 Welsh Language

The Welsh Assembly Government has been successful in their bid for the Welsh language to become an official language within the EU. In a decision by the European Union Council of Ministers it was decided that when Welsh ministers

¹⁰⁵ Committee on European and External Affairs EUR(3)-05-08 Transcript: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=90897&ds=6/2008>

¹⁰⁶ ‘The Subsidiarity Inquiry: Scoping Paper EUR(3) 06-08’, pg. 4, 17 July 2008: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=92282&ds=7/2008>

¹⁰⁷ Committee on European and External Affairs EUR(3)-06-08 Transcript: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=93965&ds=7/2008>

¹⁰⁸ WAG, ‘Wales Forum on Europe – School Competition – Mock Council of the European Union 2008’: <http://wales.gov.uk/topics/international/Events/EUMockCouncil/?lang=en>; European Commission Office in Wales ‘Schools invited to join Mock EU Council’: http://ec.europa.eu/unitedkingdom/about_us/office_in_wales/index_en.htm

represent the UK at future meetings of the Council of Ministers they will be allowed to speak Welsh. People in Wales will also be able to write in Welsh to office holders within the EU Council of Ministers. This decision is the result of co-operation between the Welsh Assembly Government, the UK Government and the EU Council of Ministers. It is hoped that this decision will open the way for discussion on using the Welsh language in other EU institutions.¹⁰⁹

5.2 Local Government

The effects of the May 2008 Local Government Election results on the political composition of local government in Wales for the next four years are now clearer. Overall, in the early post-election period there seems to be greater effort by the Assembly Government and local authorities in Wales to improve their relationship. Furthermore, current key policy initiatives emphasise different ways of promoting collaboration both across public services and between the local and Assembly Government level.

5.2.1 Local Government Election

As discussed in the previous monitoring report, the election significantly changed political leadership across local authorities in Wales with implications for WLGA's composition for the next four years. While the WLGA decided to continue its power sharing approach, due to the rise of the independents, in June, as leader of the Independent Group, Councillor John Davies (Pembrokeshire) was elected Leader of WLGA. A degree of continuity was retained as Councillor Derek Vaughan (previously WLGA Leader) became Deputy Leader and Councillor Meryl Gravell continues as WLGA Presiding Officer.¹¹⁰ The emphasis was placed on ensuring that the WLGA presents a united and strong voice for local government. On his election, John Davies stated: 'This new structure draws in leaders from all parts of Wales and I look forward to the next four years to ensuring that the voice of local government is heard loud and clear in Wales'.¹¹¹

¹⁰⁹ Welsh Assembly Press Release, 'Welsh gains new status in EU', 15 July 2008: <http://new.wales.gov.uk/news/topic/Welsh/2008/080715welshgains/?lang=en>

¹¹⁰ WLGA Press Release, 'New WLGA Leader nominated' (22 May 2008): www.wlga.gov.uk/english/press-releases/new-wlga-leader-nominated/

¹¹¹ WLGA Press Release, 'New top team at WLGA – Cllr John Davies to head the multi party approach' (27 June 2008): www.wlga.gov.uk/english/press-releases/new-top-team-at-wlga-cllr-john-davies-to-head-the-multi-party-approach/

Since the election, Welsh Assembly Government ministerial addresses relating to local government included two keynote speeches that suggest a recognition that the election results necessitate efforts to improve relations with local government. Both speeches provide an indication of the efforts taking place in this respect behind the scenes. On 5 June, in his first keynote speech as Local Government Minister since the elections, Dr Brian Gibbons emphasised the key role of local government in developing public services and outlined progress on the improvement agenda for 2008. With regards to central-local relations, he stated: 'Our success in driving forward the improvement agenda will depend on continued, successful collaboration between the Assembly Government and local government leadership. I hope this level of partnership working characterises the next few years as it has in the past'.¹¹² Rhodri Morgan's speech at the Governance in Wales' conference on 9 July was hailed as an effort to rebuild relations with local government and two points are most worthy of mention here. He stated that WAG did not intend to undertake a fundamental re-organisation of local government in Wales, however, as the First Minister is stepping down in 2009, the speech did little to provide a long term assurance in terms of structural stability. In addition, he 'outlined the need for an understanding between local government and the Assembly Government and indicated that work was underway to develop such a document'.¹¹³ The previous monitoring report explained how WLGA has recommended adopting an agreement akin to the Scottish concordat between the government and local government. Although the largely administrative Local Government Partnership Scheme has been updated in 2008, discussions around an agreement on policy and funding commitments in Wales have been underway for nearly a year, but slow progress reflects the degree of ongoing tensions in relations during this period. The speech did signal some goodwill and a positive public assurance to developing a document that could commit both sides to specific policies.

5.2.2 Local Government Finance

The most contentious issue for the Assembly Government and local government during the third term has been the local government financial settlement. During the recent quarter, amidst an increasingly difficult economic climate, the effects of the local government settlement on central-local relations were most prominent with

¹¹² WAG Press Release, 'Minister sets out the agenda for local authorities' (5 June 2008): <http://new.wales.gov.uk/news/topic/LocalGovernment/2008/2372348/?lang=en>

¹¹³ WAG, Local Government E-bulletin #25 at: <http://new.wales.gov.uk/topics/localgovernment/ebulletin/?lang=en>

regards to two issues: Foundation Phase education funding and local government employees' pay.

In May 2008, WAG announced an additional £5 million funding for the foundation phase, the new curriculum for 3-7 year olds due to be rolled out across Wales in 2008-09.¹¹⁴ WLGA and the teaching unions argued that there was still a shortfall of £10 million. WLGA's response highlighted the tension on this issue:

'The Minister's criticism of local authorities for failing to provide the necessary information is a smoke screen. The Assembly Government was already in possession of the information requested, and full costings were identified in the Expenditure Sub-Group in 2007'.¹¹⁵

WLGA also expressed its concern at the degree of under-funding in its evidence to the Finance Committee on 22 May 2008.¹¹⁶ In her own evidence to the Finance Committee the Minister for Education, Jane Hutt AM, recognised that more funding would be required.¹¹⁷ The Minister subsequently decided to extend the roll out to four years in order to allow many of the issues to be resolved.¹¹⁸ The Finance Committee's Inquiry expressed concern about the breakdown in communications between WAG and local government and recommended 'that the Welsh Assembly Government secures the finance necessary to ensure the optimum delivery of the Foundation Phase over the next 4 years'.¹¹⁹

The local government settlement was also raised in response to local authority employees' dissatisfaction with the pay offer, which led to strike action by Unison and Unite members on 16 and 17 July 2008. In explaining the 2.45 per cent employers' offer, WLGA drew attention to the pressure on council budgets: 'In Wales the local government settlement equates to 2.4 per cent hence there is no additional money in

¹¹⁴ WAG Press Release, 'Further Funding for Flagship Foundation Phase' (8 May 2008):

<http://new.wales.gov.uk/news/topic/Education/2008/2371859/?lang=en>

¹¹⁵ WLGA Press Release, "Too little too late" says WLGA' (7 May 2008):

www.wlga.gov.uk/english/press-releases/too-little-too-late-says-wlga/

¹¹⁶ Finance Committee, 'Inquiry into funding of Foundation Phase: Written evidence submitted by the WLGA and ADEW' FIN(3)-08-08: 22 May 2008: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-fin-home/bus-committees-third-fin-agendas.htm?act=dis&id=84882&ds=5/2008

¹¹⁷ Finance Committee Report on the Foundation Phase(18 July 2008):

<http://www.assemblywales.org/cr-ld7176-e.pdf>

¹¹⁸ Ibid

¹¹⁹ Ibid

the pot to meet anything above the employers' offer'.¹²⁰ As strike action loomed, WLGA reiterated that the pay offer was above the increase in WAG funding to local authorities and that a greater pay offer would call for council tax increases or cuts in staff or frontline public services.¹²¹ The strike not only caused tensions between local authorities, and workers and unions, but both sides united with Assembly Members who supported strike action in urging greater funding for local authorities to allow for pay rises. Unison's head of local government in Wales called on WAG to review local government's financial allocation for the coming year.¹²² Tensions and the threat of further industrial action continues.¹²³

5.2.3 The improvement agenda and central-local relations

Policy developments associated with the improvement agenda, in particular the Local Service Boards (LSBs) and progress on reforming the Wales Programme for Improvement (WPI), suggest an evolution in how Assembly Government–local government relations are being framed on a practical level.

First, the Local Service Boards, the centrepiece of Beecham's recommendations, are at a key point in their evolution. In his keynote speech, Rhodri Morgan emphasised the importance of LSBs in promoting collaborative working.¹²⁴ The Health, Wellbeing and Local Government Committee started a short review of Local Service Boards on 3 July 2008 and will report in the autumn of 2008. For the committee itself the review is a precursor to its review of local government scrutiny arrangements and suggests a shift in attention to local government issues within its portfolio. In terms of the boards, the review takes place at a time when all areas of Wales are shifting away from the existing community strategy/local strategic partnership model as the Local Service Board approach is rolled out across Wales in 2009-10.

¹²⁰ WLGA Press Release, 'Planned strike action by Unison is hugely damaging, says WLGA' (27 June 2008): www.wlga.gov.uk/english/press-releases/planned-strike-action-by-unison-is-hugely-damaging-says-wlga/

¹²¹ WLGA Press Release, 'Welsh Councils plan to mitigate strike impact' (15 July 2008): www.wlga.gov.uk/english/press-releases/welsh-councils-plan-to-mitigate-strike-impact/

¹²² A. Alford, 'AMs under fire after backing council workers in pay strike', *Western Mail* (17 July 2008): <http://www.walesonline.co.uk/news/wales-news/2008/07/17/ams-under-fire-after-backing-council-workers-in-pay-strike-91466-21355702/> .

¹²³ *Western Mail*, Threat of further industrial action as union ballots council workers over pay' *Western Mail* (30 July 2008): <http://www.walesonline.co.uk/news/wales-news/2008/07/29/threat-of-further-strike-action-91466-21424759/> .

¹²⁴ WAG, Local Government E-bulletin #25 at: <http://new.wales.gov.uk/topics/localgovernment/ebulletin/?lang=en>

To date, evidence to the committee illustrates differences in the operation of the six pilot boards, particularly in terms of priorities and scrutiny arrangements.¹²⁵ However, more significant are the boards' implications for Assembly Government–local government relations. As each board develops a Local Delivery Agreement in collaboration with WAG this structure aims 'to frame a much closer relationship between the Assembly Government and local bodies themselves'.¹²⁶ Furthermore, on the whole, the evidence highlighted that the composition of the LSBs, local public service leaders and a senior Assembly Government official, is working well. This membership provides a status for the LSBs and civil servant presence can potentially provide a clear channel of communication into WAG. Senior WAG officials' membership of LSBs can promote building relations and understanding of local government within WAG. It can provide an opportunity to learn about the practicalities of service delivery at the local level.

Secondly, the previous monitoring report discussed the renewed emphasis on performance and service improvement. Brian Gibbons' keynote speech on 5 June 2008 also drew attention to other aspects of the improvement agenda affecting local government in 2008, namely the proposals to reform the Wales Programme for Improvement and strengthen community planning.¹²⁷ The *'Delivering a Shared Responsibility – Performance Improvement and Community Planning'* consultation for the proposed Performance Improvement and Community Planning Measure closed in April. What is interesting here is the proposed degree to which WAG will have legal power to intervene at the local level. The summary of the consultation highlighted that nearly all responses recognised the need to legislate to reform the WPI.¹²⁸ However, there were a large number of responses expressing clear reservations about Welsh Ministers having a reserve power to direct collaboration,

¹²⁵ See the Health, Wellbeing and Local Government Committee evidence papers and committee transcripts for 3 July, 10 July and 17 July 2008: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?ds=7%2F2008&submit=Submit

¹²⁶ Health, Wellbeing and Local Government Committee, 'Committee Inquiry into Local Service Boards – Scoping Paper HWLG(3)-12-08: Paper 3' (14 May 2008): www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?ds=5%2F2008&submit=Submit

¹²⁷ WAG Press Release, 'Minister sets out the agenda for local authorities' (5 June 2008): <http://new.wales.gov.uk/news/topic/LocalGovernment/2008/2372348/?lang=en>

¹²⁸ WAG, 'Delivering a Shared Responsibility – Performance Improvement and Community Planning – Summary of responses': <http://new.wales.gov.uk/topics/localgovernment/consultation/closed/deliveringasharedresponsibility/?lang=en>

particularly its effects on local priorities, and accountability. Nevertheless, the document states that:

there should be a duty on the relevant authorities to consider collaborating with other relevant authorities with a view to securing the discharge of the general improvement duty....To support this, as part of the Measure Ministers will have a power to enable them to direct relevant authorities to collaborate with each other....we would wish to emphasise in the Measure that the Welsh Ministers' power to direct collaboration is tantamount to a power to intervene, and subject to the same conditions on its exercise.¹²⁹

It is anticipated that the measure will be implemented during the autumn of 2009.¹³⁰

Meanwhile, the roll-out of Improvement Agreements between local government and the Assembly Government is seen by many in local government as a return to form in terms of partnership. The process builds on the experience of Policy Agreements, and sees local authorities identifying and agreeing eight local improvement priorities with WAG, two for each of the four One Wales themes. In return for negotiating and agreeing the eight Agreements, local authorities receive a proportion of the £33m incentive grant, which will be awarded in future years based on progress against the Improvement Agreements. The local discretion in determining priorities has been broadly welcomed by local government, however, the fact that the £33m performance incentive grant has been retained is regarded as a key achievement given concerns that it could have been distributed via LSBs or withdrawn altogether.

5.2.4 Conclusion

The early aftermath of the local government election has provided an impetus for efforts to improve relations between WAG and local government. The current picture is mixed, with signs of improved partnership working in some areas and continuing tensions in others. It is highly likely that there are ongoing efforts to rebuild relations behind the scenes. In this respect, public statements regarding partnership working and developing a document guiding central-local relations are significant. Results of negotiations and decision-making on the local government settlement for the upcoming Assembly Government budget in the autumn will provide a good indicator as to whether the new composition of local government has actually been a platform for improved partnership working.

¹²⁹ *ibid*

¹³⁰ WAG, Local Government E-bulletin #24:

<http://new.wales.gov.uk/topics/localgovernment/ebulletin/ebulletin24/?lang=en>

6. Elections, Parties and Public Attitudes

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6.1 Elections

There were no parliamentary or National Assembly by-elections in Wales during May-August 2008. Eight local government by-elections were held in Welsh local authorities during this time period. The results are summarised in the table below. Over a small number of by-elections occurring in such disparate authorities, it is difficult to deduce general trends in the results. Probably the most politically significant result was that in Ceredigion; after the resignation of a popular local Councillor for personal reasons, a strongly fought campaign saw Plaid Cymru narrowly overturn the substantial majority of the previous Liberal Democrat incumbent. This result, following Plaid's strong local performance across the county in May's local elections, reinforced the sense that they can be expected to challenge the Liberal Democrat MP, Mark Williams, hard at the next general election.

Figure 6.1: Local Government By-Elections, June-August 2008

| <i>Ward</i> | <i>Council</i> | <i>Month</i> | <i>Winner</i> | <i>Change?</i> | <i>Swing</i> |
|---------------|---------------------------|--------------|---------------|----------------------|----------------------|
| Hope | Flintshire CC | June | Lib Dem | LD Gain from Ind | 39.2% Ind to LD |
| Betws | Newport CC | June | Labour | Lab Hold | 10.2% Lab to LD |
| St Julian's | Newport CC | June | Lib Dem | LD Hold | 9.4% LD to Con |
| Bowydd & Rhiw | Gwynedd | June | Independent | Ind Gain from Lab | 6.7% PC to Ind |
| Pentyrch | Cardiff CC | July | Conservative | Con Hold | 1.4% Con to Lab |
| Rheidol | Ceredigion CC | July | Plaid Cymru | Plaid Gain | 21.6% LD to Plaid |
| Risca West | Caerphilly CBC | July | Labour | Lab Hold | 2.7% PC to Lab |
| Cilfynydd | Rhondda Cynon Taff CBC | August | Labour | Lab Gain | 12.4% LD to Lab |

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

6.2 Parties

Three years out from the next Assembly election and the summer lull has been soporific – perhaps predictably so. This despite the fact that three of the four main parties are all at different stages in the process of electing key leaders, and that the fourth – the Welsh Conservatives – are currently engaged in the hugely important and delicate task of deciding their attitude to the future of Wales's devolved dispensation as they head towards what now appears to be an inevitable victory at the next UK general election.

Notwithstanding the extent of Labour's problems in Wales, the party's travails at the British level strongly suggest that the Welsh Labour leader could be the most senior governing Labour politician in the UK by the summer of 2010. This is surely, then, a job worth having? It is clearly an important job as far as the future of that party, in Wales and beyond, is concerned. Yet despite this, and despite the fact that Rhodri Morgan's planned departure has been preannounced for so long, potential candidates for Morgan's position conspicuously failed to show themselves. Thus far, only Carwyn Jones has displayed any serious intent by making speeches that have been widely interpreted as setting out his stall. Other possible candidates, notably Andrew Davies, Edwina Hart and, perhaps, Leighton Andrews or Huw Lewis, have resolutely failed to rise to the challenge. As of this writing it is entirely possible that Carwyn Jones could become Labour leader without facing a serious challenger – or even any challenger at all. Given the party's recent experiences with non-contested leadership elections at both British and Scottish levels, it is hard to imagine that such an outcome would benefit the party over the longer run. Granted, leadership elections are hardly conducive to new thinking. The composition of the electoral college that will elect a successor encourages a lowest common denominator approach – it will be a brave man or woman who deviates from the formula of praising the unions in reverential terms while avoiding the proverbial elephants on the doorstep that might divide opinion (the future of devolution, in particular). Yet, the need for serious debate over the future direction of Wales's most important political party has been widely acknowledged within the party itself, and if a leadership election can't generate some kind of debate then what other forum or process is likely to achieve that?

Labour's coalition partner, Plaid Cymru, is about to announce the victor in a battle for the party presidency between Elfyn Llwyd MP, leader of the party's Westminster group, and Dafydd Iwan, nationalist folk-singer and folk-hero, as well as former leader of Gwynedd council. Compared to the bitter ideological battles of the 1980s, very little seems to divide both candidates programmatically speaking. Moreover, Ieuan Wyn Jones's strong performance over the past couple of years means that whatever the outcome of the presidential race, he will retain his position as party leader whatever the formal job descriptions. Perhaps the one element of broader significance that might be read into the result is that a victory for Elfyn Llwyd may signal the final eclipse of the party's voluntary wing by its professional section. But then again, even a Iwan victory is probably only delaying the inevitable as the professionalization of the party continues apace following its post-devolution expansion.

As for the Welsh Liberal Democrats: the long-running saga of the extended twilight of Mike German's leadership continues – with observers receiving regular and extraordinarily frank updates on developments and non-developments by German's nemesis, party colleague Peter Black AM.¹³¹ Time, though, is finally running out and German seems set to relinquish his post in October with the party electing a replacement as Welsh leader (the post of Welsh leader and Assembly group leader was combined in 2007). Assembly Members Kirsty Williams and Jenny Randerson are widely tipped as the likely candidates with the former appearing to be in poll position.

Given the state of the opinion polls as well as the ways in which Wales's devolutionary dispensation make the National Assembly particularly dependent on Westminster, more significant than any of this may be the internal process currently taking place within the Welsh Conservatives to try to agree a position on the future of Welsh devolution, a process headed by Lord Roberts. Party divisions over the issue have recently been highlighted by the decision of David Davies MP to launch a No campaign, arguing that a move to legislative powers would inevitably lead to independence and resulting 'Soviet style poverty'.¹³² By contrast, the majority of the party's Assembly group support primary legislative powers. This division is mirrored

¹³¹ Most recently: <http://www.libdemvoice.org/peter-black-am-welsh-liberal-democrat-leadership-race-to-begin-soon-3274.html>

¹³² M. Shipton, 'Tory's No to Assembly lawmaking', *Western Mail* (4 Sept 2008): <http://www.walesonline.co.uk/news/wales-news/2008/09/04/tory-s-no-to-assembly-lawmaking-91466-21670799/>

throughout the party. Indeed a substantial group of activists, in particular, would be only too pleased to see the Assembly abolished all together. In such a context Roberts must surely be tempted to split the difference and recommend that the Tories continue to support the status quo. But while expedient in the short term, it is doubtful whether this would be a sensible strategy for the longer term. The terms of the Government of Wales Act 2006 – and in particular of Part Three, conferring Measure-making powers – make the UK government a veto-player in the day to day operation of the National Assembly, whether it wishes to be so or not. It is hard to see how the conflict that would inevitably arise in such circumstances between a Tory administration in London and any conceivable coalition configuration in Cardiff would benefit either the Conservative party or the Union which it supports. Despite his many years of service, the Roberts report may yet prove to be the most important contribution that this grand old man of Welsh politics has made to his nation's public life.

6.3 Public Attitudes

No major surveys on public attitudes reported results during the period covered by this report. However, one poll commissioned by the National Assembly on attitudes to the institution was conducted; its results are expected to be published in September.

The other major event in relation to the gauging of public attitudes was the announcement that the All-Wales Convention, chaired by the UK's former Ambassador to the United Nations Sir Emyr Jones-Parry, would be holding a series of public meetings across Wales. These meetings were intended, apparently, both to engage public interest in the work of the Commission and to provide one source of information about public views.

6.4 Conclusion

In conclusion, while it has clearly been a relatively quiet summer, it is almost certain to prove a lull before a much more interesting – and unpredictable – time in the months ahead. Moreover, the decisions taken and not taken over the past few months may yet prove to be very significant indeed.

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