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COALITION CREAKS OVER HEALTH

MONITORING



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales
MAY TO AUGUST 2001

Edited By
John Osmond

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SUMMARY

Relations between the parties in the Coalition government were strained to cracking point during this period over Labour's insistence on pushing through major structural changes in the organisation of the Welsh health service against Liberal Democrat objections. Last minute negotiations led to a compromise which kept the Liberal Democrats on side. Radical proposals to abolish the five Welsh health authorities and replace them with 22 Local Health Boards, coterminous with the 22 local authorities, were presented to Cabinet in early July without prior consultation with the Liberal Democrats. This attempt to railroad the proposals through the Coalition resulted in the Liberal Democrat Group in the Assembly taking the extraordinary step of making its own response to the formal consultation process that ensued. In it the Group called for substantial modifications to the Coalition policy, specifically an all-Wales Health Authority to keep the administration of the Welsh health service at arms length from the Assembly.

In November the Assembly Administration endorsed the May 28 Flanders Declaration by European Regions with Legislative Powers seeking more influence within the institutions of the European Union. Although Wales did not sign the Declaration when it was first launched, it is a signatory to a successor Declaration agreed by some 45 Regions attending a Conference of Presidents of Regions with Legislative Powers, at Liège in mid-November. The May 28 Declaration urged that "the role and setting of the Regions in the European policy-making process" be added to the themes debated at the 2004 Inter-Governmental conference on the EU's constitution.

On a number of occasions First Minister Rhodri Morgan has drawn attention to the close timing of the appearance of the Assembly's Independent Commission report on extending its powers, in late 2003, and the Inter-Governmental conference in 2004. Evidently he believes that separate arguments made at the Welsh and European levels will reinforce one another in helping persuade a Westminster government to give ground on extending primary legislative powers to the National Assembly.

Meanwhile, an emerging consensus on the Assembly's year-long procedural review broke down at the end of October when the Opposition parties together with the Liberal Democrats refused to endorse a draft final report. Instead, Deputy Presiding Officer John Marek began a series of negotiations with the party leaders and business managers to achieve a harder hitting report with more focused recommendations.

1. THE ADMINISTRATION

John Osmond and Nia Richardson, IWA

Structural Change in NHS Wales

Relations between the parties in the Coalition government were strained to cracking point during this period over Labour's insistence on pushing through major structural changes in the organisation of the Welsh health service against Liberal Democrat objections. Last minute negotiations led to a compromise which kept the Liberal Democrats on side. However, the episode exposed a rift that could widen in the months leading up to the May 2003 Assembly election.

Radical proposals to abolish the five Welsh health authorities and replace them with 22 Local Health Boards, coterminous with the 22 local authorities, were presented to Cabinet in early July without prior consultation with the Liberal Democrats. This attempt to railroad the proposals through the Coalition resulted in the Liberal Democrat Group in the Assembly taking the extraordinary step of making its own response to the formal consultation process that ensued. In it the Group called for substantial modifications to the Coalition policy, specifically an all-Wales Health Authority to keep the administration of the Welsh health service at arms length from the Assembly.

In the wake of the consultations the Liberal Democrats sided with Plaid Cymru and the Conservatives on the Health Committee in forcing Health Minister Jane Hutt to concede a plenary statement and full debate on her proposals.¹ In her report to the Committee Jane Hutt maintained the main thrust of her changes, devolving health administration to 22 new Health Boards coterminous with the Welsh local authorities. However, proposals to co-ordinate these centrally through three so-called regional 'health economies' were abandoned. Instead co-ordination was to be achieved by creating between 10 and 12 local partnerships, each involving collaboration between two Local Health Boards, two local authorities and one NHS Trust. In the case of Powys it was agreed that a single Health Board should be created by combining the Local Health Group with the Community Trust and the County Council.

However, the central question of the administration of the health service at the all-Wales level remained unresolved. The day before the Health Minister's Statement to plenary, a crisis meeting was held between First Minister Rhodri Morgan, Jane Hutt, the Liberal Democrat Deputy First Minister Jenny Randerson, and the Welsh Liberal Democrat Assembly leader Mike German to thrash out a compromise.

¹ Health Committee minutes, 7 November 2001.

An apparent concession was also made on an all-Wales commissioning authority. On the eve of her Plenary Statement the Press Association reported that the Health Minister Jane Hutt had been forced into “a last minute U-turn on plans to re-structure the NHS”:

“Labour Health Minister Jane Hutt will tomorrow announce she is to set up an all-Wales health commission after Lib Dems threatened to vote down her NHS plans if she did not do so.”²

This line was also followed by BBC Wales’ Political Editor David Williams, reporting on the talks between the Coalition partners for the *Wales Today* early evening news programme.³ The Press Association report, evidently sourced from the Liberal Democrats, continued that the new health commission would be put in charge of commissioning tertiary care in Wales, covering specialised services such as specialised cardiac, cancer and burns care. The Liberal Democrats plainly took this to be the all-Wales Health Authority they had been demanding. The acting Liberal Democrat Health spokesman, Peter Black⁴, went on Radio Wales on the morning of Jane Hutt’s statement to claim a major concession, saying that an all-Wales Health Authority was being established.⁵ That this was not the case emerged later in the day. By the lunchtime news Peter Black was backtracking. What Jane Hutt was proposing was a non-statutory commissioning organisation closely tied to the NHS Wales Directorate within the National Assembly Administration. It would focus on the provision of relatively small-scale and highly specialised services generally bought in from across the border. In her Statement to plenary the Health Minister defined it in the following terms:

“I also intend to strengthen the role currently played by the Specialist Health Service Commission for Wales. In the reformed health service in Wales, the Commission will continue to provide an All-Wales, arms-length, commissioning body, dealing with tertiary and other highly specialised acute services. At present, the Commission operates through a Board made up of representatives of the constituent Health Authorities. Post reorganisation a Board will be constituted which is made up of regional representatives of Local Health Boards, Trusts and the National Assembly. In addition to securing tertiary services, the Commission will also provide advice to the NHS in Wales in relation to more specialised secondary and regional services commissioning. It will continue to provide oversight of these areas, through advice and guidance, to the post April 2003 bodies.”⁶

By this time, however, the die was cast. Liberal Democrat support had been secured. Their votes enabled the Coalition Administration to carry its proposals in the subsequent plenary debate on 27 November by a comfortable 31 votes to 24. The key Opposition amendments, supported by both Plaid Cymru and the Conservatives, called for the

² Press Association report by Jamie Lyons, *Forced NHS U-turn exposes tensions*, 14 November, 2001.

³ 14 November 2001.

⁴ He was standing in for Kirsty Williams AM who was on maternity leave.

⁵ *Good Morning Wales*, BBC Radio Wales, 15 November 2001.

⁶ *Assembly Record*, 15 November 2001.

creation of an all-Wales statutory Health Authority that would be responsible for co-ordinating the commissioning of acute secondary services by the Local Health Boards.

At the same time the motion put forward by the Administration for the debate on 27 November appeared to edge closer, or at least hold out the prospect for future evolution, towards an all-Wales statutory commissioning body for the key acute secondary services. The precise wording committed the Administration to:

“... strengthen the Specialist Health Services Commission for Wales as the basis of an all-Wales, arm’s length commissioning body, commissioning tertiary services and having enhanced capacity to advise, guide and facilitate the commissioning of secondary care.”⁷

The Liberal Democrats had been particularly aggrieved about the lack of consultation. The Press Association report quoted ‘a senior party source’ as describing the top level meeting between the two Coalition parties as ‘business-like’. However, Ministers had left feeling ‘bruised’ and the Health Minister had learned a lesson in partnership:

“We have been screaming blue murder about this for three weeks telling her she must stop and talk to us before going ahead. But she kept on going, digging herself deeper and deeper into it. There was no ideological split, it just comes down to practical solutions. There will be some bruised people on both sides after this, but we have always said partnership government is not comfortable or easy.”⁸

The background to the row was a key health component of the Partnership Agreement that established the Coalition between the Liberal Democrats and Labour in October 2000. This stated that the new Administration would:

“Seek a period of organisational stability within Health Services in Wales to allow staff to prioritise the delivery of better health care.”

In December 2000 Health Minister Jane Hutt sought the agreement of the Liberal Democrat Health spokesperson Kirsty Williams AM, Chair of the Health Committee, for this clause to be set aside. Her consent was given but not in anticipation of the radical proposals that subsequently emerged, and certainly not in the expectation that there would be no further consultation. In his Preface to the policy paper heralding the reorganisation that swiftly appeared in January 2001, *Improving Health in Wales - A Plan for the NHS, with its Partners*, First Minister Rhodri Morgan declared:

" ... this Plan is a product of the Partnership Government ... and draws regularly and directly on the Partnership Agreement.”

This policy paper announced the abolition of the five Welsh Health Authorities by April 2003 but did not provide details of how they were to be replaced. A *Key Structures*

⁷ Assembly Record, 27 November 2001.

⁸ Press Association *op. cit.*

Group, chaired by Ann Lloyd, Director of NHS Wales, was given the task of coming up with an alternative structure over the next six months. The Group's proposals *Structural Change in the NHS in Wales* was presented to a Cabinet meeting on 2 July as a *fait accompli* so far as the Liberal Democrats in the Coalition were concerned. Subsequently the Liberal Democrats articulated a number of concerns that were widespread within the NHS, including:

- The changes threatened a major disruption within healthcare at a time when it needed stability to deal with increasing demand reflected in rising waiting lists for treatment.
- The number of "Quangos" would rise from five Health Authorities and 15 Trusts (20) to 22 Local Health Boards and 15 Trusts (37).
- The Health Minister was insisting that these changes will be cost neutral but there were no analysis to substantiate this claim.
- The National Assembly's NHS Directorate was being considerably strengthened resulting in a consolidation of more power at the centre.

These concerns were reflected in the formal submission that the Liberal Democrat Group produced:

“We believe that one health authority responsible for the strategic commissioning of key services should be created to develop into a Health Commission for Wales. This body would be responsible for commissioning tertiary services and providing All Wales strategic management and would be at arms length from the Assembly but accountable to it and scrutinised by it.

The time-scale for structural change is a matter for concern and we have doubts regarding whether it is achievable. The implementation date of April 2003 appears unrealistic. Linked to this, structural change must take account of the need for stability in regard of services and the work-force. Care must be taken not to jeopardise other policies designed to improve the quality of care by making key staff take their eye off the ball. We suggest that slowing the pace of change will allow for greater stability.

Currently Health Authorities make resource allocation decisions in public at meetings open to all. Under the proposals set out in the consultation document the NHS Directorate Health Economy teams would arbitrate ‘... in disputes between members of the Consortia in the content, range and resourcing of service level agreements and in disputes between the Consortia and their providers.’ As the NHS Directorate is not directly publicly accountable and presumably the arbitration would take place behind closed doors then this represents a potential lessening of Democracy within NHS Wales.”⁹

⁹ Welsh Liberal Democrat Assembly Group's Response to Improving Health in Wales – Structural Change in the NHS in Wales: A Consultation Document

The Administration received 345 responses from a wide range of organisations and individuals by the time the consultation period ended on 19 October. These were not made public but it was reported that the majority were hostile. For instance, Russell Hopkins, Chair of the Bro Morgannwg NHS Trust told the Health Minister:

“I believe you run the risk of creating considerable disaffection in your NHS senior management by foisting another reorganisation upon them simply to introduce a system we remember as a failure.”¹⁰

Coincidentally, a few days after Jane Hutt’s Statement, the House of Commons debated the Second Reading of the NHS Bill which included a Section on Wales allowing the National Assembly wide flexibility to frame secondary legislation to reorganise the health service. Significantly a number of Welsh MPs spoke against the proposals. Denzil Davies, MP for Llanelli, calculated there would be 52 bodies running the NHS beneath the Assembly: 22 Local Health Boards, 15 Hospital Trusts, 12 Health Partnerships, and three regional offices of the Assembly’s NHS Directorate. The result would be “... the most bureaucratic health service in western Europe.”¹¹

Jon Owen Jones, MP for Cardiff Central and a former Health Minister in the Welsh Office, complained that the Assembly Administration’s report on the outcome of its consultation, a document running to 500 pages, had only arrived in the House of Commons library that morning:

“My researcher spent hours undertaking analysis and Hon. Members will benefit from hearing some of it, although I apologise for the fact that we were able to take only a 10 per cent random sample to try to find out what the consultation said. Of the random sample, 21 per cent expressed concern about how the restructuring will affect recruitment and retention; 42 per cent expressed concern about how partnerships and consortiums between local health boards will work; 56 per cent said that Local Health Boards would be too small to work effectively; and 61 per cent said that specialist medical practitioners and managers will splinter because of the smallness of the Local Health Boards.”¹²

Owen Jones added that the consultation also revealed that a survey carried out by the NHS Confederation in Wales found that:

- 69 per cent. of managers believed that the 22 new Local Health Boards would be difficult to sustain;
- 87 per cent thought that accountability would be less clear; and

¹⁰ *Western Mail*, ‘Health Reforms to go ahead in face of hostility’, 22 November 2001.

¹¹ Hansard 20 Nov 2001, Column 250

¹² *Hansard*, 20 November, Column 261.

- 81 per cent thought that the NHS would find it difficult to manage or understand the structure put before it.

Despite such reservations Jane Hutt maintained a robust defence of her proposals throughout the exchanges. For instance, writing in the *Western Mail* on the morning of the Assembly plenary debate she declared that the five Health Authorities were,

“ ... an unnecessary tier of administration which has become between the Assembly and the sharp end of the health service where funding needs to go. Much of the power that Health Authorities now exercise will be passed down to Local Health Boards, made up of doctors, nurses and other health professionals, local authorities, the voluntary sector and local people. People who live and work locally know, at first hand, the needs of their own communities. A patient-centred approach, which builds on the evidence of what is needed for improving health and health care, is the best way forward. Local Health Boards also understand the solutions which are required. Now they will have the money and the power to make these solutions work.”¹³

Speaking some days earlier in the Commons debate Jon Owen Jones drew attention to the role of the Liberal Democrats at Westminster who, in opposing the Second reading of the NHS Bill were in effect opposing their own coalition in the National Assembly. He also reflected on the constitutional position whereby the first controversial Welsh legislation to be considered by Parliament since the devolution settlement was being inadequately scrutinised:

“The debate is an opportunity to test whether the present constitutional settlement for Wales provides a means for adequate scrutiny of new Bills. The Welsh Assembly does not have primary legislation powers, but if Parliament simply acts as a rubber stamp for Welsh matters brought to the House, we should dispense with the charade and move towards giving the Welsh Assembly primary legislation powers.”¹⁴

This intervention underlined the problems the Assembly Administration is having in finding time for its own legislation at Westminster. In the Queen’s Speech, debated at Westminster in June, it was proposed that there should be a separate NHS (Wales) Bill that would have allowed greater scrutiny. However, shortage of parliamentary time meant that this commitment was later withdrawn and the Welsh proposals incorporated instead within the NHS (England and Wales) Bill. In a Press release in June Jane Hutt made clear that a stand-alone Welsh Bill would have allowed greater debate:

“I am very pleased that the NHS(Wales) Bill has been included in today’s Queen’s Speech. The intention is for the draft Bill to be published in the Autumn and the

¹³ Jane Hutt, ‘The birth of a new NHS beckons’, *Western Mail*, 27 November 2001.

¹⁴ *Hansard*, 20 November 2001, col. 252.

Assembly will have a strong voice in discussing and debating the proposals before they reach the House of Commons.”¹⁵

As it was the combined Bill was given a Second Reading in the Commons before the Welsh proposals reached a plenary debate in the National Assembly.

‘A Winning Wales’

The opening of the Assembly’s new session was marked by the launch of four inter-linked policy statements by the Administration:

- **A Learning Country**, described as a ‘paving document’, the Welsh equivalent of a Whitehall White Paper, outlining the Cabinet’s Education policies.
- **A Winning Wales**, the Cabinet’s revamped National Economic Development Strategy.
- **A Plan for Wales**, the Cabinet’s re-worked strategic plan, setting out its medium-term objectives for 2003-4, and its longer-term aspirations for 2010, across the range of its responsibilities.
- **Skills and Employment Action Plan**, adding detail to the National Economic Development Strategy.

The core document is *A Winning Wales* which was developed through a process of extensive consultations with both sides of industry following a refusal by the Economic Development Committee to endorse an earlier version in January. When it became clear that the Administration was responding to widespread criticisms Labour’s Caerphilly AM Ron Davies, who had led the revolt within the Economic Development Committee, commented:

“I am delighted to find that the responses received from outside bodies substantiated my fundamental criticisms of the strategy as originally written. I am delighted that the old strategy has been dumped and hope the new one will reflect economic and political reality.”¹⁶

However, the Administration ran into a good deal of sniping from Plaid Cymru and the Conservatives. Plaid Cymru’s Business Manager Jocelyn Davies questioned the need for a third strategy in two years:

¹⁵ Assembly Administration Press Release, 20 June 2001.

¹⁶ Western Mail, 19 October 2001

“We have had ‘Betterwales.com’ and ‘Putting Wales First’. Now we have the Plan for Wales 2001’ ... I am beginning to wonder whether the real plan is to confuse everyone. Why do we need another plan? People tell me what they want is action rather than words.”¹⁷

The Conservative leader Nick Bourne also criticised the “plethora of documents” :

“The documents pile up and pile up. But so do the depressing statistics.”¹⁸

There were attacks on the central objective of *A Winning Wales* which is to raise the Welsh GDP from 80 per cent to 90 per cent of the UK average by the end of the decade. This was claimed to be too ambitious, though Rhodri Morgan responded:

“We are asking for a growth rate which is 40 per cent of that achieved by the Republic of Ireland over a decade. Why are you saying it cannot be achieved?”¹⁹

More generally the Opposition continued its attack on the First Minister for continuing to hold the Economic Development portfolio in the Cabinet while the Liberal Democrat leader stands aside from the position while the police investigation into his previous position at the Welsh Joint Education Committee remains unresolved.²⁰ The Administration had hoped that this would have been settled before the new session began. However, the inquiry, now linked to one being carried out by the European Commission Anti-Fraud Office OLAF, looks unlikely to be wound up before the New Year. Meanwhile Mike German won partial rehabilitation when he was unanimously voted back on to the Economic Development Committee, filling a Liberal Democrat backbench slot, on 30 October.

Targets set for the next ten years in *A Winning Wales* include:

- Increasing total employment by 135,000.
- Raising learning and skills acquisition performance at every level.
- Ensuring that Wales exploits world-class electronic communications to the full.

The document sets out the following priorities:

- **Supporting businesses** – in particular, to make sure that businesses get the advice and support they need by reducing bureaucracy in the Administration’s systems and processes and by supporting new and existing growth sectors and clusters.
- **Encouraging innovation** – by improving links between businesses and education institutions, and facilitating successful commercial exploitation of good ideas.

¹⁷ Assembly Record, 25 October 2001

¹⁸ *Ibid.*

¹⁹ Western Mail, 25 October 2001

²⁰ See the previous monitoring report, *A Period of De-stabilisation*, IWA, September 2001

- **Encouraging entrepreneurship** – by offering better support for new and growing businesses.
- **Setting a fresh direction** –by promoting Wales as a green business location, taking advantage of green business opportunities; establishing Wales as a global showcase for clean energy development and energy conservation.
- **Establishing Wales in the world** – by attracting high value investment to Wales, improving Wales’ export performance, and developing a more focused tourism strategy.
- **Making Wales a *Learning Country*** - by developing the skills of the Welsh workforce and help more people into work.
- **Creating strong communities** – by encouraging community and social businesses and the social economy.
- **Improving transport** – by investing in transport infrastructure and services.
- **Support rural Wales** – by developing income and employment in sectors other than agriculture, especially for young people.
- **Promoting information and communication technologies** – by improving access to affordable high bandwidth communications in Wales.
- **Establishing a technology commercialisation centre** – a public/private partnership to identify, invest in, and accelerate, the commercialisation in Wales of leading edge technology opportunities.
- **Promoting a lifelong learning network** - to roll out high speed broadband internet services throughout schools and libraries in Wales.

First Annual Report

Meanwhile the First Minister delivered his first ‘annual’ report to the Assembly at the opening of the new session, on 16 October. Entitled *Delivering for Wales* and presented in a glossy format with graphs and colour photographs, it describes the work of the Cabinet between April 2000 and July 2001. In the opening section Rhodri Morgan lists the Administration’s “legislative” achievements as follows:

- Provided free services such as prescriptions and dental services for certain groups, and frozen prescription charges.

- Created the UK's first Children's Commissioner, which aims to ensure that our future, the children of Wales, are safeguarded and represented in all we do.
- Established Education and Learning Wales (ELWa), our new body to oversee post 16 education and training; and Careers Wales – the first all-age advice and guidance service in the UK.
- Extended the categories of people who are eligible for support as homeless, with a Homelessness Commission, to devise a means of tackling homelessness and rough sleeping.

In addition he claims the Cabinet won extra funding during the period:

- £1.8bn in the Chancellor's Spending Review;
- £421m over the next three years to back our European Structural Funds programmes, which will make substantial moves towards improving the quality of life for people in deprived communities;
- £14.7m to compensate farmers for the effect of the level of Sterling against the Euro.

And he adds:

“The creation of the Assembly has given Wales a new international platform. Over the year, we had formal visits from Heads of State and Ambassadors from all corners of the world and were able to strengthen our political, economic and social ties abroad ... Since the autumn of 2000, the Assembly has faced an unprecedented series of crises, in fuel, flooding, the railways, Corus and, most recently, foot and mouth. Because of devolution we have been able to deal with these issues directly here in Wales. From my direct first hand observation, this has made a real difference to crisis management. The work of Assembly, and emergency staff in forming the teams, which responded so superbly to these crises, has been outstanding. I pay tribute to the sense of public service which we are able to draw upon in Wales and which has so long been a feature of the Welsh way of pulling together when things go wrong. At times in the worst of the Foot and Mouth crisis we had a team in Cathays Park Operational Headquarters with Assembly civil servants joined by UK Government civil servants, Environment Agency, plus Army and Police officers. Different chains of command and ways of working, but one loyalty and one purpose.”

Assembly Chamber

The first visitation of Prime Minister Tony Blair to the National Assembly on 30 October proved a defining moment in the ongoing saga over the projected new Chamber building. The occasion prompted a rare visitation from the London Press to hear the Prime Minister use the opportunity of his address to deliver a much-heralded rallying call over the Afghan war. However, the sketch writers proved as interested in reporting on the venue

as much as the speech, delivering a stinging verdict. Mathew Parris of *The Times* declared:

“The Chamber of the Assembly is small, low-ceilinged and characterless. It looks like the passenger lounge on a Sealink ferry, circa 1985 ... The surroundings were wrong: a makeshift Assembly in a half-finished docklands development.”²¹

Simon Hoggart of *The Guardian* remarked:

“The chamber resembles a function room in a provincial hotel ... Cicero would have fallen flat in that setting. He sounded as if he was warning us of the dangers of doing too little too late about dry rot.”²²

And Quentin Letts, of *The Daily Mail*, concluded:

“The venue was to blame. The National Assembly’s current digs in Cardiff, on a windswept industrial estate, are small and pokey. The claims floor of a provincial insurance company might have proved a more inspirational arena in which to discuss great matters of state and martial progress.”²³

These judgements appear to have stung the Finance Minister Edwina Hart, but more significantly the previously sceptical First Minister Rhodri Morgan, that Wales’ international image required a more determined approach to securing a new building. As recorded in the previous monitoring report, in mid July Edwina Hart sacked the Richard Rogers Partnership from the project after costs appeared to be rising to more than £40 million, compared with a £13.1 million construction cost budget approved by the Assembly in January 2001.²⁴ Confusion centred on the extent to which the building costs also embraced other items such as fit-out costs for the contents of the chamber and fees, which took the total budget an estimated £24 million.

In September the Administration put out an Official Journal tender for a developer or architect to take the project forward either at a fixed price or on a 22-year lease back. Meanwhile, the dispute over costs continued. In mid October the Richard Rogers Partnership circulated a ‘confidential’ e-mail to all Assembly Members refuting the Administration’s interpretation of the escalating costs.²⁵ This was duly leaked to the press. Edwina Hart then issued to AMs a rebuttal, again in confidence but in short order once more ‘leaked’ to the media.²⁶ These claims and counter-claims were analysed by the Auditor General for Wales, Sir John Bourne, who reported at some length to the Assembly’s Audit Committee in early November. He concluded:

²¹ *The Times*, 30 October 2001.

²² *The Guardian*, 30 October 2001.

²³ *The Daily Mail*, 30 October 2001.

²⁴ See *A Period of De-Stabilisation: Monitoring the National Assembly May to August 2001*, pages 11-12.

²⁵ Statement to the Assembly by Richard Rogers Partnership, 17 October.

²⁶ Edina Hart statement, *Assembly Building Project*, 17 October 2001, followed up by a more detailed analysis 26 October 2001

“Although the final outcome is as yet unknown, it seems likely that the Assembly’s new building will be smaller than envisaged when the Assembly voted to proceed with the project in June 2000, will cost significantly more than the budget originally set for it, and will be available much later than had been planned.”²⁷

²⁷ Auditor General for Wales, Letter to the Assembly Audit Committee, 6 November 2001.

2. FINANCE

Adrian Kay, University of Glamorgan

The draft budget for 2002-03 announced on 18 October covers the second year of the three-year budget agreed by the Assembly in December 2000 after the last Comprehensive Spending Review (CSR). Substantial increases in public expenditure had already been planned for 2002-03 and were part of the political environment.²⁸ Nevertheless, the draft budget contained some increases on top of those already in the system: notably £53.8m for health and social services on top of a £327.5m increase already announced and £19m for education on top of the existing planned £44m increase.

Table 1: National Assembly Budget Increases for 2002-03

| Major Expenditure Group | A: Planned increase 2001/02- 2002/03 (December 2000) (£m) | B: <i>Extra</i> increase (on top of A) 2001/02-2002/03 (October 2001) (£m) | C: Total expenditure planned 2002/03 (including A and B) (£m) |
|-------------------------------------|---|--|---|
| Health and Social Services | 327.5 | 53.8 | 3,724.3 |
| Local Government | 170.8 | 0.1 | 3,036.7 |
| Housing | 36.5 | 10.3 | 621.9 |
| Environment, Planning and Transport | 56.2 | 10.2 | 914.6 |
| Agriculture and Rural Development | (-0.3) | 2.4 | 229.7 |
| Economic Development | 36.7 | 11.7 | 504.6 |
| Education and Lifelong Learning | 43.9 | 19.1 | 985.9 |
| Culture, Sport and Welsh Language | 3.7 | 4.6 | 71.6 |

Source: National Assembly for Wales, Draft Budget 2002/03

However, the extra expenditure for 2002-03 is not new money. It is being funded from under-spending in previous financial years. This was essentially a budget of expenditure re-allocation between financial years. Finance Minister, Edwina Hart was not coy about this, stating in her budget speech,

“I regard the key theme of my Budget for this year ... [as] the urgent need to tackle the problem of under-spending across all Assembly budgets.”²⁹

²⁸ See *The Economy Takes Centre Stage: Monitoring the National Assembly*, Dec 2000 - Mar 2001.

²⁹ *Assembly Record of Proceedings*, 18 October 2001.

Indeed, such are the political sensitivities involved that under-spending has acquired a new, softer name. It is now known as 'end-year flexibility'. The under-spend amounted to three per cent of the Assembly's total budget and left the Finance Minister with £383m unspent at the beginning of the current financial year. To put that figure in some context, the amount given to the Assembly over and above the Barnett formula to cover Objective 1 spending for three years was £421m. The under-spending seems to have been greatest in the areas of health and economic development.

Contrary to popular belief the public sector does not find it easy to spend money quickly. The greater the year-on-year increases in allocated expenditure, the greater are the difficulties in spending it. This is for a number of reasons. Initially, ideas about what to do with the money are required. Following that policy proposals have to be drafted and then consulted on with the Assembly's partners. This often requires more civil service resources to design policy, to set up cost and quality control systems and establish performance management frameworks. Finally, legislation either at Cardiff or Westminster might also be required. All of these processes these take time. Rapid annual increases in public expenditure cannot always be matched by rapid increases in actual spending.

The problem of under-spending was not unexpected nor is it unique to Wales. Many commentators warned of the problem after the large spending increases announced in the CSR in July 2000.³⁰ These increases were announced after the Labour government had stuck to the relatively frugal (in the context of a growing economy) spending plans inherited from the previous Conservative administration in its first three years in office. All government departments have had difficulty spending (or in the language 'absorbing') the large year-on-year increases.

This explains the absence of strong criticism from the Opposition parties. Both Plaid Cymru and the Conservatives accepted that the Administration was not to blame and there was broad consensus on the urgent need to tackle the problem. What criticism there was, for example from Plaid's Phil Williams, cited the cause as the 'stop-go' nature of Gordon Brown's public expenditure plans as Chancellor. At the same time, the lack of criticism on under-spending did not equate with overall support for the budget from Plaid. In particular the party repeated their long-standing claim that the Assembly has not received the full amount of EU funding for Objective One to which it is entitled.

The under-spend has had two main impacts. The first is that unspent money is rolled forward to future years and the beneficiaries of public expenditure are delayed in their receipt of the full financial amounts that were planned and promised. However, it remains the Assembly's money to reallocate as it wishes across accounting periods. It is not clawed back by the Treasury, as was the case in the early 1990s when John Redwood famously returned £100m.

³⁰ See *The Economist*, July 14 2000.

The second impact will be on the prospects for future financial settlements with the Treasury. There will be another spending review next year. The political blood, sweat, tears, and First Ministers, that went into the 2000 CSR settlement and the extra £421m given to Wales are still fresh in the memory of both Treasury and Assembly officials and politicians. A negotiating strategy that emphasises Wales' needs, the usual approach taken, is politically vulnerable when there is a cash pile of £383m unspent (a figure which does not include any of the expected under-spend from the current financial year).

The Finance Minister has set medium term target that under-spending should not be greater than one per cent of the Assembly's total budget. This is to be achieved by establishing better financial early warning systems. These are designed to be able to identify within the financial year areas of likely under-spend. In addition, there was agreement between the parties in the budget debate on a suggestion from Dafydd Wigley, Plaid Cymru's new appointment as Finance Spokesperson, marking his return to the Shadow Cabinet. This was that a list of 'bottom drawer' projects should be drawn up, to be brought out at short notice within a financial year to absorb any excessive under-spending.

A further point is that time will mitigate the problem of under-spending. The public sector does eventually react to the shock of increased spending and develops an increased capacity for absorbing allocated funds and spending them within the planned financial year.

3. POLICY DEVELOPMENTS

Nia Richardson, IWA

Education

The Education Minister Jane Davidson unveiled her comprehensive policy statement on education and training in Wales, *The Learning Country*, for the next ten years in early September. Described as a pre-legislative 'paving document', it embraces early years to adulthood and shows how the Assembly's proposals will fit in with the Education Bill currently passing through Parliament. The Administration has allocated nearly £7.7 billion over the next three years to implement the plan which includes,

- Abolition of national tests for seven-year olds.
- New foundation level for ages three to seven.
- Closer links between primary and secondary schools to raise standards for children between ages 11 and 13.
- More flexibility to meet the needs of different pupils by offering different courses, particularly between 14 and 19.
- Overhaul of special education needs.

- Promotion of greater access to post-16 education.³¹

The plans set out to create a less formal educational structure. For example teachers will have more leeway in deciding what is the best way to educate their pupils. During early years there will be more learning through play, and fewer formal lessons. Secondary schools will be able to offer pupils a greater choice of courses rather than every child having no choice but to study for GCSEs.

Most notable, however, is what the Education Minister does not intend to do. Unlike in England, Welsh comprehensive schools will remain much as they are and will not experiment with different forms of control and specialisation. Rigorous testing of pupils at every level of their development will not be followed in Wales. But most important, from the point of view of the argument I am developing here, the role of local authorities as a intermediate level of policy and administration between central government and the schools, will be maintained in Wales, in contradistinction to England. As Jane Davidson put it when she launched *The Learning Country* in early September:

“We shall take our own policy direction to get the best for Wales. It is right that we put local authorities, local communities and locally determined needs and priorities at the centre of the agenda for schools. Our communities want excellent local comprehensive schools for all their children. Partnership on that front is at the heart of the way we do things in Wales.

“In a small country with relatively small unitary authorities, with so many distinctive features and circumstances there would be real risks in a wholesale shift to extensive and untested measures delivered solely through the private or other sectors without the most careful consideration. As a matter of policy that reliance on the private sector has been ruled out for Wales. So too has the introduction of a programme of specialist schools. In Wales schools have for long been encouraged to build on their strengths. When a system is working and developing well it makes no sense to disrupt the productive pattern of the relationship on which it rests.”

“The document sets out how I intend to promote Wales as learning country - making the most of partnership and collaboration that is evidence based, locally supported and professionally valid. It steers away from a basic reliance on centrally driven, competitively inspired, and community damaging approaches.”³²

A month later the Minister announced that tests for seven year olds would be scrapped immediately. Consequently the tests will not be held in 2002. According to the Minister the decision was made following 'overwhelming support, from teachers, parents and representative bodies alike' to the proposal.³³

³¹ The Western Mail 5 September 2001

³² Assembly Administration Press Release 5 September.

³³ Assembly Administration Press Release 31 October 2001.

The draft Skills and Employment Action Plan was launched with the intention that it will take forward the National Economic Development Strategy's aspirations for skills and employment in four main areas:

- Improving mechanisms of workforce development.
- Supplying entrants to the labour market with the skills needed for employment.
- Working with employers and employees to improve skills.
- Helping more people into sustained employment.

Some of the most significant proposals are:

- The introduction of new sector Skills Councils, employer-led bodies to identify and drive forward action to tackle skills shortages.
- A Wales co-ordinator to promote the teaching of maths.
- Making better use of work experience in schools and colleges.
- ELWA - Higher Education Funding Council for Wales to prepare an overall strategy for linking employers to higher education.
- The re-vamping of training programmes using an all-age approach.
- Enhancement of the New Deal in Wales.
- A joined-up approach to helping people with health and employment problems.

The Minister launched an information pack for the Welsh baccalaureate pilot as stipulated by the WJEC. The information pack consists of a leaflet prepared by the WJEC and a form for schools and colleges to register their interest in participating in the project.

The Minister sought to clarify her views on rural and small schools in a paper to the Education and Lifelong Learning Committee in October. As she put it:

“The prime responsibility for deciding the future of rural schools and small schools, also the overall distribution of school provision and the mix of denominational and Welsh medium schools, must remain with the local education authorities. They are best placed to weigh up the relevant considerations and decide when a school needs to stay open and whether it needs additional support in order to do so, and when the best educational interests of local children would be served by some form of reorganisation or a school closure. Maintaining unnecessary high levels of spare capacity can represent a waste of resources.”³⁴

³⁴ Assembly press release 31 October 2001-11-15

Economic Development

Winning Wales, the Assembly Government's draft Economic Development Strategy consisting of 60 new measures was unveiled in November amid some controversy (see Chapter 1).

One of the main initiatives included in the document is the establishment of a Technology Commercialisation Centre which will receive £3m worth of start-up funding over the next three years. The aim of the centre is to identify the next generation technologies from around the world and to vigorously promote the commercialisation of that technology in Wales - either by encouraging talented people to set up here or on the basis of joint ventures. The ultimate aim is to promote the successful development of at least ten high quality, internationally recognised companies with headquarters in Wales to create high-skilled work and high-value products.

Another initiative included is a New Welsh Centre of Manufacturing Excellence. The purpose of the centre is to help over 2,000 businesses with manufacturing advice, diagnosis and consultancy expertise. It will have a budget of £3 million over the next three years.

There have been several Wales Trade International missions by the Assembly government during the summer to South America, California, and South Africa. Together they have brought £16m worth of new orders to Wales. This success has led to a boost to its budget which will double the funding it currently receives. As things stand, the Assembly Government spends around £6m a year on Wales Trade International and its missions. This will now be brought up to £9.5 million by the end of 2004.

The Assembly is supporting a number of regional economic development projects including the development of a new terminal for P& O Irish Sea Ferries in Mostyn Dock, Flintshire. It has also agreed to allocate £13m towards the Castle Quays scheme in Swansea which will provide a new complex of café bars and 45 modern stores by 2006.

The Structural Funds

More than £220 million of Objective One funding had been allocated by October with some 250 projects underway. In the same month the largest Objective One allocation to date was committed for Finance Wales. This is the body set up by the Assembly Government and the Welsh Development Agency to assist the birth and growth of more businesses. In early November it was announced that it had won £19.7 million from European Objective 1 funding, more than matched by £20.3 million from Barclays Bank.³⁵ This was on top of £35 million already allocated from the Assembly's block. In 2002 a further £20 million should be released from the Objective 2 European programme. Finance Wales is aiming to help 4,000 small firms with high growth potential to create 10,000 jobs.

³⁵ *Western Mail*, 6 November 2001.

According to the Assembly Government 25 per cent of the European money that is available to Objective 3 projects in Wales has already been allocated to projects around Wales. Projects include:

- £627,452 to the Prince's Trust for a course for young people identified as being at risk of long term unemployment and for a project supporting unemployed people into self-employment
- £811,872 to the National Council for Education and Training Wales to support four projects including improving the IT skills of farmers and assisting enterprise in Powys to establish an effective e-business capacity.
- £601,465 to Cardiff County Council to assist three projects, including a family literacy and numeracy project based in primary schools in disadvantaged areas.

The Community Initiative Programme EQUAL funded through the European Social Fund has begun. Over £1.25 million will be allocated through the programme to promote equality of opportunity in Wales

The Economic Development Committee are currently undertaking a review of Energy policy and have appointed an expert adviser.

Agriculture and Rural Affairs

The Minister appointed a high-level advisory group to help frame a long-term direction for Welsh agriculture in October 2000 and their final document was launched in November 2001. It identifies over fifty initiatives to ensure a future for farming in Wales, divided between actions taken directly by the Assembly and actions that should be the responsibility of the UK Government and the European Union. A key message was that farmer should change from low cost production methods to,

' ... selling top quality ranges, developing innovative, high value processed products, developing export markets and targeting the top end of the expanding catering sector. The common thread is the need to target customers prepared to pay well for a quality product.³⁶

Importance was also attached to environmental sustainability and enhancing the countryside and its wildlife which would be critical for the development of tourism in rural areas. However, Rural Affairs Minister Carwyn Jones emphasised that the whilst the Assembly could recommend a direction, the success of the strategy depended on the farming industry itself:

³⁶ National Assembly Press Release 21 November 2001

“Turning the vision into reality is an enormous challenge. Let me make one thing clear. Government cannot solve the industry's problems for it. Our responsibility is to point the direction, and provide support for those who want to move in that direction. Then it is down to the industry to respond. This strategy sets out the framework and support that the National Assembly can provide. Success - or failure - depends on the industry's response.”³⁷

Farming Connect was launched in September to give farming families practical information, advice and support towards maximising their income and to foster an entrepreneurial culture. Other aspects of the service will include training opportunities, technical advice services, a Wales-wide network of demonstration farms, environmental and pollution control and advice, and a range of capital grants. However, the main initiative is the Farm Business Development Plan - a free health check for each individual farm, designed to help farmers determine the future of their businesses, and carried out by an experienced agriculture business consultant. Over £20m, which includes EU Objective 1 funding, has been made available for the various elements of *Farming Connect* over its first two years of operation.

An additional £1m is to be allocated to Local Authorities to assist them in dealing with the aftermath of the foot and mouth disease, with Powys - the worst hit area - getting almost a third of the money available.

A National Assembly Group to develop measures for the sheep industry has been established. The 'Welsh Sheep Group' comprises of officials from the National Assembly and representatives of the National Farmers Union, the Farmers Union of Wales, the Meat and Livestock Commission and the National Sheep Association. It will develop measures to accelerate the elimination of scrapie, and examine ways of reliably identifying sheep for breeding and market assurance.

The Agriculture and Rural Development Committee has agreed on the following terms of reference for its inquiry into the provision of Information and Communications Technology (ICT) in rural Wales:

- Look at individual case studies and experiences in Wales and elsewhere, to identify additional actions required to ensure that the economy and communities of rural Wales benefit fully from Information Age developments.
- The study will pay particular attention to the nature of ICT services required in rural Wales and the steps necessary to stimulate their demand and supply by:
 - Identifying the current and planned ICT activities that have an impact on economic, educational and community development in rural Wales.
 - Assessing the demand for ICT services and products in rural Wales, how their supply could best be stimulated and consequent resource implications.
- The output of the review will be a report specifying:

³⁷ National Assembly press Release 21 November 2001

- The ICT requirements of rural Wales and consequent economic development potential;
- The actions required to stimulate supply of the ICT services demanded in rural Wales.

Health

One of the Administration's priorities is mental health services and both the Children and the Adult mental health strategies were circulated during the summer, with an extra £1m allocated this year to support their implementation. The Children's Mental Health Strategy entitled *Everybody's Business* aims to promote a partnership across the health, social care, education and voluntary sectors to ensure that children who have emotional and behavioural difficulties receive appropriate services. Its main recommendations are:

- Services must be child-centred.
- Good inter-agency working is essential.
- A needs assessment for Wales is essential.
- The role of voluntary sector must be strengthened.

An implementation group with representatives from appropriate interests has now been established to work out an action plan to accompany the strategy together with detailed costings.

The main aim of the Adult Mental Health Strategy is to increase the quality of life of people with mental health illnesses, following four key principles:

- Equity - mental health services should be available to all and allocated according to need.
- Empowerment - users and their carers to be integrally involved in planning, development and delivery of mental health services.
- Effectiveness - mental health services should provide effective interventions that improve quality of life.
- Efficiency - mental health services must use resources efficiently and be accountable for the way public money is spent.

Launching the strategy Health Minister Jane Hutt said:

"This strategy presents an opportunity fundamentally to change the day to day experience of people with mental health problems who are living in Wales. By addressing the stigma and resulting social exclusion and discrimination associated with mental health problems, this strategy tackles one of the last taboos in the 21st century in our society. I want to see people

with mental health problems as a 'part' of the community rather than 'apart from' the community.³⁸

A capital renewal programme worth £40.5m aimed at more than 100 health projects was announced in October to:

- Address urgent Health and Safety requirements
- Aid recruitment and retention
- Build service capacity
- Support the delivery of cancer services
- Support the requirements of National Service Frameworks, for example on coronary heart disease
- Improve children services
- Improve mental health services.

The first allocation from the fund was £3.6m for the Welsh Ambulance Services NHS Trust whilst another £10m went to cancer-related services across Wales to provide new equipment and improve premises. A further £2m has been allocated to improve primary care buildings as promised by Jane Hutt in her Primary Care Strategy.

In November the Minister introduced her policy in response to the Royal Commission on Long Term Care for the Elderly. Henceforth, all nursing homes residents in Wales are to benefit from free nursing care whereas before, those paying for their own care in nursing home were also expected to finance the nursing care they received. Although this model does not go far as the one adopted in Scotland which seeks to provide free Long Term Care for the elderly, the Minister pointed out that Wales was going its own way as well:

“The model we are adopting for free nursing care is unique to Wales. The consultation clearly showed strong support for the model rather than the ‘banding system’ introduced in England. Funding will be set at a level of £100 a week per individual self-funder who is assessed as needing nursing care. This is a fair, reasonable and affordable contribution from the NHS towards care costs, and means that on average a self-funder will receive more than his or her counterpart in England.³⁹”

The Prescribing Practices Task and Finish Group reported back to the Health and Social Services Committee in November. Its main recommendation to establish an All-Wales Medicine Strategy Group was accepted. This will advise the Assembly on strategic planning and the cost implications of prescribing and cost-benefit analyses of drug prescription. It will be set up as a statutory advisory Assembly Sponsored Public Body to the Assembly.

³⁸ Assembly press release 25 September 2001

³⁹ Assembly Administration press release 5 November 2001.

The Health Minister has expressed her wish that national standards for children's health should be developed in early 2002. A National Service Framework will set national standards for the provision of health services for all children from birth to adulthood:

“Investment in the health and well being of children is one of the most important contributions that we can make to the future health of our nation. I have therefore decided that it is essential that we establish national standards to ensure that we have a modern children's health service that provides an efficient and responsive service to all children and their families throughout Wales.”⁴⁰

The Assembly is to allocate £4.5m for the second phase of the development of a Children's Hospital for Wales based at the University of Wales Hospital campus in the Heath, Cardiff. The second phase will see the transfer of children's oncology, elective paediatric orthopaedics and general paediatric in-patient services from Llandough in the Vale of Glamorgan on the edge of Cardiff. This was a surprise announcement, as the Minister had previously stated that the second phase of the development would have to be funded purely from charitable donations.

Environment, Planning and Transport

A major consultation *Safe Roads, Safe Communities* has been launched to promote highway safety in Wales. However, there was some opposition to the expansion of 20mph zones with the AA stating that they should only be used for 'accident blackspots'.⁴¹

A £25 million package will go towards addressing highways safety and repairs backlog. The money will be allocated between the local authorities and will be used for carriageway and footway repairs, town centre pedestrianisation, improved lighting and bridge strengthening works. The money will also be used to recruit and retain a new Child Road Safety Co-ordinator for each local authority to work with schools to educate children on road safety.

Almost £1 million pounds worth of grants have been allocated by the Assembly Government towards repair and restoring work on historic buildings. The grants will be operated by CADW and will be used for buildings of outstanding architectural or historical interest. The Assembly has also approved plans by the Minister to establish a Design Commission for Wales which will champion the cause of good design throughout Wales.

⁴⁰ Assembly Administration press release 21 September 2001.

⁴¹ The Western Mail 11 September 2001

Wales Spatial Plan - A Path to Sustainable Development, a draft land use strategy, represents the first step in the Assembly's Administration's commitment to prepare a new spatial framework for planning in Wales by 2003.

Local Government and Housing

In a policy development related to the Wales Spatial Strategy the Minister for Finance and Local Government Edwina Hart announced a review of Assembly office location throughout Wales in an effort to decentralise jobs from Cardiff. As she put it:

'With this review we are seeking to further increase the proportion of Assembly staff based outside of the capital. I am also writing to the bodies that the Assembly sponsors and asking them how they can best reflect the Assembly's policy of greater decentralisation in their own plans.'⁴²

The Minister unveiled a £14.6 million package of grants for local authorities to help them repair damage caused by bad weather conditions and floods last year.

New arrangements are to be implemented on how the Assembly Administration provides match funding for Local Authorities to draw down European Structural Fund grants. The Local Regeneration Fund will now be distributed in indicative allocations so that Local Authorities in Wales know in advance how much match funding money they will have each year to support European bids for local regeneration projects.

The Administration's aspiration in its National Housing Strategy for local authorities to transfer their housing stock to registered social landlords was given a boost by a special agreement reached with the UK government. When local authorities transfer their houses to a registered social landlord, the valuation is based on the income that will be obtained from the rents and the costs of carrying out the repairs and improvements. In some cases this valuation will be less than the debt owed by the council in respect of the houses. The Assembly Administration has persuaded the Treasury to give it funding to cover any debts which will occur as a consequence of such housing stock transfers, with funding likely to be in excess of £300 million.

Culture

⁴² Assembly press release 19 October 2001

Creative Future: Cymru Creadigol, a culture strategy for the next ten years, was unveiled as a final draft to the Culture Committee in November. Priorities include young people, communities, cultural diversity and the creative industries. It proposes to increase opportunities for professional musicians, raise the production capacity of theatre companies and maximise opportunities for communities to work with professionals in the theatre as well as including more exhibition spaces for public art in Wales. However, the *Western Mail* described the Strategy as a ‘Wish list’ since it came without any detailed costings:

“... although the lengthy document contains a wealth of action points to save the sector it could be regarded as little more than a wish list as the costs of implementing them have yet to be considered.”⁴³

However, Jenny Randerson responded,

“If you cost everything you get hung on those costing. Either people turn round and say this will cost too much and you never do anything or in five year's time we will try to do something costed at £5m and it turns out to be £25m.”⁴⁴

Much of the Culture Strategy is based on the Review of the Arts carried out last year by the now defunct Post-16 Education Committee. The main recommendation of the review was that a cultural consortium be established. The Minister for Culture, Sport and the Welsh Language gave an update to the Assembly plenary in October on the development of this Consortium known as Cymru'n Creu. Its objective is to encourage partnership between the relevant publicly funded bodies in implementing policies and priorities for the arts and culture.

The Minister stated that three Cymru'n Creu sub-groups have already been established to look at certain issues in more detail. A sub-group led by the WDA and Professor Steve Hill from the University of Glamorgan is examining the provision of up-to-date, credible information on the creative industries, whilst an ICT group has been set up under the leadership of Andrew Green of the National Library of Wales to look at developing ICT collaborative initiatives. The third sub-group has been founded to look at ways of improving access to European Structural Funds for the creative industries.

A grant of £250,000 has been allocated by the Assembly to the Sports Council in 2002-03 to support the development of golf in Wales following the success of the ‘Team Wales’ bid to bring the Ryder Cup to Wales in 2010. On this occasion ‘Team Wales’ included representatives from the National Assembly, the Golf Unions, The Sports Council for Wales, the Wales Tourist Board, and the Welsh Development Agency.

⁴³ The Western Mail 22 November 2001

⁴⁴ Ibid.

Information and Communication Technology

E-Minister Andrew Davies launched the Assembly Government's Information Communication and Technology strategy Cymru Ar-lein -Online for a Better Wales. This has five main themes:

- Broadband - Wales needs a strategy to ensure that high-speed internet connection is universally available.
- Education - Wales needs to be at the forefront in offering students access to global learning material, as well as tailoring the new e-learning to Welsh needs.
- Business - no matter what their size or location, Welsh firms must have access to and be encouraged to exploit ICT in order to expand, innovate and grow through access to global markets.
- The general public - must have affordable and easy access to the global communications network, for purposes of education, communication, entertainment, use of public services and for access to opportunity.
- The public sector - needs to be innovative in making services available electronically, especially in areas like health and education, and will be critical in building demand for high bandwidth ICT services.

The Minister had previously announced that £18.4m was being provided this year and £6m in subsequent years towards building a complete broadband network in Wales. However, Plaid Cymru's Economic Development spokesman Phil Williams, AM for South East Wales, criticised the funding as inadequate. He was particularly critical of the fact that 22 months into the Objective 1 programme, no use had been made of around £50m available for ICT infrastructure.⁴⁵

⁴⁵ Assembly Record, 1 November 2001

4. THE ASSEMBLY

John Osmond and Nia Richardson, IWA

The Procedural Review

An emerging consensus on the Assembly's year-long procedural review broke down at the end of October when the Opposition parties together with the Liberal Democrats refused to endorse a draft final report. Instead, Deputy Presiding Officer John Marek set about a series of negotiations with the party leaders and business managers to achieve a harder hitting report with more focused recommendations.

The final recommendations are unlikely to emerge much before Christmas with a plenary debate and approval of recommendations delayed until the New Year, putting the timetable back by some three months. Unresolved issues centred on five key areas:

- Practical proposals to give the Administration and Subject Committees effective influence over the drafting of primary legislation at Westminster.
- Greater transparency in inter-governmental relationships between Cardiff and Westminster and Whitehall.
- An enhanced role for the Legislation Committee in scrutinising secondary legislation.
- Giving the Subject Committees greater access to independent advice to more effectively hold the Administration to account.
- Ideas for giving more edge and substance to plenary sessions in the Assembly.

The episode marked a break in the coalition since the Liberal Democrat leader Mike German sided with Plaid Cymru and the Conservatives to reject the draft. On the other hand Business Manager Andrew Davies told the meeting of the Review Group:

“If you say the report is not radical enough, I am at a loss, because the civil servants who wrote it have tried to represent the consensus from this committee that they found emerging over the last six months.”⁴⁶

The authorship of the draft report by civil servants appears to contain some of the explanation. At an early stage in the Operational Review it had been assumed that the report would be drafted by the Chairman of the Review Group, Presiding Officer Lord Elis-Thomas. He was planning to work on the report through the long summer recess, assisted by a consultant to the Review, Richard Rawlings, Professor of Public Law at the London School of Economics⁴⁷. In the event, however, the report was drafted by a civil

⁴⁶ Western Mail, 1 November 2001.

⁴⁷ Mid-way in the Review proceedings it was proposed that Richard Rawlings be recruited as a fully-fledged Adviser. However, the Administration, led by the Business Manager Andrew Davies, objected on

service team comprising two from the Office of the Presiding Officer – Marie Knox, head of the Committee Secretariat, and Adrian Crompton, a Committee Clerk – and two from the Administration – Bryan Mitchell, head of the Cabinet Secretariat, and Steve Pomeroy, head of the Constitution Unit within the Cabinet Secretariat. It is hard to avoid the conclusion that the essential conservatism of the report was driven by the latter two civil servants, presumably responding to the wishes of the Business Manager, Andrew Davies.

Plaid Cymru's Business Manager, Jocelyn Davies, said:

“One of our major concerns with the draft report was with the role of the Subject Committees. It has been widely acknowledged that the Assembly is developing a de facto separation of roles between the executive and the legislature, and moving away from the concept of the corporate body, as Rhodri Morgan's own letter to the Review Group commented upon⁴⁸. Yet the continuing position of the Subject Committees does not recognise this. Briefing papers for the Committees emanate from the Administration. We have very few independent research facilities or resources. The result is that the Subject Committees cannot effectively hold the Administration to account.”⁴⁹

The Welsh Conservative leader Nick Bourne, said :

“We did not think the report was nearly radical enough. Our main concerns were the lack of clear division between the Executive for the Government of Wales, and the National Assembly in its legislative mode; little or no movement on family/friendly hours; the unfocussed way that the Regional Committees operate; and the need for a clearer role, in policy development terms, for Subject Committees. Other concerns that have been raised are the need to give all members the opportunity to put forward secondary legislation during a four year term, improve liaison in terms of influencing primary legislation at Westminster, and sharper Plenary sessions.”⁵⁰

The Liberal Democrat leader Michael German felt a source of the difficulties was the nature of the internal discussions between the parties during the review process. As he put it:

“I do not see great political divides in what we have been doing in the Assembly Procedure Review. However, I feel that there was insufficient time for inter party discussion, because even our so-called informal sessions were held in a largely formal context with civil servants present. We are certainly making progress now,

the basis that he had already presented evidence on his own account. Henceforth his position remained ambiguous. While he did not become a formal Adviser he was consulted on draft versions of the report.

⁴⁸ See the previous Monitoring Report, *A Period of De-Stabilisation*, IWA, September 2001, pages 25 to 28, for the contents of this letter, dated 5 July 2001, where he comments “It is now becoming a commonplace belief that the Assembly's status as a corporate body is something of a handicap. It is therefore widely accepted that we should use all the scope available to make a distinction between the governmental and parliamentary side of the corporate body.”

⁴⁹ Jocelyn Davies, interview 15 November 2001.

⁵⁰ Nicholas Bourne AM, electronic communication, 15 November 2001.

and the eventual report will be strengthened considerably, particularly on subordinate legislation.”⁵¹

Remarkably, the draft final report was posted on the Assembly website in early November. As a result it can be compared with the demands made by the parties in their submissions to the Operational Review in May.⁵² An examination of their submissions revealed that a consensus was developing across the parties 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 clearer role for the Regional Committees.

While the draft final report addressed most of these concerns it failed to recommend how substantial improvements could be pursued. For example, on the question of enhancing the impact of plenary sessions the main suggestion was to extend their meetings by the odd half-an-hour and add extra sessions on Thursday afternoons at busy times of the year. The report embraces evidence submitted by the Richard Rawlings. This lay down a set of principles which should guide Whitehall Departments when drafting primary legislation affecting Wales. In particular they demand that:

“Where a Bill gives the Assembly new functions, this should be in broad enough terms to allow the Assembly to develop its own policies flexibly. This may mean, where appropriate, giving the Assembly ‘enabling’ subordinate legislative powers, different from those given to a Minister for exercise in England.”

The report recommends that the First Minister Rhodri Morgan should “communicate [the principles] appropriately to the UK Government” but has no suggestions how they could be guaranteed. Further recommendations include:

- The annual Assembly debate on the Westminster Queen’s Speech should become a requirement of standing orders.
- Westminster Bills of importance to Wales should be considered by relevant Subject Committees with a plenary debate on the outcome a further requirement of standing orders.

⁵¹ Michael German AM, electronic communication, 18 November 2001

⁵² See the IWA report *Farming Crisis Consolidates Assembly’s Role: Monitoring the National Assembly March to May 2001*, pages 35 to 52.

The report adds:

“We also see the potential for benefits in establishing more formal arrangements for communication and collaboration with colleagues at Westminster. For example, an annual meeting between Assembly Members and the Welsh Grand Committee (or Welsh Affairs Select Committee) could be held to discuss the UK Government’s legislative programme and its impact on Wales.”

In general, however, the final draft report is more interesting for what it fails to contain than what it does. Its importance lies in pointing to the fault lines in the 1998 Wales Act that established the Assembly. In essence these centre on the difficulties thrown up by the Assembly having to lobby Westminster to meet its requirements on primary legislation. It was noteworthy, for example, that in the present Westminster session, the Assembly Administration pressed for four Bills relating to Wales to be included in the Queen’s Speech. In the event none of them succeeded. In the face of this, the draft final report of the Operational Reviews has no serious proposals on how the rapidly emerging incompatibility between the Assembly’s needs, and the often opposing priorities of the Westminster legislative process, can be addressed. However, as Michael German put it:

“The Assembly Procedural Review could not deal with matters where Primary Legislation would be required, or where there would be a need for changes to the Government of Wales Act. These were the rules by which we got all Party agreement to proceed. The real powers review comes with the establishment of the new independent Commission early next year. This is when the real challenges will begin and the Party lines will be drawn more clearly.”⁵³

Naming the Assembly and the Administration

Problems of distinguishing between the Administration and the wider Assembly, which have dogged the new institution since its inception, came to a head at the end of November. There has long been a widespread wish to make a clearer distinction between the two. However, in this period the wish became an anxiety to separate decisions which are the responsibility of the Administration from actions that can be characterised as being within the remit of the Assembly as a whole.

This is a matter that has also preoccupied the Assembly’s Review of Procedure. In July First Minister Rhodri Morgan wrote to the Presiding Officer Lord Elis-Thomas in his capacity as Chair of the Review Group, outlining his views on a range of issues, and specifically on the question of nomenclature. He said it was

⁵³ Michael German, *op.cit.*

“ ... widely accepted that we should use all the scope available to make a distinction between the governmental and parliamentary side of the corporate body.

“... As regards the terminology, the Cabinet's preference is for ‘Government of the Assembly’ and that term will be used increasingly in press and other statements which record its decisions.”⁵⁴

The issue was scheduled to be discussed between the parties at a meeting of the Review Group on 28 November. However, a few days before Rhodri Morgan confided to the *South Wales Echo* that he now favoured the phrase ‘Welsh Assembly Government’ to describe the Coalition Administration, and the term ‘Welsh Assembly’ instead of ‘National Assembly for Wales’. Accusing the ‘National Assembly for Wales’ title as being ‘long, complex and slightly pompous’ he added:

“You can never get the right title, but it would be better to have one that is shorter, sharper and adaptable.”⁵⁵

In plenary session the following day he elaborated on his thinking as follows:

“We are trying to adopt a title that will be completely clear to the people of Wales – that is all- something simple that matches their way of speaking. That is why we have decided to use the title ‘Welsh Assembly Government’. It is much simpler and shorter and is completely obvious and clear to the people of Wales.”⁵⁶

He was immediately cross-questioned by Ron Davies, Labour’s Caerphilly AM and architect of the Wales Act which, he pointed out, had enshrined the term ‘National Assembly for Wales’:

“Do you agree that it is important now to create a greater sense of clarity between the National Assembly, which is the legislative body in Wales, and its Executive, which you head, as the Government? The term that was given to the press and that your Government will now use, ‘the Welsh Assembly Government’, makes about as much sense as the term ‘the British Parliament’s Cabinet’. It is a constitutional nonsense and will confuse people even more.”⁵⁷

To which Rhodri Morgan responded:

“As a backbencher I understood and went along with the title ‘the National Assembly for Wales’, although even then ‘the Welsh Assembly’ was more commonly used in political parlance ... We now have two and a half years of experience of the Assembly in operation. People outside and inside Wales refer to us corporately as ‘the Welsh Assembly’. If you say that there is no meaning to the

⁵⁴ See the previous report, *A Period of De-Stabilisation: Monitoring the National Assembly May to August 2001*, page 26.

⁵⁵ *South Wales Echo*, 26 November 2001.

⁵⁶ *Assembly Record*, 27 November 2001.

⁵⁷ *Ibid.*

title ‘Welsh Assembly Government’, you must offer an alternative. We do not want to call ourselves ‘the Government of Wales’, because Central Government spends half of the public money that is spent in Wales and we spend the other half.”⁵⁸

The Conservative Leader, Nick Bourne, AM for Mid and West Wales, immediately added his criticism:

“When the term ‘Welsh Assembly Government’ was presented to the Assembly Review of Procedure Committee, it immediately received a universal bird, apart from the leader of the Welsh Liberal Democrats, who sided with the Administration. Rhodri Morgan mentioned that the title ‘National Assembly for Wales’ was not regularly used. I agree with that. However, it is used more than the term ‘Welsh Assembly Government’.”⁵⁹

Earlier Cynog Dafis, Plaid Cymru AM for Mid and West Wales, articulated a deep unhappiness amongst his party at the projected change, asking the First Minister,

“... are we to assume that you are concerned about the use of the word ‘national’ because that word carries connotations regarding powers, self-confidence and how we decide where policy should be created? From now on will the tendency be to use the word ‘national’ to refer to the England and Wales level? I have noticed that some Ministers’ statements mention national policies when referring to England and Wales policies, and not even to British policies.”⁶⁰

Later in the debate Plaid Cymru’s leader Ieuan Wyn Jones sought a ruling from the Presiding Officer Lord Elis-Thomas on whether the Administration could unilaterally change the title ‘National Assembly for Wales’ without consulting the Assembly since it was included in the Wales Act. Responding the Presiding Officer said:

“I assume that the legal term ‘the National Assembly for Wales’ would have to be used in any official legal document. However, I will consider this matter further, because the statement is news to me as well.”⁶¹

The Presiding Officer’s views were conveyed in a remarkably frank interview he gave to BBC Wales’ *Dragon’s Eye* weekly political programme a few days later. He stated that while the Administration was free to call itself what it liked, the National Assembly for Wales would remain just that so far as its operation as a collective body within plenary sessions, Committees and elsewhere were concerned. He added that this was its legal title on the face of the Wales Act and that it had been chosen for good reasons after careful consideration. He continued that the term ‘Welsh’ in relation to the Assembly had restricted, exclusive connotations of an ethnic and linguistic character. In contrast, he said, the title ‘National Assembly for Wales’ conveyed an inclusive message, embracing

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

and representing all the people of Wales, regardless of their language background, whether they had been born in Wales, or had moved to Wales from elsewhere.⁶²

The *Dragon's Eye* programme also revealed the contents of an internal Cabinet Office memorandum dated 27 November - the day the Assembly debated the issue - sent to all Assembly staff by the head of the Cabinet Executive, Bryan Mitchell. This provides the following guidance:

“The terms ‘administration’ and ‘executive’ should no longer be used. The term ‘Cabinet’ may still be relevant in some contexts (usually when referring to Ministers collectively) though, whenever possible, Welsh Assembly Government is preferable. The term ‘Assembly Government’ may also be used where the context is clear, for example by the use of the full title earlier in the same document or statement. The acronym WAG should not be used ...

“... The Presiding Office will not use the term ‘Welsh Assembly’ other than in the phrase ‘Welsh Assembly Government’. It will continue to use the expressions ‘Assembly’, ‘National Assembly’ and ‘National Assembly for Wales’ to describe the Assembly as a whole, or, in appropriate circumstances, activities in which the Presiding Office participates. Staff in the Presiding Office will accept the phrase ‘Welsh Assembly Government’ in questions, motions and committee papers where it is appropriate; but the phrase ‘Welsh Assembly’ will not be acceptable. Members who wish to use the terms ‘Cabinet’, ‘Executive’ or ‘Administration’ may, of course, do so; but staff in the Presiding Office should use the term ‘Welsh Assembly Government’ or ‘Assembly Government’ when referring corporately to Ministers.”⁶³

At one level nomenclature is a relatively trivial matter. At another, and especially in the Welsh political and cultural context where identity questions run deep, it can reveal underlying anxiety and insecurity. This appears to be the case in this instance. An additional factor may be the looming electoral contest in 2003, with both the Coalition Administration and the Opposition parties keen to separate themselves one from another, to promote achievement on the one side and to focus a clearer target for attack on the other.

Debating 11 September

The attacks against America on 11 September, and the ensuing ‘war against terrorism’ unleashed by the British and American governments, had a contentious impact within the National Assembly. The controversy began even before Members had returned from their

⁶² BBC Wales, *Dragon's Eye*, 30 November 2001

⁶³ ‘Notice to All Staff’, from Bryan Mitchell, Cabinet Executive, 27 November 2001.

summer recess, when it emerged that Rhodri Morgan had refused Plaid Cymru demands to recall the Assembly early to debate the issue, as it had too little power in the field. Even though the Scottish Parliament had been recalled, it was judged the matter was within Westminster's remit so it would not be appropriate for the Assembly to be recalled.

Difficulties continued when AMs returned as scheduled for their first plenary session on 16 October. It had emerged on the previous Friday that Plaid Cymru and some Labour AMs were refusing to give wholehearted backing to the allied military campaign. They argued that it was wrong to endanger the lives of ordinary Afghan people, and also feared the consequences in the wider Muslim world. On the other hand the Conservatives blocked a statement proposed by Rhodri Morgan, designed to appease Plaid and some of his own backbenchers, because it made no mention of the military campaign and simply condemned the terrorist attacks.

In the event no motion was put before the debate on 16 October, with the Business Manager Andrew Davies suggesting this was because of 'an inability to agree wording'.⁶⁴ However, Rhodri Morgan did announce that:

"The Cabinet Office is content for us to act on their behalf in Wales in co-ordinating a Welsh response from the local authorities."⁶⁵

Whitehall had at least conceded that the Assembly had a role to play preparing contingencies in the event of a terrorist attack in Wales.

During a minority party debate called by Plaid Cymru on 23 October the Assembly finally agreed a motion, albeit with the Plaid Cymru group voting against, in support of the Allied attacks on Afghanistan. The amended motion, passed by 37 votes to 15, read:

"The National Assembly considers the impact of the current international situation on Wales, and supports the actions taken by the UK Government in support of the world alliance against terrorism".⁶⁶

Yet there was some concern in Westminster that the Assembly was debating a matter for which it had no responsibility. Wrexham's newly-elected Labour MP Ian Lucas claimed that the views of his constituents and others across Wales on the crisis had already been represented at the three previous debates when the House of Commons had been reconvened.⁶⁷ The Shadow Welsh Secretary Nigel Evans, as well as several Labour backbenchers, accused the Assembly of going beyond its remit and involving itself in a matter that was the preserve of Westminster. He compared the debate as "akin to my parish council debating space travel."⁶⁸ However, First Minister Rhodri Morgan insisted

⁶⁴ Western Mail, 16.10.01

⁶⁵ Assembly Record of Proceedings, 16.10.01

⁶⁶ Assembly Record, 23.October 2001

⁶⁷ Western Mail, 24October 2001

⁶⁸ *Ibid.*

the matter was of acute interest and it was important that the views of the people of Wales were represented.⁶⁹

It was against this background that the Prime Minister, Tony Blair, made his first address to the National Assembly on 30 October. In his opening remarks he, in effect, endorsed the Assembly decision to debate the question by declaring,

"...if I were speaking today before any parliament in the world, I should feel obliged to talk about the issue".⁷⁰

Review of the Welsh Language

The Culture Committee's ongoing review of the Welsh language, begun in June, was set against the backcloth of the Education and Lifelong Learning Committee's Review of Higher Education. As previously reported, Labour, Conservative and Liberal Democrat members of the Education Committee took offence at comments made by Dafydd Glyn Jones, a leading academic from Bangor University when he advocated the creation of a Welsh-medium federal college.⁷¹ This controversy not only exposed the differing views of political parties in the Assembly on the subject of the language but also questioned the extent to which an Assembly Committee can disregard evidence presented to it without engaging in censorship. The issue preoccupied the Culture Committee following a presentation by Professor Harold Carter, former Professor of Human Geography at the University of Wales, Aberystwyth, who has for many years tracked the distribution of the language in Wales.⁷²

Giving evidence, Professor Carter observed that a major trend in language change in recent years had been the increase in Welsh speakers in Cardiff and other anglicised areas whilst it was simultaneously in decline in the Welsh heartlands. He said there should be greater educational opportunities to allow bilingualism to flourish and that incomers to Wales (or at least their children) should be expected to learn Welsh. In the ensuing questioning he stated that in his personal opinion, only those people who speak Welsh were able to call themselves truly Welsh. He added that only Welsh speakers could fully understand such things as Welsh myths and symbols and thus be fully immersed in the Welsh cultural experience.

Many of the members expressed strong opposition to his comments, in particular Lorraine Barrett, Labour AM for Cardiff South and Penarth. For the Conservatives Jonathan Morgan, AM for South Wales Central, said:

⁶⁹ *Ibid.*

⁷⁰ *Assembly Record*, 30 October 2001

⁷¹ See the previous Monitoring Report, *A Period of De-stabilisation: Monitoring the National Assembly, May to August 2001*, pages 30-37.

⁷² Culture Committee meeting 24 October 2001.

“I find it exceptionally offensive when he makes that comment. I am learning Welsh and that sort of comment does not encourage me to take it further.”⁷³

The following day, the Deputy Minister for Education, Alun Pugh, presented a motion stating that Professor Carter's evidence contravened the Assembly Standing Order on equal opportunities:

“Yesterday, a senior academic informed the Culture Committee that 'you are only Welsh if you can speak Welsh'. Professor Harold Carter's policy of *un bobl, un diwylliant, un iaith* - one people, one culture, one language - is not only offensive to many people in Wales but is in clear breach of our Standing Orders and duty to promote equal opportunities. Will you issue guidance to Committee Chairs in dealing with evidence such as this, which is in clear breach of Standing Orders?”⁷⁴

However, the Committee Chair, Rhodri Glyn Thomas, Plaid Cymru AM for Carmarthen East, insisted that Professor Carter had a right to present his own view:

“I will clarify the situation, as Alun was not at the meeting yesterday. Harold Carter was asked whether he as an individual felt that, in order to be Welsh, you needed to speak Welsh. As somebody who has learnt Welsh, he said that his personal feeling was that which has been stated. He has a right to his view. It is important that we do not try to censor what people say in Committee.”⁷⁵

Dafydd Wigley, Plaid Cymru AM for Caernarfon, another member of the Committee was of the same opinion:

"As someone who was present at the meeting in Swansea yesterday, I disagree fundamentally with Professor Carter's analysis. It is understandable for people to respond as some members have done today. However, people have a right to their opinion, even when we disagree with them. I believe that every member of the Committee disagreed with the analysis. However, as one of the greatest authorities on geolinguistics in Wales, he has a right to express his opinion and the right to a hearing from the Committee.”⁷⁶

Other members of other political parties supported the claim that the comments were in breach of the Standing Order. Jonathan Morgan (C) stated:

“What he said was offensive. You cannot overlook it by saying that it was in response to a questions. It was a clear, unequivocal statement, to which he had given due consideration. It is offensive to the vast majority of people in this Chamber and throughout the country.”⁷⁷

⁷³ The Western Mail 25 October

⁷⁴ Assembly Record of Proceedings 25 October 2001

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

The matter was referred to the Presiding Officer, Lord Elis-Thomas, whose judgement relied on his response to the Dafydd Glyn Jones affair. This placed discretion with Committee Chairs in dealing with evidence presented to the Committees:

'When the issue of giving evidence to a Committee was raised previously, it was given very serious consideration by myself, the Deputy Presiding Officer, the Clerk to the Assembly, the Committee clerk and - as the Chair of the Culture Committee stated - by the Panel of Chairs. Standing Orders have entrusted the work of chairing Committees to the Chairs. The Panel of Chairs is an important Committee in our constitution. It affords Chairs the opportunity to discuss best practice. The panel of Chairs has considered this issue and it has advised me that it is not currently of the opinion that it would be appropriate for me to set guidelines on the content of evidence given to Committees.'⁷⁸

The differing views over the future of the Welsh language was laid bare during another meeting of the Culture Committee in November when it heard evidence from the newly formed pressure group Cymuned, evidence which attracted the scorn of some Labour members.

Cymuned was established soon after the 'Seimon Glyn affair' in early 2001, which raised the issue of English in-migration into Wales⁷⁹, to defend Welsh-speaking communities. The bulk of its evidence to the Culture Committee comprised housing and planning measures to protect Welsh-speaking communities, including:

- There should be no presumption in favour of development. Instead there should be policy adoption of 'language belts' similar to 'green belts', where development is prohibited unless there is irrefutable proof of the needs to do so. A survey should be undertaken of the linguistic effect of any development that consists of more than one house in Welsh-speaking areas, and more than ten houses within ten miles of the border of any of these areas.
- Property should be designated for the use of local people with local people being defined as individuals who have lived in an area for ten years, or who have attended a local school. An area should be defined as being within a ten mile radius of the dwelling concerned.
- Every estate agent should have a statutory responsibility to offer a 'welcome pack' to every potential buyer explaining the linguistic and cultural background of Welsh-speaking communities and noting the desire of these communities that newcomers learn Welsh.
- The Assembly's Home Buy Scheme should receive funding of at least £20 million a year.

⁷⁸ Ibid.

⁷⁹ See the previous IWA reports *The Economy Takes Centre Stage: Monitoring the National Assembly December 2000 to March 2001*, pages 61-63, and *A Period of De-stabilisation: Monitoring the National Assembly May to August 2001*, pages 9-12.

- A new Housing Authority for Wales should be established to provide a national planning structure.⁸⁰

In the resulting debate a number of Labour members expressed concern with these proposals. Delyth Evans, AM for Mid and West Wales, said that she was afraid that they would create a ghetto for the Welsh language and create a divide between West and East Wales. Huw Lewis, AM for Merthyr, said he also had 'profound concerns':

“If the Assembly adopted every dot and comma we would effectively have two communities in Wales - one that does not speak Welsh, facing restrictions and monitoring, and another which speaks Welsh and has none of these restrictions.”⁸¹

Criticisms of the proposals were relatively restrained during the Committee meeting, but two of its Labour members, Huw Lewis himself and Lorraine Barrett, AM for Cardiff South and Penarth, told the *Welsh Mirror* they would be asking the Home Office for a ruling on whether the proposals constituted a breach of the new race-hate laws.⁸²

⁸⁰ Policy Solutions to the Housing Crisis in Welsh-speaking Communities, Cymuned presentation to Culture Committee 7 November 2001.

⁸¹ *Western Mail* 8 November, 2001

⁸² *Welsh Mirror* 7 November 2001

5. THE LEGISLATIVE PROCESS

Jane Williams, Department of Law, University of Wales Swansea

Queen's Speech Debate

The Queen's Speech plenary debate, held on 6 November, was re-scheduled from July because of the death of Val Feld AM. The Assembly approved a motion highlighting a number of measures as having particular relevance to the Assembly's responsibilities. These were Bills on adoption, education, homelessness, NHS reform, land registration, and rail safety. They were remitted to the relevant Subject Committees for further consideration as to the provisions they should make for Wales and how the Assembly might use its new powers therein. The motion also noted the UK Government's intention to publish the NHS (Wales) Bill and the Communications Bill in draft form and remitted these to the Subject Committees for consideration over a longer period.

Draft Bills

Publication of Bills in draft form is one means by which the Assembly can have greater impact and influence on the eventual content of Bills presented at Westminster. Speaking in the Queen's Speech debate the First Minister said he hoped to see more Bills subjected to this device. There could then be consultation continuing over "many months" prior to their introduction.

This point was echoed by the Secretary of State for Wales Paul Murphy's in his contribution to the debate. While he thought that the relationship between the National Assembly and the UK Government had improved over the previous year, he saw a need for an enhanced role for the Assembly Subject Committees. It was right that they should apply as thorough a scrutiny as possible *after* a Bill was published. However, he also acknowledged that there were difficulties about their involvement before that stage unless the Bill was published in draft form⁸³. In a different forum, appearing before the Welsh Affairs Committee on October 23, he used the combination of the current National Health Service Reform and Health Care Professions Bill and the draft NHS Bill as an example of an effective partnership between Whitehall and the Assembly in implementing Assembly policy through primary legislation⁸⁴.

⁸³ There were also practical problems about synchronising the Assembly and parliamentary team – "but in general we are getting there in terms of how we work with each other in preparing Bills."

⁸⁴ See (uncorrected) evidence to Welsh Affairs Committee 23 October

New Functions and Scrutiny by Subject Committees

The Adoption and Children Bill and the Homelessness Bill were re-introduced having failed to complete their parliamentary stages prior to the calling of the general election in the last parliamentary session. Under the Adoption and Children Bill the Assembly's functions under the Children Act 1989 are amended and supplemented in the same way as the ministerial functions in relation to England.

The now familiar drafting device is a deeming provision to the effect that the ministerial functions under the Children Act 1989 transferred by the original Transfer of Functions Order are to be read as including those functions as amended by the provisions of the Bill⁸⁵. The same technique is applied in the Homelessness Bill⁸⁶ and in the National Health Service Reform and Health Care Professions Bill⁸⁷. However, this does not indicate an assumption that the Assembly should get no further new powers than those flowing from amendments to functions originally transferred. There are many instances where new functions flow directly from the provisions of post-devolution primary legislation themselves. The device is essentially to ensure that subsequent amendments to provisions referred to in the original Transfer of Functions Order are read into the functions flowing from that particular source.

The Land Registration Bill, which includes provisions which will facilitate electronic conveyancing, does not mention Wales at all and the Assembly has no functions in this field. It is therefore interesting that this was referred to the relevant Subject Committee, on the grounds of "recent interest in the Assembly as regards the buying and selling of homes⁸⁸". Presumably this referred to the controversy over the buying of second homes in Wales by non-indigenous persons. On the other hand, the International Development Bill, under which the Assembly gets new functions in relation to the provision of assistance (other than financial assistance) to countries outside the United Kingdom, was not one of the Bills remitted to Subject Committees – perhaps because it is not clear which of the Subject Committees would have responsibilities in the field of international development.

⁸⁵ Clause 130 of the Adoption and Children Bill.

⁸⁶ See clause 16 of the Bill – in this case the functions originally transferred are under the Housing Act 1996.

⁸⁷ Clause 38 – this time operating in relation to the construction of references in the TFO to provisions of any of the Acts amended by the Bill.

⁸⁸ Assembly *Record*, 6 November 2001

'Missing' Functions: Animal Health

The Queen's Speech debate not only spanned the content of the UK Government's legislative programme but also perceived omissions in it. Apart from the issues of a St David's Day Bank Holiday and the "Welsh" tick box on the census, on both of which the Administration had sought to be included in the Westminster legislative programme, there was the question of the allocation of powers between Whitehall and the Assembly in relation to animal safety measures.

The foot and mouth crisis had highlighted some awkwardness, especially in such circumstances of emergency, about the limitations of the Assembly's formal functions in this field. In October the Agriculture and Rural Affairs Committee noted the need for more powers⁸⁹. It was suggested in the plenary debate on 6 November that the current Animal Safety Bill might provide a suitable opportunity to achieve the necessary adjustments. The First Minister, while not ruling out the possibility, stated that consultation was proceeding with a view to arranging for the necessary further transfers by transfer of functions order. In any event an amendment calling for further transfers of powers relating to animal health, through whatever route, was passed.

Subordinate Legislation

The previous monitoring report noted developments in the Assembly's approach to handling, tracking and categorising the large volume of subordinate legislation submitted to its legislative processes⁹⁰. One of a number of issues it has had to address is access to information about draft legislation and recently made legislation. In this regard, the General Statutory Instruments Bulletin, introduced on the Assembly's web-site in November, was a welcome development. The Bulletin gives weekly updated information on general statutory instruments undergoing any of the Assembly's legislative stages (for example, consideration by Subject Committees, Legislation Committee or plenary) or which have been recently made. In each case a summary of the effect of the instrument is given and the proposed or actual date of coming into force. The Bulletin should provide some additional help to Assembly Members and others interested in sorting the "debate worthy" from the uncontroversial or routine, and also for legal advisers seeking to discover recent exercises of legislative powers in advance of their official publication by HMSO.

⁸⁹ See minutes of the meeting of the Committee of 24 October 2001 and the Minister's Report to the Committee of 21 November ARD 16-01. See also an article by the Rural Affairs Minister Carwyn Jones pressing the case in the Autumn 2001 issue of the IWA's journal *AGENDA*.

⁹⁰ A period of De-stabilisation, IWA, September 2001, p.52.

6. RELATIONS WITH WESTMINSTER AND WHITEHALL

Mark Lang, Welsh Governance Centre

Tony Blair Addresses the National Assembly

In his inaugural address to the National Assembly on 30 October Tony Blair focused in the main on the international situation following the 11 September terrorist attacks. However, in second part of his speech the Prime Minister discussed more domestic matters, and in particular devolution and the relationship between the Assembly and Westminster. This is worth quoting at length since it is a wide-ranging survey of the experience of constitutional change in Britain during his premiership:

“I have heard from business leaders here that the Assembly has given Wales a real business voice. That was one reason for creating an Assembly. Much of the pressure for regional government in England comes from the desire to emulate that strong voice.

“Those who said that devolution would lead to the break-up of Britain have been proved wrong. Earlier today, in the Joint Ministerial Committee, leaders from the UK, Scotland, Wales and Northern Ireland came together to discuss issues of common interest. Diversity does not necessarily mean division; indeed, it can mean the reverse. People are perfectly capable of thinking of themselves as Welsh and British at the same time.

“Devolution to Wales is just one part of a much wider programme of constitutional reform designed to move us away from a centralised Britain to a more democratic, decentralised, plural state. The Scottish Parliament has restored a parliament to Scotland after some 300 years and has meant a radical decline in the number of Scots wanting separation. In London there is now an elected Mayor and Assembly. In Northern Ireland—thanks to the efforts of the leaders there—we have, in a part of the UK riven by sectarian division, the chance, at least, of a new future. I am delighted that colleagues from all those devolved administrations are here in the Assembly today.

“In each area, and here in Wales, of course, there are difficulties and tensions between parties and within parties. However, the result of devolution is that, instead of one centre of power focused on Whitehall and Westminster, there are several centres with the opportunity for power to be exercised more closely to the people it affects. The most remarkable thing is not the problems of devolution but the ease with which a process that amounts to a constitutional revolution has bedded down.

“However, that devolution fits within a broader framework, re-balancing power between citizen and Government, and modernising Britain's constitution. We have

incorporated the European convention on human rights into UK law. We have reformed the voting system here and in the European Parliament. We have begun the reform of the House of Lords, removing the vast bulk of hereditary peers. The Wakeham commission reported in favour of the next stage of reform, with a balance of elected, nominated and independent members. Later this month we will publish a White Paper setting out our proposals for it, based largely on the Wakeham report. There will be an elected element, to ensure proper regional representation. There will be a statutory appointments commission. There will continue to be independent members. There will be rules to determine fair political balance. We will consult on these proposals and then legislate so that we complete the work of the House of Lords reform begun in 1997.

“However, constitutional reform and devolution can never be ends in themselves; they are means to an end. The end is to improve the lives of the people we serve. Two years on, we must ask ourselves how devolved institutions have measured up to that task. I believe that there are real achievements of which the Assembly and Wales can be proud.

“On education, Wales has seen the best primary school results ever. Class sizes are smaller too.

“On health, record investment is being matched with reform. I would say that the Assembly as a whole has confidently handled what amounted to a baptism of fire due to various issues such as the fuel crisis, last year's flooding, Corus, and foot and mouth. That is a credit to the Assembly and to you, Rhodri, for your leadership and commitment as First Minister.

“Nearly half of the Assembly and a majority of the Cabinet are women—a level that puts virtually every other parliament in the world to shame. Pensioners and people with disabilities now enjoy concessionary bus travel. That policy was made in Wales and is now being extended to England. However, I think that you would be the first to accept that a huge task remains. There are major challenges above all in improving the delivery of public services—challenges that are just as great here in Wales as in the rest of Britain—in our schools, where we need to raise standards still higher, and in our hospitals, where people are still waiting too long for treatment.

“The priority now must be to harness the full potential of the current devolution settlement to improve the lives of the people of Wales. Westminster too must play its part in that process. Devolution is about partnership, and partnership is a two-way street. That is a principle on which both Rhodri Morgan and Paul Murphy have led the way—that we achieve more by working in partnership.

“As you will know, the last spending review provides an extra £1.8 billion of investment in Welsh public services. Partnership means ensuring that Wales's voice is heard loud and clear in Westminster, and I do not believe that Wales could have a greater champion in that regard than Paul Murphy, the current Secretary of State.

Partnership allows us then to act together on issues where Wales and Westminster need to come together: for example, legislation for a children's commissioner—the first post of its kind in Britain; reforms to the health service in Wales that were voted on here in this very chamber; Objective 1, where the funding is now in place to help deprived communities in west Wales and the Valleys; miners' compensation, which I know has not been getting quickly enough to those who need it and who are suffering, but where we are doing all we can to speed up the payments and ensure that the money gets to those who need it most—the oldest and the sickest miners and widows. Every week now we pay out about £1 million in Wales—over £100 million in total so far.

“There is much that we need to do together, and I believe that devolution has left the UK stronger, not weaker. We are able to do as the UK what we need to do together. And in respect of issues such as public services we can do things differently. Such a constitutional partnership may be a revolution here, but it is commonplace elsewhere in Europe and in the wider world. It allows the energy and diversity of different parts of our country to breathe and develop. I know that devolution is in its infancy still, but there is already a healthy debate about how it can develop, which is taking root in the English regions too. However, there is a wider context. A development is taking place that is again obvious and is replicated worldwide. Throughout the world, nations are coming closer together, whether in the European Union, in the North American Free Trade Agreement, in Asia with the Association of South East Asian Nations or in South America with MERCOSUR.

“Increasingly, nations are having to recognise that challenges, interests and solutions are global—climate change, international finance or terrorism, for example. Yet coincidentally, at the very time nations collaborate on a bigger stage, there is within countries a greater desire to seize back control over local issues on a smaller stage. Politics is about finding different levels appropriate to different types of issue. I believe that political systems that fail to make sense of those developments will become either out of touch with people or ineffectual.

“The purpose of modernising the British constitution is to try to avoid these pitfalls and to enable us to be a true partner in the European Union and globally, committed to devolution on the issues where devolution makes sense, yet proud to be Britain where we need to act as Britain, and proud also of devolution where that is the sensible way to make decisions.

“I also believe that separation of the component parts of the UK is a cul-de-sac. It would make each part weaker. There is merit in the simple argument that when it comes to the economy, defence, foreign policy or social security, bigger is indeed stronger. We can then project that strength globally. But within that unity, diversity can flourish. That is why devolution is so important. It may be in its infancy, but it is here to stay. There have been huge changes in the UK over the past few years. However, I hope that with our new relationship with the rest of Europe, with the UK able to do the things that it has to do together, and with devolution allowing us, where possible, to take decision-making far closer to the people, we have created

the right circumstances in which political decision making can be seen as relevant and effective for the concerns of the people we represent.

“In the end, whatever our political party, whatever our political priority, we are all a part of public service, which is the desire to try to take the right decisions, according to our beliefs and convictions, for the people we serve. Yet, unless we do so within a system that makes sense, those decisions will be less Likely to be accepted and relevant to the people we represent. The changes in the constitution of our country have been for a purpose that is to do not with constitutional change itself but with making politics more relevant and decisions better for the lives of the people we serve.

“I was proud to make the case for the Assembly some years ago. I was proud too that that case was accepted. I am deeply proud to come to the National Assembly for Wales and be the first British Prime Minister to address you. Of one thing I am certain: I will not be the last.”⁹¹

Joint Ministerial Committee

On the same day he addressed the National Assembly the Prime Minister chaired the annual meeting of the Joint Ministerial Committee in Cardiff. The Deputy Prime Minister, the heads of the three devolved administrations, and the Secretaries of State for Scotland, Wales and Northern Ireland also attended the meeting.

Progress on co-operation between the administrations was reviewed. It was concluded that on the whole communication and consultation between the UK Government and the devolved administrations had been effective.

In light of the fall out from the terrorist attacks of September 11 it was acknowledged that the devolved administrations had important roles in emergency planning, health and in the case of Scotland, police and justice matters. Improvements in collaboration across these areas were needed. The administrations needed to recognise each other’s roles and interests, and the legitimate differences between them.

Other issues discussed included:

1. There were a number of effective mechanisms for inter-Ministerial liaison, both inside and outside the JMC framework. But personal and bilateral contacts were at least as important. Experience demonstrated that these could and should transcend party barriers.

⁹¹ Assembly Record, 30 October 2001

2. Agreement on a revised version of the Memorandum of Understanding, which sets out the principles on how the Administrations work together.
3. Progress on the Government's White Paper on English Regional governance was noted. The devolved Administrations offered their support for extending the benefits of devolution where there was a regional demand for this, as well as offering their assistance based on their experiences.⁹²

⁹² Joint Ministerial Committee, Joint Press Statement, 30 October 2001

7. RELATIONS WITH THE EUROPEAN UNION

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

Wales Joins EU Legislative Regions Lobby

The Assembly Administration has endorsed the May 28 Flanders Declaration by European Regions with legislative powers seeking more influence within the institutions of the European Union. Although Wales did not sign the Declaration when it was first launched, it is a signatory to a successor Declaration agreed by some 45 Regions attending a Conference of Presidents of Regions with Legislative Powers, at Liège in mid November.

The May 28 Declaration - signed by Flanders, Wallonia, Catalunya, Bavaria, North Rhein Westphalia, Salzburg and Scotland - urged that “the role and setting of the Regions in the European policy-making process and institutional framework” be added to the themes debated at the 2004 Inter-Governmental conference on the EU’s constitution.⁹³ The follow-up Liège Declaration *The prospects of federalism in Greater Europe* includes the following:

“In the countries that have applied for membership of the European Union, especially those that have recently set up regional bodies, thought should be given to how the principle of subsidiarity can be applied in order to strengthen the regions’ powers and ensure that these regions participate effectively in the European institutions.

... Furthermore, it is important to remember that the application of the principle of subsidiarity should not be restricted to relations between the European Union and its member states, but should be affirmed at every level, including relations between states and regions in particular, but not only with regions that have legislative power.

“We request that the European Charter of Regional Self-Government be adopted as a convention to parallel the European Charter of Local Self-Government, which, since its adoption in 1985, has become a common reference for Council of Europe member states as regards the functioning of local authorities, and we undertake to contribute to completing the text. Although the European Charter of Regional Self-Government should not infringe the institutional power of member states, it should not merely establish the lowest common denominator, but cover regionalisation at every level, including regions with legislative power and federated regional states. The charter should set the standards for regionalisation in Europe while respecting

⁹³ For a report on the Declaration see Alex Wright, *Regions Flex Their Muscles*, Agenda. IWA, Autumn 2001.,

the institutional diversity of the various states, and become the guarantor of regional self-government and the application of the principle of subsidiarity within each state. It should also establish the right of regions to be consulted on and participate in legislative decisions taken at national and European level on issues likely to affect their responsibilities and essential interests.

“We are convinced that the action taken by regions with legislative power must be the driving force behind the advancement of regionalism in Europe and regions' participation in European institutions by gradually encouraging the strengthening of regional authorities in all the European countries.”⁹⁴

At the Liège conference a great deal of frustration was expressed at the lack of influence of Regions within the European Union. For instance, Wolfgang Clement, Minister President of North Rhein Westphalia, pointed out that with a population of 18 million his Region was the sixth largest economy in the European Union - yet it had less institutional power in Brussels than Luxembourg. The conference was attended by the Belgian Federal President Guy Verhofstadt who, as the current President of the European Council, undertook to ensure that the Liège Declaration would be considered at the forthcoming Laeken European summit in Brussels in mid-December.

Together with Bavaria, Catalunya, North Rhein Westphalia, Piedmont, Salzburg, Tirol, Tuscany, Flanders, and Wallonia, Wales participated in the Steering Group that organised the Liège event. Des Clifford, the Assembly Administration's representative in Brussels who attended the Steering Group meetings, commented:

“There's nothing particularly transparent about the way this grouping has grown up and arrangements for the future will be put onto a more organised footing with an agreed number of Regions representing each eligible Member State, for example four from Germany, two from Belgium and so on. Wales and Scotland will certainly be involved from the UK.”⁹⁵

First Minister Rhodri Morgan was unable to attend the Liège conference due to illness. However, he sent the following message commenting on the Declaration that was agreed:

“The resolution calls for Regions with legislative powers to ‘participate effectively in the European institutions’. It is worth recording that the structures of the United Kingdom within an unwritten constitution permit the National Assembly for Wales to play a direct role already in decision making at a European level in those areas where we have responsibility. Our ministers do attend the relevant Council of Ministers meetings, occasionally as leaders of the UK delegation and we actively take part in the policy development process within our Member State. We are pleased to have the opportunity to take part in decision making in this way and regard this as one of the successes of the UK's flexible asymmetric approach to decentralisation since 1997.

⁹⁴ Second Conference of the Presidents of Regions with Legislative Power, Liege, 15-16 November 2001, Final Declaration.

⁹⁵ Des Clifford, electronic communication, 21 November 2001.

“Although I am in sympathy with the general tone of this text there are specific points that do not apply to Wales. For example, we have no ambitions for direct appeal to the Court of Justice – although we recognise that this is a perfectly legitimate issue for some of our colleagues from other regions in Europe⁹⁶.”

“As regards the Convention on the Future of Europe⁹⁷, expanding proposed membership so as to include regional representation is obviously the right solution but is not easily achieved given the practical constraints on numbers. It is also important that Regions are able to contribute effectively to the debate also within our Member State arrangements.

“With the above minor reservations, I want to record my broad agreement and enthusiasm with the broad approach of this paper and its aspirations. I am convinced that regions with legislative powers have a vital part to play in bringing the work of the EU closer to its citizens over the most exciting two to three years in European Union constitutional evolution.”

Working Group on EU Enlargement

At its first meeting the Assembly’s Working Group on Enlargement⁹⁸ focussed on the options available for twinning either with emerging small nations such as Slovenia, Slovakia, Cyprus, Malta and the Baltic Countries, or with regions in Poland, Hungary or the Czech Republic. The Group also discussed the possibility of Wales twinning with Silesia because of its similar background with coal and steel, or with a technologically developed state such as Slovenia.

Reporting on the meeting to the European Affairs Committee, the First Minister explained that the Group had also attempted to identify the issues that surround the enlargement debate and looked at ways of marketing Wales through the private and public sectors. Involvement of the Directorate for Enlargement in future meetings of the Group and an opportunity to meet with the European Commissioner for Enlargement would be beneficial. Involvement of MEPs in the enlargement debate was also considered to be essential.

Cohesion in the Context of Enlargement

⁹⁶ This aspiration is not part of the Liège Resolution but is contained in the May 28 Flanders Declaration.

⁹⁷ Reference to a ‘Convention’ is made in the May 28 Flanders Declaration.

⁹⁸ Membership of the Working Group includes all the political parties, the CBI, Federation of Small Businesses, ELWA, TUC Wales, Higher Education Wales, WLGA and the WGA.

In an item attended by members of the Economic Development Committee, officials from the Department of Trade and Industry (DTI) made a presentation to the Committee on the future of the EU Structural Funds post 2006 and more generally on the future of economic and cohesion policy in the context of enlargement. Although this is not a devolved issue, the DTI were interested in the opinions of the Assembly on the effectiveness of the funds in achieving their stated aims.

The DTI stated that Wales received approximately £1.1 billion from the 2000-2006 Structural Funds and the accession countries would not affect this current allocation. Except for Slovenia and Cyprus, the accession countries have a considerably lower average GDP than current EU members and this would affect future allocations.

The UK government were concerned that the development of the structural and cohesion funds should not hinder the enlargement process and that future allocations of funds should have fair outcomes for both the current EU-15 and the accession countries. Reform of structural and cohesion funds should be considered alongside other EU policy instruments, particularly CAP reform. From a Welsh point of view it would be important to consider:

- The impact of the structural funds on Welsh economic performance.
- The value structural funds might add over UK or government of Wales policies.
- Whether opinion was to favour either the so-called German "net fund" model or the Spanish call for reform to enable all existing recipients of Objective 1 funds to retain their eligibility.

The following points were raised in discussion:

- Concern was expressed that regional disparities in GDP were increasing, especially in the UK. It was important to evaluate the effectiveness of Structural Funds in reducing these regional disparities.
- Because of its Objective 1 status, operating aids were identified as being as important to Wales beyond 2006 as the Structural Funds themselves.
- The UK Government was currently formulating its approach towards the future of Structural Funds in consultation with regions and the devolved administrations.
- GDP was considered to be a crude measurement, but would continue to be used by the Commission because of its applicability throughout Europe.⁹⁹

European Affairs Committee

⁹⁹ Minutes of the European Affairs Committee, 17 October 2001

Matters discussed by the European Affairs Committee at its October meeting included:

- Agreement was reached that the Committee would inform the European Scrutiny Committee of the House of Commons that the Assembly would provide its own response on the European Commission White Paper on Governance, which deals with democracy and accountability in the EU, by the end of March 2002.¹⁰⁰
 - Developments in the Tele Regions Network, a body that disseminates Best Practice in information and communication technology (ITC) and provides a voice for the Regions in exchanges with the European Commission. The Business Minister Andrew Davies is the current president.
 - In a presentation the Chair of the Agriculture and Rural Development Committee, Glyn Davies AM said that almost everything his Committee discussed had a European dimension. Agreement was reached that there should be more liaison between the two Committees.
 - An Assembly application for a grant to the European Commission to fund a network called Pan-European Laboratory for Sustainable Development was discussed. This would increase liaison with other European Regions and build relations with accession countries.

¹⁰⁰ Minutes of the European Affairs Committee, 17.10.01

8. RELATIONS WITH LOCAL GOVERNMENT

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

Finance

In mid November the Minister for Finance, Local Government and Communities, Edwina Hart made an announcement on the provisional settlement for local government (earlier than in previous years allowing local authorities more time to plan their budgets – a widespread complaint). She claimed that the Assembly’s cash support to councils is set to rise by 8.7 per cent representing a significant increase in funding for the second year running and re-asserted her commitment to non-hypothecation:

“The money will not be ring-fenced, so it will be for local authorities to decide on their priorities for expenditure, taking account of local needs. This further underlines the Assembly’s wish to see Welsh councils making local decisions for local people.”¹⁰¹

However, this was accompanied by a reassertion that local authorities must take account of Assembly priorities:

“There is a clear agreement with local government that in return for greater freedom and responsibility to determine their own expenditure on different services, they must deliver on key outcomes in areas that are top priorities for the National Assembly.”¹⁰²

Policy agreements are the mechanisms designed to deliver the desired outcomes. The agreements identify key objectives in four key action areas identified in *Better Wales*, and these objectives are shared by the Assembly and local government and provide targets for each authority over the forthcoming year. The Assembly has also supported the agreements by making up to £30m available over the first three years of agreements to provide an initial incentive for concluding the agreements and a final reward for those who achieve their targets. By mid November most local authorities were finalising their agreements.

¹⁰¹ Administration Press Release, *Edwina Hart announces increases for Councils Key Services*, 15 October 2001.

¹⁰² *Ibid.*

Re-branding Best Value

The burden of inspection and audit is a consistent complaint of local authorities and in Autumn 2001 both Local Government and the Assembly were addressing this issue. At the Welsh Local Government Conference in September the Minister for Local Government, Edwina Hart spoke of the danger of the Best Value regime creating a bureaucratic process. “That isn’t going to happen in Wales,” she declared, undertaking to look at best use of audit and inspection. Later that month Welsh local authorities emerged badly in the Audit Commission Report on Best Value.¹⁰³ When the WLGA’s Co-ordinating Committee considered their response they found it,

“... difficult to support the statement that authorities are seeking a more ‘hands on’ approach to audit and inspection”.¹⁰⁴

Their own stocktake pointed to the opposite. Furthermore, they argued that the Audit Commission

“... seems to be struggling to adapt to the changed landscape following Welsh devolution”.¹⁰⁵

A paper on new directions for the achievement of Best Value was tabled at a meeting of the Partnership Council in October.¹⁰⁶ This argued that within the context of the review of Local Government Act 1999 it is possible for the Partnership Council to advise on the development of distinct arrangements for Wales in the context of framework of reviews, performance plans, audit and inspection. There was a recognition of ‘substantial’ scope for improvement but this needed to be ‘owned’ by local authorities. Existing systems were not hitting the mark. There was too much bureaucracy and too much examination of detail which did not allow for the necessary challenge to corporate culture or systems of organisation. The culture of audit/inspection needed to change and there should be an examination of the scope, role and cost of regulatory regime and a review of the number of inspectorates. The paper suggested that Best Value should be ‘re-badged’ as the ‘Wales Programme for Improvement’ as it is ‘tainted’ within Welsh Local Government. A process could involve a Corporate Diagnosis or self-examination by each Local Authority, followed by Peer examination and an Action and annual Performance Plans which would be subject to external audit. All review, audit and inspection work would be proportionate to risk and opportunity. These proposals are the subject of ongoing discussion between the Assembly administration and local government.

At the moment the ideas are very much at a formative stage, the Partnership Council paper stressing that the ‘suggestions’ are not ‘recommendations’ and that more ‘testing of their efficacy was required’ before they achieved that status. This search for a ‘Welsh

¹⁰³ Audit Commission, *Changing Gear: Best Value Annual Statement 2001*.

¹⁰⁴ WLGA, *Audit Commission Strategy Consultation ‘Delivering Improvement Together- Response by the Association*, Enclosure B1.2, Co-ordinating Committee Papers, 28 September 2001.

¹⁰⁵ *Ibid.*

¹⁰⁶ The Wales Partnership Council *The Wales Programme for Improvement – Seeking new Directions for the Achievement of Best Value*, PC Papers, 11 October 2001.

Way' raises interesting questions about the role of Audit Commission in the Welsh context. Whereas in England it acts as a powerful policy instrument in the hands of central government, in Wales it brings an external agenda into the relationship, exacerbated, if the WLGA's perception is correct, by a lack of knowledge about the post-devolution context. The WLGA noted, for example, that in the Consultation Paper 'there is no mention of policy agreements in Wales although PSAs in England figure throughout.'

The Welsh Local Government Association Strategic Review

The WLGA was formed in 1996, following the 1994 reorganisation of local government. Membership is voluntary although the WLGA relies on member authorities' subscriptions. The Association is a constituent part of the England and Wales Local Government Association, but retains full autonomy in dealing with Welsh affairs. Politically, the WLGA helped to 'deliver' devolution, and some policy actors outside the WLGA-Assembly axis have perceived it as wielding too much influence on the Assembly. Indeed, many *within* the WLGA were beginning to feel that the relationship was rather exclusive, and by mid-2001 it was clear that the WLGA membership felt that the Assembly was monopolising the focus of the association's work. Consequently there was a need to 'take stock' of the WLGA-Assembly relationship.

These perceived problems were addressed in a Strategic Review conducted in the summer of 2001. The Director's draft report noted the feeling that the Association had 'lost momentum and that local government had lost self-direction, as the implications of devolved central government took root'. A wide-ranging consultation was conducted which revealed that "member authorities want an Association which is able to advise individually whilst protecting interests collectively". Moreover, "a concern was expressed that many Members saw the WLGA as a club for the Leader" which had no relevance to ordinary councillors. A Member survey revealed that the favoured role for the WLGA was a lobbying organisation and 'Think Tank' which also provides an Advisory Service.¹⁰⁷

Commission on Local Government Electoral Arrangements in Wales

A commitment to look at the electoral system for local government elections was one of the terms of the October 2000 Partnership Agreement that established the Labour-Liberal Democrat coalition. Accordingly the Commission on Electoral Arrangements for Local

¹⁰⁷ WLGA *Strategic Review*, Director's draft report, 28 September 2001.

Government in Wales began work in the early autumn of 2001. Its terms of Reference are:

To identify the objectives of an electoral system for local government in Wales giving consideration to all factors which the Commission consider relevant and including:

- The level of participation in local government elections.
- The capacity of each elected member to represent his or her electors in ways that reflect the expectations of electors.
- The capacity of the whole council to reflect the diversity of interests and values in the local community.
- The capacity of the council to provide effective and transparent leadership which reflects the electoral choices of the electorate.
- The capacity of the council to provide effective arrangements for scrutinising and holding its leadership to account.

To consider making recommendations on electoral procedures having regard to the considerations currently being undertaken by the Home Office:

- The timing of local elections.
- The location of polling stations.
- The potential for increasing postal voting.
- The potential for electronic voting.

To make recommendations on whether there is a need for significant change in the number of elected members on any or all local authorities in Wales

To make recommendations on the system of election, giving consideration to any system that the Commission considers relevant and including

- First Past the Post
- List Systems
- Additional Member System
- Alternative Vote and Supplementary Vote
- Single Transferable Vote
- Combination of Alternative Vote and Additional Member

The exercise is unpopular with many key local government figures. In its response to the Commission the WLGA put up a strong defence of the first-past-the post electoral system, arguing that a move to any other method would be

“... a recipe for compromise and political horse-trading of the worst kind. It would undermine the roots of local democracy and lead to political stasis.”¹⁰⁸

¹⁰⁸ WLGA, *The Commission on Electoral Arrangements in Wales- Response by the Association*, September 2001.

It further suggested that tinkering with the electoral system was not the way to re-energise local democracy and that the 'key issues' are 'developing community leadership, best value and effective scrutiny' and the delivery of 'excellent services to our communities'.

The Case for a Welsh 'Constitution'

There is evidence that some key players in Local Government are testing out the concept of a 'Welsh constitution' which would define Assembly and Local Government powers and functions respectively. At the WLGA Conference Russell Goodway, Cardiff County Council's leader, argued there was a case for codifying Welsh government and that a Welsh 'constitution' was needed within the context of the Government of Wales Act. Furthermore, in its evidence to Electoral Commission the Welsh Local Government Association stated:

“Trying to examine political representation in Wales by confining this to one part of the constitutional jigsaw is seriously flawed. Improving the efficiency of our political system in Wales means a strategic overview and the Association calls on the Assembly to conduct a proper review of this issue that is underpinned by a fundamental examination of the role of all political tiers including the Assembly itself.¹⁰⁹

Whether this line of thinking has legs remains to be seen. In the meantime individual local authorities are busy dealing with the fallout from the Local Government Act 2000. Consultations on political arrangements are underway and will be submitted to the Assembly by the new year and local authorities have started preparing their community strategies for promoting the economic, environmental and social well-being in their areas as required under the Act.

¹⁰⁹ *Ibid.*

9. POLITICAL PARTIES

John Osmond, IWA

Speculation that the UK Government has pencilled in the referendum on the Euro for the same day as the next National Assembly election, 1 May 2003, has heightened an electioneering atmosphere between the parties well ahead of the poll. The tenuous source of the speculation, a speech made by Downing Street adviser Roger Liddle at a dinner with MEPs in Strasbourg, did little to reduce its impact.¹¹⁰ All the parties are now facing an election period lasting an unprecedented 18 months.

If the two polls were held on the same day the differential impact on the parties could be considerable. For Plaid Cymru which is likely to support joining the Euro, campaigning against Labour in Wales while at the same time backing the Westminster government in a UK-wide referendum would present obvious difficulties. On the other hand, for Labour substantial benefits could accrue. The media would focus on the referendum campaigns being led by the UK leaders. Simultaneously the party could expect to gain at Plaid's expense from an increased poll on the back of public interest in the referendum. The importance of turn-out was highlighted by the outcome of the Swansea East Assembly by-election on 27 September, precipitated by the death of Val Feld. Labour's Val Lloyd easily held on to the seat, but on a turn-out of only 22.5 per cent, down 13.6 per cent on the 1999 Assembly general election.

Table 2: Swansea East Assembly By-Election Result

| | Votes | % | % change on 1999 |
|---------------------------|-------|-------|------------------|
| Labour | 7,484 | 58.13 | +12.56 |
| Plaid Cymru | 2,465 | 19.15 | -8.28 |
| Lib Dem | 1,592 | 12.37 | -6.65 |
| Conservative | 675 | 5.24 | -2.74 |
| UK Independence | 243 | 1.89 | |
| Green | 206 | 1.60 | |
| Socialist Alliance | 173 | 1.34 | |
| Bean | 37 | 0.29 | |

The election atmosphere was further boosted by a revelation that Labour's UK National Executive Committee will vet the party's list of candidates for the Assembly. A party spokesman in Wales rejected the suggestion that this provided another instance of damaging 'control freakery' exemplified by the imposition of Alun Michael as Labour's leader in the run up to the first Assembly elections:

¹¹⁰ The *Western Mail* made it a front page lead on 26 October 2001: *Revealed: the day we decide on euro.*

“We asked for the NEC to be involved in this. We did that for the simple reason that we want to make sure the same standards which were required for the reselection of our MPs also apply to our AMs.”¹¹¹

Yet, as a *Western Mail* editorial put it:

“The spectre of Labour controlling Wales from London is with us again ... Labour denies it is meddling in the party’s Welsh affairs. But why else would it want to see the list of candidates?”¹¹²

Labour’s troubles in this period paled into insignificance compared with a raft of difficulties that confronted Plaid Cymru. In the wake of the general election much attention was paid in the media to the party’s shortage of funds. In November the *Western Mail* splashed a front page headline ‘Plaid Cymru staring at financial ruin.’ This reported that the party had an overdraft of more than £100,000 and that in the Electoral Commission’s register for the previous three months had received only one donation above £1,000 - for £10,000. Unlike the larger parties Plaid Cymru is dependent on a large number of relatively small donations which not have to be registered. However, its chief executive, Karl Davies conceded:

“After our most expensive General Election campaign ever, the party’s finances are in a bad way.”¹¹³

The disappointing Swansea-East by-election result came a week after the party’s annual conference where its leader Ieuan Wyn Jones struggled to exert his authority following months of damaging internal dissension. This centred on the loss of Ynys Mon to Labour in the general election, a seat previously held at Westminster by Ieuan Wyn Jones himself, and the party’s vacillation in the face of a Labour-led assault on its approach to English in-migration into fragile rural communities. The standing ovation Ieuan Wyn Jones received for his presidential speech at the annual conference only partially offset his essential problem of emerging from the shadow of his predecessor Dafydd Wigley. There was some speculation that Wigley, having recovered from the illness that had caused him to resign as party president 18 months earlier, was looking for a career outside politics. However, his return to Plaid Cymru’s front bench as Finance spokesman in October when the Assembly reconvened after the summer recess offered the prospect of a renewed unity within the leadership. Meanwhile a special constitutional conference, held at Llanellwedd on 24 November, ended 18 months of debate over the party’s constitutional aims. The revised objectives include for the first time an explicit reference to reviving the Welsh language, and replaces the phrase ‘self-government for Wales’ with the aim of ‘full national status within the European Union’. The party now lists five aims at the head of its constitution:

- To promote the constitutional advancement of Wales with a view to attaining Full National Status for Wales within the European Union.

¹¹¹ *Western Mail*, 17 November 2001

¹¹² *Ibid.*

¹¹³ *Western Mail*, 8 November 2001.

- To ensure economic prosperity, social justice and the health of the natural environment, based on decentralist socialism.
- To build a national community based on equal citizenship, respect for different traditions and cultures and the equal worth of all individuals, whatever their race, nationality, sex, creed, gender, colour, sexuality, age or ability, or social background.
- To create a bilingual society by promoting the revival of the Welsh language.
- To promote Wales's contribution to the global community and to attain membership of the United Nations.

The Welsh Conservatives spent much of the period continuing to reflect on the outcome of the UK general election in June when, for the second time, they failed to achieve any representation in Wales. The latest Welsh Conservative figure to make the case for the party to identify more strongly with the Welsh cause, and in particular the case for enhanced powers for the Assembly, is David Melding, AM for South Wales Central. As he put it:

“Reflecting on 18 years of Conservative Government, Welsh Tories must acknowledge that a deep antipathy towards the Party developed in Wales and Scotland. It is bizarre to argue that, as one of the two great parties of state, the Conservative Party can accept a situation where it has had no MPs from Wales in two successive Parliaments. That is hardly evidence of an effective Party serving the whole Union. Some home truths need to be expressed.”¹¹⁴

And he continued:

“The Party least sympathetic to devolution needs to become its most conspicuous supporter. I believe that we have reached the stage where the British state can only survive with devolution. Commentators should not rule out, therefore, the possibility that the next and most vital advance for devolution in Wales will be instigated by the Conservative Party. It has always been my view that Britain could survive either as a unitary or a quasi-federal state. But the present model of devolution in Wales - essentially shadowing the work of the Welsh Office as was - is derivative and categorically different from the legislatures established in Scotland and Northern Ireland. We inhabit the constitutional grey zone of executive devolution with powers to determine secondary legislation. As the constitutional expert Professor Vernon Bogdanor has observed – as a clear and distinct entity, secondary legislation simply does not exist. The scope for secondary legislative powers is determined by each individual Act of Parliament. Such conferred powers can range from next to nothing to nearly everything. It depends on the particular piece of primary legislation.”¹¹⁵

¹¹⁴ David Melding, *Conservatives Should Finish the Job*, Agenda, IWA, Autumn 2001

¹¹⁵ *Ibid.*

Such statements herald the prospect that when the Coalition's independent Commission into the Assembly's powers gets underway early in 2002 it will find all four parties in the Assembly united on the need for it to be granted control of primary legislation.

For the Liberal Democrats the quarter was dominated by the continued absence of their leader Michael German from the Shadow Cabinet, due to the unresolved police investigation into his activities while head of the WJEC's European Unit. At their Autumn conference in Llandrindod at the end of October the vacuum was partially filled by the election of Montgomery MP Lembit Opik as leader of the Welsh Liberal Democrats. He was elected unopposed. In the normal course of events Michael German, as leader of the party within the National Assembly could himself have expected to be elected unopposed.

10. PRESS AND MEDIA

Nia Richardson, IWA

The press and media grew increasingly interested in the Administration's health service reorganisation in early November when they sensed that the proposals were causing a rift between the two Coalition partners. It was reported that the Liberal Democrats were annoyed at having not been consulted before they were circulated. The *Western Mail* noted it had,

"... learned that the Liberal Democrats are having doubts (over the proposals) and could withdraw vital support for the controversial plans."¹¹⁶

The Liberal Democrats, together with the Conservatives and Plaid Cymru were demanding an all-Wales Health Authority, but when it emerged during the Health and Social Services Committee on November 7 that the Minister was not going to adjust her plans accordingly, speculation grew as to what the Liberal Democrats would do. The *Western Mail* reported:

"The Conservatives and Plaid Cymru are said to be putting together an amendment to Health Minister Jane Hutt's proposals which could be supported by the Liberal Democrats. This would give them a majority and blow a hole in restructuring."¹¹⁷

On the other hand the *Guardian* suggested that the Conservatives were working directly with the Liberals:

"Conservative members want a full debate to consider the creation of a pan-Wales health authority to take on strategic role. There are rumours of an alliance between the Conservatives and the Liberal Democrats to force the issue."¹¹⁸

On the eve of Health Minister Jane Hutt's Statement to plenary, on November 14, as reported in the opening Section, a crisis meeting was held between the leaders of the Labour Party and the Liberal Democrats to thrash out a compromise. The media, heavily informed by the Liberal Democrats, were led into believing that the Minister had bowed to the Liberal Democrats' demand for an All-Wales Health Authority. It appeared to be a big story: the Minister had made a U-turn to save the coalition. On the day the BBC Wales news website contained the following prediction:

"Hutt adjusts NHS plans under pressure: Mrs Hutt will announce an all-Wales strategic body to Assembly Members on Thursday - instead of the three regional bodies as outlined earlier this month."¹¹⁹

¹¹⁶ *Western Mail*, 6 November 2001

¹¹⁷ *Western Mail*, 12 November 2001

¹¹⁸ *Guardian*, November 14, 2001

The *Western Mail* was also under the impression that the Minister had fundamentally changed her plans. Under the headline 'Hutt bows to coalition demands over reform' the paper declared:

"A senior Liberal Democrat source revealed the decision to bring in an all-Wales commissioning body for health care was taken yesterday at a meeting with First Minister Rhodri Morgan and coalition partners."¹²⁰

However, in her statement the Minister did not announce an all-Wales Health Authority. The only concession she made was to strengthen the role of the existing specialised Health Services Commission. The media and the press had been misinformed and had got it wrong.

Following her statement, BBC Wales' *Dragon's Eye* presenter David Williams waited outside the Chamber to challenge the Health Minister Jane Hutt, as he had been denied an official interview. As she emerged from making her Statement to plenary he confronted her over the apparent confusion in the Liberal Democrat's messages to the media about the compromise struck between them and the Labour side of the Coalition. In reply, she accused the media of creating a false impression of tensions:

"You seek to drive that confusion and undermine the partnership government. You're trying to drive a division that is not there."¹²¹

In October, the Prime Minister decided to use his first visit to the Assembly to give an assessment of the campaign against terrorism. However, his visit did not leave a great impression on a *Western Mail* journalist, who portrayed it as a bit of a non-event:

"He came, he saw, he smiled, he spoke and he left. After that, the Assembly waited five minutes, and then life carried on as usual."¹²²

The London press, felt that the uninspiring Assembly building was to blame for this (see Section 1).

The *Daily Post*, always keen to promote and protect the interests of north Wales, was excited in November by the announcement that the Assembly Administration was to carry out a review of the location of Assembly offices across Wales. It ran a full front-page headline calling on the Assembly to,

"Move your Assembly jobs up to North Wales"¹²³,

¹¹⁹ BBC Wales News website, November 14, 2001

¹²⁰ *Western Mail*, November 15, 2001

¹²¹ *Dragon's Eye*, BBC Wales, November 15, 2001

¹²² Toby Mason, *Western Mail*, October 31, 2001

¹²³ *Daily Post*, November 21, 2001

It also reported that, “The potential to establish a major headquarters away from Cardiff is winning cross-party backing of AMs”. Amongst others it quoted the Presiding Officer Lord Elis-Thomas who, according to the paper, was in favour of siting a 'full policy division' of the Assembly in north Wales.

While the *Daily Post* was calling on the Assembly to give more attention to the people of north Wales, an unscientific ‘poll’ carried out by the *South Wales Echo* revealed that people living immediately in the vicinity of the Assembly also felt disaffected. According to the survey 'State of a Nation', more than 60 per cent of the 1000 people questioned wanted to see the Assembly abolished or were unhappy with its performance. Only 8 per cent were pleased with the work of the politicians at the Assembly while 31per cent wanted the Assembly’s powers to be increased.¹²⁴

¹²⁴ *South Wales Echo*, October 30, 2001