



The **Constitution** Unit



Strategy Wales  
Strategaeth Cymru

# Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

## Wales

Quarterly Report  
August 2002



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# A BILINGUAL WALES

Monitoring



**Cynulliad Cenedlaethol Cymru**  
**The National Assembly for Wales**  
**June to August 2002**

Edited By  
John Osmond

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## SUMMARY

1. A Welsh Assembly Government landmark policy statement *Bilingual Future*, published in July, committed to “creating a bilingual Wales”. For the first time in the language’s history, a government was taking full responsibility for its future. This will include preparing a National Action Plan to ensure that Welsh becomes a mainstream issue across the range of Ministerial portfolios. The policy statement also concedes that ‘incomers’ are threatening the rural heartlands and promises education, planning and housing measures to address the problem. These commitments come in the wake of an 18-month period in which the language has been a matter for contentious dispute between the parties, especially Labour and Plaid Cymru. First Minister Rhodri Morgan acknowledged that the document was an attempt “to stop the language becoming a political football in the run up to next May’s Assembly elections.”
2. After a year-long investigation by the South Wales Police, the Crown Prosecution Service finally cleared Mike German in June of any criminal charges relating to his time as Head of the European Unit at the Welsh Joint Education Committee. On the same day German returned to the Cabinet as Deputy First Minister and Minister for Rural Development and Wales Abroad. The ‘Wales Abroad’ title was a new portfolio causing him to be immediately labelled by the Press as Wales’s new Foreign Minister. Opposition leaders complained that German had been allowed to return to the Cabinet before the WJEC affair had been completely cleared up, in particular an on-going investigation by OLAF, the European Union’s Anti-fraud Office.
3. Under Gordon Brown’s Comprehensive Spending Review, announced in July, the Assembly’s budget will rise from £9.4 billion in 2002-03 to £11.8 billion in 2005-06. As with the 2000 settlement, the Assembly will receive money 'over and above' the Barnett formula to provide for EU expenditure in Wales, in particular the amount spent under the Objective-1 programme. As a result Wales will receive an extra £492m between 2003-04 and 2005-06, or £164 million per year, to ‘cover’ EU expenditure. During a debate on English devolution in June Rhodri Morgan said that he “would not object” to a review of the Barnett formula.
4. Membership of the Richard Commission on the Assembly’s powers, due to report by the end of 2003, was announced in August. Four members were nominated by each of the political parties, and five public appointments were made following advertisement. The political appointments are former Merthyr MP Ted Rowlands (Labour); political lecturer Laura McAllister (Plaid); former MEP Peter Price (Liberal Democrat); and former Swansea councillor Paul Valerio (Conservative). The public appointments are Eira Davies, Managing Director of a Wrexham web publishing business; Vivienne Sugar, former Swansea Chief Executive; Sir Michael Wheeler-Booth, former Clerk of the Parliaments at Westminster; Tom Jones, a farmer from Powys and Chair of Wales Council for Voluntary Action; and Huw Thomas, former Chief Executive of Denbighshire. Appearing before the House of Lords Committee on the Constitution in May First Minister Rhodri Morgan pronounced that, “I have always held the view personally that we should have had and should have primary legislative powers.”

## 1. THE ASSEMBLY GOVERNMENT

*Nia Richardson and John Osmond, IWA*

### **Commitment to 'a Bilingual Wales'**

When the National Assembly was established in 1998, there were high hopes that it would be able to reverse the century-long decline of the Welsh language. As Dylan Phillips, a lecturer at Trinity College, Carmarthen, put it:

“There is no denying the fact that the creation of the National Assembly for Wales in 1999 was a momentous milestone in the history of the Welsh language. As well as being an important achievement in itself, with the result that Wales was at last to have its first taste of self-government in seven hundred years, for the language it also meant that this new political forum would have tremendous power and influence over the future of Welsh.”<sup>1</sup>

At the end of July 2002 just ahead of the National Eisteddfod in St David's, the Assembly Government took its first important step towards achieving that goal. In the Foreword to what undoubtedly will be regarded as a landmark document, *Bilingual Future*, First Minister Rhodri Morgan and Culture Minister Jenny Randerson pledged that:

“The Welsh Assembly Government is wholly committed to revitalising the Welsh language and creating a bilingual Wales”.<sup>2</sup>

This was highly significant as for the first time in the language's history, a government was taking full responsibility for its future. The commitment also came in the wake of an 18-month period in the life of the Assembly when, contrary to expressed hopes at the outset, the language had become a matter of contentious dispute between the parties, especially Labour and Plaid Cymru. Commenting on its publication in an interview during the National Eisteddfod, the First Minister acknowledged that the document was an attempt:

“... to stop the language becoming a political football in the run up to next May's Assembly elections.”<sup>3</sup>

Media attention focused on the policy statement's recognition that “inward-migration of non-Welsh speakers” was one of the facts contributing to the decline of the language in the Welsh-speaking communities of north-west and west Wales. The Gwynedd councillor Seimon Glyn, whose comments in January 2001 on this issue

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<sup>1</sup> Dylan Phillips, *A New Beginning or the Beginning of the End? The Welsh Language in Postcolonial Wales*, paper presented to a conference on 'Postcolonial Wales' at the Centre for the Study of Modern and Contemporary Wales, University of Glamorgan, 13 July 2002.

<sup>2</sup> *Bilingual Future: A Policy Statement by the Welsh Assembly Government*, July 2002.

<sup>3</sup> Western Mail, 8 August 2002

provoked a long-running and angry dispute, with charges of ‘racism’ levelled by some Labour figures against Plaid Cymru, now claimed vindication.<sup>4</sup> However, the Lorraine Barrett, Labour AM for Cardiff South and Penarth, said she was unhappy by the use of the term ‘inward migration’:

“It sounds as if I would have to obtain a visa if I wanted to move to Ceredigion.”<sup>5</sup>

Mid and West Wales Conservative AM Glyn Davies also expressed surprise at the use of the term, adding:

“What the Government is talking about in its document will cost a lot of money. If non-Welsh speakers feel threatened it could become difficult to raise the support for the spending.”<sup>6</sup>

*Bilingual Future* agrees with the definition of what would constitute a ‘bilingual Wales’ as set out at the head of the joint report of the Culture and Education Committees’ policy review of the Welsh language *Our Language: Its Future*, published a month earlier:

“In a truly bilingual Wales both Welsh and English will flourish and will be treated as equal. A bilingual Wales means a country where people can choose to live their lives through the medium of either or both languages; a country where the presence of two national languages and cultures is a source of pride and strength to us all.”<sup>7</sup>

In their Foreword to *Bilingual Wales*, Rhodri Morgan and Jenny Randerson continue:

“The Welsh language is an important part of our national identity and creativity, and awareness of the educational, cultural and social benefits of bilingualism is growing. Bilingual, and even multilingual cultures are the norm rather than the exception in much of Europe and across the world. That is why the Assembly Government believes that languages should be seen as providing opportunities and economic benefits for Wales ... The Assembly Government will provide strategic leadership to sustain and encourage the growth of the Welsh language within a tolerant, welcoming and open Wales. The Welsh language will be mainstreamed into the work of the Assembly Government and its agencies. Positive support for communities including primarily Welsh-speaking communities, will be provided by pursuing policies which seek to create economically and social sustainable communities. We will ensure that we have effective structures in place to enable individuals to learn the language. We will place greater emphasis on promoting language use and enabling individuals to use the language in all aspects of everyday life...”<sup>8</sup>

In a section at the end of the document, headed *Next Steps* the policy statement commits to two significant strategic initiatives:

<sup>4</sup> Western Mail, 30 July 2002.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Our Language: Its Future*, joint report of the Culture and Education Committees, June 2002.

<sup>8</sup> *Bilingual Future: A Policy Statement by the Welsh Assembly Government*, July 2002.

1. The Assembly Government will ensure that the Welsh language is mainstreamed across Ministerial portfolios and within all Assembly Sponsored Public Bodies. Each Assembly Government Minister will take responsibility and ownership of the language within their own particular policy areas.
2. The Assembly Government will publish an Action Plan for a Bilingual Wales by the end of the year. The plan will involve a blend of policies across the range of Assembly Government Ministerial portfolios, and will contain concrete measures in support of the language.<sup>9</sup>

*Bilingual Future* was the Assembly Government's interim response to the Culture and Education Committees' combined 166-page review of the Welsh language *Our Language: Its Future*, published four weeks before at the end of June. Significantly the two committees are chaired by senior Plaid Cymru AMs: Culture by Rhodri Glyn Thomas (Carmarthen East and Dinefwr), and Education by Gareth Jones (Conwy). In *Bilingual Future* the Assembly Government subscribed to the thrust of the far-reaching recommendations made in the Committees' report.

Rhodri Williams, Chair of the Welsh Language Board, commented that mainstreaming the language across all Assembly Ministerial portfolios and Assembly-sponsored Public Bodies would put Wales at the forefront of minority language planning:

“The Government is preparing the first National Action Plan for the Welsh language to ensure that the language becomes a mainstream issue for every Assembly Minister and department. The significance of this commitment for Wales and our Welsh-speaking heartland's cannot be overestimated. In terms of language planning and policy-making, it is also a world first, making Wales the envy of minority language cultures in Europe.”<sup>10</sup>

Furthermore, *Bilingual Future* commits the Assembly Government to establishing a strategic cross-cutting Unit for the Welsh language within the Administration. This will be responsible for taking forward the Assembly Government's National Action Plan which will be published in the Autumn. It will be responsible for monitoring the implementation of the Plan across all the different policy areas.

The Culture and Education Committees' report laid down 45 recommendations divided under seven different headings, including language planning, structures, education, sustainable communities, housing and planning.

On the whole, the Committees were reluctant to change the present structures for language planning, promotion and marketing. They recommended that the Welsh Language Board continue to be the main agency for increasing the number of Welsh speakers and promoting and marketing the value of bilingualism. However, they wanted to see a Forum established to bring together bodies and organisations with

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<sup>9</sup> *Ibid.*

<sup>10</sup> Western Mail, 1 August 2002.

responsibility for the Welsh language to share ideas, co-ordinate approaches and contribute to policy development.

Lorraine Barrett, a Labour member of the Culture Committee claimed there were two schools of thought amongst those who gave evidence to the Committees on how to safeguard the Welsh language's future. The first, to which she adhered, believed that education and language transference in the family should be the priority. The second believed that in-migration, out-migration and housing problems were the main barriers to the language's survival.<sup>11</sup>

Members agreed that education was an essential aspect of their review. Their report recommended that a national strategic framework should be drawn up to guide the development of Welsh-medium and bilingual education. The report also emphasised the importance of language immersion during early years and envisaged an expanded role for *Mudaid Ysgolion Meithrin* (the Welsh Association for Nursery Schools).

However, Members differed over the importance of in-migration to their study. The Labour AMs were reluctant to discuss in-migration. As a result the Committees concentrated on the effects of out-migration on the language together with its causes: lack of affordable housing and lack of employment in rural communities. They believed that Welsh public bodies had a responsibility for creating employment in rural communities which would encourage Welsh speakers to stay in their communities. It called on the Assembly, Assembly-sponsored Public Bodies and non-answerable bodies such as S4C and BBC to consider devolving to the regions. The Assembly Government is already planning to decentralise some of its departments around Wales and in her response to the committee's report Culture Minister Jenny Randerson said she would expect all the Assembly's agencies to follow this example.

Collating recommendations on housing and planning was the most difficult part of the review because they are directly connected with inward migration, availability of local housing and the threat to Welsh-speaking communities. All had been subjects of acrimonious rows within the Assembly during the previous year. The controversy had begun when Seimon Glyn, Plaid Cymru Chair of Gwynedd's Housing Committee had declared that in-migration of English people was the root cause of the decline of Welsh-speaking communities.<sup>12</sup> The debate that ensued prompted the formation of *Cymuned*, a controversial pressure group for safeguarding Welsh-speaking communities. *Cymuned* rapidly achieved a high media profile, partly by threatening to resort to civil disobedience if the Committees' report failed to address their concerns.

As it was the Committees' initial recommendations were relatively tame. They included the strengthening of the Homebuy Scheme to assist local people in buying their own homes, but this would have to apply to all of Wales, not just the Welsh-speaking heartlands. In the event, this part of the document was significantly strengthened at the last minute as a result of amendments tabled by Plaid Cymru AM Dafydd Wigley. These gained the support of Labour's Deputy Minister for Culture, Delyth Evans. The most significant proposed:

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<sup>11</sup> Interview with Lorraine Barret, 25 July 2002

<sup>12</sup> See the previous monitoring report *The Economy Takes Centre Stage*, IWA, March 2001, for a full account of this episode.

“Planning permission should be required before changing the status of a permanent dwelling into a holiday home in areas where the number of holiday homes had exceeded a threshold of the existing housing stock.”

Delyth Evans supported the amendment after Dafydd Wigley agreed not to specify a figure for the threshold. Instead, local authorities would be left to decide depending on local circumstances. Wigley also agreed to add another paragraph stating that the Environment Minister should be allowed to consider the recommendation alongside other measures which could ensure the availability of housing stock. A further amendment that was agreed included the statement:

“Local Authorities should be encouraged to use all the powers available to them, including housing and planning powers, to enable local people to secure homes, either by purchase or rent, within their own community; but that in the exercise of these powers there shall be no discrimination on the basis of language.”

As with the Homebuy Scheme this measure was accepted by all Members on the condition that it could apply to any community. The inclusion of the measure on second homes also highlighted the important role of Delyth Evans, a Welsh-speaking Labour AM, in making many of the more radical proposals acceptable to her Labour colleagues.

However, this recommendation on second homes was the only instance where cross-party consensus was not achieved. Conservative AM Glyn Davies (Mid and West Wales) found it unpalatable and claimed that Dafydd Wigley’s last minute amendments were the ex-Plaid Cymru leader’s attempts at “playing to the Cymuned/Seimon Glyn faction of his party.”<sup>13</sup> During the plenary debate on the Committees’ report Davies warned that the recommendation was:

“A political gimmick and is unworkable. If the Government’s response is foolish enough to bring forward a proposal endorsing such a scheme we will oppose it.”<sup>14</sup>

After what most of the Culture Committee members agreed had been an ‘emotionally draining’ review – although it was the work of two committees, the Culture Committee took the leading role - they were satisfied with the final report. Glyn Davies agreed to support the document despite the inclusion of the recommendation on second homes. Consequently the final recommendations were unanimous. Cross-party support for the document was essential to give it credibility and any real hope of being implemented.

Although Plaid Cymru were disappointed that a number of their recommendations were left out - in particular their call for a new Welsh Language Act - Helen Mary Jones (Llanelli) welcomed the report as:

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<sup>13</sup> Interview with Glyn Davies 30 July 2002.

<sup>14</sup> *Assembly Record*, 9 July 2002

“Visionary as well as practical, challenging as well as deliverable, and optimistic as well as realistic.”<sup>15</sup>

However, many Welsh language activists were less impressed. Cymdeithas yr Iaith (the Welsh Language Society) was disappointed that a new Welsh Language Act was not included and attacked the Committees’ review as a ‘missed opportunity.’ Cymuned also declared the document did not go far enough:

“This report represents a piecemeal approach to reviving the Welsh language, and unfortunately the pieces do not make a meal. There is no serious attempt to tackle in-migration – the sole proposal on the housing crisis, namely the Homebuy scheme, will require a substantial financial commitment by Finance Minister Edwina Hart. Unless she can supply millions of pounds of new money, the report will not be worth the paper it is written on.”<sup>16</sup>

Nonetheless, Culture Minister Jenny Randerson, has arguably made a promising start on implementing the report’s recommendations. As well as the radical commitments made in document *Bilingual Future*, she announced £450,000 of additional funding for the Welsh Language Board to finance seven initiatives, including three language action pilots in Llyn, Corwen and Ammanford. Certainly she has won approval of the Culture Committee Chair Rhodri Glyn Thomas who said:

“Her response represents an historical step by a Government which for the first time has taken responsibility for the future of the language.”<sup>17</sup>

### **Mike German Reinstated**

After a year-long investigation by South Wales Police, the Crown Prosecution Service (CPS) finally cleared Mike German in June of any criminal charges relating to his time as Head of the European Unit at the Welsh Joint Education Committee. On the same day as this announcement, Rhodri Morgan issued a press release stating that Mike German would return to the Cabinet as Deputy First Minister with ‘immediate effect’. The First Minister, who has always stood by the Liberal Democrat leader declared:

“I am very pleased for Mike German himself that, after a lengthy period of investigation the decision has now been made that no action is to be pursued against him.”<sup>18</sup>

A few days later it was announced that Mike German would return to the Cabinet as Deputy First Minister and Minister for Rural Development and Wales Abroad. The ‘Wales Abroad’ title was a new portfolio which gave the Welsh Liberal Democrat

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<sup>15</sup> *Ibid.*

<sup>16</sup> Wyn Hobson, Spokesperson for Cymuned, Western Mail, 10 July 2002.

<sup>17</sup> Interview with Rhodri Glyn Thomas, 13 August 2002.

<sup>18</sup> Assembly Government Press Release, 13 June 2002.

leader responsibility for co-ordinating the promotion of Wales in the rest of the UK and overseas. This would also involve chairing the National Assembly's European and External Affairs Committee and the Cabinet Committee on Wales and the World. The press immediately labelled him as Wales's new Foreign Minister<sup>19</sup>. Mr German also took over Carwyn Jones's responsibility for rural development and was tasked with chairing a new Cabinet Committee on the regeneration of rural Wales. Whilst Carwyn Jones lost his Agriculture portfolio he gained a new responsibility for Open Government in addition to his continuing role as Business Manager. The Open Government portfolio covers equal opportunities, freedom of information and human rights.

There were also slight changes to the responsibilities of the Minister for Finance and the Communities, Edwina Hart. She was given overall responsibility for crime reduction and safe communities which included taking over the relevant fields of drug and alcohol abuse from the Minister for Health and Social Services.

Assembly Members gave a cautious welcome to Mike German's return to the Cabinet. The Opposition parties felt his re-appointment was premature as investigations into the Welsh Joint Education Committee's European Unit were still being carried out by OLAF, the European Union's Anti-fraud Office. Plaid Cymru's leader Ieuan Wyn Jones asked:

“Would it not have been wiser, First Minister, not to have made an appointment until OLAF's investigation is complete? If OLAF does not identify any problems, there would be no qualms about Mike German's appointment to the Cabinet. Why did you feel that it was appropriate to make the appointment even though your Government and Mike German remain under a cloud?”<sup>20</sup>

Nick Bourne echoed these sentiments:

“The European anti-fraud office inquiry remains. It is an inquiry into an institution, admittedly, but it is the European operation of the Welsh Joint Education Committee. We have already had two Cabinet reshuffles, and a third as a result of this affair. Can you give an assurance that we will not have a fourth? Have you made inquiries about what stage the OLAF inquiry has reached?”<sup>21</sup>

Ieuan Wyn Jones also pointed out that Mike German would be the Assembly's third Agriculture Minister in the Assembly's first term:

“The agriculture industry and those responsible for the rural economy are genuinely concerned that we now have the third Minister to deal with rural affairs since the Assembly's inception. It appears to many that this latest change has been made for political convenience. There was no reason for it, except that you had to find a Cabinet post for Mike German. We wish him

<sup>19</sup> Western Mail, 18 June 2002.

<sup>20</sup> Assembly Record, 18 June 2002.

<sup>21</sup> *Ibid.*

well in his new job, in taking on the agriculture portfolio, but the concern persists.”<sup>22</sup>

The Conservatives, however, were more concerned about Mike German’s lack of background and experience in the agricultural field. As Nick Bourne put it:

“On the agriculture portfolio, I am not reassured that Mike German, as an Assembly Member for South Wales East, having once had a holiday on a farm, knows anything about the portfolio. The previous Minister for Rural Affairs exuded an air of confidence and competence. This must be a rare example of a reshuffle where someone who is untried replaced someone who was accepted by the farming fraternity.”<sup>23</sup>

There were further questions regarding Mike German’s Wales Abroad portfolio and his appointment to the Chair of the European and External Affairs Committee. Ieuan Wyn Jones questioned whether he was the most appropriate person to promote Wales in Europe:

“I referred to the Bentley Jennison report<sup>24</sup>: does that report not raise questions about Mike German’s credibility in dealing with European affairs? He is now responsible for European affairs in the Cabinet, and a number of questions have been asked about its suitability and the combination of his roles in the cabinet.”<sup>25</sup>

For the same reasons, Ron Davies was concerned about Mike German’s suitability as Chair of the External Affairs Committee. He said the Assembly should have a ballot vote on the appointments of the Chairs of the European and External Affairs and the Equal Opportunities Committees as had occurred with the election of the current Deputy Presiding Officer:

“There must be questions about the propriety and the wisdom of the National Assembly being represented at a much wider level by an individual who has been through such a traumatic time, and about whom there will doubtless be debate and speculation in the future as a result of the OLAF investigation. It is appropriate that Members, in casting their vote on whether Mike is an appropriate candidate for Chair of the Committee on European and External Affairs, should have the opportunity to reflect their own judgement. In pursuance of that, will you bear in mind, Llywydd, the precedent that was set some time ago when the whole Assembly recognised that the role of the Deputy Presiding Officer is a matter for the Assembly – not for party groups or the administration.”<sup>26</sup>

Nick Bourne, leader of the Conservatives concurred:

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> An audit of the WJEC European Unit at the time it was headed by Mike German, commissioned by the WJEC Board, and subsequently forwarded to the South Wales Police.

<sup>25</sup> *Assembly Record*, 18 June 2002.

<sup>26</sup> *Ibid.*

“The appointment of Chair of the Committee on European and External Affairs, as it is now called, and of the Chair of the Committee on Equality of Opportunity, are matters for the Assembly as a whole. A precedent was set – and I look to the Presiding Officer as much as to the First Minister on this -with the secret ballot to elect the Deputy Presiding Officer ... should we not consider a secret ballot in this case also?”<sup>27</sup>

A further, procedural, question was raised on the accountability of Mike German regarding his new ministerial responsibility for Wales abroad. Members quoted Section 57(4) of the Government of Wales Act 1998 which states that there should be a Subject Committee to mirror the responsibilities of each Minister. Members wanted to know whether the Committee on Rural development would subsequently become the ‘Rural Development and Wales Abroad Committee’.

The Presiding Officer concluded that Ministers could only be questioned or shadowed by a committee on their fields of accountability in which the National Assembly has functions, and could not be questioned on any additional responsibilities. He told plenary:

“Members will have heard me refer on several occasions to section 56(3) of the Government of Wales Act 1998, which requires the First Minister to allocate accountability in the fields in which the Assembly has functions to Ministers, so that, in the case of each of those fields, accountability in the field is allocated either to a Minister or to him. This means that Members and the public can be clear about what Ministers are accountable for in law. They may hold other responsibilities, but there is no accountability for them in our founding legislation.

“Standing Order No. 6.3(iv) provides that Ministers other than the First Minister, the Minister with responsibility for finance, and the Minister responsible for Assembly business, answer questions only in respect of their fields of accountability.

“I understand that the Business Committee has already requested that the First Minister provide Members with a detailed and comprehensive list of ministerial accountabilities in fields under section 56 (3) of the Government of Wales Act. I hope that this document can be provided without delay ... so that Members can be clear about the matters for which each Minister is accountable within a field in which the Assembly has functions.”<sup>28</sup>

Assembly Members were dissatisfied and frustrated with the ruling, as it would not allow them to question Mike German on his Wales abroad portfolio because this was a responsibility and not a field in which the Assembly had functions. Ieuan Wyn Jones complained:

“The Minister cannot be asked questions on his responsibility for Wales abroad and he does not appear before a Committee for Wales abroad. He can spend

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Assembly Record*, 2 July 2002

money on behalf of Wales, but he is not answerable for all the money that he spends.”

Ron Davies claimed that one of the founding principles of the Assembly was in jeopardy:

“One of the founding principles of the Assembly was that of accountability. We would not be here unless we wanted accountability. What is the point of having an Assembly if a Minister cannot be held to account?”<sup>29</sup>

However, the Presiding Officer maintained that Standing Orders do not allow for questions on ‘responsibilities’:

“The Standing Order governs our present context. Similarly, Standing Order No. 6.3 states that Ministers can answer questions ‘in relation to that field’ that is, the field of their accountability. Therefore, I cannot allow questions on responsibility.”<sup>30</sup>

### ***Foot and Mouth Powers to be Transferred***

The Animal Health Act 1981, which governs control of animal diseases such as foot and mouth, is to be amended next year to devolve operational control to the National Assembly in line with the position in Scotland and Northern Ireland. This was made clear by Carwyn Jones, former Minister for Rural Affairs and now Business Manager, in oral evidence he gave to the House of Lords Constitution Committee in May. As he put it:

“Our viewpoint publicly, and the viewpoint that has been accepted in principle by the Department for the Environment, Food and Rural Affairs, is that we should have the powers over foot and mouth, the same powers that exist in Scotland and the same powers that exist in Northern Ireland, because we have the staff to enable the operation centres to be run.”<sup>31</sup>

The fact that the powers are not devolved is a classic example of the arbitrary nature of the Government of 1998 Government of Wales Act. This transferred functions to the National Assembly piece-meal, on the basis of the previous functions of the Welsh Office. In turn these were derived from a complex array of specific ministerial functions, named in more than 300 separate pieces of Westminster primary and secondary legislation. In the case of foot and mouth Carwyn Jones has described the problem in the following terms:

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> House of Lords Select Committee on the Constitution, *Devolution: Inter-Institutional Relations in the United Kingdom*, Minutes of Evidence, July 2002, p. 270.

“The Assembly is a corporate body according to the Government of Wales Act but the fiction that it acts as one has in practice been abandoned, with a *de facto* Executive scrutinised by a legislature. Yet Assembly Ministers are not Ministers according to law, and this means that whenever primary legislation talks of the ‘Minister’ it means the UK Minister unless the Assembly or previously the Secretary of State is specified in the legislation. The Animal Health Act 1981, which largely governs animal diseases only mentions the ‘Minister’ and so animal health is not devolved.”<sup>32</sup>

In his evidence to the House of Lord Constitution Committee Carwyn Jones made the case for the Assembly’s powers to be devolved in terms of subject areas as with the Scotland Act that established the Scottish Parliament:

“Administrative devolution began in Scotland in Victorian times, in Wales in the 1960s, and the tendency has been for some powers in policy areas to be transferred rather than full responsibility to be transferred. This is something that we see further devolution settling. It means, of course, that agriculture is in the main as devolved as it can be given the Common Agriculture Policy, but there are situations such as this [foot and mouth] where the power was reserved to DEFRA but where experience and practice suggests that it would be best devolved to an institution that has the staff to be able to carry out policy. The difficulty that I faced personally was whilst from a strictly legal point viewpoint I had no responsibility at all and could have turned around and said ‘this is nothing to do with me’ and done nothing, and that from a legal viewpoint is correct, but from a political and public viewpoint that would have been wholly unacceptable. The political accountability was seen as resting in this place whereas legally it did not and that is the circle that has to be squared next year.”<sup>33</sup>

### **Health Service Re-structuring Costs**

Eight months following Assembly approval of the government’s plans for the re-structuring of NHS Wales<sup>34</sup>, Health Minister Jane Hutt presented the estimated costs of restructuring to the Health and Social Services Committee. Her plans to abolish the five Health Authorities and replace them with 22 Local Health Boards and three Regional Assembly Offices would cost between £12.5 million to £15.5 million. Opposition members claimed this represented a U-turn from her earlier commitment that:

“In terms of costings of these plans, I have already told you that these plans are cost-neutral and that we will have a management cap.”<sup>35</sup>

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<sup>32</sup> Carwyn Jones, ‘Responsibility Without Power’, *AGENDA*, IWA, Autumn 2001.

<sup>33</sup> House of Lords Select Committee on the Constitution, *Devolution: Inter-Institutional Relations in the United Kingdom*, Minutes of Evidence, July 2002, p. 271.

<sup>34</sup> See the previous Monitoring report, *Coalition Creaks over Health*, December 2001.

<sup>35</sup> *Assembly Record*, 27 November, 2002.

However, the Minister defended her position claiming that the running costs of the new structures would be no greater than the annual costs of the existing structures and so the process was cost neutral as she had promised on earlier occasions. She refused to confirm whether the £15 million would come from the NHS Wales budget or from other Assembly money. Opposition members argued that the money could be better spent. The Conservative's health spokesman, David Melding, said:

"I'm astonished that the estimate for the costs of reorganising has gone from cost-neutral to £12.5m to £15.5m, and even that's not a final estimate. This is the cost of a small hospital, but instead of getting better hospital facilities we are getting a re-organisation that I don't think will serve people well."<sup>36</sup>

Dai Lloyd, for Plaid Cymru, complained that the aim of restructuring should be to reduce not increase running costs:

"Restructuring should save money, make the structures simpler and directly improve patient care. At the moment there's no evidence, particularly on these costings, that it will save money. It's certainly not simple, and without one single all-Wales commissioning body it's not going to improve patient care."<sup>37</sup>

### **Closure of Rural Schools**

Differences between the guidance on the closure of rural schools published by Education Minister Jane Davidson in April and the guidance provided by the UK Government have been highlighted in a growing row over the closure of small rural schools in Pembrokeshire, Carmarthenshire and Monmouthshire.

By the end of July Education Authorities had decided that eight schools in Carmarthenshire, six in Monmouthshire, and three in Pembrokeshire would have to close. During the past 12 months six closures have already occurred. Unions and parents complained that Jane Davidson had stood aside from these closures. Supporters of the rural schools claim that the Welsh guidance is ambivalent on how decisions should be made, whereas the English guidance presumes against closure of rural schools. Mervyn Benford, Co-ordinator for the UK Association of Small Schools said:

"We are extremely concerned at the Welsh policy. The balance of debate gives far more space to the disadvantages of small schools and far too little to the advantages. We believe the Assembly Government's guidance document was deliberately ambivalent and encouraged local authorities to test the water. I think that the perspective within the Assembly Government is strongly against small schools – there is no other reading that can be made into the way the document is constructed."<sup>38</sup>

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<sup>36</sup> Western Mail, 13 July.

<sup>37</sup> Health and Social Services Committee, 17 July 2002

<sup>38</sup> Western Mail, 3 August 2002

NUT Wales and UCAC (the Welsh teaching union) appealed to the Minister to halt the closures. However, the Assembly Government denied claims that it is in favour of closing small schools. As Jane Davidson put it:

“Since I have been Minister for Education I have confirmed that the overriding priority in considering proposals for changes to small and rural schools is the standard of education which will result. There is no presumption for or against closure in Wales. Each proposal which gives rise to objections is looked at on its merits.”<sup>39</sup>

Differences of opinion within the Coalition emerged in August when Deputy First Minister Mike German criticised Monmouth’s Labour-led Local Authority for voting in favour of closing eight local schools which, he said, would ‘harm the education of pupils.’<sup>40</sup>

This issue will re-emerge in the coming months since parents at Moyle-grove and Dinas primary schools in Pembrokeshire are considering taking Education Minister Jane Davidson’s decision to allow their closure to go ahead to judicial review.

### ***Public Transport Review***

Environment Minister Sue Essex announced that she would be seeking additional legislative powers on transport as part of her response to the Environment and Transport Committee’s public transport report which as published in December 2001. As she told a plenary debate in July:

“I am convinced that it is essential to enhance the statutory functions of the Assembly to get the best form of public transport and obtain the vision set out in our transport framework. I intend to seek powers along the lines of the Greater London Authority Act 1999 whereby the Mayor and Authority can develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities. London boroughs are required to prepare local implementation plans. Provided resources are in place, the boroughs implement the plans once approved and the Mayor has default powers. This power would require close collaboration and enable us to set targets for implementation without removing transport functions from local authorities.”<sup>41</sup>

At the same time she rejected Plaid Cymru’s case for establishing a Public Transport Authority or a Public Transport Executive for Wales. Instead she announced the creation of a Public Transport Unit within the Assembly Government’s Transport Directorate. Another structural change would result from the setting up of a national

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<sup>39</sup> Western Mail, 26 July 2002

<sup>40</sup> Western Mail, 1 August 2002.

<sup>41</sup> Assembly Record, 2 July 2002.

public transport alliance as a non-executive body. This would include representatives of key stakeholders and would provide expertise to the new Public Transport Unit.

### ***U.K. Communications Bill***

In July the Assembly Government demanded that changes be made to the UK Communications Bill. They were highly critical of the Bill for not giving Wales a strong enough voice within the new proposed regulatory regime and were particularly annoyed that the Bill did not provide for Welsh representation on OFCOM, the new communications regulator. Culture Minister Jenny Randerson is seeking amendments to the Bill which would provide:

1. A member for Wales and other UK nations on the OFCOM board.
2. An OFCOM office in Wales.
3. A statutory role for the Assembly.
4. The Welsh Consumer Council to advise the new Ofcom regulator.

The proposals received cross-party support in the Assembly. For once Plaid Cymru's spokesman Owen John Thomas praised the Assembly Government:

“It is difficult to find fault with a response that pays such appropriate attention to the need and aspirations of Wales.”<sup>42</sup>

### ***Minority Languages Project for the British Irish Council***

A British-Irish Council meeting held in Jersey in June agreed that the Assembly Government should take the lead in developing a policy document on minority and lesser-used languages. This was first advocated by the First Minister Rhodri Morgan a month earlier in a paper to the Assembly Cabinet. Commenting that a joint Welsh/Scottish project on social inclusion would culminate in a conference in Scotland this Autumn he said the Assembly Government should now lead on a separate project of its own, to serve as the basis for a Council summit in Wales, planned for the Autumn, of 2003. On the issue of minority languages he stated:

“While all members of the Council have some interest in this area, we have an acknowledged expertise in language policy and, by a wide margin, proportionately the largest minority-language population of any of the Council members. A possible drawback is the sensitivity of language issues in Northern Ireland, although as concerns here are typically articulated by the DUP (who refuse to participate in the Council's work) that is not insuperable.”<sup>43</sup>

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<sup>42</sup> *Assembly Record*, 9 July 2002

<sup>43</sup> Rhodri Morgan, *A Policy Project within the British-Irish Council*, Cabinet Paper, May 2002

### **Audit Commission Report on Public Services**

In July the Audit Commission for Wales published *Delivering a Better Wales*, a comprehensive and damning review of public services. Comparing Wales with similar areas in England the report found that Welsh public services were lagging behind. It claimed that over £300 million was needed to bring NHS buildings up to standard and more than £750 million to bring council homes up to standard in Wales. Health and Social Care were the most problematic areas. According to the Commission, the Ambulance Service was not meeting response targets to react to 75 per cent of emergency calls within eight minutes in any part of the country. Welsh Health Trusts carried out less day surgery than in England for common surgical procedures and almost a quarter of heart patients had to go to England because Wales lacked adequate coronary care facilities. It also found that none of the 12 social services inspected by the Social Services Inspectorate for Wales had been judged to be ‘serving the people well.’

On a more positive side Wales was judged to be performing well in education with a higher proportion in Local Education Authority maintained schools achieving five grades A-C in GCSE in Wales than in England. There were also lower levels of crime in Wales. The Commission concluded that

“... overall levels of funding for both local government and health services in Wales are higher than in England but performance is mixed.”<sup>44</sup>

The report sparked a debate in the media on the future of the Audit Commission’s office in Wales. Finance Minister Edwina Hart has drawn up proposals to merge the functions of the Audit Commission in Wales and the Auditor General for Wales. The proposals were included in this year’s list of Bills the Assembly Government would like to see included in the next Queen’s Speech.

Currently the Audit Commission is responsible for auditing local authority services and NHS bodies. It is sponsored by the National Assembly but operates independently and is self-financing. The Audit Office is responsible for scrutinising the public spending of the Assembly and its agencies such as the Assembly-sponsored Bodies. If taken up by the London Government the Audit (Wales) Bill would merge the functions of the Audit Commission in Wales and the Auditor General for Wales to create a single audit body for Wales as already exists in Scotland and Northern Ireland. The body would have responsibility for the Assembly, Assembly-sponsored Public Bodies, Health Authorities and NHS Trusts, and Local Government. It would have a single line of accountability to the Auditor General for Wales.

Although Rhodri Morgan labelled the Audit Bill a “tidying up measure”<sup>45</sup> during the debate on the Assembly Government’s proposed bills, it has led to speculation in the

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<sup>44</sup> Audit Commission, *Delivering a Better Wales*, July 2002.

<sup>45</sup> *Assembly Record*, 19 March 2002.

media that it is an attempt to silence the Audit Commission and its criticism of public services in Wales.<sup>46</sup>

In light of the publication of *Delivering a Better Wales* Opposition politicians also expressed concerns that a new body would not have the same high standards as the Audit Commission. Would Local Government and Unions seek to water down the assessment criteria of the proposed new audit body leading to further trouble and decline in some of our public services? Conservative leader Nick Bourne said:

“Having different standards usually leads to more lenient standards. With a Cabinet that is dominated by people from public sector backgrounds, we are seeing that money is not being spent efficiently. These proposals mean we are in danger of having Third World standards without any effective monitoring of what’s going on.”<sup>47</sup>

However, supporters of the merger claim it will eliminate duplication between the Audit Office and the Audit Commission, particularly when auditing the National Health Service in Wales.

### ***Audit Committee’s Report on NHS Wales***

The Assembly’s Audit Committee published their report on NHS Wales finances in July. The report was based on the annual report of the Auditor General for Wales on the Finances of NHS Wales for 2002, and on evidence taken by the Committee from Ann Lloyd, Director, and Sarah Beaver, Director of Finance, at NHS Wales.

The report was heavily critical of some aspects of the health services’ finances. Despite the fact that the service had recovered from a deficit of £1.6 million in 1999-00 to a surplus of £24.3 million in 2000-01, members were concerned that this had been achieved as a result of £19.2 million strategic assistance funding to assist with the recovery plans of NHS Trusts that had incurred financial difficulties. Members believed that it could give the wrong signals to NHS Trusts that were performing well. They warned that Trusts would be held accountable if they ran up similar debts in the future:

“We accept that it was necessary to provide strategic assistance funding in order to enable certain NHS Trusts to achieve their financial recovery plans. We further accept that it would be unreasonable to burden new NHS organisations with the debts of their predecessors. However, we are concerned that such actions could be regarded as rewarding poor financial performance and could be a disincentive to prudent organisations. The restructuring of NHS Wales and the provision of additional finance for the NHS arising from the budget is an excellent opportunity for a new start. We therefore strongly recommend that the NHS Directorate take this opportunity to emphasise to all NHS organisations in

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<sup>46</sup> See the Western Mail 19 July 2002.

<sup>47</sup> Western Mail, 19 July 2002.

Wales the need for financial stability and the importance of operating within the available resources.”<sup>48</sup>

The second major concern was the large amount of money being spent on the Welsh Risk Pool which assist Health Authorities and NHS Trusts in Wales with risk management and the settlement of claims. Not only did the pool pay out £18.6 million more than expected during 2001-02 but it is estimated that NHS Wales has probable liabilities of £92 million in respect of claims to be met in future years. Audit Committee Chairman, Dafydd Wigley said that the health service was ‘existing on a shoestring’ and would find it difficult to deal with the costs of clinical negligence:

“The massive rise in the cost of clinical negligence is alarming. If unchecked this could ruin all hopes for a better health service.”<sup>49</sup>

### ***Future of the Civil Service***

Divergent views from within either side of the Assembly divide between the Presiding Office and the Welsh Assembly Government on the future operation of the civil service were put in evidence to the House of Lords Constitution Committee. In his written evidence to the Committee Lord Elis-Thomas drew attention to the fact that, in contrast to the position in Westminster, Edinburgh and Belfast, the staff in his office were not free-standing, but remained part of the wider civil service responsible to the Permanent Secretary in the Assembly:

“There are undoubtedly benefits for our staff being members of a wider group, especially in terms of career mobility and development. But there is also a danger that staff will not be whole-hearted in their commitment to serve all elected Members impartially if they believe that their careers could be jeopardised if they, for example, help a Committee to subject senior officials of the Assembly Government – who might be their line managers in their next job – to uncomfortably searching scrutiny. I am not aware that any pressure of this kind is or has been actually applied and committees’ main focus is in any event on scrutinising Ministers, but the separation between parliamentary and executive staffs which exists in most other systems is there for a good reason.

“What we have developed is a set of formal agreements between the Assembly’s Clerk and its Permanent Secretary which protect the independence and semi-autonomy of the staff who work in the Presiding Office. These have operated well to date, but I can see a good case for greater separation at some stage in the future. The difficulty in ensuring that we can provide an adequate career structure for our staff would be ameliorated if there were a Welsh Public Service, incorporating Assembly Government, Assembly-sponsored Public Bodies, and possibly local government staff, as well as those who serve elected

<sup>48</sup> Report of the Audit Committee, Finances of NHS Wales 2002, presented to the National Assembly, 25 July 2002.

<sup>49</sup> Western Mail, 25 July 2002

Members in the National Assembly (though it will be important to retain mobility of civil servants throughout the United Kingdom).”<sup>50</sup>

In oral evidence to the Committee the Permanent Secretary Sir Jon Shortridge, concurred with the idea of greater collaboration across the public services in Wales:

“I am keen to find ways of establishing stronger relationships across the public sector in Wales to assist career development for public service officials in Wales ...”<sup>51</sup>

However, he argued strongly for maintaining a unified British civil service. Responding to a question from the Chairman of the Committee, Lord Norton of Louth, comparing Wales with Scotland on the significance of maintaining a unified service, he replied:

“I think in the case of the Assembly as compared with the Scottish Executive and the Scottish Parliament it is even more important that we should retain the unified Civil Service because the nature of the settlement that we have requires us to have much closer relationships with the Government departments which share our responsibilities, particularly given that we do not have responsibility for primary legislation. From my perspective, for officials to be speaking, discussing, negotiating across the divide who are all civil servants, both sides are civil servants, both share the same set of values, I think that is very significant in helping to make this particular settlement work.”<sup>52</sup>

These views should be sent against an apparently radical commitment, contained in the Coalition Partnership Agreement, to review the role of the civil service:

“We will review the existing structures and workings of Assembly officials to ensure they are in tune with the reality of political devolution. We seek to move towards an increasingly independent and Welsh-based civil service – investigating ways of introducing an Assembly ‘fast-track’ programme to attract and retain high quality staff.”<sup>53</sup>

It was revealing, therefore, that in his written submission to the House of Lords Committee First Minister Rhodri Morgan addressed the question head-on, and appeared to square the circle, in the process of describing a cultural shift for civil servants that has taken place since the advent of the Assembly:

“... the main focus of Assembly civil servants has moved to Wales itself and to relations with the wider world. Officials have had quickly to develop new skills and competencies, in particular those concerning policy development, engagement with the Assembly’s partners and sensitivity to Ministers’ political agendas ...

<sup>50</sup> House of Lords Select Committee on the Constitution, *Devolution: Inter-Institutional Relations in the United Kingdom*, Minutes of Evidence, July 2002: ‘Memorandum by the Lord Elis-Thomas AM, Presiding Officer, National Assembly for Wales’, p.255.

<sup>51</sup> *Ibid.*, p. 280.

<sup>52</sup> *Ibid.*, p.281.

<sup>53</sup> *Putting Wales First: A Partnership for the People of Wales*, Section on Better Government, para. 6, 6 October 2001.

“That should not in any sense question the value of Assembly staff remaining part of the Home Civil Service. Adherence to a common set of values, as set out in the Civil Service Code, both gives assurance as to the quality and the objectivity of officials’ work and aids relations with Whitehall. But the emergence of a distinctive working context and a new set of required competencies to support it lies behind the Assembly Government’s commitment ‘to move towards an increasingly independent and Welsh-based civil service’.”<sup>54</sup>

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<sup>54</sup> *Ibid.*, p. 233.

## 2. THE ASSEMBLY

*John Osmond and Nia Richardson, IWA*

### **Richard Commission on the Assembly's Powers**

Membership of the Richard Commission on the Assembly's powers, established under the Labour/Liberal Democrat Coalition agreement, was announced in August. Four members were nominated by each of the political parties, and five public appointments were made following advertisement and interviews following the Nolan process.<sup>55</sup>

The remit of the Commission, chaired by Lord Richard of Ammanford, is to produce an independent report before the end of 2003 making recommendations on the powers and electoral arrangements of the National Assembly, based on the evidence of the Assembly's first term. It begins work in September.

The political appointments are:

1. **Welsh Labour:** Ted Rowlands (62), former MP for Merthyr Tydfil and Rhymney (1972-2001) and Cardiff North (1966-1970). He was a Welsh Office Minister 1969-70 and 1974-75, an Under-Secretary at the Foreign Office 1975-76 and Minister of State with responsibility for Africa between 1976 and 1979.
2. **Plaid Cymru:** Dr Laura McAllister (38), a Senior Lecturer in Politics at the Institute of Public Administration and Management, University of Liverpool. She is author of *Plaid Cymru: The Emergence of a Political Party* (Seren, 2001).
3. **Welsh Liberal Democrats:** Peter Price (60) a former Conservative Member of European Parliament (1979 – 1994) he joined the Liberal Democrats in the mid-1990s. He is a former Member of National Assembly Standing Orders Commission, a solicitor, EU consultant and part-time Chairman of Employment Tribunal. He was a Welsh Liberal Democrat candidate for European Parliament elections in 1999. Married with one child. Lives in Cardiff.
4. **Welsh Conservatives:** Paul Valerio (62), the first Lord Mayor of Swansea in 1982 he was a Conservative Councillor, City of Swansea between 1968-1996. A former Deputy Chairman for Welsh Conservative Party. Assembly Candidate Swansea West 1999.

The public appointments are:

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<sup>55</sup> Assembly Government Press Release, 31 July 2002.

1. **Eira Davies** (55) is the Managing Director of a web publishing business. She lives and works in Wrexham. Her diverse career encompasses teaching, radio broadcasting and business and she has had experience of the private, public and voluntary sectors. A Welsh speaker she is a member of the Board of S4C and of Coleg Llandrillo Cymru.
2. **Vivienne Sugar** (55) was the Chief Executive of the City and County of Swansea since 1995 until July 2002, when she resigned to allow her more time to concentrate on other activities. She has extensive experience in local government and the voluntary sector and was a member of Beacon Councils Advisory Panel from 1999 - 2002. She lives in Swansea.
3. **Sir Michael Wheeler-Booth** (68) had a long career as an officer in Parliament since 1960, ending in 1997 when he was Clerk of the Parliaments. Sir Michael was a member of the Royal Commission on House of Lords Reform and of the Commission which drafted the Standing Orders for the National Assembly. He is currently a special lecturer in politics at Magdalen College, Oxford. He lives near Chipping Norton, Oxon.
4. **Tom Jones** (52) is a farmer from Welshpool, Powys. He has been committed to public service for the past 25 years including most recently, as Chair of Wales Council for Voluntary Action, a member of the Countryside Council for Wales and Chair of the Millennium Stadium Charitable Trust. He is also Chair of Berwyn Local Access Forum and the Independent Chair of the National Assembly Working Group on Patient Advocacy and Support. He is former President of the Young Farmers Movement.
5. **Huw Thomas** (53) is from Colwyn Bay and is currently the Director of a Consultancy Company specialising in senior management development, organisation change and public policy. He was Chief Executive of Denbighshire County Council from 1995 to 2001 and prior to that was the Chief Executive of Gwynedd County Council. He also has extensive experience of public service and the voluntary sector, is hearing impaired and is the National Trustee for Wales for the RNID.

The terms of reference approved by the Assembly following a plenary debate on 20 June, are as follows:

### **Assembly Powers**

The Commission should consider the sufficiency of the Assembly's current powers, and in particular:

1. Whether the Assembly's powers are sufficiently clear to allow optimum efficiency in policymaking.
2. Whether both the breadth (that is, the range of issues over which it has control and the depth (that is, the capacity to effect change within those issues) of the Assembly's powers are adequate to permit integrated and consistent policy-making on issues where there is a clear and separate Welsh agenda.

3. Whether the mechanisms for UK Government policy-making as regards Wales, and the arrangements for influence by the Assembly on these, are clear and effective, and in particular whether they correct any apparent shortcoming from the previous item.
4. Whether the division of responsibility between the Assembly and the UK Government places inappropriate constraints on Whitehall policy-making, both on matters over which the Assembly has control and otherwise.

The Commission should consider any possible financial implications arising from the implementation of its proposals.

### **Electoral Arrangements**

The Commission should consider the adequacy of the Assembly's electoral arrangements, and in particular:

1. Whether the size of the Assembly is adequate to allow it to operate effectively within a normal working week, and without placing undue pressure on Members;
2. Whether the means of electing the Assembly, including the degree of proportionality, adequately and accurately represents all significant interests in Wales
3. Whether any changes which may be recommended to the Assembly's powers make either necessary or desirable changes to the size of the Assembly or the means of electing it .

### **Report**

The Commission should report on its deliberations, including its recommendations on the above matters, by the end of 2003. It may make interim reports or recommendations if it sees fit.

### **Procedural Matters**

The Commission is to be free from any influence from either the Welsh Assembly Government or the Assembly as a whole. It shall determine its own agenda and priorities within these terms of reference. The Commission may determine its own working procedures. However, it should:

1. Invite oral and/or written evidence from any who wish to provide it.
2. Accept such evidence in either English or Welsh.
3. Meet in public unless those giving evidence request otherwise or unless, in exceptional circumstances, the Commission resolves to meet in private.
4. Publish periodic accounts of its proceedings and evidence received.

The Commission has no power to compel any person to give evidence or to see any documents other than those available under the Assembly's freedom of information policy or similar equivalent regimes. It is supported by a Secretariat comprising seconded Assembly civil servants led by Carys Evans, formerly with the Policy Unit in the Cabinet Secretariat.

During the Assembly debate on the Commission First Minister Rhodri Morgan again drew attention to the coincidence of the timing of its deliberations with those underway on the future constitution of the European Union:

“A major revision of European treaties will take place at an inter-governmental conference in early 2004. The Laeken convention has been set up to cover the next 12 months, and the double subsidiarity question will be considered. What should Europe, member states and regional tier governments be doing? That was Tony Blair and Gerhard Schröder’s deal at the Nice summit in 2001. That is why the Laeken convention is in full swing now, and is why any recommendations by the Richard commission would be relevant to the conclusions of the inter-governmental conference in the first quarter of 2004.”<sup>56</sup>

A month earlier, in oral evidence to the House of Lords Select Committee on the Constitution, meeting at the National Assembly in Cardiff, the First Minister made clear his view that the Assembly should have primary legislative powers:

“I have always held the view, and I have always expressed the view, that it would have been better if the Government of Wales Act had incorporated primary legislative powers, but that is not the settlement we operate. It may come in the future. I have never taken the view we should have tax raising powers but I have always held the view personally we should have had and should have primary legislative powers.”<sup>57</sup>

Written and oral evidence presented to the Committee by the Presiding Officer, Lord Elis-Thomas, argues strongly that the 1998 Wales Act was fundamentally flawed in failing to delineate the Assembly’s powers in terms of subject areas. Instead, as a Memorandum, prepared by his Legal Adviser David Lambert, puts it, the Assembly:

“... exercises its functions by reference to an uncomfortable amalgam of general powers in the Government of Wales Act, of specific powers in the Transfer of Functions Orders made under section 22 of the Act, of specific powers given in a variety of ways in post-devolution legislation and by subject areas in derogation orders enabling it to implement Community Directives. Each legislative instrument which may give powers to the Assembly has to be carefully scrutinised page by page. There is no overall subject area competence and no general way of quickly and comprehensively finding whether an Act gives powers to the Assembly. Can the Assembly continue in this way with such fragmented powers, while seeking to make a significant contribution to the

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<sup>56</sup> *Assembly Record*, 20 June 2002.

<sup>57</sup> House of Lords Select Committee on the Constitution, *Devolution: Inter-Institutional Relations in the United Kingdom*, Minutes of Evidence, 10 July 2002, p. 237.

future well-being of Wales? This is one of the matters that will need to be considered by the [Richard] Commission ...”<sup>58</sup>

In an oral exchange with the Committee the Deputy Presiding Officer, Dr John Marek, made clear his view that the number of AMs should be increased:

“We have 60 Members, of whom nine are members of the Cabinet, there is then the Presiding Officer and Deputy and so on, and that leaves about 46,47,48 Members available for Subject Committees, and then of course we have other committees like the Equal Opportunities Committee, the European Committee, and committee membership tends to be ten or eleven. So we have not got enough Members. That is a general view and probably we would like about 80 Members to be able to service those committees.

*(Baroness Gould)* Would this not have some effect on the electoral system, how you arrive at 80 Members? Maybe that is something where more thought is needed.

*(Dr Marek)* With 60 we have 40 [‘first-past-the-post’] plus 20 [List Members], so if we had 80 it would be 50 plus 30. I think the important thing is to be able to service the committees and run the Assembly properly. Most of us, not everybody I guess, would say that a few more members would be very welcome.

*(Lord Elis-Thomas)* I should perhaps add that the new Assembly chamber is designed to accommodate 80 Members.”<sup>59</sup>

### ***Debate on the National Curriculum***

Plaid Cymru used their minority debate in July to call on the Assembly Government to produce a new curriculum for Wales. Research the party has commissioned from Professor Richard Daugherty of the University of Wales, Aberystwyth, calls on the Assembly Government to develop a distinctive curriculum for Wales. Plaid’s Education spokesperson, Helen Mary Jones, described existing arrangements as:

“... overly prescriptive and rigid, leaving little space for teachers to foster learners’ individual interests and talents.”<sup>60</sup>

Plaid Cymru’s vision for a new curriculum includes:

- A simplified structure based on four main phases: a foundation curriculum for children up to seven years old; a common primary curriculum for seven to 11 year olds; a common secondary curriculum for 11-14 year olds; and a curriculum framework for individual choices at 14-plus.
- A programme for active citizenship.

<sup>58</sup> *Ibid.*: David Lambert, ‘Statutory Functions: the Complications of Executive Devolution’, p. 268.

<sup>59</sup> *Ibid.*, p. 261.

<sup>60</sup> Assembly Record 02 July 2002

- Replacing the present ‘rigid’ testing regimes with continuous assessment and off-the-peg tests.
- More flexibility allowing teachers to develop their own initiatives.

However, Plaid found no support from the other parties. Education Minister Jane Davidson accused the party of turning their back on the consensus that had been built around the current since 2000:

“I find myself in unreal territory because, it is less than two years since Assembly Members voted unanimously on the curriculum. Plaid Cymru’s Education Spokesperson, Gareth Jones, strongly welcomed the fact that we had a national curriculum, which was developed in Wales and which reflected Wales’s needs. Yet, less than two years later, the party calls for the system to be changed completely. I am sorry that Plaid Cymru rejects the spirit of partnership, to which I remain committed, and which has been so welcomed outside this Chamber.”<sup>61</sup>

For the Liberal Democrats Mick Bates also defended the work of the Coalition Government:

“This partnership government is already tackling the prescriptive nature of the national curriculum and the problem of excess bureaucracy in schools. The scrapping of the test for seven-year-olds is one step that the Partnership Government has already taken to reduce teachers’ bureaucratic workload and we are receiving envious looks from teachers across the border.”<sup>62</sup>

Bates added that Plaid Cymru’s proposal to replace standard testing with off-the-peg tests would increase bureaucracy rather than giving teachers more freedom:

“I know that there is no guarantee that continuous assessment will reduce the burden of bureaucracy. It is possible that continuous assessment would increase the workload”<sup>63</sup>

The Conservatives’ Education spokesperson Jonathan Morgan, described Plaid’s approach as “dangerous and divisive”:

“Having listened to Helen Mary Jones, you would assume that the curriculum in Wales is an absolute disaster and does nothing to enhance the educational, academic and personal abilities of this nation’s young people. That is grossly inaccurate and an insult to the many teaching professionals who do so much excellent work to raise educational standards, promote diversity and academic excellence, and contribute to attaining the skills that we need in Wales.”<sup>64</sup>

Responding Helen Mary Jones pledged that Plaid would continue their campaign for a Welsh-based curriculum:

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<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

“The Minister, once again, claims that all is right with the world, and that anything that is not is being put right. While there have been welcome changes, our concern is that change is piecemeal. However, unwilling the Minister is to distance herself from the Westminster Government’s control freak, centralist agenda on the curriculum – which, frankly, even it is beginning to doubt – the debate will not go away. We must have a new curriculum that meets the needs of twenty-first century Wales. Plaid Cymru – the Party of Wales has been proud to kick-start this debate today.”<sup>65</sup>

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<sup>65</sup> *Ibid.*

### 3. FINANCE

*Adrian Kay, University of Bristol*

On 15 July, Gordon Brown announced the results of the UK Government's latest Comprehensive Spending Review (CSR). Confusingly, these cover three years of expenditure but occur every two years. The first CSR was in 1998, while the 2000 CSR allocated resources for the three years to 2003-04. The 2002 Spending Review revises these plans for 2003-04 and outlines new plans for 2004-05 and 2005-06. In the context of the Assembly, the latest CSR determines almost all the financial resources that will be available over the next three years.<sup>66</sup> The bare bones of the Assembly's settlement are set out in Table 1.

**Table 1: 2002 Comprehensive Spending Review for Wales**

£ million	2002-03	2003-04	2004-05	2005-06
Resource Budget	8,829	9,655	10,240	11,000
Capital Budget	801	830	919	999
<b>Total Departmental Expenditure Limit<sup>1</sup></b>	<b>9,424</b>	<b>10,275</b>	<b>10,941</b>	<b>11,774</b>

<sup>1</sup>Full resource budgeting basis, net of depreciation

Political reactions to these headline figures closely followed the pattern of the 2000 CSR.<sup>67</sup> They can be grouped under three broad headings: arguments over the 'Barnett squeeze'; EU money and matched funding; and the link between financial transfers and Assembly powers.

#### ***The Barnett Squeeze***

Plaid Cymru showed that using new comparability factors in the Barnett formula published on 16 July, the 'comparable' budget in England (that is, those items which correspond exactly to items in the budget of the Assembly) will rise from £131.87 billion to £171.38 billion between 2002-03 and 2005-06. The corresponding budget in Wales will rise from £9.42 billion to £11.77 billion. This enabled the party to make the valid argument that:

<sup>66</sup> See John Osmond and J. Barry Jones (Eds.) *Building a Civic Culture*, IWA, 2002, pp.85-92 for a full explanation of the distinction between Departmental Expenditure Limits and Annually Managed Expenditure.

<sup>67</sup> See the previous monitoring report, *Devolution Looks Ahead*, IWA, August 2000.

“Allowing for inflation this means that the overall budget in England for the devolved matters will increase by 6.6% per annum in real terms. The corresponding budget in Wales will rise by 5.2% per annum.”<sup>68</sup>

This is a *locus classicus* of the Barnett squeeze argument. The actual increase in the budget in Wales is equivalent to about six per cent of the actual increase in the English budget. As a population-weighted formula this is what the Barnett formula predicts: six per cent is roughly the population of Wales as a proportion of the population of England. Consequently, the actual increase in expenditure per head in England and Wales is roughly the same. However, because existing levels of expenditure per head are higher in Wales than in England, the same actual increases when expressed as a percentage appears smaller. This is a well-rehearsed argument in Welsh politics but has been used recently by Plaid and the Liberal Democrats as well as some academic sources<sup>69</sup> to press for a reform of the Barnett formula to take account of particular needs in Wales.

### **Matched Funding**

As with the 2000 CSR, the Assembly will receive money 'over and above' the Barnett formula to provide for EU expenditure in Wales, in particular the amount spent under the Objective-1 programme. So, in addition to the figures in the table above, Wales will receive an extra £492m between 2003-04 and 2005-06 (or £164 million per year) to 'cover' EU expenditure. Plaid Cymru have produced the figure that £180 million per annum is needed for Wales to spend its full entitlement under several EU programmes. However, this figure includes an uplift of £10 million to cover the strength of the Euro over the last two months. This adjustment is questionable on two grounds:

1. It is uncertain whether the recent strength of the Euro against the pound will be sustained for the period of time covered by the CSR.
2. The EU accounting system only takes account of exchange rate fluctuations annually, for which there are compensating mechanisms in place.

However, Plaid's unadjusted figure of £170 million per annum is a credible estimate of the amount of money that would be required if Wales used its full entitlement to EU funds; and the £164m allocated 'on top of' Barnett to cover it is within a reasonable margin of error.

The real political heat is in the question of match funding. The above-Barnett monies do not include nor were not intended to provide for match funding that the public sector in Wales must allocate to EU projects in order to access the EU funds. The response of the Assembly Government to this criticism was identical to that in 2000: the large overall increases in public expenditure generally, and for economic development in particular, should provide sufficient extra resources for matched

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<sup>68</sup> Plaid Cymru Press Statement, *Dr Williams responds to the CSR* 18 July 2002.

<sup>69</sup> See, for example, R. Ross MacKay, *Taxing and Spending: The Search for Balance Across the UK* IWA, 2001.

funding purposes. An alternative line is to note that the underspend across the Assembly's budget over the past few years is of sufficient magnitude to comfortably provide matched funding. This reduces the force of the Opposition's argument that the demands of matched funding are actively drawing resources away from other areas of the Assembly's budget.

### ***Financial Transfers and Assembly Powers***

Perhaps the most interesting development from the recent CSR is an increasing political interest in linking questions about the mechanics of the Barnett formula with questions concerning the Assembly's powers. In this sense, financial issues are increasingly intertwined with constitutional debates about future increases in the Assembly's powers rather than being something separate that can be negotiated after the constitutional questions have been settled.

This point is neatly illustrated by Plaid Cymru raising the question of the comparability percentages in the Barnett formula for public expenditure on railways. They noted that over the next decade the UK Government plans to spend between £20 billion and £30 billion on railways. However, according to the present plans of the Strategic Rail Authority only about £100 million will be spent in Wales. This is about 0.3 per cent of the total instead of a Barnett formula share of 6 per cent. The Welsh budget has a zero per cent comparability figure for spending on railways – that is, there are no consequentials for the Welsh block for increases in Strategic Rail Authority expenditure. This is because powers over railways have not been devolved to the Assembly. However, these powers have been devolved to London, where London Regional Transport went from 0 per cent comparability in 1998 to 100 per cent in 2000; to Scotland which went up from 0 per cent to 100 per cent in this CSR; and to Northern Ireland which has remained at 100 per cent.

In this sense, comparability percentages are a transparent measure of fiscal devolution. That is to say, the extent to which the powers to spend money have been given to the Assembly. In areas over which Whitehall retains control, any evidence that Wales receives less than its Barnett share of 6 per cent (such as the Strategic Rail Authority plan) can be used as financial argument for more Assembly powers, thus buttressing the constitutional arguments.

### ***Things They Did Not Talk About***

The political debate in Wales was dominated by the level of financial resources provided by the CSR. This was in contrast to England, where most of the discussion amongst politicians and the press concerned how the money was going to be spent and in particular, how the outcomes of the extra expenditure were going to be measured, monitored and evaluated. Discussion of these questions in Wales seems to have been limited to a brief paragraph from the Finance Minister during her statement on the CSR:

“We believe that this can be achieved in many areas without introducing a plethora of inspection and audit regimes, because the relationship between the Welsh Assembly Government and those who deliver public services is closer than it is elsewhere.”<sup>70</sup>

The decision not to adopt a Treasury-style public expenditure monitoring framework is a genuine difference between the Cardiff and London governments. The extent to which it will influence negotiations with the Treasury leading up to the next CSR and perhaps over any proposed alternative to Barnett remains to be seen.

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<sup>70</sup> *Assembly Record*, 16 July 2002.

## 4. POLICY DEVELOPMENT

*Nia Richardson, IWA*

### **Education**

The Assembly approved regulations as part of the Extending Entitlement programme that will require each local authority in Wales to provide youth support services. Education Minister Jane Davidson told Assembly:

“We are delivering on our promises to ensure that all 11-25 year olds, regardless of their circumstances, receive their basic universal entitlement to opportunities, services and the support they need in order to lead full and productive lives.”<sup>71</sup>

She announced that she is to produce a consultation document on proposals for the development of 14-19 learning Wales in October this year. A project team will work on the proposals under the leadership of John Williams, Headteacher of Pen-y-dre High School in Merthyr.<sup>72</sup>

A similar exercise is currently taking place but on the education of early years. Jane Davidson has appointed an Expert Adviser, Shan Richards, to lead on the development of a Foundation Phase for 3-7 year olds. The Adviser will be working with the Assembly, ACCAC and the Early Years Advisory Panel to develop a curriculum for early years by the end of the year.

Another policy review will be undertaken in October looking at possible models for a ‘school of the future’. The review will explore possible changes in the operation of primary and secondary schools in ten to 15 years time. The policy review will look at the following:

- The school as a community resource.
- Use of, and developments in, information technology.
- Teaching methods.
- The curriculum.
- Funding.
- Widening opportunity and participation.
- Adding value to the education and school experience.

The first meeting of a new task and finish group on truancy took place in June. Its work includes exploring the reasons for truancy and advising on current best practice on how it may be tackled and methods by which information may be shared.

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<sup>71</sup> Assembly Record, 27 June 2002.

<sup>72</sup> Report to the Education and Lifelong Learning Committee June 2002.

## **Environment, Planning and Transport**

*Wise about Waste*, the Assembly Government's National Waste Strategy was launched in June with a main objective to increase waste recycling. Currently Wales sends 93 per cent of municipal waste to landfill sites. The new strategy has targets that local authorities should be recycling and composting a minimum of 40 per cent of their municipal waste by 2010. This is significantly higher than the 33 per cent originally set for England and Wales in the UK Government's Waste Strategy 2000. The Assembly Government is providing an additional £79 million to help fund the process. In addition New Opportunities funding of £3.25m is being made available to specifically support community recycling and composting initiatives in Wales.

The strategy also includes voluntary targets for businesses to reduce the amount of waste they produce and send to landfill. The high targets have been driven by a shortage of sites in Wales that can be used as rubbish tips, particularly in the Valleys. Other proposals include establishment of a Centre of Excellence in waste research amongst further and higher education institutions and an education campaign to raise awareness and understanding across Wales of the need to manage waste in a more environmentally friendly manner.

A new Advisory Panel has been established to assist the Minister for the Environment with the administration of a new Aggregates Levy Sustainability Fund for Wales. The £1.7m fund will be spent on reducing quarrying and the effects it has on surrounding local communities. It will be spent on providing environmental and amenity benefits for communities within five mile of a quarry and on reducing the amount of primary aggregates extracted by encouraging more use of recycled or secondary aggregates such as sand and gravel.

The Assembly Government is currently developing a Walking and Cycling Strategy which is out for consultation. Proposals include:

- Bus and train operators should be required to ensure easy access to stations on foot and bicycle, and to provide on-board storage for bikes.
- Introduction of a new 'Travel Smart' scheme which would offer tailor-made travel information to individuals such as personalised bus timetables, journey plans and local cycling maps.

A new Design Commission for Wales which the Assembly voted for last October was established in May. The Commission will work with business, public bodies, professional organisations and community groups to improve the standards of new building designs in Wales. It will consist of six Directors and will be chaired by Richard Parnaby, who though a lecturer in architecture and planning at the University of the West of England lives in Wales.

## **Health and Social Services**

During the debate on restructuring of the health service last November the Health Minister, Jane Hut made an additional announcement to what had been included in the consultation document which proposed to strengthen the Specialised Health service Commission for Wales. The Commission will be renamed as 'Health Commission Wales' from April 2003 onwards and will be strengthened to:

5. Provide advice on specialised secondary and regional services commissioning.
6. Give dedicated guidance, support and facilitation more generally in relation to acute services commissioning.
7. Be the first source of independent advice and guidance on difficult commissioning issues that need determination.

Another consequence of the NHS Plan is the new independent Wales Centre for Health which is being provided for in the NHS (Wales) Bill. The Centre will be responsible for providing advice, research and training to improve health in Wales. It is currently being established in shadow form within the Felindre NHS Trust in Cardiff.

The Minister announced significant targets for the increase of the number of health care professional's staff working in the NHS in Wales by 2010. The Assembly Government is aiming to have:

- 700 more hospital consultants and General Practitioners;
- 6,000 more nurses; and
- 2,000 more other Health Care Professionals.

An All-Wales Workforce Development Steering Group is being established which will set individual targets for each Trust and the Local Health Boards within these overall targets.

A ten-year plan to overcome the deficiencies in the palliative care services has also been put out for consultation. Its main principles include:

1. Every person, irrespective of age, with life limiting conditions should be able to receive palliative care appropriate for their need.
2. Every health care professional should incorporate basic palliative care in their approach to clinical practice.
3. Every health care commissioning body should ensure that there is a clear delivery of palliative care services to the population, with the necessary resources and agreed standards of delivery.
4. Every health care commissioning body should ensure that NHS and voluntary sector providers work together.
5. The three cancer services network should ensure that specialist palliative care services are incorporated into all aspects of service provision.
6. The network should foster research and education in palliative care.

Free eye examinations have been extended to people who suffer from diabetes. The eye test will be different to a routine eye test as it will be specifically seeking to detect signs of a condition that is unique to diabetic sufferers called 'diabetic retinopathy'.

### **Substance Misuse**

The Assembly Government has supported a report prepared by the three south Wales police forces seeking additional funding from the Home Office to address substance misuse. It has also pledged to set up a task force to target the growth of heroin and crack cocaine and prevent external organised crime groups from establishing themselves in south Wales. If the request for additional funding from the Home Office for funding is refused, the Assembly will consider making a contribution to address the problem from the current budget planning round.

### **Economic Development**

A £100m 'Broadband Wales' programme has been launched to spread the use of broadband technology in Wales. The programme is aimed to enable 310,000 homes and 67,000 businesses to access high-speed Internet connection. During the early months the programme will concentrate on linking ICT business support centres to broadband so that small companies can try out the technology before they sign up. An expert unit will be established within the Assembly Government, headed by a high profile programme director, to ensure the programme's delivery.

Cardiff International Airport has won the bid to be the second UK hub of *bmibaby* – British Midland's low cost airline. Initially the airline will operate flights to, Milan, Geneva, Alicante, Faro, Malaga, Jersey, Edinburgh and Glasgow. The bid was supported by the Assembly Government and 'Team Wales' which includes the Welsh Development Agency and the Wales Tourist Board. The Assembly Government has pledged to work with both agencies in the future to ensure that Wales gets the maximum economic benefit from this development.

The Assembly Government has signed a 'Heads of Agreement framework document' with the Welsh Development Agency and DARA (Defence Aviation Repair Agency) which is the first step in the creation of a major high-tech aerospace business park at St. Athan in the Vale of Glamorgan. DARA intends to develop a new 71,000 square metre purpose-built aircraft facility which will hold up to 50 aircraft at any one time. The Welsh Development Agency is also investigating the feasibility of developing an Aerospace Centre of Excellence on the same site. Economic Development Minister, Andrew Davies declared:

“This project will be a great boost to the local economy and has the potential to create a significant number of skilled, high-tech jobs which are essential to

developing a knowledge-led economy. We will work closely with DARA to develop a world-class centre for aviation excellence, which will really put Wales on the map.”<sup>73</sup>

### **European Structural Funds**

The Objective One programme has now approved 600 projects. Recent approvals include a £3.5 million grant to Stena Line Ports, the Port Authority for Holyhead. The money will be part of a £12.3 million project to improve the infrastructure of the Port.

The development of the Technium concept has also been given funding from the Objective One programme. Together with match funding an investment of £17.2 million will be spent on developing a new Digital Technium on the University Campus at Swansea and a Technium 2 on Swansea’s waterfront. The Digital Technium will cater for companies in communications, multimedia, animation, telecommunications, e-learning and IT. Technium 2 will house rapidly expanding young companies that have outgrown the present Technium unit in Swansea.

### **Culture**

As was indicated by the Minister for Culture during the Culture Committee’s Review of the Welsh language, she has made 17 additions to the list of bodies that the Welsh Language Board can call upon to prepare a Welsh Language Scheme. These include the Care Council for Wales, the General Medical Council, the Health Professions Council, the Rail Passengers Council and the Sector Skills Development Agency.

Announcing a £360,000 funding package for the National Botanic Garden at Llanarthne in Carmarthenshire, Culture Minister Jenny Randerson said:

“The establishment of a National Botanical Garden for Wales is a great achievement. I want to work with representatives of the Garden to help to ensure that it fulfils its potential as tourism facility that enhances the economic development of west Wales, and becomes in the long term a science and education centre of renown.”<sup>74</sup>

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<sup>73</sup> Assembly Government Press release, August 7 2002.

<sup>74</sup> Assembly Government Press release 15 July 2002.

## **Local Government and Housing**

Local authorities are to be given more freedom in determining how to assist people in repairing and improving their homes. Previous home renovation grant arrangements have ended and in their place local authorities will be allowed to choose assistance in accordance with their local needs. Before using these new arrangements, however, local authorities must publish a housing renewal policy explaining how they will be delivering assistance locally.

The Local Government and Housing Committee's review of community regeneration has reached its final stage. The review has focused on funding, capacity development and shortage of community staff. It has been suggested, for example, that the Assembly Government should publish an annual digest and calendar of funding streams with associated dates and deadlines to help community project in securing funding.

## **Agriculture**

A consultation document on the future of the Tir Mynydd hill farmers assistance scheme after 2004 is being circulated. Although the document proposes no changes to the scheme it seeks views on possible options for the long-term future.

A new support programme for projects which integrate leisure and tourism has been launched by the Assembly government. The scheme, known as *Adfywio*, will provide £5.2m worth of match-funding for projects that integrate tourism business more closely with open-air recreation, outdoor leisure and the natural environment. Examples include projects that improve catering facilities for outdoor users or programmes that provide up to date and useful information about opportunities to enjoy the Welsh countryside.

New measures to combat the spread of Bovine TB in Wales have been introduced as pilot programmes by the Assembly Government. Two new methods of tackling the rise in TB are being introduced: the use of Gamma interferon blood test and a wider application of the 'severe interpretation' of skin test results. A 'severe' interpretation of skin tests results will mean that animals reacting with smaller swelling than under the standard interpretation will be culled immediately.

## 5. THE LEGISLATIVE PROCESS

*Jane Williams, University of Wales, Swansea*

### ***NHS Reform and Westminster Legislation***

The primary legislation required to give effect to the National Assembly's Health Plan is contained in two separate legislative vehicles – the NHS Reform and Health Care Professionals Act 2002, and a further Bill now published as the draft National Health Service (Wales) Bill and proposed to be introduced in the next parliamentary session. A study of the respective processes will provide valuable insight for those considering the future of primary legislation in fields devolved to the Assembly.

First there is the obvious complaint about the piecemeal nature of provisions contained in two separate Acts. Second, there are points about the processes themselves. The parliamentary process of the 2002 Act attracted the criticism that scrutiny of the Welsh provisions fell between the two stools of Westminster and Cardiff. The draft Bill on the other hand has been variously described as a 'pilot' or 'prototype' for future Wales-only Bills. Taken together they represent clear developments or innovations in law making for Wales.

### ***NHS Reform and Health Care Professionals Act 2002***

The NHS Reform and Health Care Professionals Bill was introduced in the House of Commons in early November 2001 and completed all its parliamentary stages to receive Royal Assent on 25 June 2002. Controversy about the lack of pre-legislative debate was chronicled in this section of the last quarterly monitoring report. The timetable imposed meant that some clauses and amendments were not fully considered either at Committee Stage or at Report Stage in the Commons. While it would be untrue to say that *no* attention was given in the Commons to the specifically Welsh provisions (amendments were tabled and debated both in Committee and at Report Stage<sup>75</sup>), they occupied a relatively low proportion of the total debating time.

In the Lords there were also the now familiar complaints about the presentation of Wales provisions in the England and Wales Bill – to discover the specifically Welsh provisions it is necessary to 'dot around' what ended up as sections 6, 9 and 24 and Schedules 4 and 5<sup>76</sup>, and the now 'usual' cross referential interpretative provision biting on the construction of the original Transfer of Functions Order (section 40 of

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<sup>75</sup> For example, on coterminosity of local health boards and units of local government, tabled at Report Stage in the commons by Win Griffiths MP.

<sup>76</sup> See Lord Thomas of Gresford, Second Reading, Official Record House of Lords 31 January 2002 col 376.

the 2002 Act). A different but related point was the number of changes over the past decade to the legislative structure for health care – the 2002 Act being the latest in a series of annual amendments to the National Health Service Act 1977, starting in 1997. It is difficult not to sympathise with Baroness Finlay of Llandaf’s plea for a consolidation for England and for Wales respectively.<sup>77</sup>

Lord Roberts of Conwy referred to the procedural criticisms and warned that the conflict between the Assembly's timetable for its discussions and the Government's legislative timetable at Westminster may well be used in due course (a prospective reference to the Commission on the Assembly’s powers) as a

“... dubious argument for the transfer of primary legislative powers to the Assembly”.<sup>78</sup>

In substance, however, these criticisms appear to have been ameliorated somewhat, at least for their Lordships, by the visit made by the Assembly Minister for Health and Social Services to the House of Lords before second reading to talk with interested Peers about the Welsh aspects of the Bill.

### **Assembly Implementation of the 2002 Act**

The essence of the specifically Welsh provisions in the Act are the powers enabling the National Assembly to establish and confer functions on local health boards and to direct them, together with local authorities and other bodies, to prepare health and well-being strategies. These powers are now in the course of being exercised with a view to full implementation in April 2003. It would be difficult to make the same criticism of the subordinate legislative process in the Assembly as was made of the parliamentary process of the Act. The management of the preparation of the necessary subordinate legislation, and in particular the involvement of the Health and Social Services Committee as well as outside bodies in the process, is impressive. It flows in part from the Assembly’s endorsement of the recommendations in Part 5 of the Assembly Review of Procedure.<sup>79</sup>

Early in March it was agreed by Party spokespersons that officials in the Assembly Government’s implementation team would liaise with the secretariat to the Assembly’s Health and Social Services Committee and with Assembly lawyers about the time-tabling of the secondary legislation emanating from the NHS Reform Bill.<sup>80</sup> Formal work on the subordinate legislation under standing orders could not begin until the Bill received Royal Assent, there being no formal authority for such work

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<sup>77</sup> Second Reading, Official Record House of Lords 31 January 2002 col 380: so that “someone simple like me could pick up the document and read it in its entirety instead of trying to rummage through what must be a lawyer’s tea party but what, for a clinician, I am afraid, is a nightmare.”

<sup>78</sup> Ibid, col 413.

<sup>79</sup> See this section of the last quarterly monitoring report, *Engaging with Europe*, IWA, June 2002.

<sup>80</sup> HSS-08-02 (p.7) (Notice to members of the Health and Social Services Committee of protocol agreed between the Chair, the Minister and representatives of the other political parties).

until the Assembly received the necessary powers. If the local health boards and other aspects of the reforms were to be implemented by April 2003 as intended, waiting for Royal Assent before starting work would mean an uncomfortably tight timetable mitigating against effective Subject Committee involvement and external consultation. At the same time the debates in Parliament had confirmed that there would be substantial interest and differences of view begging proper political scrutiny on both the health and well-being strategies and the other functions to be carried out by the new boards. Furthermore, the Assembly Review of Procedure Report had recommended that Subject Committees be informed at an early stage of proposed subordinate legislation. Wherever possible, especially with secondary legislation resulting from new primary legislation, the Committee should have the opportunity of looking at the proposals in the form of a *proposed* draft Order before the formal Standing Order 22 procedure starts.<sup>81</sup>

Accordingly it was agreed that the Assembly's Health and Social Services Committee would be consulted on the terms of *proposed* draft Orders and that such consultation would occur during the summer term, before the Bill received Royal Assent. A timetable was agreed for circulation of the proposed draft orders, for amendments to be tabled and for consideration by the Committee. Over the summer recess it would then be possible for the proposed drafts, with any amendments in consequence of the Minister's response to Committee's consideration, to be submitted to public consultation. The draft orders submitted to the formal processes in the autumn could then still be referred to the Subject Committee for further and formal consideration, including any consideration of changes made in consequence of the earlier informal consultation, before being sent forward to the Assembly in plenary early in 2003.

So far this approach appears to have delivered genuine engagement of the Committee at a genuinely formative stage of the implementation programme. The minutes of the Committee's meeting on 29 May<sup>82</sup> record substantial debate on amendments to a proposed draft of the Health and Well-being Strategies (Wales) Regulations.<sup>83</sup> On 19 June the Committee considered a proposed draft order dealing with the functions of the new local health boards.<sup>84</sup> Concern was expressed about the lack of detail in the proposed draft but the Committee approved a particular approach to the drafting.<sup>85</sup> A further paper with detailed proposed draft orders adopting this approach was then circulated by the Minister for consideration at the Committee's meeting on 17 July.<sup>86</sup> Queries, comments and amendments were circulated by Plaid Cymru and the Conservatives respectively.<sup>87</sup> The minutes of the Committee's final meeting before the recess record discussion of the substantive issues.<sup>88</sup> The proposed drafts will be submitted to external consultation over the remainder of the summer, redrafted and then submitted to the Assembly's formal scrutiny processes in October. Whether this will involve further, formal reference to the subject committee will be a matter for the Business Committee under Standing Order 22.5.

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<sup>81</sup> See Part V of the Report of the Assembly Review of Procedure.

<sup>82</sup> HSS-12-02 (min).

<sup>83</sup> HSS-12-02 (p1).

<sup>84</sup> HSS-13-02(p2).

<sup>85</sup> HSS-13-02(min): described as the "excluded function" approach.

<sup>86</sup> HSS-16-02(p.3).

<sup>87</sup> HSS-16-02(p3a).

<sup>88</sup> HSS-16-02(min).

It is always possible to identify scope for improvement, for example external consultation over the summer holiday period is unlikely to be ideal especially when consultees include public and voluntary bodies whose meetings cycles may be extended. Nevertheless, it is hard to deny that this process represents a significantly advanced degree of pre-legislative scrutiny when compared either with previous Welsh Office practice or with current Westminster/Whitehall procedures for subordinate legislation.

### **Draft NHS (Wales) Bill**

This Bill makes provision for a further three strands of the Assembly Government's Health Plan – the establishment of 'Health Professions Wales' as an independent body<sup>89</sup>, the establishment of a Wales Centre for Health and the development of Community Health Councils in Wales.

The Bill is the first all Wales Bill to be published in draft. Indeed it is amongst the first raft of Bills to be published in this way in the first session of the current Parliament. It is a device not specifically reserved for the particular structure of partial legislative devolution to Wales. Publication of draft Bills is being promoted as an aspect of New Labour's modernisation programme.<sup>90</sup> For the particular circumstances of Wales, however, the approach has obvious merit. It should go some way to meeting the criticisms that provisions for Wales in some post devolution Acts have received less not more democratic scrutiny. Furthermore, the use of draft Bills "as much as possible" was one of the recommendations of the Report of the Assembly Review of Procedure.

The Bill was published on 17 May 2002, by the Wales Office. It was accompanied by a regulatory impact appraisal, explanatory notes and an invitation to comment issued jointly by Secretary of State Paul Murphy and Assembly Minister for Health and Social Services Jane Hutt. Their letter of invitation explained that:

"The Welsh Affairs Select Committee will conduct the main scrutiny of the Bill on behalf of Parliament and the National Assembly for Wales's Health and Social Services Committee ... will conduct the main scrutiny on behalf of the National Assembly, though the whole Assembly will have the opportunity to debate the Bill at a plenary session. ...The Welsh Grand Committee will also convene to discuss the draft Bill and the report (if it is available) of the Welsh Affairs Committee."<sup>91</sup>

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<sup>89</sup> It has already been established as an internal Assembly Government body but primary legislation is required to authorise the establishment of a separate entity answerable to the Assembly – see statement of the Assembly Minister for Health and Social Services in plenary on 23 May 2002).

<sup>90</sup> On the same day that the Welsh Grand Committee discussed the draft NHS (Wales) Bill the Prime Minister was giving evidence to the Liaison Committee, in the course of which he reasserted his personal commitment to publication of Bills in draft wherever possible in order to allow for pre-legislative scrutiny - see answers to questions 22 to 32, oral evidence to Liaison Committee, 16 July 2002, [www.publications.parliament.uk](http://www.publications.parliament.uk)

<sup>91</sup> See [www.oss.wales.gov.uk/nhs\\_bill.html](http://www.oss.wales.gov.uk/nhs_bill.html)

Within two months of publication, on 18 July, the Assembly came to debate the draft Bill in plenary. By that time all three of the Committees mentioned in the joint letter had conducted their scrutiny.

The main consideration by the Assembly's Health and Social Services Committee was on 29 May at a meeting also attended by members of the Welsh Affairs Committee. The procedure adopted was that amendments were circulated in advance.<sup>92</sup> the Minister outlined key policy points and the Assembly Government's attitude to the amendments and the amendments were debated and withdrawn, accepted or voted upon. A Report was then drawn up and tabled ready for the plenary debate on 18 July.

The approach taken by the Welsh Affairs Committee is interesting. In its Report it declares that its "prime responsibility" in considering the draft Bill was to prepare a report for the debate in the Welsh Grand Committee.<sup>93</sup> This duly took place on 16 July. Ministerial decisions about amendments to the draft would then be taken in early August, so that in October the UK Cabinet's Legislation Committee could be presented with a Bill "ready and waiting to be presented as early as possible in the new session", with the intention that it would then "go through the standard legislative process at Westminster." The Committee appears to have taken the view that its scrutiny should concentrate more on process than on the substantive provisions. Political debate on the latter ought to be reserved for the Welsh Grand Committee at Westminster and the Assembly both in plenary and in the Subject Committee. The Welsh Affairs Committee saw its task as

"... to assure the House of Commons that

- the primary legislation is appropriate and effective;
- the balance of primary and secondary legislation is right;
- the powers given to the NAW are broad enough to ensure that their objectives, and the reasonable aspirations of stakeholders, are met, while not giving scope for unexpected or unreasonable exercise of those powers
- there is no readily foreseeable requirement for the National Assembly for Wales to have to return to Westminster to seek a slight amendment of statute because of oversight or excessively restrictive drafting."<sup>94</sup>

The Bill, like the Wales provisions in the NHS and Health Care Professions Act 2002, confers significant subordinate legislation making functions on the Assembly. The Welsh Affairs Committee Report notes that the Assembly has undertaken to produce draft subordinate legislation for public consultation whilst the Bill is still undergoing scrutiny in Parliament. In particular Ministers "agreed to seek to have draft regulations available for consultation at Standing Committee stage at Westminster". As the Report states, this will enable Bill scrutiny to include questions whether the proposed enabling powers are appropriate and sufficient for the intended purpose. It will also have the intriguing effect that proposed Assembly subordinate legislation

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<sup>92</sup> HSS-12-02 (p2a).

<sup>93</sup> Third Report, Session 2001 – 02 see [www.parliament.the-stationery-office.co.uk](http://www.parliament.the-stationery-office.co.uk)

<sup>94</sup> *Ibid.*

will be submitted for early scrutiny at Westminster, despite the formal disapplication of Westminster subordinate legislative procedures in the Government of Wales Act 1998 and their substitution by the Assembly's own procedures.

The Welsh Affairs Committee is to return in the Autumn to its examination of the legislative process as it affects Wales.<sup>95</sup> In doing so it will draw on its experience of dealing with this draft Bill.<sup>96</sup> Neither in the Assembly nor in the Westminster Committees which examined the draft Bill has there been any substantial disapproval of the draft Bill as a means of securing greater participation in pre-legislative scrutiny. No doubt it will not provide a satisfactory answer to those who call for the Assembly to be granted primary legislative powers, but the advantages of the device are equally applicable whether legislation is made in Cardiff or Westminster. Consequently it merits careful consideration by the Commission on the Assembly's powers as well as by the Welsh Affairs Committee in due course.

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<sup>95</sup> See Welsh Affairs Committee Press Notice 25 of Session 2001 – 02, 24 July 2002. Written submissions to the Committee Clerks by 1 October, oral evidence programme to be announced in the Autumn.

<sup>96</sup> See para 1.6 of the Third Report.

## 6. RELATIONS WITH LOCAL GOVERNMENT

*Alys Thomas, University of Glamorgan*

### **Sunderland Commission**

The Report of the Commission on Local Government Electoral Arrangements in Wales was published in early July. Among its recommendations were the reduction of the voting age to 16, the reduction of the minimum age for candidates from 21 to 18, and the introduction of the Single Transferable Vote (STV) form of proportional representation.

Two members of the Commission, Eleri Ebenezer (Conservative) and Alun Williams (Wales Labour Party Executive and USDAW) dissented from the majority view and advocated retention of First-past-the-post on the grounds of preserving the individual councillor-ward relationship at local level.

The Commission Report will be discussed in a Plenary session of the Assembly to be noted, but will then go out to consultation. The timetable has yet to be set, but it seems unlikely that the Assembly Government will make a formal response prior to next year's National Assembly elections. In any case, several of the recommendations would require primary Westminster legislation, and there would need to be an extensive review of electoral boundaries throughout Wales.

The Sunderland Commission was set up as a result of the Partnership Agreement which underpins the coalition between Labour and the Liberal Democrats in the Assembly. In that sense it represents a box ticked. However, question marks remain over its ultimate implementation. Sections of the Labour Party, not least the Labour dominated WLGA remain implacably opposed to any move away from First-past-the-post and should Labour win an overall majority in next May's Assembly election the impetus for change would diminish further. On the other hand, if the Liberal Democrats once again find themselves being courted as coalition partners will they insist on implementation of the report as a price for their support even in the face of local government hostility?<sup>97</sup>

### **Draft Local Government Bill**

The Westminster Government published a draft Local Government Bill for consultation on 12 June. This consultation is on an England-only basis because of timing differences in the publication of the former DLTR's White Paper and the Welsh Assembly Government's *Freedom and Responsibility in Local Government*.

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<sup>97</sup> For a fuller discussion of the Sunderland Commission report see Denis Balsom, 'A Report Destined for the Long Grass', *AGENDA*, IWA, Summer 2002.

The draft Bill is intended to give effect to all the proposals in the White Paper that require legislation. The majority of the commitments that fall into this category relate to local government finance, but there are some important elements that provide local authorities with greater operational flexibility. The key points of the draft Bill include:

- Abolition of credit approvals and replacement with a new prudential system.
- Introduction of Business Improvement Districts.
- Reduction of business rates for small businesses.
- Introduction of a statutory revaluation cycle for council tax.
- Strengthening local financial management.
- Simplifying the housing finance system.
- Power to charge for discretionary services.
- A general power to allow local authorities to trade.
- Local authorities enabled to charge for discretionary services.<sup>98</sup>

The Local Government Minister, Edwina Hart, indicated her intention to press Whitehall for

“... maximum flexibility in the Bill to enable the Assembly to develop situations that are sensitive to the particular needs and circumstances of Wales.”<sup>99</sup>

In a letter to the English Local Government Minister, Nick Raynsford MP, she requested that for those Welsh items in the Bill not subject to consultation, the general principle should be that the primary legislation is enabling rather than prescriptive. For those policy items dependent on the outcome of consultation, she requested that the primary legislation should be drafted in such a way to enable the Assembly to make secondary legislation to give effect to its policy decisions (based on the results of the consultation) in the normal course of its business. For those items in the Bill that are common to England and Wales, she requested that those powers delegated to the Secretary of State in England be delegated to the Assembly in respect of Wales.

At the Committee, papers were tabled which set out in detail the Assembly Government’s position on the individual provisions in the draft Bill. In many cases the thrust of the comments reflected a desire to preserve or establish the Assembly Government’s freedom of action. For example, with regard to the proposals for business rates new powers are proposed to set the statutory framework for Business Improvement Districts (BIDS), to provide for the petitioning, balloting and appeal procedures, and to allow Local Authorities to levy, collect and enforce an additional local rate. The Assembly Government responded that:

“... the preference of the Welsh Assembly government is for enabling legislation which provides for the National Assembly to determine the policy on business rates for Wales after due consideration of responses.”

With regard to a new provision giving mandatory relief to small businesses occupying properties within prescribed rateable value limits and a new power for the Secretary

<sup>98</sup> LGH 12-02, Paper on Draft Local Government Bill.

<sup>99</sup> LGH Minutes 10 July 2002

of State to make regulations dealing with the interaction between small business relief and other reliefs the Government wants:

“... a widely drafted power enabling the Assembly to set, by Order, the parameters of the scheme to be introduced in Wales. This would include the size and types of property to be covered and the amount of relief to be given” (including the power for the Assembly to revoke by order the current provisions for rural rate relief contained in the 1988 Act relating to Wales).

The Assembly Government is strongly opposed to a provision making transitional relief a permanent feature of revaluations, wishing:

“... to retain the existing provision that gives the Assembly the power to decide whether or not to have a scheme in the light of the impact of a revaluation on business in Wales”.

With regard to Council Tax it agreed the introduction of statutory revaluation cycle and clarification of ability to change bandings and ratios on revaluation with the proviso that it had:

“... discretion over timings of revaluation, structure of the system in Wales and complete discretion over transitional relief schemes”.

It also requested provisions not required by Whitehall, namely the approval of the Council Tax Base to become a function of local authority executives in order to improve the revenue settlement timetable and the separation of Local Government and Police settlement reports in order to enable the earlier publication of the local government settlement.

The Assembly Government’s response to the draft Local Government Bill is interesting in what it reveals about the learning curve Welsh Ministers are travelling in their efforts to influence the shape of primary legislation as regards Wales. Edwina Hart, undoubtedly aware of the problems her predecessor Peter Law encountered with sections of the Local Government Act 2000, has clearly set out where she considers the Assembly should have discretion and where the Assembly should have the same powers as the Secretary of State in England. Publication of the Bill in the autumn will reveal to what extent she has been successful.

### **Local Government Partnership Scheme**

The second report on the implementation of the Local Government Partnership Scheme was published in June. It reported on the continuing partnership between with particular emphasis on progress regarding policy agreements, the Wales Programme for Improvement and the policy statement *Freedom and Responsibility*.

## 7. RELATIONS WITH WESTMINSTER AND WHITEHALL

*Mark S. Lang, Welsh Governance Centre*

### *Wind Farm Planning Powers*

The Assembly Government is in negotiation with the Department of Trade and Industry in Whitehall to have additional functions transferred to allow it to make its own planning decisions on wind farms generating more than 50 megawatts.

The move follows controversy over planning permission granted by the DTI in May for a large £35 million wind farm near the Plynlimon mountain range at Cefn Croes in Ceredigion, west Wales. The project comprises 39 turbines which, at 300 feet, will be twice as high as Nelson's Column. A letter from the Assembly Government to the DTI asked a public inquiry. In all there were 200 letters requesting an inquiry, including one from the Countryside Council for Wales. However, a DTI spokesman said:

“We did not feel there was a case for a public inquiry because it had been through the local authority, so elected representatives had considered it and passed it.”<sup>100</sup>

Ceredigion's Plaid Cymru MP Simon Thomas said there should be a change in the law to ensure that no other wind farm in Wales could be decided unilaterally by the Secretary of State in London:

“We have had public inquiries in Wales over wind farms of just a few megawatts and if Cefn Croes had been a 49 megawatts development instead of some 58MW it would have been decided by the National Assembly for Wales. The present system, which arbitrarily takes the power to decide these matters out of Wales at a threshold of 50 megawatts, is farcical and anti-democratic.”<sup>101</sup>

Assembly Cabinet minutes in June reveal that negotiations for just such a change are underway: They state that:

“The First Minister updated colleagues on the transfer to the Assembly of functions in sections 36 and 37 of the Electricity Act 1989 relating to power stations of over 50 megawatts.”<sup>102</sup>

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<sup>100</sup> Western Mail, 24 May 2002.

<sup>101</sup> *Ibid.*

<sup>102</sup> Cabinet Minutes for 10 June 2002.

## Debate on English Devolution

In June the Assembly debated in plenary session the question of English devolution. First Minister Rhodri Morgan said he had spoken with the Secretary of State for Wales, Paul Murphy about the content of *Your Region, Your Choice*, the White Paper proposing devolution to the English Regions, published at the end of May:

“The key point is that a different model is being proposed for English regional devolution. The English regions are being offered a democratisation of the development agency function rather than the full range of functions that we have in Wales.”<sup>103</sup>

Plaid Cymru’s Phil Williams observed that elected Assemblies in England are likely to justifiably demand a review of the regional distribution of government expenditure. He therefore wanted to know how the First Minister and the Secretary of State were going to ensure that a strong case for “increased expenditure in Wales is presented early, often, and forcibly, so that the interests of the National Assembly are protected?” Rhodri Morgan responded

“I met the leaders for the Campaign for a Northern Assembly during their visit to Cardiff last Friday. I discussed that point with them. The key matter for them is to get the show on the road. It may start small: initial funding for the North-East, we are told, will be about £500 million. That is why I make the point that it would be the democratisation of the Development Agency function. It would be like having a democratically elected board of the Welsh Development Agency, and a few other functions. That is why we have 20 times the amount of funding. We have £10 billion in funding and the North-East Region will have £500 million. It is not in the same ball game. However, it may raise the question of a review of the Barnett formula, to which I would not object.”<sup>104</sup>

Liberal Democrat AM Kirsty Williams pointed out that the proposals in the Government White Paper would give the English devolved bodies the ability to raise their own revenue, as the Scottish Parliament already does. She then raised the question of why Wales did not have similar powers. However, the First Minister made clear that the revenue raising powers of the English Regional Assemblies would not be tax-raising powers, but something more akin to the Welsh Development Agency’s borrowing power or a local authority’s power to precept.

Richard Edwards, Labour AM for Preseli Pembrokeshire, raised a more overtly political matter welcoming the

“... prospect of devolution for the English regions, not least because it will help to dissipate the worst excesses of English nationalism and its mirror image, Scottish and Welsh nationalism”.<sup>105</sup>

Rhodri Morgan, though largely avoiding the ideological content of the question, responded by saying that “understanding that you need not be a nationalist to be a

<sup>103</sup> Assembly Record 11 June 2002.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

devolutionist may help, along the lines that you suggest”.<sup>106</sup> The First Minister concluded the discussion by repeating what the Prime Minister had said, when he visited the Assembly the previous November:

“... he was confident that Britain was ready to take another constitutional step, as devolution has worked so well in Scotland and Wales. He was ready to tell John Prescott, as someone who has always been an eager advocate of devolution in England, that he could go ahead. Since then, the White Paper has been published.”<sup>107</sup>

### ***Welsh Affairs Committee and the Draft NHS (Wales) Bill***

The House of Commons Third Report The Draft National Health Service (Wales) Bill was published on 10 July. The report was the result of an inquiry undertaken into the draft Bill, which was published by the Secretary of State for Wales on 17 May 2002. The draft Bill relates to three elements of the National Assembly for Wales` Health Plan:

- Development of Community Health Councils in Wales;
- Establishment of the Wales Centre for Health to provide a forum for the multi-disciplinary advice on health hazards, risk assessments of threats to health, disseminate research and other evidence to support decision-making, support multi-professional training in sustainable health.
- Creation of ‘Health Professions Wales’, a body to provide quality assurance for training and education of healthcare professions in Wales.<sup>108</sup>

The draft Bill is essentially an enabling measure, and most of the crucial detail will be in secondary legislation to be made by the National Assembly. Therefore the work of the Committee on scrutinising the draft Bill was designed to assure the House of Commons that:

- The primary legislation is appropriate and effective.
- The balance of primary and secondary legislation is right.
- The powers given to the National Assembly are broad enough to ensure that their objectives, and the reasonable aspirations of their stakeholders, are met, while not giving scope for unexpected and unreasonable exercise of those powers.
- There is no readily foreseeable requirement for the National Assembly to have to return to Westminster to seek a slight amendment of statute because of oversight of excessively restrictive drafting.<sup>109</sup>

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<sup>106</sup> *Ibid.*

<sup>107</sup> Record of Proceedings, National Assembly for Wales, 11/6/02.

<sup>108</sup> Press Notice on Pre-Legislative Scrutiny: The Draft NHS (Wales) Bill, Welsh Affairs Committee, House of Commons, 21/5/02.

The time allowed for the Committee to report was short, slightly below the two-month recommended minimum period. However, in undertaking its review the Committee held two oral evidence sessions, one at the National Assembly in Cardiff, and one at Westminster. The Assembly Minister for Health, Jane Hutt, gave her evidence in London. Although the Committee does not have the power to hold formal joint meetings, the chair of the Welsh Affairs Committee, Martyn Jones, and three other members attended a meeting of the Assembly Health and Social Services Committee on 29 May 2002 when it debated the draft Bill. Also several members of the Assembly Committee attended the oral evidence session in Cardiff.

As a result of its oral evidence sessions the Welsh Affairs Committee concluded that it was apparent that a joint view between the Assembly Government and the Wales Office, which had sponsored the Bill in Parliament, had been agreed on issues of significance.

In its Report the Committee stated that, not unexpectedly, the constituent parts of the UK are finding different ways of meeting largely common objectives. For example:

"Wales is retaining Community Health Councils (CHCs), with extended powers and responsibilities: Scotland has Health Councils similar to CHCs, but different: England will have Patients /Forums, local authority scrutiny, and separate advocacy services: Northern Ireland retains it's network of regional Health and Social Service Councils."

Furthermore, in Wales:

"... there is to be a statutory Assembly Sponsored Public Body covering all healthcare professions and support workers except doctors; in Scotland, professional regulatory functions are carried out by a Special Health Board which covers doctors as well as nurses and midwives, but other health care professions and support workers; in Scotland there is to be a Non Departmental Public Body, Northern Ireland Practice and Education Council, which will cover only nursing and midwifery; in England there is no national body and quality assurance work is carried out by individual visitors."<sup>109</sup>

Such diversity, the Committee concludes, offers ideal opportunities for discovering what works best where and why, and whether in the future there may be a case for some mechanism to ensure that the full potential benefits are realised from the diversity of provision among the nations of the UK.

On the appointment of Community Health Councils the Committee stated that it saw no reason to constrain the freedom to be given to the Assembly Government to lay down the principles underlying the appointment of members. Furthermore, it recommended that the Bill be amended to give members of the CHCs a statutory right to time off work for public duties. Overall the Welsh Affairs Committee concluded:

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<sup>109</sup> The Draft NHS (Wales) Bill, Third Report of the Welsh Affairs Committee, House of Commons, 10 July 2002.

<sup>110</sup> *Ibid.*

“We warmly welcome the publication of this first ever draft Bill for Wales, and hope that it will in due course become the standard practice, not only for stand-alone ‘Wales-only Bills’, but also for clauses in England and Wales Bills which have particular implications for Wales.”<sup>111</sup>

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<sup>111</sup> *Ibid.*

## 8. RELATIONS WITH THE EUROPEAN UNION

*Mark S. Lang, Welsh Governance Centre*

### **Common Agricultural Policy Reform**

On 10 July the European Commission published a Mid Term Review of the CAP, which was broadly welcomed by the Assembly Rural Development Minister Michael German as a basis for change. The proposals seek to change the existing market support mechanisms of the CAP, the introduction of de-coupled direct subsidy payments and reinforcement of rural development policies. Under the proposals the modulation of CAP receipts would be compulsory across the EU and compliance with animal welfare, food safety, environmental and health and safety standards would become pre-requisites for CAP payments. However, no firm conclusions were included on future arrangements for the dairy sector.

The de-coupled regime would be based on historical payments and would mean that farmers would no longer be tied to a system that required them simply to produce livestock numbers or grow specific crops in order to receive payments under the CAP. The Commission's proposals are not legislative, though they are expected to come forward in the autumn for implementation from January 2004.<sup>112</sup>

Deputy First Minister Michael German made the following statement on the changes, following a meeting of the European Council of Agriculture Ministers Meeting which he attended:

“The principle behind the Commission's proposals are in many ways remarkably close to the Welsh Assembly Government's policy on the future of farming, set out in *Farming for the Future*. The objective is not to abolish the Common Agricultural Policy, but to reform it so that it gives a better deal to farmers, rural communities, consumers and the environment.”<sup>113</sup>

### **Committee on European Affairs**

The Annual Report of the Committee on European and External Affairs was debated during the Assembly plenary session on 18 June. Deputy First Minister, Michael German, who also holds the title of Minister for Rural Development and Wales Abroad, opened the debate. In doing so he spoke of the need to create a brand for Wales embracing all the valued aspects of Welsh life, to increase the country's profile

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<sup>112</sup> Papers of the Agriculture and Rural Development Committee, 17 July 2002.

<sup>113</sup> Assembly Government Press Release, 15 July 2002.

abroad. Summing up the annual report Michael German outlined the salient developments in the Assembly's relationship with the European Union over the previous year:

“Our relationships with European Union institutions continue to develop. The First Minister met with Members of the European Parliament from all parties last December. We have developed excellent relationships with the United Kingdom Permanent Representation to the European Union through our office in Brussels. The Committee met Commissioner Barnier in December and the First Minister met him again in Brussels in May. We hope to see him in Wales before long. President Prodi was here a few weeks ago; Viviane Reding visited the Urdd Eisteddfod, and Neil Kinnock is ever present. Our stock has never been higher with commissioners. ... The Assembly is represented on the steering group preparing the way for the next conference of Regions with Legislative Powers within the European Union, which will be held in Florence in November, bringing together about 60 Regional Government leaders. Rosemary Butler has taken up a full seat for the Assembly on the Committee of the Regions, with Janet Davies acting as alternate member. Gwenda Thomas has taken up post as the Assembly's full member on the Council of Europe, on which we are represented for the first time. Ministers continue to attend the Council of Ministers as part of the UK delegation. Since June 2001, Ministers have attended seven times, and Sue Essex has attended an Environment Council for the first time. On 30 May, Jane Davidson led the UK delegation at the youth council.”<sup>114</sup>

Conservative Leader, Nick Bourne, stated that some elements of the Committee's workings had caused problems. He brought attention to the fact that the Committee had so far been unable to find a timeslot when MEPs could attend, and that the only occasion on which they could attend was when the Committee met in Brussels. He also raised the question of the chairmanship of the Committee:

“The conclusions of the Assembly Review of Procedure included an all-party recommendation regarding this Committee, namely that the chairmanship of the Committee be opened so that all Assembly Members are eligible. It was felt appropriate to widen the chairmanship, and Ministers have other jobs to do. I draw Members' attention to that. Recent events mean that we are now at loggerheads with this all-party recommendation.”<sup>115</sup>

The recent events he referred to was appointment of Michael German as its chair following his re-entry into the Cabinet. Conservative Jonathan Morgan also raised this issue:

“I am concerned by the appointment of the Deputy First Minister as Minister for Rural Development and Wales Abroad. One would assume that the existing Agriculture and Rural Development Committee would be responsible for rural development and Wales abroad. I believe that that sends a mixed message. It would be the first time in the Assembly's history that an issue such as Wales

<sup>114</sup> *Assembly Record* 18 July 2002.

<sup>115</sup> *Ibid.*

abroad would be dealt with by both a Standing Committee and a Subject Committee. Members of the Subject Committee would be able to use their powers and influence to scrutinise the role of the Minister in his capacity as Minister for Wales Abroad and contribute to policy development. It would be difficult for us to explain to the various bodies in Wales which part of the Assembly would be responsible for our engagement with Europe. Would it be the Standing Committee, chaired by the Deputy First Minister, or would it be the Committee responsible for rural development and Wales abroad? There are many unanswered questions about that Subject Committee's role and how its work will fit in with that of the Committee on European and External Affairs."<sup>116</sup>

Plaid Cymru Leader Ieuan Wyn Jones expressed his desire to see the remit of the Committee widened to act as a forum where detailed scrutiny of European issues could take place. He also criticised the Assembly Government over its decision to withdraw from the Wales European Centre, and he felt that it was vital that Wales' representation in Brussels should be in one office. Responding to the debate First Minister Rhodri Morgan observed:

“Enlargement means that the European centre of gravity will be moving steadily eastwards, and that cannot be good for Wales. We must ensure that we shout louder, and that our trade and investment programmes are ready to cope with the impact of that. Wages in the countries that will join - with the exception of Cyprus and Malta - are much lower than those in Great Britain. Therefore these countries will be significant competitors in industry. Industry will tend to want to move to eastern Europe, where it can remain inside the EU boundaries, for geographical and wage cost reasons.”<sup>117</sup>

The motion approving the Report was carried, with Labour and Liberal Democrats voting in favour, the Conservatives against, and Plaid Cymru abstaining.

### **Audit Committee Grills Wales European Funding Office**

On 20 June the Assembly's Audit Committee questioned representatives from the Welsh European Funding Office on the basis of the Audit Commission Report, *European Union Structural Funds: Maximising the Benefits for Wales*, which has recently been published. The Funding Office was represented by John Clarke, Chief Executive; Phil Gray, Director of Finance; Sheila Maxwell, Head of the European Regional Development Grant Division; and Caroline Turner, Director of Policy and Strategy. The Chair of the Committee, Dafydd Wigley, opened the questioning on the issue of partnership working:

“The report notes that the Assembly Government's commitment to partnership working, which you believe will pay off in the longer term, caused specific

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<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

difficulties in the early stages as the partners endeavoured to reach consensus on key issues. What are the advantages of partnership working in your opinion and have those advantages been realised yet?"

To which John Clarke responded:

"Yes, Chair, I believe that they are being realised. One should not see partnership as a blockage in the process. We see it as a value-adding part of the process. Our partners have enormous experience and expertise and they contribute that to the analysis of the projects."<sup>118</sup>

Dafydd Wigley also asked whether there was a danger that working in partnership could lead to compromises that could then take emphasis away from a strategic focus for the programmes. To which John Clarke responded:

"There is that danger, but one thing that we are not short of in Objective 1 is strategies and one of the things that we are very keen on doing is ensuring that there is alignment between all the strategies so that, basically, all the needles on the various compasses are pointing in the same direction."<sup>119</sup>

Dafydd Wigley also wanted to know if sufficient funds were available for all projects that needed it, and was told that sufficient monies were available. Some of the most intense questioning came from Committee Member Alison Halford, who in the following exchange enquired about the private sector involvement:

*(Alison Halford)* do you agree that the private sector's perception is that your leadership role has been fairly slow?

*(Mr Clarke)* I have not heard it said that our leadership role has been lacking in any way.

*(Alison Halford)* Slow, not lacking.

*(Mr Clarke)* Well, no, not—

*(Alison Halford)* Yes or no?

*(Dafydd Wigley)* I think that it is a definite maybe.

*(Mr Clarke)* Yes, an unequivocal maybe on that one. We have not been slow to set up the private sector unit. I can well understand, coming from the private sector myself, how that can appear to be a fearsome exercise. It is for that reason that the Assembly Government set up the social partners unit to assist those very worthy people from the private sector to make a success and make a difference on the partnerships.

*(Alison Halford)* are you doing enough to ensure that the private sector is involved? According to the figures, it is mostly the public sector that is participating, is it not? What more can you do to develop frameworks and involve the private sector?

*(Mr Clarke)* It would be very complacent and wrong of me to say that we are doing enough.<sup>120</sup>

<sup>118</sup> Audit Committee, Record of Proceedings, National Assembly for Wales, 20/6/02.

<sup>119</sup> Audit Committee, Record of Proceedings, National Assembly for Wales, 20/6/02.

<sup>120</sup> Audit Committee, Record of Proceedings, National Assembly for Wales, 20/6/02.

Labour's Janice Gregory also had some criticisms relating to the WEFO's apparently over bureaucratic approach. She pointed out that there are 11 stages to the Objective 1 application process with projects having to go through three working groups or committees prior to approval and, possibly, two rounds of consultation with other partnerships. John Clarke felt that, though some streamlining could be done, the process gave the impression of being longer than it actually was:

"If there is already in existence a reasonably well formed project and a good business plan, then, as in the rest of life, things can proceed somewhat faster."<sup>121</sup>

On the question of monitoring and evaluation he pointed out that although they have until the end of 2006 to commit all the money, there are in fact two further years after that to complete its spending. However, he agreed that his office must perform well over the next year if things are going to work through.

Dafydd Wigley ended the meeting by asking the Auditor General to present an update report in twelve months on the progress that the WEFO has made.

### **Future of the EU Structural Funds**

At its meeting on 12 June the European and External Affairs Committee received a report on a recent European Commission technical conference on the future of EU regional policy, which was attended by two officials from the Welsh Assembly Government. The Conference was entitled *The Union's Priorities for the Regions – Defining Community Value Added*, and was held in Brussels on 27-28 May. The conference was the first of three events that the Commission was arranging and future sessions will be held later this year on human resources, and simplification, which will be held sometime during early 2003.

At the conference the Commission made it clear that it was more interested in delegates discussing ideas rather than concentrate on financial issues. The European Commissioner for Regional Policy, Michel Barnier, put forward new ideas at the conference on non-Objective 1 support for regions, which would involve selecting from a 'toolbox' of support. This 'toolbox' might include urban initiatives, which would require careful consideration by Welsh stakeholders, and support for transnational co-operation programmes along the lines of INTERREG III B. There was also discussion on tri-partite agreements and regional relations with Brussels at the conference.<sup>122</sup>

Points made by Committee Members during their discussion included:

- Concern was expressed that Wales should not lose out to urban areas in England should the Commission set up structural funds programmes for urban areas.

<sup>121</sup> Audit Committee, Record of Proceedings, National Assembly for Wales, 20 June 2002.

<sup>122</sup> Paper 2: The Future of Structural Funds, European and External Affairs Committee, National Assembly for Wales, 12 June 2002.

- The issue of 'repatriating' regional policy was discussed which could work against Wales' interests. The Chair said this was not a new proposal and it was important that Wales made its position clear.
- Structural fund programmes were similar to tri-partite contracts in that they were agreed between Regions and the Commission, whilst operating within the framework of a nation state.
- The Commission was open to suggestions on taking the 'toolbox' forward although the Department of Trade and Industry (DTI) had requested firmer proposals from the Commission at the conference. The DTI would discuss any UK position on the future of the structural funds with the Assembly in advance of submitting them to the Commission.
- The Wales European Funding Office would be best placed to answer questions on the simplification of structural funds.
- The Assembly Government was developing proposals for an event in Wales to promote interest in INTERREG III B. Any major event would be organised in conjunction with the Office of the Deputy Prime Minister, who managed the UK's participation in these programmes.<sup>123</sup>

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<sup>123</sup> Minutes of the European and External Affairs Committee, National Assembly for Wales, 12 June 2002.

## 9. POLITICAL PARTIES

**Gerald Taylor, University of Glamorgan**

### **Labour's Leadership Challenge**

Fresh on the heels of Ron Davies' suggestion that he might be a leadership candidate in opposition to First Minister Rhodri Morgan when he retires,<sup>124</sup> a more immediate challenge came from an altogether different source. In couched language Blaenau Gwent AM Peter Law, suggested that party members would one day be faced with a choice over Rhodri Morgan's continued leadership. Despite such veiled threats, and the support of his constituency MP, Llew Smith, Peter Law never seemed likely to get the backing of five other Labour AMs which he would have needed to mount a challenge for the leadership himself. So why make such statements before getting the necessary support to challenge effectively?

Peter Law's challenge was prompted by Rhodri Morgan's decision to proceed to public consultation over the Sunderland Commission recommendations, and in particular those in favour of the introduction of proportional representation for Welsh local government elections. Many in the party see PR for the regional lists as the main reason why Labour failed to gain a majority in the Assembly in 1999. In addition the selection for list candidates and their rankings was perceived by some as a further erosion of constituency sovereignty within the party, on top of the controversial twinning system for constituency selections. Consequently there is widespread opposition to the extension of any form of proportional representation to local authority elections, opposition that was reflected in the Wales Labour Party's submission to the Sunderland Commission's consultation. Appearing on BBC Wales' *Dragon's Eye* current affairs programme in July Peter Law stated:

'Many sections of the Labour Party are very concerned about the way we're going now, we're going wider and wider away from the core membership with the leadership taking us down the road that nobody voted for in the Labour Party – to be with the Liberal Democrats. You see the comfort zone is what Rhodri Morgan wanted by bringing in the Liberal Democrats – no Labour Party member was consulted on it. The Labour Party has voted against PR in local government but this leadership keeps on going its own way and forgetting about Labour the Party of Wales.'<sup>125</sup>

Appearing on the same programme the First Minister refuted the accusation that he was an 'autocratic' leader:

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<sup>124</sup> See the previous monitoring report, *Engaging With Europe*, IWA, June 2002, p. 54.

<sup>125</sup> *Dragon's Eye*, BBC Wales, 18 July 2002.

“I have certainly not heard that accusation. I try to take everybody with me as much as possible but leaders from time to time will have members within their group ... who want to have a go at the leadership. It’s natural.”<sup>126</sup>

There was never any sign that Peter Law could attract the necessary support to mount a serious bid against Rhodri Morgan’s leadership. Nevertheless, he confronted the Labour party with some interesting issues. The first is that any leadership rival to an incumbent faces the task of obtaining the support of more than one sixth of the party in the Assembly, in this case five out of the 28 Members. This suggests that any leadership challenge is likely to reflect a severe breach within what will always be a small and intimate working Group. The numbers also mean that there will almost certainly never be an effective ‘stalking horse’ candidate testing potential opposition to the leader of the kind which emerges now and again amongst parliamentary parties: any challenge will almost certainly be a serious challenge.

A further issue is that although there are unlikely to be ‘stalking horse’ candidates, the kind of challenge which Peter Law engineered - responding to a perceived wider discontent within the party - may well be likely in the future. If such a challenge strikes a chord with elements of the wider party this might cause some real problems in the relationship between AMs and the party itself.

One of the more notable aspects of Peter Law’s challenge was his insistence that party policy took precedence over the recommendations of the Sunderland Commission and, presumably, over any subsequent policy arrived at by the Assembly Government. In turn this raises the question of why have such a Commission at all if, in any event party policy is to take precedence? It also raises questions over the status of party policy formulated for submission to such bodies, not least the Richard Commission on the Assembly’s powers.

### ***Plaid Cymru Chief Executive Appointed Amidst Leadership Wobbles***

Plaid Cymru’s new Chief Executive, replacing the outgoing Karl Davies, will be University of Aberystwyth Welsh election analyst, Dafydd Trystan. Dr Trystan’s connections with the Valleys – he was brought up in Aberdare - may be an advantage as the party tries to broaden its support. However, his comments as a political analyst, including suggesting the possibility that Plaid Cymru might lose seats at the next Assembly elections and questioning current party President, Ieuan Wyn Jones’ grip on the party leadership, have been exploited by the other parties and the media.

According to Press reports an anti-Ieuan Wyn Jones faction within Plaid Cymru appears to be seeking election to the party’s Executive. The nature of this ‘anti-presidential wing’ seems less than clear, but emerges from a memo obtained by the *Western Mail* from members of the party’s Executive.<sup>127</sup> This named ten nominees for

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<sup>126</sup> Ibid.

<sup>127</sup> Clive Betts, *How Serious is the Dissent within Plaid?*, *Western Mail*, 28 June 2002.

**Table 2: Principal Council By-elections, June 2001 to August 2002**

Date	COUNCIL: Ward	Result	Lib Dem	Tory	Labour	PC	Others
7/6/01	Cardiff: Canton	Lab hold	950	1,266	3,130	1,170	
7/6/01	Cardiff: Llandaf North	Lab hold	566	664	2,115	362	
7/6/01	Caerphilly: Darren Valley	Lab hold	394		502	232	
5/7/01	Pembrokeshire: East Williamson	Ind hold					840
13/7/01	Powys: Newtown Llanllwchaiarn N	LD hold	209				219
13/7/01	Denbighshire: Rhyl East	Lab hold		319	538		207
26/7/01	Carmarthenshire: Hengoed	Lab hold		70	348	293	118
26/7/01	Rhondda Cynon Taff: Talbot Green	Ind hold	24		134	181	624
30/8/01	Blaenau Gwent: Georgetown	<b>LD gain</b> Lab	417	87	348	98	
13/9/01	Powys: Rhayader	<b>LD gain</b> Ind	254				317
11/10/01	Ceredigion: Aberporth	<b>LD gain</b> Ind	336			311	
11/10/01	Ceredigion: Llanbadarn Fawr	PC hold	255			338	
11/10/01	Carmarthenshire: Llandybie	<b>Lab gain</b> Ind			504	316	417
11/10/01	Ynys Mon: Gwyngyll	<b>PC gain</b> Ind				374	117
18/10/01	Carmarthenshire: Llansteffan	<b>PC gain</b> Ind				376	302
25/10/01	Carmarthenshire: Dafen	Lab hold		29	448	250	32
20/12/01	Powys: Llangorse	LD Hold	<b>Unopposed</b>				
7/2/02	Cardiff: Gabalfa	<b>LD gain</b> Lab	925	138	451	116	44
7/2/02	Vale of Glamorgan: Dinas Powys	PC hold	46	659	348	1,039	
7/2/02	Pembrokeshire: Martletwy	Ind hold	121				361
23/4/02	Blaenau Gwent: Beaufort	<b>LD gain</b> Ind	715	17	469		58
30/5/02	Pembrokeshire: Rudbaxton	Ind hold		124		28	418
28/6/02	Monmouthshire: Goetre Fawr	<b>LD gain</b> Con	328	319	120	22	174
11/7/02	Ceredigion: Cardigan	<b>Ind gain</b> PC	84		128	341	859
11/7/02	Monmouthshire: Llanelly Hill	<b>Lab gain</b> Ind	164	339	352		537
11/7/02	Powys: Crickhowell	<b>LD gain</b> Ind	645	367			259
6/8/02	Torfaen: Panteg	<b>LD gain</b> Lab	1084	163	549	58	199
<b>Votes cast since June 2001</b>			<b>7517</b>	<b>4561</b>	<b>10484</b>	<b>5905</b>	<b>6102</b>
<b>% of the vote</b>			<b>21.7%</b>	<b>13.2%</b>	<b>30.3%</b>	<b>17.1%</b>	<b>17.7%</b>
<b>Change since May 1999</b>			<b>12.4%</b>	<b>2.9%</b>	<b>0.7%</b>	<b>-4.2%</b>	<b>-11.8%</b>

Source: Peter Black, Liberal Democrat AM for South Wales West

the executive elections, due to be held at the party's conference in September, as opposed to the leadership of President Ieuan Wyn Jones.

To what extent this represents an organised attempt to gain influence on the Executive seems unclear, though some opposition has been linked to the formation of a new left-wing group within the party, Triban Coch. In addition to the Executive nominations, the replacement of Elin Jones as Party Chairman by Steven Cornelius is seen as a further weakening of Ieuan Wyn Jones' position. Cornelius was the campaign manager for one of the party's MEPs, Jill Evans, who stood against Ieuan Wyn Jones' in the election for President.

### ***Local Government By-elections***

In the absence of any all-Wales opinion polls since the 2001 June General Election, the only indicator of how the parties are faring electorally terms are local government by-elections. Table 2, compiled by Peter Black, the Liberal Democrat AM for South Wales West, contains mixed messages for all the parties. Labour has held six seats, gained two, and lost three. The Liberal Democrats have held two and gained eight. Plaid Cymru have held two, gained two, and lost one. The Conservatives have lost one seat.

How far these results can be extrapolated into next year's Assembly elections remains doubtful, however. The worst news is undoubtedly for the Conservatives. In the past year they have neither won control nor held a seat in any by-election. Moreover, Labour and Liberal Democrat gains in Monmouthshire in July saw the Conservatives losing control of the hung county. Labour now has 19 seats compared with 18 for the Conservatives. This cannot bode well for the party holding on to Monmouth, its sole first-past-the-post Assembly seat in next May's election.

Election problems of a different type face Labour in Merthyr Tydfil where the death of veteran Labour councillor, Terry Mahoney, will cause a by-election in September. Labour currently runs the Merthyr Council as a minority administration, holding 16 of the 33 seats, against a split Independent and Plaid Cymru opposition. Labour's dominance on the Council, on which it once held all but three seats, has dwindled in a few years and a by-election loss, particularly to the Independents, could make their hold on the Council untenable. This could have wider repercussions for the Labour party in Wales as it would have a knock on effect on Labour's currently tenuous grasp of the reigns of the Welsh Local Government Association.

### ***Assembly Selections Get Under Way***

All the parties faced problems in selecting candidates for next May's Assembly elections during this period. Tyrone O'Sullivan's sudden withdrawal in June from the nomination race for the Rhondda, a key target seat for Labour, caused some consternation. O'Sullivan, a leading figure in the workers' buy-out of the Tower colliery in Cynon Valley, had been a media favourite to 'see out his career' as a Labour Assembly Member. He explained in a television interview that he had come to his decision after pressure from fellow workers at Tower who did not want to lose him at a time of uncertainty for the colliery's future.<sup>128</sup> His withdrawal cleared the way for Leighton Andrews, a public affairs consultant and leading figure in the Yes for Wales referendum campaign, to be selected.

Plaid Cymru was faced with arguments over their list selections following a National Council decision endorsing: (i) the first place for women; and (ii) if the woman chosen was also fighting a safe or winnable first-past-the post seat, the second place on the list should also go to a woman. This led to speculation of an impending challenge to the party's Shadow Culture Minister, Owen John Thomas, for his number two position on the party's South Central Regional list. In the north Dafydd Wigley, former party leader, who had decided to stand down from his constituency seat of Caernarfon, announced he was considering standing for the number two slot on the party's north region list. However, he backed away following internal party pressure. Given that he could only win if the party lost one of their three constituency seats in the northern List region, this may have been portrayed by party opponents as a choice between Dafydd Wigley as a Plaid list candidate, or his successor as party leader, Ieuan Wyn Jones in his Ynys Mon constituency. This was not a choice Plaid wished to offer.

Also in the north the Liberal Democrat AM, Eleanor Burnham, was rumoured to be facing a challenge to her list ranking in the shape of the Deputy First Minister Mike German's special adviser Nick Bennett who fought Ynys Mon in 1999.

Meanwhile, the Conservatives provoked a controversy with their list selection in South East Wales. Favouritism claims were made by supporters of William Graham, the Conservative list AM South East Wales, against Peter Davies, father of Monmouth constituency AM David Davies. It was claimed that in compiling a newsletter for party members, who will decide the list rankings, greater prominence was given to two of William Graham's rivals for the second place on the regional list, behind David Davies.

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<sup>128</sup> Interview with David Williams, *Dragon's Eye*, BBC Wales, 27 June 2002.

## 10. PRESS AND MEDIA

*Nia Richardson, IWA*

### **Welsh Mirror Attacks First Minister**

Rumours of a challenge to Rhodri Morgan's leadership of the Labour Party by Blaenau Gwent AM, Peter Law gave the Welsh press and media the chance to get their teeth into a colourful political story to fill the hiatus that appeared in the Assembly's affairs towards the end of its summer term. Peter Law is taking time over the summer to consider whether he will challenge the First Minister for the leadership in September as is allowed by Labour Party rules. Mr. Law has been telling journalists that he would better represent the Labour Party roots, who he feels are being ignored by current leader, Rhodri Morgan.

Peter Law's general position has been articulated forcibly by Paul Starling, Political Editor of the *Welsh Mirror* who ran what amounted to a campaign on his behalf. This comprised a sustained and furious attack on the leadership offered by Rhodri Morgan. In one hysterical column headed 'Rein in or dump arrogant Rhodri' he denounced the First Minister as variously a "massive egotist", a "Vaudeville act" and "profoundly undemocratic":

'He never thinks beyond the moment. He has no vision. He is a political maverick. Brilliant at being a witty companion, he is no international statesman and, in my view, never can be.'<sup>129</sup>

He went on to summarise the grievances of Peter Law in particular and what might be termed 'Old Welsh Labour' more generally:

"The Welsh Labour Party he is supposed to lead is adrift. Vital, democratic, key issues, like the hatred of proportional representation voting, and no further powers for the Assembly without a full national referendum, are ridden over roughshod if they don't suit the way Morgan chooses to write his story. Welsh Labour as a party rarely meets. He has little contact with the grassroots or with Labour's Welsh MPs. Having given most of the plum Assembly Cabinet jobs to his closest friends he then lets them make massive policy decisions affecting three million of our lives with no internal debate."<sup>130</sup>

Four days later, the *Welsh Mirror* accused the First Minister of foul play against senior figures in the Labour Party in preventing a challenge to Rhodri's leadership. Roger Rogers, secretary of Blaenau Gwent Labour Party was reported as "infuriated" that his local AM, Peter Law, had not had the opportunity to launch a proper challenge. This, he said, was because Labour's General Secretary, Jessica Morgan, had written to every Welsh AM, MP and Euro MP telling them the challenge was

<sup>129</sup> The Welsh mirror, 19 July 2002

<sup>130</sup> Paul Starling, 'Rein in or dump arrogant Rhodri', *Welsh Mirror*, 19 July 2002.

pointless because 23 of Labour's 28 AMs had already agreed to back Mr Morgan. Rogers was quoted:

“This is nothing less than central control freakery. Who the hell do these people think they are? Do they really expect party members to believe that within three days of a leadership challenge 23 AMs have signed up of their own accord? Rhodri Morgan and those around him in Cardiff are out-of-touch with the grassroots membership.

“It's like an elected dictatorship at the top. They may feel they've been very clever in seeing off a challenge from one man but what they fail to see is that he represents something which is eating away at the Labour party in Wales – and it's not going to go away.”<sup>131</sup>

Another article in the same week by Starling which criticised the Assembly government for not doing enough to tackle poverty was another opportunity for an attack on Rhodri Morgan:

“Rhodri Morgan, and the wine-swilling Cardiff smart set, should think long and hard about the messages they're sending to the rest of Wales. In the meantime, it is now time for those AMs and MPs who represent Wales' poorest areas to form a strong pressure group. Rhodri Morgan holds the job of leader in trust only. If he won't be moved to take such action then this powerful block of Welsh Labour politicians must be prepared to tell him: get in line, or get out and make way for people with policies that put our people first.”<sup>132</sup>

### ***BBC Wales Rejects Political Bias Claims***

BBC Wales Controller Menna Richards rejected claims of political bias at the BBC after a series of accusations from political figures during July that it was pro-Nationalist. In early June the *Welsh Mirror's* front page headline declared 'Beeb Bias' after Kevin Brennan, Labour MP for Cardiff West was allegedly refused an interview by the station. According to Brennan he had been scheduled to have an interview with Radio Wales' early morning show *Good Morning Wales* on 10 June. He was due to debate allegations made by Plaid Cymru MP Adam Price that the Labour party was trying to compile a 'dossier of dirt' on his party's MPs. According to Brennan, however, the programme called him five minutes before he was due to go on air to say that they would have to postpone the interview since “Mr Price would not enter a debate and did not want Mr Brennan to go on air immediately after him.”<sup>133</sup> Brennan told the *Welsh Mirror*:

“They allowed Plaid to dictate editorial terms. I was furious. The allegations Plaid have made are extremely serious, yet I was blocked from debating and challenging them and demanding evidence. In other words, BBC Wales allowed

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<sup>131</sup> Welsh Mirror, 23 July 2002

<sup>132</sup> Welsh Mirror, 26 July 2002

<sup>133</sup> Welsh Mirror, 11 June 2002

itself to be used for underhand, dark propaganda. I want to know why? I am livid at their behaviour which I find to be outrageous.”<sup>134</sup>

The BBC’s response was that there had been a technical failure and that Brennan had been offered an interview at a later time of 8.30am which he refused on the basis that most of the programme’s audience would be at work by that time.

The Deputy First Minister, Mike German, also attacked the BBC when he was cleared by South Wales Police after a year-long investigation into his past conduct at the Welsh Joint Education Committee. He accused BBC Wales of “a serious sustained campaign of political bias”, claiming that:

“... several key members at the heart of the political agenda of BBC Wales had set about destroying his career and were also trying ‘to destroy’ the Lib Dem/Labour Assembly Government.”<sup>135</sup>

Needless to say, the Controller Menna Richards staunchly rejected these accusations:

“Anybody who has a complaint to make about BBC Wales knows that they can make it directly to me – or indeed to several other people here – and it would be investigated with proper rigour and attention. Journalists working for BBC Wales are bound by very strict guidelines with regard to impartiality and objectivity. I have every confidence that our journalists follow these guidelines in their programme-making.”<sup>136</sup>

Allegations BBC Wales journalists had Nationalist leanings were countered in August when it was announced that Owen Smith, a former producer of the station’s flagship *Dragon’s Eye* political programme, was joining the Secretary of State for Wales, Paul Murphy, as his political adviser. Smith worked for the BBC for 10 years, where he edited Radio Four’s Today programme and later became an editor in BBC Wales Political Unit. He replaces Adrian McMenamin, who left the Wales Office at the beginning of July shortly after provoking a confrontation with the Assembly over its unanimous vote in favour of free personal care for the elderly. He was reported by *Dragon’s Eye* as the source of the quotation that the Assembly vote was “pathetic ... symptomatic of their irresponsible approach to politics.”<sup>137</sup>

### **Western Mail Appoints New Editor**

Neil Fowler, editor of the Western Mail since 1994, is to leave the paper in early September. He will be replaced by Alan Edmunds who has been editor of Wales on Sunday since 1996. Brought up in Cardiff, Edmunds has previously been assistant editor of the Western Mail and associate news editor of the South Wales Echo.

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<sup>134</sup> Welsh Mirror, 11 June 2002

<sup>135</sup> Western Mail, 18 July 2002

<sup>136</sup> *Ibid.*

<sup>137</sup> Dragon’s Eye, 16 May 2002. See the previous Monitoring report, *Engaging with Europe*, IWA, June 2002.