
**Commentary on the Draft
Regional Assemblies Bill
(2004)**

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Executive Summary

- The draft Regional Assemblies Bill and its accompanying Policy Statement have remained roughly faithful to the Government's intentions in the White Paper, with the addition of the new Regional Fire and Rescue Authorities, Business Links, and the subtraction of various smaller functions.
- A limited number of executive powers will be devolved to elected regional assemblies. This raises questions about the degree to which they will be able to deliver visible outputs for the electorate, particularly as most of their functions are 'back-room' ones which have far lower public salience than, for instance, health and education.
- The range of appointment rights to be available to elected assemblies appears to suggest that appointment to public bodies is considered a more central role for elected assemblies than scrutiny of public bodies. Though both of these may be valid tasks for an assembly, if it tries to carry out both of them at once accountability will become confused. It is unclear from the draft Bill and policy statement what the Government's intentions are.
- The structure of the assemblies, with most back-benchers remaining part-time, directly contradicts any Government desire for 'new blood' in representative politics. Part-time membership will appeal to the financially secure, the retired, and those already engaged at other tiers of government.
- The scrutiny role of elected assemblies will be conducted through a Regional Monitoring Committee, which will appoint sub-committees. These sub-committees will be proportional to the political balance on the assembly *minus the executive members*. This goes against the practice in the whole of the rest of UK government, and, though it may be well-intentioned, could lead to the scrutiny function failing to function effectively.
- Some of the functions of the Assembly will be exercised by functional bodies, which may guard these functions from day-to-day political interference. However, some will be handled from within the Assembly. It is hard to gauge the Government's rationale for where each function is located.



Commentary on the Draft Regional Government Bill (2004)

Introduction

The draft Regional Assemblies Bill was published by the Office of the Deputy Prime Minister on 22 July 2004. Also published were a commentary on the Bill and a Policy Statement indicating the Government's intentions for the Bill. This briefing analyses the draft Bill and policy statement, in the light of the Government's policy for elected regional government. It concentrates on the functions proposed for elected regional assemblies in the draft Bill. It compares them both with the functions proposed under the White Paper, from which there are subtle differences. The briefing also examines the constitutional proposals for the assemblies in some detail.

A number of the Government's proposals for elected assemblies do not require legislative changes and/or are not featured on the face of the draft Bill. Instead, they are referred to in the policy statement only. This briefing examines both documents as a single statement of Government policy. It also points up a number of (minor) commitments from the White Paper which are absent from the draft Bill and policy statement.

The briefing does not address the issues of funding, boundaries, or local government reform at any length. These were all examined in The Constitution Unit's *Commentary on the Regional Government White Paper* ('the Commentary') (Sandford 2002). The issue of local government reform has been the subject of much debate (Chisholm 2004). Most commentators and stakeholders have opposed the linking of local government reform to elected regional government. The Regional Assemblies (Preparations) Act was amended in its passage through Parliament to give voters a choice of two different (boundary) systems of unitary local government to be established in areas currently served by two tiers.

The immediate political context

The draft Bill was published at a point when the Government's policy on elected regional assemblies was in a considerable amount of turmoil. On 22 July 2004 Nick Raynsford and Lord Rooker, the responsible ministers in the House of Commons and Lords respectively, announced that the Government had decided to postpone the referendums scheduled for 4 November 2004 in two of the three selected regions: the North-West and Yorkshire and the Humber. The referendum in the North-East alone would go ahead.

The reasons given by the Government for this postponement related to the poor organisation of the all-postal ballot in those regions for the 10 June 2004 European Parliament election. Against the advice of the independent Electoral Commission, the Government held experimental all-postal ballots for this election in four regions instead of two: North-West, Yorkshire and the Humber, East Midlands and the North-East. The Electoral Commission had recommended using just two regions because it doubted that the Government had the capacity to organise such a large electoral pilot.

In the event there were widespread problems, particularly in the North-West. Accusations of electoral fraud and large-scale problems with posting the ballot papers made national headlines in the days running up to 10 June. The Electoral Commission undertook an enquiry immediately after 10 June, but could not report until 27 August: and parliamentary time demanded a decision on 22 July, the final day before recess.

However, few believed the Government's stated reasons for postponement. The more likely explanation was that the Government feared losing the referendums in the two postponed regions, with consequential political fallout in the run-up to a general election expected in mid-2005. Besides, losing referendums at this stage would likely have been fatal to the Government's policy.

Under the Regional Assemblies (Preparations) Act 2003 a 'no' vote triggers a seven-year wait before a further referendum could be held. It is unlikely that the policy would have survived such a setback.

At the time of writing the Government is on record as promising to reschedule the referendums—i.e. they have not been cancelled. But the existing draft Bill can only be taken with any certainty to apply to a prospective North-East regional assembly.

General comments on the draft Bill

The draft Bill has remained quite close to the policy intentions set out in the White Paper, *Your Region, Your Choice*. In order to clarify the difference that an elected assembly would make to the current make-up of regional governance institutions in England, we have constructed two large tables, which are located in Appendix 1. These tables give a pictorial representation of regional governance structures before and after the introduction of an elected assembly. The tables demonstrate clearly that few of the functions currently exercised at regional level will be directly affected by an elected assembly, and still fewer will actually be controlled by an assembly.

In the Unit's Commentary on the White Paper, we explained why we felt that the extremely thin executive powers proposed for elected regional assemblies were overly restrictive, and likely to curtail assemblies' ability to have any impact on economic growth or improved policy outcomes in their region (Sandford 2002: 10–12). This general criticism of the policy is repeated here. The powers outlined in the policy statement, of 'working with' other executive agencies and writing strategy documents, are a poor second best to executive and financial control when it comes to getting results. Strategy documents, which rely on goodwill and commitment from external organisations, can never come close to achieving the results and the speed of action available from executive powers.

As an aside, a by-product of the range of consultation rights, appointment rights and powers to 'work with' is that the Bill and even the policy statement are extremely hard to understand. Without a good understanding of the collection of regional executive agencies in England, and their interrelationships and lines of accountability, making sense of the proposals would be near to impossible: this is not helpful to gaining public support for elected assemblies. There are different provisions for almost every executive power, right of appointment and right of consultation: there seems to be no discernible pattern amongst them.

Another criticism which bears repeating is that of the peculiar randomness of the powers. In our 2002 Commentary we stated that "it is quite apparent that the range of functions to be offered to elected regional assemblies owes everything to political bargaining and little to rational analysis" (Sandford 2002: 10). This remains the case. In particular, the most significant addition to assemblies' proposed powers since the White Paper, the new Regional Fire and Rescue Services, have no link whatsoever with the rest of the proposed functions: they have evidently been added because the Deputy Prime Minister, in whose department they currently sit, was searching desperately for any new functions available.

The thinness of functions is mostly the result of rearguard action by other Cabinet ministers and departments of state, abetted by what amounts to passive approval from the highest levels of government. It is regrettable that the Government has been unable to move on these matters. The thin functions are problematic both in administrative and political terms: it is easy for opponents of regional government to argue that assemblies will be able to do nothing of significance, and it is hard to persuade voters otherwise with the available facts. Recent public opinion research has suggested that enthusiasm for regional assemblies has waned in all regions in the past eighteen months, and that there is some correlation between respondents claiming to understand the Government's proposals and being more likely to oppose assemblies (MORI 2003: also 2004 forthcoming). Now that only one referendum instead of three will be held in

late 2004, the pressure on the Government to win it has increased considerably. If a 'no' vote is obtained, it is hard to see Government doing anything other than abandoning the policy.

Lastly, it is notable that the draft Bill clearly brings elected regional assemblies within the same constitutional family as local authorities. Wherever regulatory or structural provisions occur, it applies existing local government legislation, inserting 'regional assemblies' into existing Acts. The forms and structures specified in the draft Bill also clearly owe everything to local government precedent, and next to nothing to the level of decentralisation and autonomy that has come to be associated with the word 'devolution' as applied to Scotland and Wales.

Functions of elected assemblies in the draft Bill

There are relatively few commitments on powers and functions on the face of the draft Bill. This is a sensible position, as it allows for flexibility should future governments wish to devolve further powers. A blanket provision for further devolution of functions occurs in clause 45. Executive functions are dealt with in clauses 83–109. Clauses 109–123 make a variety of amendments to existing Acts to permit the assembly¹ most of

the range of consultation and appointment rights promised in the White Paper.

A recurring feature of the draft Bill is the provision of clauses preventing elected assemblies from obtaining different sets of powers. In most parts of the Bill which provide for future devolution of extra powers, where a power is devolved by order of the Secretary of State, it must go to all elected assemblies. This will prevent the future emergence of 'variable geometry' within England.

The basic structure of the assembly, as set out in the draft Bill and the policy statement, is set out in Table 1. The assembly will have three functional bodies: the Regional Development Agency, the Regional Fire and Rescue Authority, and the Regional Cultural Consortium. The concept of 'functional bodies' derives from the Greater London Authority (GLA), which has four.² The London functional bodies' boards are all appointed by the Mayor: they carry out the executive functions of the GLA according to plans prepared by the Mayor but with management at one remove from his office.

The distribution of functions indicated by the draft Bill between functional bodies and 'in-house' functions is odd: no rationale is given, for instance, for establishing Regional Cultural Con-

Table 1: the structure of the assembly

Functional bodies	Directly managed functions	Strategies
Regional Development Agency	Housing Capital Investment	Assembly Scheme (Integrated Regional Strategy)
Regional Fire and Rescue Authority	Grants to housing associations	Economic Development Strategy
Regional Cultural Consortium	Rural regeneration programmes	Cultural Strategy
	Resource (Museums, Libraries and Archives Council)	Regional Spatial Strategy
	European funding	

¹ For clarity, and in recognition of the fact that only one referendum is now taking place, we are using the singular 'assembly' from now on.

² Transport for London, the London Development Agency, Metropolitan Police Authority and the London Fire and Emergency Planning Authority.

sortiums as functional bodies but keeping museums, archives and libraries elsewhere. Similarly, whilst RDAs must remain at one remove, housing capital funding and European expenditure (should any remain for the English regions in the next round of structural funding) are to be controlled directly by the Assembly. Whatever the arguments for and against using functional bodies in place of direct control of functions, dividing related programmes in this way is no recipe for joined-up government.

The Regional Development Agencies have expanded their funding and programmes since the publication of the White Paper. They will shortly take on the Business Link franchises from the Small Business Service. They will also inherit some Countryside Agency programmes, as the Government implements the majority of conclusions of the Haskins Report on the executive agencies of the Department of Environment, Food and Rural Affairs (DEFRA). The assembly will appoint the board of its RDA, and must ensure that at least half the board have business experience.

As we pointed out in the Commentary, the current arrangements mean that well over half of the assembly's budget is intended to be passed on to the RDA. This is reflected in the fact that various extra functions have been 'devolved' to all of the RDAs since the publication of the White Paper—amongst them the Business Link franchises and various Countryside Agency programmes.

The huge budgetary concentration on economic development (in its widest sense) is likely to lead to a lack of balance in what the Assembly will be able to achieve. Economic development, after all, is a policy field which has very little direct impact on the general public. A regional assembly will find it very difficult to sustain *public* support through its leading-edge land reclamation and business birthrate programmes, even though they may be excellent strategic policies. By contrast, the Greater London Authority maintains a modicum of public interest through Transport for London, an organisation which touches the majority of the population of London.

More problematically, the concentration of budget in the RDA will be an invitation to regular political interference by the assembly executive in the internal affairs of the RDA, something which the functional body 'model' may have hoped to avoid.

Regional Fire and Rescue authorities (RFRAs) were proposed under the White Paper *Our Fire and Rescue Service* in 2003, and will take on some, but not all, of the functions of the existing county-level fire authorities. These will include control rooms, recruitment and human resources, procurement, planning for civil contingencies (including flooding and terrorist attacks) and health and safety planning (ODPM 2003: 31). As with the London Fire and Emergency Planning Authority, a majority of their members will be appointed from the membership of the regional assembly, with the remainder appointed from regional local authorities. These details are contained in Schedule 5 of the draft Bill. As in London, the assembly members who are appointed to the RFRA must reflect the political proportionality of the assembly: and local government appointees must reflect the political proportionality of local councillors in the region as a whole. The assembly also appoints the chair of the RFRA from amongst its own nominated board members.

The third Assembly functional body is the Regional Cultural Consortium. These bodies were set up by DCMS in 1999 and have had only the most limited influence on policy so far. Most have annual funding of around £100,000 and 2–3 staff members. The documents suggest that the RCC would work with other bodies to promote culture in the region, but all of the other cultural executive agencies (Arts Council, Sport England, English Heritage) are to remain outside the Assembly. Moreover, the regional councils for museums, archives, and libraries (NEMLAC in the North-East) are to come under the control of the Assembly proper, not the RCC.

It seems quite eccentric to create a functional body which is likely to be tiny in staff, funding and influence. It is unclear why the Government wants to create a functional body in a field where there are already a large number of executive agencies with overlapping concerns. The RCC's

board may have between 11 and 29 members, and, although they must have some cultural 'expertise', there is no restriction on appointment of Assembly members to the RCC board.

Executive powers

The assembly will take on as 'in-house' functions a number of other roles from existing organisations (see the middle column of Table 1). These are the management of Resource (the museums, libraries and archives council); the Government Office's rural regeneration programmes; and the funding of housing capital investment which is currently run from the Housing Corporation (for housing associations) and the Government Office (for local authorities).

It is not immediately clear why these functions have not themselves been placed in functional bodies. Rural regeneration and Resource are relatively small funding programmes, but housing capital spending runs to over £100 million per year in any given region. This would form the largest sum of money to be spent directly by the assembly, rather than through functional bodies. All of it would in fact be passed on to local authorities or housing associations: the Bill contains

Table 2: changes in executive powers

White Paper	Draft Bill
Economic Development (RDA)	Economic Development (RDA)
Housing capital investment	Business Links
Housing association allocations	Housing capital investment
EU funding programmes	Housing association allocations
Planning	EU funding programmes
Museums, libraries and archives	Planning
Rural regeneration programmes	Museums, libraries and archives
Rail Passenger Partnership grants	Rural regeneration programmes
Tourism (regional tourist board)	Rail Passenger Partnership grants
Regional heritage sites (English Heritage)	
Regional arts	
Regional sport	
	Fire and rescue

a clause (clause 44 (6)) prohibiting the assembly from maintaining its own housing stock.

The executive functions of the assembly have undergone some minor changes since the White Paper. These are summarised in Table 2. The indications from Table 2 are that, contrary to some press reports in July 2004, there have been increases in some powers and decreases in others between the White Paper and the Draft Bill. This statement requires some explanation.

Two functions have been newly made available to the assembly under the draft Bill. The new regional fire and rescue authorities will become functional bodies. This represents a centralisation of local functions: the new authorities are intended for all regions irrespective of whether an elected assembly is established. The Business Link franchises, which disburse some £500 million per year to small businesses across England, were earmarked for transfer from the Small Business Service to the Regional Development Agencies by the Chancellor of the Exchequer. This will take place in April 2005.³

The functions which have been dropped since the White Paper are smaller in significance. The policy paper explicitly abandons the commitment

³ This is therefore, so to speak, a functional transfer with consequential for the assembly rather than an intentional transfer of power. It will take place at the same time in all regions.

to transfer part of English Heritage’s resources to the Assembly. The White Paper specified “funding for the regional tourist programme” (DTLR/ Cabinet Office 2002: 41), presumably referring to regional tourist boards, but there is no mention of this whatever in the draft Bill or the policy paper. Regional arts and sport bodies will remain outside the assembly, although it will appoint “all ordinary members” of their boards, and the chairs. The assembly will be permitted to make additional funding available for these functions.

European funding programmes are barely referred to in the draft Bill or the policy paper, reflecting the fact that they will be of negligible size by the time any regional assembly is established. The 2006 round of structural funds is almost certain to see English regions lose out to the new Eastern members of the European Union.

Some activities are specifically prohibited by the draft Bill. Among them are the provision of

any housing stock by the assembly itself, the provision of funding for any goods or passenger rail services, and barring of the assembly from becoming a passenger franchise. There are also limits on the degree of borrowing that can be carried out by Assembly-owned companies. The Secretary of State can make further prohibition through secondary legislation.

Assembly appointments

The Assembly has a range of powers to appoint members of various agencies (set out in Table 3). Some of these agencies are within the Assembly’s control, some are outside it.

Aside from this being a curious hotch-potch of appointment rights, it is notable that in most cases there will be nothing to prevent Assembly members (whether executive or back-bench) being appointed to any of these boards. Indeed, the RFRA board, as with the London Fire and

Table 3: Assembly appointment powers

Executive Agency	Appointment power	Can Assembly members be appointed?
Regional Fire and Rescue Authority	‘Some members’	Some members must come from Assembly, in political proportion
Regional Development Agency	All members	Unclear: previous guidance recommended up to four local councillors. Half of board must have ‘business experience’.
Regional Cultural Consortium	All members	No requirement or prohibition: members must have cultural expertise
Local Learning and Skills Councils	Five members on each ⁴	No prohibition
Environment Agency environment protection advisory committees	Two members on each	No prohibition
Regional arts board	All members	No prohibition
Regional sports board	All members	No prohibition ⁵

⁴ Clause 119 (2) specifies that all local LSC boards must have at least 12 members, ensuring that Assembly appointees cannot be in a majority.

Emergency Planning Authority (LFEPA), must have several Assembly members appointed to its board. Some of the appointment rights carry with them a requirement that appointees must have relevant knowledge—for instance, the RCC and RDA—and it would be hard to appoint members to other boards if they had no understanding of the subject. But most elected members do have good knowledge of at least one policy area—and some may stand for the assembly with the intention of taking on such a role.

This range of appointment powers, together with the provisions for scrutiny (see below), raises questions as to what role the non-executive members of the assembly are expected to take on. Are they scrutineers, or are they appointees to extend the assembly's executive reach? Either one of those roles would make some sense. An executive member for culture, for instance, might benefit from close relationships with party colleagues who were chairs of the arts and sports board. Indeed, it is not impossible that Assembly executive members would be appointed to be board chairs themselves, which might clarify matters. By comparison, in London, the Mayor established a Cultural Strategy Group chaired by Jennette Arnold, a Labour member of the London Assembly. Conversely, chairs and boards could be composed entirely of non-Assembly members and subject to scrutiny by the Regional Monitoring Committee (see below).

However, it does not make sense for the assembly to try to take on both the board (i.e. policy) and scrutiny role, for a number of reasons. Firstly, as we have pointed out previously, there is a contradiction between appointing members of a scrutiny body to functional body boards. This is particularly evident in the GLA (Greer and Sandford 2003, Sandford 2004a), where a majority of MPA and LFEPA boards must come from the London Assembly. This point is not mere constitutional nit-picking: it has implications for what the assembly chooses to do. The London Assembly carried out absolutely no scrutiny of MPA

or LFEPA during its first term (Sandford and Maer 2004). The reason for this was not the difficulty of constituting a committee which did not overlap in membership with the boards, but lay in members' enthusiasm for the old-style local authority executive structures of the two bodies instead of scrutiny.

Secondly, as assemblies will be permitted only a maximum of 35 members *on the face of the Bill* (clause 3 (5)), if many members are appointed to boards it will become hard to run an effective scrutiny function with those who are left over. It will also reinforce the impression that assemblies exist to provide members to serve on boards rather than to scrutinise. Experience from the GLA and local government indicates that elected members will almost always choose boards over scrutiny: very few of them are active enthusiasts for the scrutiny role. After the June 2004 elections, London Assembly members voted for a huge enforced reduction in the amount of scrutiny that could be carried out—despite being controlled by a Conservative-Liberal Democrat coalition facing a Labour mayor!⁶ This demonstrates how far the scrutiny role has to go to compete for members' affections.

Thirdly, the quantity of work involved in sitting on a board and on an elected assembly is likely to be considerable. The author's interviews in the GLA indicated that both LFEPA and MPA took up very large amounts of members' time, crowding out their Assembly role itself. This problem will be particularly acute in regional assemblies if the Government sticks to its intention that back-bench members should be part-time (see below). (The White Paper suggested three days a week, but this policy is not mentioned either in the draft Bill or the policy statement.)

There is little indication that the consequences of the appointments regime and its impact on the scrutiny role have been clearly thought through, but the indication is that the stress is on decision-making rather than scrutiny. We are not arguing

⁵ Regional arts boards and sports boards are not established in statute, so the draft Bill does not make any provision for these appointment rights. They are cited in the policy statement.

⁶ In the second term of the London Assembly, scrutiny committees may not now hold more than six meetings per year. In the first term they were holding approximately 15-18 meetings per year. Any extra meetings must be approved by the Business Management and Appointments Committee, and sources indicate this approval

that this is a mistake: but that the Government needs to be clear about what the purpose of the various Assembly powers is. One should not underestimate the influence that appointments can bring: in London, the Mayor has appointed a close ally as chair of the London Development Agency, which has led to close co-operation between the LDA and the Mayor's Office.

It may be, as an aside, that the appointments and strategy 'regime' will increase the pressure for, and logic of, full devolution of executive control of some of these agencies. But as that would in most cases require fresh primary legislation, it would not be easily forthcoming.

General powers and strategies

The White Paper listed a number of strategies that elected regional assemblies would be expected to write. This was a development from the requirements on the Mayor of London to write strategies, particularly in policy areas over which he had no executive authority. Evidence from the first term of the GLA suggests that the Mayor's statutory strategies were largely ignored where he had no executive power to implement them (Sandford 2004). Where aspects of them were delivered it was through the executive powers that were available. It is therefore a welcome development in the draft Bill that very few strategies

will be required to be written: four are mandatory, in place of ten in the White Paper.

Alongside the specification of sustainable development, the Assembly will be obliged to promote equality of opportunity (clause 49). It will also have a general duty to promote economic, social, and environmental development in its region (clause 43). There is no equivalent of the Mayor of London's obligation to consider the 'health of Londoners' across his policy-making.

Table 4 lists the strategies proposed in the White Paper and those existing in the draft Bill. The strategies in italics in the right-hand column are not on the face of the draft Bill, and so will not be mandatory, but the policy paper suggests the Assemblies would want to write them. (Strategies under most of these names have already been drafted in most regions by Regional Chambers.)

Clause 48 of the draft Bill sets out the requirements for an 'Assembly scheme'—essentially an integrated regional strategy (which most Regional Chambers have now)—which the assembly would be required to "maintain". Clause 48 (2) requires that the scheme makes clear how it would contribute to sustainable development. The scheme must be adopted within two years. One assumes that the scheme will form the basis of the small number of high-level targets to be negotiated between assembly and Government (DTLR/Cabinet Office 2002: 44). The scheme

Table 4: Assembly strategy documents

White Paper	Draft Bill
Economic Development	Assembly Scheme
Regional Spatial Strategy	Economic Development
Transport Strategy	Regional Spatial Strategy
Cultural Strategy	<i>Transport strategy</i>
Sustainable Development Framework	Cultural Strategy
Housing strategy	<i>Housing strategy</i>
Waste strategy	<i>Waste strategy</i>
Framework for Regional Employment and Skills Action	
Health Improvement Strategy	
Biodiversity Strategy	<i>Biodiversity strategy</i>

must also 'have regard to' relevant national policies (which are defined on the face of the Bill at 48 (11)).

The scheme must also have regard to existing local authority community strategies within its region, which will require the assembly to dovetail its strategy with priorities of the tiers of government both above and below it. There is also no detail on the hierarchy between the Assembly scheme and the spatial and economic strategies, which will already exist when an assembly is established. Conflicts and contradictions between spatial and economic strategies are starting to become increasingly problematic in some regions already.

Clause 43 (3) defines specific activities that the assembly may undertake in the pursuance of these ends. Those activities which promise the most scope for flexible development are the acquisition of property (43 (3) (a)) and the forming or participation in the forming of companies (43 (3) (c)).

Aside from the executive functions detailed in the previous section, the Assembly will have various consultation rights—on biodiversity (from the Environment Agency), on new roads (Highways Agency) and rail schemes (the successors to the Strategic Rail Authority). The policy statement also specifies a number of agencies that the Assembly can 'work with': Lottery distributors, English Heritage, Learning and Skills Councils, Crime and Disorder Reduction Partnerships, and the Countryside Agency/English Nature.⁷

These rights are an improvement on the White Paper. But their significance should not be overstated. The Assembly will have a general power to 'work with' any organisation it sees fit, exercisable under clause 43. The organisations specified above are merely those highlighted by the Government's policy paper. It is likely that executive agencies would want to consult an assembly when formulating their policies: most agencies want to have good relationships with legitimate, elected bodies and would want to ensure policy was harmonised as far as possible.

Curiously, a number of existing boards and partnerships are not referred to in the policy statement, even though they would appear highly relevant to the assembly: Regional Housing Boards, Sustainable Development Round Tables, Rural Affairs Forums, and the two pilot Regional Transport Boards. All of these have been formed to allow partners to advise on allocation of central funds in the regions, and it seems strange that their role has been entirely ignored.

Structure and design of the Assembly

The majority of the constitutional provisions in the draft Bill have not been changed since the publication of the White Paper.

Members will be elected through the Additional Member system, with a 5% threshold for parties to gain an additional member (list) seat. The number of members in an assembly is specified as 25–35 on the face of the Bill. The members' term of office is declared to run through until a new election (there is no formal 'purdah period'). Standing orders must be established (clause 39). A chair and deputy chair must be appointed (c.30), and a quorum of one quarter of members is established. A vote of no confidence in the leader of the Assembly triggers his or her resignation.

Although the assembly is established as a body corporate in clause 2(1), clauses 32 and 33 establish an assembly executive of a leader plus two to six cabinet members. It is curious that a minimum of two is stipulated: no minimum exists in Scotland and Wales. Most governing parties are likely to use the maximum number of cabinet members, particularly as they will be the only full-time members of the Assembly. This may be a hang-over of the provisions of the Local Government Act 2000, which specifies a minimum cabinet of three in local authorities.

The draft Bill specifies that one-third of Assembly members will be elected through the top-up list. Although this proportion seems a rather

is unlikely to be forthcoming. There was also a small reduction in the number of scrutiny committees (from 8 to 6).

arcane technical point, it is actually extremely important in determining the composition of the assembly. A top-up list making up 33% of members, instead of 43% of members (as in the Scottish Parliament) could make the difference between a Labour majority and a Labour minority in a North-East assembly (and likewise for the Conservative party in any future assemblies in the South of England).⁸ In Wales, for instance, the Labour Party won 30 seats out of 60 in the 2003 election. Had an extra ten top-up seats been available (bringing the percentage of top-up seats nearer the Scottish level), Labour would have been in a clear minority (32 out of 70 seats). Having a lower percentage of top-up members increases the likelihood of one-party government.

An enabling clause (53) allows a variety of forms of civic engagement with partners (renamed 'assembly participants'). Though the clause is open, it specifies engagement with business, employees, local authorities, and voluntary and community groups. It does not specify how such engagement should take place. It is likely that the various umbrella groups of regional interests which have been set up to engage with Regional Chambers would remain in place. Regional local government associations would also be a vital point of contact.

It is even possible that Regional Chambers may remain in existence for the purpose of civic engagement. The Government has not made clear whether it expects the Regional Chambers to evolve, organisationally, into elected assemblies, or whether elected assemblies will be set up as entirely new organisations. Where elected assemblies are set up, most of the Chambers' functions which attract funding from the Government will pass to the elected body: one assumes that the funding will pass with them. It may therefore be in the Chambers' interests to delineate a new role as the organisation responsible for organised civic engagement with the elected assembly. It could, for instance, supply co-optees to Assembly committees.

Scrutiny

The provisions for scrutiny committees in the draft Bill are quite eccentric in the context of the rest of the Bill and of current local and regional practice. The draft Bill specifies that a single 'Review and Monitoring Committee' (RMC) must be formed, and that this must consist of all of the assembly members who are not in the executive. The RMC has the power to summon officers from the Assembly or its functional bodies, but not people from elsewhere (equivalent to the power of summons available to the London Assembly). There is no mention of the word 'scrutiny' on the face of the draft Bill or the policy statement, which is itself odd given the effort that the Government has gone to to establish scrutiny in local authorities and Regional Chambers. As with scrutiny at other tiers of government, the RMC and its sub-committees will have no power to enforce recommendations.

The draft Bill goes on to specify (clauses 75–76) that the RMC may form sub-committees or area committees.⁹ External people may be co-opted to these committees with voting rights (clauses 78 and 80), but there is no power to co-opt to the full RMC itself. RMCs and sub-committees can compel officers, political advisers and executive members, to attend meetings. This obligation lasts for three years after any of those people have left their posts (clause 77 (2) (g)).

Clause 75 (5) and 76 (5) specify that the proportionality of RMC sub-committees must mirror the proportionality of the full RMC—i.e. that of the assembly *minus its executive members*. This goes against the practice in the whole of the rest of UK government, where committee proportionality mirrors that of the whole assembly or parliament *including* its executive members.

On paper, there is some logic to this: if the executive is separate from the scrutiny function, then it should not be able to exercise a majority. But in practice, it will be difficult for this to be workable

⁷ Under the terms of the Haskins Review a new executive agency is to be created out of the Countryside Agency and English Nature, provisionally titled the Land Management Agency.

⁸ Clearly this statement makes assumptions about future voting patterns in regional elections, which may be incorrect: but the point still stands.

or to avoid neutering scrutiny, for a variety of interlocking reasons.

Arithmetically, it is extremely unlikely that a party (or a coalition) would win enough seats under the Additional Member system to hold a majority on both the assembly and the RMC. The executive would need almost 65% of the vote.¹⁰ Therefore it is extremely likely that any assembly constituted in this way would see a one-party or coalition executive faced by RMC sub-committees on which they do not hold a majority.

On the face of it this sounds like an attractive proposition: a scrutiny system which did not have an in-built executive majority voting down or obstructing any criticism from non-executive parties. In practice, though, unless parties enjoy extremely good relations with one another this is not likely to work. Party politics will always lead to temptations to use the different political arithmetic to introduce an oppositional element into regional monitoring.¹¹

Experience in local government indicates that where scrutiny takes on oppositional behaviour, the executive tends simply to ignore it. In North Tyneside, where a Labour majority faces a Conservative directly-elected mayor, party politics has been strongly present in scrutiny. In Wales, party balance gives each subject committee 5 Labour members and 5 members from other parties: it is no coincidence that the Welsh Labour government attempted to vote through a change to the Assembly's Standing Orders reducing the frequency of committee meetings from 2 to 4 weeks.¹² Scrutiny becomes most politically-charged when ruling groups hold small majorities. Under this system, where the small majority vanished in the RMC sub-committee, party politics is likely to increase in significance. Ken Livingstone's period as independent Mayor was also marked by a lack of responsiveness to

London Assembly scrutiny. We also detail, at appendix 2, some rather odd arithmetical situations which could arise under this system.

Secondly, the scrutiny system clarifies the problems of any assembly with such a small number of members, some of whom will be part-time. The assembly will only have 18–28 non-executive members. It will be very difficult to achieve meaningful proportionality with these low numbers anyway, so it is hard to understand why the complex equations of clauses 75 (5) and 76 (5) appear on the face of the draft Bill. Part-time back-bench membership will severely restrict the number of RMC sub-committees that can be set up, particularly if members are also being appointed to a range of boards. The proposals as a whole risk neutering scrutiny.

On the subject of part-time membership, we can only repeat the reservations expressed in the Unit's Commentary on the White Paper. Part-time membership is an open invitation to the retired, the financially secure, and the professional politician, all of whom already predominate at local government level. If a different type or calibre of regional member is wanted, as has been claimed, this is exactly how not to achieve it. The cost savings of part-time membership as against full-time are negligible: at a rough estimate they will not exceed £500,000. Moreover, it will be very difficult for members to move in and out of the Cabinet if that means moving members from full- to part-time or vice-versa, unless their other commitments are very flexible.

Other governance matters

The draft Bill gives the assembly a right to pre-empt on local authorities in its region and the right to borrow. The legislation in the former section

⁹ Some local authorities use a system where one scrutiny committee commissions a range of subject-specific panels: they can choose to do this, however, under the Local Government Act 2000.

¹⁰ For instance, in a 30-seat assembly with a seven-strong cabinet, the governing party (say the Conservatives) would need to win 15 seats plus four (over half of seven), a total of 19. That would leave them 12 on the RMC and 11 for other parties. Winning 19 seats out of 30 (63% of the regional vote) or similar proportions will be close to impossible under the Additional Member system, even in party heartlands.

¹¹ The executive would no doubt be tempted to try to block the establishment of any sub-committees by the RMC, though politics and political arithmetic would not necessarily permit this.

is largely the same as in the Greater London Authority Act.

Three senior officers must be designated: the chief executive officer, chief finance officer and monitoring officer. This is similar to requirements in local authorities. The Assembly corporately appoints staff members (this is not delegated to the executive). Three political assistants may be appointed in the Assembly as a whole, and they must be allocated to the three largest political groups (though each group must have at least 10% of assembly membership to qualify). Political restrictions on staff are also applied. Guidance can be supplied by the Secretary of State on the appointment of special advisers. Clause 125 states that arrangements must be made for the separation of executive and back-bench officers.

No boundary review may be carried out before 2012 under the draft Bill (clause 144 (4)). Part 12 of the draft Bill makes provisions for the Electoral Commission to review regional boundaries if directed to by the Secretary of State. Transfer of areas between regions can also take place where elected assemblies do not yet exist. There is no provision in the draft Bill for the creation of new regions or for a larger number of regions than currently exists.

Conclusion

For the most part this draft Bill follows the contours of the White Paper, including a few developments that have taken place since then. It deals with a complex set of matters in a reasonably short space of time (the Greater London Authority Act was notoriously far longer). However, there are a number of curiosities about the Bill. The scrutiny system to be established is the main one, alongside the provisions for appointments and the creation of the Regional Cultural Consortium as a functional body.

The Government's policy paper makes clear that the process of drafting is not yet finished, though it suggests that radical changes to the Bill are not envisaged. However, there is room for questioning some of the extremely restrictive provisions

which exist on the face of the Bill. Many of the detailed constitutional clauses in part 1 of the Bill seem designed to ensure that devolution to the English regions is an event and not a process. They could just as easily be enacted through secondary legislation or policy, but in practice they will be more difficult to shift by their presence in primary legislation.

The difficulties with the draft Bill are with the policy to which it is giving effect. It is difficult to make a convincing administrative case for a new tier of government where so much upheaval (in the form of the huge cost and diversion of effort of local government reform) is required for a body which will have so little power. Many of its powers, as in arts and sport, are to explicitly overlap with existing central funding streams. The diagrams in Appendix 1 illustrate how little impact the assembly will have on the confusing web of regional relationships—if anything, the assembly will complicate matters still further. For the same reason, the political case required to win a referendum is hard to make. The political decision to establish very weak bodies is at the root of many of the odd structures outlined in this briefing—from the curious choices of functional bodies to the pages of legislation devoted to establishing consultation rights. The grand rhetoric of the Government's regional policy remains at odds with its much more limited reality.

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Appendix 1: Regional governance ‘before and after’ an elected regional assembly

Notes

Table 1 lists the functions of government activity in the region under current governance arrangements—with a voluntary Regional Chamber and no directly-elected body. Table 2 lists the functions as they would change when an elected assembly is introduced. The shaded area indicates the elected assembly’s direct executive powers.

The columns attempt to list the functions of regional assemblies, and of other government activity in the regions, by central department. In some cases, however, regional activity does not fit well within a single department. Only executive agencies which are active in regional policy-making and which maintain regional offices are listed here. Therefore, we have omitted, for instance, the British Tourist Authority, the Probation Service, and Invest UK.

The Strategic Rail Authority and Health Development Agency will both shortly be abolished at the time of writing, although they are referred to in current and recent policy documents released on regional government.

The Countryside Agency and English Nature are shortly to be merged into a new agency, provisionally titled the Land Management Agency, under the terms of DEFRA’s 2003 ‘Haskins Review’ of its executive agencies.

The first ‘strategies’ row in table 2 (elected regional assembly) lists mandatory strategies. The second ‘strategies’ row in table 2, and that in table 1, lists strategies which already exist in many regions (which presumably will remain in place), and which the July 2004 Policy Statement *recommends* or *suggests* that elected assemblies write.

Executive Agencies in italics indicates that the Assembly can ‘work with’ these bodies (though see page 15 above).

Shaded executive agencies will have all or some board members appointed by the Assembly.

Shaded executive agencies in white text will be required to consult the Assembly.

White text within the Regional Assembly shaded area indicates a functional body.

Table 1: Regional government structures before the introduction of an elected assembly

	DCMS	DEFRA	ODPM	DTI	DfES	DoH	Home Office	DfT
Executive Agencies	Tourist Board English Heritage Lottery Distributors Arts Council Sport England Resource	Forestry Commission Countryside Agency English Nature Environment Agency	English Partnerships Housing Corporation Fire authorities	Small Business Service RDA	HEFCE Job Centre Plus Learning and Skills Councils	Ambulance Service Strategic Health Authorities PCTs Health Protection Agency	Police	Port and airport authorities Highways Agency
REGIONAL CHAMBER								
Partnerships	Regional Cultural Consortium	Rural Affairs Forum	Housing Board Sustainable Development Round Tables	Skills Partnership		Crime and Disorder Reduction Partnership Regional Observatory		
Strategies (existing)	Tourism (Sport) Culture	Environment Waste	Housing Spatial/RPG Sustainable Development Framework	Economic Energy	FRESA	Health Improvement		Transport
Government Office		Rural regeneration	NDC NRF Community Empowerment Fund Community Chest		Sure Start Children's Fund Connexions	Public Health team	Drug Action Teams	Local Transport Plans

Table 2: Regional government structures after the introduction of an elected assembly

	DCMS	DEFRA	ODPM	DTI	DfES	DoH	Home Office	DfT
Executive Agencies	Tourist Board	Forestry Commission	English Partnerships	Small Business Service	HEFCE Job Centre Plus	Ambulance Service Strategic Health Authorities PCTs Health Protection Agency	Police	Port and airport authorities
	English Heritage Lottery Distributors	Countryside Agency English Nature						
	Arts Council Sport England	Environment Agency			Learning and Skills Councils			Highways Agency
Internal functions	Resource	Rural regeneration programmes	Housing Corporation Housing capital investment					
Functional bodies	Regional Cultural Consortium		Regional Fire and Rescue Service	RDA (inc. Business Links)				
REGIONAL ASSEMBLY								
Assembly Scheme								
Strategies	Culture		Spatial	Economic				
Partnerships		Rural Affairs Forum	Housing Board Sustainable Development Round Tables	Skills Partnership		Crime and Disorder Reduction Partnership		
			Housing	Energy	FRESA	Health Improvement		
Strategies (existing)	Tourism (Sport)	Biodiversity Waste						
Government Office			NDC NRF Community Empowerment Fund Community Chest		Sure Start Children's Fund Connexions	Public Health team	Drug Action Teams	Local Transport Plans



Appendix 2: The oddities of the Regional Monitoring Committee

This appendix gives two brief examples of mathematical peculiarities which could result from the new proposals for proportionality of Regional Monitoring Committee sub-committees. These possibilities are only two of a range of possible election results, and do not spell insurmountable problems for this new system. They also assume that regional executives would be closely concerned with the behaviour of regional monitoring committees—which, given the RMC’s inevitably limited powers and resources, is not necessarily the case.

Invented election result #1

	Results	RMC (Lab 7 exec)	RMC (Lab 5 / LD 2 exec)
Labour	15	8	10
Conservatives	5	5	5
Liberal Democrats	5	5	3

In a 25-seat assembly, Labour wins 15 seats, the Conservatives 5 and Liberal Democrats 5. If Labour forms a single-party executive, it has no majority on the RMC. However, if it forms a coalition with the Liberal Democrats, it would gain a majority on the RMC!

Invented election result #2

	Results	Exec 1	RMC 1	Exec 2	RMC 2
Conservatives	13	4	9	3	10
Liberal Democrats	6	2	4	2	4
Labour	10		10		10
Green	3		3		3

Here, in a 32-seat assembly, Conservatives and Liberal Democrats form a coalition, with four Conservatives and two Liberal Democrats in the executive. The RMC balance is then 13–13. Therefore, if the Conservatives sacrificed one of their executive members, the RMC balance would become 14–13, entitling the governing coalition to a majority on all RMC sub-committees!





