

The **Constitution** Unit

DEVOLUTION MONITORING PROGRAMME 2006-09

Wales Devolution Monitoring Report

May 2009

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



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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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WALES OFFICE



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Abbreviations and Acronyms

AM Assembly Member

BIC British Irish Council

CHC Community Health Councils

EU European Union

GOWA Government of Wales Act

GP General Practitioner

JMC Joint Ministerial Committee

LCO Legislative Competence Order

MEP Member of European Parliament

MP Member of Parliament

NAfW National Assembly for Wales

NHS National Health Service

SLC Subordinate Legislation Committee

WAG Welsh Assembly Government

WASC Welsh Affairs Select Committee

WLGA Welsh Local Government Association

Summary and Introduction

Richard Wyn Jones and Roger Scully, Cardiff University and Aberystwyth University

It is now two years since Wales's latest devolutionary dispensation came into force. Part Three of the 2006 Government of Wales Act gives the National Assembly Measure-making powers on the basis of Legislative Competence Orders (LCOs) passed through Westminster. For its supporters, Part Three opened up the possibility of the steady accumulation of legislative powers in Cardiff, allowing the National Assembly to build up the requisite experience of law making before any move to Law-making powers proper, as envisaged by Part Four of the same Act. For its critics, however, Part Three was pregnant with the possibility of delay, obfuscation and complication. A particular concern was that the National Assembly's legislative programme would be hostage to different bureaucratic, programmatic and political priorities in London – a danger symbolised above all by the role of the Welsh Affairs Select Committee (WASC) in undertaking pre-legislative scrutiny of LCOs.

Few external observers would now demur from the view that it is the sceptics that have been proven correct. A number of LCOs have become bogged down in Whitehall. Perhaps the most striking example of this (so far) is the Environmental Protection and Waste Management LCO which has taken almost two years to emerge from the Whitehall labyrinth, and has done so in a much-revised form that does not augur well for the future. And of course, we remain some distance from an actual National Assembly Measure in this vital policy area. Meanwhile, WASC members have become increasingly insistent that LCOs be very tightly drafted, constraining the National Assembly's room for legislative manoeuvre, while insisting also that the Welsh Government provide detailed accounts and justification of what precisely it intends to legislate for. Indeed, when reading the agenda of forthcoming SCWA meetings, is hard not to conclude that it is seeking to usurp for itself the role of a revising chamber *avant la lettre*.

With the system so obviously failing, it is not perhaps not surprising that the Welsh Government has been seeking ways to break the log-jam. But, those solutions are proving equally problematic. In one recent case, in order to seek to progress the Affordable Housing LCO, an attempt was made to write into the LCO the power to allow the Secretary of State to veto the Assembly's use its proposed power to suspend right to buy legislation. This proposal had then to be withdrawn when Parliament's Joint Committee on Statutory Instruments suggested (in March) that the

role proposed for the Secretary of State might not be legal under the terms of the 2006 Act.

Even more worrying for the longer term is the trend pointed to in an important new paper in the Institute of Welsh Affairs journal, *Agenda*, by Cardiff University's Marie Navarro (one of our contributors) and David Lambert. Navarro and Lambert cite an increasing tendency to empower the Assembly Government directly, rather than transfer legislative powers to the Assembly itself. If this tendency is not checked then executive dominance may well become the main story of the second decade of devolution in Wales.

* * *

The editors would like to thank Dr Elin Royles for her contributions to this series. Coverage of Europe and local government will be reinstated in future reports.

Erratum

Section 1.2 of the January 2009 Monitoring report mistakenly stated that the Health, Well-being and Local Government Committee's Inquiry Report had recommended that WAG should legislate to allow presumed consent in relation to organ donation. In fact, the majority of Committee members recommended that "the Assembly should **not** [emphasis added] at this stage seek a Legislative Competence Order, to allow the introduction of a system of presumed consent in Wales." We apologise for this error.

1. Public Policy

Paul Chaney, Cardiff University

1.1 Introduction

The spring conference season saw the main parties reflect on the coalition government's policy record and the impact of the economic downturn. Speaking at Welsh Labour's Conference First Minister Rhodri Morgan AM said the policy initiatives of his administration proved it to be an 'agile government for fragile times'.¹ Yet opposition parties were critical. Kirsty Williams AM told the Welsh Liberal Democrats conference, 'I'm angry and I'm cross that they're letting people down'.² Whilst at the Welsh Conservative gathering Nick Bourne AM said Welsh Labour's policies 'were pandering to populism' and that they had 'whittled down' the nation's financial resources.³ The pressure on the Welsh government's finances increased following announcements in the chancellor's April budget that are likely to mean that for 2010/11 WAG's revenue spending will be down by at least £216m and its capital spending down by £200m. According WAG this, and other pressures on its finances, 'will pose a significant challenge for us and our stakeholder partners'.⁴ Shadow Welsh Secretary Cheryl Gillan MP (Conservative) said the UK budget 'demands a rethink in Assembly Government spending'.⁵ With media speculation about a possible end to free NHS prescriptions in Wales, Deputy First Minister Ieuan Wyn Jones AM (Plaid Cymru) alluded to the scale of the overall problem. Speaking at the end of April he said: 'what we do know, and there's no dispute about it, is because of the state of the public finances, the Welsh block grant⁶ will be severely affected, not just next year, but well, well into the next decade'. Referring to future cuts in WAG spending, he said 'let me make it perfectly clear, these are big cuts, there's no question about that'.⁷

On other matters, in the past quarter the National Assembly received the 150th petition since the public petitions system was introduced in May 2007.⁸ And, in

¹ Anon, 'Morgan's 'stick with Labour' plea', <http://news.bbc.co.uk/1/hi/wales/8017750.stm> January 25

² Quoted in Withers, M. 'Welsh Liberal Democrat leader Kirsty Williams goes on the offensive', <http://www.walesonline.co.uk/news/wales-news/2009/04/20/welsh-liberal-democrat-leader-kirsty-williams-goes-on-the-offensive-91466-23422093/>

³ Anon 'Cameron's pledge for family help', <http://news.bbc.co.uk/1/hi/wales/7970591.stm>

⁴ <http://wales.gov.uk/news/topic/business/2009/090422budget?lang=en>

⁵ Quoted in anon, 'Opposition parties have warned Mr Darling's funding plans will hit services in Wales' <http://news.bbc.co.uk/1/hi/wales/8012500.stm> 22.04.09

⁶ See (Assembly) Members' Research Service Guide on this topic: <http://www.assemblywales.org/blockgrantandbarnettformula-2.pdf>

⁷ Anon, 'Axe fear for free prescriptions' April 30, 2009 <http://news.bbc.co.uk/1/hi/wales/8027302.stm>

⁸ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-pc-home/bus-committees-third-pc-agendas.htm>

February, the National Assembly's Presiding Officer or *Llywydd*, Dafydd Elis Thomas (AM) (Plaid Cymru) called for responsibility for the Welsh language TV channel S4C to be transferred from Westminster to the Assembly saying: 'does it make sense that a Welsh-language broadcaster is a creature of a UK government department?'⁹ Against this background, we now turn to consider recent developments across the breadth of devolved policy areas.

1.2 Health and Social Services

The past quarter has seen a raft of policy consultations in relation to health and social care – particularly on NHS Wales restructuring and, the development of services. Thus, in January, the consultation paper 'Proposals on the future of Community Health Councils in Wales' was published.¹⁰ It details: dissolution of the existing 19 Community Health Councils (CHCs) in Wales and the establishment of seven new CHCs with 23 underpinning Area Associations. Similarly, the consultation document 'Unification of Public Health services in Wales' proposed that a new integrated public health system 'will comprise a new NHS Trust, designated the Public Health Wales National Health Service Trust ... [and it] will work with the seven new LHB [Local Health Board] Directors of Public Health and strengthen partnerships with local authorities'.¹¹ Also on NHS restructuring, in March, the consultation paper 'Proposals for the Future of Specialised and Tertiary Services'¹² detailed how 'seven Local Health Boards will be responsible for planning, funding, designing, developing and securing the delivery of primary, community, in-hospital care services, and specialised services for the citizens in their respective areas'.

On other matters, in February the Community Nursing Strategy for Wales was launched for consultation. Amongst the draft policy's recommendations are: the introduction of local community nursing teams; and, a 'review [of] the Unified Assessment Process to ensure it is person-centred [and] nationally consistent'.¹³ Also in the same month, the government published its draft Heatwave Plan for Wales that 'sets out arrangements to alert appropriate health, social and other care staff and members of the public (especially vulnerable groups) to the dangers present during heatwaves'.¹⁴ Consultations continued apace in April when the Welsh government

⁹ Quoted in anon 'Caerdydd i reoli S4C?'

¹⁰ http://news.bbc.co.uk/welsh/hi/newsid_7900000/newsid_7907600/7907660.stm April 24, 2009

¹¹ <http://wales.gov.uk/consultations/healthsocialcare/communityhealthcouncils/?lang=en>

¹² <http://wales.gov.uk/consultations/healthsocialcare/unification/?lang=en>

¹³ <http://wales.gov.uk/consultations/healthsocialcare/specialisedservices/?lang=en>

¹⁴ <http://wales.gov.uk/consultations/healthsocialcare/heatwave/?lang=en>

announced its draft blood borne viral hepatitis action plan for Wales 2009-2014.¹⁵ Inter alia, it aims to improve the planning and provision of services in order to: reduce the transmission of blood borne hepatitis infection and, improve the provision of treatment and support to infected individuals. Consultation also commenced on: WAG's 'Draft Strategy for Lymphoedema in Wales'¹⁶ and, 'Service Development and Commissioning Directives for Epilepsy'.¹⁷ The latter was welcomed by the All Wales Epilepsy Forum as a 'pioneering venture'.¹⁸

With regard to the human papilloma virus (responsible for approximately 70% of cases of cervical cancer), a routine vaccination programme for 12-to-13-year-olds was introduced in Wales last year. In March, Health Minister Edwina Hart AM (Welsh Labour) announced the extension the policy initiative to all girls born between 1 September 1991 and 31 August 1995. On NHS Wales staffing levels, according to WAG, the 2008 NHS Staff Census revealed that, as of 30 September 2008, 71,467 whole-time equivalent staff were directly employed by NHS Wales (the pre-devolution total was just over 53,500, circa 1997).¹⁹ In terms of official policy evaluation, in April the Assembly's Audit Committee found that WAG policy to provide more services in the community for patients with chronic conditions was making 'disappointing progress' and was not wholly effective – and, that 'services are not configured or co-ordinated effectively to meet the needs of patients with chronic conditions'.²⁰ Also in April, the National Public Health Service for Wales (–the body that provides resources, information and advice to enable WAG, and NHS Wales to discharge their statutory public health functions) provided new policy guidance on the unfolding swine flu pandemic.²¹ May saw the launch of a policy consultation on 'Rural Health Planning' - aimed at improving primary and community health services in rural areas.²² The document has three themes: access to services, the need and opportunities for closer service integration and, community cohesion and engagement.

¹⁵ <http://wales.gov.uk/consultations/healthsocialcare/blood/?lang=en>

¹⁶ 'Lymphoedema is a chronic swelling due to lymphatic system failure. It can occur from a congenitally-determined lymphatic abnormality or from lymphatic damage by inflammation, infection, trauma, tumour, surgery or radiation. It is chronic and incurable, and requires life-long management', WAG, (2009) Draft Strategy for Lymphoedema in Wales, p.2.

¹⁷

<http://wales.gov.uk/publications/accessinfo/drnewhomepage/healthdrs/Healthdrs2008/epilepsyconsultation/?lang=en>

¹⁸ Quoted in, Anon 'Epilepsi: Cynllun 'arloesol',

http://news.bbc.co.uk/welsh/hi/newsid_7930000/newsid_7935800/7935875.stm March 11, 2009

¹⁹ <http://wales.gov.uk/news/topic/health/2009/090303staff/?lang=en>

²⁰ <http://www.assemblywales.org/cr-ld7435-e.pdf>

²¹ <http://www.wales.nhs.uk/sites3/home.cfm?orgid=719>

²² <http://wales.gov.uk/consultations/healthsocialcare/ruralhealth/?lang=en>

1.3 Education, Culture and the Welsh Language

The beginning of the year saw the publication of the long-awaited Welsh language LCO.²³ It received cross-party support when, on 3 January, the Minister for Heritage, Alun Ffred Jones AM (Plaid Cymru) made a Legislative Statement, saying: 'this marks an important milestone in the history of the language... [it] does not refer directly to rights, status or a language commissioner, but it provides the framework that would enable the National Assembly, in due course, to legislate to fulfil these 'One Wales' commitments'. For the Welsh Conservatives, Paul Davies AM said: 'we look forward very much to the specific Measures that the Government will bring forward in this field in the near future'.²⁴ There have been numerous reports of tensions between WAG and Westminster over the scope of the LCO. It is likely that its future passage - and the detail of the resulting Measure(s) will expose significant inter and intra-party differences. According to Assembly Officials the LCO has been subject to the 'widest ever consultation by a National Assembly Legislation Committee'.²⁵ The latter Committee has to produce its report on the proposed LCO by 5 June 2009.

On other issues, in January, the Assembly's Enterprise and Learning Committee published its 'Interim Report on the Economic Contribution of Higher Education (HE) in Wales'.²⁶ Amongst the report's findings was that 'the ability of higher education to be able to continue to contribute to a future thriving Welsh economy is threatened by the [estimated £61M] funding gap between English universities and Welsh universities'. Also relating to HE, one of the most distinctive post devolution policy developments – the higher education student tuition fee regime in Wales - whereby Welsh domiciled students studying in Wales receive a grant of £1,940 p.a. regardless of their background - is set for a major revision. In March, the Education Minister announced that the Welsh government grant (-that offsets the cost of student top-up fees) would be phased out from September 2010. According to the minister £44m will be redirected towards introducing a means-tested grant to assist students from poorer households with their living costs (likely to be between £2,906 to £5,000 p.a.). This policy revision has exposed tensions in – and between - the governing coalition parties. Bethan Jenkins AM (Plaid Cymru) said; WAG is 'intent on forcing students to incur more and more debt as a result of abolishing the current fee grant structure'.

²³ <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10.htm>

²⁴ Record of Proceedings, 3 January 2009, <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=115352&ds=2/2009>

²⁵ The consultation responses on the LCO can be found at: <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10.htm>

²⁶ <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=115352&ds=1/2009>

Following the announcement, opposition education spokesperson Paul Davies AM (Welsh Conservatives) said: 'questions also remain about expanding access to part-time learning and whether enough money is being set aside for the student debt right-off scheme'.²⁷ On other matters, in March, Children, Education Lifelong Learning and Skills Minister - Jane Hutt AM (Welsh Labour) launched an action plan to promote positive behaviour and school attendance entitled 'Behaving and Attending'.²⁸ This has its roots in the independent National Behaviour and Attendance Review (NBAR) published in May 2008.²⁹ The Action Plan addresses a number of the NBAR recommendations. Its key measures include: 'producing an All-Wales Attendance Framework (including a revised attendance code and guidance on monitoring and analysing absences); new guidance on behaviour in schools; and a review on provision of Education Otherwise Than at School (EOTAS) - including Pupil Referral Units.

In contrast to compulsory phase education, higher education in Wales has a lamentable record in respect of Welsh medium provision. The government's 'One Wales' policy programme states: 'We will establish a Welsh-medium Higher Education Network - the Federal College - in order to ensure Welsh-medium provision in our universities'. In December, the Education minister stated: 'I can confirm that the Coleg Ffederal *One Wales* commitment will be met by May 2011'.³⁰ Previously, with apparently little progress being made in relation to the commitment, the Welsh Language Rights Group Cymdeithas yr Iaith Gymraeg had used the Assembly's public petitions procedure to call on the government to fulfil its commitment to establishing the college.³¹ A planning board for the federal college has now been appointed and will make its recommendations to the Welsh government in June 2009. Media reports³² point to the likelihood of the board recommending: that the college be granted independent legal status and that approximately 20 new staff be appointed each year over the next 5-10 years.

²⁷ Reported in: anon, 'Welsh top-up fees grant scrapped'

http://news.bbc.co.uk/1/hi/wales/wales_politics/7951034.stm 18 April, 2009

²⁸ <http://wales.gov.uk/topics/educationandskills/learningproviders/schools/nbaractionplan/?lang=en>

²⁹ http://wales.gov.uk/topics/educationandskills/policy_strategy_and_planning/schools/339214-wag/nationalbehaviourattendance/?jsessionid=Q7TVJhSWLIT5kKCmMCyynNZGpkwplvhhbDyxZgbJy9gV1vqzz2c2!773726750?lang=en

³⁰ See page 16 in: http://www.cynulliadcymru.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-pc-home/bus-committees-third-pc-agendas/pet_3_-01-09_p2b_-e-annex_to_paper_2.pdf?langoption=3&ttl=PET%283%29-01-9%20%3A%20Papur%2002B%20%3A%20Atodiad%20i%20Papur%2002%20%28PDF%2C%20-07MB%29%20%28Saesneg%20yn%20unig%29

³¹ <http://www.assemblywales.org/gethome/e-petitions-old/dogfennau-busnes-deisebau/p-03-157.htm>

³² http://news.bbc.co.uk/welsh/hi/newsid_7960000/newsid_7964200/7964235.stm

On March 17 the National Assembly voted³³ to pass the Learning and Skills (Wales) Measure.³⁴ This will provide a wider choice of academic and vocational subjects for 14 to 19-year-olds and see greater collaboration between schools and colleges. A non-statutory rollout of the new arrangements is scheduled from September. The Welsh teaching union UCAC has expressed its concerns about the new law stating: 'this Measure could seriously undermine Welsh-medium education... it does not guarantee Welsh-medium provision'.³⁵ In April, under a Transfer of Functions Order, responsibility and funding for prisoner learning in Wales was transferred from the UK government Department of Innovation, Universities and Skills to the Welsh Assembly Government. This marks the increasing devolution of policy responsibilities in areas allied to criminal justice. The 2009-10 budget for education and library services in prisons in Wales is £2.65M.³⁶ In terms of policy evaluation, April saw the Education Minister announce the establishment of a group to review WAG policies on education for 8-14 year olds.³⁷ On other matters, in the following month, WAG announced a £3M capital investment programme to meet another 'One Wales' commitment: to modernise the public library network.³⁸

1.4 Economy and Transport

In February, in order offset fuel duty increases and keep down the cost of public transport, Deputy First Minister and Minister for Economy and Transport, Ieuan Wyn Jones AM (Plaid Cymru) announced an increase in the Bus Service Operators Grant of approximately £2m for the 2009-10 financial year.³⁹ It was also announced that the government would extend funding for the Community Transport Concessionary Fares Initiative until 31 March 2012. The latter was launched in 2005 to provide accessible travel for disabled people 'who may find it difficult to access conventional local bus services'.⁴⁰ In April, the Welsh government announced a £150m fund to support the expansion of more than 800 businesses.⁴¹ The initiative is aimed at creating up to 15,000 jobs and is based upon £75m funding from the European Investment Bank under the EU's JEREMIE initiative⁴² - and a further £60m from WAG via the European Regional Development Fund. Under the policy, those benefiting from the scheme pay off the sum borrowed as they expand; the funding is then reinvested to

³³ <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=121610&ds=3/2009>

³⁴ <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm>

³⁵ <http://www.athrawon.com/Main/Default.aspx?PageID=283&lang=A>

³⁶ <http://wales.gov.uk/news/topic/education/2009/090401prison/?lang=en>

³⁷ <http://wales.gov.uk/news/latest/090409education/?lang=en>

³⁸ <http://wales.gov.uk/news/latest/090501libraries/?lang=en>

³⁹ <http://wales.gov.uk/news/topic/transport/2009/2938022/?lang=en>

⁴⁰ <http://wales.gov.uk/news/topic/transport/2009/090310funding/?lang=en>

⁴¹ <http://wales.gov.uk/news/latest/090424fund/?lang=en>

⁴² <http://www.eif.org/jeremie/>

support other businesses. Late April also saw the announcement by the Heritage Minister, of £19m funding programme through to 2014 to develop heritage tourism.⁴³

1.5 Environment, Sustainability and Housing

In the absence of powers to ban genetically modified (GM) crops in Wales successive administrations have used their powers to set regulations on preventing contamination of non-GM crops – effectively, limiting the use of GM crops as far as possible. In February, Elin Jones AM (Plaid Cymru) the Rural Affairs minister announced a policy consultation⁴⁴ on new measures that would be ‘more restrictive than those proposed in England and Northern Ireland’.⁴⁵ Draft proposals include: imposing legal liability on GM crop growers, the introduction of a requirement for a voluntary industry-funded compensation scheme; a statutory redress mechanism; GM-free zones; and, a ban on GM crop cultivation in statutory conservation areas. In April, the Rural Affairs minister launched the ‘Local Sourcing Action Plan – Food and Drink for Wales’. This seeks to assist Welsh food and drink companies in their efforts to access local markets and make it easier for consumers to buy food and drink produced in Wales. The Strategy’s aims include: supporting the development of farmers’ markets, the development of the production and processing sectors; encouraging producers to diversify to meet local demand; and, encouraging all sectors to source more local food and drink.⁴⁶

On other matters, the first post-devolution strategy for woodlands and trees was published in 2001. In March, ‘Woodlands for Wales’, a successor strategy for the next 50 years, was published. Its stated ‘vision’ is that: ‘Wales will be known for its high-quality woodlands that enhance the landscape, are appropriate to local conditions and have a diverse mixture of species and habitats. These will: provide real social and community benefits ... and, contribute to a better quality environment’.⁴⁷ On a more controversial note, in March the Rural Affairs Minister announced pilot badger cull in an area of west Wales in order to attempt to eradicate tuberculosis (TB) in cattle. The policy contrasts with the planned approach in England, which is based on vaccination. Estimates indicate that £23M in compensation has been paid to Welsh farmers for TB in cattle in the current financial

⁴³ £8.5m will be provided by European Funding and £7.6m by WAG.

⁴⁴ <http://wales.gov.uk/news/latest/090501heritagetourism/?lang=en>

<http://wales.gov.uk/publications/accessinfo/drnewhomepage/environmentdrs2/environmentdrs2009/gmtradorgancfarm/?lang=en>

⁴⁵ Quoted in Anon ‘Cnydau GM: Tynhau rheolau’,

http://news.bbc.co.uk/welsh/hi/newsid_7900000/newsid_7906500/7906546.stm February 24, 2009

⁴⁶ <http://wales.gov.uk/news/latest/090402foodanddrink/?lang=en>

⁴⁷ <http://wales.gov.uk/about/strategy/publications/environmentcountryside/woodlandsstrategy/?lang=en>

year. Badger Trust Cymru said the policy 'ignored the weight of scientific opinion and caved in to bullying farming unions and cull-mad vets'.⁴⁸ Lastly on rural affairs policy, in May it was announced that, in furtherance of a One Wales Commitment, from 2012, WAG's five existing agri-environment schemes will be replaced by one scheme, Glastir.⁴⁹

Also in March, the government launched for consultation its 'National Energy Efficiency and Savings Plan'.⁵⁰ According to WAG, the Plan has three key objectives: 'to help reduce Wales' greenhouse gas emissions and contribute to the reduction of its wider ecological footprint; to contribute to the reduction of fuel poverty; and, to support economic development by helping businesses become more energy efficient and providing new opportunities for business'. The consultation draft of the Bioenergy Action Plan for Wales was also released during the past quarter. It too aims to: 'significantly reduce greenhouse gases emissions; contribute to long-term fuel security; ensure that the public sector leads by example; encourage the development of sustainable forestry and agriculture; and, support business development and job creation in all parts of the biomass energy supply chain'.⁵¹ Regarding other matters, an estimated 648 million disposable plastic carrier bags are used in Wales each year. In February, the Environment Minister Jane Davidson AM (Welsh Labour) announced that she is 'intending to consult on regulations to introduce a levy on single use bags in the summer'.⁵²

With respect to housing policy, at the beginning of the year WAG published the consultation draft of 'Sustainable Homes: A National Housing Strategy for Wales'. This, it states: 'aims to promote an approach to housing supply and management that will build a more sustainable future, improve communities and people's lives, and is structured around six principles: providing the right mix of housing; using housing as a catalyst to improve lives; strengthening communities; radically reducing the ecological footprint; ensuring better services; and delivering together'.⁵³ Also in February, WAG published its 'Supporting People – Housing Related Support Strategy'. According to the government, 'the Strategy aims to promote independence and choice to vulnerable groups throughout Wales, so that people can have rights to their own accommodation... The strategy is structured around the following key

⁴⁸ http://www.badger.org.uk/Attachments/Resources/304_S4.pdf

⁴⁹ <http://wales.gov.uk/news/latest/090505land/?lang=en>

⁵⁰ <http://wales.gov.uk/consultations/sustainable/energysavingsplan/?lang=en>

⁵¹ <http://wales.gov.uk/consultations/environmentandcountryside/bioenergyactionplan/?lang=en>

⁵² Quoted in Anon, 'Bagiau plastig: Rhybudd gweinidog', http://news.bbc.co.uk/welsh/hi/newsid_7880000/newsid_7884300/7884301.stm February 11, 2009

⁵³ <http://wales.gov.uk/consultations/housingcommunity/housingstrategy/?lang=en>

principles: innovative approaches to social care; addressing repeat homelessness; addressing substance misuse; increasing strategic focus; reviewing the process of supporting people funding; and professionalising'.⁵⁴ In April, as part of policy development on affordable housing, Deputy Housing Minister Jocelyn Davies AM (Plaid Cymru) announced a consultation on the regulations that govern housing associations in Wales.⁵⁵ Also in that month, the Environment, Sustainability and Housing Minister announced the draft policy: 'Waste Strategy 2009 – 2050: Towards Zero Waste'.⁵⁶ It contains the proposal that at least 70 per cent of all waste from Welsh households, the commercial sector and construction will have to be recycled by 2025.

1.6 Equalities

In January, WAG launched for consultation its All Wales Community Cohesion Strategy.⁵⁷ According to the government: 'the Strategy sets out how housing, learning and communication are key factors in improving cohesion. It also looks at the work communities are undertaking to reduce barriers to cohesion from violent extremism'. Also in the same month it was announced that the National Assembly is one of the UK's top 100 gay-friendly employers according to Stonewall's Workplace Equality Index 2009.⁵⁸ On other matters, the Welsh Assembly Government's Single Equality Scheme was launched on 31st March 2009.⁵⁹ The ambitious Scheme sets out measures in relation to public policymaking 'to go further than meeting ... legal responsibilities to promote equality of opportunity and eliminate unlawful discrimination in respect of disability, gender and race'. It continues, WAG 'will apply the same broad principles to the new areas of equality – age, religion and belief or non-belief, sexual orientation and transgender'. Worryingly, the Welsh language is not one of the 'areas' covered by the Scheme. In April, Social Justice Minister Dr Brian Gibbons AM (Welsh Labour) launched a scheme worth £1.5 million in 2009/10 to support local authorities setting up new Gypsy Traveller sites in Wales.⁶⁰ Also in April, following its scrutiny of WAG's proposed Carers LCO⁶¹ the Assembly's Legislation Committee recommended that National Assembly should get more powers in order to improve the lives of carers in Wales.⁶² Notably, April 27 saw the

⁵⁴ <http://wales.gov.uk/consultations/housingcommunity/supportingpeople/?lang=en>

⁵⁵ <http://wales.gov.uk/consultations/housingcommunity/regulatoryframework/?lang=en>

⁵⁶ <http://wales.gov.uk/consultations/environmentandcountryside/wastestrategy/?lang=en>

⁵⁷ <http://wales.gov.uk/docs/dsjlg/consultation/090107communitycohesionstrategyen.pdf>

⁵⁸ <http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=110627&ds=2/2009>

⁵⁹ <http://wales.gov.uk/topics/equality/publications/sesfull/?lang=en>

⁶⁰ <http://wales.gov.uk/topics/housingandcommunity/communitycohesion/gypsytravellers/?lang=en>

⁶¹ http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-leg-lco-no9-social_welfare.htm

⁶² <http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=124372&ds=4/2009>

publication of the UK government's Equality Bill. Significantly, clause 147 will empower Welsh ministers to impose specific legal duties on devolved public bodies to promote equality for a broader range of social groups than the existing statutes relating to 'race', gender and disability.⁶³

1.7 Social Justice, Local Government and Public Service Delivery

In January, the government published its 'Financial Inclusion Strategy for Wales'. According to WAG, the 'Strategy sets out how our financial inclusion work will support those citizens who are the most disadvantaged and marginalized members of our society by addressing the key issues of: access to mainstream financial services; access to affordable credit and savings options; access to debt and money advice; financial capability/literacy; and, income maximisation'.⁶⁴ In March, the Assembly's Health, Well-being and Local Government Committee published a report following its inquiry into what further developments are necessary to improve the quality of scrutiny and overview in local government.⁶⁵ Amongst the report's recommendations are: the provision of dedicated independent officer support for scrutiny committees; and, that WAG should consider whether funding for local authorities' scrutiny and overview functions should be provided centrally. In February, the Assembly's Finance Committee published a report following its Inquiry into Public Private Partnerships (PPPs).⁶⁶ Amongst the latter's recommendations was that WAG 'explores the possibility that borrowing powers available to local authorities could be extended to other public bodies' and, that a central PPP unit be created in government 'to manage projects on its behalf and to offer advice and training to other statutory bodies considering the PPP as a financial tool'. On 2 March the government laid before the National Assembly the proposed Children and Families (Wales) Measure.⁶⁷ Inter alia this will place a duty on Welsh Ministers to develop a new Child Poverty Strategy for Wales, which would have to be reviewed every three years (at the time of writing the proposed Measure is at Stage One of the legislative process).⁶⁸ Also in March, Jeff Cuthbert AM, (Welsh Labour) Chair of the Standards of Conduct Committee, introduced the proposed National Assembly for Wales Commissioner for Standards Measure. If passed, it will put the position of the Commissioner for Standards on a statutory basis and ensure that the Commissioner

⁶³ <http://services.parliament.uk/bills/2008-09/equality.html>

⁶⁴ <http://wales.gov.uk/consultations/socialjustice/fistrategy/?lang=en>

⁶⁵ <http://www.assemblywales.org/cr-ld7465-e.pdf>

⁶⁶ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-fin-home/bus-committees-third-fin-inquiry/bus-committees-third-fin-ppp.htm>

⁶⁷ <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-cf.htm>

⁶⁸ <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-measures.htm>

is independent of the Assembly and able to investigate complaints against Assembly Members with objectivity - and require third parties to provide relevant information.⁶⁹ On European matters, the proposed Lisbon treaty⁷⁰ included a strengthened subsidiarity protocol, which, for the first time, recognised a formal role for 'regional' assemblies in the EU decision-making process. Although, following the 'no vote' in the 2008 Irish referendum, the future of the Treaty is uncertain, future moves to secure backing for the Treaty (or a modified version) are possible. Against this background, in March, the European and External Affairs Committee published a report into subsidiarity. Amongst the latter's recommendations is that the National Assembly's legislation and policy committees encourage joint-working and networking with members of the Conference of European Regional Legislative Assemblies (CALRE) in order to prevent 'a democratic deficit' affecting the regional legislatures in respect of EC/EU policy and law.⁷¹

1.8 Conclusion

The past quarter has seen the launch of distinctive policies such as comprehensive measures aimed at preventing contamination of non-GM crops and, proposals to place a levy on disposable plastic carrier bags. Extensive policy consultations have also been published - including those related to the Welsh language LCO and, the future of Community Health Councils. Yet, whilst recent funding announcements (e.g. to: refurbish public libraries and, boost heritage tourism, etc) and a plethora of new policies (e.g. draft Rural Health Plan, Financial Inclusion Strategy for Wales, etc) may suggest 'business as usual', the spectre of the recession looms large over the government's present and future policy work. Notably, existing financial constraints were compounded by the prospect of further fiscal cuts following April's budget. As a result, one of devolution's most distinctive policies - the grant offsetting the cost of higher education student top-up fees for Welsh domiciled students will be phased out from September 2010 – and, speculation continues about the continuation of free NHS prescriptions. Thus, it would appear that the universal, non-means tested approach to public services evident over the past decade (– and, in particular, championed by Welsh Labour) - is subject to revision by economic necessity. Against this background, the full implementation of the 'One Wales' policy programme⁷² before the next Assembly elections is also open to question. Overall, the past quarter has confirmed existing fears: the immediate future looks comparatively bleak for the future funding of devolved policy initiatives – as well as public services.

⁶⁹ <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures.htm>

⁷⁰ http://europa.eu/lisbon_treaty/index_en.htm

⁷¹ http://www.calre.eu/en/about_en.html

⁷² <http://new.wales.gov.uk/about/strategy/publications/onewales/?lang=en>

2. The Legislative Process

The persistent back log of Welsh Legislation

Marie Navarro⁷³⁷⁴, Cardiff Law School

2.1 Primary Legislation:

There have been only 4 UK Acts enacted since January 2009 none of which give powers to the Assembly or to the Welsh Ministers.

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

None.

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

This year due to the priority given by central government to the economic crisis very few Bills have been introduced. As commented in our last report the 2009 Queen's Speech includes half of the number of Bills it normally includes.

So far there are 11 Bills currently before Parliament devolving powers to Wales, most of which have been detailed in our previous report: the four new Bills are: the Autism Bill, the Constitutional Renewal Bill, the Equality Bill and the Fuel Poverty Bill.

Executive powers only

Autism Bill – Private Member's Bill

Executive and Assembly +/- resolution procedures:

Apprenticeships, Skills, Children and Learning Bill

Coroners and Justice Bill

Health Bill

Policing and Crime Bill

Welfare Reform Bill

Equality Bill

Executive and Legislative powers

Local Democracy, Economic Development and Construction Bill

Marine and Coastal Access Bill

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No powers devolved but a duty on Central Government to consult WAG:

Fuel Poverty Bill

Another announced Bill awaits introduction:

Child Poverty Bill

Interestingly the **Equality Bill**'s explanatory notes⁷⁵ states in a contradictor manner:

Wales

30. Under the Welsh devolution settlement the subject matter of equal opportunities is not devolved to Wales. Clause 2 of the Bill provides a power for Welsh Ministers to add any relevant Welsh authority to the authorities subject to the duty in clause 1 to consider socio-economic inequalities. The Bill also confers powers on the Welsh Ministers in relation to the public sector equality duty. Clause 147 gives Welsh Ministers power to impose specific duties on relevant Welsh authorities and clause 145 gives them power by order to amend Part 2 of Schedule 19 which specifies relevant Welsh authorities subject to the general public sector equality duty. A procedure is specified in relation to the imposition of specific duties on crossborder Welsh authorities added to Schedule 19 by a Minister of the Crown. The procedure enables the Welsh Ministers to impose specific duties in relation to the devolved Welsh functions of the cross-border authorities or provide for specific duties to be imposed by a Minister of the Crown only after consultation with the Welsh Ministers.

2.2. Transfer of executive powers to WAG through TFOs:

This year in addition to the devolution of powers through Acts, central government will also devolve executive powers directly to WAG through 2 Transfer of Function Orders:

TFOs:

The Welsh Ministers (Transfer of Functions) Order- Prison Act 1952- In force.

The Welsh Ministers (Transfer of Functions) Order – Building Regulations- In draft.

The first of the two TFOs was made on 18th March 2009. [The Welsh Ministers \(Transfer of Functions\) Order 2009 No. 703](#)

It is interesting to note that the first Transfer of Functions Order relates to a non-devolved Field (Prisons) but the justification for such transfer is that only powers under section 47 of the Prison Act 1952 in relation to education, training and libraries, are transferred to the Welsh Ministers, so far as exercisable in relation to Wales.

⁷⁵ <http://www.publications.parliament.uk/pa/cm200809/cmbills/085/voli/2009085i.pdf>

TFOs have been a constant feature of devolution since 1999, whether under executive devolution or under legislative devolution.

2.3. Consideration of LCOs in London:

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

The Committee has published the following reports:

- Third Report of Session 2008-09 on the Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008 (HC 5) published on Monday 23 February 2009. The report is available at: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmwelaf/5/502.htm>

The Committee's conclusions were not controversial and were supportive of the LCO:

4 Conclusion

54. We agree with the Parliamentary Under-Secretary of State at the Wales Office that the proposed Order addresses an "anomaly" in the powers conferred on the National Assembly. It is unfortunate that the timing of the Welsh Assembly Government's consultation on the Radcliffe Review meant that the powers could not be part of the framework conditions for the Natural Environment and Rural Communities Act 2006. The proposed Order is consistent with the policy of the Welsh Assembly Government and the existing powers of the National Assembly and we conclude that the use of the Legislative Competence Order in Council procedure is the appropriate route in this instance.

- Sixth Report: Proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009, relating to carers.

The Committee announced its new inquiry into the proposed Welsh Language LCO on the **11 February 2009** and published a statement from the Chairman⁷⁶. The evidence taking is in progress. The Committee only gave two weeks to submit written evidence which is restrictive.

⁷⁶ http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn1508_09.cfm

The proposed Environment LCO has been referred by the Secretary of State for Wales to the Committee for pre-legislative scrutiny.

2.3.2 Joint Committee on Statutory Instruments' scrutiny:

The Westminster Joint Committee reported at the Parliamentary affirmative resolution stage of the LCO on the vires of the draft Housing LCO.

The report is available at:

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtstatin/51/5104.htm>

In summary the Committee considered that the necessity for the agreement (which is a veto) of the Secretary of State for Wales (and of the Welsh Ministers) before a certain type of Measure is made under the LCO, is ultra vires because the Assembly's competence to make Measure can only be determined by an Order in Council according to the GOWA 2006 and not by any other Order or decision made by Ministers. Such veto was not included in the Government of Wales Act 2006. The veto amounts to sub-delegation which is contrary to public law principles.

1.1 The Committee draws the special attention of both Houses to this draft Order on the ground that there appears to be a doubt in one respect that, if it were approved and made, it would be *intra vires*. [...]

The Committee's initial consideration

1.8 The draft Order seemed to delegate to the Welsh Ministers and the Secretary of State the decision whether the Assembly should have the legislative competence to abolish the rights to buy, without express authorisation in section 95. As in practice the new restriction in Part 2 could relate only to the new Matter 11.1, the draft Order appeared in effect to provide that Matter 11.1 was subject to the exception that it did not include abolition of the rights to buy unless the Welsh Ministers and the Secretary of State agreed that it should. **This seemed a remarkable proposition in the context of an Order setting out part of the constitutional arrangement between Parliament and the Assembly. [...]**

1.17 Recognising the restrictions implied by law on sub-delegation, the Committee has said (First Special Report for Session 1977-78; HL51, HC139) **that delegated legislation should not depend on the exercise of ministerial or departmental discretion unless provision to that effect is expressly contained in the enabling statute. There are no express words in the 2006 Act authorising the determination of the Assembly's competence by anything other than an Order in Council**; nor, in the Committee's view, is there a sufficiently strong implication in the 2006 Act. **The Committee considers there is a doubt as to whether new paragraph 7B in**

Part 3 of Schedule 5 to the 2006 Act, to be inserted by article 2(3) of the draft Order, is *intra vires* and reports accordingly.

The Order was due to be debated in the House of Lords but the debate has been postponed and should take place after the Easter recess. So far no date for the debate has been published on the House of Lords' website. There are indications that the Secretary of State for Wales might decide to withdraw the Order instead of a debate.

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

LCOs have progressed since the two last reports but none was finalised since August 2008. See below section 4.1.

2.4. Law made in Wales:

Law made in Wales under the 2006 Act procedures:

In summary, since July 2007: 3 LCOs and 2 (nearly 3) Measures were made.

These numbers are telling.

The Assembly's website has been modified and it shows in a much clearer and more comprehensive manner where in the process the legislation is. Congratulations on this improvement: <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm>

2.4.1. Legislative Competence Orders:

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

Figure 2.1: Proposals for LCOs and their various stages

Number LCO	Source	Purpose	Status
2007-2008			
1	WAG	Additional Learning Needs Matter 5.17	Made on the 9th of April In Force SI. 2008/1036
2	WAG	Environmental Protection and Waste Management Matters 6.1-2	<i>Got Whitehall clearance</i> Pre-legislative scrutiny by WASC- In progress
3	WAG	Vulnerable Children Matter 5.18 Matters 15.2-8 Matter 16.1	Made on the 10th of December In Force SI. 2008/3132
4	WAG	Domiciliary Care Matter 15.1	Made on the 10th of July In Force SI. 2008/1785
5	WAG	Affordable Housing Matter 11.1	<u>Joint Committee reported possible vires at affirmative resolution stage. 09/03/09</u> <i>Awaits debate in the House of Lords</i>
10	WAG	Welsh Language Matters 20.1-2	Pre-legislative Scrutiny by Assembly Legislation Committee No.5 Consultation ended 20/03/09 Pre-legislative Scrutiny by WASC consultation ended on 04/03/09 <i>Await reports</i>
7	AM- Ballot 1 Ann Jones	Domestic fire safety. Matter 11.2	Pre-legislative Scrutiny Committee– completed Report June 2008 <i>Awaits Whitehall clearance</i>
6	AM- Ballot 2 Jonathan Morgan	Mental Health Services Matter 9.2	Pre-legislative scrutiny by Committee in Cardiff – completed Report June 2008 <i>Awaits Whitehall clearance</i>
X	AM- Ballot 3	Carers	Leave to introduce draft granted.

	Helen Mary Jones		- <i>Withdrawn- WAG to re-introduce it as a Government LCO.</i>
	AM- Ballot 4 Huw Lewis	Bus and Coach Services	Leave to introduce draft granted. Consultation closed September 2008. <i>Awaits Whitehall clearance</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	Leave to introduce proposed LCO granted on 01/10/08 <i>Being drafted.</i>

2008-2009			
9	WAG (ex-Jones LCO)	Support for Carers Matter 15.9	Pre-legislative Scrutiny by Assembly Legislation Committee No.3 – consultation completed 13/02/09 WASC pre-legislative Scrutiny of proposed Order - consultation completed 28/01/09 <i>WASC and Assembly pre-legislative scrutiny – to report</i>
	WAG	Culture	
	WAG	Foundation Degrees	
8	WAG	Read Meat Industry Matter 1.1	Introduced on the 22 nd of September 2008 Pre-legislative Scrutiny Committee – Report published 10/12/08 WASC pre-legislative scrutiny – Report published 23/02/09 Draft LCO laid 24/03/09 Draft LCO approved in Plenary on 31/03/09 <i>Secretary of State to lay the draft Order before Parliament</i>
	Committee Enterprise and Learning Committee from Sustrans Petition	Traffic Free Routes Matter 10.y	<i>Pre-drafting Consultation</i>
X	AM- Ballot 7 David Melding	Official language Status	<i>Leave to introduce draft refused. Failed.</i>
x	AM- Ballot 8	Major development	<i>Leave to introduce draft refused.</i>

	Jenny Randerson	travel plans	Failed.
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The **Vulnerable Children LCO** has been formally approved by the Queen after advice from the Privy Council. The Order⁷⁷ was made on the 10th of December 2008.

The Welsh Language LCO has been finally introduced. This is the only new LCO since January. This LCO received a record amount of consultation responses both in Cardiff and in London. It is interesting to note that some of the bodies who answered the two consultations in the Assembly's and in the WASC's came up with different evidence for the different two bodies. In summary, there is in general a wide support for the LCO. The only controversial aspects in the order relate to the basis of equality between English and Welsh, the limit of '£200,000 or more in a financial year' to be defined as a public service and the definition of 'services to the public' contained in the order. Most discussions and evidence unfortunately relate to the contents of future Measures rather than on the contents of the LCO itself.

The Environment LCO has reappeared and has been sent for pre-legislative scrutiny to the Welsh Affairs Committee in a totally new form. It is now a very long and complicated Order, which bears no resemblance with the LCO as was first introduced and scrutinised by the Assembly. Further detailed consideration will be given to this LCO in our next report.

The **Affordable Housing LCO's** saga continues as the Westminster Joint Committee on Statutory Instruments has reported that the Order might be ultra vires (See above paragraph 3.2). It remains to be seen if the Order will simply fall (as is expected from the affirmative resolution procedure which it now follows) or if a new way of rescuing the Order will come up.

Three LCOs (the **Mental Health LCO**, **Bus and Coach Services LCO** and the **Domestic fire safety LCO**) still await Whitehall clearance. This has now taken quite some time (up to 2 years!). It is worth noting again that the Environmental LCO was finally submitted to the Welsh Affairs Select Committee for pre-legislative scrutiny after being cleared by most Whitehall departments.

The delay in the procedure was criticised by the Presiding Officer of the National Assembly for Wales who has been reported⁷⁸ as writing to Paul Murphy that "in the

⁷⁷ SI. 2008/3132

spirit of our often-stated agreement to make the constitution of Wales within the UK work" ... the time it takes to process LCOs put forward by individual Assembly Members "may soon render the ballot process ineffectual, thus curtailing one of the functions of a legislature that of allowing Members as well as Government Minister or Committees to take through legislation".

This is a real risk and the numbers of proposals for AM legislation have already dropped quite dramatically.

The **Red Meat LCO** seems to be sailing through the procedure and it has been formally approved by the Assembly. Nonetheless it took 6 months to reach that stage and the order still need to go through the affirmative resolution procedure in Westminster and go through the Privy Council. This shows that at the speediest the process takes at least 10 months as was already demonstrated with the First LCO.

It is quite disappointing to see that after 2 years of operating the new system things are not running more smoothly and that the speed of the procedure has not improved. Only 3 LCOs have been made in two years which I find a very poor record.

2.4.2 Proposed Measures:

Out of the **10 Measures** expected to go through the Assembly this parliamentary year, 3 further proposed Measures have been introduced since the last report: the **Commissioner for Standards Measure**, the **Children and Poverty Measure** and the **Education (Wales) Measure**.

8 Measures have been introduced so far and another two⁷⁹ are still expected to be introduced in the last 3 months of the Assembly's Parliamentary year ending in June 2009. There are great doubts that these 3 late proposed Measures will have time to be completed this year. These will add to the growing backlog of legislation still to be processed by the Assembly.

The third Assembly Measure has been formally approved by the Assembly: the **Learning and Skills Measure** and it awaits approval by Her Majesty.

⁷⁸ Betsan's Blog, BBC News, <http://www.bbc.co.uk/blogs/thereporters/betsanpowys/2009/03/>

⁷⁹ Domiciliary Care Measure, Affordable Housing Measure.

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

Figure 2.2: Various stages of the proposed Measures

Number	Source	Purpose	Status
2007-2008			
1	WAG	NHS Redress (Wales) Measure	Royal Approval July 2008
3	WAG	Learner Travel	Royal Approval December 2008
5	WAG	Learning and Skills Measure	<i>Awaits Royal Approval</i>
2	AM- Ballot 1 Jenny Randerson	Draft Measure for healthier school meals in Wales	Stage 2 – Detailed Scrutiny of the Measure by <u>Committee</u> - In progress
X	AM- Ballot 2 Mike German	Draft Proposed School Closures (Consultation and Categories) Measure	Rejected on Principle by Plenary – Failed.
4	AM- Ballot 3 Dai Lloyd	Draft Measure on Impact Assessments for the Selling off of Playing Fields	Stage 1 – Agreement on the Principle of the Measure- <u>Legislation Committee No.1</u> – In Progress
	AM- Ballot 4 Nerys Evans	Draft Measure on Recycling	<i>Awaits Stage 1 - Agreement on the Principle of the Measure</i>
X	AM- Ballot 5 Peter Black	Draft Measure on Youth Services	Rejected on Principle by Plenary – Failed
2008-2009			
	WAG	Poverty Proposed Measure	
9	WAG	Education Additional Learning Needs Proposed Measure	<i>Introduced 27/04/09</i>
	WAG	Domiciliary Care Proposed Measure	
6	WAG	Local Government Proposed	Stage 3 Detailed scrutiny in Plenary- In progress

		Measure	
	WAG	Affordable Housing Proposed Measure	
8	Standards of Conduct Committee	Commissioner for Standards	Pre-pre-legislative Consultation completed 06/09/08 by the Standards of Conduct Committee. Further consultation on the Committee's draft proposals closed on 31/12/08 Proposed Measure introduced on 25/03/09 <i>Awaits Stage 1</i>
X	AM – Ballot 6 Alun Cairns	Special Educational Needs Information	Selected in Ballot 15/10/08 Leave to introduce proposed Measure refused on 19/11/08
7	WAG	Children and Families	Introduced on 02/03/03 <i>Stage 1- Consultation- In progress.</i>

A new **Measure on Education** has been introduced by WAG in April (it was announced as the Additional Learning Needs Proposed Measure in the legislative programme). This is the Measure was made under the LCO on special educational needs. The Measure was introduced on the 27/04/09 and will start Stage 1 shortly.

The purpose of this Measure is to extend children's entitlement by providing them with rights to make special educational needs (SEN) appeals and claims of disability discrimination to the Special Educational Needs Tribunal for Wales (the Tribunal). It will amend the law that gives parents the right to make appeals and claims to the Tribunal.⁸⁰

2.4.4 Subordinate Legislation Committee inquiry

The Subordinate Legislation Committee **decided to take further evidence** in its inquiry into the effectiveness of its scrutiny of delegated powers and subordinate legislation. They have sought further evidence from:

Second consultation requests were sent to:

[Scrutiny Committees \(PDF 236KB\)](#)

[Secretary of State \(PDF 15.7KB\)](#)

[Law Commission \(PDF 25.4KB\)](#)

[Welsh Affairs Committee \(PDF 28.3KB\)](#)

Westminster MP's (with overall responsibility for the legislative

⁸⁰ <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures/bus-legislation-progress-lcos-measures-current.htm#education>

programme, and relevant opposition spokespersons) - [Harriet Harman \(PDF 28.2KB\)](#), [Cheryl Gillan \(PDF 28.2KB\)](#), [Roger Williams \(PDF 28.2KB\)](#), [Elfyn Llwyd \(PDF 28.3KB\)](#)⁸¹

The report is expected imminently.

As well as preparing for the publication of its report on the effectiveness of its scrutiny of delegated powers and subordinate legislation, the Committee has begun to consider provisions devolving powers to WAG in UK Bills. So far they have considered the UK legislative programme as a whole and two individual Bills: the Business Rates Supplements Bill and the Apprenticeships, Skills, Children and Learning Bill. It remains to be seen to whom these reports will be submitted and their effect on WAG, Whitehall, the Assembly and possibly Westminster.

2.5. Slow progress of dealing with the considerable amount of legislation which Wales still has to consider:

Progress of Legislation at a glance:

Little has been completed so far; a lot still needs to be processed!

<ul style="list-style-type: none"> ■ Backlog Measures: 5 <ul style="list-style-type: none"> ■ Learner Travel - Done ■ Learning and Skills - Done <input type="checkbox"/> Healthier School Meals <input type="checkbox"/> Playing Fields <input type="checkbox"/> Recycling 	<ul style="list-style-type: none"> ■ Backlog LCOs: 8 <ul style="list-style-type: none"> <input type="checkbox"/> Environment ■ Vulnerable Children- Done <input type="checkbox"/> Affordable Housing <input type="checkbox"/> Welsh language <input type="checkbox"/> Domestic Fire Safety <input type="checkbox"/> Mental Health Reform <input type="checkbox"/> Bus and Coach Services <input type="checkbox"/> Flags on registration plates
<ul style="list-style-type: none"> ■ New Measures: 5 <ul style="list-style-type: none"> <input type="checkbox"/> WAG: Children and Poverty <input type="checkbox"/> WAG: Additional Learning Needs <input type="checkbox"/> WAG: Domiciliary Care <input type="checkbox"/> WAG: Local Government <input type="checkbox"/> WAG: Affordable Housing 	<ul style="list-style-type: none"> ■ New LCOs: 6 <ul style="list-style-type: none"> <input type="checkbox"/> WAG: Support for Carers (previously-Jones LCO) <input type="checkbox"/> WAG: Culture <input type="checkbox"/> WAG: Foundation Degrees <input type="checkbox"/> WAG: Read Meat Industry <input type="checkbox"/> Enterprise and Learning Committee: Traffic Free Routes <input type="checkbox"/> Standards of Conduct Committee: Commissioner for Standards

⁸¹ http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/slc_inquiries/slc_inquiries-scrutiny_of_sub_leg.htm

3. Economic Development and the Budget

Assembly Monitoring Report Spring 2009

3.1. Introduction

The impact of the international economic recession on Wales continued to dominate discussions on economic development in the Assembly's spring term. It seemed initially that its effects were being felt more deeply in Wales than elsewhere in the UK, as unemployment rates rose particularly sharply in the final quarter of 2008; however, by March of 2009 the annual percentage point increase in the seasonally adjusted claimant count in Wales was only a little higher than that in the UK as a whole, following sharp increases in the South-East and South-West regions of England.⁸² Nevertheless, claimant numbers increased by 36,000 in the year up to March, and formulating an effective response remains one of the most serious tests facing the Assembly so far in its history.

Before turning to the detailed analysis of the Assembly's deliberations on economic issues, two other points require consideration. The Assembly approved a relatively uncontentious supplementary budget on 24th March,⁸³ which approved additional spending on health to reduce hospital waiting times, and brought forward capital expenditure projects which form an element of its response to current economic difficulties. Also, the long-running scrutiny inquiry of the Assembly Enterprise and Learning Committee on the Economic Contribution of Higher Education in Wales (which began in November 2007) produced an interim report.

3.2. The Economic Contribution of Higher Education in Wales

The extensive and detailed examination of the role of higher education in promoting economic development in Wales has yet to produce a final report, mainly because the Assembly Government itself commissioned a review of higher education from Professor Merfyn Jones, Vice-Chancellor of Bangor University. This has two phases: the first concerns student finance (which reported in November 2008), and the second addresses the mission of Higher Education. However, to provide some

⁸² The percentage point increase in Wales between March 2008 and March 2009 was 2.5%, whereas in the UK it was 2.1%. Source: StatsWales.

⁸³ See the Supplementary Budget Motion 2008-09, at <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=119369&ds=3/2009>.

indication of the thinking of the Committee to inform that review, an interim report providing commentary on the inquiry process has been published.⁸⁴

The report recognises the pivotal importance of Higher Education in terms of its potential contribution. It notes some important problems, particularly the much-debated funding gap which means that on a like-for-like basis, Welsh Universities receive £66 million less than if they were funded by the Higher Education Funding Council for England.⁸⁵ Other issues noted related to the need to improve commercialisation of knowledge, particularly in technology, scant engagement with the SME sector, the need for more emphasis on entrepreneurship education, restrictions on academics which inhibit closer working with business, and continuing difficulties in promoting access across all social groups. In concluding, the report indicated that considerable challenges still face the HE sector,

“... if it is to fulfil its potential to underpin economic growth and make substantial social and cultural contributions in post-devolution Wales”.⁸⁶

It also indicated the need to complete a more complex analysis of the diverse impacts of Wales’ universities.

3.3. Leading Wales out of recession

More evidence of “clear red water” between the Assembly Government and its Westminster counterpart can be found in the experimental social partnership formed to deal with current economic difficulties. The fourth of a series of Economic Summits which involve the Assembly Government, employers’ organisations and trade unions, and local government in Wales was held at Broughton on the 6th February. The response to declining aggregate demand and consequent rising unemployment in Wales consists of five major elements. As a major spender in the economy through its public procurement purchases, payments are being made more rapidly to improve business cash flow, and effort devoted to ensure Welsh businesses can gain access to procurement contracts. Capital spending is being brought forward, mainly to support the construction sector which has been particularly affected by declining demand. A package of employment support measures has been introduced: the first is *ReAct*, providing support for retraining of redundant workers and a recruitment

⁸⁴ Available at: <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/cr-ld7359-e.pdf?langoption=3&ttl=CR-LD7359%20-%20Interim%20Report%20on%20the%20Economic%20Contribution%20of%20Higher%20Education>.

⁸⁵ Higher Education Funding Council for Wales, *The Funding Gap 2006/07*. Available at: http://194.81.48.132/The_Funding_Gap_2006_07_Report.pdf.

⁸⁶ *Op. cit.*, p. 11.

subsidy for employers to re-employ them; the second is *ProAct*, is designed to help businesses keep on skilled staff by aiding training as an alternative to short-time working. Support for businesses is being consolidated into two main vehicles, FS4B (flexible support for businesses) providing business support services and the Single Investment Fund contributes to business investment expenditures. Finally, a mortgage rescue provides grants to housing associations to enable them to purchase properties which would otherwise be repossessed, and rent them back to their occupiers.

The Fourth Summit provided new support for business innovation, measures to develop procurement for public sector construction, and acceleration of elements of the FS4B scheme relating to high value-added business strategies. The scale of activity has left the official opposition in something of a quandary and prone to attacks on the coherence of its alternative proposals. The Conservative group have concentrated their critique on implementation problems, and their major contribution has been to recommend the development of a manufacturing strategy and reduction in business taxes. Whilst the nature and purpose of their manufacturing strategy is as yet vague, on the question of above-inflation rises in business rates Ieuan Wyn Jones highlighted one of the difficulties of the budgetary cost of any meaningful reduction:

“... someone has to decide where the money will come from. In other words, what should we not do that we are currently doing in order to put more money into that scheme?”⁸⁷

More effective critique of the Government’s strategy came from the Liberal Democrat Leader Kirsty Williams, who correctly identified the fact that the major problems for business came from an acute shortage of liquidity for which Welsh fiscal policy can only provide a palliative remedy. She asked three simple questions, which notably the First Minister was unable to answer:

“You cannot control the banks, but you do control Finance Wales, and it continues to offer loans at higher interest rates than may be available on the high street. You have said in the past that you cannot do anything about that because EU rules prevent you from lowering those rates. What representations have you and your deputy made to the EU about changing the rules and lowering the rates so that business can have access to credit via the mechanism that you control?”⁸⁸

⁸⁷ Assembly Record of Plenary Proceedings, 3 March 2009, p. 113.

⁸⁸ Assembly Record of Plenary Proceedings, 10 February 2009, p. 13.

The Assembly Enterprise and Learning Committee have decided to conduct their own inquiry into the economic downturn, focusing on the support available to businesses and workforce development. The first session scrutinised the Deputy First Minister and his team, and this provided an opportunity to embellish the now familiar mantra which encapsulates the Economic Summits process. In particular, the occasion provided an opportunity to highlight proposed discussions with the European Commission, in order to seek some relaxation of the rules for structural funds spending to address economic difficulties. But relief from this quarter is by no means guaranteed, as Ieuan Wyn Jones noted,

“We have not had the meeting in Brussels yet, but we understand that the European Commission will wish to make it clear to us that we will not be able to raise the intervention level across the board; we will have to make the case for increasing the intervention level where we were aware of specific problems caused by the recession.”⁸⁹

Further sessions provided the opportunity to develop a more nuanced perspective on the efficiency and effectiveness of the Assembly Government strategy. The Committee received contributions from CBI Wales, the Wales TUC, the Federation of Small Businesses, Venture Wales, West Wales Business Initiative, the Alliance of Sector Skills Councils, and eminent academic economists David Blackaby, Philip Murphy and Stephen Hill. Concerns raised included the diversion of key resources to short-term recession mitigation, whilst failing to address underlying problems in the structure of the economy which make Wales more vulnerable to such pressures. Particular note was taken of the concern of the Federation of Small Business that the Assembly Government was

“... diverting European funding to plug the gaps left by the recession instead of building a Wales for the future. There needs to be a balance between growth for the future and survival in the short term, in all of the Welsh Government’s work”.⁹⁰

There is little doubt that the full machinery available to the Assembly Government is being devoted to combating the effects of recession. However, while this energetic response provides newsworthy material, a cool and objective evaluation would suggest that even this effort is relatively insignificant when compared to the scale of reduction in aggregate expenditure associated with the present recession. Total incomes in Wales amounted to roughly £44.3 billion in 2007. If it had grown in line

⁸⁹ Record of Proceedings, Enterprise and Learning Committee, 12 February 2009, p. 18.

⁹⁰ EL(3)-05-09, Paper 1: Committee inquiry on the Welsh Assembly Government’s response to the current international economic downturn - Federation of Small Businesses (Available at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=117459&ds=3/2009>).

with the rest of the UK in 2008 (over past years, its growth has lagged behind that of the UK by an average of about 0.7 percentage points) then the impact of a 3.7 percent decline⁹¹ in potential demand in Wales would amount to £1.7 billion less than last year. In the face of such a problem, deliberations on economic affairs in the Assembly seem bemused, and lacking in appropriate realism. In this context the concerns of the Federation of Small Businesses, among others, that the more serious job of promoting structural fundamental change is being neglected, are likely to be of considerable political importance.

⁹¹ This is the average of independent forecasts cited by the Westminster Treasury: See *Forecasts for the UK economy: A comparison of independent forecasts April 2009*, No. 264 (Available at: <http://www.hm-treasury.gov.uk/d/200904forecomp.pdf>).

4. Intergovernmental Relations

4.1 Introductory

The first part of 2009 has seen an increasing level use of the formal machinery of intergovernmental relations, though focussed principally on relations between Scotland and the UK. This has included the first meeting of the 'Domestic' format of the Joint Ministerial Committee, as well as a range of meetings connected with the economic crisis. As well as the properly intergovernmental meetings discussed below, Paul Murphy, the UK Secretary of State for Wales, and the First Minister and Deputy First Minister of the Welsh Assembly Government, Rhodri Morgan and Ieuan Wyn Jones, have jointly convened two 'All Wales economic summits' to address issues arising from the economic crisis. These were held on 6 February in Broughton and on 7 April in Swansea.

There have been no judgments or opinions in devolution-related cases in the Judicial Committee of the Privy Council or the Appellate Committee of the House of Lords since January 2009.

4.2 Formal intergovernmental relations and high-level ministerial meetings

A summit meeting of the British-Irish Council was held at the SWALEC Stadium in Cardiff on 12 February. It was hosted by the First Minister, Rhodri Morgan, and the Welsh Assembly Government was also represented by the Deputy First Minister, Ieuan Wyn Jones, and the Deputy Minister for Regeneration, Leighton Andrews. The communiqué indicates that a range of issues was discussed, including the strategic review of Council and the review of its work areas, as well as drugs, social inclusion, transport, demography, early years, and indigenous and minority languages.⁹² However, the main issue substantively discussed appears to have been the economic crisis and its implications.

A Ministerial Meeting of the BIC's Sectoral Group on Environment was held in Jersey on 17 April 2009. Its communiqué reports that it discussed the creation of an energy workstream (originally a proposal of the Scottish Government), climate change, Sellafield and radioactive waste, and marine issues.⁹³ The Welsh Assembly Government was represented by the Minister for Environment, Sustainability and Housing, Jane Davidson AM, who was accompanied by Matthew Quinn, Director of the Department for Environment, Sustainability and Housing in WAG.

⁹² Available at http://www.britishirishcouncil.org/documents/cardiff_summit2.asp

⁹³ Available at <http://www.britishirishcouncil.org/documents/environment9.asp>

A meeting of the devolved first ministers and UK Prime Minister to discuss the economic crisis took place at 10 Downing Street on 25 February. This was outside the JMC framework, and appears to have been the first formal direct meeting between Alex Salmond and Gordon Brown since they respectively became First Minister and Prime Minister. A large part of the discussion appears to have concerned with complaints about the efficiency savings required of the devolved administrations, following the Pre Budget Review (PBR) of November 2008.⁹⁴

The first meeting of the JMC (Domestic) took place on 11 March. Again, no communiqué appears to have been issued. It appears that the key topics discussed related to the UK Welfare Reform bill (which requires extensive co-operation from the devolved administrations if it is to work, but for which the Department of Work and Pensions has been at best laggardly in entering into discussions).⁹⁵ The meeting is also said to have agreed on a revised version of the Memorandum of Understanding, but this had not published by early May (and was said to be awaiting final approval by ministers). Another meeting is said to be planned for late May, in preparation for a further plenary JMC meeting in June 2009. According to officials involved, a large part of the value of that meeting was the bilateral discussions between ministers in preparation for the larger meeting, which resolved a good many issues.

On 12 March, a quadrilateral meeting of devolved finance ministers with the Chief Secretary to the Treasury took place. Again, the main matter discussed appears to have been the issue of efficiency savings and their impact on devolved public services and devolved economies more generally – though again no communiqué was issued.

The UK Government has recently re-established a page about devolution on the Cabinet Office website, which gives details of ministerial meetings etc.⁹⁶

4.3 The National Assembly's acquisition of legislative powers

As is discussed elsewhere in this report, drafts of the legislative competence orders for the Welsh Language and Environmental Protection and Waste Management are

⁹⁴ No communiqué was issued after the meeting, but it was discussed by the Prime Minister's Spokesman at that day's afternoon press briefing: see <http://www.number10.gov.uk/Page18440>. See also T. Livingstone 'Rhodri Morgan discusses efficiency savings with PM', *Western Mail* 26 February 2009.

⁹⁵ For an example of the difficulties that appear to have arisen – where the DWP has failed to ensure co-operation despite the Scottish Government's own policy – see E. Barnes 'Crackdown on addicts "blocked by SNP"', *Scotland on Sunday* 25 January 2009. For the Welsh Assembly Government's concerns, see the *Wales Devolution Monitoring Report*, January 2009.

⁹⁶ At <http://www.cabinetoffice.gov.uk/devolution.aspx>

under consideration as drafts at Westminster, with public consultation on the Welsh Language LCO underway. Two Member-proposed LCOs – Jonathon Morgan’s on Mental Health and Ann Jones’s on Domestic Fire Safety – have ‘yet to gain Whitehall clearance and be referred by the Secretary of State for Wales to Parliament for scrutiny’, having been approved by the Assembly. The Welsh Affairs Committee has published a report on the Carers LCO but the Wales Office has yet to respond. The Red Meat Industry LCO has been the subject of reports by the Welsh Affairs Committee and a (UK) Government response, and is now under consideration as a formal and final draft. (It is worth noting that this was first proposed by the Assembly Government in July 2008 – such slow progress is evidence of how cumbersome and unwieldy the procedures for dealing with LCOs are, even when the LCO is uncontroversial.)

Most notable has been the case of the draft Affordable Housing LCO. A compromise to the stand-off between the Assembly and Welsh Affairs Committee, about whether the LCO should confer on the Assembly the power to suspend ‘right to buy’ of council housing, appeared to have been resolved in early January. This involved a conferral of the power on the Assembly, but subject to a veto to be exercisable by the Secretary of State to any use of the power by the Assembly.⁹⁷ The settlement was accepted by the Assembly Government’s Housing minister reluctantly, and would amount to a power for the UK Government to obstruct specific policies and pieces of Assembly legislation, in contrast to the principles set out in the 2005 *Better Governance for Wales* white paper. This awkward political compromise was undermined by the Westminster Joint Committee on Statutory Instruments (JCSI) on 10 June, when it published a report critical of this solution, on the ground that it was a sub-delegation of powers. Starting with the established principle that ‘delegated legislation should not depend on the exercise of ministerial or departmental discretion unless provision to that effect is expressly contained in the enabling statute’, which was not the case here, it considered that the proposed order might therefore be ultra vires (beyond the powers set out in the Government of Wales Act 2006). It emphasised that such matters were properly subject of a relationship between Parliament and the National Assembly, not the Secretary of State or the Welsh Ministers (especially as the latter were not accountable to Westminster at all). The JCSI was also concerned about the impact that such a delegation would have on the rights of third parties such as social landlords, and on the fact that powers devolved under Part 1 of Schedule 5 to the 2006 Act remain subject to Westminster’s power to legislate (legislative powers are conferred on the National Assembly, not transferred

⁹⁷ See M. Shipton ‘Power veto on Welsh housing’, *Western Mail* 10 January 2009.

to it) – the approach used might, in the Committee’s view, mean that Westminster’s powers would be constrained by the need for approval from the Secretary of State and the Welsh Ministers.⁹⁸ These legal reservations were shared by a number of peers, including Lord Livsey and the Presiding Officer, Lord Elis-Thomas.⁹⁹ As a result, a Commons vote on the LCO was postponed.¹⁰⁰ However, the final fate of the LCO has yet to be resolved.

Quite apart from the issues this episode raises about the working of the system of LCOs and arrangements for conferring legislative powers on the National Assembly incrementally, this also illustrates the importance of even obscure Westminster committees to shape constitutional matters in Wales. At Westminster, the JCSI is a relatively obscure committee largely concerned with technical issues relating to the framing of secondary legislation. It is not concerned with the merits of such legislation, or with more clear-cut constitutional issues. If the solutions found to problems posed by the already-complex devolved constitution of Wales are to involve such layers of complexity as to require the attention of the JCSI and fall foul of its standards, it suggests that the system is indeed hard to work properly – it is constitutional design of a Heath Robinson level of complexity, and vulnerability.

4.4 The Commons Welsh Affairs Committee

As well as its role in scrutinising LCOs, the Welsh Affairs Committee has been playing an active role in scrutiny of policy. Its large-scale inquiry into ‘Cross Border Public Services’ has produced two substantial reports in the first part of 2009.

The report on further and higher education was published on 16 January.¹⁰¹ The report was critical of the lack of coordination between the two governments’ policies in both fields, and of the extent to which the England-Wales border has become a barrier to access to education. It was particularly critical of the approach of the UK Department for Innovation, Universities and Skills (DIUS) to the differences in higher education policy between the two countries and the extent to which DIUS policies

⁹⁸ House of Lords and House of Commons Joint Committee on Statutory Instruments *Seventh Report of Session 2008-09* HL Paper 51, HC 3-vii (London: The Stationery Office, 2009), chapter 1. See also T. Livingstone ‘Whitehall veto on Assembly housing powers may be illegal’, *Western Mail* 11 March 2009.

⁹⁹ BBC News online ‘Legal row over housing laws veto’, 16 March 2009, available at http://news.bbc.co.uk/1/hi/wales/wales_politics/7945576.stm

¹⁰⁰ BBC News online ‘Housing powers hit new obstacle’ 19 March 2009, available at http://news.bbc.co.uk/1/hi/wales/wales_politics/7953825.stm

¹⁰¹ House of Commons Welsh Affairs Committee *Cross-border Provision Of Public Services for Wales: Further and higher education* First Report of Session 2008–09 HC 57 (London: The Stationery Office, 2009).

would further handicap Wales.¹⁰² In its response, the UK Government declined to take any action on the more far-reaching recommendations such as support for research in less-strongly-performing institutions, and made promises of more and more effective cooperation from DIUS in future.¹⁰³

The Committee published its final report on Health on 27 March, following an interim report in the summer of 2008.¹⁰⁴ It devoted much attention to the implications of payments for cross-border patient movements, given that some 31 000 more Welsh residents were admitted to English hospitals in 2006-7 than English residents were admitted to hospitals in Wales, while for GP registrations the deficit was 5,534 more English patients registered with Welsh GPs than vice versa. It also criticised the coordination, coherence and transparency of decision-making on both sides of the border, particularly the extent to which the UK Department of Health fails to assist NHS trusts in England in resolving such differences with WAG.

Such reports from the Committee, and the freedom it has assumed to criticise Assembly Government as well as UK Government policies, are indicative of the difficulties UK politicians face in acknowledging the constraints devolution place on their role.¹⁰⁵

4.5 The UK Budget and 'efficiency savings'

As noted above, the question of 'efficiency savings' required or assumed by HM Treasury has been a controversial one. Much of the debate above has related to the wave of such savings that were set out in the November 2008 PBR. At the 10 Downing Street meeting on 25 February, the First Minister sought to ensure that efficiency savings expected in Wales would relate to actual efficiency savings (not simple cuts or underspends) in Whitehall departments.

This controversy will only increase following the 2009 UK Budget, which increase the assumed amount of efficiency savings from the £5 billion set out in the PBR to £9 billion. The 2009 UK Budget, on 22 April, led to reductions totalling £416 million for

¹⁰² In this, it echoed – and freely quoted from – work done for Universities UK: *Higher Education and Devolution: Impact and future trends*. Universities UK Research Report. (London: Universities UK, 2008). Available at <http://www.universitiesuk.ac.uk/Publications/Pages/Devolution.aspx>

¹⁰³ House of Commons Welsh Affairs Committee *The Provision of cross-border public services for Wales: Further and Higher Education: Government Response to the Committee's First Report of Session 2008-09* Second Special Report of Session 2008–09 HC 378 (London: The Stationery Office, 2009).

¹⁰⁴ House of Commons Welsh Affairs Committee *The Provision of Cross-Border Health Services for Wales* Fifth Report of Session 2008–09 HC 56 (London: The Stationery Office 2009).

¹⁰⁵ This is itself becoming the source of some debate: see e.g. T. Livingstone 'Welsh MPs have more power than before devolution', *Western Mail* 17 January 2009.

2010-11.¹⁰⁶ However, the UK Government considers that these amount to £156 million in 2009-10 and 2010-11 and emphasised the benefits that would flow to Wales from the Budget.¹⁰⁷ Indeed, the figures set out in the Budget 'Red Book' show that public spending by the Assembly Government (its Departmental Expenditure Limit or DEL) will grow by 5.8 per cent in 2008-09, 4.8 per cent in 2009-2010 and 2.6 per cent in 2010-11; not good, but far less constrained than the Scottish Government will be. Its DEL is to increase by only 1.8 per cent in 2008-009, 4.3 per cent in 2009-10 and 0.7 per cent in 2010-11.¹⁰⁸ (The Northern Ireland Executive's DEL is to increase by 5.8, 3.3. and 3.2 per cent in each of those three years.) Given the extensive lobbying that had gone on – at the 25 February meeting and elsewhere – and the different treatment of Scotland and Wales by the proposed spending figures, it is unclear how strictly the Barnett formula was applied to the calculation of the proposed DELs for Scotland and Wales in the Budget.

4.6 Wider debates about finance

The Holtham Commission has been continuing its work during the first part of 2009, and is reportedly on track to produce its first report, on the Barnett formula and a grant for Wales, by the summer recess. Its second report (due by the end of the year) will address wider issues of its remit, principally borrowing and tax-raising powers.

The House of Lords Select Committee on the Barnett Formula has also been taking evidence, and has paid visits to Edinburgh, Cardiff and Belfast. During its visit to Cardiff on 20 March it held a private meeting with the Finance Minister, but did not take formal evidence from him. The committee has also taken oral evidence from HM Treasury (on 11 March) and from Paul Murphy and the Secretaries of State for Scotland and Northern Ireland (on 1 April).¹⁰⁹

In an answer at Prime Minister's Questions on 22 April to David Simpson (DUP MP for Upper Bann), Gordon Brown claimed that, 'It has been common ground between all the parties over the last 30 and more years that the allocation of public spending

¹⁰⁶ See BBC News online 'Wales faces £416m funding squeeze', 22 April 2009, available at <http://news.bbc.co.uk/1/hi/wales/8012500.stm>

¹⁰⁷ See Wales Office News Release 22 April 2009, 'Budget Gets Wales Ready For Economic Recovery', available at <http://www.walesoffice.gov.uk/2009/04/22/budget-gets-wales-ready-for-economic-recovery/>. Efficiency savings were not dealt with in HM Treasury's 'Regional Press Notice' for Wales issued after the Budget.

¹⁰⁸ See HM Treasury Budget 2009: *Building Britain's future. Economic and Fiscal Strategy Report and*

Financial Statement and Budget Report HC 407 (London: The Stationery Office, 2009), Table C.11.

¹⁰⁹ Uncorrected transcripts of oral evidence given to the Committee are available at http://www.parliament.uk/parliamentary_committees/hlbarnettformula/barnettuncorrected.cfm

resources in the United Kingdom is based on need. I believe that that is the right formula and the right way to proceed.¹¹⁰ Given the lack of any needs assessment since 1979, and the failure to implement that assessment then, it is puzzling how the Prime Minister might claim even to know that this is the case. His view that needs should be the underlying principle may cause him difficulties in Scotland, but is likely to be welcomed in Wales (and parts of England).

¹¹⁰ HC Debates 22 April 2009, column 228.

5. Elections, Parties and Public Attitudes

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5.1. Elections

There were no parliamentary or National Assembly by-elections in Wales during the first four months of 2009. Several local government by-elections were held in Welsh local authorities during this time period. The results are summarised in the table below. Examining the results in detail, the strong performance of the Conservatives in all of them is the most obvious and striking feature.

Table 5.1: Local Government By-Elections, Jan-April 2009

<i>Ward</i>	<i>Council</i>	<i>Month</i>	<i>Winner</i>	<i>Change?</i>	<i>Swing</i>
Rosset	Wrexham CBC	February	Conservative	Con Hold	5.5% LD to Con
Llandow / Ewenny	Vale of Glamorgan	March	Conservative	Con Hold	3.6% PC to Con
Mostyn	Llandudno TC	March	Conservative	Con Gain	n/a

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

5.2. Parties

Spring is Welsh party conference season. Unsurprisingly, given the party's substantial leads in UK opinion polls, their 2009 conference saw the **Welsh Conservatives** meeting in Cardiff in excellent spirits. There were, however, few specific clues on offer for those attending the conference seeking to discover how an incoming Cameron-led government would relate to the National Assembly and Welsh Assembly Government. David Cameron's own speech made it clear that he was not interested in:

an endless round of arguments about whether it [the Assembly] needs more powers. Let's make what we have now actually work. We need to make the politics of the principality about progress, not politically inspired grievance. And one way we can do that is to make the relationship between Cardiff and Westminster one of co-operation, not confrontation. So I want Westminster Ministers appearing in front of Assembly committees - and Assembly Ministers appearing in front of Westminster committees. And if I am elected

Prime Minister I will come to the Assembly each year and answer questions on any subject - from Wales to the wider world.¹¹¹

More meetings were also on the agenda of Shadow Welsh Secretary Cheryl Gillan who insisted that if she were Secretary of State, she would attend Question and Answer sessions in Cardiff Bay three times a year, in addition to the statutory obligation to attend Assembly plenary sessions after the Queen's Speech. She even dusted off the House of Commons Welsh Grand Committee – a 'dignified' rather than 'efficient' part of the constitution, if ever there was one – suggesting that it hold more regular meetings in Wales.¹¹² Key questions such as whether or not the Conservatives would seek to amend the Measure-Making power process, or how a Conservative government would respond to a request for a referendum on Law-Making powers by the required super-majority of Assembly Members, were left completely unaddressed.

During the conference itself there was little apparent sign of continuing repercussions following Nick Bourne's reshuffle in late February; a reshuffle that led to Jonathan Morgan's unexpected return to the backbenches.¹¹³ But it is unlikely that we have heard the last of that particular episode. August 2009 will mark the tenth anniversary of Bourne's leadership of the Conservative AMs. While he has enjoyed some notable successes as leader, he is also approaching that stage in the lifecycle of any political leader at which questions about his future are inevitably asked. Moreover, the election of a Conservative government at the UK level will create a host of new and potentially difficult challenges for the Welsh Conservative group at the Assembly. Is the notably cautious Bourne the man to rise to those challenges? He may yet rue the day that Morgan was granted the relative freedom of the backbenches. The danger for Morgan, on the other hand, is that other potential challengers for the leadership, such as Andrew RT Davies and Darren Millar, may seek to keep Bourne in office until they themselves are better placed to replace him.

¹¹¹ David Cameron, Speech to the Welsh Conservative Conference, Cardiff, 29 March 2009. Text accessed at: http://www.conservatives.com/News/Speeches/2009/03/David_Cameron_Speech_to_Welsh_Conservative_Party_Conference.aspx?Cameron=true. For Lord Dafydd Elis-Thomas's dismissive reaction see Tom Bodden, 'David Cameron's Offer to Face Senedd Questions Rejected,' *Daily Post*, 4 March 2009, available at: <http://www.dailypost.co.uk/news/north-wales-news/2009/04/03/david-cameron-s-offer-to-face-senedd-questions-rejected-55578-23301048/>

¹¹² http://www.conservatives.com/News/News_stories/2009/03/Gillan_says_dialogue_vital_for_Assembly-Westminster_relations.aspx

¹¹³ For details see <http://news.bbc.co.uk/1/hi/wales/7913572.stm>

The contrast in mood between the Conservatives' meeting at the Swalec Stadium, and those delegates who met for **Welsh Labour's** annual conference in Swansea's Brangwyn Hall, was striking. Delegates, whose numbers were reportedly down on previous years, certainly responded warmly to the keynote speeches of Prime Minister Gordon Brown and First Minister Rhodri Morgan. But the fact that they had to contend with a dysfunctional, booming sound system seemed to typify Labour's current state: it was the kind of detail that, one suspects, would not have intruded on a Labour conference in more confident and financially buoyant times.

Beyond the conference chamber itself, in addition to continued bemused head shaking over the execrable Aneurin Glyndwr website (initially hailed by Peter Hain as Welsh Labour's 'Obama moment'¹¹⁴), the main interest focused on the question of Rhodri Morgan's successor. Two potential candidates – Huw Lewis and Carwyn Jones – were actively engaged in addressing various fringe meetings. Meanwhile supporters of both men are understandably wary about increasingly strong rumours surrounding the possible candidacy of Edwina Hart. The likelihood that she would enjoy strong union backing would make her a truly formidable opponent. (Jane Hutt is another possible candidate, but her tiny majority in Vale of Glamorgan diminishes her chance of being seen as a credible future leader.) Until it becomes clearer, however, when precisely Rhodri Morgan intends to step down, the positioning and rumour over the succession has a slightly unreal quality. It seems increasingly likely that Morgan will refrain from any announcement until the autumn, meaning that a leadership campaign and election would take place during the Assembly's autumn term. This has two likely implications. First, there is clearly a danger that Welsh government will be significantly distracted by events off-stage at a crucial point in the political calendar, namely the period of key negotiations over the budget. Secondly, viewed from a narrower Labour party perspective, the new leader will have no more than eighteen months to establish their profile with the electorate before the next Assembly election. One wonders how wise continuing delay will appear in retrospect?

The **Welsh Liberal Democrats** met for the first time with Kirsty Williams as Assembly Group leader. Her speech was, according to press reports, 'rapturously received' by the delegates, who had apparently gathered in unusually large

¹¹⁴ http://www.labourlist.org/aneurin_glyndwr_-_an_obama_moment_for_welsh_labour

numbers.¹¹⁵ The problem for the party, however, is how to translate the enthusiasm of the party faithful into a viable strategy to move the Lib-Dems beyond their fourth party status. The contrast between Williams' implausibly ambitious target of a 31 member group in the Assembly ("Project 31"), and the Welsh party's realistically modest ambitions for the forthcoming European and UK general elections, is particularly stark. Their personable, telegenic new leader is clearly an important asset for the Welsh Liberal Democrats. But while it is clearly still early days for Williams' leadership, thus far there is no clear answer to the strategic dilemma that the Welsh Liberal Democrats continue to face: namely, given the crowded nature of the centre-left of Welsh politics, what is it that makes the party truly distinctive? Kirsty Williams' leadership will surely be judged by her success in resolving that dilemma.

Plaid Cymru delegates – like the Conservatives and Liberal Democrats, meeting in Cardiff – might have expected a stormy Spring conference. Following last year's debacle over the manifesto pledge to support the establishment of a Welsh medium daily newspaper, February saw the party compromise another manifesto pledge, namely opposition to Higher Education tuition fees.¹¹⁶ This volte face was publicly opposed by leading figures in the party including Adam Price MP and Party Chair, John Dixon. In the event, despite continuing tensions on the fees issue, the conference was, by all accounts, not only well run, but also remarkably harmonious.¹¹⁷ This underlines one of the more striking aspects of Welsh politics over the past two years: the apparent ease and alacrity with which Plaid Cymru has adapted to government. Despite a lifetime in opposition, and the tendency towards oppositionalism that one might expect to be the inevitable corollary, Plaid Cymru members continue to revel in being part of the Welsh government. Even the difficulties and compromises that government entails does not seem to pose any significant deterrence. The results of the forthcoming European and UK elections will, though, be important in determining whether or not this mood continues. Should Plaid Cymru suffer electorally from its association with what appears at this writing to be a terminally unpopular Labour party, will significant voices in the party emerge calling for a reorientation in its stance in Cardiff Bay?

¹¹⁵ <http://www.walesonline.co.uk/news/welsh-politics/welsh-politics-news/2009/04/18/kirsty-williams-slams-opposition-in-rapturously-received-speech-91466-23416233/>. For a slightly more jaundiced view see <http://politicscymru.blogspot.com/2009/04/and-in-yellow-corner.html>

¹¹⁶ <http://news.bbc.co.uk/1/hi/wales/7904549.stm>

¹¹⁷ http://www.bbc.co.uk/blogs/thereporters/betsanpowys/2009/04/stiletto_v_sandal.html?page=19 and <http://politicscymru.blogspot.com/2009/04/plaidconf.html>

5.3. Public Attitudes

The early months of 2009 saw the public release of findings from three major opinion surveys. One was work conducted by GfK NOP in December 2008, and financed by the Welsh Assembly Government, to support the on-going work of the All Wales Convention. A second was the now customary poll conducted in February by ICM for the BBC, with findings released around St David's Day. The final one was an academic study (with fieldwork conducted by ICM in February 2009), where Wales was one of a number of places studied in a multi-national project entitled Citizens After the Nation-State (CANS).

These three surveys gathered a large amount of data on a wide variety of matters, and this report will not attempt to cover all of them. We will simply present some major findings. All the surveys carried a question similar to that used in the major academic surveys conducted since 1997, enquiring into respondents' preferences between several broad constitutional options for Wales. However, as is shown in Table 5.2, the options given to respondents in the BBC and CANS studies, in particular, differed significantly from those presented in the most recent (2007) academic study. As such, it is very difficult to compare the findings or to look for any developing trends. Nonetheless, the surveys do suggest that the broad findings of previous studies are robust across different question and option formulations: support for Independence in Wales is limited to less than 15% of the public; support for the abolition of devolution is below 20% of the public, and a plurality of the public favour extending devolution somewhat further.

Figure 5.2: Constitutional Preferences in Wales Across Four Recent Surveys

<i>Welsh Assembly Election Study, 2007:</i>	
Q. 'Which of these statements comes closest to your view?'	
Independent, separate from UK & EU	5.0%
Independent, but in EU	6.5%
Parliament with law-making and taxation powers	41.5%
Assembly with limited law-making powers only	26.1%
No elected Assembly	15.7%
Don't Know/Other	5.3%
Number of respondents = 884	
<i>GfK NOP Poll for All Wales Convention, December 2008:</i>	
Q. 'Which of these statements comes closest to your view?'	
Independence	6.3%
Parliament with law-making and taxation powers	37.0%
Assembly with limited law-making powers only	36.1%
No elected Assembly	11.3%
Don't Know/Other	9.2%
Number of respondents = 1650	

<i>ICM/BBC Poll, February 2009:</i> Q. 'Which one of these statements comes closest to your view?'	
Independent, separate from UK & EU	4.6%
Independent, but in EU	7.8%
Parliament with law-making and taxation powers	33.5%
Parliament with law-making but no taxation powers	10.3%
Assembly with limited law-making powers only (as now)	20.8%
Part of UK and Assembly abolished	19.0%
Don't Know/Other	3.9%
Number of respondents = 1000	
<i>ICM/CANS Survey, February 2009:</i> Q. 'Which of these statements comes closest to your view?'	
No devolved government in Wales	8.1%
Welsh Assembly should have fewer powers	6.2%
Leave things as they are now	27.1%
Welsh Assembly should have more powers	42.2%
Independent, separate from UK	14.7%
Don't Know/Other	1.6%
Number of respondents = 900	

Both the BBC poll and the CANS survey also included versions of the question asked in several recent academic studies which asks respondents to indicate, first, which level of government is most influential in governing Wales, and secondly, which level should be most influential. These findings, along with those of previous academic surveys, are reported in Table 5.3. There are some difficulties in comparing the findings, as the CANS survey did not offer 'local councils' as an option to respondents. Nonetheless, the findings do appear to show that, while the perceived importance of the devolved level of government in Wales is steadily increasing, this still lags a long way behind its desired importance. All recent surveys have indicated that a clear majority of people in Wales wish the Assembly and Assembly government to have the greatest influence over running Wales. Moreover, the CANS data shows that this level desired importance for the devolved chamber is at virtually the identical level in Wales (71.9 percent) as in Scotland (74.6%).

Figure 5.3: Perceived and Desired Levels of Influence of Different Levels of Government

A. Has the Most Influence

<i>Response</i>	2001	2003	2007	2009icm	2009CANS
NAW	17.0	22.4	35.6	43.1	41.6
UK Government	64.4	57.9	53.2	31.6	50.9
Local Councils	15.5	15.0	5.4	16.5	--

European Union	3.2	4.7	5.9	8.8	6.5
Weighted N of respondents	1033	917	827	924	868

B. Should have the Most Influence

<i>Response</i>	2001	2003	2007	2009icm	2009CANS
NAW	56.2	56.0	74.3	62.7	71.9
UK Government	26.3	29.1	17.7	21.6	26.3
Local Councils	16.5	13.8	7.7	14.1	--
European Union	1.0	1.2	0.2	1.6	1.7
Weighted N of respondents	1033	917	857	971	881

A further matter on which two of the polls gathered data was current voting intention in the event of a referendum on granting primary legislative powers to the National Assembly. The Convention and BBC poll findings are reported in Table 5.4, along with those of the previous surveys which have asked about referendum voting intention. On the surface, the results appear to indicate a clear, if modest, trend towards a growing lead for the 'Yes' camp. However, the inconsistencies in question wording between the different polls does mean that any perceived trends must be viewed with extreme caution.

Figure 5.4: Polls on Referendum Voting Intention

<i>POLL</i>	% IN FAVOUR	% AGAINST	% DON'T KNOW/WOULDN'Y SAY
BBC/ICM, June 2007 ^a	47	44	9
BBC/ICM, Feb 2008 ^b	49	42	9
National Assembly/GfK NOP, June-July 2008 ^c	46	32	22
Convention, GfK NOP, Dec 2008 ^d	48	35	16
BBC/ICM, Feb 2009 ^e	52	39	9

a Telephone poll conducted by ICM for BBC Wales. Number of respondents = 1001. Question asked: "If there were to be a referendum on turning the National Assembly for Wales into a full law making Welsh Parliament with tax-raising powers, how would you vote?"

b Telephone poll conducted by ICM for BBC Wales. Number of respondents = 1210. Question asked: "If there were to be a referendum on turning the National Assembly for Wales into a full law making Welsh Parliament, how would you vote?"

c Telephone poll conducted by GfK NOP for the National Assembly Commission. Number of respondents = 2538. Question asked: "If there were to be a referendum tomorrow on giving the National Assembly for Wales full law-making powers (similar to those held by the Scottish Parliament) how would you vote?"

d Telephone poll conducted by GfK NOP, as part of work to support the All Wales

Convention. Number of respondents = 1650. Question asked: "If there were to be a referendum tomorrow on giving the National Assembly for Wales full law-making powers in these areas [specified in previous questions], how would you vote?"

e Telephone poll conducted by ICM for BBC Wales. Number of respondents = 1000. Question asked: "If there were to be a referendum on turning the National Assembly for Wales into a full law making Welsh Parliament, how would you vote?"

5.4. Conclusion

Towards the end of the period covered by this report, party politics in the UK became engulfed in the fall-out of the Westminster expenses scandal. Welsh MPs have certainly not managed to avoid criticism and controversy as a result of their expense claims, even if – so far at least – none appear to be amongst the egregious offenders. Inevitably, however, there will be an impact on the relative standing of the political parties. The nature of that impact will become much clearer in the results of the European elections held on the 4 June 2009. Those results in turn will do much to determine the nature of the next few months in Welsh politics.