



Welsh Liberal Democrats
Democratiaid Rhyddfrydol Cymru

The Welsh Liberal Democrat
submission to the
All-Wales Convention

Question 1: In general, what level of understanding do you think there is in Wales of the current devolution settlement?

- 1.1 Welsh Liberal Democrats believe that devolution has not only become accepted by the people of Wales, but that support for it has grown. A recent poll suggested that nearly 70% of people in Wales supported some form of devolution¹.
- 1.2 However, we believe that there is not yet clear understanding of the extent and scope of the Assembly's competencies. We believe this is a result of not only the fairly haphazard way in which devolved areas were selected, but also because there are retained issues within each policy area. For example, although it is commonly perceived that education policy is devolved, there are significant elements of it that are not, notably Higher Education. We believe that the piecemeal settlement makes accountability difficult and alienates people from the devolution process.
- 1.3 This is likely to increase as the process of devolution continues, as this will happen in a wide-range of ways, be it by LCOs, framework powers, transfer of functions, legislative consent motions or any other means. This is likely to continue to muddy the waters as to what areas are devolved and what are not, which will continue to frustrate people who wish to become engaged with the process of devolution. We would prefer a more straight-forward system.
- 1.4 We believe that the distinction between the Government's executive responsibilities and the Assembly's scrutiny and legislative responsibilities is poorly understood. This is partly due to misleading and unacceptable term 'Welsh Assembly Government', which serves to confuse the roles of the Assembly and the Government. This should be changed immediately preferably to the Welsh Executive or the Welsh Government.
- 1.5 We believe that it is well known amongst the politically-interested that the Assembly can gradually acquire new legislative powers, as polling shows. However, we do not accept that the majority understand fully the intricacies of what is a lengthy and complex process. We also believe that there is frustration with this process as people realise the Assembly is not able to legislate effectively for their concerns. As this frustration grows, we believe there will be increased opportunity to persuade people of the need for primary legislative power.

¹ Institute of Welsh Politics, 2008. Figures are for those supporting a full Parliament and the current constitutional settlement.

Question 2: What do you think has been the practical outcome of devolution in Wales?

2.1 The establishment of the National Assembly has led to a number of policy initiatives which have helped developed a distinctive body of Welsh public policy and altered the make up of civil society in Wales. The ability of the Assembly to react to the specific needs of Wales means that it has been able to develop policy that is more effective and relevant than that developed by Westminster. This has allowed the development of Welsh solutions to Welsh problems.

2.2 Whilst in Government, the Welsh Liberal Democrats helped deliver over 100 promises for the Welsh people. Amongst these, some of those which would not have been possible before devolution include:

Introduction of Assembly learning grants to higher education and further education students which widened access to higher education to students from a poorer background. This was despite a Westminster-centred trend towards increasing the cost of higher education.

The Assembly Investment Grant which was tailored towards supporting small businesses and to help improve Wales' economy by promoting enterprise.

700 more teachers in order to reduce class sizes and provide a better education of Wales' children. This was taking advantage of Wales' schools structure to enable children to receive a better education.

2.3 In our submission to the Richard Commission², we outlined a key number of policy areas over which the Assembly has administrative but not legislative control. We concluded that this led to "policy proposals that would be of huge benefit to Wales and its people... that, under the current constitutional arrangement, we could never implement." As there has been little constitutional change in the past this still holds true. We believe that the National Assembly does not have the tools it requires to deliver effective change for Wales.

2.4 Likewise, there are a number of key policies that the Welsh Liberal Democrats support which the Assembly has not been able to implement due to the lack of legislative competence. These include:

Safer school transport can only be achieved by drawing down the powers to abolish the three-for-two rule, ensuring that school buses are not overcrowded. This would be in addition to the recent Learner Travel Measure that did not abolish this rule.

² Welsh Liberal Democrats, *Moving to a durable constitutional settlement: Evidence for Change, Proposals for a solution* (2003) Available at: <http://www.richardcommission.gov.uk/content/template.asp?ID=/content/evidence/written/wlibs/index-e.asp>

Micro-tax measures would be a valuable tool for the National Assembly. Wales has particular economic problems and we believe that the ability of the Assembly to apply extraordinary tax and credit measures to areas with the most entrenched deprivation would be essential in alleviating poverty. However, Wales does not have the legal or fiscal powers to embark on such regeneration schemes.

Votes at 16, which the Assembly supported by a huge margin, would radically alter the political engagement of young people across Wales as well as establish Wales as a world-leader in youth equality. However, the Assembly would be unlikely to have an LCO in this area granted as it is listed as an exception in schedule 7 of the Act.

2.5 We believe that the National Assembly's lack of legislative competence, as well as the cumbersome process for acquiring new powers, the overly-cautious and unambitious actions of the Government towards acquiring new powers and the attitude of Labour MPs in Westminster means that we are not able to deliver progress for the Welsh people. In areas over which the National Assembly has executive competence, it is being held back by its lack of ability to use one of the key tools of government.

Question 3: How well, in your view, does the current devolution settlement work?

- 3.1 We do not believe that the current arrangements allow the National Assembly to deliver effective governance. This is because a fully-effective Senedd would require the full range of tools necessary to ensure that it can deliver for its people – regulation, executive decision, legislation and fiscal control. The Senedd does not have all of these powers. As a result, the Welsh ministers are unable to call on all the instruments necessary to ensure that truly effective policy.
- 3.2 We firmly believe that the National Assembly requires additional law-making powers over the full range of areas over which it has executive competence. Although we favour expanding the areas over which the Welsh Assembly has control, we need to urgently obtain legislative competence in the areas of which it has control in order to ensure that the National Assembly is able to deliver services more effectively. We believe that this distinction is not yet fully understood and that a ‘Yes’ campaign needs to begin making this point soon.
- 3.3 We believe that the National Assembly’s scrutiny processes have become more effective since the Richard Commission. The processes and structures of the Committee system are becoming both more experienced at offering objective and incisive advice and are beginning to play a bigger role in Assembly business and in scrutinising legislation. We believe that a good example of this is the Finance Committee’s investigation into the Funding of the Foundation Phase, which was effective and led to a reconsidering of Government policy. Although this standard of scrutiny is not yet the norm, we believe that with greater experience the committee system can play an active role in both the oversight of Government policy and the development of new policy, specifically by means of committee-proposed LCOs. We re-iterate our concerns that the balance between backbench members and Government and Presiding Officers members needs redress.

Question 4: How successful have the Welsh Assembly Government and the Assembly been in dealing with legislation for Wales?

4.1 In relation to the effectiveness of the process for dealing with legislation, we believe that the law-making process has been as bad as we predicted and the Labour-Plaid Assembly government and the Labour UK government are making it even worse. The process has proven to be far too slow, far too unambitious and far too Government-oriented. The system has also proven to be too adversarial and fostered an unhealthy working relationship between WAG and Whitehall and between Cardiff Bay and Westminster.

4.2 We believe that taking over 12 months to pass an LCO is unacceptable. This is partly due to the protracted legislative process which requires far too many obstacles to be overcome. However, the Welsh Assembly Government has not been sufficiently proactive in pursuing their LCOs. The veto given to the Secretary of State over the suspension of right-to-buy, and the ongoing debacle over the Welsh Language LCO show that WAG is failing to pursue the powers it needs to deliver for the people of Wales. In fact, the Affordable Housing veto is corrosive to the process of devolution and shows a deep mistrust of devolution. We believe it sets a bad precedent for the future by establishing that the Westminster Government should be entitled to over-rule the will of the Assembly.

4.3 We also do not believe that the process is ambitious enough. The LCOs proposed by the Government are not wide enough in scope to offer a sustainable policy-making framework. WAG seems intent on devolving legislative competence on the basis of each individual Measure, rather than on the basis of future need. This has been directly responsible for allowing the Welsh Affairs Select Committee to delve into the minutiae of policy detail rather than looking at the broad principles of subsidiarity. This was not the intention and is undermining the responsiveness and status of the National Assembly. We believe that the Affordable Housing LCO, for example, should be seeking to devolve all aspects of legislative competence to the National Assembly, rather than simply the power to suspend the right-to-buy.

4.4 We believe that the same arguments apply to Measures. The complex process of creating a Measure is slowing the process down. However, the attitude of the Government also means that few measures are being passed. We believe that the length of time that it takes for a Measure to be passed is entirely unacceptable. Also, we believe that the *de facto* requirement to pass an LCO before each individual Measure makes the process cumbersome and ineffective.

4.5 We believe the Assembly Government must also make sure it is making maximum use of Westminster bills to acquire more powers for Wales. While we are still reliant on Westminster to grant us more powers, it is only right that we make full use of the Framework powers. This mechanism piggy-backs more powers to the Assembly on the back of legislation going through the Houses of Parliament. With LCOs taking so long to pass we need to be making greater use

of framework powers so the Assembly can make a bigger difference for the people of Wales. The Welsh Assembly Government has failed to adequately use framework powers to increase its own competence.

Question 5: If there were a referendum under the Government of Wales Act 2006, the basic choice would be between sticking with the current arrangements for the Assembly to acquire legislative powers in devolved policy areas gradually ... or allowing the Assembly to exercise legislative powers in the full range of devolved policy areas immediately, by transferring those powers as a package ... Which of these options do you prefer, and for what reasons?

5.1 As Welsh Liberal Democrats warned, the current devolution settlement is overly complex, poorly understood and unresponsive. The Welsh Liberal Democrats have been consistent in their criticism of the process. We believe that the constitutional settlement needs to move towards a system which is simple, transparent and able to react quickly to the changing needs of the Welsh people. These principles will guide us in the debate over increasing Wales' legislative competence.

5.2 The length of time that is required to pass legislation is a disgrace. In the first year after the Government of Wales, 2006 was passed; the Assembly passed one LCO and one measure³. This is considerably smaller than the legislative output of the Houses of Parliament or the Scottish Parliament. Such a slow process means that the National Assembly is unable to legislate on the matters that concern the people of Wales. We believe that this is completely unacceptable.

5.3 We are also concerned that the current process makes too much of backrooms deals and conversations between ministers. There is too little public involvement and too little scrutiny. Likewise the process for acquiring framework powers is completely opaque. This lack of transparency breeds public mistrust in the system.

5.4 We believe that there are no advantages to sticking to the current legislative process, which is cumbersome and ineffective.

5.5 Therefore, we will be supporting moves towards a system where the Assembly can pass Acts in the full range of devolved policy areas without restriction. We believe that this will allow the Assembly to develop a much more distinctive and responsive sphere of Welsh policy. It will also improve the public understanding of the Assembly powers and the legislative process.

5.6 However, we believe that the fundamental problem with the current legislative framework is that it contains an inclusive list of areas in which the National Assembly has legislative competence. We believe that the immediate future for the National Assembly is winning a referendum to move to the wider legislative competence listed in Schedule 7 of the Government of Wales Act. However, we do not support the view that this would be the end of the devolution process. We envisage moves, in the long-term, towards a legislative settlement such as that which Scotland enjoys, where the National Assembly has legislative competence over all areas that are not specifically excepted.

³ NHS Redress Measure; Education and Training LCO

We believe that a good model for this would be Schedule 5 of the Scotland Act, 1998.

Question 6: Do you feel that there are any bureaucratic or capacity issues, within the civil service, National Assembly Parliamentary Service, civil society or the legal community that would need to be addressed before powers to pass Acts could be transferred to the Assembly?

6.1 We believe that changes in the legal framework for Wales will require changes in the way that the Civil Service works in Wales. We believe that it is essential that the Civil Service is reformed to ensure that it is able to cope with any alteration in the legislative competence of the National Assembly. In particular, we are concerned about the need for additional Welsh-speaking lawyers to ensure that there are adequate resources for the drafting of legislation in Welsh.

6.2 We also believe that there is a need to create a separate Welsh Public Service rather than simply rely on a section of the UK Civil Service. The Welsh Public Service should have parity of esteem with the UK Civil Service and there should be the possibility of easy transfer between the two organisations. We believe that any employees of the National Assembly or of the Welsh Assembly Government need to work solely for that institution and should not be placed in a position of dual loyalty.

6.3 We also believe that as the National Assembly acquires more powers, there needs to be an adequate transfer of resources from Westminster to Wales. We believe that these resources need to include civil service support and that additional Civil Service capacity is needed to ensure that the public administration is able to keep up with what we hope will be a rapid expansion in powers.

Question 7: What do you think the impact of moving to allow the Assembly to pass Acts, as provided for in Part 4 of the Government of Wales Act 2006, would be on the legal system and legal profession in Wales?

7.1 It is too early to tell what the effect of more advanced devolution of elements of civil law will have on the justice system in Wales. We believe that the transfer of justice policy and the subsequent reformation of the legal system in Scotland has worked well and believe that it could be done in Wales.

7.2 We believe that as in order to advance devolution we need to seriously examine the need for the devolution of justice to Wales. Unfortunately, a lack of academic or legal memoranda on this topic makes it difficult to resolve at this moment. Nonetheless, the Scottish experience, as well as experiences from other federal and devolved states, suggests that it is both technically feasible and worthwhile.

7.3 With an increase in the number of laws unique to Wales and a growing development of a Welsh statute book, we believe that the development of a Welsh justice system is common sense. We accept that there would be technical difficulties in doing so and wish to express our dismay that the Labour-Plaid Government has made no substantive progress on its own commitment to do so.⁴

7.4 The lack of control over justice matters also inhibits the ability of the Assembly to take action a wide range of policy areas. For example, the Mental Health LCO ought to cover both health policy (which is devolved) and justice policy (which is not). As a result, the National Assembly is unable to deliver strategic legislation. For example, in the field of Mental Health, the Assembly would be unable to develop a fairer system of detention. Likewise, the National Assembly does not have the ability to deliver effective policy on transport safety as it has no control over the British Transport Police, as is the case in Scotland.

7.5 In principle, we would support the devolution of justice to the National Assembly in order to ensure that Welsh solutions could be found to Welsh problems in the administration of justice. Indeed, we believe that it should have been devolved in 1999 or soon after. This was the case in Scotland, where justice, policing and prisons have been a devolved matter since 1999. We also note that it has been the intention to devolve justice matters to the Northern Ireland Assembly, although political difficulties have held up this transfer.

⁴ Written answer from Brian Gibbons AM, Minister for Social Justice and Local Government to Michael German AM, 25th November 2008.

Question 8: Do you believe the time is now right for the people of Wales to be given the opportunity to make a judgment, through a referendum... as set out in Part 4 of the Government of Wales Act 2006?

- 8.1 We believe that a referendum held during this Assembly term is winnable because the Welsh public are becoming both more pro-devolution and more frustrated with the ability of the National Assembly to deliver the change that Wales deserves. We believe a substantial amount of the scepticism towards the referendum is a result of the divergent attitude of Government AMs and MPs in this matter.
- 8.2 We believe that it would be both undemocratic and impractical to hold a referendum on the same day as the 2011 Welsh General Election. We believe it to be undemocratic as it is unreasonable to ask people to vote in elections to an institution when they do not know what powers it will have. We also believe it to be impractical as a successful campaign will need to be a cross-party campaign. This will not happen in the heated arguments of an election campaign.
- 8.3 We therefore believe that it is essential that the leaders of Welsh society, including those of political parties, begin campaigning now to ensure that the undoubted merits of the case are heard. The One Wales Government promised a referendum before 2011, and it is imperative that it does not renege on this promise.
- 8.4 A recent poll suggested that plurality of people in Wales would prefer a Welsh Parliament with legislative and taxation powers. Similarly, between 39% and 49%⁵ would vote 'Yes' in a referendum. These show that the argument has not yet been won, but we firmly believe that with a committed campaign which focuses on the practical benefits of additional legislative powers, we will be able to convince the Welsh people that a 'Yes' vote would be worthwhile.

⁵ Institute of Welsh Politics, 2008.