

The **Constitution** Unit

DEVOLUTION MONITORING PROGRAMME 2006-08

Wales Devolution Monitoring Report

September 2008

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



Sefydliad Gwleidyddiaeth Cymru

Institute of Welsh Politics

Cymru mewn  **Wales** in a
Ewrop Ranbarthol **Regional Europe**

ISSN 1751-3863

The Devolution Monitoring Programme

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

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

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The Constitution Unit and the rest of the research network is grateful to all the funders of the devolution monitoring programme.



WALES OFFICE



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Wales Devolution Monitoring Report

September 2008

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Abbreviations and Acronyms

| | |
|-------|--|
| AM | Assembly Member |
| DGN | Devolution Guidance Notes |
| EU | European Union |
| GOWA | Government of Wales Act |
| GVA | Gross Value Added |
| HCW | Health Commission Wales |
| HE | Higher Education |
| HEFCW | Higher Education Funding Council for Wales |
| JRF | Joseph Rowntree Foundation |
| LCO | Legislative Competence Order |
| LHB | Local Health Board |
| LSB | Local Service Board |
| NAfW | National Assembly for Wales |
| NFI | National Fraud Initiative |
| TFOs | Transfer of Functions Orders |
| WAG | Welsh Assembly Government |
| WASC | Welsh Affairs Select Committee |
| WLGA | Welsh Local Government Association |
| WPI | Wales Programme for Improvement |

Summary and Introduction

Devolution in Wales between May and September 2008 continued to live with the consequences of the 2006 Government of Wales Act. The devolved Assembly and Assembly Government Ministers were already receiving enhanced powers under the Act and the process it created for devolving further powers was also being worked through in a number of policy areas. This process made abundantly clear the complexities and potential difficulties inherent within the current constitutional 'settlement'. Moreover, the current arrangements were being operated in relatively 'easy' political circumstances. The more challenging context likely to emerge in the event of a Conservative government taking office in London became an ever-greater probability throughout the period covered by this report.

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

A central tenet of the political discourse on 'devolved' policy-making in the UK has been the need to foster an inclusive and participatory democracy.¹ Allied to this, the academic literature highlights the effect of 'communication distortions' on participation in public policy-making.² In other words, citizens' levels of awareness of the structures and processes of policy-making shape their propensity to participate in formal decision-making by lobbying, responding to consultation exercises, submitting petitions, etc. Accordingly, the mass media have a central role in informing individuals and organisations on policy matters in the devolved context, and beyond. Over recent years a major concern has been the lack of public knowledge regarding devolved policy and law-making.³ Published in June, 'The BBC Trust Impartiality Report: BBC Network News and Current Affairs Coverage of the Four UK Nations'⁴ examined the BBC's 'commitment to informing citizens and its commitment to sustaining democracy'. Its findings confirmed that the publicly-funded Corporation has been: 'failing to meet its core purpose of helping inform democracy'. Analysis of a (somewhat limited) sample output of network news and current affairs programmes in 2007 found that 19 per cent of reports relating to devolution were 'vague and confusing' and of the 136 GB or UK-wide network reports about health and education policy – none covered devolved policy. After almost a decade of devolved governance, the BBC Trust Report makes a series of recommendations to address these significant failings. Tellingly it admits, 'it may be that this Review should have taken place several years ago'.⁵ It concludes that henceforth: 'BBC management should monitor its own performance in connection with serving the nations and regions'. Given the London-centric focus of some BBC managers in relation to news

¹ See, for example, P. Chaney and R. Fevre, 'Ron Davies and the Cult of Inclusiveness: Devolution and Participation in Wales', *Contemporary Wales* 14, pp 21-49, ISSN 0951-4937, (Cardiff: University of Wales, 2001).

² See, for example, M. Whipple, 'The Dewey-Lippmann Debate Today: Communication Distortions, Reflective Agency, and Participatory Democracy', *Sociological Theory*, 23, 2, 156-178 (2005).

³ See, for example, D. Barlow, P. Mitchell, and T. O'Malley, *The Media in Wales: Voices of a Small Nation*, (Cardiff: University of Wales Press, 2006).

⁴ BBC, 'The BBC Trust Impartiality Report: BBC Network News and Current Affairs Coverage of the Four UK Nations' (June 2008):

http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/impartiality/uk_nations_impartiality.pdf

⁵ *Ibid*, pg 88.

and current affairs witnessed hitherto – and almost a decade of failure in reporting devolved policy-making – it remains to be seen whether self-regulation is the best way to address the issues highlighted in the Report.

July marked the first anniversary of the Welsh Labour–Plaid Cymru Coalition Government’s policy programme ‘One Wales’ – and saw the announcement of five proposed Assembly Measures as part of the WAG’s 2008-09 legislative programme.⁶ Marking the ‘One Wales’ anniversary, First Minister Rhodri Morgan AM (Welsh Labour) took the opportunity to highlight WAG’s investment in health by referring to the recent announcement of funding for two new hospitals in south-east Wales. Contradicting critics who complained that little headway was being made on WAG’s policy agenda Deputy First Minister Ieuan Wyn Jones AM (Plaid Cymru) also cited progress on securing the ‘One Wales’ commitment to a referendum on full law-making powers for the National Assembly during its present term. In response, both the Welsh Liberal Democrats and Welsh Conservatives criticised several aspects of WAG’s performance, including what they claimed was a general dearth of policy outcomes. Both opposition parties expressed concerns over education policy; according to Welsh Liberal Democrat leader Michael German AM: ‘there are major issues surrounding the introduction of the foundation phase in education, funding of further education, funding of higher education and the backlog in building repairs’.⁷ We now turn to look at specific policy developments over the past quarter.

1.2 Health and Social Services

Designed For Life (2005) is WAG’s ten-year health strategy.⁸ It sets out targets in relation to healthcare provision. For example, it states that by March 2008 nobody should wait more than 22 weeks for treatment. NHS Wales’ hospital waiting list data

⁶ These are in the following areas: Child Poverty – a duty on public agencies to demonstrate their contribution to ending child poverty, Additional Learning Needs – to extend the range of individuals who may appeal to the Special Educational Needs Tribunal for Wales, charging for non-residential social care – to establish a fairer and more consistent approach to charging for specified services levied by local authorities, better local services – a Measure for local government which will require local partners to co-operate in effective and joined-up community planning and service delivery, and Affordable Housing – a Measure giving local authorities the power to apply to Welsh Ministers to designate areas of housing pressure where the Right to Buy may be suspended for a limited period.

⁷ BBC News, Reported in Anon, ‘Lab-Plaid partners ‘delivering’’, <http://news.bbc.co.uk/1/hi/wales/7493203.stm> (7 July 2008)

⁸ WAG, ‘Designed For Life Creating World Class Health and Social Care for Wales in the 21st Century’ (Cardiff: WAG, May 2005): <http://new.wales.gov.uk/topics/health/publications/health/strategies/createdforlife?lang=en> Note: WAG is currently consulting on its future public health strategic framework for Wales aimed at securing ‘a concerted drive to improve health and reduce health inequalities by 2020’. The Strategic Framework is expected to be published by April 2009. See: <http://new.wales.gov.uk/topics/health/ocmo/framework/?lang=en>

released at the end of April shows that this target had been met; the total number of people waiting for a first outpatient appointment fell from 5,565 in February to zero in March. The number of people waiting for admission to hospital for treatment was also down from 2,838 to five in the same period. Weighed against this progress, data released in May revealed that other targets – such as those relating to delayed transfers of care (bed blocking), bowel cancer screening and heart surgery – had not been met. According to Jonathan Morgan AM (Welsh Conservatives) ‘heart disease, coronary disease, and cancer are very important, big health issues in Wales and if you cannot get that right then how on earth can people be confident that the NHS will be delivered in the right way’.⁹

Established in 2003, Health Commission Wales (HCW)¹⁰ has a budget of approximately £0.55bn. The Commission funds treatments normally unavailable via the NHS – such as specialised care relating to transplants and eating disorders. In June a report commissioned by health minister Edwina Hart AM (Welsh Labour) highlighted significant shortcomings in the structures, funding arrangements and operational practices of HCW and recommended its replacement with an independent body. Speaking about the proposed successor body the minister highlighted the need for a more participatory approach to HCW’s functions; she stated: ‘I am convinced that substantially-increased engagement by members of the lay public in these profoundly difficult decisions will lead to improved transparency and public confidence in both the processes and outcomes’.¹¹

Over the past few months major structural reform of NHS Wales continued to dominate health policy. In June, the National Assembly’s Health, Well-being and Local Government Committee published its response to WAG’s restructuring proposals (see May 2008 Devolution Monitoring Report).¹² The Committee concluded that the Health Minister should consider a range of issues before deciding on WAG’s final policy – including the accountability of ministers, the management of community health services and the integration of health and social care services. The Committee also said that future health bodies should have strong links with the communities that

⁹ BBC News, Quoted in Anon, ‘Health plan ‘missing key targets’’, <http://news.bbc.co.uk/1/hi/wales/7391477.stm> (9 May 2008).

¹⁰ WAG, ‘Health Commission Wales’: <http://new.wales.gov.uk/topics/health/hcw/?lang=en>

¹¹ BBC News, Reported in Anon, ‘Health body ‘should be scrapped’’, (10 June 2008) <http://news.bbc.co.uk/1/hi/wales/7446048.stm>

¹² WAG Health Wellbeing and Local Committee, ‘Inquiry to the Assembly Governments consultation Proposals on the structure of the National Health Service in Wales’ (June 2008): http://www.assemblywales.org/hwlg_3_nhs_reorganisation_final_report_-_e.pdf

they serve. In mid-July, the Health Minister responded to the consultation responses by announcing an 'outline plan' for thoroughgoing reorganisation of NHS Wales. Under the proposed reforms all NHS Wales trusts and the 22 local health boards (LHBs) would be replaced by a total of seven health organisations. Further consultation on the draft proposals is scheduled for September. Commenting on these developments, Jonathan Morgan AM (Welsh Conservatives) said that WAG's 'announcement vindicates the position Welsh Conservatives took back in 2003 – that the creation of 22 LHBs was unnecessary, bureaucratic and expensive'.¹³

Late June also saw the health minister announce a review of mixed wards in hospitals, with the aim of securing single sex wards in the future.¹⁴ In the interim NHS Wales' hospitals are being asked to provide separate washing facilities for men and women. There have also been further health policy developments following the publication of the final report of the Palliative Care Planning Group. This concluded that 'palliative care services in Wales are delivered by a wide network of providers and, although there are many examples of good services across Wales, not all patients can access them. This is largely due to geography and under-staffing in services'.¹⁵ In addition to staffing issues the report highlighted the need for improvements in bereavement counselling for families. In response the health minister announced in July further investment in palliative care with £1m allocated in 2008-09, £2m in 2009-10 and £5m in 2010-11. According to the minister this funding will be distributed on advice from the Palliative Care Implementation Group, a body that has been established in response to the recommendations in the Palliative Care Planning Group Report. In the same month the health minister accepted the recommendations of a WAG commissioned report¹⁶ that patients in north Wales should continue to use regional specialist neurosurgery centres in England for planned and emergency care, and receive follow-up treatment provided by centres in north Wales. This policy decision comes after opposition to the earlier suggestion that north Wales patients should travel to receive specialist neurosurgery care in south Wales (a roundtrip journey time of up to nine hours by road). Responding to the announcement Jenny Randerson AM, Welsh Liberal Democrat health

¹³ BBC News, Quoted in Anon, 'Proposals to streamline the NHS', (16 July 2008)

<http://news.bbc.co.uk/1/hi/wales/7510011.stm>

¹⁴ BBC News, Quoted in Anon, 'Ysbytai: Wardiau un rhyw', (25 June 2008):

http://news.bbc.co.uk/welsh/hi/newsid_7470000/newsid_7473500/7473500.stm

¹⁵ Pi Associates (Europe) Ltd, 'Palliative Care Baseline Review' (May 2008):

<http://new.wales.gov.uk/docrepos/40382/dhss/reportsenglish/palliative-care-review-e1.pdf?lang=en>

¹⁶ WAG, *Report of the Welsh Neuroscience External Expert Review Group: Recommendations for North Wales*':

<http://new.wales.gov.uk/topics/health/publications/health/reports/neurosciencesnorth/?lang=en>

spokeswoman, said: 'the big question now is how the minister will pay for these improved services in north Wales'.¹⁷

1.3 Education, Culture and the Welsh Language

In March 2006, the then Education Minister announced a National Review of Behaviour and Attendance (NBAR).¹⁸ Inter alia, it was tasked with: 'exploring ways in which parents, children, young people and the community as a whole can be more effectively supported and engaged in the promotion of positive behaviour and attendance in school', and identifying potential new legislation that would assist in these matters. In May, the NBAR Steering Group published its final report. It identified eleven 'issues that warrant much greater consideration' and policy responses by WAG. These include the significant numbers of pupils with low levels of literacy or numeracy (amongst whom there is a greater tendency for the development of behavioural and/or attendance problems during either the primary or secondary phase) and the fact that 'large numbers of existing professionals have received little or no training for their roles in managing attendance or behaviour'. Teachers' unions and the Children's Commissioner for Wales welcomed the report. Opposition education spokesperson, Alun Cairns AM (Welsh Conservatives), responded to the report saying that 'schools need clear guidance as to how to best tackle issues relating to pupil behaviour and truancy'. Welsh Liberal Democrat education spokesperson, Kirsty Williams AM, highlighted the need for 'smaller class sizes, better trained teachers and a more stimulating curriculum' in order to tackle the problem. She continued, saying WAG: 'must look at the root causes of truancy and bad behaviour. It has been found a third of all pupils who play truant do so because they are being bullied'.¹⁹ In early 2009, WAG is due to publish an action plan that responds to the issues raised in the NBAR report.

In June, the National Assembly's cross-party Rural Development Sub-Committee announced an inquiry into provision of rural education in Wales and the reorganisation of rural schools.²⁰ Specifically, the inquiry will focus on a range of issues including the educational context of rural schools and whether there are any

¹⁷ BBC News, Quoted in Anon, 'New Welsh neurology unit planned', (16 July 2008): <http://news.bbc.co.uk/1/hi/wales/7509149.stm>

¹⁸ WAG, 'National Behaviour and Attendance Review (NBAR) Report' (March 2006): <http://new.wales.gov.uk/dcells/news/educationskillsnews/2233020/nbarreport?lang=en>

¹⁹ D. Williamson, 'Report's call for early action on bad behaviour welcomed', *Western Mail*, (16 May, 2008).

²⁰ National Assembly for Wales, Rural Development Sub-Committee: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-rd-home.htm>

wider social and educational issues associated with rural school reorganisation, such as the impact on rural communities, families and children, and how this is taken into consideration as part of the decision-making process. According to Alun Davies AM (Welsh Labour), Chair of the Sub-Committee, 'this is a vital social and political issue for everyone in Wales'. On other matters, following earlier concerns over funding, it was announced in June that a year's postponement would apply in some areas of Wales with regard to the introduction of the play-based Foundation Phase (3-7 years) education policy. Amongst its objectives, the policy aims to secure a ratio of one teacher for every eight pupils. The new policy was due to be implemented nationwide in September 2008. All children aged five to seven are scheduled to be included in the scheme within the next four years.

In late June, the Education Minister announced a two-stage review of higher education (HE). Phase one will report in September 2008 and will focus on student finance arrangements and the extent to which it is targeted to widen access and encourage take up of priority subjects. It will also examine options to tackle graduate debt. Phase two will be completed in February 2009 and will review the purpose and role for HE including an examination of the current and future demands and needs of learners, the economy and society. According to the minister: 'it is time to refresh the [HE] strategy in light of ... new agendas [such as the One Wales²¹ policy programme and the Report of the Independent Review of the Mission and Purpose of Further Education in Wales, the 'Webb Review' of December 2007²²] and ensure we respond to the many challenges and opportunities faced by higher education in Wales'.²³ Yet Welsh Conservative AM Andrew Davies was critical stating: 'I am extremely concerned at the tight timescale involved in this review ... and the obvious impotency of the Assembly Government to act on many of the factors which lead to student debt'.²⁴

Official statistics estimate that domestic violence will affect one in four women and one in six men in their lifetime, and that some 77 per cent of the victims of domestic

²¹ WAG, 'One Wales, A Progressive Agenda for the Government fo Wales':

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

²² WAG, 'Promise and Performance (Webb Review):

<http://wales.gov.uk/topics/educationandskills/educationskillsnews/promise-and-performance-review?lang=en>

²³ WAG Press Release, 'Minister announces Task and Finish group to review higher education in Wales':

<http://new.wales.gov.uk/news/presreleasearchive/2335853/?lang=en>

²⁴ BBC News, Quoted in Anon, 'Student financing under review', (26 June 2008):

<http://news.bbc.co.uk/1/hi/wales/7475095.stm>

violence are women.²⁵ The cross party Communities and Culture Committee is currently conducting an inquiry into this issue.²⁶ Inter alia, its aim is to examine the delivery of WAG's strategy for tackling domestic abuse and to assess the adequacy of support provided to victims, including support provided to witnesses in the criminal justice system. The Committee is due to issue its report and policy recommendations in December 2008.

The National Assembly's Broadcasting Committee was created on 5 March to investigate and report on the future of public service broadcasting in Wales in both English and Welsh and to examine: 'the impact of digital switchover and the creation of new delivery platforms on the production and availability of programming and digital content from Wales and in Wales'. Over the past months the Committee has taken evidence from individuals representing a wide range of organisations. The Committee's Inquiry comes at a key time when the BBC's record of reporting on the devolved structures and processes of governance has been severely criticised (see Introduction above). In June, the Committee heard evidence from BBC Director General Mark Thompson. Recognising the shortcomings he said that: 'clearly there are a number of areas where we can and must make significant improvement'.²⁷ In early July, the Committee published its report 'The Future of Public Service Broadcasting in Wales'.²⁸ The report makes 28 recommendations around three main themes: maintaining plurality of provision, strengthening mechanisms for holding public service broadcasters to account for their services in Wales, and requiring the Welsh Assembly Government to produce a comprehensive communications strategy (to include policies for broadcasting, creative industries, language, culture and broadband). The Committee's key recommendation is: 'that the National Assembly should establish a standing committee on communications, which should be responsible for scrutinising the work of Welsh Ministers in relation to broadcasting and related cultural and creative industries; the development of broadband, IPTV²⁹ and associated technologies'. Whilst rejecting a call for wholesale devolution of

²⁵ Home Office, *Crime in England and Wales 2006-07* (London: Home Office 2008)

²⁶ National Assembly for Wales, Call for Evidence – Committee Inquiry into Domestic Abuse: http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-ccc-home/cc_inquiries/domestic_abuse.htm

²⁷ National Assembly for Wales, Broadcasting Committee: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-bcc-home/bus-committees-third-bcc-agendas.htm>

²⁸ National Assembly for Wales, Broadcasting Committee, 'The Future of Public Service Broadcasting in Wales: <http://www.assemblywales.org/cr-ld7148-e.pdf>

²⁹ Internet Protocol Television. The term used for television and/or video signals that are delivered to subscribers or viewers using Internet Protocol (IP). The technology that is also used to access the Internet. Typically used in the context of streamed linear and on demand content, but also sometimes for downloaded video clips.

broadcasting (currently a non-devolved matter) to WAG, the report stated 'it is necessary to create new means and mechanisms of accountability whereby UK broadcasters should be accountable to Welsh-based structures for their decisions and policy directions'. WAG's response to the report is due later in the year.

Mid-June saw the announcement by the then heritage minister, Rhodri Glyn Thomas AM (Plaid Cymru), that free access for children and pensioners will be introduced to all heritage sites managed by WAG's historic environment service Cadw.³⁰ On other matters, funding for the voluntary (or 'third') sector from the Assembly Government has increased over the past four years; from £79 million in 2002-03 to £174 million in 2006-07. In January, WAG published a strategic action plan for the third sector to deliver over the next four years.³¹ May 2008, saw the publication of the Communities and Culture Committee Report on 'The Funding of Voluntary Sector Organisations in Wales'.³² Its aims included an examination of the policy directions issued to relevant funding bodies and of the procedures for monitoring outcomes of WAG funding. Amongst the policy recommendations in the Report were calls that WAG: 'should review its code of practice on funding in order to enable third sector organisations to plan their activities more strategically' and, 'review its staff procedures to maintain accessible channels of communication between relevant departments and the third sector'. Elsewhere, with regard to Welsh language policy, an LCO giving WAG powers to legislate on the status to the Welsh language, the creation of the office of language commissioner, and additional rights to Welsh speakers was expected in the spring. However, statements made by Rhodri Glyn Thomas AM (Plaid Cymru) in June indicate that the process is taking longer than anticipated due to the complexity of drafting the LCO. He said that the drafting of the LCO should be completed by the end of the year.³³

1.4 Economy and Transport

Early May saw the launch of WAG's Transport Strategy.³⁴ Amongst its aims the Strategy lists: 'reducing greenhouse gas emissions and other environmental impacts

³⁰ WAG, CADW: <http://new.wales.gov.uk/topics/cultureandsport/historic/cadw/?lang=en>

³¹ WAG, *The Third Dimension – A Strategic Action Plan for the Voluntary Sector Scheme*: <http://new.wales.gov.uk/topics/housingandcommunity/voluntarysector/publications/thethirddimension/?lang=en>

³² National Assembly for Wales Communities and Culture Committee: *The Funding of Voluntary Sector Organisations in Wales*: http://www.assemblywales.org/voluntary_sector_report_eng.pdf

³³ BBC News, Quoted in Anon, 'Iaith: Gohirio mwy o ddeddfu?', (20 June 2008): http://news.bbc.co.uk/welsh/hi/newsid_7460000/newsid_7466300/7466364.stm

³⁴ WAG, *One Wales: Connecting the nation – Wales Transport Strategy*: <http://new.wales.gov.uk/topics/transport/wts/wts/?lang=en>

from transport; integrating local transport; improving access between key settlements and sites; enhancing international connectivity; and increasing safety and security'.

In June, plans were announced for an investment of £52m in the south Wales rail network. According to WAG the existing infrastructure is failing to keep up with the demands of a rising number of passengers. Deputy First Minister Ieuan Wyn Jones AM (Plaid Cymru) said that the investment plans 'will improve the provision in the capital's railway stations and strengthen the rail service for the valleys, including increasing the number of seats available on trains'.³⁵ Also on transport policy, data released on 9 May, the first anniversary of WAG's £2.4m three-year policy of subsidising a north/south air link, showed that 14,000 passengers had used the service, more than double the projected figure.

In terms of economic policy, information released by the Office for National Statistics revealed a mixed picture. The latest data shows that whilst per capita income, as measured by Welsh Gross Value Added (GVA),³⁶ is just 77 per cent of the UK average,³⁷ total employment was up 20,000 over the previous year and up 27,000 over the previous quarter (with 1,360,000 people in employment, the highest number on record). Also in regard to the labour force, June saw the announcement of a three-year WAG policy initiative, 'Modern Apprenticeship World Class Skills'.³⁸ Based on £40m of European Structural Fund money and some match funding from the Welsh government its aim is to create 14,000 training places that will improve workforce skills.

Recent figures on tourism in Wales show that: tourism provides employment for approximately 100,000 people, tourist spending amounts to approximately £3 billion per annum, and 11.29 million trips to Wales were made by UK residents and 959,000 by overseas tourists in 2005.³⁹ In 2007, WAG appointed consultants to assess policy and practice relating to 'the contribution of cultural tourism to Wales both

³⁵ BBC News, Reported in anon, '£52m: Gwella gwasanaeth trên', (2 June 2008): http://news.bbc.co.uk/welsh/hi/newsid_7430000/newsid_7431800/7431838.stm

³⁶ GVA (Gross Value Added) is the preferred official measure of wealth – superseding Gross Domestic Product (GDP).

³⁷ National Statistics, 'Regional GVA': <http://www.statistics.gov.uk/cci/nugget.asp?ID=420>

³⁸ WAG Press Release, 12 June 2008:

<http://new.wales.gov.uk/news/ThirdAssembly/Education/2008/2371866/?lang=en>

³⁹ Assembly Members' Research Service: Topic Brief – Tourism, <http://www.assemblywales.org/hom-pdfviewer?url=tourism>

economically and culturally'. In May, the resulting report⁴⁰ found that: 'there is a lack of clarity in the roles and responsibilities of the different organisations involved in cultural tourism. There is a need for better partnership working at all levels'. Amongst a number of key policy recommendations the report asserted that: 'an Integrated Policy and Action Planning process is long overdue that would require all public sector bodies to produce integrated strategies and action plans for cultural tourism'. Responding to the report the then Culture and Heritage Minister Rhodri Glyn Thomas AM (Plaid Cymru) said tourists should have a 'genuinely Welsh [experience] in its content, spirit and sense of place'.⁴¹ WAG's response to the report is due later in the year. Mid June saw Ieuan Wyn Jones AM (Plaid Cymru), Minister for Economy and Transport, launch a consultation process (ending 29 August) on the future setting of local speed limits on Welsh roads.⁴² The consultation will examine a range of matters including the imposition of 20 mph speed limits in appropriate locations (e.g. in the vicinity of schools) and 50 mph speed limits on lesser quality rural roads.

1.5 Environment, Sustainability and Housing

Published in June a Joseph Rowntree Foundation (JRF) report on Welsh rural housing⁴³ asserted that some rural areas will 'lose the next generation of young people without big changes in policy'. Strikingly, the report found that mean house price was now more than five times the average household income in all rural local authority areas. Other findings highlighted the shortage of social housing in rural areas and a significant increase in rural homelessness. Reflecting on existing housing policy JRF called WAG's plans to build 6,500 affordable homes across Wales by 2011 'ambitious' yet, crucially, judged them to be inadequate. The report said that at least three times that number was needed. In response the Deputy Minister for Housing, Jocelyn Davies AM (Plaid Cymru), announced that a network of specialist 'housing enablers' will be developed across all rural areas to increase the supply of affordable housing. It was also announced that unspecified amounts of funding would be made available to develop Community Land Trusts in order to expand the supply of affordable homes in rural areas for local people. The JRF underlined the need for government intervention as, despite the dearth of affordable

⁴⁰ WAG, 'Review of Cultural Tourism in Wales':

http://new.wales.gov.uk/topics/tourism/aboutvisitwales/strategypolicy/cultural_tourism_review/?lang=en

⁴¹ BBC News, Reported in Anon, 'Maximise' cultural tourism call', (26 May 2008):

<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7419272.stm>

⁴² WAG Consultation, 'Setting Local Speed Limits':

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

⁴³ Joseph Rowntree Foundation, 'The Commission on Rural Housing in Wales':

<http://www.jrf.org.uk/ruralhousingwales>

rural housing, there are 18,000 vacant homes in rural areas. Shadow Housing Minister Mark Isherwood AM (Welsh Conservatives) stated that the JRF report was 'worrying reading...affordability blights many lives and deprives many communities of their young people who are forced to move away because of high house prices and the lack of suitable properties'.⁴⁴ In keeping with this issue, in late June, the deputy minister welcomed the publication of an independent review of affordable housing that was commissioned by WAG in October 2007.⁴⁵ Amongst the review's recommendations is the creation of a new regulatory framework for housing associations in Wales. WAG's response to the review will be announced later in the year. The National Assembly's Rural Development Sub-Committee added to the policy debate on this topic with the publication of its report 'Poverty and Deprivation in Rural Wales' in July. This was critical of WAG's policies and said that they were failing to address the issue of rural poverty. Inter alia, it called for an extension of free and reduced cost public transport schemes in rural areas and a significant increase in WAG's current target of 6,500 affordable homes to be built by 2011. The government's response to the report is due in the autumn.⁴⁶ It was also in July that the housing minister announced a policy consultation exercise on the proposed changes to the planning system aimed at making rural communities more sustainable. Amongst the proposals are: that all new housing developments will have to contribute towards the provision of affordable homes and that local planning authorities will be enabled to develop policies for 'low impact development schemes, where people live and work on the land and are self-sustaining in food, energy and waste'.⁴⁷

Earlier in May, with regard to fisheries policy, Rural Affairs Minister Elin Jones AM (Plaid Cymru) approved measures⁴⁸ to further restrict scallop fishing and protect vulnerable parts of the sea bed by extending the period when scallop fishing in Cardigan Bay is prohibited (between 1 June and 31 December) and prohibiting the use of bottom-towed fishing gear on fragile reef structures off the Llŷn Peninsula (where scallop fishing is also prohibited). In June, WAG also announced that Wales

⁴⁴ BBC News, Quoted in anon, 'Lost generation' in rural Wales', (4 June 2009):

http://news.bbc.co.uk/1/hi/wales/north_west/7433947.stm

⁴⁵ WAG, *Affordable housing in Wales: an independent report to the Minister for Housing*:

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

⁴⁶ WAG Rural Development Sub-committee, 'Poverty and Deprivation in Rural Wales (July 2008):

http://www.assemblywales.org/poverty_and_deprivation_in_rural_wales.pdf

⁴⁷ Welsh Assembly Government Consultation on Meeting Housing Needs in Rural Areas:

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

⁴⁸ WAG Fisheries:

<http://new.wales.gov.uk/topics/environmentcountryside/foodandfisheries/fisheries/?lang=en>

would be the first country in the UK to use its powers under the Animal Welfare Act (2006) to ban the use of electric shock collars for dogs and cats. These devices are controlled by a handset and allow handlers give animals an electric jolt if they 'misbehave'. Opposition AM Kirsty Williams (Welsh Liberal Democrats) welcomed the development saying that 'pain and fear are not humane methods by which to train an animal'.⁴⁹

1.6 Equalities

Over the last quarter the cross-party Assembly Equality of Opportunity Committee has been gathering evidence as part of its Inquiry into Issues affecting Migrant Workers in Wales. This aims to scrutinise WAG 'on the work it is undertaking to support migrant workers and their families, public service providers and local communities with high proportion of migrants within the population'.⁵⁰ At its June meeting the Committee discussed the problems faced by overseas migrants who are over-represented in low skill occupations and who face barriers to securing employment appropriate to their skills and qualifications.⁵¹ The Inquiry is due to report in the autumn. In the meantime the Equalities Minister, Brian Gibbons AM (Welsh Labour), launched WAG's Refugee Inclusion Strategy.⁵² The Strategy's aims are to 'provide a clear strategic framework for all those working towards refugee inclusion in Wales; and co-ordinate the work of the Welsh Assembly Government and its partner organisations to maximise impact and resources'. Details of the specific measures to be taken for refugees in relation to health, housing, education, etc. have yet to be finalised. According to the minister, WAG is 'currently developing an Implementation Action Plan which sets out the resources, targets and outcomes for each action point in the strategy so that we can monitor progress effectively'.⁵³

⁴⁹ BBC News, Quoted in Anon (26 June 2008):

<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/wales/7473597.stm>

⁵⁰ National Assembly for Wales Equality of Opportunity Committee: [http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home/bus-committees-third-eoc-agendas.htm?act=dis&id=87611&ds=6/2008](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home/bus-committees-third-eoc-inquiry/bus-committees-third-eoc-mw.htm)

⁵¹ National Assembly for Wales, The Committee on Equality of Opportunity (4 June 2008):

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home/bus-committees-third-eoc-agendas.htm?act=dis&id=87611&ds=6/2008>

⁵² WAG Refugee Inclusion Strategy:

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

⁵³ WAG Press Release, 'Minister launches refugee strategy with a call for continued compassion':

<http://new.wales.gov.uk/news/presreleasearchive/2310770/?lang=en>

1.7 Social Justice and Public Service Delivery

In February 2005 WAG launched its Child Poverty Strategy.⁵⁴ The 2007 coalition government's 'One Wales' policy agenda returned to this matter and stated: 'we will support the aim to halve child poverty by 2010 and eradicate child poverty by 2020'. Mid June saw further policy development in this area as WAG announced a consultation period in relation to its strategy 'Taking Action on Child Poverty'.⁵⁵ According to WAG the initiative aims to: 'introduce new legislation to introduce a duty on public agencies in respect of child poverty, to provide free childcare places and other early years' services...[and] introduce a strategy to support vulnerable children'. Despite a plethora of such policy initiatives significant work remains to fully address this issue, as evidenced by a report by the Joseph Rowntree Foundation published in December 2007.⁵⁶ It concluded that: 'more needs to be done...child poverty still affects one in four children'. The consultation period on 'Taking Action on Child Poverty' ends on 30 September. On other matters, the Wales Audit Office report 'National Fraud Initiative (NFI) in Wales 2006/2007: Summary of Findings'⁵⁷ was presented to the National Assembly in mid-May. It concluded that the 2006-07 NFI exercise had been the most successful since the scheme began in 1996. For the period 2006-07 the total value of fraud and overpayments reported under the scheme increased by 73 per cent, from £2.6 million as reported in 2004-05 to £4.5 million in 2006-07.

1.8 Conclusion

Overall, the past quarter has seen a plethora of policy initiatives such as WAG's Transport and Refugee Inclusion Strategies. It has also been characterised by a number of policy reviews (e.g. WAG's two reviews of higher education), inquiries (e.g. NAFW Equalities Committee's inquiry into Issues affecting Migrant Workers in Wales) and policy consultation exercises (e.g. WAG's consultation on sustainable rural communities). However, successful policy development on these – and other – issues requires the participation of citizens, the public and private sectors, civil and civic society. The decade-long failings of the BBC in reporting devolved policy-

⁵⁴ WAG, 'A Fair Future for our Children: The Strategy of the Welsh Assembly Government for tackling child poverty':

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

⁵⁵ WAG, 'Taking Action on Child Poverty',:

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

⁵⁶ Joseph Rowntree Foundation, 'Combating Child Poverty in Wales: are effective education strategies in place?' (December 2007): <http://www.jrf.org.uk/knowledge/findings/socialpolicy/pdf/2162.pdf>

⁵⁷ Wales Audit Office, National Fraud Initiative in Wales 2006/07: Summary of Findings (16 May 2008) http://www.wao.gov.uk/assets/englishdocuments/NFI_2006-07_eng.pdf

making – as confirmed in the BBC Trust Report on BBC news coverage of the four UK nations – can be viewed as a significant ‘communication distortion’ on levels of participation in public policy-making. Although impossible to quantify, by contributing to an information/public awareness deficit it has undoubtedly set back the aspiration espoused during the devolution campaign of the 1990s that constitutional reform would further inclusive and participatory policy-making. A further worrying development is the claim by some Welsh MPs that the work associated with LCOs is taking too much of the time of the Welsh Affairs Select Committee; a problem that would be swiftly addressed if the National Assembly were to be granted full law-making powers. This would also provide better governance by improving clarity on ‘policy ownership’⁵⁸ and thereby enhancing democratic accountability.

⁵⁸ i.e. which tier of government/politicians – is/are responsible for policy scope/aims.

2. The Legislative Process

One Year of operating under GOWA 2006

Marie Navarro⁵⁹, Cardiff Law School

2.1 Primary Legislation

There have been five UK Acts enacted in July 2008 which give powers to the National Assembly or to Welsh Ministers. This follows the observed slow-down in the number of powers devolved by Acts to the Welsh Ministers and the Assembly in Wales.

2.1.1 Acts giving powers to the Welsh Ministers or the Assembly

There are a few powers given to Welsh Ministers under the **Criminal Justice and Immigration Act 2008** (c. 4). They are in PART 8 ANTI-SOCIAL BEHAVIOUR:

Premises closure orders, and are contained in the following sections: Section 119 Offence of causing nuisance or disturbance on NHS premises, Section 120 Power to remove person causing nuisance or disturbance and Section 121 Guidance about the power to remove etc.

Quite a few powers are transferred to Welsh Ministers in the **Sale of Student Loans Act 2008** (c. 10). The Act shows a clear and comprehensive 'Wales' section which provides:

9 Wales

(1) The Welsh Ministers may enter into arrangements under which rights of theirs in respect of student loans are transferred to another person.

(2) In subsection (1) "student loans" means loans made by the Welsh Ministers in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998.

(3) The provisions of this Act apply in relation to arrangements made under subsection (1) ("Welsh transfer arrangements") as to arrangements made under section 1(1).

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

(4) In connection with Welsh transfer arrangements references to the Secretary of State are to be read as references to the Welsh Ministers, except in...


Many powers are devolved to Welsh Ministers in the **Regulatory Enforcement and Sanctions Act 2008** (c. 13); it contains various sections specifically concerning Wales, in parallel with equivalent English sections. This shows another clear way of drafting legislation with specific applications to Wales. There is a particular section for Parliamentary and Assembly Procedure (s.61). The Act does not give legislative competence to the Assembly, but it does subject some of the subordinate legislation made by Welsh Ministers to the National Assembly's affirmative and negative resolution procedures, as well as imposing requirements on the Welsh Ministers to lay documents and reports before the Assembly.


Similarly, the **Health and Social Care Act 2008** (c. 14) and the **Housing and Regeneration Act 2008** (c. 17) give many different powers to Welsh Ministers and no further legislative competence to the Assembly. They also subject some of the subordinate legislation made by Welsh Ministers to the Assembly's affirmative and negative resolution procedures and impose requirements on Welsh Ministers to lay documents and reports before the Assembly.

2.2 Parliamentary consideration of proposals for LCOs⁶⁰


2.2.1 *The Welsh Affairs Select Committee pre-legislative scrutiny*


The Committee published the following reports:

- 23 July 2008: **Fourth Special Report: The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008: Government Response to the Committee's Fifth Report of Session 2007-08** [HTML version \(browsable\)](#) [PDF version](#)  HC 993

- 10 July 2008: **Sixth Report The provision of cross-border health services for Wales: Interim Report**
[HTML version \(browsable\)](#) [PDF version](#)  HC 870

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 other terms have precise procedural legal definitions.

-26 June 2008: **Fifth Report The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008** [HTML version \(browsable\)](#) [PDF version](#)  HC 576

-19 June 2008: **Third Special Report The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008: Government Response to the Committee's Fourth Report of Session 2007-08** [HTML version \(browsable\)](#) [PDF version](#)  HC 715

2.2.2 The House of Lords scrutiny of LCOs

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

2.2.3 Second LCO made by the Queen on the Privy Council

The second LCO, the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008, SI. 2008/1785, was made on 9 July.⁶¹ (See below for the progress of each individual LCO.)

2.3 The review of the LCO Process by the Wales Office, WASC and WAG

2.3.1 The Secretary of State for Wales' review of the LCO process

Devolution Guidance Note 16. Orders in Council under section 95 of the Government of Wales Act 2006 was issued in July 2008.⁶² The note seeks to assist UK Government officials involved with Orders in Council by: 'setting out the new legislative arrangements in Wales; setting out the principles to be applied when considering requests for enhanced legislative competence; and, explaining the procedures governing this process'. The note sets out seven principles to be followed by UK officials in dealing with LCOs which are:

- i. Deepen not broaden the settlement

⁶¹ OPSI, National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008, SI. 2008/1785: http://www.opsi.gov.uk/si/si2008/uksi_20081785_en_1.

⁶² Ministry of Justice, 'Devolution Guidance Note 16': <http://www.justice.gov.uk/docs/dgn16.pdf>

- ii. Allow scope for policy divergence
- iii. Ensure the case for powers is made
- iv. Clearly defined scope
- v. Appropriate breadth of matters
- vi. Ensure coherence of law
- vii. Respect UK powers and interests

The document addresses many of the concerns that have arisen in relation to the LCO process and makes clear that Whitehall should agree to enhanced legislative competence to the Assembly when it fulfils these seven principles. The document also makes it clear that Whitehall should agree to any LCO proposal both before it is published and at stage 3 (see below). The document describes the following stages for making an LCO:

- Stage 1: Agreeing the proposed Order
- Stage 2: Pre-Legislative Scrutiny
- Stage 3: UK Government and Welsh Assembly Government clearance of the draft Order
- Stage 4: Formal approval by the National Assembly for Wales
- Stage 5: Parliamentary approval
- Stage 6: Approval by her Majesty in Council and coming into force⁶³

This document makes progress in taking the devolution settlement forward and it can be argued that it embodies the long lost Rawlings principles, i.e. clear and sound principles on which to devolve functions to Wales. It is designed to inform UK officials. The Welsh Ministers issued similar guidance for their own officials (see 2.3.3 below).

Review of framework powers in primary legislation

There is also the Devolution Guidance Note 9 which deals with framework powers and which is less detailed and equally supportive of appropriate Bills giving powers to the National Assembly to make Measures by adding to the list of Matters in Schedule 5 of the 2006 Act.⁶⁴

⁶³ Ibid. Paragraph 30.

⁶⁴ Ministry of Justice, 'Devolution Guidance Note 9':
<http://www.justice.gov.uk/guidance/devolutionguidancenotes.htm#nine>

2.3.2 House of Commons' Pre-legislative Scrutiny: The WASC report

The Welsh Affairs Select Committee published a 'Memorandum on the Review by the Secretary of State of the procedure for Legislative Competence Orders in Council'.⁶⁵

The Committee made the following recommendations:

Conclusions and recommendations

1. We conclude that the select committee is the most effective option for the pre-legislative scrutiny of LCOs. (Paragraph 6)
2. We recommend that pre-legislative scrutiny of LCOs at Westminster continues to follow the rigorous, evidence-gathering process of the select committee. We strongly recommend that all proposed Orders continue to be referred to the Welsh Affairs Committee for pre-legislative scrutiny. Making this the standard process will help with the orderly and adequate allocation of time and resources. (Paragraph 7)
3. We propose that all Members of the House be informed that an LCO is being sought by the Assembly and that, as a matter of course, full information about any draft LCO be provided to all Welsh MPs before the Committee starts its deliberation and that they be invited to submit any views for consideration by the Committee. (Paragraph 11)
4. We would not recommend a "one size fits all" approach to our scrutiny, and we retain the option of pursuing pre-legislative scrutiny in other ways. (Paragraph 13)
5. We propose that members of the relevant committee of the National Assembly for Wales be offered a standing invitation to attend and sit in on any of our scrutiny meetings. (Paragraph 14)
6. We do not consider that there will normally be any benefit of having joint scrutiny meetings in the sense of taking evidence jointly, but we do consider that there may well be LCOs where the subject matter would make it appropriate for holding a joint meeting of the

⁶⁵ House of Commons Welsh Affairs Committee, 'Review by the Secretary of State of the procedure for Legislative Competence Orders in Council': <http://www.parliament.uk/documents/upload/Review%20of%20LCOs%20by%20the%20Secretary%20of%20State%20-%20Memorandum%20by%20the%20Welsh%20Affairs%20Committee.pdf>

two committees at the end of their separate scrutiny, to consider their respective recommendations. (Paragraph 14)

7. We believe that the Chairman of the Welsh Affairs Select Committee should regularly liaise with the Chair of the relevant Assembly Committee. (Paragraph 15)

8. The Welsh Affairs Committee must play a significant part in the pre-legislative scrutiny of LCOs, and we are committed to making the process work as effectively as possible. (Paragraph 16)

9. It is not clear that there is any real advantage in having a proposed LCO referred to an Assembly Committee and to the Welsh Affairs Committee simultaneously. (Paragraph 18)

10. Our considered view now is that scrutiny by the Welsh Affairs Select Committee should normally take place after the Assembly committee has completed its scrutiny. (Paragraph 19)

11. There would be considerable merit, when appropriate, for there to be a joint meeting of the two committees to discuss their findings together. (Paragraph 20)

12. We urge the Wales Office and the Welsh Assembly Government to work together to bring a greater predictability to the timetable of this process. (Paragraph 21)

13. We urge the Assembly and the Wales Office to find ways of giving a proper focus to legislative work, aiming at producing a reasonable number of high-quality Orders each year rather than allowing volume to swamp the system here and in the Assembly as seems to be happening at the moment. (Paragraph 23)

14. If the level of LCOs coming forward from the Assembly settles down at something of the order of the four or five per year originally envisaged, this will enhance scrutiny, facilitate better planning and avoid the danger that issues over capacity could become an obstacle to effective working. (Paragraph 25)

15. We propose that a clause be added to each LCO, making it legally clear – if there is any subsequent doubt – that the power is intended to provide the power that has been requested and outlined by the Assembly. The power to do something that had not been anticipated has not been transferred unless it is absolutely certain that it falls within the powers transferred. (Paragraph 29)

16. Clarity is absolutely important and we believe that the process is proposed here would be to the benefit of both Assembly and Parliament, and indeed would be likely to enhance mutual confidence and avoid the danger of theoretical arguments over how a power might be used in ways that had not been anticipated, possibly leading sometimes to an extended wrangle over whether a particular LCO should be approved or not. (Paragraph 31)

17. We believe that the best way of ensuring effective and thorough pre-legislative scrutiny of LCOs is for their automatic referral to the Welsh Affairs Committee, along with the other improvements identified in this paper. (Paragraph 32)

18. We recommend that the current system of scrutiny by the Welsh Affairs Committee on behalf of the House of Commons be confirmed as standard practice, with the procedural modifications we have proposed. We also recommend that the Secretary of State undertakes to review the situation again in a year's time. (Paragraph 32)

2.3.3 WAG's guidance

In July 2008, the WAG published the 'Guidance to Welsh Assembly Government Departments on Liaison with the UK Government over Parliamentary Bills, Legislative Competence Orders, and Assembly Measures' to complement the guidance published by the Wales Office on the LCOs procedure.⁶⁶

2.4 Law made in Wales

Carwyn Jones, Counsel General and Leader of the House published on 26 June 2008 a 'Progress Report on the Welsh Assembly Government's 2007-08 Legislative Programme':⁶⁷

⁶⁶ 'Guidance to Welsh Assembly Government Departments on Liaison with the UK Government over Parliamentary Bills, Legislative Competence Orders and Assembly Measures': <http://new.wales.gov.uk/legislation/guidance/guidance/?lang=en>

⁶⁷ WAG, 'Written – Progress Report on the Welsh Assembly Governments 2007-08 Legislative Programme': <http://new.wales.gov.uk/about/cabinet/cabinetstatements/2008/2379329/?lang=en>

'This statement provides a progress report on the Welsh Assembly Government's 2007/08 legislative programme in advance of the First Minister's statement on the Government's legislative programme for 2008/09, which is being made in plenary on 15 July'.

2.4.1 First Minister's Statement on the Assembly Government's Legislative Programme 2008-2009

In July, the First Minister disclosed WAG's legislative programme which included five Measures and four LCOs. It is interesting to note that the balance in the numbers of LCOs and Measures has shifted and that there will now be more Measures than LCOs. It shows that the settlement is working and that the legislative competence of the Assembly has already sufficiently increased to allow so many Measures proposals (see below).

The First Minister also declared that:

I think that we, as an Assembly—as a scrutiny and legislative body—and as a Government, and civil servants, stakeholders out there who will be directly affected by the legislation and the lawyers who are going to be advising us on how to write these laws, all need to learn the game. That is why I emphasised that we are in our apprenticeship or foundation-degree stage, as an Assembly. We are completing year 1 and, today, we are kicking off year 2 and we are learning the game. We are still in our infancy as a legislative body. Therefore, the faster that we move up that learning curve, the stronger—not the weaker—the case will be for a referendum on full legislative powers. It should be based on the successful use of the powers in the Government of Wales Act 2006, not on the lack of success of using those powers.

2.4.2 Law made in Wales under the 2006 Act procedures

In summary, so far two LCOs and one Measure have been made. There have been discussions as to the number of LCOs which would be manageable, both for the Assembly and for the Welsh Affairs Select Committee, as was reported in the Western Mail on 18 and 21 August (see below for my interpretation of the numbers at 2.5.2).

2.4.3 Legislative Competence Orders

The table below sets out the proposals for LCOs in the order they are officially announced or published in draft and the various stages they have reached. In italics

is shown the current stage of each proposal for an LCO when writing this report at the end of August.

Figure 2.1: Proposals for Legislative Competence Orders

| Number LCO | Source | Purpose | Status |
|------------|----------------------------------|---|---|
| 1 | WAG | Additional Learning Needs Matter 5.17 | Made on the 9 th of April In Force SI. 2008/1036 |
| 2 | WAG | Environmental Protection and Waste Management Matters 6.1-2 | Pre-legislative scrutiny by Committee in Cardiff – completed <i>Being Redrafted</i> |
| 3 | WAG | Vulnerable Children Matter 5.18 Matters 15.2-8 Matter 16.1 | Pre-legislative scrutiny by Committee in Cardiff – completed Report January 2008 = <u>REVISED order</u> Second Committee Report on Revised Order Joint pre-legislative scrutiny WASC / Assembly WASC Pre-legislative Scrutiny– completed <i>Awaits Formal Approval by the Assembly</i> |
| 4 | WAG | Domiciliary Care Matter 15.1 | Made on the 10 th of July In Force SI. 2008/1875 |
| 5 | WAG | Affordable Housing Matter 11.1 | Pre-legislative Scrutiny Committee– completed = <u>REVISED order</u> <i>WASC pre-legislative scrutiny of Revised Order</i> |
| | WAG | Welsh Language | <i>Being negotiated with Whitehall – To be drafted</i> |
| 7 | AM- Ballot 1 Ann Jones | Domestic fire safety. Matter 11.2 | Pre-legislative Scrutiny Committee– completed Report June 2008 <i>Secretary of State</i> |
| 6 | AM- Ballot 2 Jonathan Morgan | Mental Health reform Matter 9.2 | Pre-legislative scrutiny by Committee in Cardiff Report June 2008 <i>Secretary of State</i> |
| | AM- Ballot 3 Helen Mary Jones | Carers. | Leave to introduce draft granted. <i>- Withdrawn- WAG should reintroduce it as a Government LCO.</i> |
| | AM- Ballot 4 Huw Lewis | Bus and Coach Services | Leave to introduce draft granted. <i>Being drafted.</i> |
| X | AM- Ballot 5 Peter Black | Local Government Electoral Arrangements | <i>Leave to introduce draft refused. Failed.</i> |
| | AM- Ballot 6 Janet Ryder | Flags and motifs on vehicle registration plates | <i>Leave to introduce proposed LCO to be granted</i> |

The redrafting of LCOs:

There is no formal procedure for the pre-legislative scrutiny Committees, either in Westminster or Cardiff Bay, to reconsider an amended proposed order which has been redrafted prior to its formal introduction as a draft order to the Assembly. There is no vote in plenary at the end of the pre-legislative stage either (as was wrongly implied in my last report). Reports are tabled from the relevant Assembly Committee and WASC. This is one aspect of the procedure for making LCOs which could and should be improved in the future.

2.4.4 Draft Measures so far

The Assembly has made one Measure which has been approved by Her Majesty in Council (the NHS Redress Measure) and two further draft Measures are at stage two: the Learner Travel Measure and the Healthier School Meals Measures. Another Measure was formally introduced just before the summer recess: the Playing fields (community involvement in disposal decisions) Measure.

The table below shows the various proposals for Measures. The first column shows the order in which the drafts have been introduced before the Assembly. In italics is shown the stage each proposal for a Measure has reached at the time of writing this report at the end of August.

Figure 2.2: Various Proposals for Measures

| Number | Source | Purpose | Status |
|--------|--------|--|--|
| 1 | WAG | An NHS Redress draft Measure intends to give greater rights to patients through a new NHS redress system | Pre-legislative Scrutiny Complete at Stage Stage 1 – Agreement on the Principle of the Measure- completed Stage 2 – Detailed Scrutiny of the Measure- completed Stage 3 – Detailed Scrutiny of the Measure in Plenary Stage 4 – Approval of final draft of the Measure- completed <i>- Royal Assent July 2008</i> |
| 3 | WAG | Learner Travel | Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 28 September 2007 <u>NO</u> Pre-legislative Scrutiny by Committee Introduced 15 April Stage 1 – Agreement on the Principle of the Measure- completed |

| | | | |
|---|---------------------------------|---|--|
| | | | <i>Stage 2 – Detailed Scrutiny of the Measure- in progress</i> |
| 5 | WAG | Learning and Skills Measure will seek to reform the 14-19 curriculum | Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 28 April 2008 – Introduced on 7 July 2008 <i>Awaits stage 1.</i> |
| 2 | AM- Ballot 1 Jenny Randerson | Draft Measure for healthier school meals in Wales | Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 29 February 2008 - Introduced on 14 March Stage 1 – Agreement on the Principle of the Measure- completed <i>Stage 2 – Detailed Scrutiny of the Measure- in progress</i> |
| X | AM- Ballot 2 Mike German | Draft Proposed School Closures (Consultation and Categories) Measure | <i>Rejected on Principle by Plenary – Failed.</i> |
| 4 | AM- Ballot 3 Dai Lloyd | Draft Measure on Impact Assessments for the Selling off of Playing Fields | Leave to introduce proposed Measure granted- Published in draft for consultation BEFORE introduction to the Assembly – End of consultation Period: 13 June 2008 - Introduced on 18 July 2008 <i>Awaits stage 1</i> |
| | AM- Ballot 4 Nerys Evans | Draft Measure on Recycling | Leave to introduce proposed Measure granted- <i>To be drafted</i> |
| X | AM- Ballot 5 Peter Black | Draft Measure on Youth Services | <i>Rejected on Principle by Plenary – Failed</i> |

2.5 The first year of operation of GOWA 2006

The Assembly is still in its infancy as a legislative body, with only one year's experience operating the interim and incremental legislative powers of the Government of Wales Act 2006. The purpose of the interim legislative system is to 'both permit the National Assembly to develop the capacity to deal with enhanced powers and allow Parliament and the National Assembly to develop a balance between them which provides the best possible legislative framework for Wales and the UK'.⁶⁸

⁶⁸ Ministry of Justice, 'Devolution Guidance Note 16': <http://www.justice.gov.uk/docs/dgn16.pdf>, para. 12

It is considered that by 2010 the sphere of competence of the Assembly and WAG will have grown sufficiently for them to be able to show that they can successfully use their powers to the extent that there would be a strong case for asking the people of Wales and Westminster to give them the full legislative powers of Part IV of Schedule 7 to the 2006 Act.

The last few months in particular have shown a growing wish amongst Whitehall and Westminster that the new provisions of the Government of Wales Act should work efficiently.

2.5.1 The growing sphere of competence of the Assembly

The legislative process put in place by GOWA 2006 and the 'Interim system' described in the 2005 White Paper are in constant evolution.

The competence of the Assembly is listed as 'Matters' in Schedule 5 of the 2006 Act. This gives at any given time the spectrum of areas of legislative competence which reflects the evolutionary and incremental nature of the current settlement.

Schedule 5 started in May 2007 with six Matters in Field 13: National Assembly for Wales. One year later there are proposals for 48 Matters under 10 Fields. Out of those 29 are already in force. This means that in the first year of operation half of all Fields are in the process of being constituted. The empty Fields are:

- Field 1: Agriculture, fisheries, forestry and rural development
- Field 2: Ancient monuments and historic buildings
- Field 3: Culture
- Field 4: Economic development
- Field 7: Fire and rescue services and promotion of fire safety
- Field 8: Food
- Field 14: Public administration
- Field 17: Tourism
- Field 19: Water and flood defence
- Field 20: Welsh language

In relation to Field 20, Welsh language, discussions are currently taking place with Whitehall which mean that more than half of the Fields would be populated to some extent (either in operation or prospectively) by the end of 2008.

2.5.2 The achievements of the first year, the law produced by the Assembly

In the first year there were 12 proposals, however one was rejected out of principle and failed at an early stage. So there have been 11 viable proposals for LCOs resulting in two LCOs being made and seven going through the process either in the Assembly or Westminster. Of those seven formally introduced, five come from WAG and two from AMs. Out of the 12 informal LCOs, six were proposed by WAG, six from Ballots of AMs.

There have also been eight proposals for Measures of which two proposals were rejected on principle at an early stage. Of the remaining six viable proposals one Measure has already been formally made, four are proceeding through the Assembly, and one is expected to be formally introduced soon. Of the eight proposals three came from WAG and five from Ballots of AMs. It is interesting to note that currently there are fewer proposals for Measures coming from the Government than from AMs, but these are still early days.

In one year two LCOs and one Measure were made in the first year of GOWA's operation.

As regards the speed of the new procedures, the two LCOs took on average 10 months from start to finish (eight Months Assembly Formal Approval, two months Westminster) and the Measure took 11 months. There are indications that the time taken is getting less.

It is noteworthy that overall there are more opportunities for elected representatives to introduce draft legislation for debate by ballot in the Assembly than there are in Westminster. The extent of this is shown by the larger number of proposed Measures which have come before the Assembly from Assembly Members than from the Executive. This would be inconceivable at Westminster.

2.5.3 The problems of the interim system

The disparate range of matters and the risk of Executive Devolution to come back disguised in Narrow Legislative Devolution

As regards legislation, the 2005 White Paper, *Better Governance for Wales*, contemplated two different ways through which the Assembly could obtain powers to make Measures. The first was by means of Acts of Parliament 'in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales',⁶⁹ the second by Orders in Council 'to permit the Assembly to develop the capacity to deal with enhanced legislative powers',⁷⁰ by giving the Assembly 'powers, in specified areas of policy, to modify – i.e. amend, repeal and extend – the provisions of Acts of Parliament in their application to Wales or to make new provision'.⁷¹

'The decisions as to how wide a policy area such a power would cover...would be a Matter for Parliament....There is a range of possibilities: a) something very specific such as the functions of the Ombudsmen in Wales. b) something rather wider such as the protection of welfare of children. c) something considerably wider such as the structure of the NHS in Wales'⁷²

The intention is 'to permit the Assembly to develop the capacity to deal with enhanced legislative powers'.⁷³ This seems to suggest that in all cases the Assembly would have sufficient powers 'in specified areas of policy' to make such legislation as it considers necessary. By the examples given in Part III of the White paper (para. 3.18) it seemed that the Assembly would be given subject areas, whether specific, wider or very wide.

With some exceptions, the Matters which are either in operation or which are provisional in Schedule 5 do not seek to give the Assembly subject areas whether specific, wider or very wide powers to make law, and therefore do not reflect the

⁶⁹ The Stationary Office, *Better Governance for Wales* : <http://www.official-documents.gov.uk/document/cm65/6582/6582.asp>, para. 3.12

⁷⁰ Ibid. para. 3.13

⁷¹ Ibid. para. 3.16

⁷² Ibid. para. 3.18

⁷³ Ibid. para. 3.13

intentions in the White Paper. Nonetheless more recent examples are getting closer to such aspirations (see the LCO relating to the Welfare of Children).

Generally, however, the Matters seem to be expressed in the same terms as the sections of Acts of Parliament which were included in TFOs for executive powers to the old Assembly under GOWA 1998. An example of this are Matters 5.1-5.10 which are now in operation. These Matters are expressed in the same way as if they were sections in an Education Act of Parliament and are very differently expressed to Field 5 in Schedule 7 to GOWA 2006:

Education and training

5 Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

Exception—
Research Councils.

Other examples are the proposed Matters 7.1 (Fire) and 18.1-18.3 (Planning) in Schedule 5 to GOWA 2006. We would have thought that the aim of giving legislative powers to the Assembly should be to enable legislation to be made by the body in relation to wider subjects than fire sprinklers in HMOs and land plans.

This aspect of the appropriate breadth of Matters is referred to in DGN 16 (principle v. paragraph 24). It remains to be seen whether the operation of the new DGN 16 will mean wider Matters will be drafted and accepted in the coming years by Whitehall and Parliament.

The danger of this approach of drafting and requesting only narrow matters is the danger of repeating the problems created by the series of Transfers of Functions Orders, particularly the first one in 1999. It was never possible to understand the extent of the Assembly's executive powers under the TFOs without examining every section of every Act covering the functions which were transferred. In doing so it was always necessary to understand whichever provisos were contained in the TFO in relation to the exercise of a particular section. Consideration of Wales Legislation Online shows the complexity of this approach to the exercise of powers. In acknowledging the issue the purpose of the White Paper was to remedy the problems.⁷⁴

⁷⁴ Ibid. para 3.5

The principle set out in DGN 16 at paragraph 24 is that 'Orders should not give the National Assembly powers over the whole of any of the fields listed in Schedule 5 in one go, nor should subjects normally be imported wholesale from Schedule 7 into Schedule 5 unless a clear case for doing so is made. Defining Matters to be added to Schedule 5 should be approached on a case by case basis, from the standpoint of what the Matter is intended to cover'.⁷⁵ This interpretation has meant that the Assembly's bid for an LCO for 'Environmental Protection' has been lost somewhere within the Whitehall machinery.

However, paragraph 24, principle v. of DGN 16 encourages the use of wider subject area Matters and paragraph 17 considers that where the Assembly is able to make a case for consolidating a variety of disparate legislation Whitehall should support the proposal and make a favourable case to Parliament.

The inherent complexity of the system

There is a more fundamental problem however with the operation of the interim procedure. The need to constantly make a detailed robust case for new powers by reference to the seven principles in the DGN 16 involves a considerable amount of time and debate in the Assembly and WAG, which might better be devoted to considering the nature of the laws the Assembly should be making (i.e. the contents of potential Measures under the sought Matters). This would be avoided if the Assembly already had full competence in these Fields under Part 4 and Schedule 7.

There is also an inherent complexity in the system in that a wide number of bodies consider bids for LCOs without in some cases taking account of the views of the other bodies. That the practice has not been synchronised is a problem which is referred to in the Memorandum by the Welsh Affairs Select Committee on the Review by the Secretary of State of the procedure for Legislative Competence Orders in Council.⁷⁶

⁷⁵ Ministry of Justice, 'Devolution Guidance Note 16': <http://www.justice.gov.uk/docs/dgn16.pdf>, para. 12

⁷⁶ House of Commons Welsh Affairs Committee, 'Review by the Secretary of State of the procedure for Legislative Competence Orders in Council': <http://www.parliament.uk/documents/upload/Review%20of%20LCOs%20by%20the%20Secretary%20of%20State%20-%20Memorandum%20by%20the%20Welsh%20Affairs%20Committee.pdf> para. 17

Part of the problem stems from the lack of a structured path, or order, for the different bodies to follow when undertaking pre-legislative scrutiny of the proposed LCOs. DGN 16 has now set out a formal procedure (summarised in Annex 1) of the DGN which should ensure that the process is coherent and that all those involved are aware of each other's views. This is a challenge when considered in the context of the number of bodies concerned; each of whom had, until DGN 16, been working to a different timetable.

The question of the number of LCOs which is 'manageable'

The Presiding Officer's predictions that the amount of legislation initiated in Wales each year under GOWA 2006 would be up to 18 have been accurate. So far in the first year there have been a total of 20 proposals for LCOs and Measures (12 and 8 respectively).

The number of LCOs per year is referred to in paragraphs 21 to 25 of the WASC's memorandum; they refer both to the lack of predictability on when proposed LCOs are likely to be referred to the Committee, resulting in some disruption to the Committee's general programme,⁷⁷ and also to the possible number of proposed Orders. They consider that the number could be as high as 11 but consider they could best handle four or five a year.⁷⁸

In his response to the Memorandum the Secretary of State for Wales wrote to the Chair of the WASC on the 21st July expressing his hopes that the improvements set out in DGN 16 would go a long way to ensuring that there is greater structure in the referral of draft Orders to Parliament and that this would be assisted by a regular dialogue between officials in WASC and in the Wales Office.

In effect WASC is being asked, in looking at draft LCOs, to consider giving powers to the Assembly which would otherwise be in Bills. Such Bills would comprise at least three separate readings in the Houses of Parliament before becoming Acts. There is therefore bound to be considerable pressure placed on the Committee's overall workload in being asked to do this in addition to their other work of looking at general matters affecting Wales.

⁷⁷ Ibid. para. 21

⁷⁸ Ibid. paras 22 and 25.

No direct point of entry of the Assembly in London

Bills giving powers to WAG

There still remains the unresolved problem, referred to in both the Richard Commission Report and the 2002 report of the Assembly's internal review on the operation of the GOWA 1998, that no machinery exists whereby the Assembly can liaise directly with the Wales Office, Whitehall or Parliament regarding the formulation of proposals in draft Bills giving powers to WAG. With the extensive legislative powers available to the Assembly in Schedule 7 of GOWA it is possible that there would be less need for Bills to give such powers to WAG.

LCOs

There seems to continue to be a problem that neither the Assembly as a whole nor individual AMs or Assembly Committees can liaise directly with the Wales Office or Whitehall in relation to their own proposals for LCOs. Para. 39 to 41 of DGN 16 emphasise that the Wales Office and Whitehall will only liaise with the Assembly Government which leaves the individual AM and Assembly Committee to have to liaise with WAG only and with nobody else.

3. Economic Development and the Budget

Professor Peter Midmore, Aberystwyth University

3.1 Introduction

During the National Assembly for Wales' summer term discussions on economic development began, increasingly, to be influenced by the economic downturn: reductions in overall levels of economic growth associated with diminishing global liquidity, and cost-inflationary pressures arising from high world commodity prices, especially oil. These more difficult economic circumstances led to a familiar exchange between government and opposition in Plenary Session. First Minister Rhodri Morgan, asked about current Welsh economic performance, suggested that it was showing 'commendable resilience', particularly through a countercyclical increase in employment. When challenged on issues such as rising unemployment, the state of the housing market and relatively low GVA figures in Wales his response was to cite other indicators which give an alternative perspective, including relatively much larger growth in household incomes than elsewhere in the United Kingdom.⁷⁹ Apart from an apparently seamless transition for Plaid Cymru from critic to defender of the positive interpretation of economic data, much the same discourse journey is still being travelled.

However, consensus of a kind has emerged on an appropriate response to economic difficulties. Much discussion and policy announcement related to softer dimensions of economic development, particularly the development of higher skills levels (since low skills are related both to poor productivity and to economic inactivity, the key elements of relatively poor Welsh performance), and greater technological innovation. All of these issues combine into a focus on the Enterprise and Learning Committee's on-going review of the Economic Contribution of Higher Education, the discussion of which forms the bulk of this term's report. However, exceptions were provided. Firstly, an opposition plenary debate on regeneration, using the example of private sector engagement with improved physical infrastructures in Cardiff Bay to suggest frameworks for the Heads of the Valleys and Barry (but the motion was

⁷⁹ Assembly Record of Plenary Proceedings, 10 June 2008, pp. 8-10:
<http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080610qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20589kb%29>.

dismissed as opportunism by the government, as the latter area is a target seat for Conservatives in the coming election). Secondly, Ieuan Wyn Jones, as Minister for Economic Development, announced the simplification of Business Investment Support in the form of a new flexible Single Investment Fund, providing a unified framework for application for funds and support, which was broadly welcomed by all parties.

3.2 Skills that Work for Wales

Following a consultation by the Assembly Government on skills strategy⁸⁰ the Enterprise and Learning Committee produced a report on the approach, and the Deputy Minister (John Griffiths) duly responded with a debate in plenary session.⁸¹ Key issues which emerge relate to weak representation of Wales on the UK-wide Commission for Employment and Skills, a low aspiration for standard skill levels set as a benchmark relative to other parts of the United Kingdom, and tardiness in relation to implementation of the Webb Review's recommendations, particularly with regard for resources in relation to improvement and coordination of the learning networks which that report proposed.⁸² Of these, the setting of the intermediate skills benchmark at level 2 rather than level 3 is the most revealing since John Griffith's response indicated a desire for training needs to be market-led by employers, which opposition parties seized on as leading to a perpetuation of low-skill, low-wage conditions in Wales and with inescapable conclusions for economic welfare and development. It is clearly the strain on budgetary resources which prevents greater engagement with the skills agenda. On final publication of the Action Plan document (on 9 July 2008) the contents related to: integration of vocational (apprenticeship) training into the Welsh baccalaureate system, improved cost recovery (fees for employers and trainees), measures to improve all basic literacy and numeracy skills, collaboration with the Westminster Department for Work and Pensions to integrate

⁸⁰ WAG, *Skills That Work for Wales: A skills and employment strategy*, Cardiff: Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government, 2007: <http://new.wales.gov.uk/docrepos/40382/4038232/403829/Consultations/1901302/skills-for-wales-cons-e.pdf?lang=en>.

⁸¹ Assembly Record of Plenary Proceedings, 4 June 2008, pp. 92-114: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080604qv.pdf?langoption=3&tll=The%20Record%20%28PDF%2C%20899kb%29>.

⁸² WAG, *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: <http://wales.gov.uk/topics/educationandskills/educationskillsnews/promise-and-performance-review?lang=en>

the employment service with skills development programmes' prioritisation of key economic sectors and their skills needs, development of employment-related foundation degrees and of national research centres in higher education, engagement with employers to determine their needs are being met, and promotion of integration across all providers of 14-19 education and training. The Action Plan will be supported by a proposed Assembly Measure on Learning and Skills, introduced on 7 July 2008 and currently being assessed for its broad principles prior to more detailed scrutiny.⁸³

3.3 The Economic Contribution of Higher Education in Wales

The Inquiry of the Enterprise and Learning Committee into university activity and its effect on the overall economy has been lengthy (taking over seven months to complete and stretching over three Assembly terms) and extraordinarily wide-ranging in scope. In its final evidence-gathering phases it has concentrated on higher education's contribution to knowledge economy activities, examining the processes surrounding technological spin-outs of ideas generated by academic research and their commercialisation, and also the concept of "spin-in", in which businesses locate close to universities to gain advantage from their scientific facilities or to benefit from a local supply of graduate skills. These sessions involved discussions with Universities, small and medium enterprises (one a highly technological provider of producer services to the chemical industry, another a specialist manufacturer of textile equipment), Finance Wales and technology venture capitalists. Alongside this, and aligning the inquiry to the parallel issues of graduate skills, a number of relevant Sector Skills Councils gave evidence in a protracted additional session. Two examples of collaborations between higher and further education were explored; the first was that between the University of Glamorgan and Merthyr Tydfil College (with significant emphasis on the regeneration dimension), and the second between Bangor University and Coleg Menai. In the final meeting of the summer term the Committee took evidence again from Higher Education Wales (the organisation representing university heads) and the Higher Education Funding Council for Wales before going into private session to discuss its report and recommendations.⁸⁴

⁸³ WAG, 'Proposed Learning and Skills (Wales) Measure':
<http://www.assemblywales.org/ms-ld7133-e-a..pdf>.

⁸⁴ NAFW, Enterprise and Learning Committee, 10 July 2008:
<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els->

The final few public exchanges in this Committee exemplified the clear limits of the devolution settlement with regard to finance, education and economic development. In relation to the funding gap between Welsh and English higher education,⁸⁵ David Melding asked whether there was any way to close it other than charging fees to students. In reply, Amanda Wilkinson, the Director of Higher Education Wales, suggested that

It is our major problem and, in terms of some of the competitive issues that have been discussed ... from our point of view, if that funding gap is not closed in the fairly immediate future, there will be serious questions for us.⁸⁶

The funding gap issue had been raised in an earlier plenary debate, initiated by the Liberal Democrats. The Assembly Government sought to deflect criticism by asking from where the necessary additional resources to close the gap would be obtained, suggesting that it would either come from a rise in student fees (following Conservative Policies) or a reduction in service provision (following Liberal Democrat Policies), but was curiously ambiguous on the question of how the problem might be resolved: Alun Davies argued that “It is important to think afresh about the way in which we fund higher education, and move forward globally, ensuring that our higher education has the support that it needs to compete at that level”.⁸⁷ The painful issue has been postponed until the report of a task and finish group, which will explore options open to higher education institutions in terms of funding opportunities. However, public spending pressures of all kinds are a consequence of the capitation-based Barnett funding formula; in the case of higher education the extra resources which flow into English universities are not reflected in the block grant allocation, since English students pay top-up fees, and so it requires additional Welsh spending on student support to maintain fees at their pre top-up level.

[agendas/el20080710qv.pdf?langoption=3&ttl=EL%283%29-20-08%20%3A%20Transcript%20%28PDF%2C%20199kb%29](http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080521qv.pdf?langoption=3&ttl=EL%283%29-20-08%20%3A%20Transcript%20%28PDF%2C%20199kb%29)

⁸⁵ On the basis of student numbers and subject mix, Welsh universities would have received £70 million extra if funded by the Higher Education Funding Council for England: see *The Funding Gap 2005/06*, Cardiff: Higher Education Funding Council for Wales, 2007: http://www.hefcw.ac.uk/The_Funding_Gap_2005_06.pdf

⁸⁶ NAFW, Enterprise and Learning Committee, 10 July 2008, p. 28: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas/el20080710qv.pdf?langoption=3&ttl=EL%283%29-20-08%20%3A%20Transcript%20%28PDF%2C%20199kb%29> .

⁸⁷ NAFW, Assembly Record of Plenary Proceedings, 21 May 2008, pp. 78-106: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop/rop20080521qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C%20668kb%29> .

3.4 Conclusion

The thorough and detailed examinations of the economic contribution of higher education to the Welsh economy, and of improving skills and its legislative prerequisite, provide evidence that devolution has achieved some progress in policy development in this area. As a whole, discussions on economic development in Committee are less partisan and more forensic than in plenary session. However, some problems remain. Most policy decisions – particularly in enterprise and education – are about the most efficient means of distributing a restricted budget, and therefore many potential actions to restructure and reorient economic development processes are ruled out. It remains to be seen how effectively Enterprise and Learning Committee members deal with the mass of information and views collected during an inquiry of unprecedented length and breadth. From discussions and comments within the scrutiny sessions it seemed as though they mostly accepted, at face value, the highly positive accounts of the economic benefits of higher education without really following up on the question of why if higher education is so good performance of the overall economy is still so weak. Other factors, including the level and quality of investment and development of denser networks of economic interaction, need to be explored if the further devolution of legislative power is to be made best use of in the future.

4. Intergovernmental relations

Alan Trench, The University of Edinburgh

4.1. Introduction and background

The period from May to September has been relatively quiet. Headlines include the first meeting of the plenary Joint Ministerial Committee for over five and a half years, and various developments regarding legislative powers for Wales. As well as the work of the All Wales Convention, the UK constitutional debate continued. In Scotland, the Calman Commission began taking evidence but has done so mostly in private.⁸⁸ It launched what it called its 'summer of listening' on 1 July. The National Conversation had a somewhat higher profile, with the Scottish Government using the summer to hold cabinet meetings outside Edinburgh and tying its visits to Dumfries, Pitlochry, Inverness and Skye to public events about constitutional matters. Meanwhile, the UK Government's political difficulties have led to speculation about a Cabinet reshuffle in the autumn, and with it the creation of a combined ministry bringing together responsibilities for Scotland, Wales and Northern Ireland with English regional issues.⁸⁹ Both Plaid Cymru and the Conservatives promptly declared their support for retaining a dedicated Wales Office.⁹⁰

4.2 Meeting of the Joint Ministerial Committee

The most important headline event was the first meeting of the Joint Ministerial Committee since October 2002. This was held in London on 25 June 2008. The meeting was chaired by the Lord Chancellor and UK Secretary of State for Justice, Jack Straw, although it was described as a 'plenary' meeting (Straw was 'representing' the Prime Minister). The Welsh Assembly Government was represented by the First Minister and Deputy First Minister, Rhodri Morgan and Ieuan Wyn Jones. (Northern Ireland and Scotland were also represented by their First Ministers and Deputy First Ministers, respectively Peter Robinson and Martin McGuinness, and Alex Salmond and Nicola Sturgeon. The UK Secretaries of State for Scotland, Wales and Northern Ireland were also in attendance.) According to the

⁸⁸ Minutes of the meetings of the Commission and its various 'panels' are available at www.commissiononscottishdevolution.org.uk/papers.php

⁸⁹ M. Withers, 'Wales Office is facing the axe', *Wales on Sunday* (27 July 2008).

⁹⁰ M. Withers, 'Plaid and Tories defend "doomed" Wales Office' *Western Mail* (28 July 2008).

'joint press statement', the meeting generally reviewed the role of the JMC and relations between administrations.⁹¹ It agreed on the holding of a further meeting probably of a 'JMC Domestic' under the chairmanship of Paul Murphy in the autumn, and on the review of the Memorandum of Understanding. It also discussed a number of substantive issues including financial matters, the (Westminster) Marine Bill, and renewable energy.

The meeting appears to have been relatively low-key (there had been concern among Whitehall officials that it might degenerate into argument, and there had been concerns on the Scottish side about some aspects of the protocol, including the charring by the Justice Secretary not the Prime Minister). The fact that a meeting happened at all can be regarded as a form of progress; the fact that it went smoothly and did what it was supposed to do – discuss substantive issues where there are differences between governments – even more impressive. The question is whether this initiative is in fact sustained, and what common ground can be found between the devolved governments.

4.3 British-Irish Council sectoral meeting

A sectoral meeting of the British-Irish Council on social inclusion took place in Cardiff on 20 May 2008, chaired by Dr Brian Gibbons.⁹² Dr Gibbons also presented a paper on the Assembly Government's work on child poverty. Stephen Timms MP, Minister of State for Employment and Welfare Reform, represented the UK Government.

4.4 Legislative Consent Orders and other legislative matters

One legislative consent order (LCO) has been made, the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008 No. 1785), conferring legislative powers on the Assembly regarding charging by local authorities for social care services (in field 15 of Schedule 5 to the 2006 Act).

Further LCOs currently before Parliament are the National Assembly for Wales (Legislative Competence) (No. 5) Order 2008 (concerning affordable housing), and

⁹¹ This statement is available at www.scotlandoffice.gov.uk/our-communications/release.php?id=3676

⁹² The communiqué is available at <http://www3.british-irishcouncil.org/documents/socinc3.asp>

the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (concerning vulnerable children).

The Ministry of Justice has issued a new Devolution Guidance Note, Number 16, on *Orders in Council under section 95 of the Government of Wales Act 2006*.⁹³ This replaces interim guidance issued in 2007, and clarifies procedures for handling LCOs (see para 2.3.1 of this report).

As regards procedure, the DGN confirms the present practice – of discussion between Assembly Government and UK Government (involving both the Wales Office and line departments), with subsequent pre-legislative scrutiny carried out in both Westminster and Cardiff Bay, followed by formal tabling and Parliamentary consideration of a revised Order.

Nothing in the DGN addresses a serious gap that has arisen from the two ways in which legislative powers are conferred on the Assembly, by LCO and by Westminster legislating to transfer powers directly. LCOs require the support of the Assembly as a whole, but this is not the case if matters are added by an Act of Parliament. Indeed, Devolution Guidance Note 9. on *Post-Devolution Primary Legislation Affecting Wales* says expressly (in para. 17) that powers conferred by Act do not need the approval of the Assembly, while LCOs of course do.

The Secretary of State for Wales also held a ‘review’ of processes for making LCOs under the new arrangements.⁹⁴ This confirmed the existing procedures, including the detailed pre-legislative scrutiny of LCOs and the role of the Commons Welsh Affairs Committee in that process (something which the Committee itself pressed for in its memorandum to the review).⁹⁵ The Committee’s memorandum also complained about the volume and quality of the LCOs being sought, saying there should only be four or five LCOs a year, as they had previously envisaged, and that there should be:

⁹³ Available at www.justice.gov.uk/guidance/devolutionguidancenotes.htm#sixteen. See also Wales Office news release, ‘Paul Murphy welcomes new guidance for devolution’, 16 July 2008: <http://www.walesoffice.gov.uk/category/news-releases/page/2/>

⁹⁴ Wales Office news release, ‘Paul Murphy announces outcome of scrutiny review’, 22 July 2008: www.walesoffice.gov.uk/2008/07/22/paul-murphy-announces-outcome-of-scrutiny-review/

⁹⁵ House of Commons Welsh Affairs Committee, ‘Review by the Secretary of State of the procedure of Legislative Competence Orders in Council. Memorandum by the Welsh Affairs Select Committee’: www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacsoslco.cfm

a proper focus to legislative work, aiming at producing a reasonable number of high-quality Orders each year rather than allowing volume to swamp the system here and in the Assembly as seems to be happening at the moment. (para. 23)

The Committee's views prompted a brusque response from Lord Elis-Thomas, the Presiding Officer, who pointed out that fewer LCOs were presently under consideration at Westminster than had been predicted, with only four LCOs actually before Parliament so far (although seven more were at various stages of consideration by the Assembly).⁹⁶

4.5 UK Government's 'Draft Legislative Programme'

The UK Government's practice of announcing its legislative programme in advance of the November Queen's speech has become more established. The Draft Legislative Programme was published for consultation on 14 May, and consultation closed on 18 August.⁹⁷ The document notes that:

In many cases, a bill may also apply in part to a devolved matter in Scotland, Wales and Northern Ireland. In other cases, the exact extent may not yet be known and discussions with the devolved administrations may still be continuing. The Government remains committed to respecting the devolution settlements. (p.10)

In relation to many bills affecting devolved matters, it also notes that, 'The Government will work closely with the Welsh Assembly Government in relation to their responsibilities in this area.'

The Draft Legislative Programme also states the need for consultation with the devolved administrations about the bills proposed – although it appears that little or no consultation had taken place by the time of publication about many of the bills noted in the draft programme. One notable provision is the proposed 'NHS constitution', set out in the NHS Reform Bill. This will, apparently, apply only to

⁹⁶ M. Shipton, 'Lord Elis-Thomas hits out over MPs' claims', *Western Mail*, (18 August 2008): <http://www.walesonline.co.uk/news/politics-news/2008/08/18/lord-elis-thomas-hits-out-over-mps-claims-91466-21551452/> and also T. Livingstone, 'MPs fear Welsh law orders are swamping Westminster', *Western Mail* (25 July 2008): <http://www.walesonline.co.uk/news/politics-news/2008/07/25/mps-fear-welsh-law-orders-are-swamping-westminster-91466-21403348/>

⁹⁷ Office of the Leader of the House of Commons, 'Preparing Britain for the future: the Government's draft legislative programme 2008-09 Cm 7372' (London: The Stationery Office, 2008): www.official-documents.gov.uk/document/cm73/7372/7372.pdf

England.⁹⁸ Another is the 'Bill of Rights and Responsibilities' (no longer a 'British Bill of Rights', it should be noted); as discussed in previous reports, this is to apply across the UK but the UK Government has rejected the idea of directly consulting the devolved administrations or legislatures on the Bill.⁹⁹ This view has been criticised by the Joint Committee on Human Rights at Westminster.¹⁰⁰

4.6 Finance

The Assembly Government named Gerald Holtham, a City economist and former Director of the think-tank the Institute for Public Policy Research, to chair its commission to consider financial matters, including the Barnett formula and taxing and borrowing powers on 8 July.¹⁰¹ Holtham's background and expertise mean that he is likely to be a very effective chairman of the commission. However, it is still not clear how the commission will be composed or when it will be able to start work. Opposition politicians welcomed his appointment, but regretted the slow pace of progress to date.

⁹⁸ Ibid, p. 62.

⁹⁹ Ibid, p. 65. See A. Trench in R. Wyn Jones and R. Scully (eds.), 'Wales Devolution Monitoring Report' May 2008, para. 4.5 and A. Trench in R. Wyn Jones and R. Scully (eds.), 'Wales Devolution Monitoring Report' January 2008, para 4.6 for previous discussion of this issue.

¹⁰⁰ House of Lords and House of Commons Joint Committee on Human Rights, 'A Bill of Rights for the UK?', Twenty-ninth Report of Session 2007-08 HL Paper 165-I, HC 150-I (London: The Stationery Office, 2007), particularly chapter 3.

¹⁰¹ BBC News, 'Economist heads funding inquiry' (8July 2008): http://news.bbc.co.uk/1/hi/wales/wales_politics/7495463.stm

5. Relations with Europe and Local Government

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5.1 Europe

Europe Day was celebrated at the European Commission Offices in Cardiff Bay. The First Minister, Rhodri Morgan, attended and held a speech at the reception for VIPs, AMs, and people from all levels and sectors of society. A second reception by the European Commission Representation in Wales was held in Llandudno on 7 May. On 1 July, Slovenia handed over the Presidency of the European Union to France. The French Presidency has four key priorities – energy and the climate, migration issues, agriculture, and security and defence – as well as to continue with the ratification of the Lisbon Treaty.¹⁰²

5.1.1 Treaty of Lisbon

The UK Government has ratified the Treaty of Lisbon through a Parliamentary Bill. The European Union (Amendment) Bill was approved by the House of Commons on 11 March and was passed to the House of Lords. As of 15 August 2008, 23 Member States had ratified the Treaty. Ireland rejected the Treaty in a referendum on 12 June. The Treaty has to be ratified by all Member States before it can come into effect.

5.1.2 Subsidiarity

The Irish 'no' meant that the Lisbon Treaty, according to the First Minister Rhodri Morgan, has been 'thrown out the window'.¹⁰³ The uncertainty of the future of the Treaty has consequences for Wales, especially with regard to the subsidiarity provisions in the Treaty.¹⁰⁴ However, the First Minister continued:

'if the 27 EU Governments, in responding to the Irish 'no' vote, go for plan C ... they could say, "Can you take the bits out of the treaty that

¹⁰² 'French Presidency of the Council of the European Union Work Programme 1 July – 31 December 2008' pg 4:

http://www.ue2008.fr/webdav/site/PFUE/shared/ProgrammePFUE/Programme_EN.pdf

¹⁰³ Committee on European and External Affairs EUR(3)-05-08 Transcript:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=90897&ds=6/2008>

¹⁰⁴ Previously discussed in *Wales Devolution Monitoring Report*, May 2008, pg 49:

http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_May08.pdf

do not require the big five-act play, and simply implement it without those?”. At least then, we would get something out of this huge process of trying to make the European Commission, Council, Parliament, and so on, work more efficiently. Probably about 30 or 40 per cent of what was in the treaty that was rejected by the Irish people could be implemented without having to have these big treaty negotiations. We think that subsidiarity could be part of such a package, if that is the strategy that they go for’.¹⁰⁵

At the European and External Affairs Committee meeting on 17 July, the Committee noted the scoping paper¹⁰⁶ with regard to a subsidiarity inquiry and agreed to proceed with the inquiry in the autumn.¹⁰⁷

5.1.3 Mock EU Council Meeting

The Welsh Assembly Government in partnership with the European Commission Office in Wales has invited secondary schools in Wales to participate in a mock EU Council Meeting. The First Minister will host the event on 9 September and it will take place in the Welsh Assembly Government’s Siambwr Fach (Debating Chamber) in Cardiff Bay. It is hoped that this will become an annual event¹⁰⁸ and that it will raise interest in, and the profile of, EU politics in Wales. It should also provide an opportunity to learn about the EU among young people.

5.1.4 Welsh Language

The Welsh Assembly Government has been successful in their bid for the Welsh language to become an official language within the EU. In a decision by the European Union Council of Ministers it was decided that when Welsh ministers

¹⁰⁵ Committee on European and External Affairs EUR(3)-05-08 Transcript: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=90897&ds=6/2008>

¹⁰⁶ ‘The Subsidiarity Inquiry: Scoping Paper EUR(3) 06-08’, pg. 4, 17 July 2008: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=92282&ds=7/2008>

¹⁰⁷ Committee on European and External Affairs EUR(3)-06-08 Transcript: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home/bus-committees-third-eur-agendas.htm?act=dis&id=93965&ds=7/2008>

¹⁰⁸ WAG, ‘Wales Forum on Europe – School Competition – Mock Council of the European Union 2008’: <http://wales.gov.uk/topics/international/Events/EUMockCouncil/?lang=en>; European Commission Office in Wales ‘Schools invited to join Mock EU Council’: http://ec.europa.eu/unitedkingdom/about_us/office_in_wales/index_en.htm

represent the UK at future meetings of the Council of Ministers they will be allowed to speak Welsh. People in Wales will also be able to write in Welsh to office holders within the EU Council of Ministers. This decision is the result of co-operation between the Welsh Assembly Government, the UK Government and the EU Council of Ministers. It is hoped that this decision will open the way for discussion on using the Welsh language in other EU institutions.¹⁰⁹

5.2 Local Government

The effects of the May 2008 Local Government Election results on the political composition of local government in Wales for the next four years are now clearer. Overall, in the early post-election period there seems to be greater effort by the Assembly Government and local authorities in Wales to improve their relationship. Furthermore, current key policy initiatives emphasise different ways of promoting collaboration both across public services and between the local and Assembly Government level.

5.2.1 Local Government Election

As discussed in the previous monitoring report, the election significantly changed political leadership across local authorities in Wales with implications for WLGA's composition for the next four years. While the WLGA decided to continue its power sharing approach, due to the rise of the independents, in June, as leader of the Independent Group, Councillor John Davies (Pembrokeshire) was elected Leader of WLGA. A degree of continuity was retained as Councillor Derek Vaughan (previously WLGA Leader) became Deputy Leader and Councillor Meryl Gravell continues as WLGA Presiding Officer.¹¹⁰ The emphasis was placed on ensuring that the WLGA presents a united and strong voice for local government. On his election, John Davies stated: 'This new structure draws in leaders from all parts of Wales and I look forward to the next four years to ensuring that the voice of local government is heard loud and clear in Wales'.¹¹¹

¹⁰⁹ Welsh Assembly Press Release, 'Welsh gains new status in EU', 15 July 2008:

<http://new.wales.gov.uk/news/topic/Welsh/2008/080715welshgains/?lang=en>

¹¹⁰ WLGA Press Release, 'New WLGA Leader nominated' (22 May 2008):

www.wlga.gov.uk/english/press-releases/new-wlga-leader-nominated/

¹¹¹ WLGA Press Release, 'New top team at WLGA – Cllr John Davies to head the multi party approach' (27 June 2008): www.wlga.gov.uk/english/press-releases/new-top-team-at-wlga-cllr-john-davies-to-head-the-multi-party-approach/

Since the election, Welsh Assembly Government ministerial addresses relating to local government included two keynote speeches that suggest a recognition that the election results necessitate efforts to improve relations with local government. Both speeches provide an indication of the efforts taking place in this respect behind the scenes. On 5 June, in his first keynote speech as Local Government Minister since the elections, Dr Brian Gibbons emphasised the key role of local government in developing public services and outlined progress on the improvement agenda for 2008. With regards to central-local relations, he stated: 'Our success in driving forward the improvement agenda will depend on continued, successful collaboration between the Assembly Government and local government leadership. I hope this level of partnership working characterises the next few years as it has in the past'.¹¹² Rhodri Morgan's speech at the Governance in Wales' conference on 9 July was hailed as an effort to rebuild relations with local government and two points are most worthy of mention here. He stated that WAG did not intend to undertake a fundamental re-organisation of local government in Wales, however, as the First Minister is stepping down in 2009, the speech did little to provide a long term assurance in terms of structural stability. In addition, he 'outlined the need for an understanding between local government and the Assembly Government and indicated that work was underway to develop such a document'.¹¹³ The previous monitoring report explained how WLGA has recommended adopting an agreement akin to the Scottish concordat between the government and local government. Although the largely administrative Local Government Partnership Scheme has been updated in 2008, discussions around an agreement on policy and funding commitments in Wales have been underway for nearly a year, but slow progress reflects the degree of ongoing tensions in relations during this period. The speech did signal some goodwill and a positive public assurance to developing a document that could commit both sides to specific policies.

5.2.2 Local Government Finance

The most contentious issue for the Assembly Government and local government during the third term has been the local government financial settlement. During the recent quarter, amidst an increasingly difficult economic climate, the effects of the local government settlement on central-local relations were most prominent with

¹¹² WAG Press Release, 'Minister sets out the agenda for local authorities' (5 June 2008): <http://new.wales.gov.uk/news/topic/LocalGovernment/2008/2372348/?lang=en>

¹¹³ WAG, Local Government E-bulletin #25 at: <http://new.wales.gov.uk/topics/localgovernment/ebulletin/?lang=en>

regards to two issues: Foundation Phase education funding and local government employees' pay.

In May 2008, WAG announced an additional £5 million funding for the foundation phase, the new curriculum for 3-7 year olds due to be rolled out across Wales in 2008-09.¹¹⁴ WLGA and the teaching unions argued that there was still a shortfall of £10 million. WLGA's response highlighted the tension on this issue:

'The Minister's criticism of local authorities for failing to provide the necessary information is a smoke screen. The Assembly Government was already in possession of the information requested, and full costings were identified in the Expenditure Sub-Group in 2007'.¹¹⁵

WLGA also expressed its concern at the degree of under-funding in its evidence to the Finance Committee on 22 May 2008.¹¹⁶ In her own evidence to the Finance Committee the Minister for Education, Jane Hutt AM, recognised that more funding would be required.¹¹⁷ The Minister subsequently decided to extend the roll out to four years in order to allow many of the issues to be resolved.¹¹⁸ The Finance Committee's Inquiry expressed concern about the breakdown in communications between WAG and local government and recommended 'that the Welsh Assembly Government secures the finance necessary to ensure the optimum delivery of the Foundation Phase over the next 4 years'.¹¹⁹

The local government settlement was also raised in response to local authority employees' dissatisfaction with the pay offer, which led to strike action by Unison and Unite members on 16 and 17 July 2008. In explaining the 2.45 per cent employers' offer, WLGA drew attention to the pressure on council budgets: 'In Wales the local government settlement equates to 2.4 per cent hence there is no additional money in

¹¹⁴ WAG Press Release, 'Further Funding for Flagship Foundation Phase' (8 May 2008):

<http://new.wales.gov.uk/news/topic/Education/2008/2371859/?lang=en>

¹¹⁵ WLGA Press Release, "Too little too late" says WLGA' (7 May 2008):

www.wlga.gov.uk/english/press-releases/too-little-too-late-says-wlga/

¹¹⁶ Finance Committee, 'Inquiry into funding of Foundation Phase: Written evidence submitted by the WLGA and ADEW' FIN(3)-08-08: 22 May 2008: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-fin-home/bus-committees-third-fin-agendas.htm?act=dis&id=84882&ds=5/2008

¹¹⁷ Finance Committee Report on the Foundation Phase(18 July 2008):

<http://www.assemblywales.org/cr-ld7176-e.pdf>

¹¹⁸ Ibid

¹¹⁹ Ibid

the pot to meet anything above the employers' offer'.¹²⁰ As strike action loomed, WLGA reiterated that the pay offer was above the increase in WAG funding to local authorities and that a greater pay offer would call for council tax increases or cuts in staff or frontline public services.¹²¹ The strike not only caused tensions between local authorities, and workers and unions, but both sides united with Assembly Members who supported strike action in urging greater funding for local authorities to allow for pay rises. Unison's head of local government in Wales called on WAG to review local government's financial allocation for the coming year.¹²² Tensions and the threat of further industrial action continues.¹²³

5.2.3 The improvement agenda and central-local relations

Policy developments associated with the improvement agenda, in particular the Local Service Boards (LSBs) and progress on reforming the Wales Programme for Improvement (WPI), suggest an evolution in how Assembly Government–local government relations are being framed on a practical level.

First, the Local Service Boards, the centrepiece of Beecham's recommendations, are at a key point in their evolution. In his keynote speech, Rhodri Morgan emphasised the importance of LSBs in promoting collaborative working.¹²⁴ The Health, Wellbeing and Local Government Committee started a short review of Local Service Boards on 3 July 2008 and will report in the autumn of 2008. For the committee itself the review is a precursor to its review of local government scrutiny arrangements and suggests a shift in attention to local government issues within its portfolio. In terms of the boards, the review takes place at a time when all areas of Wales are shifting away from the existing community strategy/local strategic partnership model as the Local Service Board approach is rolled out across Wales in 2009-10.

¹²⁰ WLGA Press Release, 'Planned strike action by Unison is hugely damaging, says WLGA' (27 June 2008): www.wlga.gov.uk/english/press-releases/planned-strike-action-by-unison-is-hugely-damaging-says-wlga/

¹²¹ WLGA Press Release, 'Welsh Councils plan to mitigate strike impact' (15 July 2008): www.wlga.gov.uk/english/press-releases/welsh-councils-plan-to-mitigate-strike-impact/

¹²² A. Alford, 'AMs under fire after backing council workers in pay strike', *Western Mail* (17 July 2008): <http://www.walesonline.co.uk/news/wales-news/2008/07/17/ams-under-fire-after-backing-council-workers-in-pay-strike-91466-21355702/> .

¹²³ *Western Mail*, Threat of further industrial action as union ballots council workers over pay' *Western Mail* (30 July 2008): <http://www.walesonline.co.uk/news/wales-news/2008/07/29/threat-of-further-strike-action-91466-21424759/> .

¹²⁴ WAG, Local Government E-bulletin #25 at: <http://new.wales.gov.uk/topics/localgovernment/ebulletin/?lang=en>

To date, evidence to the committee illustrates differences in the operation of the six pilot boards, particularly in terms of priorities and scrutiny arrangements.¹²⁵ However, more significant are the boards' implications for Assembly Government–local government relations. As each board develops a Local Delivery Agreement in collaboration with WAG this structure aims 'to frame a much closer relationship between the Assembly Government and local bodies themselves'.¹²⁶ Furthermore, on the whole, the evidence highlighted that the composition of the LSBs, local public service leaders and a senior Assembly Government official, is working well. This membership provides a status for the LSBs and civil servant presence can potentially provide a clear channel of communication into WAG. Senior WAG officials' membership of LSBs can promote building relations and understanding of local government within WAG. It can provide an opportunity to learn about the practicalities of service delivery at the local level.

Secondly, the previous monitoring report discussed the renewed emphasis on performance and service improvement. Brian Gibbons' keynote speech on 5 June 2008 also drew attention to other aspects of the improvement agenda affecting local government in 2008, namely the proposals to reform the Wales Programme for Improvement and strengthen community planning.¹²⁷ The *'Delivering a Shared Responsibility – Performance Improvement and Community Planning'* consultation for the proposed Performance Improvement and Community Planning Measure closed in April. What is interesting here is the proposed degree to which WAG will have legal power to intervene at the local level. The summary of the consultation highlighted that nearly all responses recognised the need to legislate to reform the WPI.¹²⁸ However, there were a large number of responses expressing clear reservations about Welsh Ministers having a reserve power to direct collaboration,

¹²⁵ See the Health, Wellbeing and Local Government Committee evidence papers and committee transcripts for 3 July, 10 July and 17 July 2008: www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?ds=7%2F2008&submit=Submit

¹²⁶ Health, Wellbeing and Local Government Committee, 'Committee Inquiry into Local Service Boards – Scoping Paper HWLG(3)-12-08: Paper 3' (14 May 2008): www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-hwlg-home/bus-committees-third-hwlg-agendas.htm?ds=5%2F2008&submit=Submit

¹²⁷ WAG Press Release, 'Minister sets out the agenda for local authorities' (5 June 2008): <http://new.wales.gov.uk/news/topic/LocalGovernment/2008/2372348/?lang=en>

¹²⁸ WAG, 'Delivering a Shared Responsibility – Performance Improvement and Community Planning – Summary of responses': <http://new.wales.gov.uk/topics/localgovernment/consultation/closed/deliveringasharedresponsibility/?lang=en>

particularly its effects on local priorities, and accountability. Nevertheless, the document states that:

there should be a duty on the relevant authorities to consider collaborating with other relevant authorities with a view to securing the discharge of the general improvement duty....To support this, as part of the Measure Ministers will have a power to enable them to direct relevant authorities to collaborate with each other....we would wish to emphasise in the Measure that the Welsh Ministers' power to direct collaboration is tantamount to a power to intervene, and subject to the same conditions on its exercise.¹²⁹

It is anticipated that the measure will be implemented during the autumn of 2009.¹³⁰

Meanwhile, the roll-out of Improvement Agreements between local government and the Assembly Government is seen by many in local government as a return to form in terms of partnership. The process builds on the experience of Policy Agreements, and sees local authorities identifying and agreeing eight local improvement priorities with WAG, two for each of the four One Wales themes. In return for negotiating and agreeing the eight Agreements, local authorities receive a proportion of the £33m incentive grant, which will be awarded in future years based on progress against the Improvement Agreements. The local discretion in determining priorities has been broadly welcomed by local government, however, the fact that the £33m performance incentive grant has been retained is regarded as a key achievement given concerns that it could have been distributed via LSBs or withdrawn altogether.

5.2.4 Conclusion

The early aftermath of the local government election has provided an impetus for efforts to improve relations between WAG and local government. The current picture is mixed, with signs of improved partnership working in some areas and continuing tensions in others. It is highly likely that there are ongoing efforts to rebuild relations behind the scenes. In this respect, public statements regarding partnership working and developing a document guiding central-local relations are significant. Results of negotiations and decision-making on the local government settlement for the upcoming Assembly Government budget in the autumn will provide a good indicator as to whether the new composition of local government has actually been a platform for improved partnership working.

¹²⁹ *ibid*

¹³⁰ WAG, Local Government E-bulletin #24:

<http://new.wales.gov.uk/topics/localgovernment/ebulletin/ebulletin24/?lang=en>

6. Elections, Parties and Public Attitudes

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6.1 Elections

There were no parliamentary or National Assembly by-elections in Wales during May-August 2008. Eight local government by-elections were held in Welsh local authorities during this time period. The results are summarised in the table below. Over a small number of by-elections occurring in such disparate authorities, it is difficult to deduce general trends in the results. Probably the most politically significant result was that in Ceredigion; after the resignation of a popular local Councillor for personal reasons, a strongly fought campaign saw Plaid Cymru narrowly overturn the substantial majority of the previous Liberal Democrat incumbent. This result, following Plaid's strong local performance across the county in May's local elections, reinforced the sense that they can be expected to challenge the Liberal Democrat MP, Mark Williams, hard at the next general election.

Figure 6.1: Local Government By-Elections, June-August 2008

| <i>Ward</i> | <i>Council</i> | <i>Month</i> | <i>Winner</i> | <i>Change?</i> | <i>Swing</i> |
|---------------|---------------------------|--------------|---------------|----------------------|----------------------|
| Hope | Flintshire CC | June | Lib Dem | LD Gain from Ind | 39.2% Ind to LD |
| Betws | Newport CC | June | Labour | Lab Hold | 10.2% Lab to LD |
| St Julian's | Newport CC | June | Lib Dem | LD Hold | 9.4% LD to Con |
| Bowydd & Rhiw | Gwynedd | June | Independent | Ind Gain from Lab | 6.7% PC to Ind |
| Pentyrch | Cardiff CC | July | Conservative | Con Hold | 1.4% Con to Lab |
| Rheidol | Ceredigion CC | July | Plaid Cymru | Plaid Gain | 21.6% LD to Plaid |
| Risca West | Caerphilly CBC | July | Labour | Lab Hold | 2.7% PC to Lab |
| Cilfynydd | Rhondda Cynon Taff CBC | August | Labour | Lab Gain | 12.4% LD to Lab |

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

6.2 Parties

Three years out from the next Assembly election and the summer lull has been soporific – perhaps predictably so. This despite the fact that three of the four main parties are all at different stages in the process of electing key leaders, and that the fourth – the Welsh Conservatives – are currently engaged in the hugely important and delicate task of deciding their attitude to the future of Wales's devolved dispensation as they head towards what now appears to be an inevitable victory at the next UK general election.

Notwithstanding the extent of Labour's problems in Wales, the party's travails at the British level strongly suggest that the Welsh Labour leader could be the most senior governing Labour politician in the UK by the summer of 2010. This is surely, then, a job worth having? It is clearly an important job as far as the future of that party, in Wales and beyond, is concerned. Yet despite this, and despite the fact that Rhodri Morgan's planned departure has been preannounced for so long, potential candidates for Morgan's position conspicuously failed to show themselves. Thus far, only Carwyn Jones has displayed any serious intent by making speeches that have been widely interpreted as setting out his stall. Other possible candidates, notably Andrew Davies, Edwina Hart and, perhaps, Leighton Andrews or Huw Lewis, have resolutely failed to rise to the challenge. As of this writing it is entirely possible that Carwyn Jones could become Labour leader without facing a serious challenger – or even any challenger at all. Given the party's recent experiences with non-contested leadership elections at both British and Scottish levels, it is hard to imagine that such an outcome would benefit the party over the longer run. Granted, leadership elections are hardly conducive to new thinking. The composition of the electoral college that will elect a successor encourages a lowest common denominator approach – it will be a brave man or woman who deviates from the formula of praising the unions in reverential terms while avoiding the proverbial elephants on the doorstep that might divide opinion (the future of devolution, in particular). Yet, the need for serious debate over the future direction of Wales's most important political party has been widely acknowledged within the party itself, and if a leadership election can't generate some kind of debate then what other forum or process is likely to achieve that?

Labour's coalition partner, Plaid Cymru, is about to announce the victor in a battle for the party presidency between Elfyn Llwyd MP, leader of the party's Westminster group, and Dafydd Iwan, nationalist folk-singer and folk-hero, as well as former leader of Gwynedd council. Compared to the bitter ideological battles of the 1980s, very little seems to divide both candidates programmatically speaking. Moreover, Ieuan Wyn Jones's strong performance over the past couple of years means that whatever the outcome of the presidential race, he will retain his position as party leader whatever the formal job descriptions. Perhaps the one element of broader significance that might be read into the result is that a victory for Elfyn Llwyd may signal the final eclipse of the party's voluntary wing by its professional section. But then again, even a Iwan victory is probably only delaying the inevitable as the professionalization of the party continues apace following its post-devolution expansion.

As for the Welsh Liberal Democrats: the long-running saga of the extended twilight of Mike German's leadership continues – with observers receiving regular and extraordinarily frank updates on developments and non-developments by German's nemesis, party colleague Peter Black AM.¹³¹ Time, though, is finally running out and German seems set to relinquish his post in October with the party electing a replacement as Welsh leader (the post of Welsh leader and Assembly group leader was combined in 2007). Assembly Members Kirsty Williams and Jenny Randerson are widely tipped as the likely candidates with the former appearing to be in poll position.

Given the state of the opinion polls as well as the ways in which Wales's devolutionary dispensation make the National Assembly particularly dependent on Westminster, more significant than any of this may be the internal process currently taking place within the Welsh Conservatives to try to agree a position on the future of Welsh devolution, a process headed by Lord Roberts. Party divisions over the issue have recently been highlighted by the decision of David Davies MP to launch a No campaign, arguing that a move to legislative powers would inevitably lead to independence and resulting 'Soviet style poverty'.¹³² By contrast, the majority of the party's Assembly group support primary legislative powers. This division is mirrored

¹³¹ Most recently: <http://www.libdemvoice.org/peter-black-am-welsh-liberal-democrat-leadership-race-to-begin-soon-3274.html>

¹³² M. Shipton, 'Tory's No to Assembly lawmaking', *Western Mail* (4 Sept 2008): <http://www.walesonline.co.uk/news/wales-news/2008/09/04/tory-s-no-to-assembly-lawmaking-91466-21670799/>

throughout the party. Indeed a substantial group of activists, in particular, would be only too pleased to see the Assembly abolished all together. In such a context Roberts must surely be tempted to split the difference and recommend that the Tories continue to support the status quo. But while expedient in the short term, it is doubtful whether this would be a sensible strategy for the longer term. The terms of the Government of Wales Act 2006 – and in particular of Part Three, conferring Measure-making powers – make the UK government a veto-player in the day to day operation of the National Assembly, whether it wishes to be so or not. It is hard to see how the conflict that would inevitably arise in such circumstances between a Tory administration in London and any conceivable coalition configuration in Cardiff would benefit either the Conservative party or the Union which it supports. Despite his many years of service, the Roberts report may yet prove to be the most important contribution that this grand old man of Welsh politics has made to his nation's public life.

6.3 Public Attitudes

No major surveys on public attitudes reported results during the period covered by this report. However, one poll commissioned by the National Assembly on attitudes to the institution was conducted; its results are expected to be published in September.

The other major event in relation to the gauging of public attitudes was the announcement that the All-Wales Convention, chaired by the UK's former Ambassador to the United Nations Sir Emyr Jones-Parry, would be holding a series of public meetings across Wales. These meetings were intended, apparently, both to engage public interest in the work of the Commission and to provide one source of information about public views.

6.4 Conclusion

In conclusion, while it has clearly been a relatively quiet summer, it is almost certain to prove a lull before a much more interesting – and unpredictable – time in the months ahead. Moreover, the decisions taken and not taken over the past few months may yet prove to be very significant indeed.

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