

DEVOLUTION MONITORING PROGRAMME 2006-08

Wales Devolution Monitoring Report

January 2009

Prof Richard Wyn Jones & Prof Roger Scully (eds.)



Sefydliad Gwleidyddiaeth Cymru

Institute of Welsh Politics



The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell at The Constitution Unit, UCL and the team leaders are as follows:

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Abbreviations and Acronyms

| | |
|------|------------------------------------|
| AM | Assembly Member |
| BIC | British Irish Council |
| CAP | Common Agricultural Policy |
| EU | European Union |
| GOWA | Government of Wales Act |
| GP | General Practitioner |
| GVA | Gross Value Added |
| JMC | Joint Ministerial Committee |
| LCO | Legislative Competence Order |
| LSB | Local Service Board |
| MEP | Member of European Parliament |
| MP | Member of Parliament |
| NAfW | National Assembly for Wales |
| NHS | National Health Service |
| PAC | Public Affairs Cymru |
| RSG | Revenue Support Grant |
| SLC | Subordinate Legislation Committee |
| UN | United Nations |
| WAG | Welsh Assembly Government |
| WASC | Welsh Affairs Select Committee |
| WEL | Wales Environment Link |
| WLGA | Welsh Local Government Association |

Summary and Introduction

This is the tenth Devolution Monitoring Report to be produced by the team led by the Institute of Welsh Politics at the University of Wales, Aberystwyth. The report covers events during the last four months of 2008.

The year in Welsh politics ended without the sort of dramatic event (the resignation of the Secretary-of-state) with which it had begun. But a number of developments during the period covered by this report were, while less headline-grabbing than major political resignations, of arguable greater long-term significance. As this report details, the passage of Legislative Competence Orders (LCOs) for the Assembly persisted as a source of growing tension between Cardiff Bay and Westminster. The implications of other Westminster legislation meant that the devolution 'settlement' for Wales continued to be anything but settled. And the work of the All-Wales Convention, which might ultimately precipitate a referendum on major changes to the status of the devolved chamber, moved up a gear with a process of widespread public consultation being embarked upon.

Wales' political parties also experienced some very important developments. The Welsh Liberal Democrats elected a new leader. The Welsh Conservatives continued to remain uneasily undecided on their attitude towards the future of devolution, while the status of their National Assembly leader remained uncertain. And the Labour party entered 2009 in the knowledge that it, too, would almost certainly soon face a leadership contest: a contest to produce not only a new leader for their party, but a new First Minister for Wales.

1. Public Policy

Dr Paul Chaney, Cardiff University

1.1 Introduction

In November, against the background of the All-Wales Convention¹ on a future referendum on full lawmaking powers for the National Assembly, the former Tory Welsh Office minister Lord Wyn Roberts, tasked by the Conservative Party's London office with reviewing the options for the future course of devolution in Wales, presented his 'interim' report. Depending on the electoral politics in the next two years, the review has the potential to have a significant impact on the way in which public policymaking develops over the next few years.² It is critical of the public policy record of successive Welsh governments and refers to 'consistent under-performance'.³ Rather than make a final assessment, it calls for 'a root-and-branch examination of the system of governance in Wales and its effectiveness as it has developed since 1997, taking full account of the relationship with other parts of the United Kingdom'.⁴ According to Shadow Welsh Secretary, Cheryl Gillan MP, and Nick Bourne AM, 'this is very much a living document and will continue to be updated and revised in light of the ever changing situation regarding devolution'.⁵

The way in which the absence of full parliamentary powers for the National Assembly is hindering effective policymaking was again in evidence over the past quarter. For example, in October, Presiding Officer, Lord Elis-Thomas AM wrote to the Secretary of State for Wales reportedly accusing the Welsh Affairs Select Committee of MPs of 'anti-devolution sentiment'.⁶ This referred to the Committee's demand that the LCO on affordable housing from WAG be redrafted to have a narrower scope.⁷ Such wrangling not only draws out the complex LCO procedures introduced by GOWA

¹ See R. Wyn Jones and R. Scully (eds), *Wales Devolution Monitoring Report*, May 2008. Also <http://new.wales.gov.uk/about/strategy/allwalesconvention/?lang=en>

² N. Bourne, 'New Ideas, new Wales':

http://www.conservatives.com/News/Speeches/2008/03/Bourne_New_ideas_new_Wales.aspx

³ A. Browne, 'Tory study urges devolution probe', BBC News, (5 November 2008)

http://news.bbc.co.uk/1/hi/wales/wales_politics/7710828.stm

⁴ *ibid.*

⁵ Quoted in G. Thomas, 'Datganoli: Galw am ymchwiliad', BBC News, (5 November 2008):

http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/welsh/hi/newsid_7710000/newsid_7711600/7711664.stm

⁶ Quoted in Anon, 'Tensions rise over housing powers', BBC News, (19 October 2008):

<http://news.bbc.co.uk/1/hi/wales/7678556.stm>

⁷ NAFW, National Assembly for Wales (Legislative Competence) (No.5) Order 2008 (Affordable Housing): <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2007-5-2.htm>

(2006); arguably, it also raises issues of democracy and good governance when Westminster interferes with WAG's legislative proposals on a devolved policy area. A further example of central government acting as a brake on devolved policymaking is provided by the promised Welsh Language LCO (to promote equality for Welsh speakers). In setting out the government's legislative programme on 6 June 2007 the First Minister Rhodri Morgan AM (Welsh Labour) stated: 'in relation to the Welsh language ... we will place that legislative competence Order in the autumn part of our programme'.⁸ Eighteen months later the LCO has yet to be laid before the Assembly, reportedly owing to protracted negotiations with Whitehall over its scope. On other matters, in October WAG announced the awarding of the contract to build its new offices in Llandudno. This marks the latest stage in the decentralisation of national public administration in Wales; since 1999, WAG offices have opened in Merthyr Tydfil and Aberystwyth.

1.2 Health and Social Services

Between 1996 and 2006, there were approximately 300 suicides in Wales each year, a higher rate than in England but lower than in Scotland and Northern Ireland. Recently, UK media attention has focused on a cluster of 17 suicides of young people in Bridgend.⁹ In November, the government published a consultation document, 'Talk to me: A National Action Plan to Reduce Suicide and Self Harm in Wales 2008-2013'.¹⁰ It sets out actions in relation to seven key commitments, including: providing help early to those in need; responding to crises in people's lives; and, increasing research and improving information on suicide.

Approximately 500 people in Wales are currently waiting for an organ transplant. In September, the Health Minister, Edwina Hart AM (Welsh Labour), rejected the recommendation of the cross-party Health, Well-being and Local Government Committee's Inquiry Report¹¹ that WAG should legislate to allow presumed consent in relation to organ donation. The minister stated that she: 'did not believe that the

⁸ WAG, Cabinet Statements 2007, *The Legislative Programme*:

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/1516865/?lang=en>

⁹ M. Hughes, 'Bridgend suicides: "I feel shaken to the core. Why are youngsters around here doing this?"': <http://www.independent.co.uk/news/uk/home-news/bridgend-suicides-i-feel-shaken-to-the-core-why-are-youngsters-around-here-doing-this-784402.html>

¹⁰ WAG, 'Talk to me: A National Action Plan to Reduce Suicide and Self Harm in Wales 2008-2013':

<http://wales.gov.uk/consultations/closedconsultations/healthsocialcare/talktome/?lang=en>

¹¹ NAFW, Health, Wellbeing and Local Government Committee, 'Inquiry into Presumed Consent for Organ Donation': <http://www.assemblywales.org/cr-ld7192-e.pdf>

Committee's report adequately reflected the evidence'.¹² In November, the minister announced a series of public debates and a discussion document¹³ in order to gauge public opinion on the issue.

In October, the Health Minister accepted the recommendations of an independent report to improve palliative care services in Wales.¹⁴ The report by the Palliative Care Implementation Group claims to establish a fairer funding system for hospices; one based on a definition of a core palliative care service which providers will have to meet in order to secure future funding. According to the minister: 'services will be required to be consultant-led, with support from multidisciplinary teams [... and will result in] improved standards of out-of-hours care'.¹⁵ Figures released by WAG in October¹⁶ revealed that the number of complaints to NHS Wales in 2007-08 increased by 11 percentage points over the previous year's total of 6,346; they now exceed 7,000 for the first time. Forty per cent of complaints were about in-patient services, 25 per cent about outpatient services. Complaints about General Medical Practitioners rose by 29 per cent; those relating to General Dental Practitioners fell by 11 per cent; and, complaints about out-of-hours services fell by 27 per cent. Also in October, a report on care for premature babies by a special care baby charity¹⁷ concluded that: the 'Welsh neonatal service is still overstretched and understaffed and needs investment. Far too many babies are not receiving the care they deserve and there is a shortage of around 120 qualified neonatal nurses in Wales'. In response, WAG pointed to the announcement in its draft budget¹⁸ that an additional £2M a year would be invested in neonatal services from 2009-10.

September saw the announcement of revisions to the contract detailing the services that GP practices provide for patients. Under the new arrangements Local Health Boards will be able to commission additional services from GP practices including

¹² WAG Press Release, quoted in Anon, 'Public Debates on Presumed Consent announced': <http://wales.gov.uk/news/topic/health/2008/081022publicdebates/?lang=en>

¹³ WAG, 'Discussion document: Introduction of an opt out (presumed consent) system in the context of Organ Transplantation': <http://new.wales.gov.uk/topics/health/publications/health/guidance/discussion/?lang=en>

¹⁴ Palliative Care Implementation Group, 'Implementation of Palliative Care Report Palliative care services funding 2008 to 2009: <http://www.wales.nhs.uk/documents/Palliative-Care.pdf>

¹⁵ WAG Press Release, 'Reform of palliative care services announced',: <http://new.wales.gov.uk/news/latest/081013palliative/?lang=en>

¹⁶ WAG, 'Complaints to the NHS, 2007-08 – Revised',: <http://wales.gov.uk/topics/statistics/headlines/health2008/hdw20081030/?lang=en>

¹⁷ Bliss: <http://www.bliss.org.uk/page.asp?section=674§ionTitle=Wales>

¹⁸ WAG Press Release, 'Health Minister to outline two-year spending plans': <http://wales.gov.uk/news/topic/health/2008/2700311/?lang=en>

care for the homeless, asylum seekers, refugees, and care home residents. In the same month, a new vaccination programme was implemented through schools and colleges for all 12 and 13-year-old girls to protect them against the human papilloma virus that is responsible for most variants of cervical cancer.

The issue of service and support for older people is an area that has seen considerable policy development in the wake of devolution, not least with the appointment in 2008 of the first Older People's Commissioner for Wales¹⁹ and the Strategy for Older People in Wales 2008-2013.²⁰ Details of the implementation of one of the Strategy's aims were given in September when Gwenda Thomas AM (Welsh Labour) launched WAG's draft Intergenerational Strategy.²¹ This sets out proposals for policy development in a range of areas, including measures to tackle ageism and promote social cohesion through community-focused schools. In addition, in November, the Welsh government announced a public consultation on how care services for older and disabled people should be funded.²² This is a sensitive topic, one that provoked cries of betrayal from user groups when the previous Welsh Labour administration was seen as reneging on its earlier 2003 manifesto commitment to introduce free home care. The present consultation²³ will examine the funding of services designed to promote independent living such as: 'meals on wheels', home adaptations, housing support services, occupational therapy and day care. The consultation closes in March 2009. On other matters, WAG's 'One Wales' policy programme includes a commitment to 'provide a minimum of one family nurse per secondary school by the end of the [current] Assembly term' (WAG, 2007, p.10).²⁴ In September, the government published its draft proposals for implementing this commitment, including details of the roles and responsibilities of the proposed

¹⁹ Older People's Commissioner for Wales, 'Coming of Age: First Report of the Older People's Commissioner for Wales':

http://www.olderpeoplewales.com/fileadmin/uploads/documents/OPCfW_Annual_Report_E.pdf

²⁰ WAG, 'The Strategy for Older People in Wales 2008-2013',:

<http://new.wales.gov.uk/topics/olderpeople/publications/strategy2008-2013/?lang=en>

²¹ WAG, 'A strategy for intergenerational practice in Wales':

<http://new.wales.gov.uk/topics/olderpeople/publications/intergenerational/?lang=en>

²² WAG and Paying for Care in Wales, 'Creating a fair and sustainable system':

<http://www.payingforcareinwales.net/>

²³ WAG Consultation, 'Paying for Care in Wales, 'Creating a fair and sustainable

system': <http://new.wales.gov.uk/consultations/healthsocialcare/payingforcare/?lang=en>

²⁴ WAG, The development of a family nurse service for Wales

<http://new.wales.gov.uk/consultations/closedconsultations/healthsocialcare/familynurse/?lang=en>

WAG, 'One Wales: A progressive agenda for the government of Wales', (Cardiff, June 2007): <http://wales.gov.uk/about/strategy/publications/onewales/?lang=en>

family nurse service.²⁵ Following a period of consultation a standards framework for the family nurse service will be published in February 2009.

Unpaid carers constitute 12 per cent of the Welsh population and provide approximately 70 per cent of care in the community. In December, Gwenda Thomas AM (Welsh Labour) laid before the Assembly the Legislative Competence (Social Welfare) Order 2009.²⁶ According to the deputy minister, if accepted, this will 'establish a broad enabling platform that could support a wide range of possible measures to support the provision of care by carers and promote their well-being'.²⁷ An example of a possible outcome of the LCO could be a 'duty of care' on public agencies, such as NHS Wales, to provide more support to unpaid carers.

1.3 Education, Culture and the Welsh Language

In October, official statistics revealed that, in the 2008/09 academic year to date, a total of 52,070 applications had been received for student support in Wales; 39,290 applications had been received for tuition fee loans; and, 31,080 students had been awarded a tuition fee grant.²⁸ However, in November the future of this policy was put into question following the publication of an interim report of the Review of Higher Education in Wales Task and Finish Group that was set up in the summer by Education Minister, Jane Hutt AM (Welsh Labour).²⁹ The Report recommended the abolition of one of the most distinctive post-devolution policies (under the present arrangements Welsh students pay £1,200 in fees instead of the maximum £3,145 charged in England). It also represents a shift away from the universal, non-means tested approach hitherto promoted by Welsh Labour. Following the Review recommendations, it is likely that future policy will be based on a more targeted use of resources. According to Carwyn Jones AM (Welsh Labour), 'it is crucial that we get

²⁵ WAG Press Release, 'Assembly Government outlines plans to meet One Wales commitment on family nurses':

<http://wales.gov.uk/news/topic/health/2008/080922nurses/?lang=en>

²⁶ NAFW, 'The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (relating to Carers)',: http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-leg-lco-no9-social_welfare.htm

²⁷ WAG Press Release, 'Assembly Government to seek powers to provide more support for unpaid carers',:

<http://wales.gov.uk/news/topic/health/2008/2793286/?lang=en>

²⁸ WAG, 'Applications for Student Finance, Tuition Fee Loans and Tuition Fee Grants Awarded in Wales - Update, Month Ending October 2008',:

<http://wales.gov.uk/topics/statistics/headlines/post16ed2008/hdw200811132/?lang=en>

²⁹ WAG, 'Review of Higher Education in Wales',:

<http://wales.gov.uk/publications/accessinfo/drnewhomepage/educationdrs2/educationdrs2008/reviewhighereducationwales/?lang=en>

in place a fair system of student support that will provide more generous grants, and increased access to student loans, ensuring maximum levels of support are available to low income students'.³⁰

Amidst continuing debate about funding, September saw the beginning of the implementation of the Foundation Phase 'learn through play'-based curriculum. It is being rolled out to 3 to 4 year olds in the present academic year; a process that will continue until 2011 when all children aged 3 to 7 will be taught under the new curriculum. In late November the cross-party Rural Development Sub-Committee published a report³¹ following its 'Inquiry Into The Reorganisation of Schools in Rural Wales'. This originated from a petition (following the public petitions procedure under Assembly Standing Order 28) from Powys Community School Action Group. The resulting Committee Inquiry examined the wider social and educational issues associated with primary school reorganisation, such as the impact on communities, families and children - and how this is taken into consideration as part of the decision-making process. Inter alia, it recommended that WAG: develops a code of practice for consultation and meaningful community engagement which should be followed by local authorities in managing any future schools reorganisation; commission research to assess and to fully understand the impact of school closures on communities in rural Wales (- the Committee said its Inquiry was hampered by the dearth of research evidence on the issue); and, that LEAs should carry out robust community impact assessments prior to the closure of any small school. The Welsh language rights group Cymdeithas yr Iaith Gymraeg welcomed the report.³² WAG's response to the Committee report is expected in the New Year.

In December, the education minister announced that provision of the Welsh Baccalaureate Qualification will be extended to a further 9,000 students - with the 'Welsh Bac' now available to 30,000 learners via 168 schools and FE colleges.³³

³⁰ Carwyn Jones website: <http://www.labouronline.org/wibs/167158/3d361ccb-6917-c304-41dd-d9cdbcfc49d0>

³¹ NAFW, 'Rural Development Sub-Committee Inquiry into the Reorganisation of Schools in Rural Wales', (November 2008): http://www.assemblywales.org/rdc_3_schools_reorganisation_report_e.pdf

³² Cymdeithas yr Iaith Gymraeg, 'Ymateb i Adroddiad yr Is-bwyllgor Datblygu Gwledig ar ad-drefnu ysgolion gwledig': http://cymdeithas.org/2008/11/27/ymateb_i_adroddiad_yr_isbwyllgor_datblygu_gwledig_ar_a_ddrefnu_ysgolion_gwledig.html

³³ WAG, 'Thousands more to benefit from Welsh Baccalaureate Qualification': <http://wales.gov.uk/news/topic/education/2008/2818055/?lang=en>

Following the 2007 Webb Review of Further Education in Wales,³⁴ in July WAG published its 'Skills and Employment Strategy and Action Plan'.³⁵ This sets out a range of priorities including: 'addressing skills gaps and shortages in priority sectors and supporting economic development through investment in post-19 skills'; and, establishing effective and efficient learning provision. Related to the latter aim, in December the proposed Learning and Skills (Wales) Measure completed the first stage of the legislative process³⁶ when it received AMs' support.³⁷ It aims to back in law WAG's Learning Pathways policy for 14-19 year olds.³⁸ Inter alia, this will introduce a more tailored form of education with Individual Learning Pathways for each learner; offer greater choice and flexibility of programmes; and, provide Learning Coach support for pupils.

1.4 Economy and Transport

In the face of the economic downturn WAG has convened a series of 'economic summits' with representatives of key economic sectors.³⁹ In addition, a number of policy initiatives have been forthcoming. According to the government these represent over £900M in public funding.⁴⁰ They include: £290M funding for the Flexible Support for Business programme;⁴¹ £7M in rate relief for small businesses; a £10M Strategic e-Business Support Programme;⁴² action 'bringing forward capital budgets to implement [existing WAG commissioned] works which can commence

³⁴ WAG, 'Promise and Performance (Webb Review) including WAG response':

<http://wales.gov.uk/topics/educationandskills/educationskillsnews/webbreview/?lang=en>

³⁵ WAG, 'Skills That Work For Wales':

http://wales.gov.uk/topics/educationandskills/policy_strategy_and_planning/skillsthatforwales/?lang=en

³⁶ NAfW, 'Measures: What is a Measure/proposed Measure?':

<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-measures.htm>

³⁷ NAfW, 'Proposed Learning and Skills (Wales) Measure':

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-ls.htm>

³⁸ WAG, 'Learning Pathways 14-19 Years':

http://wales.gov.uk/topics/educationandskills/policy_strategy_and_planning/learning_pathways/?lang=en

³⁹ WAG, 'Wales' Economic Summit':

<http://wales.gov.uk/news/topic/business/2008/081016summit/?lang=en>

⁴⁰ WAG, 'Additional £68 million to support the Welsh economy':

<http://wales.gov.uk/news/topic/business/2008/2788960/?lang=en>

⁴¹ WAG, 'The future strategy for the development of the Flexible Support for Business website, contact centre and regional centre service':

<http://wales.gov.uk/publications/accessinfo/dnrnewhomepage/economicdrs/economicdrs2008/futurestrat4businesssupport/?lang=en>

⁴² WAG Press Release, 'More e-support for Welsh business':

<http://wales.gov.uk/news/topic/business/2008/081022esupport/?lang=en>

with short lead times and offer local employment opportunities';⁴³ and, a £35M scheme called ReAct designed to help up to 12,000 redundant workers return to employment by updating their skills.⁴⁴ In addition, WAG has released land for affordable housing projects (with an initial tranche of 8 sites and a total of approximately 350 units). The government has also introduced the Gateway Project (with £23.6M from the Convergence European Social Fund with match funding from WAG) and the North West Wales Intermediate Labour Market Project (£13.4M). The latter two projects are to be delivered by the Wales Council for Voluntary Action (the principal body representing the third sector in Wales)⁴⁵ - and will provide measures to help people into work through skills training and job placements.⁴⁶ A further initiative is ProAct - a new programme to provide training for people who would otherwise be made redundant or put on short-time working; and, a £45M Business Growth Project designed to create 6,000 jobs. In addition, in October, Leighton Andrews AM (Welsh Labour) announced plans to create a multi-million-pound urban development fund under the European Commission's Jessica programme⁴⁷ with support from the European Investment Bank. Under the proposals, some government regeneration projects would be funded from 2010 as joint ventures with the private sector; over time the £250M fund would be repaid and then reissued to new projects. According to WAG, this represents a better option than the Private Finance Initiatives used by central government over recent years - for it creates a 'legacy of funding' for future schemes.⁴⁸

In October, WAG announced funding for a research project to investigate the possibility of creating a Welsh stock market.⁴⁹ It is probable that any such move would be subject to agreement with Westminster. Yet, advocates suggest that the proposition might: increase Wales' knowledge base, be more cost effective, be

⁴³ WAG Press Release, 'Second All Wales Economic Summit':

<http://wales.gov.uk/news/topic/business/2008/081106secondsummit/?lang=en>

⁴⁴ WAG, Redundancy Action Scheme (ReAct):

<http://wales.gov.uk/topics/educationandskills/fundingsupportadvice/worklearning/gettingbacktowork/redundancyaction/?lang=en>

⁴⁵ WCVA: www.wcva.org.uk

⁴⁶ WAG Press Release, '£43 million to get people into work':

<http://wales.gov.uk/news/topic/business/2008/2783800/?lang=en>

⁴⁷ European Commission, 'JESSICA: Sustainable development for urban areas':

http://ec.europa.eu/regional_policy/funds/2007/jii/jessica_en.htm

⁴⁸ BBC News, reported in Anon, 'Major development loan fund plans' (23 October 2008):

http://news.bbc.co.uk/1/hi/wales/wales_politics/7684687.stm

⁴⁹ WAG, 'Economic Research Advisory Panel':

<http://wales.gov.uk/about/aboutresearch/econoresearch/advisorypanel/?lang=en>

attractive to business; and, boost the financial services sector in Wales.⁵⁰ On transport policy, in December, Ieuan Wyn Jones AM (Plaid Cymru), Minister for the Economy and Transport, announced a new return rail service between Holyhead and Cardiff that will reduce existing train travel times by at least 30 minutes. He also confirmed government funding towards a new half hourly rail service linking Merthyr Tydfil and Cardiff from May 2009.

1.5 Environment, Sustainability and Housing

Following the publication in May 2006 of WAG's Environment Strategy for Wales,⁵¹ October saw the publication of the Wales Environment Strategy Action Plan 2008-11.⁵² Its actions and outcomes include measures for: 'encouraging and supporting innovation and the development of the new products and services that a low carbon economy will demand'; and, measures to enhance the quality of the marine environment. The EU's Environmental Noise Directive (Directive 2002/49/EC, June 2002)⁵³ introduced a new regime of strategic noise mapping and action planning across Europe. Requirements under the Directive were incorporated into Welsh law through the Environmental Noise (Wales) Regulations (2006). In November, the Welsh government issued a policy consultation⁵⁴ on amending the regulations, inter alia, to allow quiet areas to be identified as part of the action planning process and, to give ministers' the power to publish guidance for noise action planning; in short, an enhancement of the pre-existing legal/ policy framework.

To date, over a thousand farms have applied to join WAG's Organic Farming Scheme,⁵⁵ a policy initiative that supports farms as they convert to organic status. The popularity of the Scheme can be gauged by the fact that 400 farms have joined

⁵⁰ BBC News, 'Study looks at Welsh stock market', (29 October 2008):

http://news.bbc.co.uk/1/hi/wales/wales_politics/7696001.stm

⁵¹ WAG, 'Environment Strategy for Wales':

<http://wales.gov.uk/topics/environmentcountryside/epq/envstratforwales/?lang=en>

⁵² WAG, 'Environment Strategy Action Plan 2008 – 2011', 9- (successor to 2006-08 action plan): <http://new.wales.gov.uk/topics/environmentcountryside/epq/envstratforwales/2ndactionplan/?lang=en>

⁵³ European Commission, 'Noise': <http://ec.europa.eu/environment/noise/home.htm>

⁵⁴ WAG, 'Environmental Noise Action Plans for major Roads, Railways and Agglomerations Consultation':

<http://wales.gov.uk/consultations/closedconsultations/environment/endactionplans/?lang=en>

⁵⁵ WAG, 'Organic Farming':

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/farming/agrienvironmentalorganicschemes/organicfarming/?lang=en>

since April 2008.⁵⁶ In October, Rural Affairs Minister Elin Jones AM (Plaid Cymru) announced a further £6.8M support for the expanding organic farming sector. According to WAG, this means that all applications to this year's Organic Farming Scheme can be supported, and the 2009 scheme will be extended by a further 100 applications. Government figures suggest that 'almost eight per cent of Wales is now either fully organic or in the process of conversion'.⁵⁷

In November, WAG launched for consultation its Ten Year Homelessness Plan. Its aims are to: prevent homelessness before it happens, provide easy to access housing advice, minimise mortgage repossessions and, help rough sleepers. The Plan also presents proposals to provide support to ex-prisoners who, research attests, are particularly vulnerable to homelessness upon release from prison. The consultation closes in February.⁵⁸ Whilst the vast majority of policy developments reported on in the *Devolution Monitoring Reports* stem from the executive branch of government, in addition to the public petitions mechanism (see above) the Assembly's Standing Orders also make provision for individual AMs to introduce legislative proposals through a ballot procedure. A current example - presently before the Assembly's Legislation Committee - is the proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure (2008)⁵⁹ introduced by Dai Lloyd AM (Plaid Cymru). If passed, this will compel local authorities to take into consideration the impact of the sale of playing fields on the health and well being of local communities. The Legislation Committee is inviting public views on the proposed Measure;⁶⁰ the consultation closes on 6 February.

1.6 Equalities

The Westminster government has introduced before the UK parliament a Single Equality Bill⁶¹ that will harmonise existing law in relation to anti-discrimination on grounds of gender, disability, ethnicity, age, faith and sexual orientation. The resulting Act will cover the exercise of public functions by the Welsh, Scottish and UK

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ WAG, 'National 10 Year Homelessness Plan':

<http://wales.gov.uk/consultations/housingcommunity/homelessnessconsult/?lang=en>

⁵⁹ NAFW, 'Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure: <http://www.assemblywales.org/ms-ld7178-e.pdf>

⁶⁰ NAFW, 'New Committee established to look at Assembly Legislation':

<http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=109250&ds=12/2008>

⁶¹ Government Equalities Office, 'Equality Bill':

<http://www.commonleader.gov.uk/output/page2657.asp>

governments. In October, WAG published its draft Single Equality Scheme for consultation. This aims to provide for the integrated promotion of equalities in devolved public policy. The consultation closes at the end of January 2009.⁶² Also in October, the cross-party National Assembly Committee on Equality of Opportunity agreed the terms of reference for its Inquiry into Home Maintenance and Adaptations Services for Older People.⁶³ *Inter alia*, the Committee will examine: the effectiveness of the Welsh Assembly Government's arrangements for providing home maintenance and adaptations services across Wales and between housing tenures; waiting times for Disabled Facilities Grants and the installation of adaptations; and, the maintenance of installations and equipment.

WAG has adopted the UN Principles on Ageing⁶⁴ into its policies on older people. In October, as part of its commitment to the UN Principles, Deputy Minister Gwenda Thomas AM (Welsh Labour) announced that from Autumn 2009 it will publish a 'state of the nation' report on older people's well being,⁶⁵ a development that should aid the monitoring of policy effectiveness. In November, the cross-party Assembly Committee on Equal Opportunities published its report 'Issues affecting migrant workers in Wales'.⁶⁶ It called for WAG to: establish an 'information hub' to direct users 'to sources of general and locally focused information' for migrant workers; to establish a multi-interest forum on migrant workers; and, 'conduct research into alternative, flexible forms of language training for migrants, including the use of technology'. In response, WAG announced that it was presently conducting research and will produce a report on the issue in early 2009.

1.7 Social Justice and Public Service Delivery

Published in October, the latest annual report of the Children's Commissioner for Wales highlighted limitations in the Commissioner's powers to intervene in devolved and non-devolved areas of public service delivery in Wales; it is an issue that

⁶² WAG, 'Single Equality Scheme Consultation':

<http://new.wales.gov.uk/consultations/closedconsultations/equality/singleequalityscheme/?lang=en>

⁶³ NAFW, Equality of Opportunity Committee: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home/bus-committees-third-eoc-agendas.htm?act=dis&id=101109&ds=10/2008>

⁶⁴ United Nations Programme on Ageing, http://www.un.org/ageing/un_principles.html

⁶⁵ WAG, 'First older people's monitor to be published' (23 July 2008):

<http://new.wales.gov.uk/news/topic/olderpeople/2008/olderpeople/?lang=en>

⁶⁶ NAFW Equality of Opportunity Committee, 'Issues affecting migrant workers in Wales, their families and the communities in which they live and work' (November 2008): <http://www.assemblywales.org/cr-ld7303-e.pdf>

resonates with other devolved bodies and inspectorates, especially on cross-border issues. The Report stated: 'after seven years' experience it has become clear that there are circumstances when the Children's Commissioner for Wales' powers are insufficient to safeguard some children's rights and welfare. These include the power to take legal proceedings on behalf of a child or intervene in legal proceedings and to require information from devolved bodies outside of a review. Also in areas of policy and legislation that are not devolved to WAG such as youth justice actions, the police and courts and most functions of the Home Office'.⁶⁷ On other matters, in November, Brian Gibbons AM (Welsh Labour), Minister for Social Justice and Local Government, announced the £1.5m Domestic Abuse Grant Scheme to provide capital funding to support organisations offering advice and support to victims of domestic and sexual abuse. A notable feature of the scheme is its emphasis on an inter-agency approach through the creation of specialist domestic abuse 'one-stop shops' across Wales that can provide medical care, psychological counselling and legal advice from professionally trained staff. The following month the Assembly's cross-party Communities and Culture Committee published its report into Domestic Abuse in Wales. Specifically, it focused on the support that is available for victims of domestic abuse and resources available from government bodies, health and social services and criminal justice agencies. Amongst its recommendations it called on WAG for: core funding for children's workers in refuges; more preventative work to be done in schools; more support services in place for children who disclose abuse; and, for procedures to take more account of older people who are victims of domestic abuse.⁶⁸

1.8 Conclusion

The past quarter has seen significant policy developments, for example, the first national policy framework on suicide prevention in Wales (National Action Plan to Reduce Suicide and Self Harm). Moreover, new policy initiatives have been introduced on age equality and service delivery for older people. These include: the publication of WAG's draft Intergenerational Strategy; the announcement that from Autumn 2009 WAG will publish a 'state of the nation' report on older people's well being; public consultation on how care services for older and disabled people should

⁶⁷ Children's Commissioner Annual Review 07-08:

http://www.childcom.org.uk/publications/Annual_review08_english.pdf

⁶⁸ NAFW, Communities and Culture Committee, 'Domestic Abuse in Wales' (December 2008): http://www.assemblywales.org/cc3_domestic_abuse_inquiry_report_-_e_-_final.pdf

be funded; and, the cross-party National Assembly Committee on Equality of Opportunity's inquiry into Home Maintenance and Adaptations Services for Older People.

The last few months have also seen a series of policy developments underpinning an increasingly distinctive Welsh education system – these include: the implementation of the new Foundation Phase curriculum for 3-7 years olds; the publication of the Skills and Employment Strategy and Action Plan; and the development of the Learning Pathways policy for 14-19 year olds. In addition, future targeted grants to offset HE tuition fees for students from low income households are likely following the recommendation of an interim government-commissioned report that called for the existing universal tuition fee grant scheme be abolished.

The past few months also provide evidence of how institutional mechanisms are allowing those outside the executive to have an input to the policy process - as evidenced by the Rural Development Sub-Committee's 'Report into the Reorganisation of Schools in Rural Wales' that originated from a public petition (following the post May 2007 public petitions procedure under Assembly Standing Order 28); and, the proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure (2008) introduced by Dai Lloyd AM (Plaid Cymru) via an AMs' ballot on proposed Assembly Measures.

2. The Legislative Process

2009 and the volume of legislation made in Wales will be the real test for GOWA 2006

Marie Navarro⁶⁹⁷⁰, Cardiff Law School

2.1 Primary Legislation:

There have been 3 UK Acts enacted between July 2008 and November 2008 which give powers to the Assembly or to the Welsh Ministers. Since December 2008 new Bills have been introduced which would devolve powers to the Welsh Ministers and to the Assembly. There are still more Bills devolving executive powers to WAG (6) than Bills devolving legislative powers to the Assembly (2).

2.1.1 Acts giving powers to the Welsh Ministers or the Assembly

Three Acts gave powers to Wales at the end of last year's Parliamentary session. They were the Planning and Energy Act 2008 c.21, the Human Fertilisation and Embryology Act 2008 c.22 and the Children and Young Persons Act 2008 c.23.

2.1.2 Bills giving powers to WAG only with or without control by the Assembly

For the new Parliamentary year which started in December 2008, there are 4 Bills currently introduced before Parliament which devolve executive powers only.

Only few powers are devolved to the Welsh Ministers under the **Business Rate Supplements Bill** and with the exception of clause 28, the provisions of the Act apply equally to England and Wales. The devolved power is that of making consequential provision to give full effect to the Act. The power is subject to affirmative resolution procedure.

In England, the Bill will provide county councils, district councils in areas where there is no county council, and the Greater London Authority (the GLA)

⁶⁹ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk

⁷⁰ With a thank you to Gerwyn Wise for his help in the research on the different debates and inquiries.

with a new power to levy a supplement on the national business rate. In Wales, the power extends to county borough councils and county councils. Collectively, these authorities are referred to in these notes as levying authorities.

The Bill requires levying authorities wishing to launch a Business Rate Supplement (BRS) to consult on proposals set out in a prospectus and to hold ballots where revenue from the BRS will amount to more than one third of the total cost of the project to be funded. It sets a national limit for BRS of 2p per pound of rateable value and enables the Secretary of State and, in Wales, the Welsh Ministers to prescribe, by regulations, a rateable value threshold for triggering liability for BRS. The Bill enables levying authorities to offset BID levies against the liability for BRS and to grant relief from BRS liability. It makes provision for the calculation of liability, collection and enforcement and in relation to accounting for BRS revenues. The Bill sets out the circumstances in which BRS may be varied and contains a power for the Secretary of State or, in Wales, the Welsh Ministers to cancel a BRS.

(Explanatory Notes Page 3, Para 8-9⁷¹)

Few powers are devolved to the Welsh Ministers under **the Corporation Tax Bill** and the **Policing and Crime Bill**. The powers under **the Corporation Tax Bill** are mainly to designate education bodies for the purposes of the Act. One of the powers is subject to Assembly negative resolution procedure. The powers under the **Policing and Crime Bill** are minor powers and are subject to no Assembly control.

Substantial powers are devolved to the Welsh Ministers under the **Disabled Persons (Independent Living) Bill**. The Bill aims at imposing duties upon certain persons and bodies in respect of disabled persons; conferring certain rights upon disabled persons for independent living; amending the Mental Health Act 1983 and amending the Health and Social Care Act 2008.

The purpose of this Act would be to ensure that disabled persons enjoy the same choice, freedom, dignity, control and substantive opportunities as persons who are not disabled at home, at work, and as members of the community.' (Bill Page 1⁷²)

Most powers under that Bill are devolved as the 'appropriate authority' term is used throughout the Bill which means equal powers for the Secretary of State in relation to

⁷¹ The Objectives of the Bill can be found at:
<http://www.publications.parliament.uk/pa/cm200809/cmbills/002/en/2009002en.pdf>

⁷² The Objectives of the Bill can be found at:
<http://services.parliament.uk/bills/2008-09/localdemocracyeconomicdevelopmentandconstruction.html>

England and for the Welsh Ministers in relation to Wales. All the Welsh Ministers' executive powers are subject to Assembly negative resolution procedure.

2.1.3 Bills giving both executive powers to WAG and legislative powers to the Assembly

The **Local Democracy, Economic Development and Construction Bill** and the **Marine and Coastal Access Bill** both devolve executive and legislative powers to Wales.

The **Local Democracy, Economic Development and Construction Bill** makes

provision for the purposes of promoting public involvement in relation to local authorities and other public authorities; to make provision about bodies representing the interests of tenants; to make provision about the procedures of local authorities and the audit of entities connected with them; to establish the Boundary Committee for England and to make provision relating to local government boundary and electoral change; to make provision about local and regional development; to amend the law relating to construction contracts; and for connected purposes.⁷³

It proposes to introduce 2 new Matters in Schedule 5 under Field 12: Local Government:

Matter 12.6

Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements.

This matter does not include—

- (a) direct elections to executives of principal councils, or
- (b) the creation of a form of executive requiring direct elections.

For the purposes of this matter—

- (a) “executive arrangements” has the same meaning as in Part 2 of the Local Government Act 2000;
- (b) “principal council” means a county or county borough council;
- (c) “direct elections” means elections by local government electors (within the meaning of section 270(1) of the Local Government Act 1972).⁷³

Matter 12.7

Committees of principal councils with functions of—

- (a) review or scrutiny, or
- (b) making reports or recommendations.

This matter does not include committees under section 19 of the Police and Justice Act 2006 (crime and disorder committees).

For the purposes of this matter “principal council” means a county or county borough council.

⁷³ *ibid.*

The same Bill also gives many executive powers directly to the Welsh Minister only some of which are subject to annulment by the Assembly. The executive powers seem the same as those given to the Secretary of State in relation to England.

The Welsh First Minister during the debate in the Assembly on the Queen's Speech⁷⁴ stated that the framework powers would:

enable us to consider legislative changes to drive forward the delivery of our policy commitments, to enable public services in Wales to work together – to be jointly planned and jointly delivered – across sectors. That could be across local authority boundaries, or between local authorities and other public bodies, such as health bodies, the police, or whatever, provided that it improves services for our citizens and communities.

The long awaited **Marine and Coastal Access Bill** was introduced after pre-legislative scrutiny of the draft in Parliament.

This Bill introduces a new system of marine management, covering a new planning system for setting out the Government's strategic objectives for the marine environment and developing marine plans to set out in more detail what should happen where in each area of the sea. The Bill also makes changes to the way licensing of activities in the marine environment is undertaken, and provides for the designation of conservation zones. It changes the way fisheries are managed and modifies the way licensing, conservation and fisheries rules are enforced. It allows for designation of an Exclusive Economic Zone for the UK, and for the creation of a Welsh Zone in the sea adjacent to Wales. The Bill also amends the system for managing migratory and freshwater fish, and enables recreational access to the English and Welsh coast. (Explanatory notes, Page 1, Para 3⁷⁵)

It would add 2 Matters to Schedule 5 under Field 16: Sport and recreation:

Matter 16.1

The establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys.

This matter does not include—

- (a) enabling the public to make journeys by mechanically propelled vehicles (except permitted journeys by qualifying invalid carriages);
- (b) the creation of new highways (whether under the Highways Act 1980 or otherwise).

Matter 16.2

Securing public access to relevant land for the purposes of open-air recreation.

⁷⁴ NAFW, Record of Proceedings (10 December 2008): <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20081210qv.doc>

⁷⁵ The Objectives of the Bill can be found at: <http://www.publications.parliament.uk/pa/ld200809/ldbills/001/en/2009001en.pdf>

Land is relevant land if it—

- (a) is at the coast,
- (b) can be used for the purposes of open-air recreation in association with land within paragraph (a), or
- (c) can be used for the purposes of open-air recreation in association with a route within matter 16.1.

In this matter the reference to land at the coast is not limited to coastal land within the meaning of section 3 of the Countryside and Rights of Way Act 2000.

Interpretation of this field

In this field—

“coast” means the coast of Wales adjacent to the sea, including the coast of any island (in the sea) comprised in Wales;

“estuarial waters” means any waters within the limits of transitional waters within the meaning of the Water Framework Directive (that is to say, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy);

“highway” has the same meaning as in the Highways Act 1980;

“public foot crossing”, in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot;

“qualifying invalid carriage” means an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970 (use of invalid carriages on highways) which complies with the prescribed requirements within the meaning of that section;

“relevant upstream waters”, in relation to a river, means the waters from the seaward limit of the estuarial waters of the river upstream to the first public foot crossing;

“sea” includes the relevant upstream waters of a river;

and a journey by a qualifying invalid carriage is a permitted journey if the carriage is being used in accordance with the prescribed conditions within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970.

The Bill is very long and it devolves many executive powers to the Welsh Ministers some of which are very substantial. There are some specific powers for Wales but not many. In respect to this Bill the First Minister noted that:

As this is not just a marine Bill, but a marine and coastal access Bill, it will empower the Assembly to pass legislation in this area. We are taking it forward now, through an improvement programme, but we can now give that legislative backing, so that we can provide the path infrastructure at the coast, in partnership with each of our coastal local authorities. It also enables us to clarify public access rights, which is a vexed issue in certain areas of the Welsh coast, and to identify additional areas of coastal land that will be available to the people of Wales for recreational access. It will also give us new areas in relation to fisheries, extending our competence beyond the current 12 nautical mile limit out to the media line with the Republic of Ireland. I believe that will better reflect the practical realities of how fishing is regulated. It will mean that, instead of two different bodies

regulating fishing in Wales, there will be one single source of regulation. That is a simplification of regulation for people involved in fisheries in Wales.

Following this statement can one deduct that if it had been a Marine Bill only there would have been no legislative powers?

2.2 Parliamentary consideration of proposed LCOs⁷⁶:

2.2.1. The Welsh Affairs Select Committee pre-legislative scrutiny:

The Committee published the following report: 'The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008' on Tuesday 14 October 2008.⁷⁷ There is also a section entitled Chairman's Comments⁷⁸ following the controversy about the report's findings. For comments on the Affordable Housing LCO and controversy see paragraph 4.1 below.

The Committee announced its new inquiry into the Carers LCO on 17 December and published the list of evidence questions⁷⁹.

In total since the commencement of GOWA 2006 the Committee has scrutinised 5 LCOs at the pre-legislative phase, the carers LCO will be the sixth to be so examined.

2.2.2 No LCOs were formally made by the Queen on the advice of Her Privy Council:

LCOs have progressed since the last report but none were finalised since August 2008. See below paragraph 4.1 for full information on the LCOs.

⁷⁶ For vocabulary in relation to 'proposed' and 'draft' LCOs see below paragraph 2.4.1; I refer to proposals for LCO as a generic term as the two others terms have precise procedural legal definitions.

⁷⁷ NAW, 'The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008' (14 October 2008): [Seventh Report of Session 2007-08 \(HC 812\)](#)

⁷⁸ Welsh Affairs Committee Press Notice 07-08 (14 October 2008): [Chairman's Comments](#).

⁷⁹ Welsh Affairs Committee Press Notices (17 December 2008): http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn408_09.cfm

2.3 The Debate on the Queen's Speech in the Assembly

During the debate on the Queen's Speech which took place in plenary on 10 December 2008⁸⁰ various points of interest were raised.

The first of those is the existence of a **Sewel-type convention for Wales**. Nick Bourne raised a question in relation to the proposed Education and Skills Bill which according to him would have 'little or no application' in Wales because of the current Welsh legislation (the Learning and Skills Measure) proposed by WAG before the Assembly. He questioned whether the Bill would impact on Wales and 'whether it will be referred to a Committee'. In response, the Counsel General, Carwyn Jones, stated that a Sewel-type convention exists under Standing Order No 26 under which Westminster will not legislate in areas where the Assembly has legislative competence.

The second one relates to the **missed opportunities for Welsh clauses** or the devolution of other powers to Wales under the current Bills in the Queen's Speech and the disappointment of some AMs in relation to the powers to be devolved to Wales. Kirsty Williams identified a number of 'missed opportunities' in the Queen's Speech for a further transfer of framework powers. An example provided was the Constitutional Renewal Bill, described by Kirsty Williams as a 'weak attempt to patch up the constitution', which provided no further devolution of powers. Kirsty Williams went further, arguing that this 'dull and unimaginative programme' could have been expanded to provide powers in the areas of 'policing, affordable housing, the Welsh language and the health service'.

Christine Chapman stated that she remained disappointed with the UK Governments' failure to 'grasp the opportunity to prohibit the physical punishment of children'. She stressed the concern that the Assembly is being dictated to by Westminster, stating that 'although we do not have the powers in Wales to make the necessary changes, the Assembly has taken the stand that physical punishment is unacceptable'.

Peter Black stated that the Policing and Crime Reduction Bill provided an opportunity (missed) to devolve powers to the Assembly in the sphere of the police. He noted that 'our approach to policing would differ to the approach in England' and that these

⁸⁰ NAFW, Record of Proceedings (10 December 2008): <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=109160&ds=12/2008#7>

powers ought to be provided as '50 per cent of our police forces' funding comes through the Assembly" adding that 'we are going to have arrangements that are the same for England imposed on us'.

In response to the criticism of the scope of the legislative programme, the Counsel General Carwyn Jones noted that 'in order to criticise the absence of framework powers, there must first be Bills that could carry those powers'. He noted that two of the specific framework powers suggested by the LibDem (Welsh Language and Affordable Housing) are already part of proposed LCOs. In respect of the suggestion that policing and prisons might have been devolved, Carwyn Jones emphasised that it is 'fact that that is not a field in the Government of Wales Act 2006' and he questioned why would Wales want the devolution of prisons without powers in respect of sentencing policy, control of the courts etc.

The third area of debate and a very important point was about the **poor access by the Assembly to the work carried out by WAG and in Westminster**. Nick Bourne commented on the difficulties faced by Assembly Members in obtaining information from the Welsh Assembly Government on proposed legislation. He stated that 'we have learned far more this afternoon about the position on LCO's than we have learned from the Assembly Government in the last two or three months', particularly in relation to the Welsh Language LCO and the devolution of building regulations.

Kirsty Williams also emphasised the lack of scrutiny being undertaken by the Assembly of the discussions carried out in private by the executive branches in Cardiff and London. She finds it difficult to believe that what WAG wants is best for Wales as 'the communication between the Governments takes place in a way that cannot be scrutinised'. Kirsty Williams commented that 'in a modern Wales it is not acceptable to conduct key Government business behind closed doors in the way that happens at the moment, with opposition parties not having the opportunity to scrutinise'. This point was further enhanced by Helen Mary Jones, who expressed concerns that 'issues vital to the future of our nation, and to individuals and families in our constituencies, will continue to be debated and decided at the other end of the M4'.

The debate also revealed **tensions and disagreements between the executive in London and in Cardiff** as Rhodri Morgan commented on the Welfare Reform Bill. It was said to have created a 'level of disagreement' between the respective executive

branches in Cardiff and London. The First Minister noted that the disagreement had developed in respect of the 'rhetoric, the presentational style, or the language used when discussing this huge agenda of moving people away from dependency on benefits and into the world of work'. Rhodri Morgan emphasised that the executive branches agreed on the principle of the Bill and that they typically work very closely together:

If your contribution, like ours, is in the form of medics and paramedics, including physiotherapists and mentoring and counselling services, it is natural for you to focus mainly on boosting people's self-confidence so that they feel that they are able to work again. However, if it is you who pays for the benefits, as the Department for Work and Pensions does, you are more likely to stress not the enforcement, as such, but the sanctions on people who refuse opportunities to work.

However, Nick Bourne commented that, in spite of the First Minister's 'bravado and brio', the body language suggests that the differences noted in relation to the Welfare Reform Bill are more than just emphasis.

During the debate the First Minister insisted on the **success of the current devolution system**. The First Minister stated that 'there is a misconception that needs to be corrected that only a trickle of powers has come to the Assembly'. He noted that 30 Matters have already been added to Schedule 5 and that, in addition to the legislative work of the Assembly, three Acts of Parliament were passed at the end of the last parliamentary session that contained Measure-making powers.

The Secretary of State for Wales, in response to criticisms that the devolution settlement was not working, stated that 'enormous change' had occurred 'in terms of the powers that the Assembly has and how it deals with them'. He reminded the Assembly Members, disappointed with the current powers available to the Assembly, that eight years ago, 'one or two Bills a year' was thought to be the best that devolution could provide to Wales.

The final issue to report on raised during the debate is the **potential postponement of the referendum** for moving to Part IV of the Act as the Secretary of State for Wales stated that a referendum for a Parliament in Wales ought to be postponed during the economic crisis. When Labour members (including the Secretary of State for Wales) were pushed for a clearer answer only the Counsel General answered that 'Sir Emyr Jones Parry and his commission must be given the opportunity to report before we go any further'.

2.4 Law made in Wales:

Law made in Wales under the 2006 Act procedures:

In summary, so far : 2 LCOs and 2 Measures made since July 2007.

2.4.1 Legislative Competence Orders:

The table below sets out the proposals for LCOs and the various stages they have reached.

Figure 2.1: Proposals for LCO's and their various stages

| Number LCO | Source | Purpose | Status |
|------------------|--------|---|---|
| 2007-2008 | | | |
| 1 | WAG | Additional Learning Needs Matter 5.17 | Made on the 9 th of April In Force SI. 2008/1036 |
| 2 | WAG | Environmental Protection and Waste Management Matters 6.1-2 | Pre-legislative scrutiny by Committee in Cardiff – completed <i>Being Redrafted- supposed to get clearance by Whitehall Departments.</i> |
| 3 | WAG | Vulnerable Children Matter 5.18 Matters 15.2-8 Matter 16.1 | Pre-legislative scrutiny by Committee in Cardiff – completed Report January 2008 = REVISED order Second Committee Report on Revised Order Joint pre-legislative scrutiny WASC / Assembly WASC Pre-legislative Scrutiny– completed Formal approval by the Assembly Affirmative Resolution Procedure in Parliament - completed |

| | | | |
|------------------|-------------------------------------|---|--|
| | | | <i>Awaiting Royal Approval.</i> |
| 4 | WAG | Domiciliary Care Matter 15.1 | Made on the 10th of July In Force SI. 2008/1785 |
| 5 | WAG | Affordable Housing Matter 11.1 | Pre-legislative Scrutiny Committee– completed = REVISED order WASC pre-legislative scrutiny of Revised Order - completed – report published 14/10/08 <i>Awaits formal approval by the Assembly</i> |
| | WAG | Welsh Language | <i>Being negotiated with Whitehall – To be drafted</i> |
| 7 | AM- Ballot 1 Ann Jones | Domestic fire safety. Matter 11.2 | Pre-legislative Scrutiny Committee– completed Report June 2008 <i>Secretary of State</i> |
| 6 | AM- Ballot 2 Jonathan Morgan | Mental Health reform Matter 9.2 | Pre-legislative scrutiny by Committee in Cardiff Report June 2008 <i>Secretary of State</i> |
| X | AM- Ballot 3 Helen Mary Jones | Carers | Leave to introduce draft granted. - Withdrawn- WAG to re-introduce it as a Government LCO. |
| | AM- Ballot 4 Huw Lewis | Bus and Coach Services | Leave to introduce draft granted. Consultation closed September 2008. <i>Awaits Stage 1.</i> |
| X | AM- Ballot 5 Peter Black | Local Government Electoral Arrangements | Leave to introduce draft refused. Failed. |
| | AM- Ballot 6 Janet Ryder | Flags and motifs on vehicle registration plates | Leave to introduce proposed LCO granted on 01/10/08 Being drafted. |
| 2008-2009 | | | |
| 9 | WAG ex- AM LCO Jones | Support for Carers | Proposed LCO laid on 08/12/08 WASC Pre-legislative scrutiny |

| | | | |
|---|--|--|--|
| | | | of the proposed LCO started on 09/12/08 and will be completed on 28/01/09 |
| | WAG | Culture | |
| | WAG | Foundation Degrees | |
| 8 | WAG | Read Meat Industry Matter 1.1 | Introduced on the 22 nd of September 2008 Stage 1: Pre-legislative Scrutiny Committee – Completed – Report published 10/12/08 WASC pre-legislative scrutiny – In progress – call for evidence closed 10/11/08 |
| | Committee Enterprise and Learning Committee from Sustrans Petition | Traffic Free Routes Matter 10.y | Pre-drafting Consultation |
| | AM- Ballot 7 David Melding | Official language Status | <i>Leave to introduce draft refused on 03/12/08</i> |

Two new LCOs have been introduced by the Welsh government since the last report: the **Read Meat Industry LCO** and the **Carers LCO** (previously an AM LCO).

The first Committee LCO has been announced and the LCO is based on a petition made last year by Sustrans.

The **Vulnerable Children LCO** has been waiting for the final step - the signing of the Order by the Queen after advice from the Privy Council - for some time. The LCO is of a very wide nature contrary to most other LCOs.

On the **Mental Health LCO**, Jonathan Morgan Shadow Minister for Health has had to let the Welsh Minister for Health and Social Services Edwina Hart take over his LCO to secure for him the clearance of the proposed order by Whitehall departments. This is quite a strange situation which totally relies on the Government Ministers working for back benchers and the opposition.

The **Environment LCO** and the **Welsh Language LCO** announced last year have still not been introduced before the Assembly. The Counsel General and Leader of the House, Carwyn Jones, during the debate on the Queen's Speech in the Assembly provided information in respect of certain unresolved and also the subject of significant criticism disappearance or difficulties of the two LCOs. He stated:

we hope to lay before Parliament the LCO on Environmental Protection and Waste Management very soon, along with the LCO on affordable housing. The LCO on the Welsh Language is at present the subject of discussion between the Government in Cardiff and the Government at Westminster, which is the normal course of events. Members should not be surprised at the devolution of building regulations – it was a manifesto commitment of my party at the last Assembly election, and is being delivered, as the secretary of state said, as a result of joint working between Cardiff and Westminster.

A **third version** of the **Affordable Housing LCO** has been formally introduced as a Draft Order before the Assembly. This means that this time the order can no longer be amended in Wales or in London. Controversy surrounded this LCO and its drafting. The order as presented to the Welsh Affairs Select Committee (the second version of the order) requested the transfer to Wales of powers relating to the right to buy council houses. The matter to be transferred would have included all powers in the area including the power to totally abolish the right to buy. The WASC recommended that such power should not be devolved in this full extent as the WAG did not intend to use their powers in that manner. The following statement is to be found on the WASC's website⁸¹:

To reflect better the underlying policy intention, the Committee recommends that the draft Order is amended so the ability to suspend Right to Buy/Right to Acquire applies only in areas of extreme housing pressure.

A time limit on the period of suspension of Right to Buy/Right to Acquire, and a requirement for regular review of any suspension, should also be included in the proposed Order.

The same webpage quotes the Chairman of the Welsh Affairs Committee, Dr Hywel Francis, saying:

⁸¹ Welsh Affairs Committee Press Notice 07-08 (14 October 2008): http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn2807_08_.cfm

This is the fourth LCO we have reported on and, as always, we welcome the opportunity to contribute to the scrutiny process.

We have made a number of recommendations in our report which we believe reflect the purpose of the proposed Order and which clarify the policy intention behind it. The Welsh Assembly Government has identified a valid need for additional legislative competence and we hope our report contributes effectively to the pursuit of policy in this area.

Following that report, WAG and the Wales Office proposed a compromise which was to devolve the power to abolish the right to buy but to subject the use of such power to the consent of both WAG and the Secretary of State for Wales. The explanatory notes⁸² to the Draft Order are clear in that respect:

Article 2(3) inserts paragraph 7B into Part 3 of Schedule 5 (exceptions from Part 2), which provides that Part 2 of Schedule 5 does not prevent a provision of an Assembly Measure from abolishing the right to buy, preserved right to buy or right to acquire if both the Welsh Ministers and the Secretary of State consent to the provision.

The controversy is now about the veto given to the Secretary of State for Wales which would exist only where the proposed Measure would completely abolish the right to buy in Wales. This provision definitely sets out a precedent and a 'dangerous precedent', as described by Kirsty Williams in the *Western Mail*⁸³. If this is a one off it could make sense and it offers a solution to the disagreement between the WASC and the Assembly; if it is to be followed regularly it would destroy the idea of devolving powers all together to the Assembly and we would be back to the Welsh Office days where the Secretary of State controlled subordinate legislative powers. Personally I think that this precedent should not be followed in the future and that its use fuels the debate to move to Part IV and to get a Parliament for Wales.

The **Social Welfare and other Fields LCO** (or Carers LCO as it is also called) proposes to introduce yet another table of exceptions to be inserted at the end of Schedule 5. This shows the difficulties found so far by draftsmen and lawyers to find a suitable way of expressing all the exceptions to matters being devolved as this is

⁸² NAFW, 'The National Assembly for Wales (Legislative (Housing) Order 2009 (Draft): <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/lco-ld7346-e.pdf?langoption=3&ttl=LCO-LD7346%20-%20The%20National%20Assembly%20for%20Wales%20%28Legislative%20Competence%29%20%28Housing%29%20Order%202009>

⁸³ M. Shipton, 'Power Veto on Welsh Housing', *Western Mail* (10 January 2009): <http://www.walesonline.co.uk/news/wales-news/2009/01/10/power-veto-on-welsh-housing-91466-22661284/>

the third attempt. This will be commented further in the next devolution report (if there is one) as the issue deserves full and proper consideration.

It is finally interesting to note that the transfer of executive powers only relating to **building regulations** is to take place through a Transfer of Function Order, mechanism still in use even after the passing of the Government of Wales Act 2006.

2.4.2 Proposed Measures:

For the year 2008-9 **10 Measures** are expected to go through the Assembly. 5 have already been introduced and are currently going through the Assembly.

- Learning and Skills Measure (**Introduced**)
- Healthier School Meals Measure (**Introduced**)
- Playing Fields (Community Involvement in Disposal Decisions) Measure (**Introduced**)
- Recycling Measure (**Introduced**)
- Local Government Measure (**Introduced**)

- Children and Poverty Measure (**Announced**)
- Additional Learning Needs Measure (**Announced**)
- Domiciliary Care Measure (**Announced**)
- Affordable Housing Measure (**Announced**)
- Commissioner for Standards Measure (**Announced**)

The second Assembly Measure has been formally approved by Her Majesty in December 2008 and has become law: the Learner Travel Measure.

The table below shows the various stages of the proposals for Measures.

Figure 2.2.: Various stages of the proposals for Measures

| Number | Source | Purpose | Status |
|------------------|------------|------------------------------------|---|
| 2007-2008 | | | |
| 1 | WAG | NHS Redress (Wales) Measure | NO: Pre-legislative Scrutiny by a Committee Stage 1 – Agreement on the Principle of the Measure- |

| | | | |
|----------|------------|--|---|
| | | | <p>completed- Stage 1 Committee</p> <p>Stage 2 – Detailed Scrutiny of the Measure in Committee - completed</p> <p>Stage 3 - Detailed Scrutiny of the Measure in Plenary</p> <p>Stage 4 – Approval of final draft of the Measure- completed</p> <p>Royal Approval July 2008</p> |
| 3 | WAG | Learner Travel | <p>Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 28 September 2007</p> <p>Pre-legislative Scrutiny by Enterprise and Learning Committee</p> <p>Introduced 15th of April</p> <p>Stage 1 – Agreement on the Principle of the Measure- completed</p> <p>NO: Stage 1 Committee</p> <p>Stage 2 – Detailed Scrutiny of the Measure by Committee - completed</p> <p>Stage 3 - Detailed Scrutiny of the Measure in Plenary - completed</p> <p>Stage 4 – Approval of final draft of the Measure- completed 30/09</p> <p>Royal Approval 10/12/08</p> |
| 5 | WAG | Learning and Skills Measure will seek to reform the 14-19 curriculum | <p>Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 28 April 2008</p> <p>Pre-legislative Scrutiny by Subordinate Legislation Committee</p> <p>- Introduced on 7th of July 2008</p> <p>Stage 1 Agreement on the Principle of the Measure – Stage 1 Committee- Committee report laid 02/12/08</p> <p>Assembly agreed general principles of the proposed Measure 09/12/08</p> |

| | | | |
|----------|---|--|---|
| | | | Stage 2 – Detailed Scrutiny of the Measure by Committee – began 10/12/08 |
| 2 | AM- Ballot 1 Jenny Randerson | draft Measure for healthier school meals in Wales | Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 29 February 2008 NO: Pre-Legislative Scrutiny by Committee Introduced on 14 th of March Stage 1 – Agreement on the Principle of the Measure- Stage 1 Committee reported Assembly agreed general principles of the proposed Measure 15/10/12 Stage 2 – Detailed Scrutiny of the Measure by Committee - In progress |
| X | AM- Ballot 2 Mike German | Draft Proposed School Closures (Consultation and Categories) Measure | Rejected on Principle by Plenary – Failed |
| 4 | AM- Ballot 3 Dai Lloyd | Draft Measure on Impact Assessments for the Selling off of Playing Fields | Leave to introduce proposed Measure granted- Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 13 June 2008 NO: Pre-Legislative Scrutiny by Committee - Introduced on 18 th of July 2008 Stage 1 – Agreement on the Principle of the Measure- consideration by Legislation Committee No.1 began 09/12/08 |
| | AM- Ballot 4 Nerys Evans | Draft Measure on Recycling | Leave to introduce proposed Measure granted- Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: |

| | | | |
|------------------|-------------------------------------|--|--|
| | | | <p>26 September 2008 -Introduced on 05/11/08</p> <p>Awaits Stage 1 - Agreement on the Principle of the Measure- should go to one of the permanent Legislative Committees</p> |
| X | AM- Ballot 5 Peter Black | Draft Measure on Youth Services | Rejected on Principle by Plenary – Failed |
| 4 | AM- Ballot 3 Dai Lloyd | Draft Measure on Impact Assessments for the Selling off of Playing Fields | <p>Leave to introduce proposed Measure granted- Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 13 June 2008 NO: Pre-Legislative Scrutiny by Committee - Introduced on 18th of July 2008</p> <p>Stage 1 – Agreement on the Principle of the Measure- consideration by Legislation Committee No.1 began 09/12/08</p> |
| | AM- Ballot 4 Nerys Evans | Draft Measure on Recycling | <p>Leave to introduce proposed Measure granted- Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 26 September 2008 -Introduced on 05/11/08</p> <p>Awaits Stage 1 - Agreement on the Principle of the Measure- should go to one of the permanent Legislative Committees</p> |
| X | AM- Ballot 5 Peter Black | Draft Measure on Youth Services | Rejected on Principle by Plenary – Failed |
| 2008-2009 | | | |
| | WAG | Children and Poverty Proposed Measure | |

| | | | |
|----------|----------------------------------|--|--|
| | WAG | Additional Learning Needs Proposed Measure | |
| | WAG | Domiciliary Care Proposed Measure | |
| 6 | WAG | Local Government Proposed Measure | Introduced on the 22 nd of September 2008 Stage 1 Committee Agreement on the Principle of the Measure- In progress Proposed Measure Committee consultation opened and closed |
| | WAG | Affordable Housing Proposed Measure | |
| | Standards of Conduct Committee | Commissioner for Standards | Pre-pre-legislative Consultation completed 06/09/08 by the Standards of Conduct Committee <i>Being drafted</i> |
| X | AM – Ballot 6 Alun Cairns | Special Educational Needs Information | Selected in Ballot 15/10/08 Leave to introduce proposed Measure refused on 19/11/08 |

2.4.3 The New Standing Legislative Committees of the Assembly:

The Presiding Officer announced last year the creation of five standing legislative committees to reflect the change in balance between the Assembly's scrutiny and legislative work. Four Committees will be responsible for WAG's proposed legislation including both the proposed LCOs and Measures and one Committee for Member proposed legislation. These Committees are called Legislation Committee No.1; Legislation Committee No. 2 etc.

The National Assembly's first permanent legislation committee, known as Legislation Committee No.1, met for the first time on 8 December 2008. The Committee, chaired by the Deputy Presiding Officer, Rosemary Butler AM, will primarily deal with Member and committee proposed legislation (Legislative Competence Orders and Measures)⁸⁴.

⁸⁴ NAfW Press Release (December 2008): <http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=109250&ds=1/2009>

2.4.4 Subordinate Legislation Committee inquiry

The evidence and sessions during the inquiry by the Subordinate Legislation Committee into the scrutiny of subordinate legislation and delegated powers has proved invaluable to the understanding of devolution post 2007. Many various aspects of devolution were explored or simply revealed which deserve to be reported on. The Call for Evidence document is available at:

<http://www.assemblywales.org/slc-letter-inquiry-from-chair-to-consultees-e-web.pdf>

A list of written Consultation Responses is available at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-cons-response.htm>

The written evidence and the transcripts of the oral evidence can be divided into several categories: first the information relating to the internal working of the Wales Office, WAG and the Assembly, secondly the perceived roles of WAG, the Assembly and Westminster in relation to law making powers and thirdly various aspects of the system such as the existence of a Sewel Convention in Wales and the difficulties for civil society to engage in the process.

Processes

The written and oral evidence given to the Committee provided some clarification about the legal processes in Cardiff and in London.

Important information was given on how the Wales Office works in relation to UK Bills and devolved powers. The Secretary of State for Wales stated in his written evidence that he 'engages with UK Bill teams and the Welsh Assembly Government to ensure that Welsh interests are taken into account and are addressed appropriately ...' He seems to wait for WAG to request powers after the UK legislative programme has been published. The Secretary of State does not appear to lobby for Wales-only Bills. His role seems to be limited to waiting for WAG to request powers under announced Bills and then the Secretary of State will check if the powers are within the scope of the Bill and if they reflect areas of executive powers which are already devolved.

The Secretary of State agrees the explanatory memorandum of framework powers which is drafted by WAG. The Secretary of State then seeks Cabinet's clearance before the powers are included in the Bill.

Wales Office Ministers and officials continue to work closely with UK Government colleagues and the Welsh Assembly Government to facilitate discussions and secure Welsh provisions in Parliamentary Bills. It is for Parliament to scrutinise Welsh provisions, including framework powers in Bills, and if necessary bring forward amendments in the same manner as for other provisions in primary legislation.

He concluded by saying that 'the Welsh Assembly Government and the UK Government work very closely together throughout the preparation and passage of UK Bills.' Evidence given by witnesses and statements from Members of the SLC do not seem to confirm fully this statement, as demonstrated with the examples of the Planning and Marine Bill. It is noted that the process excludes any involvement of the Assembly.

Knowledge on the how WAG works was also gained in relation to the implementation of EU Directives and of obtaining devolved powers in UK Bills.

In relation to EU Directives it is the responsibility of the lead Whitehall department to formally notify the devolved administrations at official level of any new EU obligation which concerns devolved issues and will need to be implemented by the devolved institution. It is then for the devolved institution, in consultation with the Whitehall Department, to decide how the obligation should be implemented and whether it should be done by the devolved institution separately or through UK legislation. Is this what devolution means?

In relation to devolved powers UK Bills the Counsel General argued that, although WAG tries to ensure that any proposal conferring new powers on WAG is subject to prior consultation with Welsh civil society, 'the timescale for the production of Bills means that this is not always possible for every provision' to consult. Carwyn Jones was clear that to him decisions in relation to having and framing Measure making powers in Bills are taken collectively 'in the Welsh Assembly Government and UK Government', but that any decision to confer powers in a UK Act is one for Parliament. Again the Assembly is excluded from this process.

The evidence also shared light on how the Assembly works in relation to the scrutiny of UK Bills. In its evidence, Public Affairs Cymru explained that:

Once details are agreed between the Welsh Assembly Government and Whitehall, information is provided by Ministerial statements and briefings from

the Members Research Service on an ad hoc basis, and is also provided for subject committee discussions upon request. Committee scrutiny also tends to be limited to sessions with WAG officials and Ministers, with no oral or written evidence from external stakeholders.

Finally general intelligence was gathered on the different ways to unveil Welsh powers in Bills. The Secretary of State of Wales described seven different ways: His consultation statement on the Queen's speech in the Assembly, his appearances before the Welsh Grand Committee and the WASC, briefings available to each House of Parliament on framework powers, the draft UK legislative programme, tables in the explanatory notes and the Wales Office annual report. Public Affairs Cymru reminded the Assembly Subordinate Legislation Committee that 'Regulatory Impact Assessments of draft bills, stakeholder consultation responses and evidence provided to Westminster committees on UK Bills are publicly available, and could also inform Assembly scrutiny of Welsh provisions in UK bills.'

I have never found it a problem to find proposed Welsh powers (whether executive or legislative) in a Bill once published, or to get indications that they would be on their way before they are actually included in the Bill. It is quite easy to check the Pdf versions of Bills going through Parliament. For anyone who wants to monitor the system it is quite easy to do so after the Queen's speech. What seems much more difficult is the lack of machinery available to the Assembly or any other body to influence the contents.

Issues raised during the inquiry:

Respective roles of AMs and MPs

The evidence before the committee has shown that the division of roles between MPs and AMs in relation to the scrutiny of delegated powers in UK Bills is not easy. For several witnesses and Members of the Committee the role belongs to Westminster only and that the Assembly should not undertake such activity.

However several witnesses advocated the need of the Assembly and of the SLC to carry out such scrutiny because 'Parliament is giving powers to a body that Parliament is not supervising – you are supervising it and, to me, you should know exactly the contents of those Bills'.

Carwyn Jones was very clear in his oral evidence as he stated that the Assembly 'can consider any part of a Bill passing through Westminster in order to scrutinise that Bill.'

The Counsel General also declared that 'Assembly committees have the ability to look at Bills or clauses of Bills going through Parliament in order to express a view as to whether they feel that it is appropriate to devolve that power'.

From Carwyn Jones' evidence it seems that WAG considers that the Assembly can express views as to the extent of devolved powers as already printed in a Bill but it cannot be involved in the drafting of the Bill which belong to WAG and Whitehall or in its scrutiny *stricto sensu* which belongs to Parliament. WAG clearly believes that it is a matter for ministers alone to control what powers they seek in terms of enabling them to make subordinate legislation.

Role of AMs and WAG in relation to the framing of framework powers

Carwyn Jones stated that 'it is a matter for Ministers in Cardiff as to what powers they would seek'. Mark Isherwood responded that the function of the House of Lords committee is to scrutinise the delegation of powers to ministers, but its Counsel General was suggesting that there ought to be no equivalent in Cardiff. He responded by stating that Parliament delegates powers to the Welsh Ministers and, therefore, it is 'a matter for them ... as to whether Welsh Ministers receive that power'.

Alun Davies (Member of the Committee) was clearly dissatisfied with the response of the Counsel General and stated that 'it is essential in a democracy that those powers come to the Assembly first, and are subsequently delegated to Welsh Ministers, rather than moving directly to Welsh Ministers.' Alun Davies expanded on the point further, arguing that the Assembly must have a role in the determination of powers devolved to Welsh Ministers in UK Bills. However, Carwyn Jones dismissed such a suggestion, responding: "No, because, at that stage, we are still talking about a Westminster Bill. At that stage, the formal and legal responsibility for scrutiny lies with Parliament'.

Lack of the Assembly's voice / WAG controls everything*Executive powers:*

This applies not only to UK Bills but also to WAG executive powers in proposed Transfer of Function Orders as pointed out by Tomorrow's Wales' evidence. However from looking at the SLC's website, letters of the First Minister to the SLC warned it of the transfer of new functions by TFO in relation to prisons and building regulations. Although this may be changing, there are nonetheless no provisions in the Assembly Standing Orders for such scrutiny.

WAG agrees that it does not consult the Assembly on the executive powers it seeks. Nor does it consult with the Assembly on the type of process (TFO, Bill) or power they request (legislative or executive).

The Wales Environment Link explained that sometimes the lack of understanding or taking into account the needs of Wales in the drafting and scrutiny of UK primary legislation has had detrimental effects in the implementation of the legislation in Wales.

Legislative powers:

Public Affairs Cymru described the current system by which Measure-making powers by way of the creation of new Schedule 5 Matters are included in UK Bills as a 'mystery'. This was supported by the example of the Planning Bill that failed to set out the relevant framework powers until the House of Commons Committee stage, months after Peter Hain's statement that they would be in the Bill. PAC stated that this 'curtailed significantly the amount of time available for the Assembly in any form – including the Subordinate Legislation Committee – to scrutinise these aspects.'

Tomorrow's Wales stated that it is 'wrong that such a decision was taken in private, that it was never subject to scrutiny or debate in Assembly, and indeed that it was taken without the Assembly being aware of what was happening' and that this

increases the role of the Assembly Government at the expense of the National Assembly and **undermines both the role of the elected National Assembly and the constitutional principle of the supremacy of the legislature over the executive**. Under current arrangements, the National Assembly as a legislature is not in control of which legislative powers are devolved to it, but **rather the executive acts as a gatekeeper to the Assembly's powers**.

The Role of the Assembly and of the SLC as gatekeeper for all devolved function and guardian of legality in Wales

Very serious constitutional law issues were also raised during the inquiry in particular during the oral evidence sessions of Alan Trench and of the Law Society. There is a serious risk that the Assembly is undermined as a legislature and that the executive is overly powerful in Wales.

It was Tomorrow Wales' view that the 'committee is called on to act as the watchdog of both the way that Westminster legislation treats the devolved institutions in Wales and the practice of the separation of powers within Wales'. Alan Trench suggested that the 'desirable outcome is to ensure greater ability for the National Assembly to scrutinise what goes into powers that are to be devolved to Wales and to ensure that the National Assembly is the overall custodian of legislation for Wales rather than the Assembly Government'. However, he emphasised that this will only be achieved if WAG is held democratically accountable.

Following the examples of lack of focus on Wales in the UK Bills, Ms Smith from WEL emphasised the **importance of creating a 'champion in the process, checking what we need in Wales and how to ensure that Wales will get all the benefits from the piece of legislation'**. That role could be taken by the SLC.

The Law Society went even further and advocated a role for a new committee to look at how the legislative process as a whole is developing. It was stated that the

Assembly must think about moving from having this kind of Committee, which is based on a Westminster model and was set up to be the guardian of the process of delegating powers to Ministers, to developing a committee that has a remit for looking at how the legislative process – the body of legislation as it affects Wales – is developing as a whole [...] because realistically, you will never move entirely away from Westminster legislating for Wales.

This would consider the more practical question of how the statute book in Wales is developing as a whole.

Other issues of interest arising from the inquiry:

The lack of scrutiny of Welsh clauses and the Marine and Planning Bill

Following Alun Davies (member of the Committee) suggesting that scrutiny of UK Legislation ought to be carried out by MPs, Alan Trench commented on how GOWA 2006 had limited MP scrutiny. Although Alan Trench accepted that the Welsh Affairs Select Committee was active in looking at powers devolved through LCOs, he noted

that 'it is not very active in looking at the so-called framework powers that are similarly conferred on the National Assembly' by directly amending Schedule 5.

WEL noted that little information was available on the powers in Bills proposed to be given to WAG and that this made it difficult for stakeholders to fully assess the implications of the new legislation. There is no public consultation in Wales on the Bills.

WEL expressed concern about an apparent low level of understanding among MPs that scrutinised the draft Marine Bill of its importance to Wales. WEL provided the example of Mr Charles Walker MP, who was not aware of whether the Marine Bill applied to the whole of the UK or whether the Welsh Assembly could bring forward its own recommendations.

In relation to the Marine Bill itself, **Ms Meikle noted that it 'lacked detail for Wales' when the Sustainability Committee scrutinised it and that there 'seems to be quite a tendency for Bills to do that'.** Worryingly she stated that **the Joint Committee on the draft Marine Bill in Westminster flagged that 'it is concerned that there is the potential for a legislative vacuum between Westminster and here.'**

WEL noted that the draft Bills were not given high priority within the Senedd, particularly as the Sustainability Committee was only allowed forty minutes to question the Minister on the draft Marine Bill and evidence was not sought from the public.

Improving communication from London

It was suggested that the Subordinate Legislation Committee should be given more robust mechanisms for scrutinising devolved powers in UK Bills. A solution could be to require the Secretary of State for Wales to accompany the programme statement to plenary on the Queen's Speech with a more detailed legislative statement to the Subordinate Legislation Committee, thus giving a 'clear Westminster end view'.

Several witness also suggested that it may be beneficial to have an 'obligation on clerks at Westminster to communicate' with the Subordinate Legislation Committee when any Bills with 'Measure-making' powers for the Assembly are laid in Parliament.

Sewel Convention

A parallel was drawn with the situation in Scotland where the Sewel convention was interpreted very widely and would include assent from the Scottish Parliament to both legislative and executive powers. Following that precedent the Assembly should be able to decide whether to agree to executive powers being vested directly in WAG. This is not the case in Wales where only proposed LCOs require the prior approval of the Assembly.

Access to information

A number of witnesses emphasised the current troubles faced in relation to accessing information. The main complaint made was against the Welsh Assembly Government and the lack of a 'readily accessible service' for the publication of legislation. Daran Hill suggested that Welsh Legislation Online, a service already funded by the NAW and WAG, could be adapted to provide an appropriate portal for the public to access relevant legislation.

Engagement of civic society

From the evidence given to the SCL it is clear that it is difficult for civic society to engage with the legal processes in Westminster and in Cardiff in relation to the subordinate legislation made by WAG and in relation to the proposed devolved powers in UK Bills. They gave several reasons: the lack of clarity of the information provided or because it is too difficult to access any relevant information, and because generally it is felt that there is a lack of consultation from WAG, the Assembly Committees and Westminster.

There was also a common agreement among witnesses that WAG's subordinate legislation was very difficult to find. The Counsel General said he might consider publishing it on WAG's website.

2.5 The challenge for 2008-9: the considerable amount of legislation which Wales will have to consider:

A much bigger amount of legislation is expected this year with possibly 24 proposed LCOs and Measures to process as against 3 laws (2 LCOs and 1 Measure) made last year. In addition WAG will continue to make subordinate legislation. The detail of

such Assembly legislation is given below. This will be a real test of the operation of the current devolution settlement.

Law made in Wales in 2007-8

- Measure:
 - NHS Redress (Wales) Measure
- LCOs:
 - The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 No. 1036
 - The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 No. 1785
- 238 WAG SIs published on HMSO July to July
- 163 looked at by Subordinate Legislation Committee
 - 51 referred to plenary
 - 112 cleared
- 75 Not looked at by the Committee

Proposed Legislation in progress left from last year

- Measures: 5
 - Learner Travel
 - Learning and Skills
 - Healthier School Meals
 - Playing Fields
 - Recycling
- LCOs: 8
 - Environment
 - Vulnerable Children
 - Affordable Housing
 - Welsh language
 - Domestic Fire Safety
 - Mental Health Reform
 - Bus and Coach Services
 - Flags on registration plates

New Proposed Legislation for 2008-9

- New Measures: 5

- WAG: Children and Poverty
 - WAG: Additional Learning Needs
 - WAG: Domiciliary Care
 - WAG: Local Government
 - WAG: Affordable Housing
- New LCOs: 6
 - WAG: Support for Carers (previously-Jones LCO)
 - WAG: Culture
 - WAG: Foundation Degrees
 - WAG: Read Meat Industry
 - Enterprise and Learning Committee: Traffic Free Routes
 - Standards of Conduct Committee: Commissioner for Standards

3. Economic Development and the Budget

Professor Peter Midmore, Aberystwyth University

3.1 Introduction

The sudden and worsening deterioration in economic prospects has changed the focus of discussion within both Assembly and the Administration in the autumn term, so that with regard to both economic development and the budget, longer-term strategic objectives have been eclipsed by a need to offset the vulnerability of the economy to this major shock. Wales, already the most lagging region of the United Kingdom in terms of GVA per capita, is feared to be more severely affected by the downturn in relative terms. Some differences in emphasis have emerged between political groupings, and these have sharpened as the extent of economic difficulties has become clear; the Conservatives have focused on public spending efficiency, calling for more use of the Private Finance Initiative and reductions in Business Rates, whereas the Liberal Democrats promoted the idea of a green 'New Deal', in particular using public resources to tackle the growing problem of fuel poverty.

Within the Enterprise and Learning Committee, most formal business has been devoted to education or transport issues, although the annual budget scrutiny of the Minister for Economic Development and Transport provided an opportunity to explore some wider issues. Several set-piece opposition debates on the economy took place in Plenary Session, and the Final Budget debate was coloured by discussion of short-term measures to offset the influence of the recession.

3.2 The Budget

Whereas in previous years where a minority Labour administration has struggled to produce an acceptable budget, and considerable drama surrounded the annual debate, the passage of the 2009/10 distribution of financial resources passed off relatively smoothly. The major constituents of the planned budget, shown in the table below, are broadly similar to those in 2008/09.

Figure 3.1 Planned Budget for 2009/10

| Assembly Final Budget | | |
|---|-----------|-----------|
| | 2008-09 | 2009-10 |
| | (£000) | |
| Central Services and Administration | 337,733 | 403,717 |
| Children, Education, Lifelong Learning and Skills | 1,990,574 | 2,056,729 |
| Economy and Transport | 1,839,410 | 1,898,973 |
| Environment, Sustainability and Housing | 697,040 | 673,941 |
| Health and Social Services | 5,848,869 | 6,109,558 |
| Heritage | 141,667 | 153,512 |
| Public Services and Performance | 61,118 | 59,084 |
| Rural Affairs | 384,269 | 438,787 |
| Social Justice and Local Government | 3,420,817 | 3,421,515 |
| Aggregate Budget including departmental expenditure limits and annual managed expenditure ⁸⁵ | | |

Although this year's Budget involves a considerable cash-terms increase, the effect of more rapid general inflation than envisaged in the Comprehensive Spending Review (from which it is derived) has been to reduce its value in real terms, and consequently maintaining service levels requires efficiency savings. Some of these were envisaged in the absorption of a number of Assembly Sponsored Public Bodies into the mainstream Civil Service, particularly the Welsh Development Agency. In the Enterprise and Learning Committee's budget scrutiny of the Economic Development and Transport Minister, Kirsty Williams asked: 'Can you give us an update on whether the projected savings have been achieved, and where you have been able to put that money into your budget?' Gareth Hall, the responsible civil servant answered: 'as well as making savings in our departmental running costs coming out of the mergers, and as well as having a major reduction in headcount, we are still making efficiencies in delivering all of the services and more',⁸⁶

The level of savings overall is likely to be of similar order of magnitude to that achieved last year, but as noted, the target is moving because of inflationary pressures. More generally, shifts in the overall distribution of resources raised controversy for opposition parties. While Central Services and Administration, and Health and Social Services, increased their overall share, the main loser was Social Justice and Local Government. Describing the major issue of concern as 'local

⁸⁵ See Final Budget Motion 2009-10 (GEN-LD7312): <http://www.assemblywales.org/hom-pdfviewer?url=gen-ld7312-e> and Final Budget Motion 2008-09 (GEN-LD6926): <http://www.assemblywales.org/hom-pdfviewer?url=gen-ld6926-e>

⁸⁶ Record of Plenary Proceedings, Enterprise and Learning Committee, 15 October 2008, p. 18: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=103398&ds=10/2008>.

government, which is the massive loser in this budget', Nick Bourne went on to criticise the resource standstill relating to economic development.

Given that we are entering this dreadful recession and this severe downturn, it seems strange that economic development should take such a knock, when we need to help people who are losing their jobs hand over fist in the private and public sectors, in higher education, in banking and in small business.⁸⁷

3.3 The Economic Contribution of Higher Education in Wales

Much of the Enterprise and Learning Committee's work over the previous year has involved their inquiry into the economic impact of higher education. No formal meetings during the autumn term considered this issue further, although it has been decided to issue an interim report early in the New Year. In parallel, the Minister for Children, Education, Lifelong Learning and Skills has set up a review of Higher Education with the Vice Chancellor of Bangor University, Mervyn Jones, as Chair. This latter investigation has two components, the first dealing with student finance and the second considering the purpose and role of higher education. Since much of this review will be germane to the Committee's inquiry, it makes sense to await the recommendations which emerge before producing a final report.

3.4 European Funding

One positive effect of current economic difficulties is the decline in the value of sterling, which has the effect of increasing the resources available from European sources which have been set in Euro terms. After considerable pressure from opposition parties, the First Minister was able to announce that

as a result of the strengthening of the Euro, I am pleased to be able to tell you that good progress has been made on committing additional resources. Approved project extensions to the value of £31 million have already been made, with more to follow.⁸⁸

Also, the implementation of new European regional policy funding streams, 'Jeremie' (Joint European Resources for Micro to Medium Enterprises) and 'Jessica' (Joint European Support for Sustainable Investment in City Areas) will provide opportunities to address the shortage of credit for Welsh businesses, although their intended long-term objectives may limit their impact where shorter-term liquidity problems exist.

⁸⁷ NAfW, Assembly Record of Plenary Proceedings, 9 December 2008, pp. 103-4: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20081209qv.doc>

⁸⁸ NAfW, Assembly Record of Plenary Proceedings, 30 September 2008, p. 15: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080930.doc>

A long-term initiative which came to prominence in the Enterprise and Learning Committee's discussions was 'Pride in Barry', an initiative established in 1994, which aims to increase civic awareness, promote environmental improvement and generate pride in the town. Barry is described as 'comparable [to] towns in the valleys of South Wales', with many local areas within the town in the most deprived areas in Wales, high levels of social rented accommodation, low shopper numbers and spend power, and a deficit of employment land and premises.⁸⁹ Hence, making use of the facility to directly petition the National Assembly, it was argued that revenues from the forthcoming sale of valuable Assembly Government-owned land should be reinvested to promote the regeneration of Barry. The petition was referred to the Committee, which decided to hold a hearing in the town, and published a report concluding that, despite being akin to a Convergence region town outside the Convergence Programme area, it does have considerable advantages and should not be considered a competitor for resources. It is eligible for Regional Competitiveness and Employment Programme funding, and more effort should be devoted to using those sources for regeneration. Also, as a candidate for strategic regeneration defined by the Deputy Minister, serious consideration should be given for future support from this source for the town. Giving practical expression to grass roots politics, Paul Haley, Chair of 'Pride in Barry', complimented the Committee: '...we have to say "Thank you very much2 for a process that allows small community groups such as ours to come here and create a big noise, as we know we have done through this process.'⁹⁰

3.5 The Economic Downturn

The major response to current economic difficulties as they affect Wales took the form of a series of economic 'Summits', held respectively on 16 October, 6 November and 5 December (the second was held in North Wales at St Asaph). Involving the Secretary of State for Wales, Paul Murphy, industrial and labour representatives as well as expert advisors on regeneration, each provided a platform

⁸⁹ NAFW, EL(3)-23-08, Paper 2: Evidence to the Committee on the 'Pride in Barry' petition - Vale of Glamorgan Council: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=99628&ds=11/2008>).

⁹⁰ NAFW, Record of Plenary Proceedings, Enterprise and Learning Committee, 5 November 2008, p. 27: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=105154&ds=11/2008>

for confidence-building announcements, including engaging with the financial sector to facilitate credit flows, speeding up major capital spending projects, prompt payment for goods and services procured by the public sector in Wales, and the enhancement of European Funding mechanisms to provide earlier impact. The final summit added new expenditures so that total additional spending brought forward amounted to £945 million. While there can be no doubt of the bona fide intentions of the One Wales coalition partners in tackling the effects of recession, there have been many instances of existing spending plans being repackaged and launched successively for public relations purposes. And, despite the Deputy First Minister's statement that '... my focus is placed squarely on doing all that we can to keep the impact of these unwelcome developments on individuals and communities to an absolute minimum ...'⁹¹, the limits of the devolved administration in Wales in managing economic cycles look as though they have been reached. This issue has been raised in previous Assembly Monitoring reports on economic development and the budget. Despite the Leader of the Opposition's enthusiastic support for better economic data, particularly quarterly measures of Gross Value Added ('there would be some advantage in it, as we would be able to react more quickly to a fast-changing economic position'⁹²), few of the levers necessary to manage the short-term fluctuations are available. As the real economy becomes progressively more affected by the effects of the financial crisis, more contentious discourse on this topic is sure to emerge.

⁹¹ NAfW, Assembly Record of Plenary Proceedings, 9 December 2008, p. 45:
<http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20081209qv.doc>

⁹² Assembly Record of Plenary Proceedings, 30 September 2008, p. 9:
<http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080930.doc>

4. Intergovernmental relations

Alan Trench, University of Edinburgh

4.1. Introduction and background

The period since the summer of 2008 has seemed relative quiet, at least on the formal front of intergovernmental relations. There has been more activity on two fronts: the acquisition by the National Assembly of legislative powers, and the broader constitutional debate. The former is discussed in detail below.

As regards the constitutional debate, the All Wales Convention (chaired by Sir Emyr Jones Parry) has begun its work, as has the Independent Commission on Funding and Finance in Wales (chaired by Gerald Holtham). The Commission's membership was announced and call for evidence issued on 7 October. Apart from Mr Holtham, its members are Professor David Miles, Chief UK Economist at Morgan Stanley and Visiting Professor at Imperial College, London, and Professor Paul Bernd Spahn, Professor Emeritus at Goethe University, Frankfurt am Main, Germany and adviser to the International Monetary Fund and World Bank.⁹³

Meanwhile, the debate in Scotland has moved on somewhat, with the publication of the interim report of the Commission on Scottish Devolution chaired by Sir Kenneth Calman and set up by the Scottish Parliament and the UK Government. The report is avowedly an interim report, so does not provide definitive conclusions or recommendations, but rather notes where it has reached in its thinking so far.⁹⁴ The report starts by noting that Scottish devolution has been a success, and discusses a number of areas in which further devolution might be contemplated. It considers some areas where the case appears to be strong, while in others it indicates that a strong case has not so far been made out, but it invites further evidence. On the most difficult issue, of tax-raising or varying powers and fiscal autonomy, it draws on the work of the Independent Expert Group chaired by Professor Anton Muscatelli, Principal of Heriot Watt University.⁹⁵ The report ties the nature of the tax system to

⁹³ Independent Commission on Funding and Finance in Wales:

<http://new.wales.gov.uk/icffw/home/about/thecommissioners/?lang=en>

⁹⁴ Commission on Scottish Devolution The Future of Scottish Devolution within the Union: A First Report (Edinburgh: Commission on Scottish Devolution, 2008), available at

<http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-01-vol-1-final--bm.pdf>

⁹⁵ Heriot Watt University, *First Evidence from the Independent Expert Group to the Commission on Scottish Devolution*:

the sort of welfare state that it supports, and emphasises that the more 'Scottish' the tax system, the more 'Scottish' also should be the tax system – implying less UK-wide redistribution as reliance on own sources of revenues increases. (The report does, however, emphasise the need for some sort of equalisation grant even if this were to happen.)

In addition, a House of Lords ad hoc Select Committee on the Barnett Formula has been established, with a remit to look at the purposes of the Barnett formula, whether it achieves those purposes, and to make suggestions about alternative arrangements. The committee is chaired by Lord (Ivor) Richard, and its membership also includes Lord Rowe-Beddoe, formerly chairman of the Welsh Development Agency.

4.2 Formal meetings: Meeting of the Joint Ministerial Committee and the British Irish Council

Despite the start made in June 2008 with the revival of the Joint Ministerial Committee, there have been no further meetings of the JMC (whether in plenary or the 'Domestic' format discussed at the June meeting).

There have been two meetings of the British Irish Council. A summit meeting took place on 26 September 2008 at Hopetoun House, outside Edinburgh.⁹⁶ The Welsh Assembly Government was represented by Rhodri Morgan, First Minister, and Ieuan Wyn Jones, Deputy First Minister, and the UK Government by Paul Murphy, Secretary of State for Wales. According to its communiqué, the meeting discussed a lengthy agenda, including such issues as energy, demography, social inclusion, the knowledge economy, the misuse of drugs, and transport. It considered the work of a strategic review of secretariat arrangements for the BIC, with a view to setting up a standing secretariat, and agreed to consider these further at another meeting in early 2009. It also agreed to conclude work streams on tourism, the knowledge economy, and eHealth, to set up a work stream on early years policy (to be led by Wales), and to consider further setting up work streams on child protection, housing and collaborative spatial planning (proposed by Northern Ireland), and digital inclusion

http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-15-hwu-first_evidence_report-web.pdf

⁹⁶ British-Irish Council, Summit Meeting *Communique*, 26 September 2008: http://www3.british-irishcouncil.org/documents/edinburgh_summit.asp

(proposed by the UK Government). The meeting also discussed the global financial crisis, and Ministers noted the value and importance of learning from and co-operating on measures taken and being considered in all BIC member administrations.

A sectoral BIC meeting on the Misuse of Drugs took place in London, at the Home Office, on 20 November. It was chaired by John Curran, Minister of State with responsibility for the National Drugs Strategy in the Irish Government's Department of Community, Rural and Gaeltacht Affairs.⁹⁷ The Welsh Assembly Government was represented by John Lenaghan, Head of Substance Misuse Policy Development Team in the Community Safety Division. According to the communiqué, the ministers were of the view that the sharing of experiences provided a good opportunity to learn from each other, and resolved to continue to do so. They are to meet again in late 2009.

4.3 The conferring of legislative powers on the National Assembly

Three legislative consent orders are under consideration at Westminster:

- *The National Assembly for Wales (Legislative Competence) (Housing) Order 2009*. This would confer legislative powers on the National Assembly regarding affordable housing (field 11 of Schedule 5 to the Government of Wales Act 2006). The Commons Welsh Affairs Committee published its report on this LCO on 7 October.⁹⁸ It gave detailed consideration to the proposed LCO and its use. The report was critical of the processes followed by the National Assembly in submitting the LCO (and of the failure to include framework powers in the Housing and Regeneration bill), and of the provisions in it to empower the Assembly to suspend or abolish right-to-buy for Council housing, suggesting that these powers should be subject to limitations. It also disputed the policy goals which the Assembly sought to achieve by this power, and whether suspension of right-to-buy was an appropriate means to achieve those goals. The report therefore involved an attempt by the Committee to control in considerable detail the powers that

⁹⁷ British-Irish Council, Ministerial Meeting of the Sectoral Group on the Misuse of Drugs 20th November 2008: <http://www3.british-irishcouncil.org/documents/drugs6.asp>

⁹⁸ House of Commons Welsh Affairs Committee *The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008* Seventh Report of Session 2007–08 HC 812 (London: The Stationery Office, 2008): <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/812/812.pdf>

the Assembly should have, and the policies that the Assembly would be able to pursue or not pursue. (It was later reported that an agreement had been reached between the Assembly Government and UK Government to require the Secretary of State's consent to any use of the power to suspend right-to-buy, in order to secure agreement on this LCO.⁹⁹

- *The National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008*. This would confer powers relating to agriculture (field 1 of Schedule 5 to the 2006 Act), relating to the promotion of the red meat industry. This was referred by the Secretary of State to Parliament for scrutiny on 7 October 2008, and on 14 October the Welsh Affairs Committee issued a call for evidence which closed on 10 November.
- *The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009*. This would enable the Assembly to provide support for carers, by conferring powers in field 15 of Schedule 5 to the 2006 Act. A draft LCO was introduced into the Assembly on 9 December, and on the same date referred by the Secretary of State to Parliament for scrutiny. The Commons Welsh Affairs Committee issued a call for evidence on 17 December, to close on 28 January 2009.

In addition, there have been rumours of a behind-the-scenes agreement about the terms of the long-delayed LCO on the Welsh Language, although no draft LCO has yet been published by the Assembly Government.

4.4 UK Government's Legislative programme and further proposals

The UK Government's legislative programme for 2008-09 was announced in the Queen's speech on 3 December 2008.¹⁰⁰ The programme contains 14 bills (and 7 draft bills). Six of the session's bills appear to affect devolved matters in Wales – the Business Rate Supplements Bill, the Local Democracy, Economic Development and Construction Bill, the Child Poverty Bill, the Health Bill, the Children, Skills and Learning Bill, and the Marine and Coastal Access Bill. Four of the bills have so far been published. The Business Rates Supplements bill confers powers on the Welsh Ministers to set supplemental rates (as it does on the Secretary of State, for

⁹⁹ M. Shipton, 'Power veto on Welsh housing' *Western Mail* (10 January 2009): <http://www.walesonline.co.uk/news/wales-news/2009/01/10/power-veto-on-welsh-housing-91466-22661284/>

¹⁰⁰ Office of the Leader of the House of Commons: <http://www.commonslsleader.gov.uk/output/Page2647.asp>

England). The Health bill contains executive powers for the Welsh Ministers regarding pharmaceutical services in Wales. The Local Democracy, Economic Development and Construction Bill contains framework powers adding two new matters to field 12 regarding organisational arrangements within local authorities. The Marine and Coastal Access bill adds two new matters to field 16 regarding access to coastal land and the establishment of a coastal footpath, as well as conferring executive powers on the Welsh Ministers mainly regarding Marine Coastal Zones and inshore fisheries.

In addition, the UK Government has set out proposals for the reform of welfare benefits in a white paper, which are expected to result in a bill to be introduced into Parliament during the coming session.¹⁰¹ The overall goal of the proposals is to reduce dependence on welfare benefits (notably Job Seekers' Allowance and Incapacity Benefit), and to encourage the movement of claimants into work. The plans rely on extensive collaboration from the devolved governments in providing training services to support claimants in this transition, which it admits have yet to be reached. The First Minister was publicly critical of the ideas lying behind these proposals, and their suitability in a Welsh context.¹⁰²

4.5 Financial issues: the Pre Budget Report

The UK Chancellor introduced the Pre Budget Report to Parliament on 24 November.¹⁰³ Given the global financial crisis, this was a further-reaching report than usual. The package included a stimulus package of some £2 billion, bringing capital spending forward from 2010-11 to 2009-10 and 2008-09. The Report notes that, 'in the case of devolved areas of spending, the devolved administrations may reprofile spending in line with the Barnett formula in the normal way' (para. 6.13). According to the 'regional press notice' for Wales, this will amount to £140 million for the Welsh Assembly Government. Of particular importance for the devolved governments is the increased target set for efficiency savings by the UK Government (of £5 billion in 2010-11), which also apply to the devolved governments. Details of these will be set

¹⁰¹ Department of Work and Pensions *Raising Expectations and Increasing Support: Reforming welfare for the future* Cm 7506 (London: The Stationery Office, 2008): <http://www.dwp.gov.uk/welfarereform/raisingexpectations/fullversion.pdf>

¹⁰² 'Ministers' benefit reform worries' *BBC News Online*, (10 December 2008): <http://news.bbc.co.uk/1/hi/wales/7773960.stm>

¹⁰³ HM Treasury, *Facing global challenges: Supporting people through difficult times. Pre Budget Report 2008* Cm 7484 (London: The Stationery Office, 2008): http://www.hm-treasury.gov.uk/d/pbr08_completereport_1721.pdf

out in full in the 2009 UK Budget, but applying the usual population proportion to the figure of £5 billion (in accordance with the Barnett formula) would suggest that the Assembly Government's budget will be reduced by a further £292 million in 2010-11.

4.6 House of Commons Welsh Affairs Committee

The committee's role in relation to LCOs is noted above. In addition, the committee has launched inquiries on the 2012 Olympics and their potential benefits for Wales (but not, it appears, looking at the financial implications given that spending on the Olympics is failing to trigger consequential payments under the Barnett formula).¹⁰⁴ It has also announced an inquiry into Digital Inclusion in Wales.¹⁰⁵ The committee also has underway an inquiry into Globalisation and Its Impact on Wales.

The committee has also published another report arising from its wide-ranging inquiry into cross-border public services, this time on further and higher education.¹⁰⁶ The report notes various forms of divergence in policy that have emerged with devolution, notes the higher education 'funding gap' in Wales, and is critical of co-ordination arrangements between governments in general and in particular the approaches taken by the UK Department for Innovation, Universities and Skills.

¹⁰⁴ House of Commons Welsh Affairs Committee Press Notice No 36, 'Inquiry into the potential benefits of the 2012 Olympics and Paralympics for Wales': http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn3607_08.cfm

¹⁰⁵ House of Commons Welsh Affairs Committee Press Notice No 37, 'Digital Inclusion in Wales': http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn3707_08.cfm

¹⁰⁶ House of Commons Welsh Affairs Committee, *Cross-border provision of public services for Wales: Further and higher education* First Report of Session 2008–09 (London: The Stationery Office, 2008): <http://www.publications.parliament.uk/pa/cm/cmwelaf.htm>

5. Relations with Europe and Local Government

Aled Elwyn Jones, StrataMatrix & Dr Elin Royles: Institute of Welsh Politics, Aberystwyth University

5.1 Europe

5.1.1 European and External Affairs Committee

Committee Report into CAP Health Check

In October, the European and External Affairs Committee published its report into the CAP Health Check. Between June and September, the Committee had taken evidence from a range of witnesses, including Minister for Rural Affairs, Elin Jones AM, with the aim of assessing the potential impact of the Commission's proposals on agriculture and land management in Wales, gaining the views of stakeholders on the proposals and making recommendations to the Welsh Assembly Government for their negotiations with the other UK administrations and member states.

The Committee found a divergence of views between the farming unions on the one hand and the Countryside Council for Wales and Wales Environment Link on the other, with the latter wishing to see CAP move further from production-based payments to supporting environmental and conservation.

Among the Committee's main recommendations were that the Minister should:

- ensure that recognition is given to the role played by agriculture in providing food security;
- continue to push for the power to make decisions on historic payments at a Wales level;
- welcome the proposed abolition of set-aside;
- reject the proposal to introduce progressive modulation as a limit to payments to large farms;
- continue with her support for the abolition of dairy quotas.¹⁰⁷

Committee Inquiry Into Subsidiarity

¹⁰⁷ NAFW, European and External Affairs Committee, Report – Inquiry into CAP Health Check: <http://www.assemblywales.org/gen-ld7274-e.pdf>

In response to the non-ratification of the Lisbon Treaty in the wake of the Irish referendum 'no' vote and concerns that its provisions on subsidiarity would not come into effect, the Committee decided in July to undertake an inquiry into the provision of formalised subsidiarity monitoring mechanisms between the legislatures and governments of the UK.

Thus far the Committee has held two evidence sessions and heard evidence from seven witnesses, including the Secretary General of the Committee of the Regions and academics from Cardiff University.

The Committee will consider its draft report at its meeting in February.

5.1.2 Welsh Assembly Government Activity

The First Minister's report¹⁰⁸ to the European and External Affairs Committee's November meeting reported no less than 48 different international activities carried out by the WAG Ministers between June and November 2008. This included the attendance of the Minister for Rural Affairs at the Council of Ministers when the CAP Health Check was discussed.

Foreign visits of significance over the period include the visit of King Letsie III of Lesotho to Wales in November. The King was in Wales to see the work of Dolen Cymru, an organisation which promotes friendship and understanding between Wales and Lesotho.

Lesotho is one of the countries that is supported as part of the Welsh Assembly Government's Wales for Africa programme, and the work of Dolen Cymru contributes to delivering WAG's Millennium Development Goals.¹⁰⁹

Priorities for coming period

The Welsh Assembly Government has identified the EU Budget Review, Climate Change and Engaging with the new European Parliament and Commission as the

¹⁰⁸ NAFW, European and External Affairs Committee (13 November 2008), EUR(3)-10-08. Paper 1: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=106216&ds=11/2008>

¹⁰⁹ WAG Press release, First Minister welcomes HM King Letsie III of Lesotho to Wales, 12 November 2008: <http://wales.gov.uk/news/topic/officefirstminister/2008/081112lesotho/?lang=en>

three overarching themes that will serve to prioritise and inform its EU-related work over the coming year.

The budget review is particularly key for Wales given that it has benefited greatly from structural funds expenditure in recent years, and the centrality of the Common Agricultural Policy to supporting the farming industry in Wales. The Commission intends to issue a White Paper, setting out its views on the challenges, structure and delivery of the post-2013 budget sometime during 2009 and to follow it up with proposals in 2010 and beyond. WAG's primary goal is to influence the process so that Welsh interests are taken on-board fully during the review.

Elections to the European Parliament will be held in June 2009, and Wales will have at least three new MEPs given that three of the four incumbents - Glenys Kinnock, Eluned Morgan and Jonathan Evans - will be standing down. A new College of Commissioners will be appointed later in the year, subject to the approval of the newly elected Parliament.

5.2 Local Government

The budget settlement highlights the tense and sometimes fractious relations between the Assembly Government and local government. This has unfortunately been characteristic of the third term. Attempts to renew partnership working are gradually leading towards establishing a new framework for central-local arrangements to more adequately reflect current relations.

5.2.1 Local Government Finance

The local government financial settlement demonstrated the tension between local government and the Assembly Government. In the final budget for 2009-10, the second year in the three-year settlement cycle for local government, there was additional funding to the Revenue Support Grant (RSG) of £10.9 million for 2009-10 and £10.5 million for 2010-11. Therefore, the RSG for 2009-10 is £3.9 billion, rising to £4 billion in 2010-11.¹¹⁰ This represents an average annual increase of 2.9% for

¹¹⁰ WAG Press Release, '£3.9 billion for Council Services in Wales' (10 December 2008) at: wales.gov.uk/news/topic/localgovernment/2008/2798482/?lang=en; NAW, Health, Wellbeing and Local Government Committee, 'Scrutiny of the Draft Budget – Minister for Social Justice and Local Government HWLG(3)-22-08 paper 2 (15 October) at: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=100867&ds=10/2008>

local authorities for 2009-10 with a minimum increase of 1.5%. Amongst the additional grants are £20 million in 2009-10, and £40 million in 2010-11 for delivering the Foundation Phase educational initiative.

On announcing the final details, Brian Gibbons, Minister for Social Justice and Local Government, recognised the pressures but argued that the increase was realistic given the level of WAG's reserves and future inflation projections.¹¹¹ The emphasis in previous comments was on the need to focus on partnership and collaboration and driving forward the efficiency agenda.¹¹² He argued: 'if public services in Wales are to continue to improve and sustain services, they cannot rely on increased allocations; they must find new and innovative ways of working'.¹¹³

In the context of budget discussions, WLGA was up-beat in highlighting how performance data demonstrate sustained improvement despite financial pressures. Councillor Derek Vaughan argued that a below-inflation settlement would threaten continued improvement in the context of increasing costs.¹¹⁴ In its evidence to the Finance Committee on the draft budget WLGA drew attention to disparities in funding allocations: almost double the increase in the Welsh NHS budget compared to local government, despite social services placing a heavy financial burden on local authorities.¹¹⁵ Attention was drawn to the extra pressures from efficiency savings: 'the annual local government discussions assume a 1% efficiency saving from the revenue support grant which equates to approximately £38 million per annum'.¹¹⁶ WLGA requested re-investing this funding, equivalent to a 4% council tax rise, in

¹¹¹ *ibid.*

¹¹² *ibid.*

NAfW, Health, Wellbeing and Local Government Committee Transcript (22 October 2008) at: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=103362&ds=10/2008>.

¹¹³ *ibid.*

¹¹⁴ WLGA Press Release, 'Council services continue to improve, despite financial pressures', (2 October 2008) at: www.wlga.gov.uk/english/press-releases/council-services-continue-to-improve-despite-severe-financial-pressures/.

¹¹⁵ NAfW, Finance Committee, WAG draft budget 2009-10: response from WLGA, FIN(3) 14-08(p3) (16 October 2008) at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-fin-home/bus-committees-third-fin-agendas.htm?act=dis&id=101090&ds=11/2008;

WLGA Press Release, 'Assembly Government Draft Budget – It's not in the ball park' - says WLGA' (7 October 2008) at: www.wlga.gov.uk/english/press-releases/assembly-government-draft-budget-its-not-in-the-ball-park-says-wlga/.

¹¹⁶ WLGA Press Release, 'WLGA calls on the Assembly to act now to help council tax payers' (7 October 2008) at: www.wlga.gov.uk/english/press-releases/wlga-calls-on-the-assembly-to-act-now-to-help-council-tax-payers/.

local authorities to minimise council tax increases.¹¹⁷ It called for a sparsity grant for local authorities in rural areas, for greater recognition of rising costs and argued that the 1.5% floor should have been set at 2%.¹¹⁸ In response to publication of the provisional settlement, local government contrasted its 2.9% increase with WAG's own budget increase of 4.8% and called for emergency discussions.¹¹⁹ On publication of the final settlement, WLGA leader called it 'an entirely predictable local government settlement that fundamentally fails to address the extreme pressures facing local government.....The 'One Wales' government is clearly spreading resources too thinly and front line services are being penalised as a result'.¹²⁰

While the overall budget process and settlement highlight the tension in relations, there was renewed partnership working. The main contrast is additional funding to support the Foundation Phase. WLGA welcomed the close working relationship that had developed with the Education Minister, Jane Hutt, in identifying the costs. WLGA Leader, John Davies explained: 'Following the problems of last year the very productive recent discussions we have had with Jane Hutt on the foundation phase shows us at our best when the Assembly and local government construct a common understanding and joint case'.¹²¹ In its evidence to the Finance Committee on the draft budget, WLGA argued that 'The partnership approach which underpins this must be way forward in future discussions as budgets tighten'.¹²²

Publication of the draft settlement coincided with the harsh reality of the international economic climate striking local government. This included the news that nine local authorities in Wales had £60 million of investment frozen in Icelandic bank accounts. The local authorities affected confirmed that the situation did not place them in

¹¹⁷ Ibid.

¹¹⁸ WLGA Press Release, 'WLGA Leader, Cllr John Davies – Annual Conference Speech (9 October 2008) at: www.wlga.gov.uk/english/press-releases/conference-speech-2008-wlga-leader-cllr-john-davies/.

¹¹⁹ WLGA Press Release, 'Emergency talks needed to avert funding crisis says WLGA' (15 October 2008) at: www.wlga.gov.uk/english/press-releases/emergency-talks-needed-to-avert-funding-crisis-says-wlga/.

¹²⁰ WLGA Press Release, 'Settlement – entirely predictable and completely inadequate' (10 December 2008) at: www.wlga.gov.uk/english/press-releases/settlement-entirely-predictable-and-completely-inadequate-says-wlga/.

¹²¹ WLGA Press Release, 'WLGA Leader, Cllr John Davies – Annual Conference Speech (9 October 2008) at: www.wlga.gov.uk/english/press-releases/conference-speech-2008-wlga-leader-cllr-john-davies/.

¹²² NAFW, Finance Committee, WAG draft budget 2009-10: response from WLGA, FIN(3) 14-08(p3) (16 October 2008): <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-fin-home/bus-committees-third-fin-agendas.htm?act=dis&id=101090&ds=10/2008>.

serious financial difficulties. WLGA emphasised that it would not affect service provision or local authority payroll services. Talks were held between WLGA, WAG Ministers, Paul Murphy as Secretary of State for Wales and the Local Government Association in order to press the case at the UK level.¹²³ Assembly Government statements expressed support for the UK Government's pressure on the Icelandic Government to release public funds from UK authorities.¹²⁴ While WAG expressed willingness to consider providing assistance to individual authorities in difficulty through borrowing or adjusting payment dates, it made clear that it could not provide assurances on underwriting possible losses.¹²⁵

5.2.2 Improvement

The improvement agenda continues to gather pace through specific policy initiatives, the Local Service Boards, Improvement Agreements and legislation.

As the Local Service Boards (LSBs) model is rolled out across Wales, new guidance was issued and following its inquiry into LSBs, the Health, Wellbeing and Local Government Committee produced its recommendations. In identifying priorities for local service improvement, Andrew Davies, the Minister for Finance and Public Service Delivery explained that there would be greater emphasis on pooling resources and budgets and creating stronger integration between Local Service Boards and the spatial plan groups. It was envisaged that the six Spatial Plan Ministers would engage with local service boards to enhance links between local and regional agendas and promote working across local authority areas.¹²⁶ With regards to the committee's inquiry, most interesting with respect to Assembly Government-local government relations is the recommendation that the Minister 'provides clarification of the role of LSBs as delivery mechanisms for the One Wales

¹²³ WLGA Press Release, 'No risk to payroll services, reassures WLGA' (13 October 2008) at: www.wlga.gov.uk/english/press-releases/no-risk-to-payroll-services-reassures-wlga/.

¹²⁴ WAG Press Release, 'Icelandic banks' (10 October 2008) at: wales.gov.uk/news/topic/localgovernment/2008/081010icelandic/?lang=en.

¹²⁵ NAFW, Health, Wellbeing and Local Government Committee, HWLG(3)-29-08 paper 1: 'Department for Social Justice and Local Government. Update on developments and general priorities for local government (10 December 2008) at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=108134&ds=12/2008.

¹²⁶ NAFW, Health, Wellbeing and Local Government Committee, 'Scrutiny of the Draft Budget – Minister for Finance and Public Service Delivery' HWLG(3)-23-08 paper 1 (15 October 2008) at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=100857&ds=10/2008.

Government'.¹²⁷ Their role had generally been assumed to be as a mechanism for partnership working in solving locally-determined 'hard to solve' issues.¹²⁸

The legislative dimension to the Improvement Agenda is the proposed Local Government (Wales) Measure, introduced to the Assembly on 22 September. It is seen as a way of realising commitments made in the *A Shared Responsibility* (the local government policy statement published in March 2007) with regards to local government service improvement and community planning. The Measure aims to change how public authorities account for local service provision and improvement, enhance citizen and local partner involvement in community planning and reform community strategy formulation.¹²⁹ The proposed Measure has been subject to the Stage 1 committee process with a dedicated Assembly scrutiny committee taking evidence.¹³⁰ It is expected that the Measure will be passed by May 2009.¹³¹

5.2.3 Scrutiny

In addition to improvement, reform of scrutiny was another area where WAG made a number of commitments in the *A Shared Responsibility* policy statement. In this case, WAG has experienced difficulties in gaining legislative competence over governance and scrutiny issues but further negotiations have secured Home Office agreement.¹³² Consequently, provisions in the Local Democracy, Economic Development and Construction Bill published in December 2008 transfer legislative competence to the Assembly over the decision-making structures of local government and overview and scrutiny.¹³³ Six reforms outlined in *A Shared Responsibility* require measure-making powers associated with governance and scrutiny arrangements in local authorities. It

¹²⁷ NAFW, Health, Wellbeing and Local Government Committee 'Inquiry into Local Service Boards' (December 2008) p. 10 at: www.assemblywales.org/cr-ld7339-e.pdf.

¹²⁸ Ibid.

¹²⁹ WAG Press Release, 'Assembly measure seeks local service improvements (22 September 2008) at: wales.gov.uk/news/topic/localgovernment/2008/080922measure/?lang=en.

¹³⁰ See Proposed Local Government (Wales) Measure committee at: www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-lg.htm

¹³¹ NAFW, Health, Wellbeing and Local Government Committee, HWLG(3)-29-08 paper 1: 'Department for Social Justice and Local Government. Update on developments and general priorities for local government (10 December 2008): <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=108134&ds=12/2008>.

¹³² NAFW, Health, Wellbeing and Local Government Committee, HWLG(3)-22-08 Transcript (8 October 2008) at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=101155&ds=10/2008#rhif2

¹³³ Welsh Assembly Government, Local Government E-bulletin #27 (December 2008) - not available on website at time of publication.

is expected that legislative competence will be obtained by the summer of 2009 and an Assembly Measure could be developed during the 20010/11 Assembly session.¹³⁴ It is possible that the Health, Wellbeing and Local Government Committee's current inquiry into local government scrutiny since 2004 will feed into WAG's thinking on the content of the proposed Measure.

5.2.4 A new agreement on WAG-local government relations?

In response to the clear dissatisfaction on both sides with the current arrangements for WAG and local government relations during the current term, some progress is being made towards formulating a new agreement. In his inaugural speech to the WLGA conference, WLGA Leader John Davies called for a concordat codifying local government's partnership with the Assembly. He requested a commitment to unhypothecate some grants that are external to the local government settlement and an agreement on funding new responsibilities.¹³⁵ During his appearance before the Health, Wellbeing and Local Government Committee on 10 December Brian Gibbons suggested a renewed effort on the Assembly Government's part to improve partnership relations with local government. A paper explained:

The Assembly Government continues to be committed to working in close and productive partnership with local authorities. We aim for a constructive relationship which will underpin the delivery of the Government's strategic aims while supporting authorities to deliver excellent local services.¹³⁶

New strategic arrangements, likely to be called Outcome Agreements, are to be piloted as a framework to set priorities and deliver services based on outcomes and greater financial flexibility. The Essex-Jones agreement which has been the basis of relations since 2003 will be refreshed to 'reflect this new political and policy context in which we operating (sic)'.¹³⁷ Recognition of the need to define roles, responsibilities and accountabilities has increased and was framed within the broader context of how central-local government relations operate both in Scotland and England. While

¹³⁴ NAFW, Health, Wellbeing and Local Government Committee, Transcript (10 December 2008) at: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=109580&ds=12/2008#2;

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¹³⁵ WLGA Press Release, 'WLGA Leader, Cllr John Davies – Annual Conference Speech (9 October 2008) at: www.wlga.gov.uk/english/press-releases/conference-speech-2008-wlga-leader-cllr-john-davies/

¹³⁶ NAFW, Health, Wellbeing and Local Government Committee, HWLG(3)-29-08 paper 1: 'Department for Social Justice and Local Government. Update on developments and general priorities for local government (10 December 2008): <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=108134&ds=12/2008>.

¹³⁷ Ibid.

progress is slow, with both sides in support of developing a concordat it is clear that Wales intends to adopt a model similar to Scotland.¹³⁸

5.2.5 Conclusions

In an attempt to improve what continues to be a fractious relationship, there have been some advances towards developing a concordat. Given the public statements on both sides, it seems that this is now the preferred option on both sides. While the budget settlement underlined the extent of tension in Welsh Assembly Government – local government relations, the example of joint working on the Foundation Phase illustrated that constructive partnership remains possible between Ministers and local government. The worsening economic climate and the more limited Assembly finances certainly necessitates action in this direction.

¹³⁸ NAFW, Health, Wellbeing and Local Government Committee, Transcript (10 December 2008): <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=109580&ds=12/2008>

6. Elections, Parties and Public Attitudes

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6.1 Elections

There were no parliamentary or National Assembly by-elections in Wales during the last four months of 2008. Several local government by-elections were held in Welsh local authorities during this time period. The results are summarised in the table below. Examining the results in detail, it is difficult to deduce any general pattern in changes in party support.

Figure 6.1: Local Government By-Elections, Sept-December 2008

| <i>Ward</i> | <i>Council</i> | <i>Month</i> | <i>Winner</i> | <i>Change?</i> | <i>Swing</i> |
|-------------|------------------------|--------------|---------------|----------------|------------------|
| Priory | Abergavenny TC | September | Lib-Dem | LD Gain | not known |
| St Dogmaels | Pembrokeshire CC | September | Independent | Ind Gain | 29.6% LD to Ind |
| Ystalfera | Ystalfera TC | October | Labour | Lab Gain | not known |
| Town | Merthyr Tydfil CBC | October | Labour | Lab Gain | 17.4% LD to Lab |
| Glyncoch | Rhondda Cynon Taff CBC | December | Labour | Lab Hold | 26.6% Lab to Ind |

Source: www.gwydir.demon.co.uk/byelections

The most important election held during the period covered by this report, however, was that for the leadership of the Welsh Liberal Democrats. The contest, to succeed Mike German, drew two candidates, both of whom have been members of the National Assembly since 1999: Jenny Randerson and Kirsty Williams. The two had taken opposing positions during negotiations over the possible 'Rainbow' coalition after the 2007 National Assembly election: Randerson had strongly supported the Lib-Dems going into coalition with Plaid Cymru and the Conservatives; Williams had been the most high-profile opponent of the idea. The leadership campaigns of the two also had some clear differences in emphasis. Randerson made the most of her experience as a (generally successful) Assembly Government minister between 2000-03; Williams spoke on several occasions about challenging what she labelled a 'cosy consensus' around Cardiff Bay in a manner that at least hinted at a more confrontational approach to the Lib-Dems' political opponents.

The leadership contest was formally launched in early October (although Williams had long-since made clear that she would be a leadership candidate); the results of the postal ballot of the party's Welsh membership were announced on 8 December. Despite expectations of a very close result, in the event Williams won a fairly clear victory, with 910 votes (59.9%) to Randerson's 612 (40.1%) on a 69.44% reported turnout. The likely implications of this result for the Welsh Lib-Dems' future are discussed in the next section of this report. But one immediate implication of the result was to show that the party has little more than 2000 members across the whole of Wales. Addressing this weakness in the Liberal Democrats' grass roots must surely be a major priority for Kirsty Williams.

6.2. Parties

Kirsty Williams has argued for the development of a '31 seat' strategy' by which the Welsh Liberal Democrats would attempt to become the majority party in the National Assembly.¹³⁹ It is difficult to credit this as being remotely credible, even over the course of several, extended political lifetimes. Of more interest and relevance, therefore, is the question of how a Williams-led party is likely to behave in any future coalition negotiations. Some clues may be gleaned from Williams' 2007 Institute of Welsh Politics lecture, the most extensive account to date of her political views.¹⁴⁰

While her condemnation of the 'cosy consensus' alleged to characterise Welsh politics might suggest that the Liberal Democrats will embrace principled oppositionism (although this might in practice equate to marginalised irrelevance), Williams was also at pains to stress her progressive credentials, and in particular her hostility to Thatcherism and its legacy. Indeed a careful reading of the lecture suggests that, in the long run, Williams' election makes a reformed Lab-Lib coalition more likely. Apropos of which it is interesting to note that Rhodri Morgan has recently floated the possibility of a change in his party's stance on PR for local government elections – this specifically in order lay the basis for future Lab-Lib co-operation.¹⁴¹

¹³⁹ See, for example, her contribution to Rhodri Morgan, Nick Bourne, Kirsty Williams, Adam Price, *Politics in 21st Century Wales* (Cardiff: IWA, 2008).

¹⁴⁰ K. Williams, *Breaking Through the Consensus*: (Aberystwyth: Institute of Welsh Politics, 2008):

http://www.kirstywilliams.org.uk/speeches/000006/breaking_through_the_consensus.html

¹⁴¹ Again see his contribution to Rhodri Morgan, Nick Bourne, Kirsty Williams, Adam Price, *Politics in 21st Century Wales* (Cardiff: IWA, 2008). See also the analysis by Bestan Powys at <http://www.bbc.co.uk/blogs/thereporters/betsanpowys/2008/11/never.html>

Morgan proposed that local referendums on the introduction of PR would be allowed on an authority by authority basis. It remains to be seen whether this proposal will make any headway within the Labour party; nor is it clear whether this would be enough to make coalition government attractive to Williams; nor indeed whether Williams could carry her own party even if the latter were to be the case. But this is clearly 'one to watch'.

While Labour itself is almost universally expected to undergo a leadership election at some point in 2009, the contest itself has yet to commence and currently remains at the phoney war-stage with two candidates continuing to position themselves with an eye to future hostilities. The favourite remains Carwyn Jones, but Huw Lewis used the 2008 Institute of Welsh Politics Annual Lecture to lay the intellectual foundations for his campaign.¹⁴² In the lecture, Lewis walked a delicate line. While stressing, on the one hand, his credentials as a life-long devolutionist, Lewis also rejected talk of further constitutional change in favour of concentration on policy delivery. The latter is, of course, a position likely to find favour among devo-sceptic members of the Welsh Parliamentary Party. But illustrating perfectly the limitations of the status quo, it is clear that the centre point of Lewis policy platform – a National Wealth Fund for Welsh children – would itself require primary legislation. Constitutional and policy-related questions are not easily separated in the context of Wales's current, Byzantine constitutional dispensation.

The final weeks of 2008 saw the future of Nick Bourne as Welsh Conservative leader called into doubt in the sound and fury surrounding Bourne's expense claims. Jonathan Morgan and Darren Millar are currently being tipped as likely candidates for the succession, this despite the latter having only joined the National Assembly in May 2007. Assuming that he does indeed harbour leadership ambitions, surely it is more likely that Millar will bide his time?

At any rate, much more significant for the Welsh Conservatives – and Welsh politics – is the debacle of the Roberts Report. Commissioned by David Cameron to review the Tories position on devolution, Lord Roberts' report was promised for the summer of 2008. In the event, an 'interim report' was announced (though not circulated) on the day of Barack Obama's election as US President – as good a day on which to

¹⁴²H.Lewis, *Wales in 2020*, Available at <http://wales2020.greenoughm.fastmail.fm/IWP%20Speech>

bury an alternative political story as might possibly be imagined!¹⁴³ While few beyond a very select group have been allowed to view what is apparently a very lengthy document, the report has nonetheless served to commit the Conservative Party to supporting the form of devolution underpinned by Part Three of the 2006 Government of Wales Act. This despite the Welsh Conservative leadership's eloquent and very far-reaching criticism of that dispensation, and the process by which it was brought into being. Viewed from a longer-term perspective, Roberts seems to have sealed Bourne's fate much more effectively than any perceived indiscretions over an iPod. Since becoming party leader in Wales, Bourne has attempted to render the party's image in Wales more 'Welsh', and this in large part by making it more devolution friendly. But with Roberts effectively championing the views of three Welsh Conservative MPs – devo-sceptics to a man – it appears that that strategy has reached a dead-end. It remains to be seen what options now remain open to Bourne or any potential successor.

With regards to Plaid Cymru, while the party is clearly increasingly irritated by the continuing failure of the UK government to elevate any of its nominated figures to the House of Lords, as yet this has had no wider repercussions. Indeed perhaps the only Plaid-related development of note since the previous report were Adam Price's comments to the effect that he has ambitions to stand for election to the National Assembly, strongly implying that he would wish to do so as his party's candidate for his Westminster constituency of Carmarthen West and Dinefwr.¹⁴⁴ While such a development would have a significant impact on Welsh politics and would be very much welcomed as such by Plaid members, it is safe to assume that this sentiment would not be shared by the seat's present National Assembly incumbent, Rhodri Glyn Thomas.

6.3. Public Attitudes

October 2008 saw the publication of findings from a major new survey of public attitudes conducted by the Institute of Welsh Politics (IWP) and the survey company GfK NOP on behalf of the National Assembly for Wales Commission. The survey, which was conducted by telephone during the preceding summer, comprised the

¹⁴³ A. Browne, 'Tory study urges devolution probe', *Western Mail* (5 November 2008): http://news.bbc.co.uk/1/hi/wales/wales_politics/7710828.stm

¹⁴⁴ M. Shipton, 'Plaid MP wants to be AM' *Western Mail*, (23 September 2008): <http://www.walesonline.co.uk/news/welsh-politics/welsh-politics-news/2008/09/23/plaid-mp-wants-to-be-an-am-91466-21877829/>

largest sample for a survey about political attitudes in Wales ever conducted (with more than 2,500 respondents). This is valuable because it allows for substantial sub-samples to be developed, and valid comparisons to be made between different groups within the overall population.

The published findings made a number of important comparisons between the different regions of Wales. Notwithstanding the emphasis that has long been placed on Wales' political divisions, the evidence from this new survey strongly supported other work on public opinion conducted over the past decade by the IWP which points to a substantial homogenisation of attitudes to devolution having occurred in the years since the 1997 referendum. For instance, when survey respondents were asked to choose their most-preferred option for how Wales should be governed from four possibilities (Independence, a Parliament with substantial law-making powers, an Assembly with only limited law-making powers, and No Devolution), the results that emerged were remarkably consistent across the five electoral regions of Wales. Independence was the least popular option in all five regions; No Devolution was the second least popular in all five regions. And the Parliament option was chosen by a plurality in all five regions.

The survey also made some interesting enquiries into public knowledge of the devolution settlement in Wales. This suggested that public understanding of the broad parameters of how Wales is now governed is fairly high, if somewhat less than universal. Thus, more than three-quarters of respondents correctly identified the correct statement out of several options for describing the powers of the devolved institution (see Figure 1).

Figure 6.2: Understanding of Devolution Settlement (%) 2008

| 'WHICH OF THE FOLLOWING STATEMENTS IS TRUE? THE NATIONAL ASSEMBLY FOR WALES...' | % |
|---|----|
| 'Can pass any laws on any subjects it wishes' | 3 |
| 'Has no powers to make laws' | 9 |
| 'Has powers to make laws in a number of areas, and these can be expanded with the agreement of the UK parliament' | 77 |
| Don't Know | 11 |

There is also some evidence of public knowledge in areas where devolution has a direct impact on many of their lives. In a 'knowledge quiz' where respondents to the survey had to give True/False answers to a number of statements about devolution in Wales, almost 90% correctly identified the powers of the devolved chamber in the field of education – rather more than did so in the fields of defence and taxation.

Figure 6.3: Political Knowledge Quiz, (%) 2008

| ITEM | % RIGHT ANSWER | % WRONG ANSWER | % DON'T KNOW |
|---|-------------------|-------------------|-----------------|
| 'The National Assembly for Wales cannot change the basic rate of income tax in Wales' | 57 | 32 | 11 |
| 'The National Assembly for Wales can take decisions about defence policy' | 71 | 14 | 15 |
| 'The National Assembly for Wales can decide how much of its budget is spent on schools' | 89 | 4 | 7 |
| 'The National Assembly for Wales has about 100 elected members' | 16 | 49 | 35 |
| 'The Presiding Officer of the National Assembly for Wales is Rhodri Morgan' | 14 | 70 | 15 |

However, public knowledge of the details of devolution – even some fairly fundamental details such as the distinction between the National Assembly (the legislature) and the Welsh Assembly Government (the executive) – appears very low. Hence, only 14% of respondents responded correctly to the statement that 'The Presiding Officer of the National Assembly for Wales is Rhodri Morgan'. Whether this finding is more wounding to the pride of the Presiding Officer or the First Minister is open to debate.

6.4. Conclusion

While the past few months have represented a reasonably clear space in what is now a very crowded political calendar, there have been few signs of a let up in political activity. We can expect a further ratcheting up as we approach the European elections in June. Speculation also continues about a UK general election. But as the

focus switches to another political level, AMs may console themselves with the knowledge that public attitudes evidence has now overwhelmingly confirmed the status of devolution as the settled will of the Welsh electorate.

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NAfW, European and External Affairs Committee: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home.htm>

NAfW, Finance Committee: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-fin-home.htm>

NAfW, Health, Wellbeing and Local Government Committee: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlq-home.htm

NAfW, News: <http://www.assemblywales.org/newhome.htm>

NAfW, Records of Proceedings: <http://www.assemblywales.org/bus-home/bus-record-of-proceedings.htm>

Office of the Leader of the House of Commons:

<http://www.commonleader.gov.uk/output/Page2647.asp> National Assembly for Wales: www.assemblywales.org

Older People's Commissioner for Wales: www.olderpeoplewales.com/

United Nations Programme on Ageing: www.un.org/ageing/un_principles.html

WAG, Cabinet Statements 2007:

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/?lang=en>

WAG, Consultations: <http://new.wales.gov.uk/consultations/?lang=en>

WAG, Independent Commission on Funding and Finance in Wales:

<http://new.wales.gov.uk/icffw/home/about/thecommissioners/?lang=en>

WAG, Press Releases: <http://new.wales.gov.uk/news/topic/?lang=en>

WAG, Publications: <http://new.wales.gov.uk/publications/?lang=en>

Wales Legislation Online: www.wales-legislation.org.uk

WCVA: www.wcva.org.uk

WLGA: <http://www.wlga.gov.uk/>

WLGA Press Releases: <http://www.wlga.gov.uk/english/news/>