



The Constitution Unit



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Nations and Regions: The Dynamics of Devolution

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**FARMING CRISIS
CONSOLIDATES ASSEMBLY'S
ROLE**

MONITORING

**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

MARCH TO MAY 2001

**Edited By
John Osmond**

May 2001



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SUMMARY

As the UK general election approached, delayed by the foot and mouth crisis until 7 June, the electoral politics of the Westminster debate threatened to drown out the concerns of the National Assembly. Nowhere was this more so than in the mounting sense of crisis around the position of Deputy First Minister Mike German and the stability of the Coalition. Accused of impropriety in his former position as Head of the Welsh Joint Education Committee's European Unit, German became besieged by a media-led campaign demanding that he resign, or at least stand aside until he had cleared his name. First Minister Rhodri Morgan insisted throughout that his Deputy need not resign unless and until there was a formal police investigation. At the time of writing this had not materialised, despite the WJEC handing a copy of an internal auditor's report on Mike German's activities to the South Wales Police. The allegations had first appeared when the Coalition Administration was formed in October 2000, raising suspicions then about their timing. Their re-emergence in the middle of the general election campaign rekindled these questions. Despite divisions within the Labour Group the Administration's line has been held, at least until after the general election. The issue may re-emerge as a result of an investigation underway by the European Commission's anti-fraud unit OLAF into contracts between the EU and the WJEC, apparently signed by Mike German. This may result in the WJEC being forced to repay as much as £1m of EU grants. Rhodri Morgan insisted that no Minister subject to "speculative allegations" should be forced to stand aside declared Mike German was being subjected to "trial by media". It was noteworthy, however, that the issue hardly penetrated the media beyond the border.

Neither did the Assembly's Administration's record in handling the foot and mouth outbreak, but it proved a significant event in the Assembly's development. This report judges that it consolidated devolution providing an opportunity for the Assembly to prove its credibility. In particular the Administration, led by an authoritative Agriculture Minister in Carwyn Jones, demonstrated that it was capable of handling complex problems involving multi-level governance in a period of crisis. In turn this reflected on the Assembly more generally, doing something to dispel a widespread view that it is little more than a talking shop. In the process there developed a sense that Cardiff is increasingly replacing London as the main location of political accountability in Wales.

Meanwhile the Assembly's Operational Review under the chairmanship of the Presiding Officer increasingly took on the character of a Constitutional Convention. Substantial submissions were made by each of the parties, in particular the Conservatives and Plaid Cymru. The Review is being carried out within the framework of the 1998 Wales Act and is concentrating on procedures rather than policy. Nevertheless, it is striking how rapidly a consensus is developing across the parties on such matters as the need for a stronger identity for the Welsh Government in the Assembly, the role of the Subject Committees, and improved mechanisms for influencing primary legislation in Westminster.

1. THE ADMINISTRATION

Nia Richardson and John Osmond, IWA

(i) Dealing with the Foot and Mouth Crisis

Six days after foot and mouth was first diagnosed in England in late February, the outbreak reached Wales when a lamb infected with the disease was found at Gaerwen abattoir, Anglesey. Within hours an exclusion zone of 16km around Gaerwen had been formed, emergency powers to make the countryside a prohibited area for walkers had been passed, free helplines had been established in the Assembly and the Ireland Wales five nations rugby match had been cancelled.

A few days previously, Agriculture Minister Carwyn Jones had been hinting that Wales could lobby for movement licenses, abdicating from the UK wide movement ban if a case wasn't found in Wales within the next seven days:

“It would be possible for us to be able to export from Wales even though the export ban might be in place in the rest of the United Kingdom. It isn't the case that the ban has to exist on a member-state level or not at all. It is possible for regionalisation to take place.”¹

Whilst this was no longer an option, the quote proved that even before foot and mouth had reached the border the crisis was being addressed within a highly distinctive Welsh context, with a willingness to take a radically different approach from England if necessary. At the same time, although the Assembly was facing a major rural crisis, it had few real powers to deal with it. The only powers it had were over the export of meat and livestock and access to public footpaths. Despite these constraints, the Assembly was so pro-active in its handling of the crisis that it can be argued that the experience served to consolidate devolution in Wales.

Firstly, the Assembly proved that it could get to grip with a crisis. It effectively assumed powers from Whitehall by becoming MAFF's agents in charge of disease control in Wales.

When foot and mouth was confirmed in Wales on 27 February, the Assembly established an operation room in Cathays Park which was to manage, on behalf of MAFF, the culling of infected animals and prevent the spread of the disease. The Assembly's Agriculture Division established information points across Wales, some of them within the Assembly's existing rural offices. It also rushed through emergency powers to make

¹ The Western Mail 24 February 2001

Wales a prohibited area giving local authorities the power to close public footpaths (see the Section on *The Legislative Process* in this report, pages 51-58, detailing the procedures that were adopted).

When it came to dealing with contiguous culling, the Assembly took a different approach to England. In England livestock at neighbouring farms of infected holdings were automatically slaughtered. In Wales, farmers were asked to allow vets on to their land so they could take local circumstances and natural barriers into account when assessing the risk of the spread of the disease and deciding whether the animals should be culled or not. This approach was later used in England. Another distinctive Welsh initiative was 'follow up visits' to infected farms after their livestock had been slaughtered.

It was the Assembly Administration which took the difficult decisions over the mass slaughter of sheep in north Powys and Anglesey and how and where the carcasses would be disposed. These were decisions that had to be taken quickly. On the whole they were taken quicker and more effectively in Wales since the Assembly was dealing with a much smaller area than the Whitehall Ministry for Agriculture, Fisheries and Food (MAFF). It is arguable that in the process the Welsh Government became clearly visible to the Welsh public as a major decision-maker for the first time. Indeed, when furore broke out over the fact that Wales had not been included in the remit of a Downing Street task force to assess the impact of the crisis and draw up a rescue plan, it was suggested by 'source close to the UK Cabinet' that this was because Wales was dealing with the crisis better than England,

“I don't think for a moment that there's any snub to the Assembly. It's just that the UK Government itself is in a mess as to what it's going to do.”²

When the Downing Street taskforce was announced Assembly Ministers and officials were angry that Wales was not part of its remit and that the Assembly had not even been consulted on the matter. As Carwyn Jones put it:

“It's important that we realise this is a UK disease and it is a matter for all arms of government to come together and put forward a plan to help the economy recover and prosper.”³

Pressure from the Assembly led to David Hanson MP, a Minister at the Wales Office being invited to join the taskforce the following day. However there was some disappointment that a representative from the Assembly had not been chosen. Carwyn Jones and Downing Street later attempted to play the whole saga down as a 'mistake' by Downing Street officials who had assumed that it was an English task force and not an UK-wide group. In the meantime, Carwyn Jones established Wales' own taskforce which was a slimmed down version of the Rural Partnership. This group was asked to draw up a rural recovery plan for Wales to be put in hand after the disease abated.

² Western Mail 14 March 2001

³ *Ibid.*

Another point of contention between Whitehall and the Assembly was over vaccination. MAFF was keen to use vaccination as a fallback contingency plan in the blackspots of Cumbria and Devon if the disease continued to spread. Carwyn Jones travelled to London on the 18 April to tell MAFF that vaccination would not be used in Wales and would not receive the approval it needed from the Assembly.

However, whilst the Assembly Administration took a maximalist view of its powers in managing the disease and also managed to assert itself against Whitehall on several occasions, there were still moments of frustration. Nowhere was this more acute than on the subject of movement licenses, a power that had been devolved to the Scottish Parliament but not to Wales.

There were complaints during a reconvened Rural Affairs Committee meeting on 11 April that London was obstructing the Assembly. The Welsh Chief Veterinary Officer Tony Edwards had advised that it would be safe to relax regulations over the movement of animals in some areas so that they could be taken to better pastures or abattoirs. North Ceredigion was one of the areas mentioned. However, London had overruled attempts to relax regulations and the removal of North Ceredigion from the list of affected areas. During the meeting the Minister conceded that he found the fact that easing restrictions was not a power exercisable by the Assembly while it was available to the Scottish Parliament as “frustrating”.⁴

Nonetheless, by taking the lead in dealing with foot and mouth the Administration had demonstrated that the Assembly was more than a talking shop. Its proactive role in showed that it was capable of exercising the same powers as the Scottish Parliament. As Carwyn Jones put it:

“We can handle the situation. We should have the same powers as Scotland.”⁵

While the foot and mouth crisis consolidated devolution by showing that the Assembly could get to grips with an issue, it also made a difference in Wales by bringing decision-makers closer to people on the ground and providing a new point of accountability. The Agriculture Minister Carwyn Jones and his officials travelled throughout Wales meeting farmers and their representatives every day during the crisis. The Minister dispatched 3000 letters to every farmer in Wales advising on the symptoms of foot and mouth, accessing arrangements and other matters. Carwyn Jones claims this interaction between decision-makers in the Assembly Administration and the people affected would not have occurred during the days of the Welsh Office régime:

“You’re closer to the ground. You meet the farmers. England is too big for that. And officials in the old Welsh Office would never have done it.”⁶

⁴ Agriculture and Rural Affairs Committee 11 April meeting

⁵ Interview with Carwyn Jones, 8 May 2001

⁶ *Ibid.*

In a plenary debate on 15 March, Glyn Davies the Conservative Chair of Rural Affairs Committee explained that the Committee had also played its part in bringing the views of the people to decision-makers. Referring to a meeting of his Committee the previous day, he said,

“All the concerns that people have throughout Wales found a way into the debate, and I hope that you ensure that whatever you do is related closely to the views of the Agriculture and Rural Development Committee. In a political institution like this, there can be no better way to hold a detailed discussion on such an important issue.”⁷

However, nothing pointed to the change in public focus from London to Cardiff more than the events that took place in the Epynt mountain range in Breconshire during early April. On 30 of March, Carwyn Jones confirmed that livestock culled in Powys would be burned or buried at an army firing range on the Epynt near Sennybridge. By the next day police were guarding the entrance to the Epynt after farmers had begun demonstrating as slaughtered animals were brought from as far as 100 miles away to be buried there. The protesters' main concerns were that dead sheep would affect those grazing on the Epynt and that the presence of carcasses underground would pollute watercourses that rise here and flow throughout south and west Wales. The protest reached its peak on 2 April when a bulldozer that was to have been used in the culling was stolen and used to ram its way through a security cordon injuring a police officer.

Action taken following the Epynt incident demonstrated how the presence of the Assembly made a difference to Wales during the crisis.

- Firstly, the protesters were able to meet the Assembly Minister for Agriculture to voice their concerns. On 30 March, a delegation of the 300 protesters met with Carwyn Jones to discuss alternative arrangements for the disposal of carcasses. It is unlikely that the protesters would have met an official from the old Welsh Office and it is even less likely that they could have had meetings with MAFF.
- Secondly, it showed the extent to which the Assembly Administration had taken over as the institution to which most attention was directed the focus. For instance, in an article in the Guardian a representative of the protest, Katherine Jones from Sennybridge directed all her anger towards Carwyn Jones and the Assembly. Pointing out that graffiti displayed in the Breconshire village of Trecastle read *Welsh Assembly: you are the weakest link* she wrote:

'We've been let down...the National Assembly is supposed to be working in the national interest of Wales...They are willing for this area to be sacrificed

⁷ Record of proceedings, 15 March 2001

so that a round-the-clock cull can be maintained. We have been sold down the river because this is a rural area with a sparse population.⁸

- Thirdly, the fact that the 'drama' was played on a much more local stage led to Epynt becoming the most monitored site in the UK despite the fact that events here were little different to what was happening elsewhere. Eventually, on 19 April, dumping at Epynt was abandoned. Assembly officials had been able to negotiate a deal to export a small number of carcasses for dumping in England.

In short, without the Assembly it is unlikely that the concerns voiced at Epynt would never have been recognised and dealt with in such a relatively sensitive way: it would have been just another burial site in Wales.

At the same time discontentment with the Administration's approval of burial sites led to the first and only ministerial victim of the foot and mouth crisis in Wales. On 12 April the Deputy Minister for Education and Lifelong Learning, Merthyr AM Huw Lewis, issued a Press Release expressing his anger that neither himself nor local councillors in his Constituency had been consulted on a proposal to use the Trecatti tip on the edge of the town as a site for the disposal of sheep carcasses.

Breaking party ranks, and indeed collective ministerial responsibility, the Press Release was sharply critical of the Rural Affairs Minister Carwyn Jones,

“The handling of this whole business has been a shambles. I am disgusted that the wishes of my constituents have been ignored in this way and that as their elected representative I have been kept in the dark for virtually the whole of the last two weeks. I have spent nearly two weeks urging Carwyn Jones not to allow this instruction to be given and on every occasion he has been evasive. There is strong opposition to this from the many communities that I represent and I am disgusted that our wishes and our views seem to matter so little to the Minister.”⁹

This outburst was all the more surprising since, as a former senior Labour Party official Huw Lewis had a reputation as an ultra-loyalist who would never step out of the 'party line', an aspect of the affair that was reflected in Carwyn Jones' response:

“Huw Lewis's comments are not grounded in sense or reason. When I read the press release I wondered which party he was a member of.”¹⁰

Huw Lewis's position rapidly became inevitably untenable and he resigned his Cabinet position six days later after refusing to withdraw his comments. This was his second resignation in the Assembly's short life. The first was his resignation as a Labour whip in

⁸ The Guardian 10 April 2001

⁹ Office of Huw Lewis AM, Press release 12th April 2001.

¹⁰ The Western Mail 13 April 2001

a protest following Alun Michael forced resignation as the Assembly First Minister in February 2000.

The episode did nothing to deflect a general impression that Carwyn Jones, the Minister for Agriculture was handling the foot and mouth crisis extremely well. Though representing the urban constituency of Bridgend he soon developed an easy relationship with farmers' leaders and the farming community generally. Being a native Welsh speaker undoubtedly helped. And although at 34 he is one of the youngest of the Assembly's members, and the youngest in the Cabinet, his bearing – he is a large man with a strong Welsh-intonated voice – and his background as a barrister contributed to his relaxed air of authority. On the whole he dealt with a fraught few months with a calm assurance. Certainly he received nothing but plaudits during Assembly plenary sessions from all sides, as the following comments illustrate:

“I record the Liberal Democrat's thanks to the Minister for his efforts during this outbreak and to his staff. We are well aware of the pressure on the department, given a possible lack of resources.” (Mick Bates, Liberal Democrat, 8 March)

“I thank Carwyn for the way he is dealing with this catastrophe.” (Dafydd Wigley, Plaid Cymru, 8 March)

“Carwyn Jones... who has done a good job in difficult circumstances.” (Nick Bourne, Conservative, 20 March)

However, the mood changed during the first weekend of April when opposition emerged against proposals to bury the carcasses of slaughtered animals at sites in Anglesey and Sennybridge. Carwyn Jones spent the day on Anglesey listening to the concerns of local people over the burial of carcasses at Penhesgyn quarry. Anglesey County Council had voted against using the quarry as a dumping site. Whilst the Minister insisted that the quarry be used, he was forced into promising to look for alternatives.

He was on his way from Anglesey to his home in Bridgend when he heard about the protests in the Epynt at Sennybridge. Diverting to Epynt he arrived to face 300 protesters obstructing the entry to the Epynt Mountain burial site. During the day the protesters included his fellow AM's Kirsty Williams (Liberal Democrat) and Nick Bourne (Conservative). Kirsty Williams was not happy:

“People are very angry. They first heard of plans to dump on the Epynt from the news. There was not an iota of prior consultation. I warned Carwyn last week that he faced trouble over disposal of carcasses from Powys.”¹¹

The Minister met with the protesters' representatives and, in a similar commitment to the one he had made in Anglesey, he promised to consider any other alternatives that Powys

¹¹ The Western Mail 3 April 2001

County Council could offer. The Epynt protest erupted into violence later that day as one protester used a bulldozer to ram through the security cordon surrounding the site and injuring a police officer. The Western Mail labelled it as

*'The day Carwyn lost control.'*¹²

Despite this, the Minister refused to be moved on the necessity of burying at Epynt. He perhaps had reason to be confident since he had the support of the Farmers' Unions who wrote a joint statement with him on 12 April explaining why dumping at Epynt had to happen,

“We have a common purpose, to defeat foot and mouth disease. We have to complete the cull as quickly and effectively as possible, and to do that we must dispose of the carcasses swiftly. Livestock from infected farms are being burned or buried on farm, but it is simply not practical for that to happen with the livestock culled from neighbouring farms. It would slow down the cull immensely. If we are to keep ahead of the disease the only option is to bury or burn on centralised sites that have been properly prepared and meet the Environment Agency's stringent standards. The site at Epynt is the only such site currently available.”¹³

Carwyn Jones' position on Trecatti and other dumping sites was just as unequivocal:

'It is about time we stopped thinking purely about our own communities and started thinking about Wales. We cannot have this rampant nimbyism. Everyone may have to have their fair share if Wales is to conquer this disease.'¹⁴

While the Epynt debate was underway, another incident served to increase the pressure on the Minister. On 13 April, a man in Gilwern near Abergavenny was caught on video firing bullets at loose sheep and lambs in a field. The video was subsequently aired on the Welsh television and photographs appeared in the Press. The impression was of the cull was getting out of control. A Western Mail editorial *Get a grip Carwyn, and take control* was particularly critical:

“Many people will find the whole episode shocking. Others, particularly those caught up in the foot-and-mouth fiasco themselves, will not be particularly surprised. They will see this as just the latest symptom of the confusion that has dogged almost every aspect of the attempts to contain and eliminate the disease. We have already seen farmers loading animals on to trucks for slaughter only to be told of long, unexplained delays. We have seen 4000 sheep buried at an airfield, only to be removed when they contaminated local water courses. These and the latest worrying twist now demand a clear response from Rural Affairs Minister Carwyn Jones. He must either condemn the Gilwern incident and promise real action to

¹² The Western Mail 3 April 2001

¹³ The Western Mail 12 April 2001

¹⁴ The Western Mail 14 April 2001

stop it from happening again or he must explain why it happened. Either way he must get a grip on the foot and mouth situation in Wales and start asserting his authority.”¹⁵

The video also prompted a frank exchange of views between Carwyn Jones and Peter Rogers, a Conservative north Wales AM and an Anglesey farmer. In the Western Mail Rogers was reported as claiming that

“ ... the alleged cruelty captured on amateur video bore no comparison to the lingering death of thousands of animals suffering because of appalling welfare conditions ... Carwyn Jones had ignored his calls for urgent action to be taken under the welfare disposal scheme.”¹⁶

However, Carwyn Jones was quick to defend himself,

'I've told Peter Rogers many, many times that the Intervention Board runs the welfare disposal scheme. It doesn't seem to register in his thick head. Sometimes I wonder whether Peter understands disease control at all.’¹⁷

However, the Minister survived these first two difficult weeks of April. By middle of the month he found the Western Mail was congratulating him on his approach to the crisis:

“Carwyn Jones has come out fighting in his drive to eradicate foot and mouth. The Rural Affairs Minister has not had the best of weeks, with outspoken criticism from fellow Labour AM Huw Lewis and protests at disposal sites. His tough talk and non-nonsense approach must be applauded at a time of crisis.”¹⁸

The crisis certainly promoted Carwyn Jones's profile in Welsh politics. The competency he displayed saw him emerge as a prominent member of the Cabinet and a potential successor to Rhodri Morgan. The foot and mouth outbreak also provided the Assembly as a whole with an opportunity to prove its credibility. Despite some instances of confusion, notably over the issue of burial sites, the Assembly Administration demonstrated that it was capable of handling complex problems involving multi-level governance in a period of crisis. In turn this reflected on the Assembly more generally, doing something to dispel a widespread view that it is little more than a talking shop. In the process there developed a sense that Cardiff is increasingly replacing London as the main location of political accountability in Wales. A Western Mail editorial reflected this succinctly:

“Some of the confusion to date may have arisen because responsibilities are divided between the Ministry of Agriculture, Fisheries and food and the National Assembly.

¹⁵ The Western Mail 14 April 2001

¹⁶ The Western Mail 16 April

¹⁷ Ibid

¹⁸ The Western Mail 18 April

But Mr. Jones is the man with his head on the block in Wales, not the faceless bureaucrats of MAFF.”¹⁹

(ii) The Administration's Legislative Programme 2001-2

In mid-March the Assembly debated for the first time in its history the legislative programme the Administration would like to see incorporated in the next term at Westminster following the UK general election. In future years, under the new Standing Order 31.10, this will be an annual event in the early Spring, prefiguring the Westminster Government's Autumn Queen's Speech. As the First Minister Rhodri Morgan put it in his opening remarks:

“Today's debate is about much more than the Bills in the present Parliamentary session or the next. It goes to the heart of the relationship between the Assembly and the Government of the United Kingdom, in terms of the powers that we have and what we are eager to achieve.”²⁰

In the inaugural debate the Coalition Administration put forward proposals for just four Bills it would be pressing to be included in the Westminster's Government forthcoming legislative programme. They were to:

- Promote collaborative working and improve accountability in the NHS in Wales.
- Provide greater cohesion in and between education, training and careers systems in Wales.
- Give the Assembly power to approve the content of census forms in Wales.
- Make St David's Day a bank holiday in Wales.

Though not opposing these proposals, Plaid Cymru's leader Ieuan Wyn Jones described the package as a whole as “timid” and not “a programme for government”, while Nick Bourne for the Conservatives spoke of “a lack of vision across the spectrum of legislative action.”²¹ These responses were echoed a few days later by the Labour backbencher Ron Davies in a submission to the Assembly's Operational Review, when he spoke of a lack of ambition on the part of the Administration:

¹⁹ *Ibid*

²⁰ *Assembly Record*, 13 March 2001.

²¹ *Ibid.*

“It was important that we submitted an ambitious programme for inclusion in the Queen’s Speech following a general election. This will be the most significant legislative programme since the Assembly has had the procedures in place to allow its own wishes to be expressed.”²²

Rhodri Morgan himself took a robust line when he presented his opening proposals for primary legislation for 2001-2:

“We can expect the United Kingdom Government and Parliament to take for what they are, namely proposals drawn up in Wales, to be implemented in Wales. This is proof that the devolution settlement works and provides what Wales needs.”²³

He said the proposed Health and Wellbeing Bill would enable the Assembly to implement fully its NHS Plan for Wales. In particular it would establish Local Health Partnerships based on the 22 existing local health groups to provide primary, community and some secondary health services. These are aimed to fill the vacuum left by the abolition of the five Welsh Health Authorities, from 2003. They will “hold assets, control funds, and employ staff” - allowing the Conservative health spokesman, David Melding to declare that they would in effect establish 22 new Primary health trusts in Wales²⁴. In addition the Bill would:

- Establish strategic planning boards to facilitate joint working between the new Partnerships, NHS trusts and local authorities.
- Consolidate public health provision.
- Expand the remit of Community Health Councils to include primary care and nursing homes.
- Establish an independent complaints panel
- Establish a Welsh Centre for Health Research.
- Create a new body to replace the Welsh National Board for Nursing, Midwifery and Health Visiting.

Rhodri Morgan told the Plenary that the main focus of the proposed Education Bill would be to improve

“... cohesion between the stages of the education system: pre-school to primary, primary to secondary, secondary to further education ... People of all ages do not go through sudden step changes in their development and, therefore, neither should arrangements for education and lifelong learning. The Bill would impose new duties on the relevant authorities and, via them, on their agents, to plan transitions properly, to co-operate in doing so and to provide services flexibly ... The Bill would also reform the independent education sector, particularly as regards special

²² Ron Davies, Presentation to the Presiding Officer’s Operational Review of the National Assembly, 21 March 2001.

²³ *Assembly Record*, 13 March 2001

²⁴ *Ibid.*

needs education and the placement of children in care in independent schools. It would also enhance the Assembly's role in special educational needs provision. Finally, it would empower the Assembly to restructure the pattern of provision of higher and further education in Wales if necessary."²⁵

The proposed Bill on the census was a response to the outcry in Wales at the lack of a Welsh identity tick box in the 2001 census form²⁶, while the St David's Day Bank holiday proposal would involve placing an amendment to the 1971 Banking and Financial Dealings Act.

Plaid Cymru tabled nine amendments to the motion embracing the Coalition Administration's proposals, advocating nine pieces of primary legislation. All were lost in votes at the end of the debate, due to the combined Labour and Liberal Democrat majority. They are worth listing, however, since they provide an indication of Plaid's priorities. The party urged the Cabinet to press for Westminster Bills to:

- Vary Corporation Tax and Employers National Insurance contributions in Objective 1 areas – an initiative already being pressed for by the Liberal Democrats in the Coalition.²⁷
- Devolve powers to the National Assembly in respect of home buying and selling – which, in the words of Helen Mary Jones (Plaid, Llanelli), “should enable us to ensure that young people's housing needs are met and sufficient low cost housing is available.”²⁸
- Omit Wales from any requirement to link teachers' pay to pupil examination results and from any legislation requiring the establishment of specialist schools.
- Give Wales more representation on the Strategic Rail Authority; powers to develop an integrated transport system in Wales; powers to instruct the Strategic Rail Authority; in line with the Scottish Parliament and London Assembly.
- Take ownership of the railtrack system back into public control.
- Amend the Health and Social Care Bill to implement the recommendations of the Royal Commission on the Long-term Care of the Elderly in full.
- Introduce a concordat through which the National Assembly can be consulted in advance about the content of the Queen's Speech.

²⁵ *Ibid.*

²⁶ See *The Economy Takes Centre Stage: Monitoring the National Assembly December 2000 to March 2001*, IWA, page 27.

²⁷ See *Coalition Politics Come to Wales: Monitoring the National Assembly September to December 2000*, IWA, pages 24-25.

²⁸ *Assembly Record*, 13 March 2001.

- Review the Barnett formula with a view to replacing it with a needs-based formula that will help tackle deprivation and social exclusion throughout Wales, and including a mechanism to trigger additional special aid in the event of major structural crises.
- Provide for the abolition of the clawback of benefit payments as it affects groups such as ex-miners and their widows.

In his submission to the Assembly's Operational Review Ron Davies described the efforts to influence the Westminster Government's programme as a useful but tentative first step. He noted that, as promised in the debate on the Queen's Speech the previous December, the Subject Committees had been consulted. However, the consultation had been designed to elicit responses on legislation known to be in the pipeline already rather than an exploration of new areas. What was needed was an open-ended and systematic review by each Committee of its legislative needs and aspirations:

“Hopefully, these bids could be considered and prioritised by the Assembly at large before being submitted to the government in London by the First Minister and the Secretary of State.”²⁹

At the same time, he continued, there was a lack of understanding in the world outside the Assembly about what the Assembly can actually do. One response would be to initiate discussion with those outside interests, as to what should or should not be included in a potential bid for legislative time.:

“That hasn't happened so far. Was this a conscious act of policy or simply an act of omission? In any event, should we not ensure that in future years, we consult the social partners, the CBI, the TUC, the WCVA and its constituents, the WLGA, Assembly-Sponsored Public Bodies and others with a direct interest in what the government does?”³⁰

Such a process of consultation, he said, would have produced a wider and more varied list of legislative projects. They might have included the following:

- Legislation to provide greater operational independence for the Welsh Development Agency and to transfer to the National Assembly the residual functions currently invested in the Secretary of State.
- A Bill to give the power for the Children's Commissioner for Wales to inspect Home Office establishments as called for by *Children in Wales*.

²⁹Ron Davies, Submission to the Assembly Review of Procedure Group 21 March 2001: Supplementary paper.

³⁰ *Ibid.*

- Legislation to bring about a Strategic Rail Authority for Wales. The current arrangement, whereby the Assembly only has a consultative role in the appointment of one member to represent the interest of Wales in this area, is unsatisfactory for the promotion of a truly sustainable transport strategy in Wales.
- A ‘*Common Land Management Act*’ to bring about effective utilisation and protection of common land for wildlife habitat and related conservation purposes.
- Legislation to abolish student loans and tuition fees and re-initiate grant funding for students in further education.
- Legislation to strengthen the status and funding of S4C.
- A Marine Conservation Act to convey powers to the National Assembly for the protection of the marine environment and bio-diversity.
- A Forestry Act to convey new powers to the National Assembly in relation to forestry and to transfer to the National Assembly for Wales those powers in relation to the functions of the Forestry Commissioners currently held by the Secretary of State.
- To place the Arts Council for Wales on a statutory basis and to ensure greater accountability to the National Assembly.
- Legislation to clarify the existing position on GMOs and to empower the National Assembly to make appropriate regulations.

In his Paper Ron Davies said the process of testing the Westminster government’s response to Welsh aspirations for primary legislation was important for a number of reasons:

“We need to know the attitude that the new government will take. Will it ensure that all legislation which is initiated and which relates to devolved matters conveys maximum discretion to the Assembly? Will it ensure that the Assembly’s proposals, where appropriate, will be incorporated into its own Bills? Will it ensure that adequate provision is made for the submissions by the Assembly? If it fails these tests, will it indicate whether its opposition is ideologically-based or whether it relates to a shortage of time and, if the latter, will it indicate whether the Assembly’s proposals will be incorporated in future year’s programmes?”

One thing seems abundantly clear to me – the less we ask for, the less we are going to get. We need to know precisely how the Westminster government views the Assembly on this critical issue of legislation. The evidence from the current session is not encouraging. The Children’s Commissioner has been established via a welcome ‘Wales only Bill’ although sadly, it’s powers (thanks to Home Office

objections) fall far short of those advocated by, for example, *Children in Wales* who can legitimately claim to have been the first advocates.

The First Minister accepted the recommendation from the Economic Development Committee that the Assembly should be given order-making powers in respect of the Regulatory Reform Bill. The Bill as it stands, albeit not having completed its Parliamentary passage, offers only the right of consultation to the Assembly and not the order-making powers as suggested by the Committee and recommended both by the Executive and the Assembly.

We mustn't allow ourselves to fail for want of vision, imagination and a poverty of ambition. The advocates of the legislative status quo argue that we must make the present system work. So be it. Lets try to make it work as vigorously as possible. The responsibility then rests with central government to respond in an equally vigorous and constructive way."³¹

(iii) New Cabinet Sub-Committees Drive Policy Agenda

Four new Cabinet sub-committees were established in May (allowed under Section 55 of the Wales Act). This is the first occasion in the Assembly's history when sub-committees have been formed. The new Committees will drive policy in the following areas.³²

- *Sustainable Development*, aimed at ensuring that sustainability is fully reflected in policy-making, and taken forward in innovative ways.
- *Children and Young People*, to co-ordinate activity by the Assembly and other public and voluntary agencies in this area.
- *Wales in the World*, to co-ordinate promotion of the image of Wales in the UK and beyond.
- *Corus*, to co-ordinate the package of remedial measures arising from the steel redundancies

While the Cabinet remains the ultimate decision-making body, the sub-committees will allow fuller, and more strategic, consideration of policy in the major cross-cutting areas. As First Minister Rhodri Morgan put it:

³¹ *Ibid.*

³² Administration Press Release, 8 May 2001, Assembly website.

“This brings a whole new dimension to Cabinet Government - a new way of dealing with some of the most important issues facing us in Wales today. The new Sub Committees will provide us with an invaluable mechanism to think across our portfolios, pool ideas, and make long term policy collectively. The minutes of these sub-committees will be published on the same basis as those of the Cabinet as part of my commitment to open government and access to information.”³³

Apart from the formal membership, listed below, other Ministers with an interest in any of the agenda items for a meeting may attend on request. The sub-committees will be supported jointly by the Cabinet Executive and officials in the relevant policy divisions. They may also involve individuals and organisations from outside the Assembly.

Sustainable Development

First Minister (chair)

Deputy First Minister and Minister for Economic Development

Minister for the Environment

Minister for Rural Affairs

The Committee's objectives are to:

- Determine the policy priorities for promoting and securing sustainable development.
- Identify and pursue cross-cutting policy initiatives which will contribute to meeting the Cabinet's commitments.
- Ensure that sustainable development is given due priority in all Cabinet and Assembly policy-making.

Children and Young People

Minister for Health and Social Services (chair)

First Minister

Minister for Culture, Sports and the Welsh Language

Minister for Education and Life-long Learning

The Committee's objectives are to:

- Determine the policy priorities within the context of the Assembly's Framework for Children and Young People in Wales and *Extending Entitlement* and secure their implementation;

³³ *Ibid.*

- Identify and pursue cross-cutting policy initiatives which will contribute to the realisation of these goals;
- Ensure that the interests of children and young people are given due priority in all Cabinet and Assembly policy-making.

Wales in the World

First Minister (chair)

Deputy First Minister and Minister for Economic Development

Minister for Assembly Business

Minister for Culture, Sports and the Welsh Language

The Committee's objectives are to:

- Determine the priorities for raising and maintaining the international profile of Wales;
- Identify and pursue the most fruitful ways of meeting these goals;
- Ensure that international issues are given due priority in all Cabinet and Assembly policy-making.

Corus

First Minister (chair)

Deputy First Minister and Minister for Economic Development

Minister for Finance, Local Government and Communities

Minister for Education and Life-long Learning.

Minister for the Environment

The Committee's objectives are to:

- Ensure the implementation of the remedial measures arising from the restructuring, plant closures and redundancies announced by Corus in February/March 2001.
- Evaluate the need for its continued existence after six months.

2. POLICY DEVELOPMENT

Nia Richardson, IWA

Policy development in the Assembly was to a large extent influenced by outside events during this period, in particular the foot and mouth crisis and the continuing problem of the Corus steel redundancies.

ECONOMIC DEVELOPMENT

The Assembly Administration awarded a record budget increase to the Welsh Development Agency which will receive £273m for the next financial year – 59 per cent from the Assembly with the remainder from European Funds and from self-generated revenue. The new money has been accompanied by new targets:

- To create or safeguard 24,300 jobs over the next year of which 16,300 must be in the west Wales and Valleys Objective 1 region.
- Help set up 4,000 new businesses
- Help win £52m of new business for existing small firms.

This initiative was the main response to the Corus steel crisis that engulfed Wales in the early part of the year.³⁴

Meetings between the steel-making company Corus and Government Ministers from London and Cardiff proved futile in preventing massive redundancies in Wales and the rest of the UK. As a consequence, at the end of the consultation period in early May an emergency £66m aid package was unveiled, with the bulk of funding provided by the Assembly. The package was divided between economic and education and training measures to develop and regenerate the affected communities. Economic development initiatives involved a £43m programme comprising

- (i) A £32m recovery package to tackle the problems created by the closure of the Ebbw Vale works and the downscaling of operations at Llanwern.
- (ii) £4m additional funding for the WDA's South-West Division to address development and regeneration needs from closure of the Bryngwyn plant.
- (iii) £2m for business support measures to provide backing for redundant workers considering setting up their won businesses.

³⁴ See the previous Monitoring Report, *The Economy Takes Centre Stage: Monitoring the National Assembly December 2000 to March 2001*, IWA March 2001.

(iv) £5m to remain unallocated for emerging priorities from the ongoing consultation process.

Education and training measures included £7m for employment and training provision, not only for workers made redundant by Corus and its contractors, but also their families and those in the supply chain. The key components are:

- (i) An additional £5.7m for ELWa – (the Enterprise and Learning Council for Wales) to provide a wide range of flexible training based on individual needs
- (ii) An extra £250,000 for careers companies to ensure there is no shortage of specialist support.
- (iii) Up to £1m to be made available for enhanced learning and skills related activity through the Wales Union Learning Fund.

The UK government has also made a commitment to provide each worker made redundant with a lump sum of £2,500.

In response to the foot and mouth crisis the Department for Economic Development was also charged with reviving the flagging tourism business which was hard hit by the foot and mouth outbreak. An extra £1 million was allocated to the Wales Tourist Board which was used to boost a marketing campaign to assure potential visitors that Wales was still 'open for business'. However, the WTB claimed that it would need a further £10 million if it was to be able to compete for visitors with other parts of Britain once the crisis was over.³⁵ On 21 March, Mike German, the Minister for Economic Development published a Tourism Charter which aimed to give guidance to tourism operators, national parks and local councils on which attractions they could safely open to visitors. Other measures taken included:

- The Welsh Development Agency's Diagnostic and Consultancy Support Service to be made available free of charge to rural businesses affected by the disease.
- A £12m rates relief package.
- Extension of the small firms loans guarantee scheme.
- Deferment of VAT, National Insurance and PAYE contributions.
- The establishment of a rural hardship fund.

A new group is to be formed by Economic Development Minister Michael German to advise him on the development of a special new grant for small and medium-sized enterprises. It will advise him on the design and delivery of a small and medium-sized enterprise grant to be available throughout Wales. The group will advise him on what type of assistance SME's most require and how to ensure the new grant is in line with E.U. state aid rules.

³⁵ The Western Mail 30 March

EQUAL, an European Union Community Initiative which funds innovative ways of tackling discrimination and inequality in the labour market was officially launched by Mike German on March 14. The programme is worth £13 million and will tackle social disadvantage and support equal opportunities throughout Wales.

A letter written by the CBI, the Federation of Small Business, Chamber Wales and the TUC which complained that the private sector was being frozen out of the Objective One process was leaked to the press in March. The Welsh European Funding Office (WEFO) later announced that it was seeking expertise from the private sector to work help implement the European Objective 1,2, and 3 programmes in Wales.

AGRICULTURE

A number of measures were quickly introduced in an attempt to ease the detrimental effect of the foot and mouth crisis on rural Wales. Tir Mynydd payments worth £22m were released to farmers earlier than planned and an additional £1m was given to the agri-food partnership in Wales to help the sector recover from the effects of the disease. In addition, the Minister for Agriculture and Rural affairs set aside £500,000 to match pound for pound voluntary donations from the public to help relieve rural distress.

A slimmed down version of the Rural Partnership in Wales was brought together by the Minister. Together with Assembly officials this will draw up a plan to help relieve pressures on rural businesses once the foot and mouth disease has abated. The Group will be jointly chaired by Agriculture Minister Carwyn Jones and the Minister for Economic Development, Michael German.

A report commissioned jointly by the Health and Agriculture Ministers on the effects of rural stress in Wales published their proposals and recommendations in early March. The report proposed that a Rural Stress Working Group be established consisting of around eight key representatives of those organisations currently involved in stress in Wales. The group is to be charged with developing a campaign to raise the profile of rural stress in Wales. It was also proposed that a new all-Wales rural stress helpline be established. This proposal was urgently brought forward during the foot and mouth crisis and was up and running by the end of March.

When the Department of Enterprise, Training and the Regions (DETR) announced in April that it had given the go-ahead for two GM crops trials in Wales - one in Pembrokeshire and the other in Flintshire - there was anger that the Assembly had not been consulted. There was anger too that the DETR was overriding the Assembly's stated aim for Wales to be a GM-free country. Elin Jones, Plaid Cymru's Spokesperson on Agriculture said:

'It completely overrides the democratic will of the Assembly'.³⁶

The Conservative leader Nick Bourne echoed this view:

"I am absolutely furious at the way in which Westminster, fully knowing of the Assembly's stance on GM testing, has decided to completely ignore the wishes of the people of Wales."³⁷

Protests ensued, especially in Pembrokeshire. However, despite investigating all scientific and legal avenues Assembly Minister Carwyn Jones conceded that he could not find the means to legally prohibit the trials:

"If I were to prohibit the trials in the absence of scientific and legal justifications there would be a very high risk of an award of very substantial damages against the Assembly."³⁸

Nevertheless, in May the Assembly became the first political institution in Europe to introduce statutory separation distances between GM and neighbouring crops. This was done through a prohibition notice under Section 110 of the Environmental Protection Act 1990. The prohibition order will also enable the Assembly to take its concerns to the European Union where it will press for a fully precautionary approach over GM crops in Wales.

EDUCATION

The Minister Jane Davidson initiated a review into the guidelines which covers the handling of allegations by pupils against their teachers. She intends to consult relevant bodies before publishing new guidance on timescales for investigating and resolving cases. The Minister has moved away from the English model announced by David Blunkett in the same week. She claimed that his proposal of 25 regional co-ordinators who would advise school governors, police, social workers and councillors on such matters was not the appropriate solution in Wales since it was a much smaller country. A separate review into the procedures used by the Local Education Authority and the governing body in dealing with the case of Marjorie Evans, the headteacher of St. Mary's School, Caldicot in Monmouthshire, who was accused and subsequently cleared of hitting a pupil, has also been initiated by the Minister. Any recommendations emanating from this inquiry will be filtered through to the above-mentioned revision of guidelines.

³⁶ The Western Mail 6 April 2001

³⁷ *Ibid.*

³⁸ The Western Mail 2 May 2001

Following the outbreak of foot and mouth in Wales, the Minister gave special instructions to training services in Wales as to how they should develop training and new skills to people affected by the disease. Measures include:

- Ensuring that existing programmes such as Modern Apprenticeships are delivered flexibly in order to respond to the needs of those affected. The Employment Service is considering additional advisory support for its programmes.
- ELWa (the new Enterprise and Learning Council for Wales responsible for further education) is to examine whether it can bring forward projects proposed for tourism and agriculture and other sectors that have been hard hit, so that they can provide much needed help now.
- ELWa in conjunction with Cyngor NTO Cymru (the Welsh arm of the National Council for Training Organisations) will be identifying the training needs of specific sectors to help those who are laid off or on shorter working hours as a consequence of foot and mouth.

A consultation has begun into how the performance of schools should be measured now that the Minister for Education intends to get rid of league tables. The consultation paper entitled *Excellent schools for all communities* offers two possible options for the future:

- The first is to scrap the current arrangements and ask parents to visit or contact their local schools to get the results.
- The second option is that a value-added indicator is added to the tables along with new indicators designed to show the recent progress made by each school and how the school's performance compares with the average for Wales given the prevailing socio-economic conditions.

During April the Minister announced that as a consequence of the chancellor's budget an extra £23m would be available for education this year. The package would be divided so that £15m would go to schools, £4m for further education and an extra £3.4m for higher education. The higher education funding is to be used to assist Higher Education Institutions to recruit and retain high quality staff. Part of the money is also to be used in developing the new Foundation Degree which has been created to encourage wider access and participation. However, there was anger and frustration amongst the Teaching Trade Unions who claimed that the £15m for schools was not reaching them in time for it to be included in their forward plans for the next school year. As a result some teachers were being made redundant. However, the Minister for Education and Lifelong Learning defended her position by strongly denying that funding was an issue for schools:

'Some of the funding has yet to be allocated to schools. But all schools will have received their allocation by the end of May - the key time for taking decisions about staffing and other matters for September.'³⁹

³⁹ The Western Mail 13April

The Basic Skills strategy worth £27.3m has also been launched, to:

- Reduce the numbers of children leaving primary and secondary schools struggling with basic skills.
- Sharply reduce the number of adults who experience basic skills problems by at least 25 per cent over the next three years.

The strategy will focus activity across all ages and on four key measures:

- Continuous promotion of the importance of basic skills.
- Action plans.
- New literacy and numeracy qualifications for young people and adults.
- Effective improvement programmes.

The Education Minister has introduced measures to take forward the Assembly's early years policy, following publication in February of the Education Committee's final report on *Laying the Foundations: Early Years Provision for Three Year Olds*. A £200,000 audit to determine current and future levels of early year's provision in Wales commenced in March. Moreover an Early Years Advisory Panel consisting of professionals and agencies will be established to consider the data collected during the audit and develop a strategy and implementation plan on the subject.

HEALTH

The Children's Commissioner for Wales Bill, the first formally Wales-only legislation introduced at Westminster at the instigation of the National Assembly for Wales, passed through Parliament on 11 May. The Act makes further provisions for the Children's Commissioner for Wales established under Part V of the Care Standards Act 2000, and specifically:

- sets out the principal aim of the Commissioner as safeguarding and promoting children's rights and welfare
- empowers the Commissioner to consider and make representations to the National Assembly for Wales on any matter affecting the rights and welfare of children in Wales
- introduces a power to review the exercise of functions of the National Assembly and other persons;
- extends the power of the Commissioner to examine particular cases of children and to assist in particular cases by applying those powers to a wide range of bodies; and

- extends the power to review and monitor arrangements for complaints procedures, whistle-blowing and advocacy by applying it to a wider ranges of bodies in Wales providing services to children.⁴⁰

The Children's Commissioner for Wales Act legislated to give effect to the recommendations of Sir Ronald Waterhouse's inquiry into child abuse in Wales which had not been published at the time of passing the Care Standards Act. The Act had an uncontroversial passage through Westminster and had cross party support within the National Assembly for Wales.

Despite the fact that waiting lists came down every month after Christmas, Jane Hutt failed to reach the targets she had set herself last May. She had promised to reduce in-patient waiting lists from 80,000 to 65,000 by April this year and had provided £40m for the NHS to do it. However in April it emerged that she was nearly 4,000 adrift of her target if 3,500 patients who had been transferred into another list were included. She also failed to reach her target of eliminating 50 per cent of waiting times of more than twelve months. The Conservatives proposed a vote of no confidence in the Minister in plenary on 1 May on the basis that her credibility had been destroyed by her failure to reach the targets. However, she escaped censure when no other party supported the motion.

Details of how the NHS Plan for Wales is to be implemented were circulated. The programme will be led by a Steering group chaired by the Health Minister herself, whilst the actual preparation for implementing the objectives and targets set out in the plan will be undertaken by an implementation group chaired by the NHS director and nine task and finish groups. Furthermore, During a plenary debate on 13 March, Rhodri Morgan announced that he would seek to put on the agenda for the next Queen's Speech a Health and Wellbeing Bill for Wales which would be introduced as a package of measures to allow the Assembly to implement fully the NHS plan for Wales.

Debate is ongoing as to the benefits and the shortcomings of the Plan. The main complaints have been its lack of targets compared to the English Plan, its failure to increase capacity and the strategy vacuum it has created in announcing the abolition of health authorities without giving detail of what is going to replace them.

On 1 April 2001 free dental examinations were introduced for people under 25 and over 60, a significant divergence of Welsh from English policy. Another set of regulations providing free prescriptions for those aged under 25 came into effect at the same time.

Shortages of nurses and other medical professions continue to be endemic in Wales. In an attempt to get to grips with the problem, the Health Minister has established a NHS Wales Recruitment and Retention Team with three members of staff in the NHS Human Resources Division. She has also allocated £175,000 for return to practice courses for

⁴⁰ See further Wales Office Press Release, 'Children's Commissioner Bill Becomes Law,' 11 May 2001; <http://www.hmsso.gov.uk/acts.htm>.

nurses and a further £175,000 for general recruitment and retention initiatives in the current year.

The Department of Health received £20m additional funding following the Chancellor's budget. The core allocation of £11m will be spent on the Assembly's three priority areas, cancer, heart disease and mental health services.

LOCAL GOVERNMENT AND HOUSING

The Local Government and Housing Committee published its report on Housing Stock Transfer in May. The remit of the review had been to look at the Assembly Cabinet's policy on the transfer of council housing into community ownership. The Committee's main recommendation is that a change in the local government finance system should occur to allow local authorities to borrow on the same terms as housing authorities. The Committee said the Assembly Cabinet should make representations to the UK Government on the issue. The Strategy is to be discussed in plenary towards the end of May.

The National Assembly passed its first Wales-originated legislation in February. The Homeless Persons Order which was not a Welsh variation or copies of English legislation extended the categories of homeless people to be regarded as a priority need for accommodation. There were five new categories: homeless people aged 16-18; young people leaving care once they pass 16; newly-released prisoners; ex-servicemen; and people fleeing violence or harassment.

The consultation document for the National Assembly's Black and Minority Ethnic Housing Strategy has been published. Its purpose is to assist social landlords in ensuring equality of opportunity when it comes to housing. It is proposed that the Strategy should be implemented by a partnership which would involve relevant agencies.

In accordance with the Partnership Agreement, the Minister for Local Government and the Communities announced the establishment of a Commission on Electoral Arrangements in Local Government. The Commission will be chaired by Professor Eric Sunderland and will start work in June, with a remit to report within 12 months. Any change to local government electoral arrangements is likely to prove unpopular with Labour Party councillors.

THE ENVIRONMENT

A new Transport Framework for Wales has been launched for consultation with the outright aim of creating a better co-ordinated and sustainable transport system. The new document sets out the context within which the Assembly's decisions relating to transport should be taken during the next ten years. Some of the factors the Framework emphasises are:

- An emphasis on improvements to public transport on all modes, its availability and the quality of interchanges.
- A targeted roads programme at strategic and local level addressing the need to relieve communities from the environmental effects of traffic, to provide access for economic purposes and to tackle congestion.
- Promotion of a greater proportion of freight transported by rail.
- Quality assured information about conditions on road and public transport systems.
- Measures to increase cycling and walking for short journeys, especially those to school, work or other transport interchanges;
- Support for local authorities and the various local transport consortia to achieve the overall aim at a local level.

A draft Planning Policy for Wales has also been subjected to consultation. It contains proposed key guidance on a wide range of issues and matters relating to land use planning across Wales. It includes policy aims to guide development away from flood risk areas, the possible establishment of Wales' first Green Belt areas and measures to improve accessibility for all. There is also much stronger encouragement for both rural and farm diversification.

Pensioners and people with disabilities are now entitled to receive free bus passes guaranteeing half-fare travel on local buses in Wales under a scheme launched by the Assembly on 1 April.

Finally, the Minister is to establish a working group to investigate the potentials of expanding Cardiff International Airport. The new working group will include representatives for the Welsh Development Agency and Cardiff Chamber of Commerce. Sue Essex, Minister for the Environment, Planning and Transport and Mike German, Minister for Economic Development met with senior management of Cardiff Airport on March 3 to discuss key proposals for enhancing the airport. Proposals to expand the airport were outlined by David Melding AM (Conservative) when he led a short debate in plenary on the issue on 15 March.

CULTURE

Speculation surrounding the future of the Wales Millennium Centre (WMC), a major theatre and opera complex due to be built alongside the National Assembly in Cardiff Bay, appeared to have been settled in April. In October, the Assembly had given the board of the WMC a six-month breathing space in order to firm up costs after it emerged that the final bill for the building could be as much as £100m.

However, by 5 April a Press Release from the Culture Minister signalled that the Welsh Millennium Centre had been given the go ahead but only after the WMC had agreed to strict conditions set by the Assembly's Administration. These are:

- The Assembly must have assurance that the Board and Executive will be well equipped to tackle the next phase of the project and the Building Subcommittee given the capacity to tackle the issue fully.
- The procurement method must and now will rest on a fixed priced contract - and the project may proceed provided that the price post tender certainly does not take the project beyond £92 million.
- The Subject Committee must take stock - and be reassured - of the business plan and the extent to which there is a reasonable expectation of accommodating the projected £2m annual operating costs.

The third condition was met on May 16. The WMC gave a presentation to the Culture Committee explaining the revised figures for the project and the WMC's business plan. The Chairman of the Committee, Rhodri Glyn Thomas later said that they were satisfied with the plans,

“We have been given reassurances about the business plan and been given full, comprehensive answers to our questions. We will now write to Finance Minister Edwina Hart that we are satisfied with the business plan.”⁴¹

Both the Millennium Stadium plc. and Cardiff County Council received a grant worth £250,000 each in March to assist them in holding major football events, notably the Worthington Cup final and the FA Cup final. The grants were given on the basis that the football matches would help promote Wales as Edwina Hart, Minister for Finance and the Communities explained:

“They promote Wales generally as a place to visit, work and invest and they promote the Millennium Stadium and Cardiff, the capital city as an important gateway to the wider Wales.”⁴²

April 1 was an important day for Welsh culture as entry to the eight sites of the National Museums and Galleries became free for everyone: *Free for all and all for free* will now be the new motto of the Museums.

⁴¹ The Western Mail 17th May 2001

⁴² The Western Mail 9 March 2001

3. FINANCE: THE FUTURE OF THE BARNETT FORMULA

Adrian Kay, University of Glamorgan

In an interview in *The Guardian* on 24 April, the Deputy Prime Minister, John Prescott, raised the question of the future of the Barnett formula after the forthcoming UK general election. He argued that given the UK government is committed to reviewing the whole structure of local government finance (in England) it makes sense to make the exercise wider and consider the funding of the wider regions, and nations of the UK. He was firmly reigned in the next day with No 10, the Treasury, and DETR all putting out statements reaffirming that there were no plans to review the workings of the Barnett formula. The episode produced a flurry of London Press commentary on the Barnett formula that quickly stirred such apparently grander debates as English regionalism, the fiscal autonomy of Scotland as well as the future of the United Kingdom.

What Prescott Said

The Guardian reported that the Deputy PM was expected to use a Green Paper on English regional government after the election to push for a review of the Barnett formula, which was not 'written in stone', in the face of reluctance from the Chancellor. Prescott was quoted as saying that after the review there would be 'blood on the carpet' because of a 'tartan backlash', but insisted that Labour would have to 'bite the bullet' to prevent an even bigger row at the next general election. Further, he wanted to press the PM to include plans for regional referenda to test the mood for elected regional assemblies in England in the first Queen's speech of the next parliament: 'I don't think it will be at all credible not to have referendums in the next parliament'.

The Barnett Formula

The Barnett formula was introduced in 1978 by the then Chief Secretary to the Treasury, Joel (now Lord) Barnett. According to Lord Barnett, it was a temporary measure to constrain the growth in public expenditure in Scotland which had accelerated in the 1960s and 1970s in response to the growing political force of Scottish nationalism. It was applied to Wales in 1979. Each year the National Assembly (along with the Scottish Parliament and Northern Ireland Assembly) receives a financial block, the allocation of

which is at the Assembly's discretion. The change in the block each year is determined by the Barnett formula. The Welsh block is increased each year by a population-weighted proportion of the actual increase in comparable public expenditure in England. So, for example, an extra £100m in health spending in England produces about a £6m increase in the block for Wales. So, the formula is about the changes in the block not the baseline to which it is applied. Neither needs or relative incomes are in the formula. Scotland and Wales get more money per capita than England today because they did so when the formula was introduced in 1978/79.

Although the formula is simple to state, its application is considerably more complex and ultimately political. The question of what constitutes comparable public expenditure is opaque. The Treasury does not publish the methodology or the figures involved in the calculation of the total increase in government expenditure in England to which the Barnett formula is applied in order to arrive at the Welsh block. Despite the Barnett formula, the Welsh block is a negotiated settlement between Whitehall and Cardiff. The sense of scientific objectivity or rigorous accuracy implied by the word formula is spurious. The Barnett formula sets the framework for discussions at official and ministerial level, which are intensely political.

The Political Future of the Formula

It is the disparity in government spending between England and Scotland that provokes the ire of Labour MPs for the north of England. For example, Scotland spends 11 per cent more per head than its neighbour, the north-east of England, even though its GDP per head is some 25 per cent higher (HM Treasury, Spending Review, 2000). This is the focus of the debate. This inequality provides Prescott's constituency.

In cabinet terms, Alistair Darling, the Social Security Secretary and Stephen Byers, the Trade Secretary, have made it clear that they are in favour of retaining the Barnett formula. They have rallied round Gordon Brown's position that the existing arrangements for public finance allocation are linked into his public spending plans at least until 2004. This has reportedly left Mr Prescott virtually isolated. However, the apposite question is, of course, the view of the Prime Minister. As *The Scotsman* put it:

“All attempts to raise the issue of regional public expenditure in the UK, even by the Deputy Prime Minister, have been quashed with a speed that suggests acute paranoia on the subject.” (10 May 2001)

This is evidence of a strategy for the forthcoming general election rather than the post election period. In judging the political future of the Barnett formula, the key judgement is whether in the wake of a second election victory are the views of MPs for the north of England likely to be significant in the PM's thinking for a second term? There seems to

be a consensus in the London press that they will be. However, all that can confidently stated at this stage is that talk of a Barnett backlash occupies column inches but little evidence exists for it outside press circles.

It is interesting to note the political calculations of John Prescott. In his terms, the next election means Westminster rather than 2003 Assembly elections. He seems to suggest that he would prefer the political battle over a new funding formula to be conducted against the background of Assembly elections. Whether the Wales Labour Party shares his political judgement in this regard is a moot point. In response to an Assembly question about Prescott's comments, Edwina Hart warned that Wales could lose as well as gain from any revision of the formula.

Both Plaid Cymru and the Liberal Democrats are committed to scrapping the formula. This is a significant change from the 1999 Assembly elections when none of the four parties included the reform of the formula in their manifestos and there seemed to be a consensus among politicians that Barnett was the least worst method of allocating public expenditure to Wales. Plaid Cymru launched a policy proposal 'Busting the Block' at the beginning of May calling for the Barnett to be replaced by a needs-based system of allocating public expenditure to Wales. In Scotland, the SNP is also in favour of scrapping the formula and giving Scotland full fiscal autonomy. Both John Prescott in his Guardian interview and the London media ignored this political pressure from the two nationalist parties and the serious challenge they will provide for Labour in elections to the devolved governments. There are therefore two political debates taking place about the future of the Barnett formula and the disconnection between the two makes any kind of prediction about its future extremely difficult. In such complex political debates, the status quo often predominates.

A Better Barnett? Wales and the Alternatives

Two principles have guided most of the speculation about a replacement for Barnett; need and equality. Equality can be understood in three senses. The first is equality of government expenditure per head across the UK. Identifiable government expenditure per head in Wales is 18 per cent higher than in England (HM Treasury Spending Review, 2000). Wales would thus tend to lose out (relative to the present situation) with a formula based on this version of the principle of equality. Secondly, there is equality of service throughout the UK: the provision of health care, education, transport and other services should be equivalent across the UK. This implies that those areas where public services are more expensive to provide, for example London, should receive a greater level of funding. A formula based on equality of service might reduce Wales' share of public expenditure as its lower cost of living means that attracting and retaining public servants is often cheaper than in the south east of England. The principle of need and these first two notions of equality are contradictory. Addressing needs, which are unequal across the

regions and nations of the UK, would require inequalities in government expenditure and public service provision.

However, equality may also be considered in terms of outcome. Public expenditure should be allocated in order to reduce disparities in educational achievement, health status, access to transport etc that exist across the UK. This is broadly the equivalent of need. On the majority of socio-economic indicators of need, the disparity between Wales and England has grown since 1979 (when the baselines to which the Barnett formula has been applied were established). Any funding formula based on an index of need would thus tend to benefit Wales relative to the current position under the Barnett formula.

4. CONSTITUTION BUILDING ON THE HOOF

John Osmond, IWA

During May the Assembly's Operational Review under the chairmanship of the Presiding Officer took on the character of a Constitutional Convention. Substantial submissions were made by each of the parties, in particular the Conservatives and Plaid Cymru. Although the Review is being carried out within the framework of the 1998 Wales Act and is concentrating on procedures rather than policy, it is striking how rapidly a consensus is developing on the following propositions:

- A stronger identity for the Welsh government and Cabinet combined with a sharper separation between the executive and legislative functions of the Assembly.
- Clearer definition of the scrutiny and policy development roles of the Subject Committees.
- Improved mechanisms for influencing primary legislation at Westminster.
- A more organised approach for dealing with subordinate legislation.
- Sharper plenary sessions with more opportunities for interrogating the administration.
- An enhanced role for the European Affairs Committee.
- A stronger role for the Regional Committees.

The Liberal Democrat contribution was the briefest and least specific, perhaps reflecting its drafting some three months before the other parties, in January 2001. On the other hand, given their previous hostility to the devolution project, the submission made by the Conservative Group in the Assembly was surprisingly hard-edged containing a series of on the whole radical ideas for improvement. Plaid Cymru's submission was more philosophical but equally far reaching in its implications. The views of the National Assembly Labour Party were more tentative than the other parties, suggesting as many questions for further consideration as firm recommendations. At the same time there was an acknowledgement that answers to the questions will open up an agenda beyond the brief of the present Operational Review which will be completed towards the end of 2001. Indeed, the final section of the Labour submission asked: "What sort of shape do we want the Assembly to have in ten years?" It then establishes part of the future agenda by asking:

"Is there, for example, a consensus that the Assembly should be a strategic/policy making institution with little role in direct delivery of services or should we take ever more direct responsibility for things currently dealt with by Assembly Sponsored Public Bodies or even by Local Authorities?"

Taken together the submissions of the four parties to the Operational Review reveal a frank acknowledgement on all sides that there are serious flaws in the basic design of the machine they have to operate. They convey a striking impression of a new institution

beginning to find its feet by its members getting to grips with the devil that lies in the detail of their work. What is also striking is the convergence in many instances of ideas on how to overcome the difficulties. In the deliberations currently underway within the Operational Review we are witnessing a spectacle that can only be described as constitution building on the hoof.

(i) The Welsh Executive

The Conservative Group declare that in the longer term they would favour

“... a legal separation between a ‘Welsh Executive’ (established as a Department of State) and the National Assembly which would be a distinct legislative body. However, such a change would require an amendment to the Act and is therefore outside the remit of this review. We would, as an interim measure, favour the establishment of a stronger *de facto* split between the executive and legislative functions of the Assembly.

Their document goes on to make the following recommendations to achieve this:

- ‘*The Welsh Executive*’ should be recognised as a distinct entity throughout Standing Orders and in the Protocols, Codes of Conduct and other Assembly documents. For example references to the Assembly Cabinet should be replaced by references to the ‘*The Welsh Executive*’.
- ‘*The Welsh Executive*’ should have its own logo, imprimatur and identity. Consultation documents, letters, press releases and other official communications from the Administration should be issued under the imprimatur of ‘*The Welsh Executive*’.
- The former Crickhowell House should be seen as the base of the Assembly whilst Cathays Park should be seen as the base of ‘*The Welsh Executive*’. As far as is practicable civil servants and Executive members should work from Cathays Park, or at least be based there.

Plaid Cymru follows this line, though less specifically:

“We strongly suggest that the Assembly more clearly define its constituent parts and labels them consistently to assist a move away from the corporate title ‘Assembly’, reserving that for appropriate occasions.”

The Liberal Democrats also draw attention to the problems surrounding the Assembly’s status as a ‘body corporate’, noting that at present it is “operating a *de facto* separation between legislature and executive.” They suggest, however, that the matter should be considered by the forthcoming independent Commission on the Assembly’s powers, to be established in early 2002, since to resolve it may require primary legislation.

In their submission the Conservatives seek clarification around the appointment of Deputy First Minister and Deputy Ministers, positions The Deputy First Minister's responsibilities have been described as cutting "*across the range of government business*" yet he is not accountable through a question time in plenary session.. Again, it is not clear that he would automatically succeed to the position of First Minister in the event of a vacancy. Accordingly the Conservative Group recommends:

- That an additional plenary question time session be created for the Deputy First Minister to answer questions "*across the range of government business*".
- That Standing Orders be amended to clarify the role of the Deputy First Minister in the event of a vacancy in the position of First Minister.

The Conservatives also call for greater clarification of the role of Deputy Ministers

"If it is determined that Deputy Ministers are members of the Executive and subject to collective responsibility (not a 'glorified parliamentary private secretary'), then the Group is of the view that their role in Plenary and in Committees should be seriously examined. For instance, should a Deputy Minister have the right to question fellow members of the Executive at Assembly Questions? Should the Executive have two seats on each Subject Committee (the Minister *and* his/her Deputy)? Does this not constrict the ability of members to scrutinise executive actions? If it is accepted that Deputy Ministers should not sit on the Audit Committee, the Standards Committee or the Legislation Committee why should they sit on the Assembly's Subject Committees? In the future it might be expedient for an Executive to bind greater numbers of 'non-executive members' to the administration in the knowledge that these AMs will be subject to collective responsibility. 'Executive creep' must not be allowed to take place."

(ii) The Subject Committees

Labour's submission supports Ministers continuing to be full members of the Subject Committees but acknowledges that "this raises issues about the relationship to the rest of the members when they are in scrutiny modes, which may require further attention." On this Plaid Cymru has no doubts:

"We suggest that in practice during scrutiny sessions the Minister ceases to be a member of the Committee. Minister sitting on Subject Committees have problematic implications for the policy development role also as the Executive, by virtue of controlling the information the Committee receives, has an undue influence on the process."

More generally of the scrutiny and policy development roles of the Subject Committees, the Plaid Cymru submission states:

“If scrutiny and policy development is to be maintained as dual roles then mechanisms should ensure that these roles are functionally separate. One example would be the Education Committee where the Minister's report forms a distinctive scrutiny period, while other periods are devoted to policy development. We suggest that far greater time should be given to the Minister's Report, perhaps setting apart specific Committee meetings for this purpose.

If the Committee is involved in policy development, the agenda of the policy process must be separate from that of Government so that its contributions to policy development can therefore be accorded a unique status. The Plaid Cymru Group therefore feels that the Minister should not have influence on the agenda of the Committee.

Each Committee approaches policy development in its own way. The in-depth investigatory approach is best seen by the record of the Post-16 committee, a Committee almost universally lauded for its policy development. The approach of brief discussions (usually 40-minute sessions) on a number of wide ranging topics was taken by the Health and Social Services Committee until the beginning of this year. We suggest that the Panel of Chairs discuss the varying approaches in order that the most appropriate be adopted.”

The Conservative Group's approach is remarkably similar:

The dual role of the Committees, as scrutinisers and policy makers has sometimes been a difficult one to reconcile. This dual role reflects the ambiguous nature of the Act, which tried to tread a 'third way' between a local government committee model, and the classic parliamentary executive-legislative split. The Group is of the view that this compromise can be made to work - though we recognise that a great onus is on committee chairmen to give clear direction to their committees. However, it is instructive that in the Government's proposed model for local government 'Overview & Scrutiny Panels', executive members are barred from membership of such committees ... The Group believes that committees achieve their best results when focussing on specific policy areas. Committees that have decided to deal with six or seven issues simultaneously have often not had the impact that they might have wished.

Arising from this analysis the Conservative Group offers the following recommendations

- That the Standing Order which permits an Assembly Minister to put an item on a committee agenda should be expunged. Committee agendas should be

determined by the Chairman in consultation with committee members under SO 9.10.

- A convention should be established that when a Subject Committee agrees a report this does not bind the executive in general or executive members in particular.
- The Executive should make an official response to reports made by Subject Committees within a specified timescale.
- Amendments should be permitted to motions in plenary on Committee Reports, unless the motion has been tabled by the Chairman of the relevant Committee (in which case amendments will not be permitted).

The Conservative submission adds that while the Subject Committees have produced some penetrating studies of public policy problems, there has been frustration that some of their recommendations have not been acted upon fully. As a result the Group favours granting Subject Committees the power to propose Assembly legislation. It says a timetable should be drawn up by the Business Committee to allocate time to each Committee over the four years of the life of an Assembly.

(iii) Relations with Westminster and Whitehall

Plaid Cymru, the Conservatives and Liberal Democrats all highlight this topic as a key area for the Operational Review to tackle, notwithstanding that its consideration inevitably strays into the fundamental issue of the Assembly's powers. Plaid Cymru's analysis is the most hard-hitting:

“The current situation has proved to be inflexible and complicated and no-one seems certain about the legal competence of the Assembly in a number of areas. The current complexity hinders anyone getting a feel for what the Assembly may and may not do. The complexity of the Assembly's initial powers is further compounded by the way devolution has been accommodated in Acts passed since the Assembly was created. In fact, Lord Gwilym Prys Davies identifies this as the greatest threat to the success of the current model of devolution in his lecture entitled “The National Assembly: A Year of Laying the Foundations” in the summer of 2000.

There is no overall strategy for giving the Assembly new functions in its subject areas and without a strategic approach the Assembly may have few or no new functions under new primary legislation. Assembly policy is failing to feed into new Acts and new Acts fail to bestow enough discretion on the Assembly to be meaningful. Holding debates after Bills are published is far too late.

New Acts of Parliament potentially raise a number of issues for the Assembly. Firstly, new powers created may be retained by UK Government Ministers instead of being devolved to the Assembly. Secondly, powers currently held by the Assembly will be lost as new Acts repeal old ones. Thirdly, subordinate legislation made by the Assembly under the old Acts will also be lost.

For example, the Pollution Prevention and Control Act 1999 gives no functions to the Assembly whereas the Assembly had powers under the environmental legislation it replaces. Powers under this Act are given to UK Ministers only. When the UK Minister makes subordinate legislation under this Act it will apply to England and Wales. This represents an erosion of the Assembly's powers. The new Local Government Act illustrates a different problem. It actually gives powers to the Secretary of State for Wales over specific plans of local authorities rather than to the Assembly. Post devolution this is unacceptable.

This present complex constitutional position is further complicated by the lack of a consistent approach. The majority of Bills before Parliament give the Assembly "parallel powers" to UK Ministers enabling the Assembly to do in Wales what those Ministers can do in England. This is old-fashioned thinking and fundamentally misunderstands devolution as the UK policy agenda still sets the parameters for the Assembly.

The Learning and Skills Act tackles the issue in a different and more appropriate way. Assembly policy was actually written into the Bill in a separate section for Wales. Although this is a better approach it must be acknowledged that the resulting section for Wales is very prescriptive and does not represent an opportunity for the Assembly to take a radically different policy approach to that being adopted for England.

One way forward is to ensure that all appropriate Bills contains permissive clauses giving the Assembly general powers within the remit of those Bills. This solution is clearly within the boundaries of the current Government of Wales Act. Unless such an attitude is adopted in future in relation to new pieces of primary legislation the Assembly runs the risk of future central governments making legislation so specific that Welsh devolution is snuffed out. This is a real danger because currently there are no clear guidelines as to what must be achieved by primary legislation and what must be left to secondary legislation.

A solution may be to create a new concordat between the Assembly and Westminster setting down a range of agreed rules about how new primary legislation will be drafted to take devolution into account. For example, that powers will always be given in a flexible and permissive way to the Assembly; that no currently held powers will be lost; and that powers shall only pass to the Secretary of State for Wales in limited and specific circumstances.

Concerns on this matter were raised in the last round of debates on the UK Government's forward legislative programme. Thus, on the 19th December 2000 the Assembly debated the Queen's Speech and the plenary resolutions contained a number of significant points regarding the Westminster legislative process, such as

“calls on the First Minister to publish a detailed account of the procedures through which the Assembly can influence the content of the government's legislative programme.”

And

“calls on the First Minister and the Secretary of State for Wales to ensure that all Bills which impact on the functions and responsibilities of the Assembly is drafted in such a way as to permit the Assembly maximum flexibility in implementing their provisions and developing policy in the areas concerned.”

And

“remits the above Bills (i.e. Children's Commissioner for Wales; Health and Social Care; Homes; Regulatory Reform; and Special Educational Needs) to the relevant Subject Committees...for further consideration as to the provisions they should make for Wales and how the Assembly should use the powers therein;....requests that each committee report to the Assembly by February 13th”

And

“calls on the relevant Assembly Minister to make a statement prior to the conclusion of the passage of these Bills through the UK Parliament detailing the extent to which any amendments to Bills reflect the representations made by the Assembly;”

Clearly these resolutions, supported by all the political parties within the Assembly, illustrate the desire of the Assembly to better influence the UK legislative process as it affects Wales. However, five months on, has the First Minister published, “a detailed account of the procedures through which the Assembly can influence the content of the government's legislative programme”? The inclusion of the views of subject committees on what provisions should be contained in the named Bills and how those provisions will be enacted is crucial to that aim but despite the deadline of 13th February no subject committee reported to the plenary on their deliberations. Instead the reports of the subject committees were laid and the motion simply noted them. The committees made very few comments and the assumption of the First Minister that this indicated contentment is disputed. Silence should never be taken as agreement. It is suggested that AMs receive training on the committees role in this process. Committees should devote more time to this important work and be presented with options for consideration. The Panel of

Chairs should discuss this year's experience and learn from it. For instance, at an Assembly Review meeting Kirsty Williams, Chair of the Health and Social Services Committee, expressed the view that the discussions by the Health committee on this item were geared towards implementation of the legislation *as it stood* and did not explore the committee's aspirations of what the legislation might say.

The role of the Secretary of State for Wales and the Wales Office is central to the Assembly's influence on primary legislation. But the lack of resources at the Wales Office must be acknowledged as a stumbling block to the effective monitoring of the passage of all the primary legislation affecting the functions of the Assembly at any one time in Westminster.

There is a need to develop the capacity and ability of the Assembly to sponsor Bills in Parliament and the creation of a clear and transparent mechanism in Westminster will therefore be vital. This will be especially important when the government in Wales is drawn from a different political party than the Westminster government and the respective policy priorities will be diametrically opposed.

The Assembly needs to have more formal links to the Welsh Select Affairs Committee. For example, their extensive work and the report on Social Exclusion in Wales hardly received a mention from the Executive here and its recommendations for the Assembly have been ignored.”

This details analysis is supported by recommendations put forward by the Liberal Democrat and Conservative Groups. The Liberal Democrats recommend:

- We need to clarify the relationship between the Assembly and the Wales Office and the means by which the Assembly can communicate its view to the UK government.
- We need to clarify when the Assembly needs to approach UK government departments via the Secretary of State, and when we can approach such departments directly. More direct Minister to Minister communication between the Assembly and Whitehall should be our long-term aim.

The Conservatives declare:

“The liaison between the Assembly and Whitehall Departments has left much to be desired. On a range of issues – from the planting of GM crops to incarceration of asylum seekers in Cardiff prison – information and consultation with the Assembly has appeared to be an afterthought. This has not only caused embarrassment to Assembly Ministers but also calls into question the commitment of some Ministers in Westminster to the success of devolution.”

And they recommend two ways of dealing with the problem:

- That an all-party *ad hoc* Concordats Committee be set up and allocated one year to review each departmental Protocol that has been established with a view to strengthening their provisions and ironing out any weaknesses.
- Consideration ought to be given to appointing senior figure – perhaps a former civil servant or judge - to be independent arbitrator in the event of disputes between the Assembly and Whitehall departments.

The Labour Group's approach is more studied:

“We agree strongly with the Legislation Committee that there needs to be a process by which Westminster legislation is monitored for its potential impact on current Assembly powers as well as the need for new subordinate regulations.

In general we would like to see better inter-parliamentary liaison. We appreciate the defined role of the Welsh Affairs Committee, for example, but we would like to see more co-operation between the Assembly, especially our Committees, and Welsh Members of Parliament, perhaps with the use of “commissions” to collect and evaluate evidence on matters of joint concern.”

(iv) Subordinate Legislation

The Labour Group's submission reflects a growing awareness within the Assembly, especially among backbenchers, that it has so far failed to grapple effectively with the complexities of dealing with the large volume of secondary legislation for which it is responsible. The submission states:

“We believe a formal and regular process for Committees to comment on proposed legislation needs to be developed. This begs the question of how much time should Subject Committees be giving to subordinate legislation, or looking at the potential impact of UK government legislation which we consider should be a matter for each Committee to determine depending on their current priorities. The important principle is that they should be kept informed and given the opportunity to scrutinise and comment on legislation if they see fit ...

... Very little attention has been given to this area in terms of training of Members and Support Staff and there is a general lack of awareness and information. However, the use of plenary time to vote through streams of orders of limited interest seems unproductive. It is acknowledged that there has been some criticism of the use of ‘urgency’ procedures under Standing Order 22 (ii) but what is really needed is a streamlined procedure for ‘uncontroversial’ regulations. It should be possible to fairly ensure proper consideration of many orders without the extensive use of plenary time.”

Plaid Cymru also believes that the procedure for dealing with Subordinate Legislation needs urgent review:

“Currently the system has far too many pressure points during the year when the Assembly is dealing with large amounts of subordinate legislation while at other times there is virtually none being dealt with. The system needs organising so there is a steady flow of legislation throughout the year.

Some of the problems emanate from the time tabling of Statutory Instruments (SIs). The current system leaves it too late to scrutinise or amend SIs effectively. For example, the main reason cited for rejection of Plaid Cymru's amendment to the Dental Regulations and Prescription Regulations (23rd March, 2001) was that accepting these amendments would delay the commencement by three months. Statutory Instruments should be brought before plenary at least three months before their commencement to enable Members to amend them. It is crucial that the Assembly is able to amend subordinate legislation and indeed represents a real opportunity for developing mechanisms for doing so effectively which may act as a model for Westminster.

The Business Minister should draw up and publish a forward look programme for Secondary Legislation for the coming year. This could be done in terms of a monthly guide to forthcoming legislation and would have to remain flexible. This would reduce pressure points, allow for greater preparation and ensure sufficient time for subordinate legislation to be scrutinised and amended fully before being passed in plenary.

Much of the confusion surrounding subordinate legislation is due to the highly complex legislative settlement itself. The lack of a clear resource giving a continually up-dated guide to the powers of the National Assembly has been a serious flaw. Members need adequate resources to obtain advice on legislative matters that the Assembly Library is often unable to provide in sufficient detail. The existence of a Legal Adviser to the Office of the Presiding Officer has proved a valuable source of advice, as has the Welsh Legal Digest recently made available on the Internet.

The lack of connection between policy and legislation also needs to be reviewed. We believe that legislative change should be driven by policy, not the other way round. There has been a lack of connection between policy development, both within the committees and in plenary. This is again reflected in the little time which has been dedicated to legislation within both.”

Meanwhile the Liberal Democrats and the Conservatives concentrated on the role of backbencher members under Standing Order 29, suggesting that individual members should be given more opportunities to propose secondary legislation .

(v) Plenary Sessions

On this topic the main problems and questions are set out in Labour's submission, a more fundamental analysis and critique is offered by Plaid Cymru, while the Conservatives once more concentrate on detailed recommendations for change. The Labour submission concentrates on the management of plenary sessions:

“We believe it is time to develop a more consistent and coherent set of procedures for plenary. In that context we feel there are a number of questions to be addressed, some of which are clearly the province of the Presiding Officer but others are for resolution through the business committee or the Assembly as a whole. An overriding concern is the process by which Agendas are compiled and the tight deadlines in which Groups have to consider motions and amendments. We do think it odd that whilst questions which want to be contemporary and relevant have to be tabled a fortnight beforehand, amendments for largely ‘set piece’ debates are only available two days before hand. With amendments particularly, this makes it difficult for Groups to discuss business for Thursday plenary when we are not notified of the agenda before Group meetings on Tuesday mornings. This impacts greatly on our backbenchers, who are often deprived of a comprehensive opportunity to discuss the issues.”

Other questions raised by the Labour submission are:

- Do we spend enough time in Plenary? It might be more satisfactory to concentrate the sittings into "plenary weeks", designating other weeks for committee meetings.
- Should there is a different balance of questions, statements, debates?
- Is it right to limit speeches? Should reading speeches and questions be allowed?
- Should there be "injury time" to allow for interventions? We believe interventions contribute significantly to the liveliness and relevance of debate and should be encouraged.
- Should there be tighter rules for dealing with Statements? And Points of Order?
- Do we want changes in the types and numbers of questions allowed?
- What are family friendly hours in the Assembly context? Should we allow extensions on Tuesday evenings?
- The Labour Group would support moves to make arrangements to hold occasional plenary sessions in north and west Wales.

Plaid Cymru argues that many of the problems associated with the plenary sessions can be traced to the random character of the Assembly's powers. It also concludes that many

votes in plenary are simply not followed through by the Administration and presses the case for more plenary time to be devoted to legislation:

“This makes it more difficult to develop a programme of plenary discussion showing vision, especially in terms of legislation. Often what we discuss is in terms of immediate response to current situations, not necessarily with a strong idea of what can be done about them. These debates (in a similar way to the use of Statements by the Executive), result in less time being available to discuss longer term issues which are often of key importance to the Assembly's work without proper justification in terms of outcome.

Debates with an unclear purpose have led to vague outcomes and misled the public. However, many debates have had very strong outcomes with strong resolutions being passed by the Assembly. One would presume that most of these have been enacted, but there is no clear way of finding this out. There is a record on the Intranet of resolutions passed, but it gives no indication of what action has been taken to fulfil them. A record on what action was taken to implement the resolution and when this was done should supplement the current record. This is especially important as there have been suggestions in the past that resolutions might simply not be enacted if they proved too difficult (for example, the resolutions made in the Sustainable Development debate on September 14th, 2000). This is a totally unacceptable situation. If, for example, for legal reasons, a resolution cannot be taken forward, then it should be formally stated that this is the case and reasons given in a Plenary session.

Where resolutions refer to non-devolved matters, the action which the Administration has taken to further these formally with other bodies should also be made public. The Assembly has taken a strong view on several non-devolved matters that have enormous relevance for the people of Wales, for example, Structural Funds match funding, the Local Government, Transport and the Criminal Justice Bills. Whether the First Minister made a formal submission to the Secretary of State to Wales on these issues has since been questioned (see Ron Davies, *In Search of Attitude*, December 2000, p. 7). There should be a more transparent mechanism to see what action has been taken from resolutions. Obtaining information on these points is made very difficult since intergovernmental communication is covered by the Official Secrets Act and the Freedom of Information Bill. This may not always be possible owing to confidentiality, but the spirit should be to make this available wherever possible.

It is disappointing that more plenary time has not been dedicated to legislation. Often secondary legislation is not debated at all, or receives only very little time reducing the scope for proper scrutiny. Even when it is clear secondary legislation needs adapting to meet the needs of Wales, amending SIs and their motions has also proved difficult (see below). Neither has adequate time been allocated to discussing the impact of primary legislation on Wales or proposals for primary legislation that

the Assembly thinks needs to be implemented. Under Standing Order 31.9 at least 3 Members or an Assembly Minister are able to table a motion calling on the UK Government to bring forward a public Bill or bring forward amendments to an identified Bill currently before either House of Parliament. However, there isn't a clear link to plenary under this. Is there even a guarantee that it will be discussed in plenary? There should be a proper link to plenary, possibly with a time restriction.”

The Conservative Group's submission declares that the Plenary is the key to the future success of the Assembly:

“It must not be treated as a mere platform for the executive or as a glorified debating society by non-executive members. Decisions by the Assembly must be recognised as the ultimate expression of the Assembly's will.”

The submission says that while Question time has a crucial role in making the Executive's actions transparent and accountable, it has not always achieved these objectives. Generally it is short “and not especially illuminating”. While not wishing to turn “the chamber into a ‘bear pit’ or a Celtic equivalent of the House of Commons”, the Conservatives suggest the following improvements

- That Standing Orders are amended to extend the minimum period for questions to Assembly Ministers to 30 minutes a month (as First Minister's questions are in practice). This would allow greater opportunity for the Assembly Executive to be scrutinised.
- At questions to Assembly Ministers principal party spokesmen from parties not represented in the Cabinet should be allowed the opportunity for a second supplementary question if they wish to take it. The extended question time would ensure that this did not use up time for ‘non-executive members’. This would follow the precedent set by the Presiding Officer for party leaders not in the executive.

The submission goes on to express concern about the rule that prevents Members from tabling questions to the First Minister on the full range of the Executive's policy responsibilities. For example, Members cannot question the First Minister on reforms of the NHS or on the Executive's transport policies. “This seems absurd and has led to Members dreaming up more and more ingenious ways of drafting questions and bending the rules on supplementary questions.” Members should be permitted to table questions to the First Minister on the full range of policy areas for which the Executive has responsibility. On debates on motions the Conservative submission recommends

- The vote on the short debate topic should be re-instated.
- The time allocated for party nominated debates should be increased from 60 minutes to 90 minutes.
- That debates on substantive policy proposals from the Executive be given more lengthy scrutiny. Major policy proposals should be given at least 3 hours of debate.

- The principal spokesperson of a political group should be given 10 minutes to speak in debates and 15 minutes in debates lasting two hours or more.

The submission adds that while Conservative Group supports the principle of ‘family friendly’ working hours it also recognises that such parameters ought to be interpreted flexibly. Accordingly, it suggests:

- The normal finishing time should change to 6pm [from 5pm] on Tuesdays and Wednesdays, but if a longer period is required then the Presiding Officer or Chairmen of Committees should be permitted to extend proceedings by up to one hour.
- Plenary should start 30 minutes earlier on a Tuesday and finish 25 minutes later on a Thursday. This would provide the Assembly with more than 30 hours a year for additional debate.

(vi) The European Affairs Committee

Dissatisfaction with the working of the European Affairs Committee is voiced by the Labour, Conservative and Plaid Cymru Groups. As the Conservative Group’s submission puts it:

“Against expectations the European Affairs Committee has not turned out to be a high profile committee. Though much attention has focused on the way in which Wales could enhance its relationship with the European Union post-devolution, the European Committee has been relatively low key. This reflects more on the infrequency of its meetings and the selection of agenda items than on the quality of its membership. Its treatment of pressing European issues such as preparations for the Nice Treaty has been a serious disappointment. The Group believes that measures could be taken to correct this underachievement.”

Plaid Cymru stresses the importance of the Committee:

“As the majority of the policy areas within the present remit of the National Assembly are influenced so much by developments at the EU level, in particular Agriculture and the Environment, it is essential that the Assembly, through its European Affairs Committee, be fully aware of the latest developments in the EU and be given proper opportunity to engage with the UK Government when it prepares its negotiating line.

The National Assembly's European Affairs Committee is but one of the positive elements within Wales's relations with the EU. The challenge for this Committee is to find a means of co-operating effectively with the National Assembly's

Representation Office in Brussels and the Wales European Centre, and work with Wales's representatives on all levels within the EU to promote and make the best use possible of the opportunities on offer to us through our membership of the EU.

We recommend believe that the Committee should meet on a more regular basis to ensure more detailed discussion and the creation of more productive proceedings. It should act as an overarching Committee. The Committee has to have a proper strategy in place. Each Subject Committee should appoint one of its members to be its European co-ordinator / rapporteur.

The work and role of the House of Commons and House of Lords European Legislation Committees should be examined to establish the wider framework within which the National Assembly's European Affairs Committee has to operate.

The role of European Committees within other devolved administrations should be considered for relevance to Wales. In particular, following the example of Wallonia and Catalonia, the National Assembly's European Affairs Committee should invite UK Civil Servants and European Commission Officials whose work is of special interest to Wales to attend, so that they can hear the Committee's views. If the officials' work involved agriculture matters, for example, the meeting could be a joint one with the Agriculture Committee.

Again following the examples of Wallonia and Catalonia, the National Assembly's European Affairs Committee could put forward motions to be approved by the whole Assembly calling on the cabinet to act in a particular way, or to make the Assembly's opinion on a European issue clear to the UK Government. A motion of the whole Assembly would have more authority and weight than if the Committee were acting alone or only representing its opinion to the First Secretary.”

Labour's submission reflects Plaid Cymru's point that the European Committee suffers from not having representatives from all the Subject Committees sitting on it. It also refers to the issue whether the Committee should be chaired by a Cabinet Minister. On the one hand this weakens the Committee's potential for scrutiny; on the other it tends to enhance the Committee's influence.:

“Backbench Chairs would need sufficient back-up resources to deal effectively with such complex policy agendas. The question needs airing to consider the most effective role for the Committee.”

However, the Conservative submission cuts through such doubts to recommend the following:

- That Standing Order 15.4 be amended to remove the requirement that an Assembly Minister (currently the First Minister) chairs the Committee. A non-

executive chairman might allow the Committee to meet more frequently. Such a move would also take agenda-setting powers away from the Executive.

- That Standing Order 15.5 be amended to oblige the European Committee to submit an annual report to the Assembly plenary. This would ensure a higher profile for European issues on the floor of the Assembly chamber.
- That the European Committee be given a standing authorisation to sit on Fridays to enable Welsh MEPs to attend the proceedings of the committee.

(vii) Regional Committees

All the parties have proposals to enhance the role and functions of the Regional Committees, with Plaid Cymru suggesting that if this cannot be achieved then consideration should be given to reducing their role. The Liberal Democrats sought clarification on what had been done to implement an Assembly motion of 28 June 2000 which proposed strengthening their role by:

- Establishing an ability to take evidence.
- Providing a mechanism for greater interaction with the Subject Committees including an ability to produce reports for consideration by the these Committees.
- More pro-actively publicising meetings.

Concern about the Committees' effectiveness was most clearly voiced by Plaid Cymru:

“There has been some confusion about the role of the committees and how they can feed effectively into the work of the other committees. There should be a clear mechanism for them to feed additional and alternative information that reflects different regional opinions into the work of subject committees. They should also provide ideas as to what additional areas the Assembly needs to focus on, in line with the spirit of devolution. There should be a process for people within the regions to scrutinise Members as to whether these aims have been achieved.

Some of the Regional Committees have been well attended and attracted lively debate - notably the North Wales Regional Committee. Others have found it difficult to attract audiences to some sessions. Some subjects have clearly struck a cord with local participants, whilst others have been of less relevance to local concerns. We now need an assessment of why some have been successful, but others not. These meetings are not inexpensive and we must ensure they contribute in the most effective way possible.”

The Labour Group's submission added that the usefulness of the Regional Committees "seems to depend on the drive of chairs and the level of interest of individual members" and made two suggestions:

- One way of improving their focus might be to require that Regional Committees are the first avenue for formal consultation with the Assembly. This might also help to establish a more coherent process for formal consultation, which appears at present to be done on a largely ad hoc basis.
- Regional Committees should closely link in to investigations being carried out by Subject Committees. This would enable them to have a route for formally getting views put into the Assembly processes. The right for a Regional Committee to sponsor an Assembly debate relevant to their area each year might be another way of giving a structure to their work.

The Conservative Group added the following ideas:

- The practice of rotating the Chairs of Regional Committees annually should cease. Chairmen of regional committees should be appointed for a longer period according to party balance.
- The regional committees should be reconfigured to reflect the Assembly's five electoral regions rather than the four economic fora.
- Regional Committees should be afforded the opportunity to propose secondary legislation along with Subject Committees

5. THE LEGISLATIVE PROCESS

Jane Jones, Department of Law, University of Wales, Swansea

(i) Powers in New Primary Legislation and the Process of their Enactment

From the parliamentary session just ended the Assembly gains new powers in Acts on Capital Allowances, the Children's Commissioner for Wales, Health and Social Care, Regulatory Reform and Special Needs and Disability.

The National Assembly would have received powers in other Government programme Bills if they had completed all stages when Parliament was prorogued. These were in relation to Commonhold and Leasehold, Culture and Recreation, Homes, Hunting (if the regulatory option had been successful) and International Development.

On 19 December 2000 in its debate on the Queen's Speech the Assembly approved a motion committing to the appropriate Subject Committee Bills of particular relevance to the Assembly. A further plenary debate on 13 March noted the content of those reports. Opening the debate on 13 March the First Minister reaffirmed his commitment to involving the Subject Committees in this way in future years. On this occasion the Subject Committees had offered few comments, which the First Minister took to mean that there was

“... cross-party approval for our all-round success in influencing the UK Government in the package of measures in this year's Queen's Speech.”⁴³

A recommendation of the Economic Development Committee, to confer on the Assembly powers to make regulatory reform orders under the Regulatory Reform Act, was not reflected in the Act as eventually passed – the power remains in Whitehall, with requirements in certain circumstances to obtain the consent of the Assembly

The main focus of debate in the Assembly on 13 March was directed to what might go into next session's Queens' Speech rather than the points arising from Subject Committee consideration of the content of the current session's Bills. As the First Minister pointed out this was the first but not the last time the Assembly would debate proposals for future primary legislation pursuant to the requirement in Standing Order 31.10 that the Cabinet should bring its proposals in this regard before the Assembly in Plenary each year. The Cabinet's proposals on this occasion have been detailed in an earlier section of this Report dealing with the Administration (pages 11 to 12).

⁴³ Record of Proceedings 13 March 2001

The whole debate lasted one hour. Only a small fraction of this time was devoted to the current session's Bills. No mention was made of the issue then current on the Children's Commissioner for Wales Bill about the scope of the Commissioner's powers to consider matters extending beyond those functions for which the Assembly has responsibility⁴⁴. The crucial concession, in the form of a provision for the Commissioner similar to that for the Assembly in section 33 of the Government of Wales Act 1998 for the Assembly, was made by the Government at Committee Stage in the House of Lords on 3 April⁴⁵. It is of course possible that the Assembly Cabinet were aware at the time of the debate on 13 March that the Government intended to make the amendment so that the issue had gone away. Nonetheless there is a question whether sufficient time is yet being set aside for consideration of the terms of current Bills. The point has been made to and will be considered by the Assembly's Review of Procedure⁴⁶.

At the other end of the process, in Westminster, there was rather more debate on the terms of new Wales provisions, even within a session which everyone anticipated would be foreshortened by a general election. This section of the last IWA Monitoring Report⁴⁷ noted emerging issues about the classification and scope of new powers conferred on the Assembly and the representation of Assembly policy in Westminster. There was an interesting discussion of the latter in the debate on a procedural motion before Second Reading in the House of Commons on the Children's Commissioner for Wales Bill.

These issues re-emerged at Committee Stage in the Lords, principally in consequence of an amendment moved by Lord Thomas of Gresford intended to confer on the Assembly a general enabling power subject to the consent of the Secretary of State, including the power to alter primary legislation, "for the purposes of carrying into effect" the provisions of Part V of the Care Standards Act 2000, in which the powers of the Commissioner are contained. The purpose of the amendment was to enable the Assembly to make "such alterations as the government at Westminster agree are necessary and to put them into effect without joining the queue for parliamentary time"⁴⁸.

Speaking to his amendment Lord Thomas expressed a hope that a convention would grow that where the will of the National Assembly for Wales had been expressed, then the Westminster Parliament would put the primary legislation into effect unless there was a good and stated reason to the contrary.⁴⁹ This was supported by Lord Elis-Thomas who added that the Assembly should not be in the same position as UK Government

⁴⁴ The point was made in the meeting of the Assembly Subject Committee on Health and Social Services of 24 January, but also, apparently more vociferously, by the Children in Wales Campaign Group which lobbied the House of Lords during the Lords stages of the Bill.

⁴⁵ "The Commissioner may consider, and make representations to the Assembly about, any matter affecting the rights or welfare of children in Wales."

⁴⁶ See for example the paper submitted by the Chamber Secretariat January 2001, "Plenary Procedures" ARP 01-01(P2).

⁴⁷ "The Economy Takes Centre Stage" March 2001.

⁴⁸ Official Record House of Lords, 3 April, col 788

⁴⁹ Ibid col 785

Departments in looking for slots in the parliamentary timetable. It was he said important that the constitutional committee of the House should consider this issue.

The amendment was withdrawn but not before the Government had acknowledged that the constitutional committee would have to focus on these matters and had conceded that the objective was “perfectly understandable”⁵⁰.

The position therefore remains that the question of how Westminster process and convention may need to be adapted to reflect the Assembly’s position in relation to new primary legislation remains under active consideration both in Westminster and the Assembly, and meanwhile the matter develops through experience of each Bill.

(ii) Foot and Mouth

The burden on the law makers of producing emergency controls through the exercise of delegated legislative powers may be unlikely to excite sympathy amongst those suffering the economic and social effects of foot and mouth. It is nonetheless an extraordinary burden, falling on a small number of officials in the separate UK administrations. It has also highlighted some interesting issues about Assembly legislative process and the division of powers between the Assembly and Whitehall which will merit careful reflection in slower time.

A visit to the foot and mouth pages of the Assembly’s website reveals some 31 statutory instruments made in less than three months from the end of February to the middle of May. Disregarding the three of these which are UK-wide, this represents over half the total number of general statutory instruments made in the field of agriculture fisheries and food by the Assembly since it took legislative powers in July 1999. The powers exercised come mainly from two sources:

- the Animal Health Act 1981, an Act which consolidated various earlier Great Britain statutes containing order making powers for the control of diseases in animals;
- section 2(2) of the European Communities Act 1972, which provides for the implementation in the UK of EU obligations by means of regulations made by a designated authority.

Powers under the Animal Health Act are conferred variously on “the Minister” (in relation to the whole of Great Britain), “the appropriate Minister” (in relation to England, Scotland and Wales separately) and “the Ministers” jointly (in relation to Great Britain). A large-ish Foot and Mouth Order was made in 1983 by the then Ministers jointly, to which there were three amending Orders before devolution. The 1999 Transfer of

⁵⁰ Ibid col 788, Lord Williams of Mostyn

Functions Order transferred to the Assembly the functions exercisable in relation to Wales by “the appropriate Minister” and the functions of “the Ministers” so far as exercisable by the Secretary of State for Wales.

The Assembly is designated for the purposes of section 2(2) of the European Communities Act in relation to the Common Agricultural Policy, but not in relation to certain other matters, notably transport including regulation of drivers hours, on which EU measures have required implementation by the UK during the foot and mouth crisis.

Accordingly, Animal Health Act Orders extending to Wales only have been made not by the Assembly alone but by the Assembly jointly with the Minister of Agriculture Fisheries and Food, and Regulations under section 2(2) of the European Communities Act extending to Wales only have been made by the Assembly alone as the designated authority in relation to the Common Agricultural Policy in Wales, except for those regulations made on a UK wide basis in relation to transport (milk collection, drivers hours, disinfection of tyres etc.)

Under Assembly Standing Orders various procedural requirements can be disapplied if the Assembly Cabinet agrees, a dispensation first described as “urgency” and now described as “executive” procedure. The speed with which controls have been applied in relation to foot and mouth has necessitated not only the use of executive procedure but also a special delegation by the Assembly Cabinet to the Assembly Minister for Agriculture and Rural Affairs to decide that it is appropriate. It has also dictated that very few of the instruments have been produced bilingually, scrutinised by the Legislation Committee or debated in the Assembly before enactment, or subjected to a regulatory appraisal. As noted above, many measures were required by EU decisions, leaving no scope for different provisions in the different parts of the UK even if the respective administrations had sought them.

The speed at which these provisions have been enacted is dramatic. Study of the series leaves one with a clear impression, no doubt accurate, of almost daily change in the legal regime. Many of the instruments came into force only hours or in a few cases minutes after being made – the record being held by the Diseases of Animals (Approved Disinfectants) (Amendment) (Wales) Order 2001⁵¹ which came into force on 2 March just five minutes after being made, implementing a Commission Decision of the previous day. A further consequence of the pace of enactment is that where any new function is conferred on the Assembly – as can happen where the instrument implements new EU law - there may be no time for the Assembly in plenary to delegate that function to the First Minister. This in turn has spawned a further innovation in Assembly process - the Import and Export Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2001⁵² (made two and a half hours before coming into force and having a limited duration of one week) contain the necessary delegation, thereby obviating the need for a separate Assembly motion.

⁵¹ S.I. 2001/641 (W.31)

⁵² S.I. 2001/659 (W.34)

In these circumstances the most effective way for a person affected by the regime to keep up with what it requires must be through the internet. Publication of the subordinate legislation, even on the internet by HMSO, has lagged behind the pace. This is worrying because law which is unpublished is generally unenforceable. However, the Assembly should be congratulated on the special pages it has devoted to the subject of foot and mouth which include full coverage of the legislation and associated guidance, and were presumably designed in part with this concern in mind.

Whether any of these new procedural presentational devices might be adopted for future use in the interests of efficiency in other less pressured circumstances is a matter for reflection in slower time. There has certainly been little time, in the heat of the crisis, for reflection on whether the division of responsibilities for making and administering orders and regulations on animal health remains appropriate. The powers exercised in the current crisis are examples of the general approach of the first transfer of functions order of simply transferring to the Assembly the functions previously exercised by the Secretary of State for Wales. It would be surprising if the experience of foot and mouth did not highlight some unwelcome results of this approach – for example, the Assembly Minister expressed frustration at the Assembly's lack of discretion to ease movement restrictions, a discretion enjoyed by the Scottish Parliament.⁵³

(iii) Assembly Review of Procedure

There remain many issues for the Assembly in relation to the legislative process not least of which are effectiveness in achieving policy objectives through primary and subordinate legislation; and efficiency - the sorting exercise necessary to secure maximum time and resources for the first objective and to process less important and uncontroversial measures with minimum use of time and resources. Those issues have been raised in various papers and evidence given to the Assembly Review of Procedures.⁵⁴

Specific proposals by the Legislation Committee for changes to Standing Orders sparked some controversy as to the legal boundaries of the remit of that Committee. The

⁵³ Minutes of the Agriculture and Rural Affairs Committee 11 April 2001 – in practice the problem was alleviated by arrangements made under section 41 of the Government of Wales Act 1998 enabling Assembly officials to carry out the relevant functions, but this would not have been necessary if the Assembly had had the function in the first place.

⁵⁴ A thoughtful analysis, referring back to the themes identified by the National Assembly Advisory Group (“democracy, openness, inclusiveness and participation, efficient and effective decision making”) is contained in an Annex written by Martin Evans to the Analysis of Staff Responses submitted to the Assembly Review in February ARP-02-01 (p6) and report in the previous quarterly Monitoring Report *The Economy Takes Centre Stage*, IWA, March 2001, p. 34.. It is an excellent starting point for consideration of the issues before the Review.

proposals, for which support was drawn from evidence submitted to the Review by academic lawyers⁵⁵ included:

- A requirement for Ministers to provide regular information to chairs of Subject Committees about forthcoming subordinate legislation, *with a "specific copy to the (Legislation) Committee"*⁵⁶.
- Enabling the Legislation Committee to require Assembly Ministers to explain decisions about procedure and handling, especially the use of executive procedure, and to require Ministers to appear in person and be questioned at Legislation Committee for this purpose.

There being some doubt as to whether these matters fell within the proper scope of the Legislation Committee's remit under section 58 of the Government of Wales Act 1998, a joint legal opinion was sought and given by the Counsel General and the Legal Adviser to the Presiding Officer. They advised that the proposals did indeed exceed the statutory powers.⁵⁷ At the risk of over simplification, the point is that the Legislation Committee has responsibilities "*relating to the scrutiny of relevant Welsh subordinate legislation*"⁵⁸ and the Assembly is expressly prevented from giving the Committee any responsibilities not relating to the scrutiny of such legislation⁵⁹. Calling the Executive to account for its decisions as to policy, process and handling is not therefore within the Committee's proper legal remit.

The argument may run on as the Legislation Committee has responded to the joint opinion maintaining their original proposals and stating that they should now be submitted to the Review Group, and some support for the proposals is contained in the submissions of both the Labour and Plaid Cymru Party Groups. It would be a pity if the argument about the legal construction of section 58 were to divert efforts from achieving what appears to be the shared objective of enabling the Assembly as a whole and its external partners to participate in policy development, to scrutinise the acts of the administration and to participate effectively and efficiently in the legislative process. All the more so since the statutory framework clearly provides for mechanisms (other than the Legislation Committee) for inclusive policy development, for accountability of Assembly Ministers and for scrutiny of the decisions about procedure and handling. Those mechanisms are the Subject Committees, the Assembly in plenary and the Business Committee. The Review group might do well to focus on best use of those

⁵⁵ Written evidence of Professor Richard Rawlings, 1 March, and further evidence submitted by Professor Rawlings and Professor Keith Patchett, 3 May.

⁵⁶ This proposal would formalise a practice which has been developing in any event – see for example the approval in the submission to the Review by the Panel of Subject Committee Chairs, Agenda Item 4 in the Assembly Review meeting of 9 May, of the undertaking of the Agriculture and Rural Development Department to provide the Subject Committee with information on the programme of forthcoming subordinate legislation.

⁵⁷ Opinion of Winston Roddick QC and David Lambert 20 March, ARP-03-01.

⁵⁸ Section 58(1) of the Government of Wales Act 1998

⁵⁹ Section 58(7)

mechanisms rather than on a novel and legally doubtful development of the role of the Legislation Committee.

6. RELATIONS WITH WESTMINSTER AND WHITEHALL

Mark Lang, Welsh Governance Centre

(i) GM Crops

At the beginning of April the Ministry of Agriculture Fisheries and Food (MAFF) announced that three sights in Wales would undertake trials in planting GM seeds, one in Pembrokeshire owned by the former Conservative MP Tony Marlow. It emerged that MAFF had not informed either Assembly Ministers or officials in advance of the announcement, who learned of it only from the media.

MAFF has one of the worst records of Whitehall Departments in ignoring the implications of devolution: its decision to identify three Welsh sites in Wales was taken despite the Assembly's policy that Wales should be GM-free. The farming community was split on the issue, with NFU welcoming the trials and the FUW criticising them, and organic farmers particularly vocal in their opposition. On 5 of April it emerged that the Assembly was considering legal action to get the trials halted on health grounds.⁶⁰

The Chairs of the Environment and Agriculture Committees, Richard Edwards (Labour) and Glyn Davies (Conservative), both called on the Assembly Administration to oppose the trials and impose an outright ban, or at least seek the powers to enable it to do so. However, it became clear that the Assembly did not have the power to stop the trials. If it tried to issue an Environmental Prohibition Order it would be liable for legal action against it – opening up the possibility of either seed producers or crop growers suing for sums as much as £50 million.⁶¹ Rural Affairs Minister, Carwyn Jones, ruled out stepping in to prevent the planting of GM crops:

“I have now received the scientific assessment that I requested from the Advisory Committee on Releases to the Environment in relation to the trials of genetically modified crops announced for three sites in Wales last month. In short, it does not constitute a sufficient basis for the exercise of my powers under section 110 of the Environmental Protection Act 1990 to restrict the planting of GM crops.”⁶²

At the same time he proposes to restrict the planting on the following grounds:

“However, in pursuing the Assembly's policy of adopting the most restrictive approach possible, within the existing legislative framework, in relation to GM

⁶⁰ Western Mail, 5 April 2001

⁶¹ Western Mail, 28 April 2001

⁶² Assembly Record, 1 May 2001

crops, I can also advise you that I have found a means to provide a basis to safeguard organic production in Wales. This will be done by placing separation distances between GM and non-GM production methods on a statutory basis. Acting in this way will trigger a notification to Europe under Article 16 of the European Directive 90/220.”⁶³

This constituted the first such restrictive move by any European legislature. On 3 May the UK Environment Minister Michael Meacher met with the seed company Aventis, at the behest of GM protestors, to get them to delay the trial. Despite this the first seeds were planted in Flintshire over the weekend of 7 May. On 9 May the owners of the other sites pulled out of the trial, after pressure from protestors, leaving Flintshire as the only GM trial site in Wales.

(ii) Foot and Mouth

The Foot and Mouth crisis became a factor in Assembly relations with Westminster and Whitehall in April, particularly in relation to the question of vaccination. As the number of reported cases of the disease in Wales rose to 73 Carwyn Jones was called to talks with the Agriculture Minister, Nick Brown, in London on 19 April. At the meeting the Welsh, Scottish and Northern Ireland Ministers were united in opposition to the use of vaccination, in the face of apparent pressure from London to do so.⁶⁴

Carwyn Jones stated that this united front from each of the devolved administrations depended on there being a rapid capability to dispose of carcasses.⁶⁵ This came just days after the resignation of Deputy Minister Huw Lewis, over plans for a mass burial site at Trecatti in his Merthyr constituency. The owners of Trecatti, Biffa, subsequently said that no burials would take place until reassurances over health had been given.

Throughout the crisis the language of the London and Cardiff administrations appeared to differ. Carwyn Jones talked of the crisis in terms of a national emergency, while London was keen to stress that the situation was under control. On 20 April the UK Government's Chief Scientific advisor, Professor David King, said that the epidemic was under control and that the use of vaccine was only being held as a contingency in the worst effected areas of the country.⁶⁶

(iii) The Barnett Formula

⁶³ *Ibid.*

⁶⁴ Western Mail, 19 April 2001

⁶⁵ *Ibid*

⁶⁶ Western Mail, 20 April 2001

In April the suggestion that the Barnett formula should be revised was raised by the Deputy Prime Minister John Prescott, although Number 10 was quick to rule out such a review until 2004 at the earliest. A few days later Peter Mandelson added his weight to calls for an early revision of the formula, which guarantees 18 per cent more for services in Wales than in England, on the grounds that it discriminates against the English.

On 2 May the Welsh Conservatives also called for a review of Barnett, though only for 'Acts of God' such as the Foot and Mouth and flooding crises. They argued that it should be retained for mainstream services such as health and education.⁶⁷ On 3 May the Assembly debated a Plaid Cymru motion calling for a review of the Barnett Formula, which stated:

“The National Assembly further calls on the Labour/Liberal Democrat administration to enter into discussions with the UK Government to review the Barnett formula so that the allocation of resources to the Barnett block is in future decided on a needs-based formula.”⁶⁸

Replying to the debate the Finance Minister Edwina Hart argued that she “... kept the operation of the Barnett formula's impact on the Assembly's budget under constant review.” And furthermore “when it is appropriate to do so, I make the case for provision over and above Barnett.” She also added that any review of Barnett would not necessarily result in a greater financial benefit for Wales.⁶⁹

During the debate Plaid Cymru's spokesman Phil Williams made the point that the Barnett Formula was originally conceived on the basis of need, and that therefore arguments put forward that a needs-base formula would be impossible to conceive were wrong. He said:

“It is often forgotten that the original Barnett settlement was based on a proper needs assessment. As I keep every piece of paper that I get my hands on, here is my copy of the original 1979 needs assessment. However, you must remember that that needs assessment was carried out at a time when the GDP per head in Wales was close to 90 per cent of the UK average. Barnett was a mechanistic way of adjusting the budget for a few years and was never intended to last for 20 years. It is now totally inappropriate because the needs of Wales are so much greater.”⁷⁰

(iv) Wales Office Annual Report

⁶⁷ Western Mail, 2 May 2001

⁶⁸ Assembly Record, 3rd May 2001

⁶⁹ Ibid

⁷⁰ Ibid

In April a the Wales Office's Annual Report revealed there is room for improvement in the way the it presents Westminster policies to the National Assembly, which only rated 'fair' on a scale from excellent to bad.⁷¹ Five Whitehall departments contributed to a survey on how they view the Wales Office performance on the range of indicators shown in Table 1. The assessment may be regarded as especially pertinent inn view of the debate that is underway about the future of the Wales Office and whether it should be merged into a new department representing the devolved territories (see the Political Parties section in this report).

Welsh Opposition parties argued that the Annual Report showed that there was still a lot to do in improving communication between the Assembly and Whitehall. Wales Office officials defended their record and said that regular communication between them and the Assembly has improved over the previous twelve months.⁷²

Table 1
Wales Office Performance as see by other Whitehall Departments

	<u>Excellent</u>	<u>Good</u>	<u>Satisfactory</u>	<u>Fair</u>	<u>Poor</u>	<u>Bad</u>
Working relations with Wales Office		✓				
Wales Office handling of work			✓			
Promotion of devolution		✓				
Presentation of Assembly's views to Government		✓				
Presentation of Government's policies to Assembly				✓		
Facilitation of Communication between Assembly and Government			✓			

(v) The Welsh Affairs Committee

⁷¹ Western Mail, 4 April 2001

⁷² Ibid

On 28 March the Welsh Affairs Committee published its report *Wales in the World: the role of the UK Government in promoting Wales abroad*.⁷³ The Welsh Affairs Committee published its report entitled *Welsh Young Offenders Outside Wales: Interim Report and Proposals for Further Inquiry* on 11 May 2001.⁷⁴

The Committee has taken written evidence in preparation for its inquiry into post-devolution primary legislation as it affects Wales. The Committee is expected to return to the subject early in the next Parliament.

⁷³ First Report, 28 March 2001, HC 38.

⁷⁴ Second Report, 11 May 2001, HC 511.

7. RELATIONS WITH THE EUROPEAN UNION

John Osmond, IWA, and Mark Lang, Welsh Governance Centre

(i) 2004 Inter-Governmental Conference

The Assembly Administration is giving increasing attention to the 2004 Inter-Governmental Conference of the EU which will address the role of Regional Governments within the EU institutions. At the 4 April meeting of the European Affairs Committee First Minister Rhodri Morgan reported that he had written to Keith Vaz, Minister for Europe at the Foreign and Commonwealth Office

“... pointing out to him the importance of the Assembly being fully involved in any future discussions in relation to the next Intergovernmental Conference in 2004. I also asked him to take particular account of the Assembly’s interest in any discussion of a ‘Charter of Competences’.”⁷⁵

And in a Press Release to mark Europe Day the First Minister re-emphasised the point:

“The European Inter-Governmental Conference in 2004 will chart the way forward for Europe. It will examine what is best for Europe, Member State Governments and also regional tiers. I want Wales to be firmly involved in this process and for our voice to be heard.”⁷⁶

The Director of the Wales European Centre in Brussels, Joseph Gallacher, has pointed out that the key forum for expressing the Welsh point of view is likely to be a Europe-wide Convention established by local and regional bodies in the run-up to the 2004 Inter-Governmental Conference:

“The pressure in Germany and elsewhere for the next IGC to tackle the triangle of powers - European, national and regional - rather than just the European / national split will not go away. As a first step, the partners in Wales need to agree a common view on the key issue at the IGC, both in terms of how a delineation of competences can be achieved and on how the local and regional dimension could be expressed in a European treaty. Would it be possible to produce a joint position statement which had the support of both local government and the National Assembly? A common strategy would help to clarify lobbying points and ensure concerted action at the right place and the right time ...

⁷⁵ Chair’s report to the Committee on European Affairs, 4 April 2001

⁷⁶ Assembly Press Release, 9 May 2001

... the involvement of Wales in the IGC cannot be taken for granted. Other regional and local government bodies will be lobbying for a Convention prior to the IGC and for the Convention's membership to include devolved governments and local authorities. A key issue will be how far partners' wish to support and involve themselves in this lobby."⁷⁷

(ii) First Joint Ministerial Committee on Europe

At the April meeting of the European Affairs Committee First Minister Rhodri Morgan reported on the first meeting of the Joint Ministerial Committee on European issues, which had been held on 1 March. He said he had participated by video-link and had raised three main points:

“(i) The level of participation by Assembly Ministers in Council of Ministers meetings. He had pressed for a high level of access to these meetings. David Trimble and Denis Haughey, fellow participants in the meeting had also pressed for this and a rota system had been informally agreed.

(ii) Information on the physical preparations for the introduction of the Euro had not yet been received. There would need to be a high level of awareness of preparations in two parts of the UK: Kent and Wales which would soon have five ports.

(iii) Wales wanted to be involved in preparations for the Euro as manufacturing was currently suffering from the pound-euro exchange rate.”⁷⁸

(iii) Objective Two Aid

Plans put forward by the Assembly Administration on how the £75 million of European Objective 2 money should be spent in East Wales were approved by the European Commission in April. The plans, costing £75m over the next seven years, are aimed at setting up 820 new firms and creating 5,100 jobs during the programme. The main Objective 2 programme covers most of Powys, and parts of Cardiff and Newport and is worth in total some £127m including match funding. Transitional funding of around £63m is also available for Monmouthshire, the rest of Powys, and parts of Wrexham, Cardiff, Newport and the Vale of Glamorgan.

The Committee overseeing the programme, chaired by Newport East Labour AM John Griffiths, held its first meeting on March 26. It is expected that the first projects under the programme will be approved in June.⁷⁹

⁷⁷ Joseph Gallacher, *Devolving Europe*, AGENDA Spring 2001, IWA.

⁷⁸ Chair's report to the Committee on European Affairs, 4 April 2001

(iv) European Cohesion Report

In his Chair's address to the Assembly Committee on European Affairs in April First Minister Rhodri Morgan reported on the second European Cohesion Report. A key concern was the future of European Structural Funds after 2006 in the context of EU Enlargement. One of two consequences would occur as a result of the new applicant countries generally having a lower GDPs than Wales: either Wales would no longer qualify for funds, or there would be transitional arrangements in which payments would taper off over several years. Discussions on the future of the Structural Funds will begin in July under the Belgian presidency.⁸⁰ Arrangements have been made for the UK Belgian Ambassador, Lode Willems, to attend a meeting of the European Affairs Committee on 27 June.

At the end of May a Cohesion Forum will be held in Brussels to discuss the implications, and the Assembly will be represented by Deputy First Minister Mike German, Phil Williams (Plaid), Val Feld (Labour) and Alun Cairns (Conservative), as well as two officials from the Assembly and one from the WDA. Discussions on the future of the structural funds are likely to continue over a number of years. The Assembly will be involved in the development of the UK line on the main issues raised in the Cohesion Report.

⁷⁹ Assembly Press Release, 3 April, 2001

⁸⁰ Minutes of the Committee on European Affairs, 4 April 2001

8. RELATIONS WITH LOCAL GOVERNMENT

By Alys Thomas, Martin Laffin and Gerald Taylor, University of Glamorgan

(i) Postponing the Local Government Elections

On 2 May Edwina Hart, Minister of Finance, Local Government and Communities announced to the Local Government and Housing Committee that the local elections scheduled for 2003 should be postponed for a year until May 2004. Following a consultation exercise, begun in November 2000, she had concluded that local government elections and the National Assembly elections should take place on different dates thereby reducing confusion and encouraging participation in the democratic process.⁸¹ An Order will be brought forward to implement the changes. Most Members of the Committee welcomed the initiative while the Welsh Local Government Association Leader, Sir Harry Jones stated:

“It was evident following the May 1999 elections that it would be beneficial to separate the Local Government and National Assembly elections. Holding the Local Government elections in May 2004 will ensure the logistical complexity in terms of organising two such large and significant elections simultaneously does not occur again.”⁸²

However, William Graham, the Conservative Assembly spokesman on local government said that the Assembly, council and community elections should all to be held on the same day to save money. Despite the coalition, the Liberal Democrats were also critical. Peter Black, the Liberal Democrat Deputy Minister for Local Government reported that when the issue had been discussed by party's Group in the Assembly

“... we took the view that although the two polls should be separated, we were not happy about postponing the council election for a year.”⁸³

⁸¹ Local Government and Housing Committee minutes, 2 May 2001, Assembly website.

⁸² Welsh Local Government Association Press Release, 2 May 2001

⁸³ *Western Mail*, 3 May 2001

(ii) Economic Development

At a Partnership Council meeting on the 26 March 2001 the Economic Development Minister, Mike German gave a presentation on the National Economic Development Strategy. This reflected the desire of local government that the Partnership Council should have the scope to look at the broad sweep of issues relating to Wales and not confine itself to the narrow remit of local government matters. While supporting the broad objectives of NEDS the view of the Partnership Council was that it could not endorse the Strategy as it stood as the role of Local Government in economic development was not given sufficient attention.

In April the WLGA gave evidence to the Economic Development Committee of the National Assembly for Wales. The WLGA noted that 'local authorities play a key part in the economic regeneration of Wales' providing crucial services which support business growth and development. They have powers under the Local Government and Housing Act 1989 to promote the economic development of their area and under the Local Government Act 2000 may now do anything that they consider may promote or improve the economic well-being of their area.

The WLGA urged the Assembly to give a clear direction to economic development in Wales. It said that there needed to be a clear framework for the Assembly's own initiatives and to inform and give coherence to the work of the WDA and Wales Tourist Board. The principle of the National Economic Development Strategy and the Economic Development Committee's review of business support services was welcomed. However, it argued that the Assembly needed to recognise and promote the importance of local regeneration to the overall prosperity of Wales in all its policies, including the National Economic Development Strategy. All-Wales policies and strategies were inadequate because of the diversity of Wales:

'We suggest that a very substantial part of the economy in Wales is local or regional in focus, with the success of businesses being strongly influenced by local conditions, rather than all-Wales circumstances. Blanket policies that apply equally across Wales are simply not sensitive enough to tackle these variations, nor are they able to deliver effectively on an all-Wales basis. Local economic development helps to ensure that local needs are met.'

The WLGA concluded that:

- More recognition needed to be given to local initiatives in the draft National Economic Development Strategy and in the Committee's review of business support services.
- Appropriate funding to support local regeneration needs to be made available.
- Policies should be based on a more sophisticated understanding of how the economy operates so that the Assembly can identify what needs to be done,

based on an understanding of what it can deliver, what it can seek to influence, and what it cannot control.

- The Assembly also needs to ensure coherence between its own policies to ensure that they are mutually compatible. For example, the draft NEDS, draft Transport Framework and draft review of planning policy all have different timescales and different objectives.
- The Assembly should take full account of the local and regional dimension in its policies and strategies.

In response the Chair of the Economic development Committee acknowledged that Local Authorities had a key role and were key drivers of economic development at a local level. The challenge was one of effecting co-ordination between the local and regional level.

(iii) Local Government Finance

In March the Welsh Local Government Association's presented a response to the Local Government and Housing Committee to the Assembly consultation paper *Simplifying the System - Local Government Finance in Wales*. The Association welcomed :

- The removal of central controls over borrowing and their replacement by locally controlled prudential borrowing;
- A power for councils to vary the business rate locally, and reductions in the bills for small business;
- The retention of standard spending assessments as the cornerstone of distributing revenue support grant.

However, it expressed concern that the consultation paper failed to address what it considered the fundamental problem in the local government finance system, namely the low proportion of income that councils raise locally:

- Councils should have full control over business rates.
- Consideration should be given to the introduction of additional forms of local taxation.
- There should be a fundamental review of fees and charges set or controlled by the Assembly.

- There should be a revaluation for council tax, with consideration being given to changes in the valuation bands and the ratio between them and to changing the value of the council tax discount.

The WLGA committed itself to working with the Assembly to secure new legislation that would meet the needs of Wales and would give powers to the Assembly (not the Secretary of State or Treasury) to the extent that powers need to be conferred on central government at all. The Association concluded:

“As a result, the content of the Bill that gives effect to the proposals may need to be different for Wales from whatever the UK Government decides may be necessary for England.”⁸⁴

(iv) Education Funding

The controversy over the impact of non hypothecation on education funding and comparisons with English education funding, as discussed in the previous Monitoring Report ⁸⁵, has rumbled on. On the one hand, the teaching Unions are claiming that 120 teaching jobs will be lost due to shortfalls in Local Authority Schools budgets.⁸⁶ On the other hand, the National Assembly and WLGA tabled a joint report at the Education and Life Long Learning Committee entitled an Analysis of School Funding in Wales for 2000-2001. The report concluded that the Wales average was higher than for all English non-metropolitan areas. However, significant disparities were identified within Wales:

- Average budgeted per pupil spend in Wales in 2000-01 was £2,850.
- The range was £2,560 in the Vale of Glamorgan to £3,500 in Ceredigion
- The overall budget per pupil for England was £2,870: £2,800 excluding London.
- The Wales average was higher than for all of the English non-metropolitan areas and for two of the metropolitan areas (Yorkshire and the North East).
- LEAs in Wales vary widely in size (measured in terms of pupil numbers), average school size, and share of pupils entitled to free school meals but pupil teacher ratios vary much less.
- LEAs in Wales are much smaller than LEAs in England, average school size in Wales is smaller, pupil teacher ratios in England are similar to those in Wales

⁸⁴ Welsh Local Government Association response, Local Government and Housing Committee minutes, 14 March 2001

⁸⁵ *The Economy Takes Centre Stage: Monitoring the National Assembly December 2000 to March 2001*, IWA, March 2001

⁸⁶ *Western Mail* 7/8 May 2001

but slightly higher on average, share of pupils entitled to free school meals is higher in Wales than the average for England.

- Since 1990-91 spend per pupil in Wales has increased by 16% in real terms, compared with 14per cent in England; average per pupil spend in England and Wales has been close throughout.
- Cross-border comparisons show per pupil budgets lower in North East Wales than in neighbouring English authorities; higher in mid Wales than in neighbouring English authorities; and higher in South East Wales than in neighbouring English authorities.
- Relative differences between authorities in level of achievement widen between key stages 1 and 4; the main changes are the relative improvement for rural areas and relative decline for the Valleys.⁸⁷

(v) Ethical Framework for Local Government

The establishment of new ethical framework for local government in Wales is being taken forward as part of the National Assembly's Local Government Bill. Statutory instruments under Part III of the 2000 Local Government Act will be laid before the Assembly and are anticipated to come into effect in July 2001. The consultation on the draft regulations was concluded in early April 2001. The foundations of the new ethical framework are:

- The general principles and code of conduct for members. The general principles are the basis for the code of conduct. Every relevant authority will be required to adopt a code of conduct and all their members will have to agree to be bound by it.
- New investigatory functions conferred upon the Commission for Local Administration in Wales (CLAW) which will be responsible for handling allegations of a failure by a member to comply with the relevant authority's code of conduct.
- Standards committees which will be responsible for providing advice and training, for considering matters relating to members' conduct referred to a monitoring officer by CLAW, imposing penalties where allegations are upheld, and granting dispensations to speak or vote. There will be a right of appeal from a standards committee to an appeals panel appointed by the National Assembly.
- The Adjudication Panel for Wales which may set up case tribunals to review the evidence of CLAW's investigations and, where the allegations are upheld, impose appropriate penalties.

⁸⁷ Education and Lifelong Learning Committee, 9 May 2001

- A code of conduct for local government employees.⁸⁸

The Finance, Local Government and Communities Minister, Edwina Hart reported on the consultation to the Local Government and Housing Committee. Some respondents were concerned that giving members a duty to report any breach of the law by anyone could lead to a proliferation of reports about minor offences, when the main intention of that part of the code of conduct was to oblige members to report potentially criminal behaviour. Others were concerned that some might construe taking part in demonstrations as 'bringing the office of member into disrepute', when that might be a legitimate expression of their views. A small number thought that the requirement to register their membership of all private clubs would be off-putting to potential councillors. Other comments focused on the need for standards committee, tribunal and appeals hearings to be conducted fairly and in accordance with the principles of the European Convention on Human Rights; and on how monitoring officers will cope with overseeing the standards framework in all community councils in their area as well as in the principal authority.⁸⁹

⁸⁸ Local Government and Housing Committee minutes , 14 March 2001, Assembly website.

⁸⁹ . *Ibid.*

9. POLITICAL PARTIES

John Osmond, IWA

A striking feature of this period was the entanglement of debates and policy development in the Assembly with the campaign leading up to the UK general election on 7 June. Despite an injunction from the Presiding Officer that in debates Members should eschew reference to the UK contest, the temptation proved too much for them to resist. As the June poll drew closer electioneering within the Chamber grew more intense. The media-driven controversy surrounding the position of the Deputy First Minister Mike German over his former role as head of the European Unit at the Welsh Joint Education Committee, dealt with elsewhere in this report, served to further embroil the Assembly in the Westminster campaign. However, the underlying key question could only be resolved by the election itself: to what extent would the sea-change in Welsh politics that occurred as a result of the first 1999 Assembly elections be confirmed or accentuated by the forthcoming Westminster contest?

The general election campaign invaded the Chamber on 17 May when Plaid Cymru initiated a Minority Party debate on a motion proposing that

“ ... the National Assembly expresses its profound concern at the effect of UK Government monetary, fiscal and public expenditure policy on the economy and communities of Wales.”⁹⁰

To this the Conservatives proposed a series of amendments which, among other things called on the Labour-Liberal Democrat Assembly Administration “to condemn the imposition of stealth taxation” by the previous UK Labour Government. These moves prompted a walk-out by the Liberal Democrat Group. Liberal Democrat Deputy Minister Peter Black declared,

“The fact that this motion has been tabled undermines the ruling that the general election should not intrude on the Assembly’s normal business. Plaid Cymru is making a mockery of the Assembly by turning it into another arena in which to fight the general election. By their amendments the Conservatives are also treating Assembly proceedings as an extension of the general election campaign ... Minority party debates should not be used to fight another parliament’s election as this debate does.”⁹¹

Despite the abstention Labour won the vote by 22 to 17, as the Conservatives also abstained on the Plaid Cymru motion, having seen all their own amendments fall. Nonetheless, the Liberal Democrat abstention angered some on the Labour side. For instance, Ron Davies (Caerphilly) declared:

⁹⁰ Assembly Record, 17 May 2001

⁹¹ *Ibid.*

“Their failure to support the partnership on this occasion – particularly given the strains Labour members are under at the moment, given the accusations levelled at their leader – was a grave betrayal of the principles of the partnership and was particularly insensitive.”⁹²

It was noteworthy that the former First Secretary Alun Michael who had rejected a deal with the Liberal Democrats intervened at this point to defend the Coalition. He said the parties should ensure its stability was not damaged by “careless words”:

“Over a period of time and seeing the irresponsibility with which Plaid Cymru and the Conservatives operated, the Liberal Democrats came to see the only way forward was for the two parties of devolution to make sure the Assembly worked.”⁹³

Given the Assembly’s responsibility for administering key functions such as health and education, and deciding on key spending priorities in these areas, it was inevitable that its role should be highlighted in the parties’ Welsh Manifestos for the Westminster election. This is particularly noteworthy in the Labour Manifesto *Ambitions for Wales* which has lengthy sections dealing with the Assembly Administration’s policies in the fields of education and health. It provided a contrast with previous “Welsh” Labour Manifestos which tended to merely top and tail the all-British version. At the start of the campaign Rhodri Morgan described it as “very Welsh, written in Wales to answer Welsh needs, made in Wales, and developed in Wales”⁹⁴. And he declared that Labour had learned the lessons of its disastrous showing in the 1997 Assembly elections:

“I’m sure that you won’t see a repetition this time of the election performance that we had in 1999, probably the poorest one we’ve had in three-quarters of a century. We have taken on board the challenge. When you get that kind of message from the electorate then obviously you have to respond to it. The Welsh manifesto is in part a response to what was a very poor performance in ’99 following what was an absolutely amazing performance in ’97.”⁹⁵

At the same time he conceded that what he described as Plaid Cymru’s ‘Oliver Twist’ mentality, would appeal to voters:

“They always want more, more, more. They’re trying to capitalise on dissatisfaction and say that its not enough and whatever it is they always double it and ask for more. Of course it will appeal to everybody, but the responsibility of government is to make the figures add up.”⁹⁶

⁹² Western Mail, 18 May 2001

⁹³ Western Mail, 19 May 2001

⁹⁴ Western Mail 10 May 2001.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

Despite its self-conscious 'home-grown' flavour the Manifesto is silent on Welsh constitutional matters save for a one sentence reference in a section dealing with devolution in a United Kingdom context:

“In Wales, we will build on the already successful legislative partnership with the Assembly, and continue to enact specific legislation for Wales where appropriate.”⁹⁷

On wider UK devolution the Manifesto re-iterates the 1997 Manifesto commitment that provision should be made for directly elected regional government in England “where people decided in a referendum to support it, and where predominantly unitary local government is established” adding,

“The UK Parliament makes the essential financial allocations to all devolved bodies. English MPs make up 85 per cent of the UK Parliament so there is no case for threatening the unit of the UK with an English Parliament, or the denial of equal voting rights to Scottish, Welsh and northern Ireland MPs at Westminster.”⁹⁸

However, a more detailed account of Labour's outlook on the future development of devolution in Wales was provided by a reply from First Minister Rhodri Morgan to a letter David Morris Chairman of the cross-party Parliament for Wales Campaign, circulated to all the party leaders in Wales. In his response Morgan stated:

“While you will be disappointed that the Labour Party manifesto does not contain pledges to provide a law making and tax varying Parliament for Wales, I hope you will welcome much that is in the manifesto and in the actions of the Assembly which are distinctive to Wales and represent Welsh responses to the opportunities in Wales - pledges and programmes in education, health, economy, environment and regeneration. I am not convinced that any contrasts between the National Assembly and the Scottish Parliament over the past two years have been determined in the main by the differences in our legislative powers. The appropriate point for reviewing the Government of Wales Act is during 2003 and 2004 when the Assembly has completed its first full term. That is why the Partnership Government announced the setting up of an independent commission to sit from 2002 to mid late 2003 to consider whether the powers of the Assembly could and should be strengthened. In the meantime, I am more than content that this general election and the next Assembly election are fought on the basis of what our devolved institutions deliver rather than on the powers given in the 1998-9 settlement.”

The Welsh Conservative Manifesto *Time for Common Sense in Wales* also commits to an independent commission, in the following terms:

⁹⁷ *Ambitions for Wales*, Labour's 2001 Welsh General Election Manifesto, page 35

⁹⁸ *Ibid.*

“As a matter of urgency, an incoming Conservative Government will establish an independent commission to conduct an inquiry into the workings of the National Assembly for Wales. The inquiry will be independent of Government and independent of the Assembly. It will be made up of representatives of all sections of Welsh society. It will be given the remit of looking at the functions of the National Assembly for Wales and to make recommendations as to how the body can better deliver for all the people of Wales. It will make recommendations to the Secretary of State for Wales.”

On the face of it this sounds as if the Conservatives have an open mind on extending the Assembly's powers. However, this was qualified by Nicholas Bourne, Leader of the Welsh Conservatives in the National Assembly, in his response to the circular from the Parliament for Wales Campaign:

“The Welsh Conservatives are committed to making the National Assembly for Wales a success, but doesn't believe that extending the powers of the Welsh Assembly is the only way forward. If other parties are putting this into their manifestos then the only way this can be done is by having another referendum.”

Both the Welsh Liberal Democrat and Plaid Cymru Manifestos commit to give the Assembly equivalent legislative and tax-varying powers as the Scottish Parliament. Although no reference is made either manifesto to a referendum to validate such changes the issue did emerge in the Press conferences at their launch. The Liberal Democrats said a referendum would be required before tax-varying powers were granted, while Plaid Cymru said it was open-minded on the question.⁹⁹ The Liberal Democrat Manifesto added a commitments on PR and the Barnett formula:

“There should be 80 Members elected by the Single Transferable Vote in multi-member constituencies ... Everybody accepts that the current ‘Barnett formula for funding Wales fails to take account of its needs. The Liberal Democrats will establish a Finance Commission for the Nations and Regions to agree a new needs-based formula. Such a formula would provide a massive boost for public funding in Wales.”¹⁰⁰

Plaid Cymru's commitments are laid out in the following terms:

“The Party of Wales will introduce a Bill to provide legislative powers for the National Assembly in all of its areas of responsibility, together with additional areas such as the police and railways. The Assembly should also have tax raising powers and a clear distinction between the executive and the legislature. As with the Scotland Act, the new Wales Act should leave the door open for further devolution within the UK framework. This would mean an increase in the number of Members

⁹⁹ Western Mail 18 May 2001

¹⁰⁰ *Freedom for Wales in a Liberal World*, Welsh Liberal Democrat General Election Manifesto 2001, page 4.

and the resources to serve them. Resources should be transferred from Westminster to meet the cost of this increase.

“We shall also press for progress towards the development of an integrated public service for local government, the Assembly and other public bodies in Wales. This would enable a national career structure to be created along with wider mutual understanding and a spirit of partnership between government levels. We would want to keep close links with the other civil services of the islands of Britain and the European Commission and regular secondments could be used as one way of ensuring this.”¹⁰¹

¹⁰¹ *Plaid Cymru – The Party of Wales Manifesto 2001*

10. PUBLIC ATTITUDES: ASYMMETRIC VOTING

Denis Balsom, Welsh Governance Centre

Opinion polls and surveys taken in Wales since the advent of the National Assembly have revealed a common pattern of asymmetric voting. The electorate's declared voting intention for a forthcoming Westminster general election has differed markedly from that reported for a hypothetical Assembly election. In particular, support for Plaid Cymru has continued to fluctuate at around 30 per cent, matching the party's actual performance in the Assembly election in May 1999. Plaid Cymru's potential support at a Westminster election however, has advanced from the 10 per cent that the party polled in 1997, but never threatened to reach similar levels. Whilst the results for all parties show some variation, it is the displacement by Plaid Cymru of Labour Party support, as occurred at the 1999 Assembly election that is most notable.

At the last Westminster election, in 1997, Plaid Cymru polled fractionally less than ten per cent of the votes cast. This modest total was the party's highest share of the vote since 1974, but gave little indication of the seismic shift that was to occur, two years later, at the elections to the National Assembly. In 1997, Plaid Cymru's vote remained highly differentiated, varying between seats such as Caernarfon, where Dafydd Wigley secured 50 per cent+ support, to swathes of Gwent where the party barely polled 3 per cent.

TABLE 2
How would you vote if a general election for Westminster were held tomorrow?

	Feb 2001	Oct 2000	July 2000	May 2000	March 2000	Jan 2000	Election 1997
Conservative	22%	25%	25%	23%	20%	21%	20%
Labour	52%	45%	51%	47%	50%	56%	55%
Liberal Democrat	10%	13%	9%	12%	12%	8%	12%
Plaid Cymru	14%	15%	13%	15%	16%	13%	10%
Other party	2%	2%	2%	2%	2%	3%	3%

In 1997 the Labour Party won a landslide which, in Wales, saw the election of thirty-four MPs and manifested itself in a total rejection of the Conservatives. The Welsh Tories had entered the election with six MPs and ended up with none. Thus although the Labour Party approached the subsequent Assembly elections defending an historic high point, its losses could be said to amount to no more than a return to a more usual pattern of party affiliation across Wales. The Labour Party lost support in every constituency in Wales, bar one. In Cardiff West, Rhodri Morgan, the then Leader-in-exile, increased his share of the vote. But unlike previous elections, when Labour support has fluctuated with that for

the Conservatives or Liberal Democrats, in 1999 Plaid Cymru support increased in every single constituency ranging from +5.1 per cent in Monmouth to +35.7 per cent in Islwyn.

TABLE 3

How would you vote if an election for the National Assembly for Wales were held tomorrow?

	Feb 2001	Oct 2000	July 2000	May 2000	March 2000	Jan 2000	Assembly Election 1999
Conservative	16%	16%	15%	14%	14%	13%	16%
Labour	44%	39%	40%	41%	43%	45%	37%
Liberal Democrat	9%	12%	8%	10%	10%	6%	13%
Plaid Cymru	29%	30%	34%	32%	31%	33%	30%
Other party	2%	4%	3%	3%	2%	3%	5%

Apologists have tended to focus upon the very low turn-out of 46 per cent at the National Assembly elections, as the principal explanation for Labour's misfortunes. Emphasis on poor participation however, must not be allowed to obscure the magnitude of the political shift. Although less than one-in-two voters in Wales bothered to go the polls, Plaid Cymru polled over 300,000 votes – almost double their vote in 1997 when three-out-of-four people voted. Whilst the low turn out in 1999 certainly contributed to Labour's poor showing, earlier research has shown that all parties were affected by abstention.

At the beginning of the 2001 General Election campaign, Rhodri Morgan declared that Labour had “learned its lesson” from the reverses of 1999¹⁰². Labour will be seeking to maximise its vote, especially in the seats where Plaid Cymru success in 1999 has heightened the expectation that lifelong loyalty to Labour may finally have been eroded. The UK campaign however, appears to be continuing to emphasise a large Labour lead in the polls and the inevitability of a Labour victory on polling day. In these circumstances it seems likely that turnout may well fall, with Labour voters, in apparently safe Labour seats, being the most likely to stay at home. If this happens, it would raise, once again, the spectre of Plaid Cymru making gains. Plaid Cymru supporters have generally shown a higher propensity to vote, for example in their record in elections to the European Parliament. But even if turnout were to return to more normal, general election levels of around 70 per cent, there is still the fear that defecting from Labour will now be easier for many former supporters, just because it has happened before. For many voters, especially in south Wales, desertion is no longer unthinkable and may even be justified as a positive assertion of a renewed Welsh identity. The key questions therefore, focus upon those voters who are reporting to the various opinion polls an intention to vote differently at an Assembly election from a General Election.

¹⁰² Western Mail 10 May 2001

Over the last year, NOP have conducted six all-Wales opinion polls for HTV which have confirmed the differential in voting support for parties between a National Assembly election and a Westminster general election. Aggregating these polls into one dataset allows a detailed demographic profile to be drawn of those voters who would choose to vote differently at these elections. In the present General Election campaign, this is the key target group of voters whose loyalty Labour must retain or Plaid Cymru must capture if the political changes of 1999 are to be either reversed or sustained.

TABLE 4

Change in voting intention between a Westminster election and an Assembly election

		LABOUR	PLAID CYMRU
National Identity	Welsh	0.5%	-7.2%
	English	-0.5%	2.2%
	British	0%	5.0%
Gender	Male	-0.7%	-1.4%
	Female	0.7%	1.4%
Age	18-34	-0.5%	2.2%
	35-54	0.9%	-1.4%
	55+	-0.3%	-0.9%
Welsh Language	Fluent	-2.4%	-10.6%
	Some	0.1%	3.7%
	None	2.3%	6.9%
Social Class	AB	1.1%	-2.2%
	C2	-1.4%	0.7%
	DE	0.3%	1.6%

Source : NOP polls for HTV Wales, 2000 - 2001

The major difference revealed by the analysis shows that Plaid Cymru support at an Assembly election is less intensely Welsh than at a Westminster election and slightly less middle class. Whilst more voters support Plaid Cymru at an Assembly election, proportionately fewer are fluent Welsh speakers and Welsh identifiers. This gives Plaid Cymru, at an Assembly election, a much broader, inclusive base. This also suggests that Plaid Cymru is perceived to have a particular relevance at an Assembly election but that this might not apply at a general election. Consequently, in the current campaign the Labour Party have every interest in emphasising the United Kingdom context of the contest and the irrelevance of Plaid Cymru to the Westminster outcome. Plaid Cymru, on the other hand, can make a virtue of their broadened appeal. Their Assembly successes in Islwyn and Rhondda demonstrate conclusively an ability to poll well outside of the Welsh speaking heartland of north and west Wales.

The run of polls since the Assembly elections has also shown Plaid Cymru sustaining a potential Westminster vote of between 13 – 16 per cent. Although modest in absolute terms, if repeated at this General Election, such a vote would represent a very substantial increase in Plaid Cymru support. Under Britain's first-past-the-post electoral system, an

increase in votes is not necessarily matched by an increase in seats. The difficulty facing Plaid Cymru will be how to present an election performance, where they polled, say 15per cent (which would be half as much again as in 1997) as a success, if they do not win any additional seats. To win an additional seat, Plaid Cymru may well be prepared to forego a greater number of votes elsewhere across Wales.

11. PRESS AND MEDIA

Nia Richardson, IWA

The media has been the driving force behind the emergence of allegations of corruption against Mike German, the Liberal Democrat Deputy First Minister and Minister for Economic Development.

On 10 May, Dragon's Eye, BBC Wales' leading current affairs political programme, broadcast a 'leaked' copy of the Bentley Jennison report, by the independent auditors drafted in to examine the finances of the Welsh Joint Education Committee's (WJEC's) European Unit. The Head of the European Unit throughout the 1990s had been Mike German.

Allegations against him had first emerged in October 2000, a few days after the Partnership government coalition deal had been announced. The allegations focused on his use of corporate credit cards, restaurant bills and other expenses while overseas on business as Head of the Unit. Furthermore internal memos expressing concerns over the Unit's financial state were leaked to the press by the WJEC. This was the beginning of a bitter and very public feud between Mike German and the WJEC, led by its Chairman, Jeff Jones, the Labour leader of Bridgend County Council. In response, Mr. German had released a transcript marked 'highly confidential' to the press in which a QC speaking in July 1998 cast doubt on whether the WJEC was lawfully constituted. He also claimed that the allegations were part of a politically-motivated smear led by the local Labour councillors who dominate the WJEC's governing body to discredit him in an effort to destabilise the coalition deal.

Subsequently, the WJEC decided to bring in independent auditors to investigate the Unit. Mike German agreed to co-operate and answered 130 questions on his period as Head of the Unit. The report was completed by the end of April 2001. However, the WJEC delayed any discussion of the report to give Michael German time to respond to it. At the same time Jeff Jones did reveal to the press that the report had unravelled inconsistencies between Mike German's answers to the auditors and the evidence that was available at the WJEC:

“There are serious contradictions in his (Mr German's) answers.”¹⁰³

There is no doubt that there was widespread leaking of the report to the media. This was despite a disclaimer on its title page that

¹⁰³ The Western Mail 9 May 2001

“This report has been produced for the information of the WJEC only on a private and confidential basis and is not for any wider dissemination whether in whole or in part.”

As stated above, copies was obtained by BBC Wales and later leaked to press journalists and also opposition politicians in the Assembly. The Dragon's Eye programme on 11 May was dedicated to unravelling the findings and conclusions of the report. It revealed that the WJEC might have to pay as much as £1m in clawback money to the European Union. Furthermore, the report added that

“... failings by management was the prime reason for clawback.”

The report also looked into how the European Unit had been allowed to run up a deficit of £218,000 before its closure in 1999. Mike German had previously denied that the Unit was in any financial trouble when he left in December 1998. However, the programme had obtained internal memos signed by members of the WJEC and Mr. German which proved that he was aware of the depth of financial problems at the Unit. The report also suggested repeatedly that the WJEC might want to look again at the expenditure of the European Unit, as there were inconsistencies between some of the answers that Mike German had given and evidence supplied by the WJEC. For example, there were allegations that Mr. German extended a trip to Vienna in order to attend a Liberal Democrat Conference, and that the prolonged stay was financed by the WJEC.

Hours before the programme went on air, the war of words between Mike German and the WJEC escalated to another level. Previously he had refused to talk to the programme or even look at the report. However, at 6.00pm two hours before the programme was to be aired live on television, he issued the producers with an 18-page statement which accused the WJEC of falsifying documents to suggest that he was lying. When the WJEC were informed of this they declared to Dragon's Eye that they would be taking legal steps in light of the comments. Mike German also announced that following the leaking of the report, he would cease to co-operate with the WJEC's investigation.

First Minister, Rhodri Morgan has stood by his Mike German ever since the allegations emerged last Autumn, declaring that only if there were a police investigation would his deputy have to stand aside. However, following the leaking of the report to the media several Labour backbenchers demanded the removal of Mike German from the Lib-Lab cabinet Peter Law (Blaenau Gwent) who was ousted from the Cabinet following the Partnership Agreement, declared on Radio Wales that Mr. German should resign.¹⁰⁴ A few days later, on May 16, Tom Middlehurst (Alyn and Deeside), who resigned from the Cabinet in protest at the coalition deal also called on Mike German to resign. Under a Daily Post headline *Labour AM calls for German to Quit: Middlehurst breaks ranks by demanding action against under-fire Liberal Democrat leader* he was quoted as saying

¹⁰⁴ *Wales at One*, BBC Radio Wales, 11 May 2001

“I believe he should now stand aside.”¹⁰⁵

Middlehurst was particularly concerned at suggestions by German that some of the evidence produced by the WJEC for the auditors might have been tampered with to implicate him. He stated that if this was the case then the police should become involved to investigate the whole matter. Alun Pugh (Clwyd West), Deputy Minister for Economic Development was another Labour AM angered by Mike German questioning

“... the record-keeping of Wales's premier examinations board”.¹⁰⁶

The leaked report and its subsequent coverage in the media led to an exchange of words in plenary on the May 15. Nick Bourne (Conservative) demanded a full debate whilst Ieuan Wyn Jones (Plaid Cymru) called for Rhodri Morgan to state the grounds on which his deputy would have to resign. Morgan reiterated he would have to stand down if there was a formal police investigation into Mr. German's conduct. However, a Western Mail editorial expressed concern that the affair would have a detrimental impact on the Assembly as a whole:

“Now Opposition leaders want a debate on the issue; it is slowly encroaching on the Assembly and its ability to carry out its work adequately ... The hot water the Deputy First Minister finds himself in, for whatever reasons is becoming hotter by the day. This goes beyond his fortunes though. Rhodri Morgan has backed his deputy and would lose credibility if the balloon went up. But this transcends the fate of any one, or two, individuals, The Assembly is now being affected by these allegations and that is the most worrying aspect of all.”¹⁰⁷

An Editorial in the Welsh Mirror's went on the attack:

“At the time, to hear Mr. German talk, he was the European Unit. Its top man. The bee's knees. 'I am Head of the European Unit' he would happily remind anyone willing to listen. Now though Mr. German is playing an entirely different tune. Mr. German is going around whispering to journalists: 'I was only a third-tier officer. I was never senior management. I was accountable to my line managers.’”¹⁰⁸

The editorial then attempted to dispel the rumours that the WJEC were politically motivated against the Liberal Democrat involvement in the Coalition by pointing out that Peredur Ekland, a Liberal Democrat Councillor and member of the WJEC Board had insisted that the audit report had absolutely nothing to do with politics. A column by Clive Betts in the Western Mail took an opposing view. He had also received a leaked copy of the Audit report:

¹⁰⁵ The Daily Post 16 May 2001

¹⁰⁶ The Western Mail 16 May 2001.

¹⁰⁷ The Western Mail 16 May 2001

¹⁰⁸ The Daily Mirror 11 May 2001

“After reading 200 pages, my conclusion was that the aim was to discredit Mr. German. Those questions in the report leaked to the Western Mail and other media this week are, hardly, however, about whether Mr. German is fit to remain as Deputy First Minister. They relate, rather to why the Welsh Joint Education Committee called on the auditors to pay so much attention to alleged misdeeds by Mr. German, who was no more than a third-tier officer at the examinations body. In other words, Mr. German answered firstly to a line-manager, and then to the head of the organisation, the Secretary, now entitled Chief Executive’.¹⁰⁹

Betts also hinted that it was the WJEC, who had leaked the report:

‘I don't know who brought my copy to the Western Mail office in the Assembly because I wasn't there. But there is no doubt that WJEC chairman Jeff Jones, a Labour Councillor in Maesteg, has been leaking information as reported.’

Betts concluded that:

“The WJEC is run by a board of 22 local authority councillors, most of them party political. Until they are thrown overboard, the ship will be unable to avoid the rocks; if not now, then in the future”¹¹⁰

The saga took a new turn on May 21 when the Welsh Mirror revealed that the WJEC would be formally passing the Auditor's report to the police. WJEC Chairman Jeff Jones had told the paper before the scheduled meeting of the WJEC board had taken place to make this decision that,

“We are absolutely convinced that there is clear evidence that Mr. German defrauded the WJEC while working as Head of the European Unit.”¹¹¹

Later that day the WJEC held a press conference to confirm they would be handing over the Auditors' report to the police. The fraud investigations unit of the European Commission, OLAF, was already looking into the European Unit of the WJEC, and as a result the Conservative MEP Jonathan Evans had added his voice to those calling for German to go¹¹².

On 22 May the Daily Post ran a banner front-page headline, 'German: Is this the End' next to a pensive photo of the Deputy First Minister.¹¹³ The Western Mail's headline was “Audit File on German case goes to police”¹¹⁴ Both Plaid Cymru and the Conservative

¹⁰⁹ The Western Mail 18 May 2001.

¹¹⁰ The Western Mail 18 May 2001

¹¹¹ The Welsh Mirror 21 May 2001

¹¹² Good Morning Wales, Radio Wales, 11 May 2001

¹¹³ The Daily Post 22 May 2001

¹¹⁴ Western Mail 22 May 2001

Party demanded that Mr. German resign. Nick Bourne, the Assembly Conservative leader said,

“He should stand down from his ministerial positions in order to respond to the damaging findings.”¹¹⁵

Plaid Cymru’s Business Manager Jocelyn Davies said:

“The action by the WJEC confirms our concerns about the extremely serious allegations of incompetence and improper behaviour. It cannot be right for him to continue to be responsible for running the European structural-fund programmes when he stands accused of incompetence in running EU-funded projects at the WJEC’.¹¹⁶

However, Mike German released a statement to the press stating that he would not be resigning. Moreover, he welcomed police involvement as an

“... opportunity for independent scrutiny. The motive and timing of the referral to the police could be seen as malicious, designed to undermine the partnership government in the Assembly during the General Election campaign. For months now the WJEC has acted as prosecution, judge and jury in a trial by media designed more to discredit me than to forward the interests of the organisation it served”.¹¹⁷

There were also calls for the whole affair to be subjected to a judicial inquiry. Supporting this Richard Livsey (former MP for Brecon and Radnor), President of the Welsh Liberal Democrats declared:

“The truth has to come out.”¹¹⁸

On the other hand Jocelyn Davies attacked the idea:

“This action cannot be justified and the Government should play no part in stepping in to resolve what is a personal dispute between Mr. German and his former employers.”¹¹⁹

Later it was revealed that the Coalition Administration had actively considered the case for a judicial review . A notebook belonging to one of Rhodri Morgan’s special advisers containing references to discussions inadvertently fell into Plaid Cymru hands and were raised in an Assembly debate on the issue on 22 May. A Western Mail report on the episode quoted an Assembly Cabinet member remarking:

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ The Western Mail 21 May 2001

¹¹⁹ *Ibid.*

“Some of us were horrified at the costs that could be involved and were glad when the idea was rejected.”¹²⁰

In the Assembly plenary session on 22 May the Coalition defeated by 27 to 20 votes a Plaid Cymru/Connservative bid for an immediate full-scale debate on the affair. The Western Mail reported that an earlier meeting of the Labour Group had secured unity after Rhodri Morgan had urged loyalty during a general election campaign, but suggested the unity was unlikely to hold once it is over. The former Welsh Secretary Ron Davies (Caerphilly) was quoted:

“He [Mike German] gained a stay of execution today, but he will swing from the highest tree after the election.”¹²¹

In the plenary debate Rhodri Morgan insisted that no Minister subject to “speculative allegations” should be required to stand aside. He said the decision to refer the relevant papers to the police should bring the allegations and counter allegations to an end:

“Now with the police investigating the documents and dealing with them in the normal way, when misconduct has been alleged, trial-by-media, which has been so distasteful, can stop.”¹²²

¹²⁰ Western Mail 22 May

¹²¹ *Ibid.*

¹²² *Assembly Record*, 22 May 2001