

DEVOLUTION MONITORING PROGRAMME 2006-08

Wales Devolution Monitoring Report

May 2008

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 and Akash Paun at the Constitution Unit, UCL and the team leaders are as follows:

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Abbreviations and Acronyms

AM	Assembly Member
CAP	Common Agricultural Policy
EEAC	European and External Affairs Committee
EIB	European Investment Bank
EU	European Union
GoWA	Government of Wales Act
GVA	Gross Value Added
IPPR	Institute for Public Policy Research
LCO	Legislative Competence Order
LHB	Local Health Board
LSB	Local Service Board
MP	Member of Parliament
NAfW	National Assembly for Wales
OPSI	Office of Public Sector Information
RSPCA	Royal Society for the Prevention of Cruelty to Animals
SCDI	Scottish Council for Development and Industry
WAG	Welsh Assembly Government
WASC	Welsh Affairs Select Committee
WEFO	Wales European Funding Office
WLGA	Welsh Local Government Association

Summary and Introduction

This is the eighth Devolution Monitoring Report to be produced by the team led by the Institute of Welsh Politics at Aberystwyth University. The report covers events between January and early May 2008.

The resignation of Peter Hain as Secretary of State for Wales in January 2008 was the event that attracted probably the greatest amount of public attention during the period covered by this report. It was particularly ironic that Hain went just as the 2006 Government of Wales Act, the content and political progress of which he had masterminded, was bearing fruit. This fruit included the passage of the first 'Legislative Competence Order' provided for in the Act, giving much greater powers to the National Assembly in a specified area; and also further progress toward the establishment of the All Wales Convention, the work of which is intended to foreshadow the Referendum on devolving primary legislative powers that was anticipated in the 2006 Act.

The period covered by this report saw the coalition government of Labour and Plaid Cymru – a political alliance difficult to imagine only 12 months previously – continuing to function relatively smoothly. But early 2008 also witnessed local elections that produced further erosion of the Labour Party's once dominant position in Welsh political life. With the retirement of First Minister Rhodri Morgan also beginning to loom ever larger on the political horizon, Wales continues to live in politically interesting times.

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

A potentially significant development for public policymaking was the publication in March of the report of the Establishing Committee of the All-Wales Convention.¹ The Report outlines the terms of reference for the Convention that is due to commence work this summer with the purpose of creating a national debate on full law-making powers for the National Assembly and assessing the levels of support for any future referendum on the creation of a Welsh parliament. If successful, such a process offers the potential for progress in relation to what the European Commission identifies as the principles of 'good governance', namely: openness, participation, accountability, effectiveness and coherence.² Arguably, this follows because of the greater clarity about the nature of devolved policymaking competencies that will be achieved should the Welsh legislature gain primary legislative powers following a successful referendum outcome.³

A further noteworthy development occurred in April with the publication of the 'One Wales Delivery Plan'.⁴ This sets out the level of progress made in respect of all the 228 policy commitments published in the 2007 coalition government policy programme, One Wales. According to the First Minister, the Delivery Plan 'is an essential piece of business planning, to ensure that the "government machine" delivers. This is also a document that will allow the people of Wales to see precisely what we will be doing over the next three years.'⁵ The Delivery Plan reveals that variable progress is being made on the One Wales commitments. Some, such as the abolition of the internal market in NHS Wales (see below), are recorded as being complete. Other, arguably more challenging, objectives have seen less progress. For example, in respect of legal rights for citizens in relation to the Welsh language (commitment # 189), the Delivery Plan records: 'under policy consideration. To be dealt with in Assembly Measure(s) to follow the Welsh Language LCO'.

¹ <http://new.wales.gov.uk/about/strategy/allwalesconvention/?lang=en>

² See: Commission of the European Communities (2001) European Governance: A White Paper, Brussels, COM (2001) 428 final.

³ In other words, instead of the present opaque, incremental and complex constitutional arrangements based upon executive ministerial powers (latterly augmented by the passing of Assembly Measures) clarity will be enhanced by the National Assembly having general legislative competence in areas other than those noted as being reserved to Westminster (as presently the case with the Scottish Parliament).

⁴ <http://new.wales.gov.uk/about/strategy/1wales/plandelivery/?lang=en>

⁵ <http://new.wales.gov.uk/news/presreleasearchive/080408launch/?lang=en>

Unfortunately, the absence of quantifiable policy targets in respect of some commitments, as well as the sometimes generalised and conditional nature of some of the Plan's entries, serves to undermine its utility.⁶

April also saw the First Minister give a keynote speech on his government's policy record that defended WAG's universal entitlement approach to aspects of social welfare provision. He noted:

Some of the weaker-minded commentators sometimes accuse us of government-by-gimmick or even call us a give-away-government... [this reveals] their failure to recognise that the clearest linking purpose between a wide range of our most imaginative policies – free prescriptions, free breakfasts in primary schools, reduced price bus travel for 16–18 year olds to name just three – is the way in which they all contribute directly to making work pay. One of the major stumbling blocks for anyone who has had to settle for a life on welfare benefits is the anxiety that, on taking up work, new expenses will erode the differential between what can be earned in employment and what can be obtained through the social security system.⁷

On specific policy initiatives a further notable development was the announcement that on 10 December 2007 the Welsh Assembly Government (WAG) cabinet had considered the possibility of introducing a Welsh honours system.⁸ Referring to the proposals, Plaid Cymru backbencher Leanne Wood AM observed: 'We cannot have an elitist system. If we are to have an honours system in Wales, let's have one owned by the people of Wales rather than the Establishment'.⁹ This is striking for it relates to policy outside the usual matters covered in Schedule 5 of the Government of Wales Act 2006 and, if implemented, effectively offers the prospect of separate arrangements from the British honours system centred on the crown. We now turn to explore more 'traditional' areas of devolved policymaking.

⁶ For example, the comments on progress in relation to WAG's commitment of support for the "dot.cym campaign" (i.e. for domain name status for Wales on the Internet based on 'Cymru') offer little insight into progress against concrete measures for securing policy outcomes (in this case the Delivery Plan states: 'preparatory work in 2008-09 leading to a possible application if feasible for implementation').

⁷ Downloadable from: <http://new.wales.gov.uk/news/presreleasearchive/2153556/?lang=en>

⁸ See Cabinet Minutes, December 10, 2007:

<http://new.wales.gov.uk/about/cabinet/CabinetMeetings/frommay2007/minutes/2007/10Dec07/?lang=en>

⁹ Reported in T. Livingstone, (2008) Honours flummery that Wales can do without, *Western Mail*, January 31 2008.

1.2 Health and Social Services

On 25 January 2008, the cross-party Proposed Vulnerable Children LCO Committee published its report on anticipated legislation in this area. Inter alia, the report recommended 'the establishment of a statutory monitoring group to monitor the implementation of the United Nations Convention on the Rights of the Child within Wales, and report regularly to the Assembly'.¹⁰ WAG will respond to the Report later in 2008. Also in January the Assembly's Health, Wellbeing and Local Government Committee agreed the terms of its inquiry into the presumed consent of organ donation.¹¹ The National Assembly does not currently have legislative competence in relation to this matter. However, the Assembly Parliamentary Legal Service advised the Committee that it could seek an LCO to allow the National Assembly to legislate on organ donation. The Assembly's Petitions Committee has already received two submissions calling for presumed consent to apply in NHS Wales, and Health Minister Edwina Hart (Labour) has agreed to undertake public consultation on the issue.

January saw the commencement of the cross-party Children and Young People Committee's inquiry into advocacy services for children and young people. Policy development in this area stems from 'Telling Concerns', the critical report by the Children's Commissioner for Wales published in 2004.¹² The latter highlighted the fact that despite earlier public papers on advancing the needs and concerns of children, it was still the case that public policy making and service delivery often overlooked issues and viewpoints relating to children. The origins of the committee's inquiry also relate to 'A Study of Advocacy Services for Children and Young People in Wales' commissioned by WAG in 2005.¹³ This concluded that there was:

A need for some fresh thinking about a regional or a national-based children's commissioning body that can connect and integrate advocacy provision across key service areas and generate more independence for advocacy.

¹⁰ National Assembly for Wales (Legislative Competence) (No. 3) Order 2007 Committee Report January 2008, downloadable from: www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=71999&ds=1/2008

¹¹ (i.e. that organs are available for transplantation without consent from an appropriate person, unless the deceased have previously registered their unwillingness for their organs to be available for transplantation in the event of their death).

¹² Children's Commissioner for Wales, 'Telling concern: Report of the Children's Commissioner for Wales' Review of the operation of Complaints and Representations and Whistleblowing procedures and arrangements for the provision of Children's Advocacy Services. Downloadable from: www.childcom.org.uk/publications/Telling_Concerns.pdf

¹³ WAG, A Study of Advocacy Services for Children and Young People in Wales - A Key Messages Report Downloadable from: <http://tinyurl.com/3khzuk>

It concluded that the 'pressing need for change seems hard to refute'.

The government's Delivering Emergency Care Strategy was launched in February.¹⁴ This is designed to ease the pressure on NHS Wales' unscheduled care system. Such pressure is due to the fact that the majority of patients using hospital accident and emergency units are not 'true' emergencies. In response, the strategy sets out plans for Urgent Care Centres to be set up to deal with such non-life-threatening cases. The strategy also sets out measures for better sharing of information to improve the transition of care, as well as the use of new technology to link rural and remote Minor Injury Units with accident and emergency units in order to provide more effective clinical decision-making.

In March Edwina Hart announced that visitors, patients, and staff will be able to park free at most NHS hospitals in Wales by the end of 2011. According to the minister, 'car parking charges fall heavily on people frequently attending NHS hospitals, whether they are patients, staff or visitors... They are at best an inconvenience and at worst an unfair expense'. Approximately £5.4m was collected by NHS Wales trusts from hospital parking charges in 2006/07. Whilst patients' groups and the British Medical Association welcomed the move, opposition AM Jenny Randerson AM (Welsh Liberal Democrats) raised concerns that the reduction in revenue would be 'taken out of front-line care, as the government has not announced that it will be giving any extra [funding to cover the shortfall]'.¹⁵ Also in relation to state hospitals, the health minister announced in late March that over the next six months crisps, chocolate and sugary drinks will be removed from vending machines in NHS Wales hospitals. This policy initiative is aimed at tackling a situation where almost a fifth of 6 to 13-year-olds, 6 out of every 10 men, and half of women in Wales are overweight or obese, the highest rates in the UK.

In terms of health care provision, in February the Health Minister set out plans for an Epilepsy Care Plan.¹⁶ According to WAG this is the first time such a dedicated plan has been outlined in any UK country. Epilepsy is the most common neurological condition in Wales and affects between 20,000 and 30,000 people. The strategy

¹⁴ WAG: Delivering Emergency Care Services: An Integrated Approach for Delivering Unscheduled Care in Wales. Downloadable from:

<http://new.wales.gov.uk/dhss/publications/health/strategies/1971764/decsstrategie.pdf?lang=en>

¹⁵ Quoted in anon <http://bbc.co.uk/1/hi/wales/7273649.stm>, March 3 2008

¹⁶ WAG, 'Service Development and Commissioning Directives for Epilepsy'. Downloadable from: <http://new.wales.gov.uk/consultations/currentconsultation/healandsoccarecurrcons/serviceepilepsy/?lang=en>

includes measures to: 'Reduce the incidence of epilepsy, help people to self-manage their condition and provide more care closer to people's homes – thereby reducing the likelihood of hospital admission'. Consultation on the Epilepsy Care Plan will close on 21 May.

In April 2003, as part of a reorganisation of NHS Wales designed to bring decision-making closer to communities, WAG abolished Wales' five health authorities and created 22 local health boards (LHBs) that mapped onto local council territorial boundaries. In an apparent partial reversal of this move, April saw the health minister announce a three-month consultation exercise on a revised policy that will streamline health administration by cutting the number of LHBs to a total of eight.¹⁷ According to the minister, the proposals are intended to 'improve patient care and the patient experience' and, to put in place 'administrative arrangements for the NHS that are effective'.¹⁸ The policy also proposes that the internal market in NHS Wales be replaced with direct funding from WAG (or an NHS Board for Wales). In theory, the internal market was supposed to secure greater efficiency through competition between LHBs; yet in reality the evidence suggests that LHBs seldom commissioned from hospitals outside their respective areas. Thus the anticipated competition gains were less than predicted, whilst administrative costs covered 22 LHBs as opposed to the previous five health authorities. The apparent government U-turn has attracted strong criticism from opposition parties. Jonathan Morgan AM (Welsh Conservatives) observed that the post-2003 introduction of 22 LHBs was a 'catastrophic mistake... Edwina Hart [AM] has been forced to try and repair the damage caused to the NHS by her colleague Jane Hutt [AM – former health minister]'. Jenny Randerson AM (Welsh LibDems) was wary of the new proposals, describing them as being part of 'the Labour-Plaid government's centralising agenda'.¹⁹ The deadline for responses to the NHS Wales reorganisation policy proposals is 25 June.

1.3 Education, Culture and the Welsh Language

In January WAG announced details of its proposed Learning and Skills (Wales) Measure 2008. This law will give statutory support to WAG's Learning Pathways policy aimed at changing provision for learners between the ages of 14 and 19. The latter has six elements: 'individually tailored learning pathways; wider choice and

¹⁷ WAG, 'Proposals to change the structure of the NHS in Wales: Consultation Paper'. Downloadable from:

<http://new.wales.gov.uk/consultations/currentconsultation/healandsoccarecurrcons/nhswales/?lang=en>

¹⁸ WAG, 'Consultation on proposed changes to NHS structure', WAG Press Release, 2 April 2008

¹⁹ Reported in anon 'Minister unveils NHS boards cull', April 2 2008. Downloadable from: <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7327153.stm>

flexibility; the learning core; support for learners through a learning coach; personal support and careers advice and guidance'.²⁰ The policy emphasises the need to meet individual learning needs. According to WAG, personal support aims to 'ensure access for all learners to services or people to support them in developing solutions to the personal, social, emotional and physical problems which become obstacles to them realising their potential'. Key policy objectives are to: reduce the number of young people leaving full time education with no qualifications; increase attendance, reduce exclusion and improve retention; and improve the numbers of those progressing to further learning (full-time or work-based) at 16 years. The government claims that the draft Measure is 'designed to ... ensure equality of opportunity in all key elements of Learning Pathways for learners in learning settings in Wales'.²¹

Building on pilots carried out in 42 schools, work is continuing towards the September launch of phase one of WAG's Foundation Phase policy for early years education (3-7 years). According to the government, this:

Places great emphasis on children learning by doing. Young children should be given more opportunities to gain first hand experiences through play and active involvement rather than by completing exercises in books... The emphasis will be on ... the development of skills and their application.²²

Initial details of the policy were set out in the strategy document 'The Learning Country' (2001), and it marks a potentially significant step in increasingly distinctive education policy framework applying in Wales. However, the cost of £107m related to higher staff-to-pupil ratios associated with the initiative has led the Welsh Local Government Association (WLGA) and Association of Directors of Education in Wales²³ to raise concerns over a funding shortfall. This follows a claim that that only £41m of the sum announced by the government is new money.²⁴ Referring to what has been seen as a tight budgetary settlement for local government one WLGA official said: 'There's a possibility if the Foundation Phase policy is funded in full there will be problems for other measures and there could be staff job cuts'. In response, education minister Jane Hutt AM asserted: 'We recognise that there is a need to

²⁰ WAG, 'A Fair Future for our Children', Cardiff, WAG. Downloadable from:

<http://new.wales.gov.uk/about/strategy/strategypublications/strategypublications/1133404/?lang=en>

²¹ WAG, 'Proposals for a Learning and Skills (Wales) Measure 2008', Cardiff, WAG. Downloadable from: <http://tinyurl.com/5yka8w>

²² See http://new.wales.gov.uk/topics/educationandskills/policy_strategy_and_planning/early-wales/foundation_phase/foundation_phase_faqs/?lang=en

²³ See www.wlga.gov.uk/english/adew/

²⁴ BBC Wales, 'Education scheme cash 'shortfall'', 21 January, 2008
http://news.bbc.co.uk/welsh/hi/newsid_7300000/newsid_7307500/7307506.stm

recruit 2,000 additional staff into these positions [teachers/classroom assistants]; the money's there ... and the skilled teachers and the support will come through'.²⁵

In January, WAG published details of updated subject orders forming part of the revised national curriculum in Wales. This will be implemented in stages from September.²⁶ According to WAG:

The purpose of these changes is to identify the skills for each subject and the range of contexts, opportunities and activities through which these skills should be developed and applied. The content has also been updated to ensure relevance to the twenty-first century and manageability for learners and teachers.

Accompanying these policy changes, the document Making the Most of Learning – Implementing the Revised Curriculum²⁷ sets out guidance in the following areas: focusing on the learner, planning learning and teaching and assessing learning. In a separate development, April saw the education minister announce publication of the strategy for developing school-based counselling services.²⁸ This will receive funding of £6.5m over the next three years. This policy development stems from a recommendation in the Children's Commissioner for Wales' 2004 Clywch Inquiry Report,²⁹ and is a commitment in the 2007 One Wales coalition government agreement.

In February the culture and heritage minister Rhodri Glyn Thomas AM (Plaid Cymru) announced that WAG would make available £600,000 in subsidy over three years for a new Welsh language news service. A recent review commissioned by Bwrdd yr Iaith Gymraeg (The Welsh Language Board) concluded that 'there is a pressing need to develop the sector to ensure its survival, although support for a daily newspaper would carry significant risks'.³⁰ Others have questioned whether the level of announced subsidy is sufficient to realise the plans for a Welsh language daily. In response, the culture minister pointed to the case of Northern Ireland where an Irish

²⁵ Interview broadcast on 'CF99' S4C television, 30 January, 2008

²⁶ Using its powers under Section 108 of the Education Act (2002)

²⁷ WAG, 'Making the most of learning – implementing the revised curriculum', page 2. Downloadable from: <http://tinyurl.com/52v2jh>

²⁸ WAG, 'School-based Counselling Services in Wales a National Strategy'. Downloadable from: <http://new.wales.gov.uk/topics/educationandskills/publications/guidance/counsellingservicesstrategy/?lang=en>

²⁹ 'Clywch: Report of the Examination of the Children's Commissioner for Wales into allegations of child sexual abuse in a school setting'. Downloadable from: www.childcom.org.uk/publications/clywch.pdf

³⁰ Welsh Language Board, 'A Review Of The Welsh Language Print Media: An Independent Review Commissioned From Dr Tony Bianchi'. Downloadable from: www.bwrdd-yr-iaith.org.uk/cynnwys.php?cID=&pID=109&nID=2845&langID=2

language paper has received £200,000 in state aid over three years. This, he said, 'proves that it can be done'.³¹ Also on Welsh language policy, following the Development Plan for a higher education network – The Federal College – to deliver Welsh-medium provision in universities that was announced in November 2007, WAG declared in February that £1.3m in funding would be made available via the Higher Education Funding Council for Wales for Welsh-medium postgraduate scholarships and academic fellowships. There was also a promise that 'further action in planning for the Federal College [is] to be published in 2008'.³²

Also in February the state education inspectorate, Estyn, published its annual report on education and training.³³ It concluded: 'Standards within most areas of education and training in Wales have improved over the past year, but the rate of improvement is slowing down in many sectors'.³⁴ In response, the Jane Hutt AM announced WAG's School Improvement Strategy.³⁵ According to the government, this offers:

vision and an implementation schedule for putting school effectiveness based on tri-level reform into action. Tri-level reform is the whole of the education community (schools, local authorities and the Assembly Government) working collaboratively and in alignment.

This 'systems thinking' approach is based upon work by Professor Michael Fullan,³⁶ and, according to the minister, it will 'very substantially address' concerns about lower performing schools raised by Estyn.³⁷ Lastly in relation to education policy, 9 April saw a constitutional milestone with the first Order in Council signed by the Queen. This gives the National Assembly powers to draft primary legislation for Wales to help people with additional learning needs.

1.4 Economy and Transport

In January 2008 the Assembly Government launched its draft skills and employment strategy 'Skills that Work for Wales'.³⁸ It also announced a consultation process on

³¹ S4C Television, Newyddion, 5 February 2008, 21.00

³² WAG, 'One Wales Delivery Plan 2007-2011, Chapter 5, (WAG: Cardiff 2008). Downloadable from: <http://new.wales.gov.uk/about/strategy/strategypublications/strategypubs/1walesdeliveryplan/?lang=en>

³³ ESTYN Annual Reports. Downloadable from: www.estyn.gov.uk/annual_report.asp

³⁴ 'Standards of Education and Training in Wales improve, but the rate of improvement is slowing down', Estyn Press release, 26 February 2008. Downloadable from: www.estyn.gov.uk/press_releases/pr186_01_Annual_report_06_07.pdf

³⁵ WAG, 'School Effectiveness Framework'. Downloadable from: <http://tinyurl.com/3q4m6f>

³⁶ See: www.michaelfullan.ca

³⁷ Quoted in A. Wightwick, 'Postcode lottery' of Welsh school success', February 27, 2008, Western Mail

³⁸ WAG, 'Skills That Work for Wales: A skills and employment strategy'. Downloadable from: http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/skillsthatwork/?lang=en

how to increase business-relevant skills levels and determine the future form and functioning of a Wales Employment and Skills Board.³⁹

Section 113 of the UK government's Local Transport Bill 2007-08 gives powers to the National Assembly in respect of the 'provision for and in connection with the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads'.⁴⁰ Whilst not ruling out the future introduction of road charging, the Minister for the Economy and Transport, Ieuan Wyn Jones AM (Plaid Cymru) stated: 'There's no prospect whatsoever of introducing charges on the existing network'.⁴¹ On economic development matters, in February, the minister said that: 'Businesses, especially in [what he termed] "unfashionable" areas had trouble in securing money before developing'. In response, he announced that WAG would be drawing on European Investment Bank funding in order to set up a £150m fund to support small businesses in deprived/rural areas.⁴² In respect of transport policy, on 15 April the Deputy First Minister laid before the Assembly the draft of the Learner Travel (Wales) Measure 2008. Inter alia, this will increase entitlement to school transport for young children. Underlining the complexity and shortcomings of the present devolution settlement, the draft Measure does not cover bus regulation and safety - both issues that were raised in its consultation phase⁴³ - because they currently fall outside the Assembly's powers. The minister has said he will be making 'the strongest possible case' for an LCO to gain the necessary powers in this area.

1.5 Environment, Sustainability and Housing

The coalition government's policy agenda One Wales committed WAG to: 'aim to achieve annual carbon-equivalent emissions reductions of 3 percentage points per year by 2011 in areas of devolved competence'. In March the cross-party Sustainability Committee published the first report of its Inquiry into Carbon Reduction in Wales.⁴⁴ The report's recommendations included the suggestion that

³⁹ WAG, Proposals for a Learning and Skills (Wales) Measure 2008

http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/learningskillsmeasure/?lang=en

⁴⁰ Downloadable from: <http://services.parliament.uk/bills/2007-08/localtransporthl.html>

⁴¹ 'Road pricing 'only on new roads'', January 20, 2008. See:

<http://news.bbc.co.uk/1/hi/wales/7198652.stm>

⁴² Quoted in Anon, 'Hwb o £150m i fusnesau bach', 7 February 2008:

http://news.bbc.co.uk/welsh/hi/newsid_7230000/newsid_7232500/7232581.stm.

⁴³ WAG, Proposals for a Learner Travel (Wales) Assembly Measure:

<http://new.wales.gov.uk/consultations/closed/transclocons/learnertravel/?lang=en>

⁴⁴ The inquiry focuses on residential carbon reduction as well as carbon reduction by transport, industry, public bodies and electricity generation: www.assemblywales.org/generic_report_introduction.pdf

'building regulations are devolved to the Welsh Assembly Government as a matter of urgency in order that stricter energy efficiency measures can be implemented'.⁴⁵

In mid-February the Minister for Environment, Sustainability and Housing, Jane Davidson AM (Welsh Labour), launched WAG's Renewable Energy Route Map.⁴⁶

The minister asserted that:

Wales is fortunate to have considerable natural renewable energy resources, which if sensitively but extensively exploited could make Wales self sufficient in renewable electricity within 20 years, with half of this from marine, a third from wind and the rest from biomass and micro-generation.⁴⁷

Friends of the Earth Cymru responded, saying: 'We particularly welcome the commitment to raise the target for renewable energy, and the recognition of the key role that wind energy must play if we are to reach any targets at all'.⁴⁸ Consultation on the strategy closes on 13 May. On related matters, in March, WAG announced that it had completed agreements with three companies that will allow them to seek planning permission to develop wind farms in woodlands that are managed by Forestry Commission Wales⁴⁹ on behalf of the Assembly Government. In respect of agricultural policy, on 8 April the Rural Affairs minister, Elin Jones AM (Plaid Cymru), announced that Wales would be the first UK country to introduce badger culling in an attempt to reduce incidences of bovine tuberculosis (TB). According to WAG:

The incidence of TB has increased dramatically over the past decade with 7,905 cattle slaughtered in Wales because of the disease in 2007 compared with less than 700 in 1997. The cost of compensation has risen from £1.8m in 2000/01 financial year to £15.2m in 2007/08.⁵⁰

However, those opposed to the policy, including animal welfare charities, asserted that culling badgers goes against the conclusions of the UK government-appointed Independent Scientific Group on the matter.⁵¹

⁴⁵ National Assembly for Wales, 'Residential Carbon Reduction in Wales, 1st report of the Sustainability Committee's Inquiry into Carbon Reduction in Wales. Downloadable from:

www.assemblywales.org/sc_carbon_reduction_household_final_report_published_version.pdf

⁴⁶ WAG, Renewable Energy Routemap for Wales. Downloadable from:

<http://new.wales.gov.uk/consultations/currentconsultation/envandcouncurrcons/renewenergymap/?lang=en>

⁴⁷ WAG, 'Route to low carbon future for Wales mapped out', press release 19 February 2008. See:

<http://new.wales.gov.uk/news/ThirdAssembly/Environment/2008/2137370/?lang=en>.

⁴⁸ Quoted in Anon, 'Clean, green' energy plans out', 19 February 2008, at:

<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7251549.stm>,

⁴⁹ www.forestry.gov.uk/wales

⁵⁰ WAG, 'Comprehensive Plan to eradicate bovine TB announced'. See:

<http://new.wales.gov.uk/news/presreleasearchive/2131604/?lang=en>

⁵¹ www.rspca.org.uk

1.6 Equalities

Following on from the 2004 cross party Mainstreaming Report,⁵² a critical evaluation of WAG's approach to equalities and developments in the law on equalities such as the gender equality duty in the Equality Act (2006), in February WAG published its 'Inclusive Policy Making Tool'.⁵³ This is designed to assist policymakers in considering equality and human rights when developing or revising public policy. According to WAG: 'It will help to identify how a new or revised policy could affect people in different ways (intentionally or unintentionally) and what action is needed to remove any adverse effects'. The policy tool focuses on: age, disability, faith/religion, gender, race, sexual orientation and human rights. Worryingly, it does not refer to the Welsh language.

In December 2004 WAG commissioned research on the accommodation needs of Gypsy-Travellers in Wales in order to inform future policy development.⁵⁴ This stemmed from a series of recommendations in the National Assembly's cross-party Equality of Opportunity Committee's report 'Service Provision for Gypsies and Travellers'. In furtherance of policy in this area, in March Social Justice Minister, Brian Gibbons AM (Welsh Labour), announced grant funding of £1.5m in 2008/09 in order that local authorities can set up new Gypsy Traveller sites in Wales. The announcement follows the £1.7m refurbishment grant scheme for Gypsy Traveller sites that was launched last December.

1.7 Social Justice and Public Service Delivery

The National Assembly adopted the Wales Spatial Plan in 2004. It sets out an economic development agenda for the next 20 years. The past quarter has seen public consultation on WAG's 'Wales Spatial Plan Update 2008: People Places Futures'.⁵⁵ The aim of the policy is:

Making sure that decisions are taken with regard to their impact beyond the immediate sectoral or administrative boundaries; [and] that there is co-ordination of investment and services through understanding of roles and interactions between places.

⁵² National Assembly for Wales, 'Report on Mainstreaming Equality in the work of the National Assembly - LD3118'. See www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=18572&ds=2006/6

⁵³ WAG, *Inclusive Policy Making Guidance*, at: <http://new.wales.gov.uk/topics/equality/publications/inclusivepolicy/?lang=en>

⁵⁴ WAG, *Accommodation needs of Gypsy-Travellers in Wales* See: <http://new.wales.gov.uk/topics/housingandcommunity/research/accomneedsgypsy/?lang=en>

⁵⁵ WAG, *People, Places, Futures: The Wales Spatial Plan 2008 Update Consultation*. See: <http://wales.gov.uk/about/strategy/spatial/news/january2008/?lang=en>

The consultation process closed on 24 April and WAG will publish its response later in the year.

In March WAG published the results of a survey that asked 7,500 households in Wales about their experience of 10 public services, including education, health and local government. This revealed that between 70-90 per cent of the Welsh public had positive views about the public services that they use.⁵⁶ However, the survey also revealed concerns over the accessibility of information about services and the standard of complaint handling. On other matters, 'Tackling Domestic Abuse: the All Wales Strategy' was published in March 2005.⁵⁷ In February, Brian Gibbons announced the extension of policy on domestic abuse with the launch of a helpline set up to assist male victims of domestic violence. The Dyn Cymru helpline⁵⁸ is funded by WAG and will provide basic support and information to heterosexual, gay, bisexual, and transgender men who experience domestic abuse.

1.8 Conclusion

The past quarter is characterised by a series of new policy outputs by the coalition government and, in a UK context, evidence of distinctiveness in Welsh policymaking (e.g. the Epilepsy Care Plan, the phased abolition of NHS Wales car parking charges, Learning and Skills (Wales) Measure 2008 etc). The April publication of the One Wales Delivery Plan provides some detail on the progress made against the coalition government's 228 policy commitments for the third Assembly.

The past months have also seen the government trying to reconcile its ideological commitment to locally-based management in the public sector with the need to secure efficient administrative structures. Thus the proposals for 8 new Local Health Boards to replace the existing 22 represents a potential U-turn and offers the prospect of further major structural upheaval in NHS Wales just five years after the abolition of local health authorities. On other matters, it is noteworthy that reports by the Children's Commissioner for Wales have acted as a spur to policy development over the past few months (e.g. in relation to advocacy services for children and young people and in-school counselling support). Finally, as noted, the publication of

⁵⁶ WAG, 'Living in Wales Survey'. See:

<http://wales.gov.uk/topics/improvingservices/peoplefirst/research/surveyresults06/?lang=en>

⁵⁷ WAG, 'Tackling Domestic Abuse: The All Wales National Strategy'. See:

<http://new.wales.gov.uk/topics/housingandcommunity/safety/publications/domesticabusestrategy?lang=en>

⁵⁸ The Dyn Prosiect/Y Cynllun Dyn. See: www.allwalesunit.gov.uk/media/pdf/e/3/Dyn_Wales_-_Dyn_Cymru_Helpline_Summary.pdf. Tel: 0808 801 0321

the report of the Establishing Committee of the All-Wales Convention offers the prospect of progress towards securing a positive referendum result to create a Welsh parliament – an outcome that will deliver a constitutional settlement more in line with the principles of good governance. As such, this represents an opportunity to secure a major advance over the present opaque, incremental and complex policymaking arrangements based on the provisions of the Government of Wales Act 2006.

2. The Legislative Process

Marie Navarro⁵⁹, Cardiff Law School

2.1 Primary Legislation:

There have only been 3 UK Acts passed so far in 2008. None of these has given powers to the Assembly or to the Welsh Ministers, and there has been an observable slow down in the number of powers devolved to the Welsh Ministers and the Assembly in Wales.

2.1.1 *Acts giving powers to the Welsh Ministers or the Assembly*

None.

2.1.2 *Bills introduced in Parliament affecting the powers of the Welsh Ministers or of the Assembly:*

There have been no new Bills since December 2007 proposing to give powers to the National Assembly for Wales or the Welsh Ministers.

The increasing number of proposals for LCOs conferring new powers on the Assembly could explain the fall in primary legislation achieving the same. Nonetheless, it is surprising to see bills in supposedly devolved areas that do not give legislative powers to the Assembly in Wales. For example, both the Health and Social Care Bill and the draft Marine Bill give only executive powers directly to the Welsh Ministers. The Football Spectators and Sports Grounds Bill 2007-08 gives no powers to Wales at all. Consequently, opportunities for legislative devolution are being missed.

Therefore, it can be inferred that devolution under the new system remains highly pragmatic, and the devolution of powers, and their form (legislative and/or executive), depends on each particular bill. Significantly, it also appears that an equivalent to the Sewel Convention does not apply to Wales.

2.2 Parliamentary consideration of proposals for LCOs⁶⁰:

So far the Secretary of State has agreed that four proposals for LCOs be presented to Parliament for pre-legislative scrutiny and/or an affirmative resolution procedure.

⁵⁹ Research Associate, Editor of Wales Legislation Online, www.wales-legislation.org.uk

⁶⁰ For vocabulary in relation to 'proposed' and 'draft' LCOs see below paragraph 4.1. I refer to proposals for LCO as a generic term as the two others terms have precise procedural legal definitions.

Of note is the pre-legislative and legislative procedure through which the first two LCOs passed. This involved pre-legislative scrutiny by the Commons Welsh Affairs Select Committee (WASC) and Lords Constitution Committee, followed by debates in Commons delegated legislation committee and on the floor of the House of Lords. A further novelty was the joint scrutiny conducted by WASC and an Assembly Committee.

2.2.1 House of Commons' Pre-legislative Scrutiny:

The National Assembly for Wales (Legislative Competence) (Education and Training) LCO:

Two House of Commons committees scrutinised the first proposal for an LCO on children with special needs: the Welsh Affairs Select Committee at the pre-legislative scrutiny stage; and a delegated legislation committee⁶¹ chaired by Hywel Williams at the affirmative resolution procedure stage.

National Assembly for Wales (Legislative Competence) (No 4) Order 2008 (Domiciliary Care)

The first joint committee meeting between WASC and the Assembly⁶² took place on 17 January in Cardiff. The joint committee was composed of: Dr Hywel Francis MP in the Chair; Mrs Siân C. James MP; Hywel Williams MP; Joyce Watson AM; Peter Black AM; Irene James AM; Dai Lloyd AM; and Jonathan Morgan AM. At the end of the meeting it was decided that the two committees 'will be meeting separately on 31 January to take further evidence in connection with this proposed Order'.⁶³

WASC published its report on the proposal for the LCO on 5 March,⁶⁴ making a handful of drafting changes which did not appear in the final draft of the order.

The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (previously entitled the National Assembly for Wales (Legislative Competence) (No.3) Order 2007).

⁶¹ Draft National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008: www.publications.parliament.uk/pa/cm200708/cmgeneral/deleg6/080318/80318s01.htm

⁶² Minutes of evidence taken before Welsh Affairs Committee (enlarged by the proposed domiciliary care LCO Committee, National Assembly for Wales):

www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/uc257-i/uc25702.htm

⁶³ Ibid.

⁶⁴ 'Welsh Affairs- Fourth Report':

www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/257/25702.htm

WASC is currently calling for evidence on the proposed LCO. A second joint committee scrutiny of the LCO is to take place on 5 May. It remains to be seen if this joint form of pre-legislative scrutiny will become the normal form of such scrutiny for every proposed LCO in the future.

2.2.2 Welsh Affairs Select Committee Scrutiny:

In order for WASC to be involved in scrutinising a proposed LCO at the pre-legislative scrutiny stage, the procedure adopted is that the Secretary of State for Wales must send it a letter inviting the committee to do so. There are currently two proposed LCOs waiting to be referred to Parliament by the Secretary of State for Wales:

- National Assembly for Wales (Legislative Competence) (No.2) Order 2007 (Environmental Protection and Waste Management)
- National Assembly for Wales (Legislative Competence) (No.5) Order 2008 (Affordable Housing)

The proposed Environmental Protection and Waste Management LCO will be redrafted to reduce its scope and remedy the legal uncertainties it would currently create. The new draft will need to be debated and approved in the Assembly before being submitted to the Secretary of State for Wales and Parliament.

The proposed affordable housing LCO has proven politically controversial and it will be very interesting to follow its developments in the future.

2.2.3 House of Lords Scrutiny:

The pre-legislative scrutiny by the House of Lords of proposed LCOs has so far been very straightforward and unproblematic. The Constitution Committee is considering all the draft LCOs for the House of Lords and so far as found that no LCO raised 'matters of constitutional principle'.

2.2.4 First LCO made by the Queen

The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 was made on 9 April 2008.⁶⁵ This is the first Legislative Competence

⁶⁵ Available at: www.opsi.gov.uk/si/si2008/uksi_20081036_en_1.

Order to be made. It completed its process in 10 months and the timetable for the Order making was summarised as follows by the Wales Office:⁶⁶

Proposed Order published in National Assembly for Wales 11/6/07

National Assembly for Wales Committee report laid 28/11/07

House of Lords Constitution Committee considered the Order 4/12/07

Welsh Affairs Committee report published 21/12/07

Draft Order approved by National Assembly in plenary 5/2/08

Draft Order approved by House of Lords 12/3/08

Draft Order approved by House of Commons 18/3/08

Order approved by Her Majesty in Council 9/4/08

It remains to be seen if future proposals for LCOs will go through the process faster. There are already clear indications that some will definitely take much longer if, for example, the Secretary of State for Wales waits a while before inviting WASC to start its pre-legislative scrutiny, or if committees in the Assembly or in Parliament take longer for their scrutiny.

2.3 The Secretary of State for Wales' review of the LCO process:

As discussed in previous monitoring reports, the Secretary of State for Wales has a major administrative and statutory role in the LCO procedure. According to the *Western Mail*, the new Welsh Secretary Paul Murphy announced that he will carry out an informal review of the entire LCO process.⁶⁷ It will be interesting to see how this initiative develops and what conclusions it reaches.

2.4. Law made in Wales

A comprehensive new Assembly webpage to track Welsh LCOs and Measures:

The Assembly's website now includes an important new page that shows all the legislative instruments with which the Assembly is currently involved, be they LCOs or measures. It also offers a free electronic update service providing details of which stage in the legislative process each of these has reached.⁶⁸ The Assembly should be congratulated for this initiative; it is exactly what was needed in order that the public be able to follow the legislative process ushered in by the Government of Wales Act 2006. The great value of this page is that it is the only place where details

⁶⁶ Wales Office News Release, 'Paul Murphy hails historic day for Welsh devolution', (9 April 2008):

www.walesoffice.gov.uk/2008/04/09/paul-murphy-hails-historic-day-for-welsh-devolution/

⁶⁷ T. Livingstone, 'Murphy to examine transfers of power', *Western Mail*, (12 March 2008)

⁶⁸ Available at: www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm.

can be found of both the scrutiny carried out by Westminster and the scrutiny undertaken by the Assembly. The page also provides links to various relevant documents.

So far, one LCO has been passed and there are ten proposals for others, including six 'proposed LCOs' introduced before the Assembly. There have been eight draft Measures so far, including three formally introduced before the Assembly.

2.4.1 Legislative Competence Orders:

In order to understand the procedure for an LCO it is important to distinguish its two main phases:

- At the pre-legislative scrutiny stage, i.e. before it is approved by plenary and while amendments are permitted, it is called a 'proposed LCO'
- At the scrutiny stage in the Assembly, i.e. before a second vote in plenary, it is called a 'draft LCO'; there is no further possibility of amendment.

Every LCO starts as a 'proposed LCO', then it becomes a 'draft LCO' and finally becomes an LCO made by the Queen on the advice of Her Privy Council after following the affirmative resolution procedure in Westminster.

The Assembly refers to a 'Revised LCO' if at the end of the pre-legislative scrutiny stage modifications have been suggested to the proposed LCO. A revised LCO still needs to be approved by plenary before it can proceed to the next stage in the Assembly as a draft LCO to be formally approved by the Assembly in plenary at this second stage. It is subsequently sent to the First Minister, who sends it on to the Secretary of State for Wales to lay before Parliament for the affirmative resolution procedure.

Hereon, 'proposals for LCOs' is used as a generic term to describe LCOs at any stage. Figure 2.1 shows the stages reached by each LCO proposal, with that reached by the end of April 2008 in italics. The first column shows the order in which they were so introduced.

Figure 2.1: Proposals for Legislative Competence Orders

LCO No.	Source	Purpose	Status
1	WAG	Additional learning needs	Made on 9 April <i>In Force</i>
2	WAG	Environmental protection and waste management	Pre-legislative scrutiny by Committee in Cardiff: completed <i>Being Redrafted</i>
3	WAG	Vulnerable children	Pre-legislative scrutiny: completed by Committee in Cardiff Report: January 2008 >Revised Order <i>WASC pre-legislative scrutiny</i> Joint pre-legislative scrutiny WASC / Assembly
4	WAG	Domiciliary care	Pre-legislative Scrutiny Committee: completed report March 2008 Joint pre-legislative scrutiny WASC/Assembly WASC Pre-legislative Scrutiny: completed report March 2008 <i>Draft LCO to be laid</i>
5	WAG	Affordable housing	<i>Pre-legislative Scrutiny Committee: to report at end April</i>
6	AM- Ballot 2 Jonathan Morgan	Mental health reform.	Pre-legislative scrutiny by Committee in Cardiff Committee to report
7	AM- Ballot 1 Ann Jones	Domestic fire safety	Pre-legislative scrutiny by Committee in Cardiff <i>Committee to report</i>
6	AM- Ballot 2 Jonathan Morgan	Mental health reform.	Pre-legislative scrutiny by Committee in Cardiff Committee to report
N/A	WAG	Welsh language	<i>Being negotiated with Whitehall</i>
N/A	AM- Ballot 3 Helen Mary Jones	Carers	Leave to introduce draft granted. <i>Being drafted</i>
N/A	AM- Ballot 4 Huw Lewis	Bus and coach services	Leave to introduce draft to be granted.
N/A	AM- Ballot 5 Peter Black	Local government electoral arrangements	<i>Leave to introduce draft to be granted.</i>

New 'Proposed LCOs:

The two new proposed LCOs since the last report are:

- The National Assembly for Wales (Legislative Competence) (No.6) Order 2008 (Relating to the Provision of Mental Health Services)⁶⁹, laid on 18 February 2008. Its effect would be as follows:

The following Matter be inserted under Field 9 Health and Health Services in Schedule 5 to the *Government of Wales Act 2006* to enable the Assembly to legislate on this issue by way of an Assembly Measure:

Provision for and in connection with:

- a) the assessment by the health service in Wales of persons who are or may be mentally disordered persons,
- b) duties on the health service in Wales to provide treatment for mentally disordered persons,
- c) independent mental health advocacy for persons who are or may be mentally disordered persons.

This matter does not include assessment of, treatment or advocacy for persons detained, liable to be detained or liable to recall under the Mental Health Act 1983 (or any statutory modification or re-enactment thereof).

- The National Assembly for Wales (Legislative Competence) (No.7) Order 2008 (Relating to Domestic Fire Safety)⁷⁰ was laid on 20 February 2008. Its text notes:

The LCO would add the following matter to field 11 of Schedule 5:

Matter 11.1

Provision for and in connection with a requirement that a sprinkler system be installed in new residential premises.

Interpretation of this Matter

'New residential premises' means –

- (a) premises constructed for residential use;
- (b) premises converted to residential use;
- (c) premises converted to use as a single residence by physical subdivision of one or more existing residential premises; and
- (d) premises converted to use as a single residence by physical incorporation of more than one existing residential premises.

A 'sprinkler system' means any automatic fixed system intended to extinguish control or contain fires by means of water propelled under

⁶⁹ National Assembly for Wales (Legislative Competence) (No.6) Order 2008 (Relating to the Provision of Mental Health Services): www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2008-6.htm

⁷⁰ National Assembly for Wales (Legislative Competence) (No.7) Order 2008 (Relating to Domestic Fire Safety): www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2008-7.htm

pressure through pipework and spray heads which operate when a predetermined temperature is reached.⁷¹

New proposals for LCOs:

There is another WAG proposal for an LCO relating to the Welsh Language in the pipeline. The Assembly's website indicates that it has not been published yet but that it is expected to be published in draft before the summer recess. As discussed below, individual AMs have also proposed a number of LCOs following the regular Members' ballots.

The redrafting of LCOs:

The Assembly Standing Orders make provision for a 'reconsideration stage' of a proposed LCO if amendments are required following the pre-legislative scrutiny stage. So far, the pre-legislative scrutiny process has meant that two Proposed LCOs will have to be redrafted: LCO No. 2 on the environment; and LCO No. 3 on vulnerable children. While there is no sign yet of a redraft of LCO No. 2, LCO number 3 has been redrafted and renamed a 'revised LCO'. This shows the extent of the amendments which can be made to proposed LCOs, which can include the redrafting of existing proposed Matters and the inclusion of new fields and new matters.

The proposed amendments to LCO No. 3 are quite impressive in their extent and consequences. The revised LCO proposes to amend three fields at the same time and this is indicated in the LCO's new title: The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.⁷²

The revised LCO proposes to amend Field 5 Education and Training, Field 15 Social Welfare and Field 16 Sport and Recreation. It inserts a Matter 5.18 to Field 5: education:

Matter 5.18

The provision of any of the following for children or young persons—

- (a) facilities for social or physical training;
- (b) educational activities.

In this matter "children" and "young persons" have the same meaning as in field 15.'

It inserts seven Matters to Field 15 Social Welfare

⁷¹ Member Proposed Legislative Competence Order: Domestic Fire Safety Draft Explanatory Memorandum, Paragraph 33 of Explanatory Notes to the LCO: <http://tinyurl.com/3grss6>

⁷² The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008: <http://tinyurl.com/48gm5l>

'Matter 15.1

Functions of public authorities relating to—

- (a) safeguarding children from harm and neglect;
- (b) safeguarding and promoting the well-being of vulnerable children;
- (c) reducing inequalities in well-being between children or young persons.

This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.

Matter 15.2

Adoption services and special guardianship support services.

Matter 15.3

Fostering.

Matter 15.4

Social care services for any of the following—

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after—
 - (i) who have attained the age of 25, and
 - (ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

Matter 15.5

Co-operation and arrangements to safeguard and promote the well-being of children or young persons.

This matter applies to—

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;
- (b) police authorities and chief officers of police for police areas in Wales;
- (c) the British Transport Police Authority;
- (d) local probation boards for areas in Wales;
- (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
- (f) youth offending teams for areas in Wales;
- (g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
- (h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

Matter 15.6

Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

Matter 15.7

Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; the functions of such an office or body, including in particular—

- (a) reviewing the effect on children or young persons of the exercise by any person of functions related to their well-being;
- (b) reviewing and monitoring—
 - (i) advocacy services;
 - (ii) arrangements for dealing with complaints and representations made by, or on behalf of, children or young persons in respect of persons with functions related to their well-being or persons providing them with social care services;
- (c) examining cases of particular children or young persons;
- (d) considering, and making representations about, any matter affecting the well-being of children or young persons.⁷³

It inserts one Matter to the Field 16: Sport and Recreation:

Matter 16.1

The provision of recreational facilities and activities for children and young persons.

In this matter “children” and “young persons” have the same meaning as in field 15.

This is the first case of a single LCO amending three different fields at the same time. Once again, it will be fascinating to follow the development of this ‘revised LCO’ and of this approach in the drafting of proposed LCOs. The revised LCO is now being scrutinised by WASC in London before it can become a draft LCO after approval by plenary. This will be developed in September’s *Wales Devolution Monitoring Report*.

The redrafting also simplified the Table of Exceptions at the end of Schedule 5. What the proposed order offers is a table of exceptions per subject field, which is much more comprehensive. For any given list of devolved Matters there is a corresponding list of exceptions to be read in conjunction. This is a much more intuitive way of setting out Matters and their exceptions in a comprehensive manner.

The involvement of Civic Society in LCOs:

Civil Society continues to engage with the LCO process, providing evidence in both written and oral form. T

⁷³ Ibid.

Figure 2.2: Civil Society Responses to Legislative Proposals

LCO Number	Source	Purpose	Civil Society Responses
1	WAG	Additional Learning Needs	14 responses
2	WAG	Environmental Protection and Waste Management	10 responses
3	WAG	Vulnerable Children	23 responses
4	WAG	Domiciliary Care	20 responses
5	WAG	Affordable Housing	12 responses
	WAG	Welsh Language	11 responses
7	AM- Ballot 1 Ann Jones	Domestic fire safety.	Consultation still open
6	AM- Ballot 2 Jonathan Morgan	Mental Health reform.	Consultation still open
	AM- Ballot 3 Helen Mary Jones	Carers.	N/A
	AM- Ballot 4 Huw Lewis	Bus and Coach Services	N/A
	AM- Ballot 5 Peter Black	Local Government Electoral Arrangements	N/A

2.4.2 Draft Measures so far:⁷⁴

Three Measures have been proposed so far by the Welsh Assembly Government. These relate, respectively, to NHS Redress, Learner Travel, and Learning and Skills (specifically, on the 14-19 curriculum). The first two have been introduced and received support in principle, while the third was undergoing consultation.

In addition, a total of five Measures have been proposed by individual AMs. These are on the subjects of: healthier school meals (introduced by Jenny Randerson, Liberal Democrat); School Closures (Mike German, Liberal Democrat); Impact Assessments for the Selling off of Playing Fields (Dai Lloyd, Plaid Cymru); Recycling (Nerys Evans, Plaid Cymru); and Youth Services (Peter Black, Liberal Democrats). Of these only the first, on healthier school meals, had been agreed to on principle by the time of writing. Mike German's Draft Proposed School Closures (Consultation and Categories) Measure was rejected, while the other three were yet to be introduced.

⁷⁴ Full details of all proposed Measures can be found at: www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm

2.4.3 Assembly Ballots⁷⁵:

There were two more rounds of Assembly Member Ballots since the last *Wales Devolution Monitoring Report*, on 20 February and 16 April 2008.

LCO Ballots

The first LCO Ballot was won by Huw Lewis AM, who was thus able to introduce a 'proposed LCO' relating to bus and coach services in Wales.⁷⁶

The second LCO Ballot was won by Peter Black AM, whose draft LCO related to local government electoral arrangements.⁷⁷

Measure Ballots:

The first Measure Ballot was won by Nerys Evans AM, whose draft Measure related to Recycling.⁷⁸

The second Measure Ballot was won by Peter Black, whose draft Measure related to Youth Services.⁷⁹

2.4.4 Private Member Measures

No new drafts published since last report.

2.4.5 Assembly Members bids for future ballots:

Thus far, there have been many fewer proposals for Measures than for LCOs entered into the ballots. There were only two proposals for Measures in the last ballot, giving a 50 per cent chance of success. Meanwhile, there were 16 names in the hat for the LCO ballot with a total of 11 different proposals. The full list of entries made by AMs so far is available on the Welsh Assembly website.⁸⁰

⁷⁵ 'First AMs get chance to pass new laws': www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=53476&ds=7/2007

⁷⁶ Proposed Provision of Bus and Coach Services Legislative Competence Order, at: <http://tinyurl.com/44hb8w>

⁷⁷ Proposed Local Government Electoral Arrangements Legislative Competence Order, at: <http://tinyurl.com/4b55sn>

⁷⁸ Proposed Recycling Measure www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots/business-measures-ballot-26-06-07/business-measures-mb-31.htm

⁷⁹ Proposed Youth Services Measure www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots/business-measures-ballot-26-06-07/business-measures-mb-23.htm

⁸⁰ Available at: www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots.htm

2.5 The All Wales Convention

The Establishing Committee for the All Wales Convention met between December 2007 and March 2008 before publishing its report in which the intended remit of the Convention, when it begins operation in the summer, was described as follows:

Broadly, we expect that the Convention will inform the Welsh public about the powers currently available to the Assembly (or ' the system of government in Wales') and also assess the implications of moving towards full law making powers, considering the arguments for and against a move in this direction.

The Convention will aim to give the widest possible cross section in Wales, the opportunity to share their views on this subject, so that the question of full law making powers can be explored thoroughly with a full appreciation of people's views and concerns.⁸¹.

The First Minister and Deputy First Minister accepted the recommendations in the report, and will outline in due course what steps need to be taken to implement those recommendations. The setting up of the Convention was a commitment made as part of the One Wales agreement between Labour and Plaid Cymru in summer 2007. Its purpose is to create a national debate on full law-making powers for the National Assembly and assess the levels of support for any future referendum.⁸²

⁸¹ WAG Wales Convention: <http://new.wales.gov.uk/about/strategy/allwalesconvention/?lang=en>

⁸² 'Plans for all-Wales convention signed off':
<http://new.wales.gov.uk/awcsub/awchome/newsandevents/news/pressreleases/signedoff/?lang=en>

3. Economic development and the Budget

Professor Peter Midmore, University of Wales Aberystwyth

3.1 Introduction

While the Assembly Government's economic development strategy (*Wales: A Vibrant Economy*⁸³) was constructed during the previous administration, it continues to serve as an analytic foundation and a strategic perspective for the One Wales coalition agreement. Its main objectives focus on closing the gross value added (GVA) per capita gap between Wales and the rest of the United Kingdom, firstly by increasing the participation of the working age population in the labour market, and secondly by improving the quality of employment so that the earnings of those in work improve. Much of the preoccupation of Assembly transactions relating to economic development revolved around the latter. In plenary session, there was an opposition debate on the continuing relative decline of GVA against overall UK performance. The Enterprise and Learning Committee (which embraces scrutiny of both economic development and education) neatly covered both of its major responsibilities by continuing work on a review of the economic contribution of higher education in Wales, and also considering the Assembly Government's proposals for a skills and employment strategy, where responsibility is shared with the UK Government. In relation to Assembly Government spending, plans were marginally revised through the approval of a supplementary budget motion to approve changes before the end of the financial year.

3.2 The relative performance of the Welsh economy

The Office for National Statistics produced its annual estimates of Gross Value Added (GVA) for Wales in December 2007; at a provisional £14,396 per head in 2006, it was 77.3 per cent of the United Kingdom average, the lowest of all regions, and a slight decline relative to 2005.⁸⁴ This continued poor performance of the measure provided the occasion for a plenary debate on a Conservative-proposed motion to note concern; since a target of 90 per cent of the UK average GVA was set by the initial Labour administration in Wales, this has been a continual and well-rehearsed theme of opposition debate. In essence, the Conservative argument was

⁸³ WAG, *Wales: A Vibrant Economy, The Welsh Assembly Government's Strategic Framework for Economic Development*, (November 2005). See http://new.wales.gov.uk/docrepos/40382/4038231141/403821124153/wave_en.pdf?lang=en.

⁸⁴ *Regional, sub-regional and local gross value added*, National Statistics First Release, 14 December 2007, www.statistics.gov.uk/pdfdir/gva1207.pdf.

that lack of urgency in supporting the private sector had delayed productivity improvements, and the heavy reliance on public sector employment in Wales would be increasingly difficult to sustain in the more challenging economic circumstances to come over the next few years.

Amendments were proposed by both the governing coalition and the Liberal Democrat group. The former reversed the sense of the motion, and congratulated the One Wales government on its economic development, transport infrastructure and skills and employment strategies (particularly with the aim of increasing employment of working age people to 80 per cent of the total); the latter wanted to refocus economic development support on small and medium sized companies, and extend broadband quality and availability.

In fairness, the size of the reduction in proportionate GVA per head in Wales between 2005 and 2006 was miniscule and far less than in previous years, so that within the limits of statistical error, as the government suggested, the position may indeed have been stabilised. However, even though Ieuan Wyn Jones noted that other indicators (employment, unemployment rates and exports) were all positive, the uncomfortable fact remains that if overall GVA per head is static, then the other ingredients in the recipe (particularly productivity and the evenness with which incomes are distributed in the working population) must have deteriorated. Alun Cairns attempted to exploit any potential discomfiture, recalling that Plaid Cymru Members must defend ‘everything that they criticised leading up to the Assembly elections’.⁸⁵ Whilst the tone of debate was more measured than on previous occasions, the desire to extract maximum political advantage was still evident within each of the party groupings.

3.3 The economic contribution of higher education in Wales

Skills, innovation and competitiveness are the key themes of economic development policy within the EU; its Lisbon Strategy, agreed in 2000 and re-launched at the Gothenburg in 2005, identifies knowledge infrastructure and continuous learning as vital elements in promoting economic transformation. It is of particular relevance in Wales, since the Convergence Programme focusing on the West Wales and the Valleys region is governed by the Lisbon Strategy. This aims (among other things) to:

⁸⁵ Assembly Record of Plenary Proceedings, 23 January 2008, p. 111. See: www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=71961&ds=1/2008

increase employment rates; encourage innovation, information technology, research and development; and provide greater support to small businesses. The role of higher education institutions in contributing to these goals throughout Wales are the subject of the current, ongoing inquiry, which began in November 2007.

The Enterprise and Learning Committee's terms of reference are to consider: the engagement of higher education with business; their impact on their local and regional economies (particularly through use of European Structural Funds); embedding of entrepreneurship in educational programmes; improvement of skills (including collaborations with further education); and wider impacts including community work, cultural contributions, student and graduate mobility and improving access and participation.⁸⁶

According to Universities UK, the indirect and induced impact of universities on incomes in the economy as a whole is almost one and a half times their direct impact; on employment, it is responsible for about as many jobs outside of universities as those which exist within it.⁸⁷ However, although higher education is itself relatively big business within Wales, the main focus of attention is not on the impacts of direct spending, but the contribution it makes to the quality of the business environment through the creation of knowledge and its transfer to the regional economy.

Over the course of the Spring session of the Assembly, the Enterprise and Learning Committee took evidence from the Universities of Cardiff, Swansea, Aberystwyth, UWIC, Newport, Lampeter, Trinity College Carmarthen, the Open University, and the National Union of Students. All of the conventional higher education establishments emphasised their spending impacts, their contribution to the supply of skilled workers to the economy, the application and commercialisation of high technology expertise in terms of spin-off activities (particularly through the Assembly Government funded programmes, the Knowledge Exploitation Fund and Knowledge Technology Partnerships), and their cultural importance. The newer universities and Trinity College made more of directly commercially-relevant consultancy, and also more of their impact on domestic students, through reaching out to marginal groups

⁸⁶ Enterprise and Learning Committee (28 November 2007). See www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=66645&ds=11/2007.

⁸⁷ University of Strathclyde, *The Economic Impact of UK Higher Education Institutions*, report for Universities UK, London, 2006.

traditionally under-represented in higher education. The evidence of the Open University concentrated exclusively on this function. The student evidence, and a separate paper from Dylan Jones-Evans,⁸⁸ emphasised the importance of embedding entrepreneurship within university education in order to promote the skills necessary to develop innovative and rapidly growing new business activity.

Perhaps it is unsurprising that higher education representatives should dwell entirely on the positive dimension. While most committee members seemed somewhat in awe of the senior academics marshalled by each institution to tell them how good they were, only Kirsty Williams asked the obvious questions (in this instance in relation to supporting entrepreneurship and spin-out activities):

... the Welsh Assembly Government has already chucked a bucketload of money at this but that we have not received value for money on what was spent in previous years. Given that we have already spent loads of money that has not resulted in masses of businesses being created ... why would this committee want to recommend your idea that we should chuck even more money in?⁸⁹

In a later session she continued:

... What has struck me as slightly curious as we have gone along is that every educational institution that has come before us to date... talks about its wonderful links with industry and how much the institution is contributing to individual businesses. Yet, the representatives of business that have come before this committee have been critical, and, in the case of the Federation of Small Businesses, highly critical, of the ability of academic institutions ... to truly understand the problems of business and engage in a way that is useful to them.⁹⁰

In fact, only evidence from Swansea University ventured a critique of constraints on enhanced contribution by the higher education sector to economic development in

⁸⁸ National Assembly for Wales, 'Evidence to the Committee inquiry into the economic contribution of higher education - Cardiff University'. See www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=70357&ds=1/2008.

⁸⁹ Record of Plenary Proceedings, Enterprise and Learning Committee, 23 January 2008, p. 14. See: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=72628&ds=1/2008

⁹⁰ Record of Plenary Proceedings, Enterprise and Learning Committee, 20 February 2008, p. 13. See: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=76490&ds=2/2008

Wales. Their evidence⁹¹ suggested that while the higher education sector was performing well in terms of providing skilled graduates, collaborating in research with industry, and capitalising on its expertise commercially, it was not effective on a strategic level. To improve its performance, it should be attracting and anchoring companies into high-tech clusters, particularly through creation of science park jobs. The barriers to achieving this were the relatively small size of Welsh universities and a consequently lower critical mass of research quality, an adverse subject mix (for instance, only small proportions of engineering and medicine), and fragmented, disjointed and over-managed funding support for knowledge transfer in Wales.

The role of higher education in achieving improved productivity and wage levels is part of a broader process of examining skills development across the labour force; in that respect, collaboration with its poor relation, further education, in order to improve economic performance is also part of the review. Further education colleges provide foundation degrees which, to an extent, overlap with university provision, and in future sessions the Enterprise and Learning Committee will engage more directly with these questions. It is anticipated that the report of the inquiry will be completed before the Assembly's summer break.

3.4 The Skills That Work for Wales strategy

Sir Adrian Webb chaired an independent review of the further education sector, which published its report in December 2007.⁹² Following this, and recognising the relatively poor skill status of the Welsh labour force, the Assembly Government published a consultation on its skills strategy.⁹³ In view of its terms of reference and on-going work on the higher education inquiry, the Enterprise and Learning Committee discussed a response to the consultation, and the strategy itself was debated in plenary session.

In brief, *Skills That Work for Wales* proposes refocusing the resources for vocational training and business support on targeted skills, with financial contributions from

⁹¹ National Assembly for Wales, 'Inquiry into the Economic Contribution of Higher Education in Wales', written evidence by Swansea University. See: <http://tinyurl.com/3o36hn>

⁹² *Promise and Performance: Report of the Independent Review of the Mission and Purpose of Further Education in Wales in the Context of the Learning Country* (The Webb Review), Cardiff: Welsh Assembly Government, 2007. See: <http://wales.gov.uk/topics/educationandskills/educationskillsnews/promise-and-performance-review?lang=en>

⁹³ *Skills That Work for Wales: A skills and employment strategy*. Cardiff: Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government, 2007. See: http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/skillsthatwork/?lang=en

businesses (and possibly individuals). It would make provision more demand-led, relying on Sector Skills Councils to provide guidance, and reform both the framework of qualifications and the institutional structures which provide them. It departs somewhat from the underlying Webb Review, placing major emphasis on Modern Apprenticeships as a vehicle for skills improvement (rather than Foundation Degrees), and centralising the existing role of Sector Skills Councils (while the Webb review suggested that 'critical outcomes can be delivered only by enhanced governance, national and local, that drives priorities, overcomes barriers and spans boundaries'⁹⁴). In Wales, further education colleges have no powers of their own to award foundation degrees, but must seek accreditation from universities. This contrasts with England, an anomaly which provoked concern from committee members. In the light of probing questions as to the relationship between the Webb Review and the skills strategy, the Deputy Minister for Skills, John Griffiths, conceded that '*Skills That Work for Wales* is really a preliminary response to Webb'⁹⁵, and further work on developing an action plan would take place in the summer of 2008. The committee also explored the strategy's targets (over the long term, the aim is to increase the proportion of the working age population in employment to 80 per cent), but failed to elicit any kind of commitment to precise dates from the deputy minister.

In plenary session, the Assembly discussed a government motion welcoming the outcome of the Webb Review and endorsing the skills strategy; to an extent, the debate repeated several of the themes raised in committee. Some members were perplexed at being asked to adopt a strategy which, at the time of debate, was still open for consultation. A key additional point, however, was that the substantial extra funding required for achieving the main enhancements required by the strategy was, on current budgetary allocations, not available. While additional resources can be deployed from European funding sources, the rate of progress in approving applications has so far been particularly slow; as late as January 2008, none of the applications for funding had been approved.⁹⁶

Discussion of the Enterprise and Learning Committee's draft response to the skills strategy took place after the plenary session. The response made a number of

⁹⁴ Webb Review, op cit., p. 6.

⁹⁵ Record of Plenary Proceedings, Enterprise and Learning Committee, 27 February 2008, p. 16. See: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=77612&ds=2/2008

⁹⁶ M. Shipton, 'Bidders await decisions on Convergence aid', Martin Shipton, *Western Mail*, (4 February 2008). See: <http://icwales.icnetwork.co.uk/news/politics-news/2008/02/04/bidders-await-decisions-on-convergence-aid-91466-20431221/>

recommendations, including (among others) raising the ambition concerning the level of improved skills, more robust targets and timescales, and provision of statutory powers for Further Education Colleges to award Foundation Degrees. However, agreement on the response initially foundered, not on the recommendations of the report, but on the critical tone which coloured the original draft. Members of opposition parties were keen to stress 'lack of detail in the consultation document' and 'the absence of a strong and positive steer';⁹⁷ others, particularly Labour Members, were inclined to be less critical. As the report is to be debated in plenary, and lack of unanimity would undermine the strength of its recommendations, a compromise expression on the overall reaction of the committee to its scrutiny of the minister was adopted, albeit with some reluctance.

3.5 The second supplementary Budget motion

Ostensibly a technical exercise, the supplementary budget identified approximately £200m of additional resources from inter-departmental transfers and 'end-of-year' flexibility. The most significant element was an additional allocation of £83m to reduce NHS waiting lists. As standing orders require, the supplementary budget was scrutinised by the Finance Committee. While supporting the motion and seeking no changes, this committee was concerned about the ease of interpretation of supplementary budgets, and more particularly, the large amounts of discretionary funds which remain unallocated at the end of financial years. Other members noted the difficulties of the agricultural sector resulting from the foot-and-mouth disease outbreak and contrasted the struggle to provide an adequate compensation package (due to funding constraints) with these hitherto unused resources.

3.6 Conclusion

The implications of the Government of Wales Act on subject-specific business in the Assembly are becoming clear. There were only two opportunities to question the Minister of Economy and Transport over the whole session, and although the Higher Education inquiry evidence sessions of the Enterprise and Learning Committee took up most of the time available, progress is slow and other key areas of debate (especially with regard to school education) have been neglected as a result. Some further progress in constructive dialogue between parties has occurred, probably as a result of the changed alliances in defending and opposing coalition politics in the

⁹⁷ *Skills that Work for Wales: Committee's draft response to the Welsh Assembly Government's consultation - Annex 1.* See www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=78384&ds=4/2008.

Assembly. While these are welcome, resources and opportunities to improve the relative economic position of Wales have not been sufficient, and an assessment of the quality of both policymaking and scrutiny must conclude that the economic justification for devolved powers has not yet been fully vindicated.

4. Intergovernmental relations

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4.1 General

The overall intergovernmental and constitutional agenda at UK level has continued to be dominated by debates about Scotland. Issues relating to Wales have had little visibility on the broader UK-wide agenda, even as far as the 'All Wales Convention' is concerned, with the exception of Peter Hain's resignation as Secretary of State for Wales and its implications. Beyond this, main areas of activity affecting Wales have related to general incremental changes in the machinery for intergovernmental relations, and the issue of the acquisition of legislative powers – important for Wales, but less so further afield.

4.2 New Secretary of State for Wales, and machinery of government issues

Peter Hain resigned as Secretary of State for Wales on 24 January, in the midst of a row about the financing of his campaign for the Labour deputy leadership and failure to declare donations properly to the Electoral Commission. He was replaced in that position (but not as Work and Pensions Secretary) by Paul Murphy, who thus returned to the office he held between 1999 and 2002. Reaction to Murphy's appointment was generally favourable, particularly from Rhodri Morgan and Elfyn Llwyd MP, despite Murphy's well-known reputation as a 'devo-sceptic' (that said, the Liberal Democrats have been more hostile).⁹⁸ Murphy has described himself as a 'devo-realist', and since his appointment, or re-appointment, he has been at pains in various statements, interviews and speeches (such as his St David's Day lecture at Cardiff University on 6 March) to emphasise his general support for devolution and his pragmatic approach to the issues it raises.

The appointment of a new Secretary of State did not trigger broader changes at Cabinet or ministerial level relating to devolution. Huw Irranca-Davies remains parliamentary under-secretary at the Wales Office. It appears that part of the reason for Murphy's appointment (and for Wales being his only responsibility, rather than combining it with other portfolios or creating a 'department of nations and regions') was a desire on the part of Gordon Brown to avoid large-scale changes to the machinery of government following Hain's snap resignation. However, such changes

⁹⁸ See 'Paul Murphy returns as Welsh Secretary', *Western Mail*, 25 January 2008.

may follow in due course. Murphy has been given various additional responsibilities to purely Welsh ones, including 'digital inclusion' and working to re-establish the Joint Ministerial Committee.

4.3 Formal intergovernmental meetings

There have been no meetings of the plenary Joint Ministerial Committee in the period covered by this report nor publicised ones of its functional committees. However, this is likely to change shortly. The UK Government has now decided to revive the JMC framework, and Paul Murphy has been tasked with setting up the revived committee.⁹⁹ This is being approached in a slow, painstaking way, with Murphy undertaking a round of meetings with the devolved administrations about how the new framework would work. The suggestion is that there will be two sets of meetings: the plenary JMC, and a functional version (dubbed 'JMC Domestic' by some) to deal with practical policy matters. At that point a 'first' meeting was expected in the spring, and a plenary one by the autumn. As of the end of April no meetings had taken place. Whether Gordon Brown would chair plenary meetings is unclear – the implication of press coverage is that this would fall to Jack Straw instead. If not chaired by the UK Prime Minister, it would lose much of its symbolic value as a manifestation of 'Britishness', even if the risks of political embarrassment to the UK Government would also be reduced. The 'domestic' format was suggested by the Scottish Government back in the early autumn, and might itself take various forms (or have changing ministerial attendance) depending on the substantive issues under consideration.

A summit meeting of the British-Irish Council took place in Dublin on 14 February 2008.¹⁰⁰ The Welsh Assembly Government was represented by First Minister Rhodri Morgan, Deputy First Minister Mr Ieuan Wyn Jones, and Minister for Social Justice and Local Government Dr Brian Gibbons. Paul Murphy, the new Secretary of State for Wales, represented the UK Government. The meeting reviewed progress of its work to date and developed plans for further future work, including a summit to be held in Scotland in September.

⁹⁹ See 'Devolution forum revived as rows grow', *Western Mail*, 6 March 2008.

¹⁰⁰ The meeting's communiqué is available at www3.british-irishcouncil.org/documents/dublin_summit2.asp

4.4 Legislative powers and related issues at Westminster

The accretion of legislative powers by the National Assembly through Legislative Competence Orders (LCOs) continues. As of 30 April, ten were at various stages of consideration, and one (The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008, SI 2008 No. 1036) had been formally approved by the Privy Council. Most of these remain either under consideration at the National Assembly, however, or by the Secretary of State. Only two are before the Westminster Parliament and have been considered by the Commons Welsh Affairs Committee:

- the draft National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (formerly known as the National Assembly for Wales (Legislative Competence) (No. 3) Order 2008), which is concerned with vulnerable children, and
- the National Assembly for Wales (Legislative Competence) (No. 4) Order 2008, which concerns the provision of domiciliary care.

The committee has yet to report on the vulnerable children LCO, but its report on the domiciliary care LCO, published on 5 March, is particularly worthy of note for two reasons.¹⁰¹ First, it is a very detailed consideration of the LCO (the substantive part of the report runs to 28 pages), covering the principle of conferring the powers specified, the Assembly Government's policy and the practical issues arising from both of these. Such detailed consideration clearly involves a huge degree of effort, and it has to be questionable whether such work can be maintained if the volume of LCOs increases (the scrutiny of the LCO by the Lords Constitution Committee was, by contrast, limited to a brief consideration of whether it raised any issue of 'constitutional principle', dealt with by a letter from that committee's chairman to the Secretary of State rather than by formal report). Second, the committee was critical of the approach taken by the Assembly Government to handling the LCO, saying:

We also note the haphazard approach to processing proposals for Legislative Competence Orders in Council. The failure on the part of the Welsh Assembly Government to follow the anticipated procedures for these proposals, which were described during the progress of the Government of Wales Act 2006, has created significant problems. The Wales Office, the Welsh Assembly Government and the National

¹⁰¹ House of Commons Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008*, Fourth Report of Session 2007–08 HC 257 (London: The Stationery Office Limited, 2008).

Assembly for Wales should seek to coordinate the procedures more effectively in future.¹⁰²

(One might note that the 'anticipated procedures' were set out by the Wales Office and the committee itself, not the Assembly Government. In reality, its concern is that its own expectations have not been met rather than that the Assembly Government has not lived up to its word.) Beyond this, it is becoming clear at Westminster that the process of dealing with LCOs is in fact unduly cumbersome. In evidence to the Commons Justice Committee on 8 May (for its inquiry 'Devolution: A Decade On'), Rhodri Morgan admitted that the system 'creaks a bit', while Lord Elis-Thomas (hitherto a staunch defender of the system) suggested that the detailed scrutiny carried out by the Welsh Affairs Committee was part of the problem and that the Justice Committee, taking a lighter-touch approach, might be more suited to undertaking this task.¹⁰³ Apparently, discussions are underway behind the scenes between the various parties to simplify the present system.

As noted above, several LCOs remain with the Secretary of State for submission to Parliament. Behind the scenes, several more are under negotiation between Cathays Park and Whitehall (and have been for many months now). It remains unclear to what extent the change of Secretary of State will affect these sorts of processes.

In addition to the various LCOs underway, three Westminster bills add 'matters' to Schedule 5 to the Government of Wales Act 2006:

- The Education and Skills bill will confer powers on the Assembly relating to school inspections (Field 5.10A)
- The Local Transport bill will confer powers relating to road charging (Field 10.1)
- The Planning bill will confer various powers on the Welsh Ministers regarding planning control and development plans, by the Assembly Government and by local authorities in Wales (Fields 18.1-18.3).

As these do not attract the same detailed level of scrutiny as that required for LCOs, there is an emergent difference in the impact of the two routes – which is apparently also becoming the source of some (as yet private) concern at Westminster.

¹⁰² Ibid, para. 76.

¹⁰³ See 'Give creaking Welsh law-making system time, says Rhodri' and 'Committee is "not operating as expected"', *Western Mail*, 9 May 2008.

4.5 The broader UK constitutional debate

The broader constitutional debate about the Union, mainly focussed on Scotland, has moved on somewhat since January. The Scottish Government's 'National Conversation' was re-launched on 26 March, though the range of activities remains limited and it essentially remains a blog of ministerial statements with public comments.¹⁰⁴ The re-launch has two main features: an attempt to involve civil society more actively in the Conversation, and the proposal that there should be a 'multi-option' referendum covering 'enhanced devolution' as well as the status quo and independence. (The white paper *Choosing Scotland's Future* provides for that referendum to be held during the present Parliament, probably in 2010 or 2011.¹⁰⁵)

There has been much activity on the side of the unionist Scottish Constitutional Commission. That was given the go-ahead by Gordon Brown in an interview for BBC TV Scotland's 'The Politics Show' on 19 February. The implication, however, was of a take-over of the process by the UK Government in London. What has been established is in fact an independent commission, though it is resourced and supported by the UK Government rather than the Scottish Parliament (under whose aegis it also operates). Its chairman is Sir Kenneth Calman, Chancellor of Glasgow University, formerly Vice-chancellor of Durham University and chief medical officer in both the (English) Department of Health and the Scottish Office. His appointment was announced on 25 March. The Commission's membership was announced on 28 April, when it held its first meeting at Holyrood.¹⁰⁶ Although initially expected to report by the autumn, the objective appears now to be to produce an interim report by November and a final one in the spring of 2009.

¹⁰⁴ See A. Salmond 'National Conversation with Scotland's institutions', speech in Edinburgh, 26 March 2008. Available at www.scotland.gov.uk/News/This-Week/Speeches/First-Minister/nationalconversation

¹⁰⁵ Scottish Executive, *Choosing Scotland's Future: A National Conversation. Independence and responsibility in the modern world*. (Edinburgh: Scottish Executive, 2007). Available from www.scotland.gov.uk/Publications/2007/08/13103747/0

¹⁰⁶ Apart from Sir Kenneth, the members are: Colin Boyd, former Lord Advocate, member of the House of Lords (Labour); Rani Dhir, Director Drumchapel Housing Co-operative; James Douglas-Hamilton, former Scottish Office Minister and MSP, member of the House of Lords (Conservative); Professor Sir David Edward, retired judge of the European Court of Justice; Murray Elder, member of the House of Lords (Labour); Audrey Findlay, former Leader of Aberdeenshire Council, now convener of the Scottish Liberal Democrats; Jamie Lindsay, former Scottish Office Minister, member of the House of Lords (Conservative); John Loughton, Celebrity Big Brother contestant and President of the Scottish Youth Parliament; Murdoch MacLennan, chief executive, Telegraph Media Group; Shonaig Macpherson, chair of the National Trust for Scotland and of the SCDI (Scottish Council Development and Industry); Iain McMillan, director, CBI Scotland; Mona Siddiqui, Professor of Islamic Studies at the University of Glasgow; Matt Smith, Scottish Secretary, Unison, and Jim Wallace, former deputy first minister and leader of the Scottish Liberal Democrats, and a member of the House of Lords.

Part of the Labour agenda for the Commission (the transfer of devolved powers back to Westminster) is strongly opposed by the Liberal Democrats, whose Scottish leader Nicol Stephen has asked Sir David Steel to reconvene his commission (which first reported in 2006) to create pressure for further change in devolution without such 'undevolution' of powers. That view also appears to be shared by Sir Kenneth Calman himself.¹⁰⁷

A cause for concern, particularly in Wales, has to be the fact that the Commission is supposed to have a UK-wide remit, and a brief that includes financial issues, but has no Welsh members, and indeed an approach in which UK-wide issues appear only sporadically and for what look very much like partisan reasons.

Beyond this, the UK Government continues work on its broader constitutional reform agenda. Relevant to Wales are aspects of the work on 'Britishness', notably the 'British statement of values' and a 'British Bill of Rights'. On 26 March, in a speech to a seminar at the Institute for Public Policy Research (IPPR), Michael Wills (Minister of State at the Ministry of Justice) suggested that the statement of values (intended *inter alia* to 'combat the separatist nationalists in Scotland and Wales') should be developed by a consultative process culminating in a 'citizens' summit' of some 500 people selected randomly but to be representative of the broader population.¹⁰⁸ This would then go to Parliament for a final decision, but such wider public involvement would 'enhance representative democracy'. Wills notably did not offer to consult the devolved legislatures or administrations in this process. However, it remains unclear what such a statement might mean, what effect it might have, or how it might relate to the 'British Bill of Rights' which is also still on the UK Government's agenda.

¹⁰⁷ See 'No case for Holyrood to lose powers – devolution review chief', *The Scotsman*, 26 April 2008.

¹⁰⁸ M. Wills, 'The politics of identity'. Speech to Institute for Public Policy Research, London, 26 March 2008. Available at www.justice.gov.uk/news/sp260308b.htm

5. Relations with Europe and local government

Dr Malin Stegmann McCallion & Dr Elin Royles: Institute of Welsh Politics, Aberystwyth University

5.1 Europe

In January Margot Wallström, Vice President of the European Commission, visited Wales and spoke alongside the First Minister at a Wales Forum on Europe. Ms Wallström also spoke and took questions at a special session of the National Assembly for Wales. This visit was followed by a further high-profile EU visit in February when Iztok Mirošič, the Slovenian Ambassador to the UK, briefed the European and External Affairs Committee (EEAC) on the Slovenian's Presidency priorities. It is hoped that visits like these will raise the awareness of EU issues among a wider Welsh audience.

In February the EEAC agreed upon the priority areas for the committee's work programme for 2008; this programme was further confirmed at a meeting in April. The rationale for the areas of priority is their (potential) consequence for Wales and matters devolved to Wales.

5.1.1 EU Presidency briefing

The Slovenian Ambassador to the UK, Mr Iztok Mirošič, attended the European and External Affairs Committee meeting on 7 February. Mr Mirošič held a presentation in which he outlined the priorities for the Slovenian Presidency of the EU. He believed that the EU faces two major challenges for 2008: the 'ratification and implementation of the treaty of Lisbon, and strengthening the EU's role globally'.¹⁰⁹ These challenges will influence the five main areas on which the Slovenian Presidency will focus, which include 'the future of the EU and the ratification and implementation of the reform treaty ... [and] the successful launch of the new Lisbon strategy cycle'.¹¹⁰ The Ambassador also discussed other areas of mutual interest with the First Minister, such as convergence funding and language rights.¹¹¹

¹⁰⁹ The Committee on European and External Affairs Minutes, Thursday 7 February 2008, page 5. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?ds=2/2008

¹¹⁰ Ibid.

¹¹¹ European and External Affairs Committee, Minister's Report, EUR(3)-02-08 Paper 1 – First Minister's Report. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=75942&ds=2/2008

5.1.2 European Commission's Annual Legislative and Work Programme for 2008: areas of priority for the European and External Affairs Committee

At the EEAC meeting on 7 February the committee agreed upon this year's work priorities for the year. Based on the European Commission's Annual Legislative and Work Programme for 2008,¹¹² the Member's Research Service highlighted the possible areas which were seen to be both of strategic importance and relevance to devolved matters for Wales. The committee members then decided upon four priority areas from the Commission's Annual Legislative and Work Programme: subsidiarity; the future of regional policy; the CAP health check; and the Lisbon Strategy.¹¹³ Two of these priority areas and their implications for Wales are examined in more detail below.

Subsidiarity

The Treaty of Lisbon provides national parliaments within the European Union with a greater scope to participate in the EU policy process; a new clause in the Treaty sets out their rights and duties. Of significance here for Wales is the duty for national parliaments to consult their devolved administrations. Article 3b (3) in the Treaty of Lisbon reproduces Article 5 of the Treaty Establishing the European Community with one significant addition for the devolved administrations in the UK. It 'includes regional and local government within the sphere of subsidiarity'¹¹⁴. Although the article does not prescribe how it should be applied below the national level, it does not disregard sub-national levels of government.

The reason for an EEAC inquiry into the issue of subsidiarity would 'be to work with counterparts at the Scottish Parliament, Northern Ireland Assembly, House of Lords and House of Commons in developing formal agreements between Westminster and the devolved administrations following ratification of the Treaty'¹¹⁵. The Scottish Parliament's European Committee has shown an interest in developing a subsidiarity protocol between the devolved legislatures and Westminster. An agreement would further support consultations on European legislative proposals as well as ensuring

¹¹² The Annual and Legislative Work Programme 2008 can be found on the European Commission's website: http://ec.europa.eu/atwork/programmes/docs/clwp2008_en.pdf

¹¹³ European External Affairs Committee *Forward Work Programme* EUR(3)-03-08(p.2). www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=81261&ds=4/2008

¹¹⁴ European External Affairs Committee *EEAC Work Programme, February 2008* EUR(3)-03-08(p2) Annex. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=81262&ds=4/2008

¹¹⁵ Ibid.

that the National Assembly for Wales could effectively feed into the process of subsidiarity.

Future of Regional Policy

In September 2007 the European Commission launched a consultation on the future of EU Regional Policy. The initial results of the European Commission's consultation will be published in the 5th Progress Report on Economic and Social Cohesion,¹¹⁶ due in the second quarter of 2008. The Progress Report will be followed by a Green Paper on European Territorial Cohesion in September 2008. What is of interest here is that the Welsh Assembly Government has taken a different opinion on the future of EU regional policy to the UK Government. This was expressed by First Minister Rhodri Morgan at the EEAC meeting on 28 February:

The British Government's attitude is that regional policy should be concentrated entirely on the new accession countries that are 'really poor', and that it should not be devoted to the less well off areas of relatively rich countries like the UK. We take the view that there is still a role for regional policy throughout the EU, not only in terms of protecting our turf - we do not expect to get convergence funding in 2014, but we damn well expect the same sort of transitional post-convergence funding that Ireland benefited from when it stopped receiving convergence funding. The British Government's inclination is to ask: 'Do you really need that?', and we say: 'Yes, we do'.¹¹⁷

The First Minister also stated that Wales has achieved a step towards getting the UK Government 'to recognise, in its official stance with Europe, that not everybody in the UK at governmental level, namely us, agrees that there should not be any transitional arrangements'.¹¹⁸

5.1.3 JEREMIE

On 17 April the Deputy First Minister and Minister for Economy and Transport, Ieuan Wyn Jones, updated the European and External Affairs Committee with regards to the JEREMIE¹¹⁹ scheme. The JEREMIE scheme was set up in 2005 in order to help improve access to finance for small and medium-sized firms, e.g. through micro-

¹¹⁶ European Commission progress Report on Economic and Social Cohesion:

http://ec.europa.eu/regional_policy/conferences/4thcohesionforum/all_contrib_en.cfm?nmenu=3

¹¹⁷ The Committee on European and External Affairs Minutes, Thursday 28 February 2008, page 6.

www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=77252&ds=2/2008

¹¹⁸ The Committee on European and External Affairs Minutes, Thursday 28 February 2008, page 7.

www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=77252&ds=2/2008

¹¹⁹ Joint European Resources for Micro and Medium Enterprises.

credit, under the regional programmes for 2007-20013.¹²⁰ The JEREMIE scheme will cover the whole of Wales and is a partnership between Finance Wales and the European Investment Bank. The Welsh European Funding Office (WEFO) has confirmed the scheme in principle; it is currently 'subject to confirmation of match funding from the European Investment Bank (EIB) and completion of State Aid notification'.¹²¹

5.1.4. Conclusions

The difference of opinion between the UK government and the Welsh Assembly Government with regards to the future of EU regional policy highlights the importance of the strengthening of the subsidiarity principle in the new Treaty currently being ratified. It will be interesting too to follow the co-operation between the centre and the devolved administrations if the Treaty is ratified and comes into effect.

5.2 Local government

The previous report discussed the tensions in Assembly Government-local government relations. The publication of the final local government settlement together with developments during the past few months suggest tensions will continue, and they could become even more difficult following the local government elections.

5.2.1 Local government settlement and council tax

Two key changes made between the draft and final Assembly Budget were additional local government funding and education funding for the 'foundation phase'. The final local government settlement for 2008-09 was £3.8bn, which included an additional £4.7m in revenue support funding. This additional allocation ensured that no local authority received increases of less than 2 per cent (in contrast to the below 1.5 per cent provisional settlements for some authorities). The average increase across local authorities was 2.4 per cent.¹²² Introducing the Budget, Andrew Davies, Minister for Finance and Public Service Delivery, stated that they had listened to local

¹²⁰ European Union Regional Policy, Inforegio, Panorama, No 25, March 2008, page 6.

http://ec.europa.eu/regional_policy/sources/docgener/panora_en.htm

¹²¹ European and External Affairs Committee *Update on JEREMIE and JESSICA Financial instruments* EUR(3)-03-08 (p1): 17 April 2008. www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=81240&ds=4/2008

¹²² WAG Press Release, *More money for services* (22 January 2008) Downloadable from:

new.wales.gov.uk/news/ThirdAssembly/LocalGovernment/2008/2137496/?lang=en

¹²² The Record, (29 January 2008) Downloadable from: www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080129qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20572kb%29

government representatives.¹²³ Brian Gibbons, Minister for Local Government and Social Justice, argued that the settlement was 'a good and fair deal for both local government and council tax payers in a challenging period'.¹²⁴ He also argued that it 'lays to rest any accusations that the Welsh Assembly Government is short-changing local government within the overall context of the comprehensive spending review settlement'.¹²⁵

The reaction of WLGA and opposition Assembly Members was less positive. While the WLGA welcomed the cap at 2 per cent, as the average rise for councils was well below inflation, it called the final budget 'little more than an exercise in window dressing' and the worst settlement since devolution.¹²⁶ Concerns were once again voiced regarding the implications for frontline services and council tax levels. Cllr Meryl Gravell also stated: 'Our key priority will be protecting frontline services and the proposals of the "One Wales document" will need to be judged on whether they satisfy this benchmark'.¹²⁷ Debates within the Assembly drew attention to a number of issues. Jenny Randerson highlighted that of the additional £4.7m, £2.5m was directly from the local government and social justice portfolio, resulting in cuts in other areas within this portfolio. The further £2.2m was from Assembly Government reserves and would have to be repaid. Another issue raised was reform of the local government funding formula.¹²⁸

In March 2008, it was announced that the average council tax increase across Wales was 3.8 per cent, the lowest council tax rises in over a decade. According to Steve Thomas, WLGA Chief Executive, the situation demonstrated that councils were 'fully in tune with their communities needs'.¹²⁹ The announcement coincided with the release of a WLGA survey showing that local government had ensured £94m in

¹²³ The Record, 22 January 2008. Downloadable from: <http://tinyurl.com/53zy98>

¹²⁴ WAG Press Release, *More money for services* (22 January 2008) Downloadable from: new.wales.gov.uk/news/ThirdAssembly/LocalGovernment/2008/2137496/?lang=en

¹²⁵ The Record, 29 January 2008 Downloadable from: www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080129qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20572kb%29

¹²⁶ WLGA Press Release, *Assembly final budget tinkering at the edges says WLGA* (16 January 2008) Downloadable from: www.wlga.gov.uk/english/press-releases/assembly-final-budget-tinkering-at-the-edges-says-wlga-150108/

¹²⁷ Ibid.

¹²⁸ The Record, (22 January 2008); The Record, (29 January 2008).

¹²⁹ WLGA Press Release, *Fair scrutiny needed across all senior public sector salaries, says WLGA* (17 April 2008) Downloadable from: www.wlga.gov.uk/english/press-releases/fair-scrutiny-needed-across-all-senior-public-sector-salaries-says-wlga

efficiency savings during 2007, 'proving that local government is the most committed part of the Welsh public service for delivering better outcomes for local people'.¹³⁰

5.2.2 Improvement Agreements and National Minimum Standards

In the past few months, tackling the 'postcode lottery' in public service performance and variability across local authorities has become a WAG priority.¹³¹ Renewed emphasis on performance and service improvement is being developed through the already extant Improvement Agreements and the establishment of National Minimum Standards. A new system of Improvement Agreements and associated Improvement Agreement Grants (IAGs) is being introduced for the 2008/09 financial year as a successor to Policy Agreements and Performance Incentive Grants. This system will be more focussed on assessing service improvement, and 'addressing local areas of underperformance and priorities for change'.¹³² The idea of national minimum standards builds on local government annual performance figures. There are likely to be a set of five to six standards that all providers should meet; these are expected to be implemented by April 2009.¹³³ Reflecting the emphasis in statements on working with local government to develop the improvement agenda, a Task and Finish group with representatives from WLGA, the Society of Local Authority Chief Executives and Senior Managers (SOLACE) and local authorities was tasked with producing a report for the Improvement Board by April on these proposals.¹³⁴ The Local Government Policy Division intends to engage with individual local authorities to negotiate Improvement Agreements following the May elections.¹³⁵

These proposals suggest a new approach to service improvement, seen as a means to 'redirect the national uniformity of policy agreements back toward the local level'.¹³⁶ At the same time, as Andrew Davies explained, the emphasis is on incentivising local authorities: 'we are looking at, for example, funding in particular

¹³⁰ WLGA Press Release, 'Welsh Council Tax Increases by Average 3.8%', 6 March 2008, at: www.wlga.gov.uk/english/press-releases/welsh-council-tax-increases-by-average-38

¹³¹ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08 Transcript, 20 February 2008, Downloadable from: <http://tinyurl.com/6qmxsg>

¹³² Welsh Assembly Government, Local Government E-Bulletin #22 (February 2008) at: new.wales.gov.uk/topics/localgovernment/ebulletin/ebulletin22/?lang=en

¹³³ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08-(p1) Ministerial Scrutiny Sessions (20 February 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=74935&ds=2/2008

¹³⁴ Welsh Assembly Government, Local Government E-Bulletin #23 (March 2008) at: <http://new.wales.gov.uk/topics/localgovernment/ebulletin/23/?lang=en>

¹³⁵ Ibid

¹³⁶ Welsh Assembly Government, Local Government E-Bulletin #22 (February 2008) at: new.wales.gov.uk/topics/localgovernment/ebulletin/ebulletin22/?lang=en

service areas to be paid against performance and agreed performance standards in each local authority. So, again it is a matter of both the carrot and the stick'.¹³⁷

In parallel, the WLGA highlighted improvements in local government performance. It drew attention to inspectorate reports of improved standards in social services and education.¹³⁸ Furthermore, WAG's 'Living in Wales' survey identified that up to 90 per cent were highly satisfied with the level of service provided by their local council.¹³⁹ As a result, WLGA Chief Executive Steve Thomas stated: 'Despite mounting financial pressures, rising public expectation....councils have shown quality leadership, embracing the efficiency agenda more than any other area of the Welsh public sector'.¹⁴⁰

5.2.3 Local Service Boards

The Local Service Boards (LSBs) model established following the Beecham report is a WAG priority to integrate public service delivery and facilitate collaboration across public services.¹⁴¹ Building on pilot projects established in 2007, the model is being expanded across Wales with the first wave of local delivery agreements for 2008-09 being agreed by LSBs by the end of April 2008 and other boards being established and developing agreements for 2009-10. Three aspects promoted during the forthcoming period include: pooling resources and budgets; greater emphasis on connections between the local service board and the Wales spatial plan processes to develop a regional approach; and a new model of 'engaged leadership' that entails senior level WAG presence on the LSBs.¹⁴²

Brian Gibbons signalled a more robust approach to local government on collaboration and improvement on the *Politics Show* on 13 April 2008. He called for closer working to improve services and proposed that council numbers could be

¹³⁷ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08 Transcript (20 February 2008) Downloadable from: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=76477&ds=2/2008 or op. cit. 12

¹³⁸ WLGA Press Release, *Councils rise to the challenge as social services improve across Wales* (8 January 2008) at: www.wlga.gov.uk/english/press-releases/councils-rise-to-the-challenge-as-social-services-improve-across-wales/; WLGA Press Release, *Local government delighted by continued improvement in education standards* (26 February 2008) at: www.wlga.gov.uk/english/press-releases/local-government-delighted-by-continued-improvement-in-education-standards/

¹³⁹ WLGA Press Release, *Welsh councils top public services delivery poll* (5 March 2008) at: www.wlga.gov.uk/english/press-releases/welsh-councils-top-public-services-delivery-poll/

¹⁴⁰ Ibid.

¹⁴¹ Health, Wellbeing and Local Government Committee, HWLG(3)-04-08 Transcript (20 February 2008). www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?act=dis&id=76471&ds=2/2008

¹⁴² Ibid.

reduced if targets were not realised: 'It could mean restructuring...the big challenge for local government is with the existing structures, working jointly with health, with other external organisations, working jointly across organisational boundaries'.¹⁴³ In response, Steve Thomas, WLGA Chief Executive, pointed to current collaboration and argued that talk of reorganization was 'not really a show-stopper...there are ways of delivering some functions that don't have to be delivered in 22 different ways'. He even suggested that 'there are plenty of people in local government who would agree with reorganization'.¹⁴⁴

5.2.4 Assembly Government – local government relations and the election

While the Welsh Assembly Government was more robust in its approach to local government over the past few months, local government made public its attitude towards the deterioration in relations. At the meeting of the WLGA's 70-strong Council on 22 February, leaders of local authorities highlighted that, in contrast to the positive relationship since devolution, relations with WAG were now increasingly fragile as local government was not being listened to and was 'being treated shamelessly by the WAG'.¹⁴⁵ The tight budget settlement and its implications for local service delivery were the main points of contention. As a result of 'centralisation in a devolved system', a WLGA report recommended investigating the Scottish model, in which there is a concordat between government and local authorities.¹⁴⁶

The local government election on 1 May 2008 resulted in further diversification of the political complexion of local government; this could potentially exacerbate already difficult relations. In particular, Labour now only has overall control of 2 of the 22 local authorities while its One Wales coalition partner, Plaid Cymru, lost overall control of Gwynedd Council. Given the rise of the independents, and depending on the outcome of local coalition negotiations, Labour could lose its longstanding leadership of WLGA. Questions can be raised regarding how WAG will negotiate with other parties at the local government level, both locally and collectively at a national level through the WLGA. Notably, the success of independents and particularly 'independent parties' either directly opposed to or at least positioning themselves as alternatives to Labour or Plaid Cymru (notably in the South Wales valleys and in Gwynedd) could add another dimension to central-local relations. Interestingly, on

¹⁴³ D. Williamson, 'Gibbons threat to cut number of councils if they fail to improve', *Western Mail* (14 April 2008)

¹⁴⁴ D. Williamson, 'No shock in merging county councils', *Western Mail* (15 April 2008).

¹⁴⁵ A. Wightwick, 'You just don't understand us anymore and it might just spell D-I-V-O-R-C-E, councils tell WAG', *Western Mail* (23 February 2008).

¹⁴⁶ Ibid.

taking the post of Permanent Secretary at the Assembly Government, Dame Gillian Morgan identified 'ensuring that the Assembly Government and Wales' 22 councils co-operate effectively' as one of her goals, stating further that 'local government is fundamental'.¹⁴⁷

5.2.5 Conclusion.

Newly elected councils across Wales face an extremely tight financial year in 2008-09 and a number of challenges. The current Welsh Assembly Government's policy agenda for local government is clearer, with an emphasis on increasing performance, improvement and collaboration across public services. The recent election result creates a more mixed political context for Assembly Government-local government relations. This could lead to further tensions, to moves to formalise relations or to a greater effort on both sides to cooperate and a redirection towards renewed 'partnership'.

¹⁴⁷ D. Williamson, 'People are our best asset but they're an asset in short supply', *Western Mail*, (5 May 2008).

6. Elections, Parties and Public Attitudes

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6.1 Elections

The major electoral event during the period covered by this report came on its very last day. Elections were held for all the seats in all 22 Welsh unitary local authorities on 1 May 2008, for seats last fought four years previously. The elections constituted the largest test of the public mood towards Wales' parties outside of a National Assembly or UK general election. An outline of the final results is given in Figure 6.1 below.

Figure 6.1: Summary Results of 2008 Local Authority Elections in Wales

	Seats Won	Change Since 2004	Councils Won*	Change Since 2004
Labour	342	-124	2	-6
Conservatives	174	+63	2	+1
Lib-Dems	162	+21	0	-
Plaid Cymru	205	+31	0	-1
Independents/ Others	381	+9	0	-

Source: http://news.bbc.co.uk/1/hi/uk_politics/wales/default.stm

* Eighteen councils are now under 'No Overall Control' by a single party, compared with twelve in 2004.

The clear loser in the local elections in Wales, as in England, was the Labour Party. Labour's results in 2004 had been poor. Yet the party still lost more than a quarter of the seats it was defending from 2004. There was no such obvious single winner; rather, all the other major parties, as well as several groups of independents, had cause for some celebration. That said, there were also reasons to temper the celebrations in all cases.

In line with a very strong performance in England, the Conservatives made the greatest number of gains in seats. Nonetheless, the Tory advance remained, for the greater part, restricted to those limited parts of Wales that have historically been areas of reasonable strength for them: British Wales, in Balsom's terminology. Outside these relative bastions, the rebuilding of Welsh Conservatism continues to prove hard going. Plaid Cymru also made significant net gains, and comfortably

retained their position as the second party of Welsh local government in terms of councillors. But local problems in Gwynedd contributed to the party losing their majority in the one local authority they had previously controlled; the party also suffered twin embarrassments, with Party President Dafydd Iwan losing his council seat in Gwynedd, and Plaid's prospective Westminster candidate, Penri James, being ousted in Ceredigion, Plaid's key target seat for the next general election. The Liberal Democrats made solid, if unspectacular, progress overall. But after a very difficult year for their party in Wales, any success for them was welcome.

Perhaps the most important implication of the local election results, however, is that the Labour Party's long-standing dominance of local government across much of Wales has now been pretty much eliminated. This may not prove to be permanent: unlike in Scotland, Wales does not yet have in place a proportional voting system for local government elections that guarantees political balance in its local authorities. But even so, this development is surely of great importance. Coming on top of the party's historically low vote share in the 2007 National Assembly election, it leaves Labour's long-standing hegemony in Welsh electoral politics looking distinctly sickly.

6.2 Parties

As of this writing, the dust has yet to settle on the local election results. While the complexion of the ruling groups in most of the 18 local authority areas under No Overall Control is becoming clearer, it may be several more weeks before matters are finalised. Given the bewildering sequence of events following last summer's Assembly election, close observers of the Welsh political scene will naturally be wary about predicting the final outcome of coalition negotiations. Nonetheless, it currently appears that the smallest of the four major parties, the Liberal Democrats, may be the major gainers with a role in the administration of some 13 of the 22 Welsh local authorities, with Labour featuring in around 9, Plaid Cymru in about 8 and the Conservatives in some 7. Various groups of Independents – a veritable moveable feast in the Welsh political context – can be expected to feature in the administration of about 15 authorities.¹⁴⁸

The practical consequences of this large-scale experiment in coalition politics will make for interesting viewing in coming years. It will also be interesting to note what effect these developments at the local level will have at the national and UK levels.

¹⁴⁸ G. Thomas, 'Independents rule Welsh councils'. See: <http://news.bbc.co.uk/1/hi/wales/7400330.stm>

Will the experience of various types of coalition politics by an ever greater number of party activists make it easier, or more difficult, to achieve agreement on coalition arrangements at higher political levels? Moreover, could the normalisation of coalition make it easier for Labour and the Conservatives to agree to demands for PR for local government as part of Assembly or Westminster coalition agreements? Conversely, will the increasing stake of both Liberal Democrats and Plaid in the current system of local government mean that they become less committed to change than in the past?

Of more immediate interest will be the ways in which the political parties interpret the election results. Of particular significance, of course, is Labour's reaction. The most interesting and thoughtful post mortem to emerge so far has come from former Secretary of State for Wales, Peter Hain. In an interview with Adrian Masters on BBC Wales's Politics Show, Hain blamed Labour's particular problems in Wales on two factors.¹⁴⁹ Weak organization was the first, with Hain citing an absence of strong local campaigning (apart from a few notable exceptions). But secondly, he also drew attention to the rapid changes taking place in Welsh society; changes to which the Labour Party in Wales has failed to adequately respond. These changes mean that Welsh voters, especially younger voters, have different aspirations from previous generations. Labour, Hain opined, has yet to respond adequately to this development. While calls to target more aspirational voters tends to be regarded as code for more New Labour-type policies, the Neath MP was adamant that this was not his aim: 'I don't want the London template just transplanted into Wales, that wouldn't work, but the old Welsh Labour template won't work either.'

But while Hain's analysis of the problems faced by Welsh Labour was bold and impressive, the content of the 'progressive modern left-wing politics' which he advocated, and 'which Labour ought to lead' was less clear. It will be interesting to see how the thinking of one of Welsh Labour's most astute political minds develops, now that he is free from the constraints of office. But it remains open to doubt whether the intellectual capital needed to underpin the renewal of the party can be generated by Hain, any other individual, or, indeed, the various Labour-leaning think tanks. Ideas Wales was another addition to the ranks of the latter in February,¹⁵⁰ but its website currently shows little beyond a statement of aims. With the website of

¹⁴⁹ 'Hain: Welsh Labour has lessons to learn'. See <http://this-is-sparta.blogspot.com/2008/05/hain-welsh-labour-has-lessons-to-learn.html>

¹⁵⁰ IdeasWales: www.ideaswales.org.uk/ See also M. Shipton, 'Labour goes in search of bright ideas' *Western Mail*, (1 Feb 2008): <http://icwales.icnetwork.co.uk/news/politics-news/2008/02/01/labour-goes-in-search-of-bright-ideas-91466-20422619/>

another putative Labour-linked think-tank (Wales 20:20) appearing largely inactive, Labour's ability to rejuvenate itself intellectually remains in considerable doubt.¹⁵¹

6.3 Public Attitudes

There were no new major surveys or other substantial sources of information about Welsh public attitudes published during the timeframe of this report. However, an ICM poll conducted for the BBC in February 2008 did include a question about a referendum on 'turning the National Assembly into a full, law-making Welsh Parliament'. Results showed a narrow lead (49 per cent to 42 per cent, with 9 per cent 'don't knows') for the 'Yes' camp. The All-Wales Convention, being established by the Assembly Government under the leadership of Sir Emyr Jones-Parry, is widely expected to conduct some more detailed research into public attitudes and their potential implications for a referendum.

The period of this report also saw publication of further findings from the Economic and Social Research Council (ESRC)-funded 2007 post-election survey, conducted by the Institute of Welsh Politics and the National Centre for Social Research. The previous report in this series presented detailed figures on public attitudes to the governance of Wales. These data provide some fascinating additional information.

First, we now have available information regarding the constitutional preferences of the supporters of the different political parties in Wales. Figure 6.2, below, displays this information: it shows the percentage support given to each of the four main constitutional options among supporters of each party. While the fairly low numbers of respondents in individual cells in the table mean that we must interpret this information with caution, what is nonetheless striking is the degree of commonality of attitudes. Conservatives are the most likely still to oppose devolution outright, and Plaid partisans are much the most likely to support independence. Yet a plurality of identifiers with every party support the same constitutional option, a Parliament for Wales (with the marginal exception of the Liberal Democrats, amongst whom support for a Parliament ties with support for an Assembly). While the picture is doubtless rather different for die-hard party activists, these results do support a general finding that has consistently emerged from recent survey data on the general public: namely, that rather than Wales' constitutional status becoming a line of increasing division,

¹⁵¹ Wales 20:20. www.wales2020.com/

there has in fact been something of a homogenisation of attitudes across Wales during the last decade.

Figure 6.2: Constitutional Preferences by Party Identification, % (Wales 2007)

	<i>Cons</i>	<i>Labour</i>	<i>Lib Dems</i>	<i>Plaid</i>
Independence	5.8	9.3	11.8	25.4
Parliament	38.5	44.3	38.2	47.7
Assembly	26.3	29.6	38.2	14.6
No Devolution	26.9	12.6	7.9	11.5
Don't Know	2.6	4.2	3.9	0.8

Weighted N of respondents = 674

Also now published are results from questions that probe beyond the basic constitutional preferences of individuals, and ask them where responsibility for some specific matters should be vested. Survey respondents were asked about which level of government 'ought to make most of the important decisions for Wales' for four key policy areas: Welfare Benefits, the National Health Service, Schools, and Defence and Foreign Affairs. Results are presented in Figure 6.3 below. These show not only clear majority public support for the devolved level of government to have control over areas where they already make many decisions – on schooling and healthcare – but also a similar level of public endorsement for those powers to extend to an area like welfare benefits. The latter is striking, as it is a policy area that currently remains very much reserved to Westminster. However, majority public support for the empowerment of the devolved level of power is not uncritical or universal, and a very substantial majority have no desire to extend it as far as defence and foreign policy.

Figure 6.3: Desired Level of Government Decisions for Wales, % (2007)

	<i>Benefits</i>	<i>NHS</i>	<i>Schools</i>	<i>Defence/Foreign</i>
WAG	59.5	61.9	56.7	21.6
UK Govt	22.7	26.1	18.5	74.1
Local Councils	16.8	11.6	24.7	1.3
EU	1.0	0.4	0.1	2.9
Weighted N =	859	867	866	852

6.4 Conclusion

In his analysis of the local election results, John Osmond declared that 'Labour's near century-long domination of Welsh local politics came to an end on May Day 2008'.¹⁵² This almost certainly over-states the case. The more rural areas of the country have never known Labour dominance at local government level. Even in metropolitan Wales, Labour has regularly faced serious, sustained and sometimes successful challenges. In short, the party's strength at the local level has never matched its sustained domination of Welsh representation at Westminster. Moreover, it is the latter that has underpinned the party's dominant position in Welsh politics more generally.

Labour's domination of Wales's Westminster representation remains intact – at the very least until the next UK general election – in large part due to the quite spectacularly disproportionate workings of the first-past-the-post system in the Welsh context. Moreover, Westminster remains the dominant level in Welsh political life: not only in formal terms through the preservation of parliamentary sovereignty, but also because Westminster (and, indeed, Whitehall) are veto-players in the post-2006 Act Welsh legislative process. Important vestiges of Labour hegemony therefore still remain. While Welsh Labour is clearly down, it is not yet out.

Nonetheless, reversing or even halting the current decline presents a huge challenge to the party. A few local battles like Montgomeryshire (Con/LD) and Ceredigion (Plaid/LD) notwithstanding, Labour will be the party defending territory in the next general election in Wales. It will also have to do so against different opponents in different places, making the construction of a coherent and effective response difficult. Welsh Labour is further hampered by lacklustre organisation, under-developed and under-resourced policymaking structures, and an absence of credible, authoritative and appealing leadership given Rhodri Morgan's imminent departure and the forced resignation of Peter Hain. Even more fundamentally, there appear deep philosophical disagreements within Welsh Labour about how to proceed. Some appear to regard Rhodri Morgan's attempt to put 'clear red water' between Welsh and British Labour as a populist over-reaction to the Alun Michael period. And given the poor 2007 and 2008 results, they now seem to believe it is time to cleave closer to British Labour (the UK party's current travails apparently notwithstanding). Others

¹⁵² J. Osmond, 'The Welsh results examined "Anyone but Labour"', Open Democracy website: www.opendemocracy.net/ourkingdom/2008/05/07/the-welsh-results-examined-anyone-but-labour

see no alternative to Morgan's attempt to stress Welsh distinctiveness. But the content of that distinctiveness – what exactly constitutes a 'progressive policy agenda' in early twenty first century Wales? – remains deeply problematic.

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