



The Constitution Unit



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Strategaeth Cymru

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END OF THE CORPORATE BODY

Monitoring
The National Assembly
December 2003 to March 2004

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CONTENTS

SUMMARY.....	1
1. ASSEMBLY GOVERNMENT	
END OF THE CORPORATE BODY	2
TESTS AT 11 AND 14 TO BE ABOLISHED	4
TOP-UP FEES	4
NATIONAL BOTANIC GARDEN	5
FREE SWIMMING	5
SMOKING BAN	5
QUEENS SPEECH BID	5
ELWA	7
EDWINA HART INQUIRY	7
2. FINANCE	
OBJECTIVE 1 DEBATE	8
EU ENLARGEMENT	9
3. NATIONAL ASSEMBLY	
ASSEMBLY POWERS	10
OPPOSITION REJECT BUSINESS STATEMENTS	11
SMACKING BAN	12
FAIR TRADE	12
NORTH WALES VISITORS CENTRE	12
4. POLICY DEVELOPMENT	
HEALTH AND SOCIAL SERVICES	13
EDUCATION	14
ECONOMIC DEVELOPMENT AND TRANSPORT	14
ENVIRONMENT, PLANNING AND COUNTRYSIDE	15
FINANCE, LOCAL GOVERNMENT AND PUBLIC SERVICES	16
SOCIAL JUSTICE AND REGENERATION	16
CULTURE, SPORT AND LANGUAGE	17
5. THE LEGISLATIVE PROCESS	
WESTMINSTER BILLS	18
<i>Smoking in Public Places (Wales) Bill</i>	18
<i>Constitutional Reform Bill</i>	19
<i>University of Wales, Cardiff Bill</i>	19
PROGRESS OF BILLS CONFERRING FUNCTIONS ON THE NATIONAL ASSEMBLY	19
<i>Establishment of a Public Audit (Wales) Bill Committee</i>	20
<i>The Higher Education Bill</i>	22
<i>Draft School Transport Bill</i>	23
<i>Traffic Management Bill</i>	24
<i>Planning and Compulsory Purchase Bill</i>	24
<i>Children Bill</i>	25
<i>Health Protection Agency Bill</i>	25
<i>Fire and Rescue Bill</i>	25
<i>Housing Bill</i>	25

<i>Domestic Violence, Crime and Victims Bill</i>	25
DEVELOPMENTS WITHIN THE NATIONAL ASSEMBLY	26
6. RELATIONS WITH WESTMINSTER AND WHITEHALL	
HEALTH MINISTER UPSETS WELSH LABOUR MPS	28
WELSH AFFAIRS SELECT COMMITTEE	28
GM CROPS	29
BARNETT ON BARNETT	30
BOUNDARY REVIEW	30
RAIL REVIEW	30
7. RELATIONS WITH THE EUROPEAN UNION	
WALES' CONTRIBUTION TO THE EUROPEAN CONVENTION.....	31
8. RELATIONS WITH LOCAL GOVERNMENT	
EXTRA FUNDING	33
FUNDING CONSULTATION.....	34
9. POLITICAL PARTIES	
LABOUR	35
CONSERVATIVES	38
PLAID CYMRU	39
WELSH LIBERAL DEMOCRATS	40
LLAIS CEREDIGION	41
PEOPLE BEFORE POLITICS	41
10. PUBLIC ATTITUDES	
DAILY POST ASSEMBLY SURVEY.....	43
WELSH IDENTIFIERS.....	44
11. PRESS AND MEDIA	
JOHN MAREK AND DRAGON'S EYE	46
WESTERN MAIL SUPPORTS LEGISLATIVE ADVANCE	47

SUMMARY

The position of Counsel General, the senior law officer who advises the National Assembly, will be abolished following a failure to appoint a successor to the first holder of the office, Winston Roddick QC. Instead the position will be divided into two, with one lawyer appointed to advise the Assembly Government and another the Presiding Office. This constitutional shift signalled the end of the National Assembly's formal status as a corporate body.

Ahead of the Richard Commission's report on the National Assembly's powers and electoral arrangements, due at the end of March, First Minister Rhodri Morgan said he favoured primary legislative powers but was against tax-varying powers. The Richard Commission is expected to recommend a hybrid of the Scottish and Northern Ireland devolution settlements in order to extend the Assembly's powers. However, in a letter to the Prime Minister, 19 Welsh Labour MPs declared that any move towards primary powers for the Assembly would require a further referendum. The Secretary of State Peter Hain attempted to head off opposition at Westminster by arguing that any change should not involve a reduction of the 40 Welsh MPs.

Due to European enlargement West Wales and the Valleys will lose their Objective 1 status in 2006 but will continue to receive 75 per cent of current £1.2 billion funding levels – approximately £931 million – between 2007 and 2013. This was announced as part of the European Commission's new 'Convergence Fund'. This will replace the current structural funds at the end of 2006 as a result of the EU's expansion from 15 to 25 members. While West Wales and the Valleys remain below 75 per cent of the average GDP of the current 15 member states, the percentage will rise above the 75 per cent when the East European accession states join.

Meanwhile, on the basis of confidential government figures, Carmarthen Plaid Cymru MP Adam Price claimed that the Assembly Government had spent less on European projects than the Conservatives did in the three-year period pre-devolution. The figures obtained from the DTI show that an annual average of £153.4 million was spent on Wales between 2000-02 compared to £172.275 million in 1994-9. He also claimed that the statistics show that in the first three years, the average annual spend on Objective One in West Wales and the Valleys has been almost 50 per cent less than the average figures pledged before the start of the programme.

However, Assembly Government Economic Minister, Andrew Davies said the figures were not comparing like with like. "The Objective One programme was not approved by the Commission until July 2000 and consequently virtually nothing was spent during that year," he said. "It is therefore not surprising that spend was lower during 2000-02 compared with the old programme."

Ron Davies, former Secretary of State for Wales and Caerphilly AM, announced he was leaving Labour and joining the party founded by former Wrexham Labour AM John Marek, now the deputy Presiding Officer. The new party, Forward Wales, is expected to contest the European elections in June with Ron Davies heading its list.

1. ASSEMBLY GOVERNMENT

John Osmond and Jessica Mugaseth, IWA

End of the Corporate Body

The position of Counsel General, the senior law officer who advises the National Assembly, will be abolished following a failure to appoint a successor to the first holder of the office, Winston Roddick QC. Instead the position will be divided into two, with one lawyer appointed to advise the Assembly Government and another the Presiding Office.

This constitutional shift signalled the end of the National Assembly's formal status as a corporate body. It is widely anticipated that among the recommendations of the Richard Commission, which reports on the Assembly's powers at the end of March, will be one to make the growing divide between the Assembly Government and the Assembly itself, that is between the executive and the legislative, a legal separation.

The anticipated separation of legal advice to the Assembly Government and the Presiding Office was forced by First Minister Rhodri Morgan's rejection of a recommended replacement for Winston Roddick who retired in October 2003. In late December 2003 Civil Service commissioners recommended that Gerard Elias QC, a leading Welsh criminal lawyer, should become Counsel General to the Assembly on a salary of £120,000 a year.¹ However, the First Minister objected because he had been a freemason and was an advisor to the Independent Supervisory Authority for Hunting.

Instead, he asked that another short listed candidate be chosen, Malcolm Bishop QC, who had stood as a Labour candidate in Bath in the two 1974 general elections and had as a referee the former Lord Chancellor Lord Irvine. The Civil Service commissioners turned down this request with the result that the whole selection process is now being rethought. The likely outcome is that the position of Counsel General will be abolished. As Rhodri Morgan told a plenary session in March:

“I have asked the Permanent Secretary to make recommendations as soon as possible on future arrangements for providing authoritative legal advice to the Welsh Assembly Government and the Presiding Office. My current preferred option is to separate the two.”²

Under the terms of the 1998 Wales Act the National Assembly still operates formally as a corporate body. That is to say, it remains a single legal personality in which there is no separation between its executive and legislative functions. As the former Counsel General, Winston Roddick put it, at the start of the Assembly's life, in 1999:

¹ The interviewing panel included Baroness Prashar, the First Civil Service Commissioner, Lord Justice Thomas, a senior presiding England and Wales judge, Sir Anthony Hammond, a former Treasury solicitor, and Sir Jon Shortridge, the Permanent Secretary.

² *Assembly Record*, 9 March 2004.

“It is a basic characteristic of the UK Parliament that the executive, that is the Cabinet, is separate from the legislature -- the doctrine of the separation of powers. That separation can only exist de facto in a corporate body like ours and there lies what is perceived to be a weak point in the devolution settlement for Wales.”³

Anticipating that the ‘de facto’ separation of the Assembly Government and the Assembly will become ‘de jure’ following the Richard Commission, the Presiding Officer is currently debating whether it should change its name to ‘Assembly Parliamentary Service’. This is a further indication that these changes are intimately bound up with the National Assembly’s acquisition of primary legislative powers.

In refusing the First Minister’s request that they recommend Malcolm Bishop the Civil Service Commissioners were saying, in effect, that there was no justification – that is to say exceptional circumstances – for him to refuse their first recommendation. In a statement to plenary explaining the events Rhodri Morgan declared:

“I did not register any objection to the four people on the shortlist, although I commented on the fact that one candidate who was eventually recommended for appointment by the panel was a prominent freemason. My concern derived from the salience of freemasonry, which has been reflected in debates in the Committee on Standards of Conduct and in the Assembly as a whole.

“I was however prepared to waive my concern on this issue, noting that the candidate was prepared to resign from the Freemasons, as had the previous Counsel General on appointment. When the Permanent Secretary advised me of the panel’s recommendations and I read the full papers, I became aware of information not previously known to me, namely that the recommended candidate was also a board member of the Independent Supervisory Authority for Hunting. My concern was not the candidate’s personal views on hunting or on any other issue... given the current high political salience of the legislation on hunting with dogs, taken in conjunction with our public debates surrounding freemasonry, I judged that the legal advice of a Counsel General who was prominently associated with these two controversial areas would not carry the necessary stamp of untrammelled authority through the Assembly. A Counsel General who would not carry the required authority would not be able to meet the key pre-requisite of the post.

“Furthermore, the Commissioners had rated as appointable a second candidate on the shortlist. In the panel’s assessment, either candidate was appointable. The difference between the two in overall scoring was small, each having different relative strengths.

“I judged that the second candidate was more likely to carry the legal authority that was fundamental to the post. It was on that basis, and that basis alone, that

³ *Crossing the Road*, Winston Roddick QC, Law Society Lecture, National Eisteddfod, Ynys Mon, August 1999.

I made the decision to approach the civil service commissioner to exercise the exceptional circumstances provision laid down in their procedures as was my right. The commissioners decided not to exercise that provision as was their right”⁴

Tests at 11 and 14 To Be Abolished

Standard Assessment Tests (SATs) for 11 and 14 year olds should be abolished, according to an Assembly Government review by Richard Daugherty, Professor of Education at the University of Wales, Aberystwyth. His Review Group, which published an interim report in January 2003, declared that exams “distorted the learning experiences of pupils in many schools”.⁵ Instead greater emphasis should be put on teacher assessment. Other recommendations include:

- At the end of Year 5, nine year old pupils should take a test to provide information about their learning skills, both for the Year 6 teacher and for the secondary school to which the pupil will be transferring a year later.
- Core subject teacher assessments for eleven year olds at the end of Key Stage 2 should be retained in broadly their current form.
- Statutory Testing for fourteen year olds at Key Stage 3 should be phased out after three years.

Top-up Fees

Following devolution of powers over student support to the National Assembly, Education Minister Jane Davidson has appointed Professor Teresa Rees, of Cardiff University, to conduct an independent review. The Assembly Government have ruled out top-up fees until 2007. The Rees Review will report in April 2005 to inform policy towards student support and the financing of the higher education sector. It will advise on:

- The impact on Wales of the introduction of variable fees in England from 2006.
- The effects both of introducing variable fees in Wales from 2007, and of not doing so.

A settlement has yet to be agreed between Jane Davidson and the Westminster Education Minister Charles Clarke on how Wales will finance higher education without top-up fees. However, Jane Davidson has stated that no Welsh higher education institution will suffer financially through the Assembly Government’s decision to delay any decision on top up fees until 2007.⁶

⁴ *Ibid.*

⁵ *Learning Pathways through Statutory Assessment: Key Stages 2 and 3*, Daugherty Assessment Review Group. Interim Report, January 2004.

⁶ Assembly Government *Press Release*, 13 January 2004.

National Botanic Garden

A rescue package to save the National Botanic Garden from closure has been agreed between its Trustees and the Assembly Government. In return for a restructuring of the Garden's management the Assembly Government, Millennium Commission and Carmarthenshire County Council have agreed to provide an extra subsidy totalling more than £2.5 million over the next four years.

The Garden at Llanarthne in Carmarthenshire has debts of £2 million and was facing imminent closure without financial support. Culture Minister Alan Pugh said negotiations were underway which would involve an Assembly Government funding lifeline so long as there were substantial changes to the management structure.⁷ In the event the garden will get £300,000 from each of the funding partners – with an additional £1.3 million from the Millennium Commission to be spent on improving the attraction for tourists, and £150,000 a year from the Assembly Government for the next four years.⁸

Free Swimming

An evaluation of the free swimming for school children pilot project, published at the end of January, revealed a more than 100 per cent rise. Children's sessions increased from 387,000 during the 2002 school summer holidays to 803,000 in 2003. Free swimming in local authority pools for the over 60s will be piloted in Autumn 2004.

Smoking Ban

In pursuit of his efforts to ban smoking in public places Culture Minister Alan Pugh has asked the Art Council for Wales to discourage smoking in theatres and other venues it funds. As he put it:

“We are not proposing cutting funding, but we will want to look at it in 12 months time and we would prefer to move by persuasion. At this stage there is no direct linkage between financial support from the Assembly Government and smoke-free status.”⁹

Queens Speech Bid

⁷ *Western Mail*, 16 March 2004.

⁸ *Western Mail*, 19 March 2004.

⁹ *Western Mail*, 3 March 2004.

In mid March the Assembly Government announced seven Bills it would like to see to be included in the Queen's Speech at Westminster this Autumn:

- Commissioner for Older People (Wales) Bill – to establish a new Commissioner, who would safeguard and promote the best interests of older people in Wales.
- Education (Miscellaneous Provisions) (Wales) Bill – to place limits on junior class sizes similar to those for infant class sizes. It would legislate for a primary school breakfast scheme, the Assembly Learning Grant, and would enable more integrated working between Higher Education Funding Council for Wales and ELWa. It would provide Estyn with powers of inspection for youth and community work training within the HE system. The Bill would also require FE institutions to publish annual statements on government and management.
- Housing (Suspension of Right to Buy) (Wales) Bill – to enable the Assembly Government to designate areas of housing pressure where the Right to Buy could be suspended.
- Local Government (Town and Community Councils) (Wales) Bill – to enable local councils in Wales to deliver a wider range of services and actions locally; to enable the Assembly Government to directly fund local councils' activities; to increase the effectiveness of their representational role and their ability to work in partnerships with other bodies.
- Public Services Ombudsman (Wales) Bill - to create a new single Ombudsman's jurisdiction for Wales, incorporating into one the present three Ombudsman posts: Local Government Commissioner, Health Service Commissioner, and the Welsh Administration Ombudsman. It would enable the post holder to investigate complaints of maladministration against any of a wide range of public bodies in Wales.
- Tourism Accommodation (Registration) (Wales) Bill - to create a new enabling power for the Assembly to establish a tourist accommodation registration scheme in Wales.
- Transport (Wales) Bill - to provide the Assembly Government with a coherent set of transport powers for the first time, allowing the development of an integrated transport policy. The Bill would include (i) strengthened powers in relation to transport planning and implementation; (ii) a new requirement on the Assembly to publish a national transport strategy; (iii) a duty on local authorities to prepare local plans or to work together to produce regional plans; and (iv) a power to establish one or more joint transport authorities, to discharge specific local authority transport functions over two or more local authority areas. The Bill would greatly strengthen the Assembly's powers in relation to the railways, with a authority to give directions and guidance to the Strategic Rail Authority, powers to make payments to, and enter into binding agreements with the Authority, as well the appointment of one member of the Authority. Finally, the Bill would contain a general power to allow the Assembly Government to make both revenue and capital payments to transport operators.

If Baroness Finlay's Private Member's Bill in the House of Lords on smoking in public places fails to become law, the Cabinet will want to take up with the Secretary of State for Wales the possibility of a Wales-only Bill coming forward from the UK Government on the Assembly Government's behalf.

ELWa

Elizabeth Raikes, Monmouthshire County Council's Chief Executive, has been appointed Chief Executive of ELWa, the Education and Learning Council for Wales. Mrs Raikes, who began her career as a teacher and qualified as a chartered accountant, takes up her new position in April 2004.

Edwina Hart Inquiry

Northern Ireland Assembly Ombudsman Tom Frawley has been called in to investigate allegations that Social Justice Minister Edwina Hart bullied one of her civil servants. Last year Charles Willie, head of the Assembly Government's Equality Policy Unit, was made redundant. This was the culmination of a history of poor relations between him and Mrs Hart since April 2000 when she became Chair of the Assembly's Equality of Opportunity Committee.

Internal documents disclosed to Mr Willie under the Data Protection Act showed how Mrs Hart had put pressure on senior civil servants to remove him from his post. For example, minutes of a meeting between Sir Jon Shortridge and Peter Gregory, at the time the Assembly's Director of Personnel state:

“Peter said Edwina Hart was pressing him to put Charles on the Partnership Council's Equality Project and to replace him with an individual currently working for South Wales Police.”¹⁰

Mr Willie made a complaint to the Assembly Standards Committee and initially its independent advisor on standards, Richard Penn was appointed to investigate the claims. However, he decided to withdraw because he had had professional contact with both Mr Willie and Mrs Hart.

Mr Willie claims Mrs Hart “continually sought to undermine me, sideline me, and generally bully senior officials to remove me from my post, without regard for the proper procedures, processes and practices that all Civil Servants and Ministers should follow.”¹¹

¹⁰ *Western Mail*, 13 January 2003.

¹¹ *Ibid.*

2. FINANCE

James Foreman-Peck, Cardiff Business School

Objective 1 Debate

The Objective 1 programme for west Wales and the Valleys is the most ambitious Structural Fund project ever undertaken in Wales and the largest Objective 1 programme for the UK. Hence the surprise that greeted Plaid Cymru's Carmarthen MP Adam Price's apparent discovery that spending in the current Objective 1 area is lower than under the previous grant regime between 1994 and 1999¹².

Andrew Davies responded that, because individual projects necessarily took time to win approval, and that Objective 1 was still in its early stages, like was not being compared with like. However Mr Price went on to maintain that the annual spend in 2002 was less than in 2000 - when the programme began - and that this conclusively demonstrated mismanagement.

In some respects Adam Price's conclusion is hard to square with the Objective 1 Evaluation Report of September 2003. The report described the commitment of funds at mid-term as "broadly good", with the exception of Priority 3 Community Economic Regeneration. The report proceeded to point out that in a number of areas, the Programme was unable to fund eligible proposals because of shortage of funds. However a number of criticisms were advanced:

"The Programme has clearly been driven largely from the 'bottom-up', with systems and processes designed to respond to project ideas rather than to initiate them ... the lack of specific consideration given in strategy documents to the role which Objective 1 might play in implementing these strategies might be thought surprising."¹³

And more important in the light of Adam Price's findings:

"The system for project selection which has evolved is highly participative, but is perceived by applicants as very burdensome and over-long, and this appears to have some grounding in fact."¹⁴

This last comment was an allusion to the delays and barriers imposed by the arrangement of 'Partnerships'. A vital element of the programme is that European funds for any project must be matched with income from another source. In a briefing given in Cardiff towards the end of February 2004, Manfred Beschel from the European Commission stated that his employers favour matched funding grants for Objective 1 because they can 'lever in' more money than simple grants. But actually the principle of matching has been the bane of Objective 1 funding in Wales.

¹² Martin Shipton, 'Sham of our Euro millions', *Western Mail*, 11 February 2004.

¹³ CRG Research Associates Ltd *Mid-Term Evaluation of the Objective One Programme for West Wales and the Valleys* September 2003

¹⁴ *Ibid.*

Where the private sector is concerned, matched grants may lower the effective costs of a project. If they do, then work may be brought forward that otherwise would not pass the financial viability test. That is, so long as public funding propriety criteria and the demands of participation do not impose offsetting additional administrative burdens. A second qualification is that there must not be a fixed budget from which the spending can be taken. The private sector investment 'pot' is, in one sense, the entire world market and so the pot available to Wales is likely to be elastic: it would not be strained by additional demands from Wales.

The public sector is rather different and the Assembly Government proposed that some two thirds of the matching for Objective 1 money would come from UK public funds. Either other spending heads must be cut to release the money, or the UK tax payer is obliged to find the greater part of the additional funds required by the programme. This is one reason why the grant has been something of a poisoned chalice. Assembly Government budgets were already committed at the outset and so extra money could only be provided at the discretion of the Chancellor of the Exchequer.

Here also lies one difficulty of demonstrating the 'additionality' of Objective 1 spending that the European Commission requires. The money must be shown to give rise to projects that would not have been undertaken otherwise. If these projects were important why was it that the government did not fund them anyway? If they were not important why should the government commit any funding at all? If an Objective 1 project had 'levered in' additional public money to Wales, this would have been at the expense of public spending elsewhere in the UK, where other projects would have been displaced. The principle of 'additionality' is hardly satisfied if an extra project is gained under these circumstances.

EU Enlargement

Against this background the revelation that enlargement of the European Union will remove Objective One status and funding from west Wales and the Valleys after 2006 is perhaps less painful than appears at first sight. The addition of 70 million relatively low income citizens to the EU will reduce the average EU GDP per head. On current trends average incomes in West Wales and the Valleys will therefore no longer be below 75 per cent of the EU average by 2007. The region will cease to qualify for Objective 1 money by then, even though it would have been eligible if the boundaries of EU had not been extended¹⁵. The Regional Policy Directorate recognises the so-called 'statistical effect' regions should have a continuing claim on funds. But what proportion of Objective 1 funding that would have been forthcoming actually will be made available in the new circumstances remains a matter for future intense bargaining within the Commission.

¹⁵ *Third Cohesion Report Convergence Competitiveness and Co-operation*, European Commission, Regional Policy, February 2004.

3. NATIONAL ASSEMBLY

John Osmond and Jessica Mugaseth, IWA

Assembly Powers

The Richard Commission on the Assembly's powers and electoral arrangements sparked a vigorous internal Labour Party debate ahead of the publication of its report on 31 March. The report was widely expected to recommend primary legislative powers for the National Assembly on the basis of a hybrid system combining aspects of the Scottish and Northern Ireland devolution settlements.

This prompted 19 backbench Welsh Labour MPs to declare that the Assembly should not be given substantial new powers without a further referendum. In a letter to the Prime Minister they stated:

“We wish to make it clear that we regard the present constitutional arrangements as a settlement specifically endorsed by the people of Wales in a referendum ... any substantive change in those arrangements, for example, introducing primary legislative powers or tax-raising powers for the National Assembly would require the endorsement of the people of Wales in a further referendum.”¹⁶

The Secretary of State for Wales, Peter Hain, who will be pivotal in negotiating any change through Westminster, alluded to the referendum hurdle in a lecture to the Constitution Unit at University College London, in January:

“The question of democratic legitimacy depends to a large extent on how fundamentally any proposed changes deviate from the existing settlement.”¹⁷

In other comments he stated “I do not favour a Scottish solution”¹⁸, referring to a Scottish-style Parliament for Wales as a “Pandora's Box”, and adding: “I am not touching with a barge pole the Scottish nightmare of reductions in numbers of MPs.”¹⁹ However, in his Constitution Unit lecture he suggested a range of options that did not go as far as the Scottish model were possible:

“First we could maintain the current arrangements whereby functions can be transferred to the Assembly on a case-by case basis. Second we could give the Assembly wider secondary legislative powers. Third, Westminster and Cardiff could operate joint pre-legislative procedures. Fourth Wales could adopt a Northern Ireland model under which the Assembly gained primary legislative

¹⁶ www.bbc.co.uk/wales 26 February 2004.

¹⁷ *Changing for Good – Devolution: the Silent Revolution*. State of the Nations Lecture, Constitution Unit, 27 January 2004.

¹⁸ *Western Mail*, 13 January 2004.

¹⁹ *Western Mail*, 3 March 2004.

powers in those areas already devolved, with the potential for future powers being devolved by agreement.”²⁰

At the same time First Minister Rhodri Morgan reiterated his own preference for full legislative powers:

“The broad thrust of my own personal belief is that it would be better if we had primary legislative powers and it would give us more capability to do more good things for the people of Wales, but I take the completely opposite view on tax-varying powers.”²¹

And Rural Affairs Minister Carwyn Jones in a booklet *The Future of Welsh Labour* not only advocated primary powers but also argued that there was a need to reform the Barnett Formula so that it more accurately reflected Welsh spending needs.²²

The divisions opening up in Welsh Labour’s ranks have resulted in a delay to the special conference being convened to consider the Richard Commission’s recommendations. To allow more time for a consensus to emerge, it has been pushed back from July to 11 September. A liaison committee comprising three AMs from the Assembly Group and three MPs from the Welsh PLP has been established to improve communication.²³ Critical will be a vote on the issue at the Wales TUC towards the end of May. If a motion supporting primary powers, being sponsored by Unison, is approved, the position of those in the party pushing for a further advance at the September conference will be strengthened.

Meanwhile, powers in a range of areas continue to be devolved to the National Assembly. The Higher Education Bill sets out the transfer of student support and tuition fee powers to the Assembly. The Children and Family Court Advisory Service (Cafcass) is to come under the control of the National Assembly through the Children’s Bill. Additionally plans are being made to transfer to the Assembly full statutory authority and policy responsibility for animal health and welfare matters.

Opposition Reject Business Statements

The Business Statement has continued to be rejected by the opposition parties throughout this period due to the Assembly Government making Ministerial statements rather than concede debates on controversial questions. These have included the future of the National Botanic Garden, the Edwina Hart affair, and the Objective 1 funding.

²⁰ *Ibid.*

²¹ *Assembly Record*, 3 February 2004.

²² IWA, February 2004.

²³ Membership comprises Leighton Andrews, AM for Rhondda; Lynne Neagle, AM for Torfaen; Ann Jones, AM for the Vale of Clwyd; Jackie Lawrence, MP for Preseli; Mark Tami, MP for Alyn and Deeside; and Wayne David, MP for Caerphilly.

Smacking Ban

In a debate on the Children's Green Paper, the AMs registered their dissatisfaction with the Blair administration for failing to pursue a ban on smacking children. An amendment criticising the UK Government on this score, proposed by Liberal Democrat AM Kirsty Williams, was passed by 41 votes to 9 with 3 abstentions.²⁴ A further amendment tabled by Kirsty Williams to increase the powers and role of the Children's Commissioner for Wales, was also adopted.

Fair Trade

Debating International Trade in plenary, the Assembly passed a motion (by 35 votes with 11 against and 11 abstentions) to ensure that the government promotes principles of fair trade, good employment practices and environmental sustainability in international trade.²⁵

North Wales Visitors Centre

A new exhibition and visitor's centre for the National Assembly opened in Colwyn Bay in north Wales in February. It will be a base for two co-ordinators whose job is to build links with local communities, plus an education officer who will be visiting schools across north Wales.

²⁴ *Assembly Record*, 14 January 2004

²⁵ *Assembly Record*,

4. POLICY DEVELOPMENT

Jessica Mugaseth, IWA

Health and Social Services

Jane Hutt distributed £30 million to the 22 Local Health Boards across Wales to implement the Wanless reform agenda at local level. Funding has been distributed according to the recommendations of the Townsend Report (2000)²⁶ that funding should go to areas with the greatest health need. As a result Caerphilly Local health Board receives the most funding (£5.254 million) and Denbighshire Local health Board the least (£0.147 million). The funding will enable the Health Boards to develop their own action plans to improve social care, primary health care and community services.

Jane Hutt announced that from April 2005 all couples aged 23-39 in Wales will be offered once cycle of IVF Treatment on the NHS. To be eligible for treatment the couples will need to meet the clinical criteria established by NICE and the social criteria to be established by the Assembly Government.

A special fund of £5 million was allocated to cut the number of people waiting over 18 months for hospital treatment. One initiative offers treatment in hospitals in England in an attempt to reduce waiting lists in Wales. The NHS will pay for all treatment if patients choose to accept the option of going to an alternative hospital, including transport costs for both patients and relatives. Another initiative is to allow consultants to run weekend clinics to clear the backlog of patients by 31 March. This move came ahead of the introduction of the second offer scheme in April which is designed to prevent breaches of targets. Under the scheme, all patients who will not be treated in the target time will be offered the same operation elsewhere in Wales, in England, in the private sector or even abroad.

Jane Hutt has set further targets to reduce deaths from cancer and coronary heart disease by 2012, with additional health gain targets for children.

From Autumn 2004, the Care Council for Wales will begin registering social care workers in Wales. The Social Care Register is part of the work being taken forward to raise standards and professionalise the service. Meanwhile, the Health and Social Service Committee appointed Professor Vivienne Walters of Swansea University as the expert adviser on its review of the interface between health and social care. The committee's report of the review will be published in the summer.

Following the recommendation of the Wanless report to put a greater emphasis on preventing ill-health, a new initiative was launched in February. *Health Challenge*

²⁶ A review of the arrangements for allocating resources for health and social services. The formula used is based on the resident population of each LHB and the cost of meeting the health needs of the population.

Wales aims to engage whole communities in health improvement through healthy eating and exercise. A Wales ‘Sport Summit’ was held in Cardiff at the end of January in which First Minister Rhodri Morgan proposed a contract

“... in which the Government takes the responsibility for creating the conditions which enable people to take care of their own health and well being ... in return for individuals to be prepared to make the investment needed in terms of physical activity which will serve them in years to come.”²⁷

A 12 month review of progress in safeguarding vulnerable children in Wales, lead by Neath Labour AM Gwenda Thomas was announced in December 2003.

From 1 April 2004, the Assembly Government will provide childcare vouchers to officials with children of nursery age, from six weeks to four-and-a-half years.

Education

Following research carried out by the Qualifications, Curriculum and Assessment Authority for Wales (ACCAC) the Assembly Government announced that from September 2004 Key Skills Qualifications in Wales will be assessed by a portfolio of evidence from candidates rather than by external tests. The Key Skills Qualifications were introduced from September 2000 as part of the package of reforms to post-16 qualifications.

The Education Committee has agreed to review local authority arrangements for transporting pupils to and from school. It will look at the types of buses used and measures taken to ensure the safety of pupil during their journey. The Committee will appoint an expert adviser and submit the final report to the Cabinet Childrens sub-committee in November.

The Information Communication and Technology (ICT) Task Force, established in 2002, was brought to a close a year early in March 2004 due to changing requirements. The £1.02 million contract was awarded to W. S. Atkin in June 2002 and was intended to run for three years.

Economic Development and Transport

The Assembly Government’s £86 million 2004-05 transport grants were announced in January:

- £33.5 million for road infrastructure.
- £7.9 million to develop rail networks.

²⁷ *Western Mail*, 30 January 2004.

- £35.5 million to support integrated transport solutions such as bus-rail interchanges.
- £7.7 million to encourage walking and cycling, including safer routes to school.
- £1.1 million to provide revenue support for bus services.

Towards a Technology Industry Strategy for Wales, a new Assembly Government sponsored report, aims to encourage partnerships between the private and public sectors. The strategy will be led by the WDA, ELWa and the Welsh Electronics Forum. Similar reports will be published around other key growth sectors and clusters, setting out a way the public sector will support key growth sectors and clusters in order to facilitate an increase in overall GDP.

Economic Minister Andrew Davies opened the new Wales International Centre in New York on St. David's Day. The new office, in Manhattan's Chrysler Building, will be used to promote Wales and Welsh business potential in the American market.

The Assembly Government's *Walking and Cycling Strategy for Wales* was published in December. It aims to increase walking and cycling across Wales through the promotion and provision of facilities.

Finance Wales Chief Executive Colin Mitten announced his resignation in March in order to develop his family business in New Zealand.

Environment, Planning and Countryside

From 1 April 2004 local authorities will only be required to complete one survey about their waste collection activities. At present they are asked to complete several surveys which will be replaced with a new, streamlined system from which weight and financial data will be drawn. The new 'WasteDataFlow' system will make the data collected more reliable and consistent and will enable fair comparisons between local authorities.

In January the Environment, Planning and Countryside Committee published their provisional report on *Planning Aspects Associated with the Provision of Affordable Housing and Sustainable Communities in the Countryside*. The Animal Health and Welfare Strategy, a result of the 2001 foot and mouth outbreak, was also launched in January.

In February Rural Affairs Minister Carwyn Jones announced new arrangements for farm payments that will apply from 2005. CAP reform in the dairy sector will be taken forward by making additional payments as a straight top-up of the dairy premium.

Finance, Local Government and Public Services

The Assembly Government approved the police authorities finance settlement for 2004-05. They will each receive an increase of 3.25 per cent on the final 2003-04 settlement. The police authorities are funded through a variety of routes:

- National Assembly Government - £142 million.
- Home Office - £212 million.
- £21m specific grants, such as the crime fighting and rural policing funds provided by the Assembly Government but funded through the Home Office.
- Council Tax

In addition, the Home Office has allocated additional funding to set a 3.25 per cent floor and ceiling which no authority can rise above or below in its increases or decreases in spending. Achieving this floor for the Welsh police authorities required £13.7million over the initial formula allocations. In addition to revenue funding, police authorities will receive £8.9 million in capital support.

The distribution of the Assembly Support and the police grant follows the needs-based formula agreed between the Home Office, the Assembly Government, the Office of the Deputy Prime Minister and the police authorities in England and Wales. The complex nature of the police budget was discussed in a plenary debate, in which Finance Minister Sue Essex described the settlement as “fair and reasonable.”²⁸

This financial settlement approved by the Assembly will now enable the police authorities to set their council tax precepts for next year.

Social Justice and Regeneration

A Fuel Poverty Advisory Group has been established to look at new initiatives, develop partnerships with communities and voluntary organisations across Wales, and co-ordinate strategies to ensure that no household will experience fuel poverty beyond 2018.

A free 24-hour telephone helpline for victims of domestic violence set up by Welsh Women’s Aid has been awarded a three year grant by the Assembly Government.

Social Justice Minister Edwina Hart opened a Crime Victim Support National Office for Wales in mid-February. The Assembly Government is providing £188,000 over three years to fund the office.

²⁸ Assembly *Record*, 10 February 2004

Culture, Sport and Language

£6.5 million of Lottery Money, distributed by the National Opportunities Fund in Wales, will encourage more people in Wales to take up an active lifestyle.

Secondary legislation has brought the water utilities in Wales under the remit of the Welsh Language Act. The legislation will bring Dwr Cymru, Severn Trent and Dee Valley within the Act which will give customers the option of corresponding in either language and bilingual billing

Welsh Language Board Chair Rhodri Williams, will be relinquishing the Chair following his recent appointment as Director for Wales at Ofcom.

5. THE LEGISLATIVE PROCESS

Sarah Beasley, Cardiff Law School

Westminster Bills

Smoking in Public Places (Wales) Bill

On 22 January 2003, the Assembly unanimously passed a motion, under Standing Order 31, calling on the UK Government to bring forward a public Bill to provide that the Assembly could, by statutory instrument, prohibit all smoking of tobacco in such public buildings as may be specified in that instrument. This request for primary legislation was duly passed to the UK government by the Assembly Minister, but was not included in the Queen's speech as a government Wales-only Bill. Instead, the 'Smoking in Public Places (Wales) Bill' was introduced as a private member's bill in the House of Lords by Baroness Finlay of Llandaff on 11 December 2003.

It provides for the National Assembly for Wales to make regulations to prohibit smoking by any person whilst in a public place in Wales. Any person found to be in contravention of these regulations shall be guilty of an offence.

The un-amended Bill provides for the Assembly to make regulations for the definition of a 'public place' and for any penalty to be imposed for a breach of the regulations (no more than three months imprisonment or a fine not exceeding level 3). At second reading on 16 January, Baroness Finlay gave an undertaking to amend the Bill at Committee stage to reduce the penalty to a fine not exceeding level three on the standard scale, and omitting imprisonment.

The Bill has been reported on twice by the Delegated Powers and Regulatory Reform Select Committee²⁹, who have concluded on both occasions that:

- "The substance of the Bill raises sensitive issues involving consideration of the conflicting claims of personal freedom and public health. We take the view, therefore, that many details of the ban are so significant that it is inappropriate to leave them all to subordinate legislation.
- (...) We believe that it is for the House as a whole to decide whether to agree to delegate powers, for Wales, to the National Assembly which the Committee would advise were not appropriate to be delegated, for England, to a Minister."³⁰

On 4 February 2004, the Assembly Health and Social Services Committee discussed the Bill and recorded a unanimous endorsement of its principles. The Bill passed

²⁹ Third Report of the Delegated Powers and Regulatory Reform Committee: HL Paper 17 2003/4; Fifth Report of the Delegated Powers and Regulatory Reform Committee : HL Paper 31 2003/4.

³⁰ House of Lords Delegated Powers and Regulatory Reform Committee Report HL Paper 17: 2003/4.

second reading, where it was agreed that it would be committed to a Committee of the whole House.

Constitutional Reform Bill

Published on 25 February 2004 and following a four month consultation in 2003, this Bill plans to set up an independent Supreme Court as the final court of appeal for England, Wales and Northern Ireland, and the final civil court of appeal for Scotland. It will also rule on devolution issues - a role currently performed by the Judicial Committee of the Privy Council. It will be presided over by 12 judges, to be known as Justices of the Supreme Court, who will no longer be permitted to sit in the House of Lords as peers.

It is proposed that the current Law Lords will become the first 12 Justices of the Supreme Court and future appointments will be made through a Judicial Appointments Commission, operating independently of political patronage. The Bill also introduces measures to abolish the office of Lord Chancellor. These functions will be transferred to the 'President of the Courts of England and Wales' - a post anticipated to be filled by the current Lord Chief Justice, Lord Woolf.

University of Wales, Cardiff Bill

This private Bill provides for the University of Wales College of Medicine to be united with University of Wales, Cardiff.

Progress of Bills conferring functions on the National Assembly

In a plenary statement in early December 2003, Business Minister Karen Sinclair, proposed that the government Bills with particular relevance to the Assembly's responsibilities should be committed to the appropriate subject committee for further consideration. These Bills, and the committees to which they were due to be referred, are as follows:

- Public Audit Wales Bill - Ad hoc committee.
- Higher Education Bill - Education and Lifelong Learning Committee.
- School Transport Bill - Economic Development and Transport Committee, and Education and Lifelong Learning Committee.
- Traffic Management Bill - Economic Development and Transport Committee.
- Planning and Compulsory Purchase Bill - Environment, Planning and Countryside Committee.
- Children Bill - Health and Social Care Committee.

- Health Protection Agency Bill - Health and Social Care Committee.
- Civil Contingencies Bill - Local Government and Public Services Committee, and Social Justice and Regeneration Committee.
- Fire and Rescue Services Bill - Social Justice and Regeneration Committee.
- Housing Bill - Social Justice and Regeneration Committee.
- Domestic Violence, Crime and Victims Bill - Social Justice and Regeneration Committee.

These Bills are discussed further, as follows:

Establishment of a Public Audit (Wales) Bill Committee

On 13 January 2004, the National Assembly voted unanimously to establish an ad-hoc Public Audit (Wales) Bill Committee 2004, under Standing Order 8.1. Due to the fact that the proposals contained within the Bill encompassed several of the Assembly subject committee portfolios, this ad-hoc committee was set up to carry on the work of the previous ad-hoc committee³¹ which scrutinised the draft Bill. Terms of reference for the Committee were:

- i. to consider the Public Audit (Wales) Bill, as introduced to Parliament on 27 November 2003;
- ii. to consider the Minister for Finance, Local Government and Public Services' letter of 1 December, reporting the UK Government's response to the Public Audit (Wales) Bill Committee's recommendations on the draft Public Audit (Wales) Bill.

The Committee was to report its conclusions back to the Assembly by 6 February 2004, and would cease to exist on 27 February 2004. Membership of the Committee consisted of five AMs: two Labour and one each from Plaid Cymru, the Conservative Party and the Liberal Democrat party, so as to secure, as far as is practicable, the balance of political groups in the Assembly.³²

On 4 February 2004, the National Assembly considered a motion proposing that it:

- i. notes the report of the Public Audit (Wales) Bill Committee 2004; and
- ii. calls upon the Welsh Assembly Government to bring forward proposals under Standing Order 31.9 to put the committee's recommended amendments to the UK Government.

The report of the earlier ad-hoc Committee made seven recommendations, listed briefly below:

1. The Bill should amend s90 of the Government of Wales Act 1998 to provide that the Auditor General for Wales should be appointed after consultation with the National Assembly for Wales. The amendment should include the provision that

³¹ Previous Ad-Hoc Committee discussed in IWA April-July 2003 Monitoring Report

³² Standing Order 8.3

the Assembly debate the appointment on a motion proposed by the First Minister and agreed with the Chair of the Audit Committee.

2. The provisions of Clause 11 should be extended to enable the Auditor General to track public money passing from local government to end users, such as contractors and grant recipients, to ensure that it has been properly and appropriately spent.
3. Clause 16 should be amended to require that the Code of Practice prepared or revised under Clause 16(1) should be debated by the National Assembly.
4. Clause 50 should be deleted.
5. Schedule 3 para 3 should be strengthened to protect the pension rights of the staff of both organisations.
6. Schedule 3 para 4 should be amended to give staff the option of remaining with their current employer, without detriment to their current terms and conditions of service, after the transfer date.
7. Terminology in the Bill should be gender neutral.

These recommendations were relayed to the Government by the Assembly Minister. Following the publication of the Bill by the Government which contained only two of the seven recommendations made by the Committee, the report of the second Committee, laid on 27 January 2004, made two recommendations:

- i. It re-iterated its request to amend section 90 of the Government of Wales Act 1998 (GOWA) to provide for the Auditor General for Wales to be appointed after consultation with the National Assembly. The Committee wished the amendment to include the provision that the Assembly should debate the appointment in a motion proposed by the First Minister and agreed with the Chair of the Audit Committee. This recommendation reflected the Committee's view that the Assembly as a whole should be consulted on the appointment and that it should not be sufficient that the issue of consultation should be left to the goodwill of the Welsh Assembly Government of the day, so there would be no possibility of the Assembly government appointing its own auditor. The government did not accept this recommendation from the earlier Committee and the published Bill does not amend GOWA;
- ii. It re-iterated its earlier request, that again had not been accepted, that Clause 54 (Clause 50 in the draft Bill) be deleted. It was the belief of the Committee that the protection offered to local government by this clause would inhibit transparency and would be out of line with that given to other public sector bodies in Wales. Again, the Government did not agree with this recommendation as it did not accept that Wales should have different provisions on the disclosure of information from England, and in making this recommendation, the Committee has advised that if the government is not prepared to do so, an early opportunity should be sought for an appropriate amendment to be made to legislation on an England/Wales basis.

In its report, the Committee noted that recommendations (ii) and (iii) of the earlier Committee had been accepted by the Government, and the Committee was content with the drafting in the published Bill. Recommendations (v) and (vi) were not accepted by the Government, on the grounds that these would be more appropriately dealt with in the statutory transfer schemes. This was accepted by the Committee. Recommendation (vii) was also not accepted by the Government, and the Committee

noted this with regret. The Bill is due for further consideration in Grand Committee in the House of Lords.

The Higher Education Bill

This Bill, presented to Parliament on 8 January 2004, contains provisions which were initially proposed in the government White Paper *The Future of Higher Education*, published on 22 January 2003. The majority of the Bill affects both England and Wales but does include measures relating to Wales only. In particular, the Bill contains provisions for the transfer of certain functions relating to student support and the tuition fee regime to the National Assembly for Wales. The Bill is divided into 5 parts:

Part 1: establishes the Arts and Humanities Research Council, which will be set up by Royal Charter and is intended to give research in the arts the same standing as research in the sciences;

Part 2: creates a statutory mechanism for dealing with student complaints. The intention is to establish an independent adjudicator who will review complaints made by students in higher education institutions (HEIs). The adjudicator would make recommendations, which although not binding, would allow the student recourse in the courts if not implemented. The proposed provisions will also require HEIs to use a scheme approved by the Secretary of State or, in Wales, the Assembly.

The Bill will also give the Assembly equivalent powers to the Secretary of State to designate an operator of a student complaints scheme. It is envisaged that this would be Universities UK, who are establishing a voluntary scheme, and that this would be operated on an England and Wales basis. However, there will be powers for the Assembly to designate another body to provide a scheme. The adjudicator's office would be funded by subscriptions from institutions.

Part 3: enables institutions to charge variable fees. It is intended under the Bill to provide parallel powers for both the DfES and the Assembly to introduce variable fees. It designates, for England, the Director of the Office of Fair Access (OFFA) as responsible for approving the plans of those institutions wishing to charge higher fees. However, OFFA will not operate in Wales. The Bill will give the Assembly the power to specify the basic fee level, and to set a cap on fees.

The Assembly Minister for Education and Lifelong Learning has announced that, following receipt of Royal Assent, an independent review of the issue of variable fees will be undertaken, to be Chaired by Professor Teresa Rees, who has previously carried out an investigation into student hardship in Wales, which was included in the Bill consultation process.³³

Part 4: relates to the transfer of student support functions and enables tuition fee payments to be deferred.

The intention is to transfer the majority of student support functions, including the policy on tuition fees, which presently lie with DfES to the Assembly.

³³ Assembly Record, 13 January 2004.

Excepted from this transfer of functions is the collection of repayments through taxation, which is operated on a UK-wide basis. Those functions will, therefore, remain with the Secretary of State for Education and Skills.

It also contains provisions to prevent student loans being written off by bankruptcy and provisions on disclosure of information.

Part 5: contains miscellaneous and general provisions relating to the extent of the Bill, and the process for exercise of regulation making powers under the Bill.

The Bill has been the subject of much controversy, in Westminster and in the Assembly, where the Assembly Education Minister, Jane Davidson, made a statement in plenary on 13 January 2004. Whilst many Members have questioned the principles behind the Bill, serious concerns were also raised in the Assembly about the practicalities of funding arrangements. The Assembly Government has given a commitment not to introduce variable fees in the lifetime of this Assembly, but all three opposition parties within the Assembly questioned whether the power not to introduce variable fees in Welsh Universities would be of any use to the Assembly if there is no money allocated by central government in addition to that awarded under the Barnett formula.³⁴ In response, the Education Minister stated:

“I have made it clear ... that we would only want student support transferred to Wales if we received a financial package that is acceptable to the Assembly Government. I have received assurances from Charles Clarke that the transfer in 2006 will be cost neutral ... We will make a statement on how we intend to fund higher education in Wales after the Bill receives Royal Assent, and after Professor Teresa Rees’ independent commission reports. We estimate that it will do so around the spring of 2005, and we will make a statement that autumn on our intentions as an Assembly Government.”

The Bill was debated in the Education and Lifelong Learning Committee on 28 January 2004, at which the Parliamentary Under Secretary of State for Wales, Don Touhig, was present. Several additional concerns were raised by Members:

- That the perceived level of debt incurred by students under the new proposals would deter many students from entering higher education.
- That the proposals in the Bill could create cross-border inequalities between England and Wales and also between England and Scotland.
- That the proposed cap on variable fees would create a market place in higher education.

The Bill continues its passage through the House of Commons.

Draft School Transport Bill

The National Assembly Transport Directorate has recently carried out an audit of school transport provision by local authorities in Wales, the results of which are anticipated before Easter 2004. In light of this, the Assembly Education and Lifelong

³⁴ *Assembly Record*, 13 January 2004

Learning Committee met on the 28 January 2004 to discuss the establishment of a School Transport Policy Review, the agreed terms of reference of which are as follows:

- “To examine the arrangements made by local authorities in Wales for transport of pupils by bus to and from school.
- To examine the type of buses used and measures taken to ensure the safety of pupils during their journey.
- The committee shall take account of the School Transport Bill, due to be published in draft later this year.
- The committee shall submit a report to the Assembly Minister and the Cabinet Sub-Committee on Children and Young People.”

The Committee will appoint an expert adviser to assist in the review in April and aim to have the report submitted to the Minister and cabinet sub-committee in November.

Traffic Management Bill

This Bill was introduced into the House of Commons on 11 December 2003. There are no specific Welsh clauses, although powers to issue guidance and to make regulations throughout the Bill have been given to the National Assembly. The Assembly also has commencement powers for the provisions in Wales.

The purpose of the Bill is to alleviate congestion and improve traffic flows on local authority roads and trunk roads in England and Wales. The Bill’s provisions can be broken down roughly as follows:

- Creation of a new traffic officer service for trunk roads
- Appointment of traffic managers and traffic directors within local authorities
- Strengthening of local authorities’ powers to co-ordinate streetworks
- Additional powers to local authorities to enforce traffic offences through the civil courts.

Planning and Compulsory Purchase Bill

This Bill received its first reading on 1 December 2003 and is divided into nine parts. Of particular interest to Wales and the Assembly is Part 6, which contains Wales-specific clauses, which overhaul the development plan system in Wales. Provision is also made for the Assembly Government to publish a national spatial plan for Wales to which local planning authorities will be required to have regard when preparing their development plans. This Bill has yet to be discussed in the relevant Assembly Committee.

Children Bill

Introduced into House of Lords on 3 March 2003, this Bill contains important provisions for the National Assembly. Part 1, which relates to the Children's Commissioner, extends to the whole of the United Kingdom, whilst Parts 2 to 5 extend to England and Wales only. Part 3 provides for Wales-only clauses in relation to childrens' services in Wales and Part 4 ('Advisory and Support services for family proceedings') devolves to Wales functions previously exercised across England and Wales together. This Bill also has yet to be addressed by an Assembly subject committee.

Health Protection Agency Bill

This Bill was introduced to Parliament on 27 November 2003. It establishes a new body to provide advice and support to the UK Government and to each of the devolved administrations on the relevant health matters within its remit.

Fire and Rescue Bill

The Bill was introduced into the House of Commons on 12 January 2004, following the earlier government White Paper³⁵. It has far reaching implications for Wales in that it proposes to devolve the responsibility for fire and rescue services in Wales to the National Assembly. It is yet to be discussed in the relevant Assembly subject committee.

Housing Bill

The Bill received first reading on 8 December 2003 in the House of Commons. It makes a number of reforms, such as introducing a national licensing scheme for housing in multiple ownership. However, the most noteworthy for the Assembly is the creation of a new office of Social Housing Ombudsman for Wales to provide an independent means for the investigation of complaints against social landlords in Wales.

Domestic Violence, Crime and Victims Bill

The Bill is intended to introduce reform to the civil and criminal law in the areas of domestic crime and violence by criminalising the breach of non-molestation orders under the Family Law Act 1996; by extending the availability of restraining orders under the Protection from Harassment Act 1997; and by making common assault an arrestable offence. Although criminal justice is not a devolved responsibility, the Bill

³⁵ Fire Services White Paper discussed in IWA April-May 2003 Monitoring Report

provides for the Assembly to be consulted by the Secretary of State on a number of issues. In response to the Bill, an All Wales Domestic Violence Strategy is currently being developed.

Developments Within the National Assembly

On 4 November 2003, the Home Office launched a consultation document *Policing: Building Safer Communities Together*. This set out the Westminster government's ideas for the next stage of reform of the police service, following the introduction of the Police Reform Act 2002. On 28 January 2004, the Assembly Minister for Social Justice and Regeneration, Edwina Hart, made a statement to the Assembly outlining the Assembly Government's response to the Green Paper. The main points to note were:

- Allowing local authorities to nominate elected councillors to represent their community needs – this would provide the link of democratic accountability between the police authority and the local authority.
- Would it be more efficient for the boundaries of the four Welsh police forces to be re-drawn to match those of the other emergency services in Wales, such as the ambulance and fire services?
- It would be beneficial, in terms of command and control, call handling and communication, if there were joint ventures with the ambulance and fire services – as is currently the case in Dyfed Powys. The Minister believes this might provide a more efficient service with cost savings.

The following pieces of statutory instruments were passed in the period:

- Approval of the Waste Management Licensing (Amendment) (Wales) Regulations 2004
- Approval of the Assembly Guidance on Regulatory Appraisal
- Approval of the Welsh Language Schemes (Public Bodies) Order 2004
- Approval of the Conduct of Members (Model Code of Conduct) (Amendment) (Wales) Order 2004
- Approval of the Local Government (Ordinary Day of Elections) (Wales) Order 2004
- Approval of the Housing Renewal Grants (Prescribed Form and Particulars (Amendment) (Wales) Regulations 2004 and the Housing Renewal Grants (Amendment) (Wales) Regulations 2004
- Approval of the Council Tax (Prescribed Classes of Dwellings) (Amendment) (Wales) Regulations 2004
- Approval of the Local Authorities (The Alteration of Requisite Calculations) (Wales) Regulations 2004
- Approval of the Council Tax (Demand Notices)(Amendment) (Wales) Regulations 2004
- Approval of the Miscellaneous Food Additives (Amendment) (Wales)

Regulations
2004

- Approval of the Education (Individual Pupil Information) (Prescribed Persons) (Wales) Regulations 2004
- Approval of the Jam and Similar Products (Wales) Regulations 2004
- Approval of the Health Professions Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2004 and the Health Professions Wales (Establishment, Membership, Constitution and Functions) Order 2004
- Approval of the Pesticides (Maximum Residue Levels in Crops, Food and Feeding tuffs) (England and Wales) (Amendment) Regulations 2003
- Approval of the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) (Establishment and Constitution) Order 2004
- Approval of the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) Regulations 2004
- Approval of the Water Industry (Prescribed Conditions) (Undertakers Wholly or Mainly in Wales) Regulations 2004

6. RELATIONS WITH WESTMINSTER AND WHITEHALL

Jessica Mugaseth, IWA

Health Minister Upsets Welsh Labour MPs

Health Minister Jane Hutt has been attacked by two Labour Westminster colleagues on health policy. Jon Owen Jones, MP for Cardiff Central, reiterated his concern that the Assembly Government's poor performance on hospital waiting lists is damaging the case for further devolution. He called for :

- Closure of some hospitals and services in some areas and opening new services elsewhere so that provision is located where it is most needed.
- Acknowledgement of efficiencies brought by the Public Finance Initiative.
- Charging Local Authorities for delayed discharges.

At the same time he conceded that reform was difficult and often painful:

“There is little the Richard Commission can suggest that can make the Assembly more willing to address change, but it can suggest ways to break the political gridlock in the Bay and create effective governments that can pursue and defend the public interest despite local unpopularity or narrow sectional lobbies.”³⁶

Meanwhile, Pontypridd MP Kim Howells sent a letter to Jane Hutt questioning her professionalism after it took over two months for her to respond to previous correspondence he had written on behalf of one of his constituents. When a response finally arrive it was signed by a member of her staff. A furious Mr Howells told the Western Mail:

“I have never had to suffer the discourtesy of a reply on an important subject like this one, not from the minister, but from someone unknown signing it on behalf of the Minister's diary secretary.”³⁷

Welsh Affairs Select Committee

The Welsh Affairs Select Committee published its fourth annual report setting out the six major inquiries it had completed during 2003:

- Transport in Wales

³⁶ *Western Mail*, 21 January 2004.

³⁷ *Western Mail*, 19 February 2004.

- Primary legislative process as it affects Wales
- Empowerment of children and young people
- Draft Public Audit (Wales) Bill
- Provision of Rail Services in Wales
- Manufacturing and Trade in Wales

In addition to *ad hoc* meetings with National Assembly Committees, the Welsh Affairs Select Committee and the Panel of Chairs of the National Assembly have agreed to hold twice yearly meetings to discuss issues of mutual interest. The annual report highlights its wish to enhance co-operation between the two institutions.

GM Crops

Rural Affairs Minister Carwyn Jones said he had not changed its policy on GM crops despite a ruling in Westminster to accept commercial genetically modified crops in the UK. Following the UK government's decision to allow commercial genetically modified crops, he said the Assembly Government would work in partnership with the other UK governments to discuss the possibility of introducing co-existence measures and exploring the possibility of voluntary GM free zones:

“DEFRA has agreed to commercial cultivation in principle. This is not the view of the Assembly Government. We have not accepted the principle that commercial cultivation should proceed. We have not agreed to the listing of Chardon LL. This is in the pipeline. We believe that coexistence should come before giving consideration to listing. No agreement on listing has been reached at UK level.”³⁸

He claimed that despite the Westminster decision, the Assembly Government have not agreed in principle to the commercialisation of GM crops and has taken no decisions as regards to listing crops. He explained that the Assembly Government believes that seeds must be put on the UK National Seed List. This would need the consent of all four UK administrations. He added that co-existence would be require a legal arrangement to ensure that sufficiently good measures exist to ensure GM crops and conventional crops can co-exist:

“I repeat that we have not agreed, even in principle, to allow GM crops to be grown in Wales. We are far from that situation, but we must ensure that we deal with every situation that could arise, and we must now consider co-existence”³⁹

³⁸ *Assembly Record*, 9 March 2004

³⁹ *Ibid.*

Barnett on Barnett

Lord Joel Barnett, namesake of the formula which determines how much money comes to the National Assembly and the Scottish Parliament, has disassociated himself from it:

“It is a great embarrassment to have my name attached to such an unfair system, especially as, when I introduced it, it was going to last only a year. It has now lasted more than 20 years, because successive governments have failed to deal with it for fear of upsetting the Scots.”⁴⁰

Boundary Review

Boundary review proposals for Wales will result in all of its 40 Westminster seats being retained, while involving significant changes in Gwynedd. There Caernarfon, Meirionnydd Nant Conwy and Conwy will be replaced by three new seats named Arfon, Dwyfor Meirionnydd and Conwy.

The new seat of Arfon will take in the northern part of the existing Caernarfon constituency, together with Bangor, which is currently in Conwy. The southern part of the Caernarfon constituency will be joined with the western part of Meirionnydd Nant Conwy to form the seat of Dwyfor Meirionnydd. As a result 7,000 voters will be transferred from Meirionnydd Nant Conwy to the new Conwy Seat. It is widely believed that these changes will make Conwy, currently held by Labour, more winnable by Plaid Cymru.

All other Welsh constituencies will keep their existing names with 20 undergoing minor changes and 17 with no changes at all.

Rail Review

Proposals to devolve public transport powers to the National Assembly for Wales will be discussed in a review of the rail industry announced by Transport Secretary, Alistair Darling. Secretary of State for Wales, Peter Hain, described these prospects of devolving further powers to the Assembly as:

“Devolution in action... Alistair Darling is pointing the way forward for more decisions on Welsh transport to be taken in Wales,”⁴¹

⁴⁰ House of Lords, *Hansard*, 7 January 2004.

⁴¹ *Western Mail*, 20 January 2004.

7. RELATIONS WITH THE EUROPEAN UNION

Jessica Mugaseth, IWA

Wales' Contribution to the European Convention

In an article for the Institute of Welsh Affairs, Des Clifford, the Assembly Government's representative in Brussels has revealed how the Assembly Government, in partnership with the Scottish Executive significantly influenced the UK government's contribution to the Draft European Constitution.⁴²

First Minister Rhodri Morgan engaged with thinking about the Convention at an early stage. It soon became apparent that the best hope the Assembly Government had to influence the debate was through the floor of the Convention rather than participating in the wider external debate. Fortuitously, the UK member of the Convention was Peter Hain, initially as Foreign Office Minister but later as Welsh Secretary, which allowed an easier entry than might otherwise have been possible.

The Assembly Government shared a clear community of interest with the Scottish Executive in developing ideas about how regional governments could be accommodated in the developing Constitutional Treaty. Together they worked up a set of ideas that were taken to the UK Government as a basis for discussion. They then collaborated closely with the Cabinet Office. A series of meetings were held at official level in London that brought the devolved administrations together with directly interested Whitehall departments. Working to a tight timeframe a text was hammered out which achieved the aims of the devolved administrations but which were also politically sellable to the UK Government. The document called for:

- Treaty recognition of the role of regions working within the member state.
- A clear statement of principles of subsidiarity.
- A role for devolved administrations in ex ante subsidiarity monitoring within the UK arrangements.
- Right of the Committee of the Regions to appeal to the European Court of Justice for violation of subsidiarity.
- Direct pre-legislative consultation by the Commission with implementing and transposing authorities.
- Reform of the Committee of the Regions obliging the Commission to explain why it rejects CoR opinion when that is the case.

Before devolution, the UK was one of the EU's most rigidly centralised members. Consequently, the proposed Convention text amounted to a very significant departure from previous UK policy. The possibility that the UK could emerge as the champion of the rights of regions was extraordinary, possibly even to itself, but certainly to French and German observers.

⁴² For a detailed account of the role Wales played see: Des Clifford 'How devolution changed the UK's foreign policy', IWA, *Agenda* Spring 2004.

A last hurdle had to be crossed before the paper became a done deal. The First Minister took it to a meeting of the Joint Ministerial Committee (Europe) to win the formal endorsement of the UK Government. In alliance with the Scottish First Minister, Jack McConnell, that was achieved in January 2003 and the proposals were adopted as UK policy. The convention paper was officially styled *A paper submitted to the European Convention on behalf of the UK Government and the Devolved Administrations in Scotland and Wales*. The First Minister later described it as Wales' "first contribution to UK foreign policy". It was perhaps the clearest example to date of devolution fundamentally changing the way the UK approaches Europe.

Peter Hain presented the joint paper at a special Convention plenary called to debate regional issues on 7 Feb 2003. In the weeks beforehand, the Assembly Government in Brussels worked closely with colleagues in Baden-Wurttemberg to co-ordinate Hain's contribution with that of Erwin Teufel, Minister-President of Baden Wurttemberg and the Bundesrat (German Upper House) representative to the Convention. The contribution had the desired impact. Few were expecting the UK, the traditional centralists, to emerge as the voice of regional interests. The effect was all the more powerful precisely because it was unexpected.

Of the six points listed above, five made their way – to a greater or lesser degree – into the final text of the draft Constitutional Treaty. Article 5 recognises the role of Regions (for the first time); Article 9 is a statement of subsidiarity that explicitly recognises the regional dimension (this is amplified in the protocol on subsidiarity appended to the Treaty). The Protocol on the role of member state parliaments establishes a mechanism for parliaments to scrutinise Commission proposals at pre-legislative stage, allowing objection on grounds of infringement of subsidiarity. The UK parliament has indicated that Wales and Scotland will be consulted within this mechanism. The Commission has committed itself to a measure of consultation with regional governments, although to a lesser degree than Wales would like. The Committee of the Regions is to be given right of access to the European Court of Justice but is otherwise left unreformed.

8. RELATIONS WITH LOCAL GOVERNMENT

Jessica Mugaseth, IWA

Extra Funding

In Gordon Brown's pre budget report in November he announced an increase in funding for local authorities in England and Wales to ensure minimal council tax increases. Through the Barnett formula consequence Wales received an extra £22,382,000.

Local Government Minister Sue Essex announced that £19, 508,000 of this money would be earmarked to increase the capacity of home care for the elderly. It would be used to reduce delays in transfers of care from hospitals and allow local authorities to improve the way they plan and fund care home places and therefore reduce pressures on council tax. The money may also be used for housing schemes that provide new ways of supporting elderly, infirm or convalescent people living in their own homes.

The money was distributed using a needs-based formula based on pensioner deprivation levels in each local authority. An additional £0.5 million was divided between the most deprived communities in Wales according to the Welsh Index of Multiple Deprivation. Through this formula, Monmouthshire only received £10 of the £500,000.

Opposition Members and Local Authorities attacked this ring-fencing of the money to the social care sector since it had been given by the Chancellor specifically to keep council tax rises down. Russell Goodway, leader of Cardiff County Council and finance spokesman for the Welsh Local Government Association said it was "ill-thought out."⁴³ However, the Finance Minister responded:

"This is money given directly to local government to reduce the pressures that they have, which in turn will influence council tax rises to make sure they are reasonable."⁴⁴

Of the extra funds some £3.5 million will be used to developing the free swimming initiative.

Meanwhile the Local Authorities have set their council tax for the forthcoming financial year. Despite the increase in budgets due to the extra money from Gordon brown's pre-budget statement, all councils will be raising their council taxes by amounts ranging from 2.4 per cent in Caerphilly and 9.5 per cent in Powys.

⁴³ *Western Mail*, 8 January 2004.

⁴⁴ *Assembly Record*, 14 January 2004.

Funding Consultation

The Assembly Government was undertaking a consultation on local government funding between February and April, raising two key issues:

1. What should the balance of local authority funding be in terms of the amount of revenue raised locally and resources provided by the Welsh Assembly Government?
2. What is the optimum method of local taxation to ensure that distribution of burden is fair to domestic and non-domestic taxpayers?

9. POLITICAL PARTIES

Gerald Taylor, University of Glamorgan

Labour

For Labour personalities loomed larger than issues, although the imminence of the Richard Commission's report exercised the party. Leighton Andrews, Labour AM for the Rhondda and a leading figure in the Yes campaign in the devolution referendum, called for a 'new consensus' on the Assembly and for Welsh Labour to set up a working group.⁴⁵

Meanwhile, Alan Trench, an academic at University College London's Constitution Unit, observed that, given his parliamentary duties, Welsh Secretary Peter Hain would play a crucial part in Westminster debates over the Richard Commission's findings.⁴⁶ Hain himself soon responded to the challenge, declaring that the Scottish model was not a 'panacea' for the problems of devolution, and that in his mind it was 'ruled out'.

Interestingly Hain claimed the 'bottom line' for change was the maintenance of 40 Welsh MPs.⁴⁷ This drew the response from Plaid that Hain was putting the interests of the Labour party before the interests of the people of Wales.⁴⁸ In fact Hain found himself defending his views not only against Welsh nationalist critics, but also against those in Scotland who saw his comments that Wales didn't need a Scottish style Parliament because the Welsh economy was doing better than Scotland as suggesting that the Scottish Parliament had failed to deliver. Hain claimed this was "deliberately misinterpreting" his views to create mischief and all that he had meant was that the model of devolution did not dictate its performance.⁴⁹

Hain sought to clarify his position in a speech at the Constitution Unit in which he pointed out that change to the devolution settlement was, in fact, ongoing. He argued for changes in the Assembly's electoral procedures to prevent those being defeated in constituency elections gaining a seat through the list system. A Parliament on the Scottish model would require another referendum in Wales.⁵⁰ He followed this up with a suggestion that Wales could follow Scotland's lead and establish a review of boundaries and voting systems after the Richard Commission had concluded its report.⁵¹ This drew the response from the Welsh Conservative leader, Nick Bourne, that the Richard Commission had already cost £788,298 and another review would be

⁴⁵ 'Labour "must forge new consensus on Assembly"', *Western Mail*, 29 November 2003.

⁴⁶ Alan Trench, 'Peter's Question for Ivor', *Agenda*, IWA, winter 2003/4, and Martin Shipton, "'Chance for Hain to grow as politician'", *Western Mail*, 27 December 2003.

⁴⁷ "'No Parliament for Wales'", *Western Mail*, 13 January 2004.

⁴⁸ 'Hain "jumping parliament gun"', *Western Mail*, 14 January 2004.

⁴⁹ 'Hain defends view on Scots devolution', *Western Mail*, 16 January 2004.

⁵⁰ 'Our powers struggle', *Western Mail*, 27 January 2004.

⁵¹ 'Hain seeks electoral change', *Western Mail*, 10 February 2004.

a waste of taxpayers' money. Plaid's Ieuan Wyn Jones described the proposal as 'blatant gerrymandering'.⁵²

Meanwhile Assembly Environment Minister, Carwyn Jones, was arguing for a review of Welsh quangos, a better relationship between elected politicians in the party at all levels, primary law-making powers for the Assembly, and a revision of the Barnett formula.⁵³

During First Minister's questions Rhodri Morgan commented that he was in favour of primary legislative powers for the Assembly, but not tax raising powers.⁵⁴ A joint working group of MPs and AMs was established and the issue was scheduled to be raised at the party's spring conference, with the Welsh Annual Conference put back from July to September to allow time for discussion of the report's findings. Nonetheless, Hain claimed he was not prepared to open the 'Pandora's Box' of accepting a Scottish Parliament model for Wales and nineteen Labour MPs signed a letter insisting that proposals for tax varying or law making powers should require a second referendum.⁵⁵

The relationship between Labour at the Assembly and in Westminster was raised in other areas as well. Following the Queen's Speech Rhodri Morgan defended the fact that space for only one Bill had been found.⁵⁶ However, he was attacked by Lord Morris of Aberavon, who asserted that the Welsh Secretary had "hardly any other real functions" than to argue for Welsh legislative time in Cabinet and that this was a "pretty poor reward for his efforts."⁵⁷

Welsh MPs also registered their concern at poor turnout for the Assembly elections in 2003 with the Welsh Affairs Committee, in a report on empowering children and young people,⁵⁸ supporting 'in principle' the lowering of the voting age to 16.⁵⁹ This call was later supported by Welsh First Minister, Rhodri Morgan.⁶⁰ Labour's Welsh MPs were also concerned that the Assembly was diverting UK Government funding intended in England to relieve council tax pressures to fund care for the elderly, and thus relieve bed blocking,⁶¹ as well as ongoing concerns over performance in health

⁵² 'Hain defends bid for second review of Assembly voting', *Western Mail*, 11 February 2004.

⁵³ Carwyn Jones, *The Future of Welsh Labour*, IWA, and 'Labour to be pressed over Assembly law-making', *Western Mail*, 26 January 2004.

⁵⁴ 'Rhodri's for more power – but not to levy taxes', *Western Mail*, 4 February 2004, and the Assembly *Record*, 3 February 2004.

⁵⁵ 'Hain wants "Pandora's Box" kept shut', *Western Mail*, 3rd March 2004.

⁵⁶ "'Be grateful for one a year'", *Western Mail*, 3rd December 2003.

⁵⁷ Martin Shipton, 'Labour elder rebukes Hain and Morgan over no Bills', *Western Mail*, 12th December 2003, and Hansard Lords, Vol. 655, no. 8, col. 717, 9th December 2003.

⁵⁸ Welsh Affairs Committee, *The Empowerment of Children and Young People in Wales*, vol. 1, TSO: HC177-1, <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmwelaf/177/177.pdf>.

⁵⁹ 'Cut the voting age to conquer apathy', *icWales*, 16th January 2004, and 'Welsh MPs join the calls to lower the voting age', *Western Mail*, 16th January 2004.

⁶⁰ 'Rhodri Morgan backs votes at 16', *Votes at 16*, 9th February 2004, <http://www.votesat16.org.uk/news.php?story=82>, and 'First Minister urges votes at 16', *News.scotsman.com*, 6th February 2004.

⁶¹ 'Labour split as council tax cash is diverted to health', *Western Mail*, 7 January 2004, and 'Chancellor asked to investigate WAG allocation of earmarked cash', *Western Mail*, 8 January 2004.

care.⁶² To mark Rhodri Morgan's fourth anniversary as First Minister on 9 February 2004, the *Western Mail* decided to mark his performance out of ten, giving him seven for promoting Wales abroad and personal charisma, but a weak 3.5 on authority over Cabinet - apparently because he has failed to sack Health Minister, Jane Hutt - and a poor two for public service delivery.⁶³

Meanwhile MP Llew Smith, who will be standing down from his seat in Blaenau Gwent at the next General Election, continued to leave his mark on Welsh Labour politics. Following his opposition to the women-only shortlist for selecting his replacement in Blaenau Gwent⁶⁴, he and Blaenau Gwent AM, Peter Law, led a local campaign to the National Assembly against Post Office closures in Blaenau Gwent, with some of the campaigners attacking 'New Labour's so-called modernization agenda'.⁶⁵ When Unison's regional secretary in Wales, Paul O'Shea, described criticism of the way in which union member, Maggie Jones, was selected in Blaenau Gwent, Llew Smith responded in the pages of *Tribune*, by arguing that 85 per cent of the constituency membership had 'boycotted' the meeting, and that this reflected a lack of democracy in the party. He further suggested that it was the fact that 'ordinary Labour members' lacked power in the party which had meant that instead of the 1 million membership party promised by Tony Blair, party membership was at 200,000 and falling.⁶⁶

Another internal critic of the Labour party in Wales, and former Welsh Secretary, Ron Davies, who had stood down from the Assembly at the 2003 elections, decided to resign from the party claiming that there was a 'huge void' as Labour was not performing and Plaid lacked credibility because of their commitment to independence.⁶⁷ Davies went on to criticise Welsh Labour's position over the Richard Commission saying they were neither strong enough nor willing to challenge the Labour Party in London over the issue.⁶⁸ Turning his attention to Labour in the Assembly Davies claimed the party had:

“... reverted to its worst kind of past behaviour in the Valleys. It is nepotistic, inward-looking, tribal, secretive and self-serving.”⁶⁹

At the same time he announced his own decision to join ranks with fellow Labour defector, John Marek, in Marek's new party Forward Wales.⁷⁰ The bookies seemed impressed, immediately making him joint favourite, with Labour incumbent, Jeff Cuthbert, to retake his old Assembly seat in Caerphilly.⁷¹ However, initial attempts for him to head a joint Forward Wales and Wales Green Party slate of candidates for

⁶² 'MP warns on Assembly's poor performance on hospital waiting', *Western Mail*, 21 January 2004.

⁶³ Martin Shipton, 'They call him the wanderer', *Western Mail*, 10 February 2004.

⁶⁴ See John Osmond (ed), *Wales is Waiting: Monitoring the National Assembly September-December 2003*, IWA.

⁶⁵ 'Old Labour slates New over closure of urban post offices', *Western Mail*, 9 December 2003.

⁶⁶ Llew Smith, 'It's an issue of democracy', *Tribune*, 6 February 2004, and 'Blair to blame for falling membership', *Western Mail*, 6th February 2004.

⁶⁷ 'Ron Davies quits "too right" Labour Party', *Western Mail*, 26 January 2004.

⁶⁸ 'Davies says Labour "in a mess" over powers', *Western Mail*, 27 January 2004.

⁶⁹ 'Labour in the Assembly: "nepotistic, tribal, secretive"', *Western Mail*, 23 February 2004.

⁷⁰ 'Davies to join Forward Wales', *Western Mail*, 23 February 2004.

⁷¹ 'Bookies to make Ron Davies joint favourite to win old Assembly seat', *Western Mail*, 24 February 2004.

the June European election proved unsuccessful. Wales Green Party leader, Martyn Shrewsbury, stated that his party's constitution ruled out an electoral alliance, and said he was "puzzled as to why Forward Wales feel the need to set up a new party." Kay Jenkins, head of the Electoral Commission in Wales, further stated that UK electoral law prohibited slates "comprising candidates from more than one party."⁷²

Conservatives

In a New Year message Mid and West Wales AM Glyn Davies called for a more optimistic, less introspective and more outward looking Welsh Conservative party. He said they had been held back by their focus on the UK rather than Wales and that this had contributed to their loss of support over the last 20 years.⁷³

The Welsh focus was certainly supported by the new UK Leader Michael Howard's return to his 'childhood home' in Llanelli. He reflected on the influence of the town and his time at the local Grammar School on his political views and career:

"If you grew up in Llanelli and you were a natural rebel interested in politics then you had to be a Conservative."⁷⁴

However, not everyone was impressed with the Conservatives commitment to Wales. The proposals to reduce the National Assembly's budget by £1 billion as part of an overall £35 billion reduction in public expenditure under a future Conservative government was criticized both by Secretary of State for Wales, Peter Hain, and by Plaid MP, Adam Price. Even Welsh Conservative leader, Nick Bourne commented that cutting back on administration might not cover the whole £1 billion. Welsh Liberal Democrat leader Lembit Opik asked why the savings on administration hadn't happened under 18 years of Conservative Government. First Minister, Rhodri Morgan, claimed they demonstrated a 'catastrophic ignorance' of the health service in Wales and that they would inevitably hit frontline services.⁷⁵

The dangers of relying on UK based media management under devolution were demonstrated by David Morris, the Conservative's parliamentary candidate for Carmarthen West and Pembrokeshire South, who sent out a press release prepared by Conservative Central Office in London. This referred to an Audit Commission report on the funding of local authorities in England without realizing that it did not apply to Welsh local authorities.⁷⁶

Other Conservative parliamentary candidates were also in the news. Monmouth AM, David Davies, who has been selected as the party's parliamentary candidate in the Monmouth constituency, followed up his criticisms of the All Wales Ethnic Minority Association (Awema) for failing to employ effectively grant money received from the

⁷² 'Rulebook dashes hopes of radical Welsh alliance in Europe', *Western Mail*, 4 March 2004.

⁷³ 'This is our year ahead, says Tory', *Western Mail*, 20 December, 2003.

⁷⁴ 'Tory leader focuses on Welsh roots on a trip back home', *Western Mail*, 6 December 2003.

⁷⁵ 'Assembly "£1bn worse off under Tory plans"', *Western Mail*, 17 February 2004.

⁷⁶ 'Tory in "spin" blunder', *Western Mail*, 15 December 2003.

Assembly⁷⁷, with claims that the Commission for Racial Equality (CRE) were ‘institutionally racist’ and ‘the best recruiting sergeants the British National Party could have’ in the way they dealt with race issues. The comments were raised at UK level following the disciplining of Ann Winterton, MP, for her public joke about Chinese cockle pickers, and David Davies issued an apology for any ‘misleading impression’ his comments had given.⁷⁸

Meanwhile, while one Conservative candidate, Dr Felix Aibel, was standing down in Brecon and Radnorshire; another, AM Alun Cairns, was being selected to fight Labour-held Vale of Glamorgan. Dr Aibel, who had stood for the Conservatives in Brecon and Radnorshire in 2001, trailing the victorious Liberal Democrat by only 750 votes⁷⁹, was said to be standing down after criticisms by local activists over the amount of time he was able to devote to the constituency⁸⁰, apparently the result of business pressures⁸¹. Alun Cairns, the Conservative’s economic development spokesman in the National Assembly, will seek to overturn a 4,700 Labour majority in the Vale of Glamorgan, and is the third Conservative AM to be selected to fight a parliamentary seat.⁸²

Plaid Cymru

Defeated for the Party’s presidency by Dafydd Iwan, Cynog Dafis set out his first challenge to the party’s new leadership warning against ‘becoming obsessed’ with independence and not dealing with more substantive immediate issues such as immigration. In an article for the Institute of Welsh Affairs’ *Agenda* journal⁸³ Dafis called on the party to support a ‘nation building’ programme around demands for a legislative Parliament, independent education system with a ‘truly’ national curriculum, strategy for growth in the Welsh language, a better focused cultural policy, a national broadcasting system, encouragement for a Welsh civil society, investment in Welsh transport, regional economic development, and the laying the foundations for a national labour market.⁸⁴

Whilst Plaid’s current generation of statesmen disagreed on the party’s future, one of its great historical formative influences, Gwynfor Evans, was celebrated by the readers of the *Western Mail*, who voted him Wales’ ‘greatest living statesman’, defeating the likes of Neil Kinnock, Rhodri Morgan, Jim Callaghan, Michael Heseltine and Geoffrey Howe to the award.⁸⁵

⁷⁷ ‘AM calls for inquiry into equality group’s activities’, *Western Mail*, 3 December, 2003.

⁷⁸ ‘Tory sorry for jibe at race body’, *Western Mail*, 27 February 2004, and ‘Tory calls CRE “institutionally racist”’, *Guardian Unlimited politics*, 26 February 2004, <http://politics.guardian.co.uk/conservatives/story/0,9061,1156815,00.html>.

⁷⁹ ‘Felix Aibel quits as Tory Candidate’, *News Wales*, 23 January 2004.

⁸⁰ David Cornock, ‘Empty Seats’, News Log, *BBC News*, 12 February 2004.

⁸¹ ‘Candidate quits marginal seat’, *BBC News*, 23 January 2004.

⁸² ‘Vale of Glamorgan marginal seat to be contested by AM’, *Western Mail*, 24 February 2004.

⁸³ Cynog Dafis, ‘Nationa Building’, *Agenda*, Winter 2003/4.

⁸⁴ Martin Shipton, ‘Avoid independence: Cynog’, *Western Mail*, 23 December 2003.

⁸⁵ ‘Gwynfor Evans tops poll for greatest living statesman’, *Western Mail*, 8 January 2004

Plaid also benefited from a donation of a computer software package worth £29,450 from Cardiff firm Splitside, providing the party with an enhanced computerized membership system.⁸⁶ This single donation amounted to considerably more than their cash donations, of £19,516 in the same quarter.⁸⁷

Plaid's Assembly leader, Ieuan Wyn Jones, focused firmly on the relationship between the Assembly and the UK government. Firstly he accused Welsh Labour MPs of 'anti-Welsh spin' in attacking the Assembly's health record. Whilst critical of Health Minister Jane Hutt's performance himself he claimed that seeing this as a result of the devolution process was 'plainly ridiculous'. He suggested that Labour MPs

“... see the next Westminster election looming on the horizon and those with small majorities are in a state of near panic as they will have to defend the Assembly government's appalling record on health.”⁸⁸

He followed this with a response to a statement by Environment Minister, Carwyn Jones, raising the possibility of replacing the Barnett formula which is the main mechanism for calculating the Assembly's budget. Ieuan Wyn Jones called for an independent inquiry and argued that a needs-based formula would improve the Assembly's budget by £800 million.⁸⁹ Finally, in a speech on the future of devolution the Plaid Cymru leader called for the Assembly to have law-making powers and the ability to vary income and corporation taxes and raise environmental levies.⁹⁰

Welsh Liberal Democrats

Welsh Liberal Democrat leader Mike German attacked his former coalition partner in a keynote address at his party's Spring conference in March. He accused Labour of stifling individual enterprise and creating a too much bureaucracy from above. Using examples of people he had met whilst travelling Wales he demonstrated how the structures created by Labour in schools, universities, the NHS and throughout other areas of public life were hampering the development of individuals:

“Note that is the individual who puts up with the unfairness. It is the system that inflicts it. And that is how it so often is. The individual against the system – not the system supporting the individual.”⁹¹

He added that Labour councils across Wales were losing sight of their aims:

⁸⁶ 'Software puts Plaid in big time', *Western Mail*, 26 February 2004.

⁸⁷ The Electoral Commission, <http://www.electoralcommission.gov.uk/media-centre/newsreleasedonations.cfm/news/290>.

⁸⁸ 'Ieuan attacks "anti-Welsh" NHS spin', *Western Mail*, 26 January 2004.

⁸⁹ 'Plaid calls for inquiry into how Treasury funds Wales', *Western Mail*, 5 February 2004.

⁹⁰ 'Wales "should control taxes"', *Western Mail*, 7 February 2004.

⁹¹ *Western Mail*, 8 March 2004.

“Labour run their council for the purposes of control. The purpose of such control often loses out to control for the sake of itself... councils have been hijacked by a few Labour barons intent on control rather than freedom. In each case, the system has taken over from the service.”⁹²

Meanwhile, the Welsh Liberal Democrats found themselves with e-mail problems in February. Firstly, the Swansea Labour Party accused Nick Tregoning, a Swansea Liberal Democrat councillor, one of the party’s candidates for the 2004 European elections and the regional manager for Liberal Democrat AM Peter Black, of using the National Assembly e-mail to contact Swansea Liberal Democrats during a council by-election. Peter Black said he had reminded his staff to keep local party and Assembly work separate, but described it as ‘a minor matter. There is no real cost involved when e-mail is used ... and it is different to rules over something like notepaper.’⁹³ Then a mistake by a party official sent an e-mail of an early draft of the party’s next General Election manifesto to Welsh Labour AMs.⁹⁴

The launch of their manifesto for the June local elections went more smoothly, and contained proposals to replace council tax with a local income tax and to allow local authorities to borrow money, although how this would be achieved by councils themselves was unclear.⁹⁵

Llais Ceredigion

Following on the heels of Forward Wales another new party was unveiled, although with more modest ambitions. Llais Ceredigion (the Voice of Ceredigion), announced that it would be fielding candidates in June’s local elections and had selected a potential mayoral candidate if a referendum agreed to a directly-elected mayor.

The party has been formed from the pressure group Llais Y Cardi which itself was formed to protest against proposals for the building of 6,500 houses in the area. Llais Ceredigion council candidates will target the seats of supporters of those proposals. Leader, Emyr Hywel, said that Llais Ceredigion had ‘been established to continue the process of solving the issue of the lack of democracy in Ceredigion’. The reaction from Plaid Cymru was hostile, with Ceredigion MP Simon Thomas, claiming the group had “misled the electorate.”⁹⁶

People Before Politics

⁹² *Ibid.*

⁹³ ‘Lib-Dem attacked over use of e-mail’, *Western Mail*, 21 February 2004.

⁹⁴ ‘Lib-Dems draft is sent to Labour’, *Western Mail*, 25 February 2004.

⁹⁵ ‘Lib-Dems unveil battle plans’, *Western Mail*, 27 February 2004.

⁹⁶ ‘Cardis register party for elections’, *Western Mail*, 3 January 2004; ‘From pressure to politics’, *Western Mail*, 7 January 2004; and ‘New party reveals election targets’, *BBC News*, 6 January 2004.

Meanwhile, there will be another new party contesting all 33 seats in Merthyr Tydfil local elections in June. *People Before Politics* is made up from a cross section of local people who are dissatisfied with existing parties and with the way the council is being run. The party says it will deliver services in a open and accountable way, to effectively respond to the challenges of renewal and regeneration. It promises honesty, integrity, openness, commitment, pride, fairness, accountability, democracy, mutual respect, unity and credibility.

10. PUBLIC ATTITUDES

Jessica Mugaseth, IWA

Daily Post Assembly Survey

A survey commissioned by the Daily Post in north Wales revealed that over 70 per cent of respondents believed that the National Assembly is biased towards the south. The poll of 334 people, of which only one third voted for devolution, highlighted the divisions that continue to exist between the north and south in Wales. The following tables show the main results of the survey. The split in opinion between the six counties could be reflection of how Assembly Government policies have been implemented. For example, Flintshire received a £20 million grant to build a new Airbus plant, arguably the reason why respondents there were significantly more positive about devolution.

Table 1: Does the Assembly serve North or South Wales?

North Wales	4.2 per cent
South Wales	70.4 per cent
Serves Both the Same	8.4 per cent
Don't know	17.1 per cent

The results indicate that despite efforts by the Assembly Government, including a Minister from north Wales in the Cabinet, public perception remains sceptical about the equality of treatment between north and south Wales. The detailed results revealed that half of those who feel the Assembly serves North Wales were from Flintshire.

Table 2: Would you scrap the Assembly tomorrow if they could?

Would continue with devolution	49.4 per cent
Would scrap it	33.8 per cent
Don't Know	16.8 per cent

Encouragingly, when asked about the future of devolution the majority were in favour of keeping the Assembly. The highest proportion of those wanting to keep the Assembly were within the 18-29 age range. This contrasted with over 57 per cent of 50-59 year olds who wanted to abolish the Assembly. The response in Gwynedd was also hostile to the Assembly, with almost 44 per cent of respondents saying they would abolish the Assembly.

Table 3: Has living in Wales improved since devolution?

Strongly agree	2.7 per cent
Agree	29.3 per cent
Neither agree nor disagree	12.3 per cent
Disagree	31.7 per cent
Strongly disagree	9.3 per cent
Don't know	14.7 per cent

Over 30 per cent of respondents felt that their lives had improved since devolution, with the most positive responses coming from the younger groups: 42 per cent of 22-29 year olds said that living in Wales had improved.

Table 4: How do you rate the Assembly?

Very good	4.2 per cent
Fairly good	0.7 per cent
Average	26.9 per cent
Fairly poor	20.1 per cent
Very poor	13.5 per cent
Don't know	14.7 per cent

However, the Assembly did not fare well on its performance. More people rated it as 'poor or very poor' than 'average or above'. Nobody in Wrexham thought the Assembly was doing a very good job whereas in Conwy 10 per cent of those asked thought this to be the case.

Welsh Identifiers

In the latest Welsh Labour Force Survey, 67 per cent of adults considered their national identity as wholly or partly Welsh. Sixty per cent of adults in Wales stated their national identity as Welsh only.⁹⁷ A further 7 per cent described their national identity as Welsh but included another identity, most commonly British, in their answer.

As expected, the most important factor associated with Welsh identity was country of birth. People born in Wales were far more likely to describe their national identity as Welsh (87 per cent) compared with those born in England (15 per cent), in other UK countries (17 per cent) or outside the UK (13 per cent).

Among the general population, Welsh identifiers was most common in south Wales. Merthyr Tydfil had the highest proportion of people who reported a Welsh identity (85 per cent). It was one of a band of five Unitary Authority areas stretching from Neath Port Talbot in the mid south to Blaenau Gwent in the south east where 80 per cent or more identified as Welsh.

The survey revealed that 22 per cent of people identifying themselves as Welsh now live elsewhere in Britain, with the large majority attracted to the south East of England. It shows Welsh people living in England are, on average, more highly qualified and more likely to belong to higher social classes than those in Wales. The figures also show that 38 per cent of working-age male Welsh identifies living outside Wales are

⁹⁷ *Focus on Wales: Its People*, ONS, 8 January 2004. A national identity question was introduced on the Labour Force Survey in 2001. Respondents in Wales were asked if they considered their national identity to be Welsh, English, Scottish, Irish, British or another national identity. They could choose as many or as few options as applied to them.

graduates, compared with 10 per cent in Wales. Among Welsh women nearly half of those living outside Wales are members of the managerial and professional class, compared with 22 per cent of women living inside the country.

Three out of four people living in Wales at the time of the 2001 Census were born in Wales (75 per cent). A further 20 per cent were born in England, 2 per cent were born in other UK countries or Ireland, and 3 per cent were born in countries outside the UK. The proportion of people resident in Wales who were born in Wales has declined over the post-war period. At the time of the 1951 Census, 83 per cent of people living in Wales were born there. This fell to 77 per cent in 1991 and 75 per cent in 2001.

By contrast, the proportion of English-born people living in Wales increased during this period. Whereas in 1951 fewer than one in seven people living in Wales were born in England, by 2001 this had grown to more than one in five.

The proportion of people who were born in Wales differs markedly across Unitary Authority areas, with the highest proportions found in South Wales. In both Blaenau Gwent and Merthyr Tydfil 92 per cent of residents were born in Wales, followed by Caerphilly, Rhonda Cynon Taff (90 per cent each) and Neath Port Talbot (89 per cent). The northern border authority of Flintshire had the lowest proportion of residents born in Wales, only 51 per cent. Conwy and Powys had the next lowest proportions, 54 and 56 per cent respectively.

11. PRESS AND MEDIA

Jessica Mugaseth, IWA

John Marek and Dragon's Eye

The reliance that the Labour administration has on John Marek remaining Deputy Presiding Officer in the Assembly was clearly demonstrated in a plenary session which he chaired due to the absence of the Presiding Officer through illness.

While the First Minister was making a statement about the appointment of the new Counsel General, questions were raised by Labour Members about the suitability of John Marek remaining chair. These followed his comments to the BBC Wales political programme *Dragon's Eye* concerning Rhodri Morgan's involvement in the application process. In the television interview John Marek expressed his dissatisfaction with the First Minister's intervention:

“What Rhodri Morgan has done strikes at the heart of how we administer the country. It amounts to a politicisation of the civil service. That's something that we've not had in this country. The result has been that we have had a country which has a lot less corruption than any other country in the world and we want to keep it that way.”⁹⁸

When asked about the accusations of cronyism, the Deputy Presiding Officer replied:

“ I don't see what other explanation there is.”⁹⁹

In the Assembly chamber Rhondda Labour AM, Leighton Andrews, suggested that was John Marek himself had leaked the story to the media, asking the First Minister:

“Can you tell us whether your proposed leak inquiry would be able to investigate whether the source of the leak was the Assembly Member for Wrexham?”¹⁰⁰

Labour Members recognised their need to have two opposition members in the Presiding Office chair to sustain their majority. Hence they would not call for a vote of no confidence in the Deputy Presiding Officer. With their hands tied, Caerphilly AM Jeff Cuthbert called for a point of order:

“It was a question of your suitability to chair this particular session because of the strong views that you expressed ... which suggested to me that you were

⁹⁸ BBC Wales *Dragon's Eye*, 4 March 2004.

⁹⁹ *Ibid.*

¹⁰⁰ *Assembly Record*, 9 March 2004.

not impartial in this matter and that, in that sense, you had a personal interest.”¹⁰¹

Despite the objections and following the suspension of plenary for half an hour to consult standing orders, the Deputy Presiding Officer exerted his authority:

“This is an exceptional circumstance, but I believe that the interpretation of Standing Order No 1.10 is clear, and the question is: do I have a direct or indirect personal or financial interest? I have considered this matter before, of course, and having listened to Jeff Cuthbert, I have considered it again and I have to say that my mind has not been changed. I do not have a personal or financial interest, and therefore we should move on.”¹⁰²

The plenary session then continued with the opposition parties taking the opportunity of reminding the Assembly Government of their precarious majority and their dependence on the opposition members to chair the Assembly. As Plaid Cymru leader Ieuan Wyn Jones put it:

“I remind you that you only govern because two opposition members hold the posts of Presiding Officer and Deputy Presiding Officer. That may not always be the case and I would ask you to remember that.”¹⁰³

Western Mail Supports Legislative Advance

Strong support for Environment and Rural Affairs Minister Carwyn Jones call for primary legislative powers was given by a Western Mail leader in January. It stated:

“Mr Jones makes a very good point when he asks why our Assembly should be the only one of eight Parliaments and Assemblies in the UK not to have primary law-making powers. Why, indeed, should the House of Keys on the Isle of Man have such powers when our Assembly does not? ... Any answer other than one that commits to redressing this anomaly will betray a prejudice against Wales as a nation unacceptable in the 21st Century.”¹⁰⁴

The paper attacked other Welsh Labour leaders for failing to give a lead, saying the ground was being left clear for those opposing any change:

“The decision of Welsh Labour not to make a substantive submission to the Richard Commission was quite extraordinary. Its official reasoning was that it would be inappropriate for the Assembly’s governing party to make its views known before the Richard report is published. The real reason was to keep under wraps for as long as possible the fundamental splits over devolution that

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ ‘Lone voice as Labour dawdles over laws’, *Western Mail*, 26 January 2004.

have existed for many years in the party and continue to dog its consideration of constitutional matters.”¹⁰⁵

¹⁰⁵ *Ibid.*