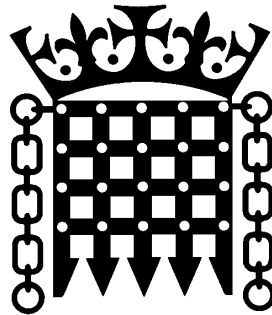


The Government of Wales Bill: **Devolution and the National Assembly**

Research Paper 97/129

4 December 1997



This paper is one of a series on the *Government of Wales Bill* (Bill 88 of 1997/98) which is due for second reading on Monday 8 December. Research Paper 97/132 *The Government of Wales Bill: Operational Aspects of the National Assembly* 5.12.97 deals with selected aspects of the Assembly, such as its location and Assembly members' pay, as well as the relationships with Westminster. Research Paper 97/130 *The Government of Wales Bill: The National Assembly's Partners* 4.12.97 examines the Bill's provisions relating to quangos and local government, and the new role of the Welsh Development Agency. See also Research Paper 97/60 *Wales and Devolution* 19.5.97 which looks at earlier aspects of the devolution debate in Wales; 97/126 *Devolution and Europe* 1.12.97 which looks at the potential impact of devolution on the UK's relationship with EU institutions; and 97/78 *Public Expenditure in Scotland and Wales* 9.6.97 which looks at the Barnett formula and other public expenditure topics. Research Paper 97/92 *Scotland and Devolution* 29.7.97 is also relevant, as well as 97/113 *Results of Devolution Referendums*. 10.11.97.

This Paper is intended to provide a general overview of the Bill and the devolution debate in Wales. It sets out the proposals in the White Paper *A Voice for Wales* (July 1997 Cm 3718) and looks at the debate surrounding the referendum on 18 September 1997. Finally it looks at the form of the proposed legislation and examines the Bill's provisions on elections, executive functions and finance, amongst other topics. An Appendix provides details of the referendum result and the AMS voting system.

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Summary

The White Paper *A Voice for Wales* was published on 22 July 1997. It set out proposals for the establishment of an Assembly for Wales with 60 members elected by the Additional Member System. The Assembly would take on the executive functions currently exercised by the Secretary of State for Wales, and would have the power to make subordinate legislation in those areas. It would be led by an Executive Committee, made up of leaders of a number of subject committees. The legislation establishing the Assembly would also provide for a newly reorganised Welsh Development Agency and transfer the functions of Tai Cymru (Housing for Wales) to the Secretary of State and provide powers for the Assembly to reorganise a range of other quangos in Wales.

Following the White Paper and the passage of the *Referendums (Scotland and Wales) Act 1997* a referendum was held in Wales on 18 September 1997. There was a narrow 'Yes' vote, and the Government announced that it would proceed with the introduction of legislation.

The Bill had its first reading on 26 November. It reproduces the broad policy objectives of the White Paper in greater legislative detail, but now providing for a First Secretary to lead the Executive Committee, and calling the Assembly the National Assembly.

The electoral system for the National Assembly is a Proportional Representation system, similar to that proposed for the Scottish Parliament, but likely to be less proportional in effect. Electors will have two votes: one for a constituency MP and one for a registered party or an independent candidate for five electoral regions. Separate legislation will be necessary to provide for the registration of parties, and subordinate legislation will be required to create a new regime for electoral expenses, deposit etc.

The Assembly will be funded via block grant. *The Explanatory and Financial Memorandum* notes that the Barnett formula will continue to form the basis for the distribution of the block grant.

A statutory Commission will be created which will draw up the draft standing orders of the National Assembly. These standing orders will cover such areas as integrity, accountability, provision of information. Subject committees will be established, as well as advisory regional committees.

The National Assembly will carry out executive functions in areas specified in schedule 2 of the Bill, which broadly covers the current responsibilities of the Secretary of State for Wales. A draft Order in Council is expected shortly which will set out in more detail the functions to be transferred under clauses 21-27 of the Bill. Specific provisions will apply in relation to the implementation of EU directives.

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I. The White Paper, *A Voice for Wales*, and subsequent developments

A. Summary

The White Paper was published on 22 July 1997¹ and set out proposals for an elected Assembly assuming many of the functions and powers of the Secretary of State. Ron Davies said in his Commons statement on the White Paper:²

Wales will continue to share the same framework of laws as England, including the primary legislation made for it by Parliament, and it will remain firmly part of the United Kingdom. But the new Assembly will assume many of the functions and powers that I currently exercise. It will have at its disposal the staff and budget of the Welsh Office, now some £7 billion; it will determine policies and set standards for major public services; it will bring forward secondary legislation where necessary to implement those policies, and it will assume responsibility for unelected bodies in Wales, and have powers to reform them and bring them to account.

That means that, in future, decisions on schools, health care and other key services will be taken by people directly elected by, and accountable to, Welsh voters, and therefore responsive to their views. We will be equipping the Assembly to set a new economic agenda for Wales, focused on Welsh needs and priorities, to create the new jobs and industry that Wales still badly needs. Above all else, the Assembly will provide a clear and distinctive voice for Wales.

The Government intend that the Assembly should be a new kind of elected body, open to all talents and close to the people it serves, working in partnership with central and local government, for the benefit of all parts of Wales.

It is the Government's intention to forge a new kind of politics. The Assembly will therefore be based on principles of partnership, democracy and inclusiveness.

First, the Assembly will improve the government of Wales by working in partnership with others, especially Welsh local government. The partnership between the Assembly and local government will ensure that each tier respects the legitimate role of the other.

In making that point, I should like to thank my hon. Friend the Member for Rhondda (Mr. Rogers) for his helpful paper on the proper relationship between the Assembly and local government. Let me tell him and the House that the Assembly will promote and foster local government in Wales; it will regularly review with local government how effectively that commitment is being observed; and it will not be given any new power to take functions away from local government, but will be given powers to transfer functions from quangos to local government. The establishment of the Assembly will give local government a new opportunity to reassert its rightful place as an equal partner in the governance of Wales.

¹ *A Voice for Wales* (Cm 3718)

² HC Deb vol 298 c.753-755

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The Assembly will also need to work closely with other key partners, including business and industry and the European institutions. The business community will gain easier access to key decision makers in the Assembly as it pursues its new economic agenda, and the Assembly will listen to the voice of business and respond quickly and effectively to its needs.

The Assembly will foster a new relationship with Europe. The administration of European structural funds is a matter of great importance to us in Wales. That responsibility will pass to the Assembly, which will, in consultation with the Commission, be able to determine priorities for European funding in Wales. Assembly members with executive responsibilities and their officials may, where appropriate, have a role to play in delegations to the Council of Ministers as agreed by the United Kingdom Minister leading those negotiations.

The second principle is democracy. For the first time the key decisions for Wales will be made by people elected by and democratically accountable to the people of Wales. The executive committee will provide the political leadership of the Assembly, and will be subject to scrutiny through the processes of question and debate. Under the Assembly, policies that matter to people in Wales education, health and other key public services will be determined in Wales.

I now turn to the quango state. In recent years, the growth in the number of unelected bodies and some of their activities has caused great concern in Wales. Our proposals for a new and democratic structure of government will address that concern. The Assembly will be given sweeping powers to democratise, and if necessary further restructure, the quangos that remain.

That is a major package of reform, but in the Government's view the need to start the reform of the quango state in Wales is too urgent to be left to await the Assembly. Action is required now, even before the Assembly is established: that point was made forcefully by my hon. Friend the Member for Merthyr Tydfil and Rhymney (Mr. Rowlands) in earlier debates. I agree with him, so the Bill establishing the Assembly will, by merging the Welsh Development Agency, the Development Board for Rural Wales and the Land Authority for Wales, create a new economic development agency for Wales. It will be a powerhouse to promote the economic regeneration of our country. It will also transfer Tai Cymru's staff and functions to the Welsh Office, and wind up that body.

We shall also wind up Cardiff Bay development corporation by March 2000, while securing the continuing development of Cardiff Bay. We shall reduce the number of training and enterprise councils in Wales from six to four, and we shall make important changes to national health service administration. The Government have already announced that the number of NHS trusts will be reduced. Today, I can tell the House that the Health Promotion Authority for Wales and the Welsh Health Common Services Authority will be wound up and their functions transferred.

Taken together, those proposals will have a profound effect. Unelected bodies will be reduced in number before the Assembly is established, and placed under proper democratic control and scrutiny once the Assembly is in place. No longer will our key public services lie in the hands of political appointees operating in secret and accountable to no one in Wales.

The third principle I mentioned was inclusiveness.

The Assembly that we propose will have 60 members. Forty of them will be directly elected from parliamentary constituencies through the first-past-the-post system, with 20 additional members to provide an element of proportionality. Voters will be able to vote both for constituency candidates and for party lists for additional members. The Assembly will reflect all Wales in its membership and in its working practices, and its committees will give all political parties in the Assembly the opportunity to make their distinctive contribution to its work. Our proposals for regional committees will give all parts of Wales a stake in the Assembly's success.

I want people of real ability and commitment, representing the widest possible range of interests, to serve in the new Assembly. In particular-although this is not a matter for legislation-it is vital for women to participate more in public life in Wales, and I look forward to seeing a high proportion of women as Assembly members.

Members of the official Opposition have suggested that our proposals in some way threaten the integrity of the United Kingdom. That is simply wrong. Parliament will continue to be responsible for primary legislation for Wales, and there will be no reduction in Wales's representation in Parliament as a result of our establishing the Assembly.

The Secretary of State will continue to represent Welsh interests in the Cabinet, and will participate fully in the Government's formulation of policy. Through his links with the Assembly, he will ensure that Wales's voice is heard more clearly on issues of major importance to Wales. In the same way, Assembly officials-who will be members of the Home civil service-will work in close partnership with officials in other Departments in developing policy proposals. Wales will remain an integral part of the United Kingdom: let there be no doubt of that.

In a response Michael Ancram for the Opposition described the proposals as a "vast constitutional mess, the full extent of which will probably only come apparent only when we see the draft legislation" (c. 756). He considered that the role of the Secretary of State would be reduced to that of a messenger boy between Cabinet and the Welsh Assembly, and that Wales would be marginalised within the UK (c.756-757).

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The White Paper's summary of the proposals was as follows:

1. An Assembly for Wales: an overview

1.1 The Government proposes that a directly-elected Assembly will assume responsibility for policies and public services currently exercised by the Secretary of State for Wales. The Assembly will have at its disposal the £7 billion budget currently assigned to the Welsh Office, and will allocate resources from it to public services in Wales for which it is responsible. The Assembly will also set policies and standards for those services; reform and oversee the work of unelected public bodies; and make detailed rules and regulations, through secondary legislation, within the framework laid down in Acts of Parliament.

1.2 The Assembly will be able to debate all issues of concern in Wales, and will be required to observe the highest standards of behaviour, and proper respect for equal opportunities. It will give equal status to the English and Welsh languages. The Secretary of State's powers will be transferred to the Assembly by Order.

The case for an Assembly

1.3 The establishment of the Welsh Department of the Board of Education in 1907 marked the beginning of administrative devolution in Wales, which gathered pace in the 1960s when the Welsh Office was established with responsibility for local government, housing and roads. More responsibilities have been added over time - health, industry, agriculture, education, economic development, planning and many more - so that now the Secretary of State for Wales has responsibility for a wide range of public services in Wales, which are funded from an annual budget of £7 billion. The services are run directly by the Welsh Office and indirectly through local authorities, health authorities and NHS trusts, and unelected bodies (quangos) like the Welsh Development Agency (WDA), the Further and Higher Education Funding Councils and Tai Cymru. Of these, only the local authorities are directly accountable to the people of Wales.

1.4 It is to address this democratic deficit that the Government is now proposing to set up an Assembly for Wales. It believes that those controlling the spending and setting the standards for public services should be answerable to the people they serve; and that a more responsive elected body will be better placed to promote economic prosperity and quality of life across Wales.

The Assembly

1.5 The Government proposes that the Assembly will have 60 members, directly elected by the Welsh people every four years. Its headquarters will be in Cardiff, and it will be staffed by existing Welsh Office staff who will remain members of the Home Civil Service.

1.6 The Assembly's overall political leadership will be provided by an Executive Committee, made up of the leaders of each of its subject committees. It would operate in a similar way to the UK Cabinet, and would normally be formed by members of the majority party within the Assembly. The composition of the Assembly, the electoral procedures and the practical arrangements for its operation are set out in Chapter 4.

What the Assembly will do

1.7 The Assembly will take over the responsibilities that the Secretary of State exercises in Wales. These are shown briefly here and will be listed in the Bill that establishes the Assembly.

The Secretary of State for Wales has responsibilities for :

- *economic development*
- *agriculture, forestry, fisheries and food*
- *industry and training*
- *education*
- *local government*
- *health and personal*
- *social services*
- *housing*
- *environment*
- *planning*
- *transport and roads*
- *arts, culture, the Welsh language*
- *the built heritage*
- *sport and recreation.*

A more detailed list of the Secretary of State's current responsibilities is given in Annex A.

1.8 The Bill will contain the power to transfer the Secretary of State's responsibilities to the Assembly by Order, subject to the approval of the House of Commons and of the House of Lords. The Government's intention is that the Transfer Order will pass to the Assembly virtually all the functions of the Secretary of State for Wales. It would come into force soon after the Assembly is established in May 1999.

1.9 The Government does not propose to transfer to the Assembly responsibility for functions which currently operate on a common basis throughout the United Kingdom. These include foreign affairs, defence, taxation, macro-economic policy, policy on fiscal and common markets, social security and broadcasting.

The Assembly's powers

1.10 The Assembly will be able to set policies which can drive the Welsh economy forward and make a difference to the quality of life in Wales. It will have powers to reduce the number of Welsh quangos, establish their priorities and hold them to account. It will be able to examine proposals for UK legislation, advising on whether they are appropriate for Wales.

1.11 The Assembly will help to create the body of law which governs Wales. The basic framework of the law is set in Acts of Parliament - primary legislation - within which Secretaries of State make rules and regulations in secondary legislation. For example, the detail of the school curriculum or the designation of environmentally sensitive areas are currently decided by the Secretary of State for Wales within the framework laid down in Acts of Parliament. The Government proposes that in Wales the Assembly will assume these powers to make secondary legislation.

1.12 The Assembly will be responsible for setting the policy context within which Welsh public bodies operate. There are now over 80 such unelected bodies in Wales, spending over £2 billion a year. The Assembly will have powers to reduce their numbers and refocus them. The Government will begin the process of reform by establishing a new economic 'powerhouse' for Wales through the merger of the Development Board for Rural Wales and the Land Authority for Wales into the WDA.

1.13 Once established the Assembly will agree with these bodies how to implement its policies and will be able, in open debate, to question and monitor their actions. It will be able to take advantage of the wide range of its responsibilities to develop new strategies on complex issues such as poverty and public health, which require a co-ordinated approach.

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1.14 The Assembly will also inherit the powers of the Secretary of State for Wales to issue guidance and directions. These, for example, set requirements for local authorities' child care provisions and determine the economic development agencies' priorities for job creation. The Assembly could also issue guidance to the National Health Service and make decisions on disputed proposals for significant changes in it, including hospital closures.

1.15 The Assembly will be the forum for the nation, able to debate all matters of concern in Wales, not only those which it directly controls. It will be able to invite Government Ministers, public bodies and other experts to contribute to such debates. For example, the Assembly could investigate and make recommendations on proposed changes to social security legislation or to the structure of the court system that had particular implications for Wales.

The Secretary of State for Wales

1.16 The establishment of an Assembly will create a new relationship between Wales and Westminster. But Wales will remain firmly a part of the United Kingdom. Wales and England will continue to share a common legal system and much else besides. In the making of legislation and in the debates on UK policy, Wales's voice and influence must be felt in Cabinet and Parliament. There will therefore be a continuing role for a separate Secretary of State for Wales, with a seat in the Cabinet, to safeguard Welsh interests.

1.17 The Secretary of State will need to work closely with the Assembly and be informed, though not bound, by its views. The Secretary of State will represent Wales - with the benefit of having heard the democratic voice of the Assembly - in policy formulation and resource decisions.

1.18 The Secretary of State will be able in his own right to attend meetings of the Assembly to participate in its debates but will not be able to vote. The Government expects that the Secretary of State will meet the Assembly's Executive Committee regularly to exchange views and information about Government policy.

1.19 The Secretary of State will retain a small team of civil servants to support his work. They will work in partnership with the Assembly and other government departments on policy matters covering Wales and other parts of the UK.

Royal matters

1.20 The Assembly will be a Crown body. The Government envisages that Her Majesty The Queen or Her representative would formally open the Assembly after each election.

1.21 The Secretary of State for Wales will continue to advise Her Majesty on Welsh matters that are considered by the Privy Council, such as appointments that are made by Her. The Secretary of State will also be responsible for other dealings with Her Majesty and other members of the Royal Family, including Royal Visits. He will be responsible for submitting to the Prime Minister recommendations for honours in Wales and for appointments to Royal Commissions in Wales.

Resources for the Assembly

1.22 The Assembly will have at its disposal the budget - currently £7 billion - which now falls within the responsibility of the Secretary of State for Wales. Changes to this budget will, as now, be largely tied to changes in comparable spending programmes in England. The Assembly's decisions about how this budget should be spent will determine the range and quality of public services in Wales.

The Assembly will:-

- *need to balance the requirements of the NHS against the need to fund local authority services such as education social services and maintenance of local roads, other public bodies such as the WDA and its own expenditure (such as on trunk roads),*
- *be able to decide how far to promote new initiatives by specific grants to local government and how far to increase the discretion of local authorities by providing funding which is not linked to particular services;*

- *balance the needs for economic development against the needs of environmental protection and conservation.*

1.23 Putting these spending powers in the hands of an Assembly means that these decisions will be open to scrutiny in Wales: at present they are examined once a year in the House of Commons when the Secretary of State for Wales makes his expenditure statement, and occasionally by Parliamentary committees. A directly-elected Assembly will provide opportunities for a fully informed debate in Wales, and will take decisions which can reflect the needs and circumstances of Wales, and most importantly, the views of the people.

The conduct of the Assembly

1.24 The Government intends that the Assembly should be a modern, inclusive institution. It will gain the trust of the Welsh people only if it conducts its affairs openly and properly.

The Government will therefore ensure that the Assembly:

- *observes high standards for making public appointments and the conduct of its own business;*
- *is staffed by politically impartial civil servants, whose conduct will be governed by the principles of the Civil Service Code applicable throughout the UK;*
- *has regard to the interests of local authorities, business, unions and the voluntary sector, and works in partnership with them to promote the economic, social and environmental well-being of Wales;*
- *is a modern democratic institution that reflects the diversity of Wales, promotes sustainable development, and provides equal opportunities for all;*
- *treats the English and Welsh languages on the basis of equality.*

The challenge ahead

1.25 Over the last 40 years Wales has made a remarkable shift from an economy based on heavy industry - coal and steel - to more diverse modern manufacturing industries, often established through inward investment and demanding very different skills. Despite this success, Wales still faces some major challenges.

1.26 The new jobs created by inward investment are making demands for scarce technical skills. Economic prosperity is not yet spread evenly across Wales. There are still areas of very high unemployment, poor housing and social deprivation. Too many people in Wales do not work as a result of poor health. Welsh Gross Domestic Product per head remains stuck at around 84 per cent of the UK average.

1.27 The Government wants to tackle these problems and spread economic prosperity throughout Wales, improving the quality of life of everyone in Wales. It believes that an Assembly with Members representing all parts of Wales, responsive to its needs, can provide the necessary leadership. A directly-elected Assembly, firmly embedded in the United Kingdom and in touch with the communities it serves, will liberate the energy of the Welsh people to make a real difference.

B: Devolved Responsibilities

The White Paper stated that the Assembly would take over the executive responsibilities that the Secretary of State exercises in Wales, and that these responsibilities would be listed in the Bill. Annex A of the White Paper set out his powers and duties:

Annex A: Powers and duties of the Secretary of State for Wales

1. Industrial and economic development

- promoting economic and industrial development and enterprise
- sponsorship of the main economic development agencies
 - Welsh Development Agency
 - Development Board for Rural Wales
 - Land Authority for Wales
 - Wales Tourist Board
 - Cardiff Bay Development Corporation
- financial assistance to industry, including Regional Selective Assistance
- promoting inward investment
- support for exporters
- administering European Structural Funds
- urban and rural regeneration
- promotion of energy efficiency and environmental management
- promotion of innovation and technology development
- deregulation.

2. Education and training

- setting standards for schools and monitoring their performance
- National Curriculum content and assessment
- sponsorship of the Curriculum and Assessment Authority for Wales
- funding grant-maintained schools, and capital projects in voluntary-aided schools
- approving changes to the organisation of schools
- funding further and higher education, including sponsorship of the Further and Higher Education Funding Councils for Wales
- funding the Training and Enterprise Councils and Careers Service Companies
- training policy, careers education and guidance, and lifelong learning
- links between education, training and work.

3. Health

- administration of the NHS in Wales
- holding NHS organisations to account
- monitoring public health
- allocating health service resources
- promoting good practice
- health promotion
- workforce planning, education and training
- funding research and development.

4. Agriculture

- Welsh aspects of agriculture and fisheries policy
- support payments to farmers
- agri-environmental programmes
- promotion of Welsh food products.

5. Local government

- local government policy and finance
- allocation of resources
- council tax
- business rates.

6. Housing

- allocation of resources to local authorities and housing associations
- social housing
- refurbishment schemes
- sponsorship of Tai Cymru
- special needs housing
- problem estates.

7. Social services

- community care policy
- inspection of social service provision, including care homes (through the Social Services inspectorate for Wales)
- issuing statutory guidance to local authorities
- funding local authority and voluntary sector initiatives
- policy on children's services
- policies for particularly vulnerable groups, including people with a learning disability
- promotion of voluntary sector activity and volunteering.

8. Transport, planning and environment

- highway authority for trunk roads
- funding of transport infrastructure projects
- town and country planning policy
- determination of appeals and call-in powers
- environmental protection, including flood defence and coastal protection
- joint sponsorship of the Environment Agency (with the Department of the Environment, Transport and the Regions, and the Ministry of Agriculture, Fisheries and Food)
- sponsorship of the Countryside Council for Wales.

9. Arts and cultural heritage

- Welsh language policy
- sponsorship of the main arts and culture bodies, including
 - Arts Council of Wales
 - National Museums and Galleries of Wales
 - National Library of Wales
 - Welsh Language Board
- ancient monuments and historic buildings
- sport, including sponsorship of Sports Council for Wales.

A local government model would operate these responsibilities with an Executive Committee chaired by a Leader and subject committees to monitor areas of responsibility. The Executive Committee would be responsible for the preparation, and submission to the Assembly for debate and approval, of secondary legislation for Wales (para 4.21). When primary legislation is introduced into Westminster the Government would consider which of the new powers it contains should be exercised by the Assembly (para 3.39). Assembly officials would liaise with Whitehall officials about the timing and context of secondary legislation (para 3.40)

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C: The Role of the Secretary of State and Disputes Resolution

The White Paper emphasised that the Westminster Parliament would continue to pass new legislation for Wales (para 3.33). The Secretary of State would continue to participate fully in the Government's policy formulation, legislative and resource decisions, and to represent the needs of Wales in Cabinet and Cabinet Committees. The Secretary of State would form a partnership with the Assembly: - "Informed by its views, the Secretary of State will be able to ensure that Wales's voice is heard more clearly on issues of major importance to Wales. While he will not be obliged to support the view which the Assembly has expressed, the voice of Wales should be heard much more strongly than under the present arrangements" (para 3.35). The White Paper did not address the possibility that the Welsh Assembly and the Secretary of State might represent differing political parties. The Secretary of State will be under a statutory duty to consult the Assembly about the Government's legislative programme after it has been announced in the Queen's speech (para 3.38) and to consult the Assembly on appointments to public bodies in Wales made by other Government Departments (para 3.41). The proposals for resolution of disputes over the extent of the Assembly's powers were set out as follows:

3.42 Close consultation between the Assembly and Whitehall will minimise the risk of disputes between them. It will be clear from the Order transferring a particular power whether it has or has not been transferred to the Assembly. Thus the only question which should arise is about the way in which the Assembly is proposing to use a power.

3.43 The Attorney General and Solicitor General will continue to serve Wales and England. Any disputes about the Assembly's use of its powers will be referred to the Law Officers. This should allow disputes to be settled speedily, without recourse to the Courts. If the Law Officers considered that the Assembly had used, or was proposing to use, its secondary legislation powers unlawfully, the matter could be put to the Judicial Committee of the Privy Council for a speedy decision.

D: The Relationship between the Welsh Assembly and Westminster Parliament

As noted above Parliament would continue to be the principal law maker for Wales. The White Paper states "The Assembly will need to establish a close partnership with Members of Parliament representing Welsh constituencies. They will continue to be involved in considering new legislation that applies to Wales and to represent their constituents small matters" (para 3.37). It also noted that "setting up the Assembly will not reduce Wales's representation in Parliament" (para 3.37). There was therefore no equivalent to the Scottish White Paper's proposal to refer Scottish representation in the Westminster Parliament to a review by the Parliamentary Boundary Committee for Scotland³.

The Assembly will be consulted about the Government's legislative programme for the session but only after it has been announced in the Queen's speech and no formal powers are proposed for Assembly Members to give evidence to Standing Committees on bills. The future of the Welsh Select Committee and the Welsh Grand Committee will be reviewed by the Commons (para 3.44). but the Secretary of State will continue to be accountable for his

³ see Research Paper 97/92 *Scotland and Devolution* Section N

actions "though the normal mechanism of Parliamentary Questions and debate. He will not however be accountable for the activities of the Welsh Assembly. The Assembly will need to establish procedures for replying to concerns raised by Members of Parliament on their own account or on behalf of their constituents in relation to the Assembly's activities" (para 3.45). No definition of the Secretary of State's "actions" in terms of Parliamentary accountability was given in the White Paper.

E: Wales and the European Union

The Secretary of State would retain his responsibility for representing Welsh interests in relevant aspects of European offers when discussed with the UK Government. However the Assembly would be able to communicate its views effectively to Whitehall (para 3.48). The Assembly would have the opportunity to scrutinise relevant proposals coming before the Council of Ministers as well as other European documents, in the same way as the Westminster Parliament. The Assembly would have an obligation to ensure the implementation and enforcement of relevant EU obligations. If it failed the Assembly would be liable to meet any financial penalties the EU imposed. Westminster would however legislate to ensure implementation of such obligations throughout the UK. The position on European negotiations and representation in Brussels was set out as follows;:

European negotiations

3.49 The lead UK Minister is responsible for co-ordinating and settling the UK policy line in negotiations, and for ensuring that the views of colleagues are fully taken into account through negotiations between government departments. The arrangements need to be flexible enough to accommodate fast-moving negotiations. Within this framework, the Secretary of State for Wales may participate in relevant meetings of the Council of Ministers and, where appropriate, represent the UK on relevant items.

3.50 In the areas for which it is responsible, the issues raised in negotiation and the effect of the decisions reached will be of direct interest to the Assembly. if it is to discharge its functions effectively, it is important that the Assembly should be able to keep the delegation advised of its views. The Secretary of State and the Assembly will need to liaise closely to establish the necessary arrangements.

Representation in Brussels

3.51 In pursuing its interests in the European Union, the Government works through the offices of the UK Permanent Representation in Brussels (UK Rep). The wider partnership in Wales, including local authorities, agencies and others, has separate arrangements, supporting and funding the Wales European Centre in Brussels which acts for them as a facilitator and source of advice.

3.52 UK Rep will continue to represent the Secretary of State for Wales and other Welsh interests as part of its duty to promote agreed government policies in Europe. It will be open to the Assembly to decide the form of its own presence in Brussels, so that it has available its own source of information and influence.

3.53 It will be important that Wales should also be properly represented in the membership and staffing of the various institutions that help shape the conduct of European business. Welsh members already make a valuable contribution to the work of the European Parliament and the Committee of the Regions, as well as to the Economic and Social Committee. The Bill will provide for members of the Assembly to represent Wales on the Committee of the Regions. The Secretary of State will be consulted about European appointments of special relevance to Wales.

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In a later statement on 11 September Ron Davies clarified this summary, announcing that Ministers in the Welsh Assembly would be able to attend European Council of Ministers' meetings together with UK Ministers, and to nominate members for European regional and economic and social committees⁴, but there would be a single UK line followed by Assembly, Scottish Parliament and Whitehall. This would bring the Welsh proposals more into line with the Scottish proposals for devolution⁵. The Assembly would take over responsibility for all the Welsh Office's functions relating to the European Structural Funds, so that in agreement with the European Commission the Assembly would determine the priorities and administration of European funding allocated to Wales. (para 3.56)

F: The Assembly and the Welsh Economy

The White Paper considered that "one of the Assembly's most important tasks will be to provide clear leadership and strategic direction to boost the Welsh economy" (para 2.1). The Bill to set up the Assembly would therefore include provision for the immediate creation of a new economic agency by transferring the functions and responsibilities of the Land Authority for Wales and the Development Board for Rural Wales to the existing Welsh Development Agency. Once elected, the Assembly would set the policy framework for the enlarged WDA and appoint its members and find and oversee its work (para 2-12). Chapter 2 sketched out proposals for a regional structure for economic development to coordinate work by TECs educational institutions, local authorities and the Assembly. It expected the Assembly to forge closer links with other European regions. The Bill establishing the Assembly would require it to assess the costs for business of complying with proposed Assembly orders (para 2.26) and to consult business in advance if there were such costs.

G: Local government and Quangos

The Assembly's relations with the 22 unitary authorities forming Welsh local government is addressed in Chapter 3. The Assembly would be responsible for funding local authorities in Wales, and the duty of the Secretary of State to consult representatives of local government about the annual revenue settlement would be transferred to the Assembly (para 3.9). The UK Government is committed to reviewing the use of capping on local authority budgets and "the role of the Assembly in respect of council tax will depend on the outcome of this review" (para 3.10). Moreover, the Assembly's new role in calculating the national non-domestic rates poundage for Wales will be subject to revision following a UK review of business rates. The poundage can not in any case be increased by more than the RPI. The Assembly would have responsibility for the system of capital expenditure, including deciding how much Welsh local authorities could borrow (para 3.11). The Assembly would be expected to "respect local government's power" (para 3.6) and the White Paper noted that "the Bill establishing the Assembly will not give it any new power to take functions away from local government (this could be done only by further primary legislation passed by Parliament)". (para 3.6).

⁴ *Financial Times* 12/9/97 "Welsh Assembly's EU role boosted", Welsh Office PN 11.9.97.

⁵ See Research Paper 97/92 "Scotland and Devolution" p 73-74

The White Paper's proposals for quangos⁶ have been the subject of some debate. The Government proposed immediate action to reduce the number of executive public bodies in Wales:

Action before the Assembly is elected

3.14 The Bill will include provision for:

- Creating a new *Economic Development Agency for Wales* by merging the Welsh Development Agency, the Development Board for Rural Wales and the Land Authority for Wales - as described in Chapter 2.
- Transferring to the Welsh Office *Tai Cymru's* staff and functions, including those of regulating Housing Associations. These responsibilities will pass to the Assembly when it is set up. Local authorities will have an enhanced role in planning the provision of housing in their areas.

3.15 The Government will make further changes, which do not need new statutory powers:

- Reduce the number of *Training and Enterprise Councils* from six to four to match the regional structure of the new Economic Development Agency, as described in Chapter 2.
- Wind up the *Cardiff Bay Development Corporation* by the end of March 2000. The Secretary of State will agree with the Corporation and local authorities in the area the best way of achieving an orderly wind-up of its affairs, and of securing the continued development of the Bay.
- Wind up the *Residuary Body for Wales*. This small body was set up to sell property which became redundant as the result of local government reorganisation in 1996. It should have completed its task very shortly, and there is no need for it to continue in existence until 2000.
- Transfer to the Assembly the staff and responsibilities of the *Health Promotion Authority for Wales*. This will enable its important work to be integrated with the Assembly's other health responsibilities.
- Transfer the staff and responsibilities of the *Welsh Health Common Services Authority* either to other NHS bodies where appropriate, or to the Assembly once it is established.
- Review the number and configuration of *NHS Trusts* with the objective of improving the standards of service while releasing much-needed resources for patient care. This review is already under way and should result in a reduction in the number of Trusts before the Assembly is elected.

According to the White Paper this would reduce the number of executive bodies in Wales from 19 to 14. (p 16)

Following the establishment of the Assembly it would be responsible for appointing members and monitoring the work of public bodies:

The Assembly's powers

Appointments

3.16 The Assembly will be responsible for making appointments to the Welsh public bodies that remain when it is set up, other than those operating under Royal Charter, where it may acquire these powers in due course. The Secretary of State is now solely responsible for making over 600 public appointments, and makes nearly 100 others jointly with other Secretaries of State. The Government's proposals will reduce this number. The Government is determined that all appointments should be made on merit, without bias and with strict regard to propriety. This is essential to restore public confidence in unelected bodies.

3.17 The Assembly's Standing Orders will have to comply strictly with the principles of open procedures and of appointments made on the basis of merit in accordance with the recommendations of the Nolan

⁶ For background see Research Paper no 96/72 *The Quango Debate*

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Committee. The Order in Council that established the Commissioner on Public Appointments will be amended so that he can monitor appointments made by the Assembly.

Monitoring the performance of public bodies in Wales

3.18 The Assembly will assume the Secretary of State's powers to issue directions to individual bodies, and to monitor their performance. It will be for the Assembly to agree targets and to discuss their corporate and operational or business plans with them. It will need to establish proper reporting and scrutiny arrangements. The Assembly will receive annual reports and accounts from the bodies for which it is responsible and will be able to question Chairmen and Chief Executives on them.

3.19 The Assembly will also be able to invite a wide range of other public bodies that operate in Wales to appear before it or its committees to give evidence. These are bodies whose decisions have important implications for Wales but which the Assembly will not fund or otherwise control: examples include the Health and Safety Executive, Equal Opportunities Commission, and the Post Office.

3.20 The Assembly will also have contacts with the utility regulators. At present the Secretary of State for Wales has some responsibilities for regulating the water industry in Wales, some of which have been delegated to the Director-General for Water Services, who is primarily responsible for price regulation and customer protection in Wales and England. The boundaries of the water companies are dictated by the course of natural watersheds, and so do not follow the boundary between Wales and England. In that context, the Government will examine how far functions in this area can practicably be delegated to the Assembly.

3.21 The Assembly will also be able to invite evidence from the office of Electricity Regulation, the office of Passenger Rail Franchising, the office of Telecommunications, the office of the National Lottery and the office of Gas Supply. The Government believes that the Assembly should be able to monitor the activities of these bodies in Wales and make its views known. However the bodies will remain accountable to Parliament.

3.22 The Assembly will inherit responsibilities for bodies and policy areas that are currently shared between the Secretary of State for Wales and other Ministers, particularly where such bodies cover Wales and England together. For example, the Environment Agency will be sponsored jointly by the Assembly - to whom the Agency will report in Wales - the Department of the Environment, Transport and the Regions, and the ministry of Agriculture, Fisheries and Food. The Assembly will need to develop effective working relationships with government departments in such cases.

The White Paper promised that the Assembly would be given "new powers" to restructure many of the remaining quangos where this was practicable to do so and that the Bill would "give the Assembly limited power to amend existing primary legislation" (para 3.23). The powers would extend only to the new economic development agency, the Welsh Tourist Board, Curriculum and Assessment Authority for Wales, Further Education Funding Council for Wales, Welsh Language Board, Agricultural Wages Committees, and statutory advisory boards, (other than the Local Government Boundary Commission for Wales) reporting solely to the Secretary of State for Wales. The Assembly would be able to transfer some or all of these bodies' functions to other public bodies in Wales, including local authorities and the Assembly (para 3.24).

Other bodies, such as those operating at arm's length from the government (Higher Education Funding Council for Wales) and those who exercise judicial or quasi-judicial functions (Valuation Tribunals), or those created by Royal Charter or Warrant (National Library of Wales) will not be subject to the Assembly's restructuring powers. (para 3.25). Annex B of the White Paper lists 81 public bodies responsible to the Secretary of State for Wales - 19 executive bodies, 36 NHS bodies, 19 advisory bodies, and 7 tribunals. The White Paper suggests that the Assembly would be able to review the provision of specialist advice to its Committees (3.26) and would be able to change the number of health authorities and trusts in

Wales once it takes over the Secretary of State's responsibilities for the NHS in Wales. (para 3.29). It will not have power to transfer the functions of health authorities and trusts to local government, but could transfer them to itself. The UK Government would retain responsibility for national standards and arrangements concerning education training and pay and conditions of NHS staff.

The Assembly would be required to have regard to the interest of local government in exercising its responsibilities for public bodies in Wales, and the White Paper envisage that "through this partnership with the Assembly Welsh local authorities will have a greater voice in the running of bodies that spend millions of pounds of taxpayers' money in providing local services. In addition, the restructuring of Tai Cymru's responsibilities will give local authorities a significantly enhanced role in coordinating the delivery of local housing strategies. (para 3.31). The White Paper does not consider the possibility that the Assembly's strategy with regard to quangos might differ from that of local authorities and does not give local government formal powers of appointments to public bodies, or to be formally consulted.

H: Financial arrangements

The White Paper noted that the Assembly would take responsibility for virtually all the Welsh Office's budget of £7 billion and that the Secretary of State would remain responsible for negotiating for Wales in the Government's Public Expenditure Survey. The Assembly would be accountable for the control and management of the budget and would meet its own administrative costs from that budget. Background on the existing financial arrangements and the Barnett formula is given in Research Paper 97/78 *Public Expenditure in Scotland and Wales*. The White Paper confirms that this formula would continue to operate after the establishment of the Assembly. Annex D of the White Paper gave further detail on the proposed arrangements:

Annex D: Funding the Assembly

The present arrangements

D.1 The Secretary of State for Wales is responsible for a little over half of general government expenditure in Wales. Most expenditure within his or her responsibility makes up the Welsh Block.

D.2 The Block arrangements serve two purposes. They give the Secretary of State freedom to determine his own spending priorities, since he can allocate resources to his various programmes as he decides. They also reduce the extent to which the size of the Welsh budget is an issue in the annual Public Expenditure Survey process, since changes to the size of the Block are largely determined by the application of a formula rather than by negotiation within Government.

D.3 The Block formula (known as the "Barnett" formula) works as follows. In each year's Public Expenditure Survey there are changes in provision for comparable spending programmes in England, such as health and education, which in Wales are the responsibility of the Secretary of State for Wales. These changes are multiplied by the percentage which Wales' population represents of the population of England, to give the change in the Welsh Block. The present percentage is 6.02 per cent, based on the 1991 Census. The total effect of the changes in England therefore largely determines the overall changes to the plans for the Welsh Block. To give a highly simplified example, if the Government decides to increase or decrease spending by £100 million on relevant spending programmes in England, there will be an increase or decrease of £6.02 million in the Welsh Block.

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D.4 In 1997-98 planned provision for the Block, including central government support for local authorities, is £6.636 billion. This is made up as follows:

- almost half the amount (46 per cent) is accounted for by local authority spending, £2.567 billion on revenue and £465 million on capital;
- one-third of the Block, £2.353 billion, is spent on health and personal social services;
- £728 million is spent by the 19 executive quangos in Wales;
- the remaining £524 million is spent directly by the Welsh office, mostly on trunk roads, regional assistance, training and the cost of running the Welsh Office itself (£72 million in 1997-98).

D.5 Agriculture spending in Wales (which includes fisheries and food) is part of the responsibility of the Secretary of State. This spending is not in the Block and is not therefore covered by the Barnett formula. This is because the amount which needs to be spent in Wales, mostly in the form of market support measures, is determined very largely by UK and European Union policies. The Secretary of State's planned spending on agriculture in 1997-98 is £258 million.

The new arrangements

D.6 The Government proposes that the financial arrangements for the Assembly will largely replicate the existing system.

D.7 The changes to the size of the Welsh Block will largely be determined by the Barnett formula. The Secretary of State for Wales will decide an appropriate sum for the running costs of his own office, to carry out his continuing functions. The remainder will be available to the Assembly as its Block.

D.8 The Secretary of State will be under a duty to notify the Assembly of the amount of its Block for the year, the way in which the formula has been applied and the amount which he is allocating to cover the cost of his own functions.

D.9 Within its Block the Assembly will set and manage its own spending priorities. The Assembly will conduct the process of allocating resources in an open and transparent way: it will be required to publish a report each year setting out clearly the detailed financial allocations that it has made, together with its priorities and objectives. The Government has made clear that it intends to keep a very tight rein on public expenditure, so the Assembly will have hard choices to make. The greater openness and discussion that the Assembly will bring to these important spending decisions will represent a major advance on present arrangements.

D.10 In addition, the Assembly will receive an agriculture allocation to cover spending determined by the Common Agricultural Policy, together with Hill livestock Compensatory Allowances: the Assembly will not be able to vary spending on these schemes. The amount of this funding for agriculture will be determined separately by the UK Government and the European Commission, as happens at present. This spending on agriculture will continue to be outside the Welsh Block but will be within the Assembly's budget, and will not be decided by the formula which applies to the Block. The Government will bring other domestic funding for agriculture within the Block.

D.11 Decisions taken by the Assembly will sometimes have financial implications for government departments. Similarly, government departments may on occasion implement policies which will lead to additional costs for the Assembly. Generally, it will be right, in line with long-standing conventions, for the body whose decision leads to higher or extra costs to meet those costs. This general rule will continue to apply between the Assembly and government departments. Many of the UK Government's decisions will result in automatic adjustments for Wales through the Barnett formula.

The Block formula

D.12 Annual changes to the Welsh Block will be calculated by the population-based formula used at the moment. These arrangements based on the Block and formula have worked in practice, producing fair settlements for Wales in annual public expenditure rounds and allowing the Secretary of State for Wales to take his spending decisions in accordance with Welsh needs and priorities. The Government will publish the rules under which the Barnett formula currently operates, and the purely technical changes to them that need to be made from time to time. The formula will be updated from time to time to take account of population changes. Any other changes to the formula will only be on the basis of a full study of relevant spending needs, to be carried forward in consultation with the Assembly.

The Secretary of State's role

D.13 The Secretary of State will continue to share the Government's collective responsibility for public expenditure and to participate in settling the Government's spending priorities. Informed by the views of the Assembly and circumstances in Wales, he will - as now - be able to contribute to collective discussion of those English expenditure programmes which, through the formula arrangements, affect the size of the Welsh Block.

D.14 The Secretary of State will provide the channel through which the Assembly can conduct any discussions it might wish to have with the Government on financial matters. Thus, for example, if it has any concerns about the detailed operation of the Block formula, the Assembly will be able to make representations to him.

Office of Her Majesty's Chief Inspector of Schools in Wales

D.15 The Assembly will become responsible for funding this non-Ministerial Department.

Treasury consents

D.16 Various Acts of Parliament require the Secretary of State or Welsh public bodies to obtain the Treasury's consent before they may take certain actions. The Bill will make provision to remove most legal requirements for the Assembly itself to obtain the Treasury's consent. Where appropriate, the Bill will provide for public bodies in Wales that are controlled solely by the Assembly to obtain its consent, rather than that of the Treasury.

I: Electoral Arrangements for the Welsh Assembly

The electorate for the Assembly would be the local government electorate and so will include citizens of other EU states and peers, but exclude voters overseas. (para 4.2). The Assembly would have 60 members, 40 to be elected by "First Past the Post" (FPTP) for constituencies identical to the parliamentary constituencies, and 20 to be elected under the Additional Member System to be used also for the Scottish Parliament, and based on the proportional representation systems used in Germany and New Zealand⁷. Annex 3 of the White Paper described the detailed arrangements and confirms that four Additional Members will be elected from each of the European Parliamentary constituencies in Wales; Annex C explained how the process will work:

C.2 The four additional members from each European constituency will be identified by:

- counting the number of votes cast for each party list for the area;
- calculating the number of constituency seats won by each party throughout the area;

⁷ See Research Paper 97/26 *Voting Systems - The Alternatives* for background.

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- dividing the number of each party's party list votes by the number of constituency seats won by that party **plus one**. The party with the highest number of votes after that calculation gains the first additional member;
- repeating the calculation for the second to fourth additional members, but in each case dividing the party list vote by the number of constituency seats won, **plus one, plus any additional member seats allocated in previous rounds**

The system ensures that all parties which command a significant level of support across Wales will win some seats in the Assembly.

An illustration

C.3 Using figures from the 1997 General Election, **and assuming that voters cast their second votes for the parties of the constituency candidates they supported**, it is possible to illustrate how the system would work. (This is not a prediction of how representation for this part of Wales will look In the Assembly: it is important to remember that voters will be able to vote for candidates from one party and use their second vote to support a different party's list.)

Mid and West Wales

(8 constituencies plus 4 additional members = 12 seats)

Constituencies won on 1 May 1997: Labour 4, Liberal Democrats 2, Plaid Cymru 2, Conservatives 0

	<i>Lab</i>	<i>Con</i>	<i>PC</i>	<i>LibDem</i>	<i>AM Result</i>
Party Vote*	116,151	63,769	61,777	56,479	
1 st AM	÷5=23,230	÷1=63,769	÷3=20,592	÷3=18,826	Con win
2 nd AM	÷5=23,230	÷2=31,884	÷3=20,592	÷3=18,826	Con win
3 rd AM	÷5=23,230	÷3=21,256	÷3=20,592	÷3=18,826	Lab win
4 th AM	÷6=19,358	÷3=21,256	÷3=20,592	÷3=18,826	Con win
Constituencies	4	0	2	2	
Additional Members	1	3	0	0	
Total representation	5	3	2	2	

*i.e. total of votes cast for each party's candidates in constituency elections. In practice, the party vote total is likely to differ from the constituency candidates total as electors will be free to support candidates from one party but support another party with their second vote.

Representing all parts of Wales

C.4 The Government's proposals mean that the different parts of Wales will be fairly represented in the Assembly:

European constituency (Parliamentary constituencies)	Proportion of Welsh electorate	Number and proportion of Assembly seats
– North Wales (Ynys Mon, Caernarfon, Conwy, Clwyd West, Vale of Clwyd, Clwyd South, Delyn, Alyn and Deeside, Wrexham)	21.6%	13 (21.7%)
– Mid and West Wales (Meirionnydd Nant Conwy, Ceredigion, Preseli Pembrokeshire, Carmarthen West and South Pembrokeshire, Carmarthen East and Dinefwr, Llanelli, Montgomeryshire, Brecon and Radnorshire)	18.2%	12 (20%)
– South Wales West (Gower, Swansea East, Swansea West, Neath, Aberavon, Bridgend, Ogmore)	17.9%	11 (18.3%)
– South Wales Central (Vale of Glamorgan, Pontypridd, Rhondda, Cynon Valley, Cardiff North, Cardiff West, Cardiff Central, Cardiff South and Penarth)	21.6%	12 (20%)
– South Wales East (Newport East, Newport West, Monmouth, Torfaen, Islwyn, Caerphilly, Blaenau Gwent, Merthyr Tydfil and Rhymney)	20.6%	12 (20%)

All parties would be able to nominate candidates both for direct election from the constituencies and as an additional member, but a candidate would not be permitted to appear on the AM list in more than one European Parliamentary constituency (EPC). MPs, MEPs, councillors, ministers of religion and nonjudicial Members of the House of Lords will be eligible as candidates (c.7) so a dual mandate will be possible and once elected will serve a fixed term of four years with casual vacancies filled by by-elections. Where an AM is concerned the party which that departing Member represents will nominate a new Member - the first available candidate from the party's published list for the EPC at the last election. The White Paper noted "Regardless of how they are elected, all members of the Assembly will be of equal standing" (para 46). The Assembly would also not be able to dissolve itself before the end of its four year fixed term, (para 48) following a local government model and the first elections are planned for 6th May 1999 to coincide with Welsh county and county borough elections.

J: *The Operation of the Assembly*

The White Paper proposed that the overall political direction of Assembly would be provided by its Leader, elected by the whole Assembly who will chair an Executive Committee (EC). The other members of the EC will be the leaders of the various subject committees. The Assembly would determine the number and size of these committees, and the Bill would require the membership of subject committees to reflect the balance of political parties in the Assembly as a whole , (para 4.19) reflecting again a local government model. Chairpersons to these committees will be elected by the Assembly and will reflect the overall political

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balance. In addition each subject committee will elect its own leader, usually a member of the majority party in the Assembly who will provide political direction for the committee, (para 4.19). The Bill would permit the EC to be drawn from members of a single party and to meet in private. The Leader of the Assembly "will however be subject to regular questioning on matters of political significance across the whole range of the Assembly's work", (para 4.15). in an attempt to replicate the role of the Prime Minister at Westminster. Members of the Assembly whose job would be "demanding and full-time", (para 4.46) would receive a salary set initially by the Senior Salaries Review Board, with additional amounts for the Leader of the Assembly and leaders of subject committees. Expenses for members would be in accordance with an Assembly scheme to be approved by the Secretary of State, (para 4.46).

The Bill would also require the establishment of regional committees, with at least one for North Wales. These will be advisory only, (para 4.20). Before the Assembly is established an all party Commission would be appointed to draw up its initial Standing Orders, subject to later amendment by the Assembly, (para 4.12). The Bill will specify the principles on which the SOs will be based to ensure openness and accountability, (para 4.28). However, the Government "will ensure that Standing Orders make provision for emergency decisions, and provide for the Assembly to question later any such actions under this procedure", (para 4.21).

All secondary legislation made by the Assembly would be known as an Assembly Order. Further detail was given in Chapter 4:

Secondary legislation

4.22 Subject committees and the Executive Committee will be responsible for the preparation, and submission to the Assembly for debate and approval, of secondary legislation. All secondary legislation made by the Assembly will be known as an Assembly Order. The Bill will provide that draft Assembly Orders must be laid before the Assembly after the relevant committee has agreed to it. It will be open to the Assembly to approve the draft Assembly Order or to reject it.

What is secondary legislation?

At the moment, Orders, rules and regulations fill in the details of the framework set in Acts of Parliament. Together, they are known as secondary legislation. Most secondary legislation is controlled by Parliament. There is a joint committee of both Houses of Parliament which scrutinises most secondary legislation and draws attention to inappropriate drafting or use of powers.

Some Orders, rules and regulations require the approval of both the House Of Commons and the House of Lords ("Affirmative Resolution Procedure"). This Procedure usually applies only where the maximum of Parliamentary supervision of a particular piece of secondary legislation is likely to be required.

The majority take effect and remain in force unless either House of Parliament, within a specified period passes a resolution annulling them ("Negative Resolution Procedure"). Very few pieces of secondary legislation are debated under this procedure.

Some Orders, in particular Commencement Orders which set the date(s) when new Acts of parliament come into effect are not subject to either Procedure and are not controlled by Parliament.

Secondary legislation is concerned with the details of government policy, and is necessary to implement major decisions in many Policy areas. For instance, in recent years; the Secretary Of State for Wales has signed into law regulations vital to such areas as the National Curriculum in Wales, the major restructuring of Welsh local government and the routes of new trunk roads.

Secondary legislation can also be used in cases of urgency. For instance, following the 1996 'Sea Empress' oil spill in Pembrokeshire, the Secretary of State introduced emergency measures to protect public health.

All of these and many other powers would in future be exercised by the Assembly.

4.23 The Government's proposals imply a far greater degree of democratic scrutiny of secondary legislation affecting Wales than is possible now. The Assembly's subject committees will be able to consider in detail and amend proposed Orders, and the whole Assembly will have the chance to approve or reject each Assembly Order. In addition, subject committees will be able, in appropriate cases, to consult on draft Orders or take expert evidence on them. Once approved by the Assembly, the presiding member of the Assembly will sign Assembly Orders into law.

4.24 Within its areas of responsibility, the Assembly will be able to revoke, replace or amend secondary legislation which is in force, just as the Secretary of State may do now.

4.25 The Bill establishing the Assembly will contain a provision that the Welsh and English versions of Assembly Orders are to be regarded in legal proceedings as of equal validity and effect.

As noted in the White Paper existing secondary legislation increases considerably in size, scope and complexity. Presumably a future government of a different political party than that governing the Welsh Assembly might construct primary new legislation to reduce the scope for diversity in secondary legislation. A secondary legislation scrutiny committee will be appointed by the Assembly to be chaired by a member of a minority party; draft Assembly orders would be scrutinised by this Committee to ensure the Assembly has the necessary powers (para 4.27).

The Bill would require the Assembly to produce clear rules on registration and disclosure of its Members' outside interest, (para 4.25) and committees will be subject to Question Time by the Assembly, and to providing Written Answers to questions, (para 4.30). The Assembly would be required to meet in public (except for the EC) and other limited cases (for example in relation to commercially sensitive decision), and the proposed UK Freedom of Information Act would extend to the Assembly, (para 4.31). Public proceedings would be fully bilingual (para 4.32). The Bill would require an Assembly Audit Committee to be chaired by a member of a minority political party. The Head of the Assembly's permanent staff would be designated as the Assembly's Accounting Officer, (para 4.35). an Auditor General for Wales would be appointed by Her Majesty the Queen to audit the Assembly's accounts and those of its sponsored bodies (except NHS bodies which the Audit Commission will continue its current function). He will be independent of the Assembly and supported by the UK National Audit Office, (para 4.37). The PAC would continue to question Accounting Offices in Wales about the exercise of their functions, but it would be open to the PAC to decide to delegate the task of taking evidence to the Audit Committee. The Bill would also provide for the UK Parliamentary Commissioner for Administration to investigate complaints about the way in which the Assembly exercised its powers, (para 4.39).

Assembly officials would be members of the Home Civil Service and be subject to the principles of the Civil Service Code⁸. The staff would be selected and promoted on merit, and most Welsh Office staff would transfer to the Welsh Assembly (para 4.40-4.41). Transferred staff would retain their existing terms and conditions of service but "officials"

⁸ See Research Paper no 97/5 *The Accountability Debate: Codes of Guidance and Questions of Procedure for Ministers* for background.

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style of working will need to adapt to meet the needs of committees which contain members of all political parties represented in the Assembly." (para 4.42)

The Assembly would be based in Cardiff, (para 4.44) and the estimated costs of establishing it were set out as follows:

Costs of establishing and running the Assembly

4.45 The costs of establishing the Assembly will be met from the Welsh Block, as it emerges from the Comprehensive Spending Review. They will comprise:

- **one-off costs for acquiring and equipping a building for the Assembly.** The Government estimates that, for the sites which it is considering, the costs would fall in the range of £12 million to £17 million;
- **annual administrative costs of the Assembly, including holding elections.** The Government estimates that the average annual running costs of the Assembly will be in the range £15 million to £20 million, or around £6 for each person in Wales, This would be in addition to the running costs of the Welsh office, which are around £72 million a year. These figures assume up to 100 additional staff, and include the cost of the Secretary of State for Wales' office.

K: The White Paper - a critique

The White Paper has some clear similarities with the scheme set out in the *Wales Act 1978*. The Assembly is to be given mainly executive powers (but with new powers over the restructuring of quangos) and is to operate on local government lines, with subject committees for all the areas for which the Assembly would be responsible. Like the 1978 model it will have power to make secondary legislation.

The White Paper noted that the executive responsibility of the Secretary of State will be listed in the Bill and transferred to the Welsh Assembly, (para 1.7), presumably meaning that, as in 1978, specific powers will be enumerated making it difficult to gain an overall picture of what is being devolved. As the Constitution Unit Report⁹ noted, detailed identification of the powers to be transferred is already the method used for executive decentralisation when powers are transferred to the Welsh Office by Order in Council under the *Ministers of the Crown Act 1975*. "If the Assembly as a statutory body was to act in a particular subject area in place of Ministers, it could only do so by taking over their powers as already enacted or by being given new powers, similarly particularised and circumscribed" (para 57). However, the statutes have not necessarily been drafted with devolution in mind, and the Assembly's power to make secondary legislation will therefore depend on the nature of the powers devolved. No set of principle has yet been applied in determining the extent of secondary legislation when powers are provided in a legislative scheme. The subject areas to be devolved in the White Paper broadly correspond to those in the 1978 Act which had also devolved responsibility for the WDA, Land Authority for Wales and Development Board for Rural Wales to the Assembly. Police and broadcasting policy were not devolved under the 1978 Act. The role

⁹ *An Assembly for Wales*, 1996.

of the Secretary of State was broadly similar to that proposed in the White Paper, and his accountability to Parliament was never really tested under the 1978 model.

The 1978 Act contained override and intervention powers for the Secretary of State. What the Bill would provide in this area was unclear. The White Paper stated that disputes would be referred to the Law Officers (Attorney General and Solicitor General) who would continue to serve both Wales and England, but with final decisions with the Judicial Committee of the Privy Council, (para 3.43). The 1978 Act contained a provision (s.70) that the Attorney General would bring proceedings against the Assembly for a declaration as to whether it had failed to discharge a duty or had done or was proposing to do anything beyond its powers.

There are other similarities with the 1978 Act; the Assembly is for a fixed four year term with no provision for early dissolution, an Executive Committee consisting of the leaders of the subject committee in effect is to control the Assembly, and as in 1978 party balance rules do not apply to it. Assembly staff would be civil servants. However, the 1978 Act, unlike the White Paper, disqualified MPs from membership as a result of a Lords amendment¹⁰ and used the FPTP electoral system to create an Assembly of 80 members. The 1978 Act permitted the functions of some public bodies to be transferred to the Assembly but not all the Secretary of State's powers of appointments were to be transferred. The White Paper noted that appointments to public bodies under Royal Charter "may" be acquired by the Assembly in due course, (para 3.16). As in the White Paper the Assembly was given no taxing powers, and received its budget in the form of a block grant agreed between the Secretary of State and Assembly with Treasury approval.

The Independent Constitution Unit expressed concerns in its 1996 report about an executive model of devolution as leaving the Welsh Assembly dependent on the degree of discretion conferred by the Westminster Parliament. The separation between legislative schemes prepared in Westminster and administered in Wales might cause practical difficulties of policy implementation. It voiced worries about the local government model of executive power as unwieldy. It concluded however that "because of the ambivalence in Wales about an Assembly, executive devolution may be a necessary first step to get the devolution process started".(para 132).

Following the publication of the White Paper the Constitution Unit published a *Commentary on the Welsh White Paper* which was critical of the lack of legislative powers for the Welsh Assembly and its dependence on a block grant from the UK Government.. It considered that "Executive devolution is unlikely to be stable or long lasting, because it is so heavily dependent on co-operation between Cardiff and Westminster"(p.1).

The position of the Secretary of State was seen as pivotal: "because the Assembly has no legislative power the Secretary of State will be needed to try to ensure that laws passed at Westminster meet the needs of Wales. He will have to work closely with the Assembly, holding regular meetings with its executive; and the White Paper says that (unlike his Scottish counterpart) he will be able to attend the Assembly and participate in its debates. The

¹⁰ on 6th June 1978.

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Scottish Secretary may be little more than a go between; but the Welsh secretary will be more like a governor general." (p.2).

The Constitution Unit also criticised the local government model adopted for the Welsh Assembly. It approved the creation of the Executive Committee as an improvement on the shadowy status of the ruling party group found in local authorities, but thought "there is a risk that the local government model will import many undesirable local government practices. A series of official reports - have mounted a sustained critique of the local government committee system as a relic from the nineteenth century. The system is cumbersome, with the potential for the same issue to be referred to several different committees; power is diffused, so that it is difficult to see where accountability lies; and there is a blurring of the executive and representative roles, to the disadvantage of both. Even the apparent openness and power sharing suggested by the multi-party committees is a bit of a smoke screen, since if a single party has a majority, the real decisions are often taken at party meetings held behind closed doors, and then forced through the committees with little serious discussion, and no chance that they will altered." The Unit also wondered whether the assumption in the White Paper that the members of the Assembly would be full-time was likely to be accurate, since in Australia and Canada the smaller provincial parliaments sit for only 50 to 60 years a year.

The Unit was concerned that there should not be an over-reaction against quangos, many of which were established to hive off functions to independent bodies or to bring in specialist expertise. "It is going counter to current wisdom to encourage the Assembly to bring too many public services under its own control, when recent experience in local and central government points to the Assembly having a strategic and co-ordinating rather than a service delivery role."

Finally the Unit considered that Wales was overrepresented at Westminster, and this would be less justifiable after devolution; the number of Welsh seats would need to be reviewed at the same time as the Scottish seats.(p5). A rolling devolution scheme, allowing for the further transfer of executive and legislative power as in the *Northern Ireland Constitution Act 1973*, was a better model for Wales.

Professor Keith Patchett¹¹ noted that the proposals in the Labour policy documents before the general election would weaken the direct Welsh input to the development of central UK Government policy, since an executive Assembly would not be part of the Government, and the Secretary of State would be representing the interests of the Westminster Government in dealings with the Assembly. An executive Assembly would be poorly placed to influence drafting of primary legislation.

L: The passage of the Referendums (Scotland and Wales) Bill

Research Papers 97/61 *The Referendums (Scotland and Wales) Bill* and 97/92 *Scotland and Devolution* examine the content and progress of the 1997 Act. The most significant amendment in relation to Wales was the Lords amendment at Committee Stage to ensure that

¹¹ "Assembly Focus: 2 Power and Politics" *Agenda* Winter 1996/97 See Research Paper 97/131 for further details

the referendum in Wales was held on the same date as Scotland¹². This was subsequently reversed by the Commons¹³.

The question of a threshold for the referendum vote was raised, but Ministers were concerned to make clear that no "fancy franchises" were acceptable. Lord Sewel for the Government noted that the Labour manifesto of 1997 had promised a simple majority¹⁴: but Lord Mackay of Ardbrecknish for the Opposition, posed the question "If only 10 per cent of the electorate voted, with 51 per cent in favour, would the Government really go ahead with a Welsh Assembly?"¹⁵

A free booklet was distributed to households in Wales from 26 August summarising the White Paper at a cost of £160,000¹⁶. No Government funds had been given to the Yes or No campaigns. The Government set up an Information Line to inform the electorate about the devolution plans¹⁷.

In June 1997 the Labour MP Llew Smith alleged that the Welsh Secretary of State Ron Davies had threatened him with expulsion from the party if he campaigned against devolution in the referendum¹⁸. These allegations were denied by Tony Blair in the Commons on 25 June but not to the satisfaction of Llew Smith. Over the summer there were press reports of discontent within the Welsh Labour party over the devolution policy. Other Welsh Labour MPs: Ray Powell, Denzil Davies, Allan Rogers, Ted Rowlands and Alan Williams all expressed reservations about the Government policy on devolution and there were wider tensions within the Welsh Labour Party. In the last week before the referendum Sir Ray Powell, Allan Rogers and Alan Williams announced that they would vote No¹⁹. Ted Rowlands said he would vote Yes²⁰. There were also some Conservatives who favoured devolution, including a former MEP, Peter Price²¹. Sir Wyn Roberts,²² former Minister of State at the Welsh Office, argued that the Welsh Assembly should have a Cabinet-type system with ministers accepting individual responsibility whilst not encouraging voters to vote Yes.

The Vote No campaign was launched on 22 July 1997, and the main financial backer was revealed as Julian Hodge, a resident of the Channel Isles²³. Viscount Tonyandy, the former Speaker, was President of the organisation. Following the publication of the White Paper, Plaid Cymru decided on 26 July to campaign for a Yes vote through the Yes for Wales

¹² HL Deb vol 581 3/7/97 c351

¹³ HC Deb vol 299 30/7/97 c422

¹⁴ HC Deb 21/7/97 vol 581c1272

¹⁵ c 1269

¹⁶ Welsh Office 26/8/97 *Ministers Launch Household Version of Devolution White Paper*

¹⁷ Welsh Office PN 6/8/97

¹⁸ *Western Mail* 26/6/97 "Flowers of dissent rising higher"

¹⁹ *Western Mail* 10/9/97 "The personal touch crucial in the run-up"

²⁰ *Times* 16/9/97

²¹ *Western Mail* 10/9/97 "Labour rebels Friends of Thatcher"

²² Now Lord Roberts of Conwy

²³ *Financial Times* 22/7/97 "Money speaks against assembly"

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Organisation²⁴. On 29 August the Liberal Democrats, Plaid Cymru, and the Wales Green Party issued a joint declaration supporting a Welsh Assembly²⁵.

Campaigning was suspended for 6 days following the death of Diana, Princess of Wales, and then was overshadowed by the devolution referendum on Scotland. Polling for the Welsh referendum took place on 18th September 1997 and the result was very close: - 50.3% (559,419) voted for a Welsh Assembly and 49.72% (552,698) voted against. The turnout was 50.12%. Full details are given in the Appendix and in an accompanying Research Paper.²⁶ A number of commentators drew attention to the fact that only 25% of the Welsh electorate had positively supported devolution. There appeared to be a significant East-West split in Wales, with the eastern half of the country, traditionally more associated with migration from England, being more sceptical of the Welsh Assembly.

The narrow majority on a low turnout was seen by commentators as endangering the legitimacy of the Welsh Assembly. Peter Riddell noted that while in Scotland three fifths of the electorate voted and three quarters of those supported a Scottish Parliament, in Wales only half of the electorate voted and a half of those supported an Assembly. On a rough calculation 45 per cent of the Scottish electorate voted Yes, compared to 25 per cent of the Welsh electorate²⁷. Tony Blair was quoted as saying that it was important to respond to fears that were expressed by the people²⁸. Ron Davies noted "eighteen years ago the proposal for devolution was defeated by four to one. Tonight's Yes vote is a stunning turn around and shows that the people of Wales want the Government to further the interests of Wales". In a Parliamentary Answer in the Lords, Lord Williams of Mostyn, for the Government said that the Government "will now proceed with its commitment to the people of Wales, while encouraging further views and suggestions on how those proposals can best be developed to create an efficient and effective Assembly"²⁹

M: Reactions to the White Paper

In the Commons debate on the White Paper on 25 July 1997³⁰ Ron Davies emphasised the potential economic benefits of the Welsh Assembly. Michael Ancram, for the Opposition, drew attention to the potential cost of the assembly which he estimated as £100m over the first four year term (c1135) and to the power given the Assembly to enhance the distribution of revenue support grant to local authorities (c1138). The Labour MP Alan Williams argued that a Welsh Assembly would not have prevented the economic devastation of Wales in the 1980s since central economic policy remained with the UK Government, and that if the Conservative Government had used primary legislation, (instead of secondary), to impose the detailed implementation of poll tax the Welsh Assembly would not have been able to resist that policy. He also considered that the White Paper did not propose enough restructuring and was not active enough on the abolition of quangos (c1145), Another critic, Denzil

²⁴ *Western Mail* 28/7/97 "Wigley offers Plaid supporters to campaign for assembly"

²⁵ *Western Mail* 30/8/97 "Lib Dems write in Yes Campaign" Joint Declaration on Devolution Referendum 29/8/97

²⁶ Research Paper 97/113 *Results of Devolution Referendums (1979 and 1997)*

²⁷ *Times* 20/9/97 "Narrow escape showed force ministers to rethink their plans"

²⁸ *Times* 20/9/97

²⁹ HL Deb. vol 582 16/10/97 c.199W

³⁰ HC Deb. vol 298 c.1119-1192

Davies considered that the proposals would eventually lead to a semi-federal UK (c 1152) and doubted whether the Barnett Formula would survive (c 1152). Ted Rowlands also argued that not enough had been done to reform the quango state and that the past success of the Secretary of State in attracting more investment was endangered by the proposals (c1169). Allan Rogers was concerned that insufficient powers had been restored to local government (c 1174).

Richard Livsey for the Liberal Democrats welcomed the White Paper but reiterated the party policy in favour of giving the Assembly powers to make primary legislation and to vary taxes (c 1147). The omission of broadcasting from the Welsh Assembly remit was questioned (c 1147) and he argued that an 80 seat Assembly with 40 FPTP and 40 elected by AM would be more proportional (c 1148).

Iuean Wyn Jones for Plaid Cymru broadly welcomed the White Paper and warned that Wales would be left behind by the rest of the UK if it did not accept devolved government (c1157). A number of Conservative MPs expressed the opinion that the "whole devolution programme presupposed the passive acquiescence of the English" (Owen Paterson c1165). For the Conservatives, Nigel Evans, floated the possibility that the Secretary of State could also hold the office of Leader in the Assembly (c 1188) and queried the resulting lines of accountability (c 1188).

The commentator, Simon Jenkins³¹, drew attention to the lack of legislative and fiscal power given the Welsh Assembly in contrast with the Scottish Parliament, noting that the Assembly could not change council tax rates, or business rates. However he supported the Assembly as an "important new pluralism in British democracy, the opposition of region to centre, rather than of party to government". Leighton Andrews, Deputy convenor of Yes for Wales drew attention to the need of Welsh politics to reflect social and cultural changes in Wales and to the hope that an Assembly would help deepen pluralism in politics and civil society³². A number of commentators have noted that the issue of the Welsh language had been largely addressed by S4C and the Welsh Language Board³³, and was no longer so divisive as in 1978/79.

The Confederation of British Industry Wales adopted a neutral stance but expressed concerns about the cost, and the need for business representation in the Assembly. It wished to have a statutory limit on the cost of the Assembly set at a maximum of 1.3 per cent of the Welsh budget³⁴. On 29 August Ron Davies published a business manifesto for the Assembly proposing that business representatives would be coopted out to industrial and economic committees of the Assembly³⁵. Brian Morgan, former chief economist at the WDA supported devolution, arguing that an Assembly would provide greater focus on economic development and coordinate the education and training strategy for that development. He concluded that Wales had done poorly compared to Scotland in accessing its share of public sector

³¹ *Times* 17/9/97 "A dragon not St David"

³² *New Statesman* 4/7/97 "The end of the Boyo culture is nigh"

³³ *Guardian* 8/9/97 "A kinder, more gentle nationalism for Wales"

³⁴ *Western Mail* 27/8/97 "Business presents shopping list to ensure that its interests are reflected"

³⁵ *Guardian* 29/8/97 Business moved to Welsh Assembly

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expenditure in relation to its relative prosperity which argued for a powerful form of regional government³⁶. The *Western Mail*³⁷ noted that local government in Wales supported devolution now that the county council tier of local government had gone. Ron Davies called on 27 August for new types of candidates to be selected for the Assembly, with relevant experience and skills³⁸.

Press reports indicated that the Wales Labour Party executive might achieve central control over candidates to the Assembly through the use of an approved list³⁹.

Ron Davies also clarified the White Paper proposals on representation within the EU in a press statement on 11 September, emphasising that the proposals for Wales and Scotland were the same; and that there would be scope for executive members of the Assembly to speak on behalf of the UK delegation in the Council of Ministers with the promise that there would be a single UK line to be followed by Assembly, Scottish Parliament and Whitehall⁴⁰.

The Just Vote No campaign raised fears about potential conflicts between North and South Wales and that the Assembly might encroach on local government powers and finance. It was also concerned that the establishment of an Assembly would lead to the downgrading revision of the Barnett formula and a reduction in the number of Welsh MPs at Westminster⁴¹.

Tony Blair promised to retain the Barnett formula in pre-referendum campaigning⁴². However Robert Hazell from the Constitution Unit was quoted as saying that he was not sure whether it would survive scrutiny by a new government in the next century. An Institute of Welsh Affairs publication⁴³ argued that the Barnett formula had largely failed in its aim of reducing the disparity between England and Wales in the last twenty years. There were press reports of difficulties between the Secretary of State for Trade and Industry and the Scottish and Welsh Secretaries of State over a concordat on economic aid to the regions.⁴⁴

Jonathan Evans, Conservative spokesman on Welsh affairs, considered the White Paper proposal to refer any dispute about the exercise of the Assembly powers to the UK Law Officers as 'naïve' since in the event of a Conservative government at Westminster the legality of a decision would be judged by an Officer who was a member of a government of a different political persuasion from the Assembly.⁴⁵ Mr Evans has also been quoted as saying that the possibility of rejecting the Bill should not be discounted following a full Parliamentary debate.⁴⁶ The *Western Mail* also quoted Peter Hain as saying that the opponents of devolution had to accept that the people of Wales had made a decision that devolution should go ahead.

³⁶ *Western Mail* 10/9/97 "Potential for growth can be realised with correct targeting of budget billions"

³⁷ 10/9/97 "Councils go for it"

³⁸ *Western Mail* 27/8/97 "Assembly will create a new political culture"

³⁹ BBC News Website <http://www.bbc.co.uk/politics> 97/devolution

⁴⁰ Welsh Office PN 11.9.97 "Assembly would give Wales a better voice in Europe, says Ron Davies"

⁴¹ *Western Mail* 17/9/97 "20 questions we're all asking"

⁴² *Western Mail* 17/9/97 "No cut in spending for Wales, vows Blair"

⁴³ *The Economic impact of a Welsh Assembly*

⁴⁴ *Western Mail* 7/11/97 "Redwood to exploit 'the turf war over aid'"

⁴⁵ *Law Society Gazette* 3.9.97 "Dragon Power"

⁴⁶ *Western Mail* 29.9.97 "Warning to peers over Assembly"

Democratic Audit published *Devolution Votes :PR Elections in Scotland and Wales* in September 1997.⁴⁷ It contained simulations of elections based on AMS on polls conducted immediately after the 1997 election using two different scenarios; firstly that people would vote exactly as in the general election and secondly as if people would vote for local and regional candidates, using their second vote on the ballot paper. Labour was expected to have a majority in both scenarios, but in the second scenario Plaid Cymru was expected to gain seats, giving an Assembly with a Labour majority facing a multi-party opposition.

The Welsh Affairs Select Committee have begun an inquiry into the Government's devolution proposals but no evidence has yet been formally published. The Welsh Grand Committee met on 18 November to consider North Wales and the government's proposals for a Welsh Assembly.⁴⁸ Ron Davies emphasised the potentially inclusive nature of the Assembly but confirmed that no changes were planned to the electoral system outlined in the White Paper. He noted that with the advice he had received based on general and European parliament election, the system would be 'broadly proportional'.(c11) Peter Hain, junior Welsh Office minister, considered that there had been too defensive a reaction to the result of the Welsh referendum, arguing that there had been a 30 per cent swing in favour of devolution. It was necessary to continue campaigning and announced the establishment of a communications strategy group which would communicate to the whole of Wales the benefits which an Assembly would bring.(c36-39)⁴⁹

The Institute of Welsh Affairs published *Making the Assembly Work: Report of an IWA Constitution Working Party* on 25 November. It recommended an increase in the number of members to at least 80 to provide for an adequate number of subject and regional committees. It considered that the White Paper lacked clarity on whether it was establishing a Cabinet-based, or local government model, and recommended that the Executive Committee's position be more clearly distinguished from the subject committees, by appointing the Executive Committee from members of the majority party, rather than from the leaders of the subject committees. It also considered that the Bill should contain within it measures to provide for the further transfer of powers to Wales following the example of the *Northern Ireland Constitution Act 1973*.

⁴⁷ Democratic Audit paper no 12

⁴⁸ HC Deb WGC 18.11.97

⁴⁹ Peter Hain has advocated Alternative Vote for Westminster elections in *Times* 23.10.97 "We vote for a sensible alternative". The article did not comment on the use of AMS for the Assembly.

II The Government of Wales Bill⁵⁰

The Bill was published on 27 November. There are few changes of substance from the proposals in the White Paper. The Press Notice accompanying the Bill⁵¹ and the press pack defend the fact that there are no changes from the White Paper as being the proposals which 'were tested and endorsed in the referendum. The Government has no mandate to change the principles set out in the Bill.'

The Assembly is now named the *National Assembly of Wales* to reflect the belief that the Assembly will serve the whole of Wales. The Leader of the Executive Committee is to be known as the First Secretary. The Executive Committee will now be able to delegate functions to the First Secretary, who will take on more of an executive role than envisaged by the White Paper but the arrangements fall short of a Cabinet model. The Standing Orders for the Assembly will be drawn up by a statutory Commission provided for in the Bill. The running costs of the Assembly set out in the *Explanatory and Financial Memorandum* remain the same as in the White Paper.

The launch of the Bill was to a certain extent overshadowed by uncertainty over the future site of the Assembly. On 25 November Cardiff City council rejected a final offer of £3.5m by Ron Davies for Cardiff City Hall and at the press conference Mr Davies confirmed that the Government were now considering a range of different sites and that temporary accommodation might have to be used to ensure that the Assembly could meet in May 1999.

A: Reactions to the Bill

Michael Ancram, Constitutional Affairs spokesman for the Opposition, argued, in a speech on 29 November 1997,⁵² that the Bill did not guarantee Wales a strong voice within the UK and that the people of Wales would face a long period of uncertainty over the funding of public services, the position of minorities, and the stability of their system of government. He highlighted the risk of uncertainty for business of a potentially cumbersome method of decision-making. He stated that the Conservative party would take a constructive approach to the Bill and table appropriate amendments, in particular to assert the continued sovereignty of Westminster. The Conservatives would also reserve the option to press at a later date for a further referendum if genuine concerns remained about the legislation.

⁵⁰ Bill 88 of 1997/98

⁵¹ Welsh Office Press Notice 27.11.97 "Ron Davies welcomes the Government of Wales Bill"

⁵² *An Unsettled Bill for an Unsettled Nation* speech 29.11.97

The Liberal Democrats in Wales welcomed the Bill but indicated that they would be tabling amendments to increase the number of members, to give stronger legislative powers to the Assembly and to create a position of Prime Minister for Wales.⁵³

Plaid Cymru welcomed the Bill and the new name for the Assembly, but wanted to introduce a Cabinet structure, so that there was a group of people made clearly accountable for putting a programme. Elfyn Llwyd⁵⁴ said " the committees have a useful role to play, but they cannot be expected to provide the dynamism which would come from a Cabinet." Plaid Cymru were also concerned that the proposals did not affect quangos which were UK or GB based, but which also operated in Wales, and that the Bill did not offer details about any right of Assembly leaders to attend EU Council of Ministers meetings.

Ted Rowlands commented in the *Western Mail*⁵⁵ that it would be important to use the proceedings on the Bill to inform the electorate about the positive benefits, and considered that the role of the Secretary of State as set out in the White Paper was little more than that of a 'political and economic eunuch'. His role in attracting inward investment had to be preserved. He also queried the electoral system for the Assembly which he described as a hybrid, inciting the worst kind of competition and duplication between the Westminster and Assembly representatives.

The director of CBI Wales, Elizabeth Haywood, gave evidence to the Welsh Affairs Committee on 2 December 1997. According to the *Western Mail* she expressed concern that a local government style structure would not be able to make quick decisions, and commented that there was no economic imperative for establishing an Assembly. It was therefore essential for the Assembly to demonstrate its beneficial effect on business and economic development.

The Bill in detail

Aspects of the Bill are considered in detail below. *Notes on Clauses* from the Welsh Office have been deposited in the Library and are available in the Vote Office.

⁵³ Liberal Democrats press release 27.11.97 "Welsh Liberal Democrats welcome publication of Wales Bill - but will seek amendments."

⁵⁴ *Western Mail* 3.12.97 "CBI Wales casts eye over Assembly"

⁵⁵ *Western Mail* 27.11.97 "Choice to make on voting and venues"

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*B: Form of the Bill and Commons Proceedings*⁵⁶

The *Government of Wales Bill* is large, comprising 149 clauses and 14 schedules over 129 pages,⁵⁷ and, with the forthcoming bill on Scottish devolution, is one of the central planks of the government's legislative programme for this session.⁵⁸ The size and significance of the Bill means that the manner of its proposed Parliamentary proceedings will be of significance to its prospects of successful enactment.

The Bill is due to have its Commons second reading in a single day, on 8 December. This compares with the single day given to the second reading of the *Wales Bill* in December 1977 (and the *Scotland Bill* the previous day) although the second reading of the preceding session's *Scotland and Wales Bill* lasted 4 days in December 1976.⁵⁹

As a Bill which is presumably to be regarded as one of 'first class constitutional importance', the committee stage would, if existing practice were followed, be taken entirely on the floor of the House rather than wholly or partly in standing committee 'upstairs'. The theory and practice of this 'convention' is considered in more detail in Research Paper 97/53, *The Commons committee stage of 'constitutional' bills*, 20.5.97. There was speculation before, during and since the general election that the Government may seek to minimise potential difficulties in both Houses by not following such 'conventions' in order to enact its significant programme of constitutional legislation in this Parliament.⁶⁰ It was even thought by some that its 'modernisation' programme, to be set in train at the outset of this Parliament, was designed in part to institute new procedures or practices which would smooth the passage of likely contentious legislation.⁶¹

The Modernisation Committee, which reported on 29 July (two days before the summer recess), did indeed examine the committee stage of 'constitutional' bills, but decided to propose no immediate action on this matter, but said that it would return to it in due course.⁶² It emphasised that there was no agreed definition of a 'bill of first class constitutional importance', and that technically such bills were no different from any other bill. The Committee did accept that there were two "two firmly held and contrary views" on the treatment of such bills, either that the Floor of the House committee stage practice should continue, so that all Members could have the opportunity of participating in consideration of proposals which could affect the powers of Parliament itself (para 78), or that, while matters

⁵⁶ A list of the order-making powers contained in the Bill is set out in the appendix to the companion paper, RP/13

⁵⁷ *Notes on clauses* are available in the Vote Office. There had been earlier speculation that the Government may have produced 'framework' devolution bills, that is relatively brief primary legislation with significant order-making provisions to 'flesh out' the detail of the schemes in Scotland and Wales, perhaps by way of new forms of legislative procedure akin, say, to 'deregulation order' procedure.

⁵⁸ The Bill contains, as part of the devolution scheme for Wales, significant provisions on public bodies in Wales

⁵⁹ For further detail on the Parliamentary proceedings on these Bills, see chapter VI of Research Paper 97/97, *Time spent on Government Bills of constitutional significance since 1945*, 1.8.97

⁶⁰ See further on the Parliamentary passage of constitutional legislation in Research Paper 97/97.

⁶¹ On Commons modernisation, see Research Paper 97/107.

⁶² *The legislative process*, First report of the select committee on the modernisation of the House, HC 190 of 1997-98, July 1997

of constitutional principle be determined in this way, "detailed and technical issues" should be better dealt with in a committee-type forum (para 79).

The report concluded that "whilst we see no reason why a programme for the passage of such a bill could not be agreed, if agreement were impossible, the Government of the day would presumably feel obliged to fall back upon a traditional timetable motion" (para 80). It would appear, in effect, that the Government and Opposition agreed to differ on this matter, but not allow it to breach the consensus on the Committee on the rest of its proposals, as consensus is generally seen to be valuable (if not essential) to successful change in Parliamentary procedure and practice.

When the House debated the Committee's report in November⁶³, the Leader of the House, Ann Taylor, emphasised how existing procedures already contain scope for flexible approaches to the legislative process,⁶⁴ and did not refer expressly to the committee stage of 'constitutional' bills. However the Shadow Leader of the House, Gillian Shephard, made it clear in her speech that the Opposition would "strongly resist any suggestion that there should be any change" to exist practice (c1071):

Our view to that effect is recorded in the Committee's report. We reject suggestions from some that there might somehow be problems with definition or with ordering such business or that the House is incapable of scrutinising such Bills adequately and in detail ... We on the Opposition Benches accept the report, while putting down a marker about our reservations on the treatment of constitutional Bills.

During Business Questions on 27 November, Opposition Members pursued this matter with the Leader of the House:⁶⁵

Mr. Bernard Jenkin: Will the Leader of the House stand by the assurance given by the Secretary of State for Wales in a press release issued this morning on the publication of the Government of Wales Bill: *During the Bill's parliamentary progress, it is, of course, open to any hon. Member to put forward changes to the Bill and to have these explored in detail through open debate.*"?

Mrs. Taylor: I am sure that the Bill will get the full attention of all hon. Members, which it deserves. As I said, we are discussing through the usual channels and with other hon. Members the detailed handling of the Bill.

And (c1127)

Mr. Laurence Robertson: Can the Leader of the House be a little more specific about the Committee stage of the Government of Wales Bill, following the point raised by my hon. Friend

⁶³ HC Deb vol 300 cc1061-1129, 13.11.97. The report was agreed to without a division.

⁶⁴ In particular, in the present context, *S.O. no. 63(3)* permits the splitting of the committee stage between the floor of the House and standing committee, a technique used notably for Finance Bills. See chap IV of Research Paper 97/53.

⁶⁵ HC Deb vol 301 c1125, 27.11.97

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the Member for North Essex (Mr. Jenkin) and also the hon. Member for Merthyr Tydfil and Rhymney (Mr. Rowlands), who sits on the Government Benches? Will she take into account the fact that, although hon. Members from Wales have a great deal to contribute to such a Bill, so do hon. Members on both sides of the House?

Mrs. Taylor: I am sure that hon. Members from Wales have a great deal to say, although none of them will be representatives of the Conservative party, because it has no Members for Wales. I have been as fair as possible. The usual channels are discussing the handling of the Bills, and my colleagues and I in the usual channels are happy to receive any representations from any quarter of the House.

Ted Rowlands also asked for consultation over any proposed splitting of the committee stage between the chamber and standing committee. The Leader of the House acknowledged that there were strong views within the House on these matters: "There is no simple party divide as to how we should handle legislation of this kind...Discussions have begun through the usual channels about the handling of the Government of Wales Bill - and later of the Scotland Bill. We want to try to agree a way forward with all parties in the House...When we have had further discussions, I hope to be in a position to make a more definitive statement about how the Bills will be dealt with"(c1120). See also Welsh questions on 3 December 1997 (c.341-2).

During the press conference launching the *Government of Wales Bill* on 27 November the Welsh Secretary, Ron Davies, did not state definitively how its committee stage would be handled, but he did suggest that, while the key provisions of the Bill would be taken on the floor of the House, it would not be the best use of Parliamentary time for all matters of minute detail to be taken there. He stressed that such matters would depend on the attitude of the Conservative Opposition to the handling of the Bill.

In a speech to the Wales Conservative Council on 29 November, Michael Ancram returned to the committee stage issue:⁶⁶

The Government has refused to address the flaws in its proposals. It is therefore up to the Conservative Party to look after the interests of the UK as whole, and Wales in particular, and make devolution work as best it can. To that end, we shall put down constructive amendments to the Bill in an attempt to remedy its worst failings.

This is why it is vital that the Government follows long-established precedent and allows the Committee Stage of the Bill to be held on the floor of the House of Commons. It should be open to any MP to put forward changes to the Bill and to have these explored in detail through open debate."

⁶⁶ "An unsettled Bill for an unsettled nation", Conservative Party PN 1558/97, 29.11.97

Ron Davies has said that he wants the bulk of the to be dealt with in a committee room, away from the floor of the House of Commons. He said that most Members of Parliament will have no interest in the minutiae of the Bill. I have to say that he is wrong. With this Bill, the devil is in the detail - and that detail has implications for both Wales and the United Kingdom as a whole.

The Conservative Party is going to take a constructive approach to the legislation and table amendments to meet the severe flaws of the Bill as currently drafted. We must not be prevented from looking after the interests of the Welsh people simply to avoid Ron Davies the embarrassment of well-founded criticism from his own backbenchers. The Committee Stage of the Bill must be taken on the Floor of the House.

The devolution bills in the 1970s all had their committee stages on the floor of the House. The *Scotland and Wales Bill 1976-77* had 10 days before the unsuccessful guillotine motion of 22 February 1977, and one day thereafter (a total of 95 hrs 47 mins), but made no further progress. Both the *Scotland Bill* and the *Wales Bill* in 1977-78 were guillotined before their committee stages on the Floor;⁶⁷ the former having 14 days in Committee of the Whole House (101 hrs 10 min), and the latter 9 days (64 hrs 26 mins). The *Scotland Bill* had 2 days on report and one on third reading (a total of almost 22 hours consideration in the Chamber), and the House spent one day on each of the *Wales Bill's* report stage and third reading (just over 14 hours).

In the Lords the *Scotland Bill* had 2 days on second reading, 13 days in Committee, 5 days on report and a day (nearly 3 1/2 hours) on third reading. The *Wales Bill* had one day on second reading, 6 days in Committee, 2 days on report and a day (over 2 1/2 hours) on third. Further time was spent in both Houses considering Lords Amendments and the Commons responses to them. In total 24 days in the Commons and 23 days in the Lords were spent on the *Scotland Bill*, and 17 days in the Commons and 12 days in the Lords on the *Wales Bill*. Both the *Scotland Bill* and *Wales Bill* took 270 days from initial introduction to Royal Assent.⁶⁸

C: The Electoral System

This is set out in Part I of the Bill. **Clause 2** and **Schedule 1** of the bill sets out the membership of the Assembly and provides for an assembly of 60, one member elected from each of the 40 Parliamentary constituencies named **Assembly constituencies** and 20 additional members from the five existing European Parliamentary constituencies, now named **Assembly electoral regions**. As foreshadowed in the White Paper the electoral system will be the Additional Member System Annex C of the White Paper provided

⁶⁷ As was the *Referendums (Scotland and Wales) Bill* this session

⁶⁸ On the Parliamentary passage of the 1970s legislation see Research Papers 97/60, *Wales and devolution*, 97/92, *Scotland and devolution*, and 97/97.

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exemplification and these are reproduced in this Paper above. The Government has therefore resisted pressure from the Liberal Democrats and others to increase the number of seats to make the National Assembly more proportional; in Scotland, the split is 73 constituency members and 56 additional members, meaning 43 per cent of elected members are additional. The Liberal Democrats favoured increasing the number of seats to 70-80, which they argued would also increase the number of members available to sit on committees⁶⁹ and offer more chance of representing all sections of the community. Democratic Audit found that an increase of five more additional members would "significantly increase the proportionality of the overall election outcome"⁷⁰ It also found that the Welsh system could easily leave marked disparities in representation amongst the parties uncorrected, to the benefit of both Labour and Conservative and the disadvantage of Liberal Democrats and Plaid Cymru (especially in South Wales) (p18)

The calculations for the AMS are set out in Clauses 4 and 6. **Clause 4** gives electors two votes, one for the constituency and one for the electoral region. The ballot paper will therefore have two parts. Constituency members are elected under first past the post and then under **Clause 6** the number of electoral region votes are added together for each registered party (or independent candidate) and the additional seats allocated according to share of the vote. The four additional members for each electoral region are identified by calculating the number of constituency seats won by each party in the region, and dividing the number of each party's party list votes by the number of constituency seats won by that party plus one. The party with the highest number of votes after that calculation gains the first additional member. The calculation is then repeated for the second to fourth additional members, but dividing the number of constituency seats plus one and plus additional member seats allocated in previous rounds. This is a straightforward application of the D'Hondt formula.

Therefore a party which won 30 per cent of the vote, which had already won 30 per cent of the constituency seats available would win no more additional seats. A party which won considerable numbers of votes in the electoral region but had not achieved a constituency seat would be compensated with additional members in proportion to vote share. Parties which had won more constituency seats than their proportion of the share of the vote would justify do not lose their constituency seats. There is no formal threshold or level of support which a party must achieve to be allocated an additional member seat; nevertheless, an informal threshold will operate defined by 100 per cent, divided by the number of seats in each electoral region (100/11) translating as nine per cent. There seems little chance of fringe parties gaining a seat under this informal threshold.

During the Second Reading of the current *European Parliamentary Elections Bill* the Home Secretary, Jack Straw, promised to consider the arguments for adopting an open list system on the Belgian model for the regional list electoral system proposed for the next European

⁶⁹ see Welsh Grand committee 18.11.97

⁷⁰ *Devolution Votes: PR Votes in Scotland and Wales* Democratic Audit Paper no 12 September 1997

Parliament elections in 1999⁷¹ The AMS system uses closed lists and there is no provision for open lists in the Bill, but it is possible to have an open list variant as used in the regional assembly in Bavaria. Neal Ascherson has suggested that the use of closed lists in any of the new forms of PR planned for introduction is undesirable for promoting democracy⁷²

If the Bill is passed this will be the first time that a Proportional Representation system will be used to elect an assembly in Great Britain; Northern Ireland uses Single Transferable Vote for local elections. AMS is also planned for Scotland,⁷³ for elections also to take place in 1999, but the regional list system is planned for the European Parliament elections in 1999⁷⁴ Voters therefore face a variety of electoral systems within a month of each other in 1999- local council elections under First Past The Post, National Assembly elections under AMS and European Parliamentary elections under a regional list. Some voter education will be necessary.

Assembly members may be British, Irish or EU **citizens**, and may include peers and ministers of religion, local councillors and MPs (**Clause 13**). Otherwise the normal disqualifications applicable to MPs⁷⁵ under Section 1(1) of the *House of Commons Disqualification Act 1975* and to local councillors will broadly apply. (**Clause 12**) Lords Lieutenants, lieutenants and High Sheriff are disqualified from representing an area in which they hold office. (**Clause 12(4)**) An Order in Council may make provision for additional disqualifications. It is intended that this Order will list membership of public bodies as disqualifying offices; the current list under the 1975 Act is not necessarily appropriate for the Assembly.

The Bill provides for parties to be registered under relevant statutory procedures (**Clause 4(8)**) but separate legislation to be introduced this session will set out the details of the registration process. Any registered political party may submit a list not exceeding 12 persons to the Regional Returning Officer. Independent candidates will be able to form a 'party' and submit lists, provided it is properly registered. Candidates can only be on one regional list. Individuals may also stand as candidates for a single electoral region, but only if they are not candidates on a list submitted by a registered party, or standing as a constituency candidate for a registered party (**Clause 5**).

The introduction of a system of party registration required for this Bill, as well as for the European Parliamentary Elections Bill and the forthcoming Bill to introduce a Scottish Parliament will mean that a new system of maximum election expenditure will need to be

⁷¹ HC Deb vol 301 25.11.97 c814 see Research Paper 97/120 *The European Parliamentary Elections Bill* for background

⁷² *Independent on Sunday* 30.11.97 "If we're not careful, we'll be rubber stamping someone else's choice"

⁷³ see Research Paper 97/92 *Scotland and Devolution* for details, pending the publication of the bill for Scotland

⁷⁴ see Research Paper 97/120 *The European Parliamentary Elections Bill* for background

⁷⁵ see *Parliamentary Practice* (21st ed 1989) chapter 3 for details

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developed. The details are expected in secondary legislation, but are not yet available. No details are given in the Bill about the election deposit. A deposit of £5,000 per list is expected in the *European Parliamentary Elections Bill*.⁷⁶

By election procedures are set out in **Clause 8**. By elections will only be held when there is a vacancy in an Assembly Constituency seat (**8(1)-(2)**) where a simple First Past The Post system will be used, and no by election will be held where a vacancy exists within 3 months preceding a full election of the Assembly. If a vacancy occurs for an Assembly electoral region the Regional Returning Office will notify the presiding officer of the name of the next highest eligible⁷⁷ candidate on the relevant party list. The list applicable is that submitted for the full election. However, the regional returning officer must establish that the candidate is "willing to serve" as an Assembly member, so the candidate may decline the seat. Note that it is the candidate who decides on his availability, not the registered party (although the party may wish to influence the decision). There is no provision for alternative procedures to come into play if the relevant candidate is no longer a member of the registered party. If there is no eligible candidate left on the list the seat is left vacant until the next full election.

The **franchise (Clause 10)** is as expected, those eligible to vote in local government elections, that is the Parliamentary franchise minus overseas voters, plus peers and EU nationals who fulfil the residency requirements.⁷⁸ Electors will not be able to vote in more than one electoral region or Assembly constituency at a full [ordinary] election. More detailed provisions on the conduct of elections will be made under **Clause 11**, including regulations on election expenses, and combing polls, and will draw on existing regulations governing the conduct of parliamentary, European parliamentary, or local government elections. Part III of the *Representation of the People Act 1983*⁷⁹ will apply to disputed elections (**Clause 11(5)**). Regional Returning Officers will be designated to organise the election (**Clause 11(6)**) so there is no provision for an independent electoral Commission to supervise the conduct of the election, as suggested in the independent Constitutional Unit briefing.⁸⁰

Parliamentary Boundary Commission for Wales will be required under **Schedule 1** to review Assembly electoral regions whenever it recommends alterations affecting Parliamentary constituencies in Wales. The Commission is required to have regard to rules set out in para. 8 of Schedule 1:

The rules

8. -(1) The rules referred to in paragraphs 4 and 7(2) are-

⁷⁶ See Research Paper no. 97/120 *European Parliamentary Election Bill* p.

⁷⁷ in terms of electoral law

⁷⁸ for background see Appendix to Research Paper 97/92 *Scotland and Devolution*

⁷⁹ election petitions and courts

⁸⁰ 1997 Briefing No 11 Establishing on Electoral Commission. NB This is different from the election Commission set up to review PR systems for Westminster elections.

1. Each Assembly constituency shall be wholly included in one Assembly electoral region.
2. The regional electorate for an Assembly electoral region shall be as near the regional electorate for each other Assembly electoral region as is reasonably practicable, having regard (where appropriate) to special geographical considerations.
3. The total number of Assembly seats for the Assembly electoral regions shall be-
 - (a) one half of the total number of the Assembly constituencies, or
 - (b) (if that total number is not exactly divisible by two) one half of the number produced by adding one to that total number.
4. The number of Assembly seats for an Assembly electoral region shall be-
 - (a) one fifth of the total number of Assembly seats for the electoral Assembly regions, or
 - (b) (if that total number is not exactly divisible by five) either one fifth of the highest number which is less than that total number and exactly divisible by five or the number produced by adding one to one fifth of that highest number (as provided by subparagraphs (2) to (4)).

(2) If the total number of Assembly seats for the electoral Assembly regions is not exactly divisible by five, the Commission shall calculate the difference between-

- (a) the total number of seats for the Assembly electoral regions, and
- (b) the highest number which is less than that total number and exactly divisible by five, and that is the number of residual seats to be allocated by the Commission.

(3) The Commission shall not allocate more than one residual seat to an Assembly electoral region.

(4) The Commission shall divide the regional electorate for each Assembly electoral region by the aggregate of-

- (a) the number of Assembly constituencies in the Assembly electoral region, and
- (b) one fifth of the highest number which is less than the total number of seats for the electoral Assembly regions and exactly divisible by five, and, in allocating the residual seat or seats to an Assembly electoral region or Assembly electoral regions, shall have regard to the desirability of allocating the residual seat or seats to the Assembly electoral region or regions for which that calculation produces the highest number or numbers.

The principles are therefore broadly those currently governing the redistribution of European Parliamentary Constituencies set out in the 1978 *European Parliamentary Elections Act*

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which will be superseded by the *European Parliamentary Elections Bill*.⁸¹ However, the schedule makes clear that the ratio of electoral region seats to Assembly constituency seats will remain at 1:2, so that the total number of electoral region seats will be close as possible to half of the number of constituency seats. The schedule also ensures that the number of electoral regions seats should be divided equally between individual electoral regions; one fifth of the total number of electoral region seats should be given to each electoral region, or as nearly as possible to one fifth.

Schedule 1 provides for the PBC to publish its provisional recommendations take into account representations, and hold local inquiries in line with its usual procedures for reviews into Parliamentary constituencies. Such procedures will not be necessary where the PBC is merely recommending changes in the number of seats for an electoral Region, and the proposed or revised number of seats for the Regions is divisible by five. An Order in Council will give effect to the PBC's recommendations, in line with usual procedures for the redistribution of Parliamentary seats.⁸²

The Assembly will be subject to fixed term elections, held every four years on the first Thursday in May, subject to modification for a month either way by the Secretary of State in line with his current powers in relation to Local Government elections. Elections for community councils may be postponed for three months where the Assembly poll would otherwise be held on the same day.

D: Executive functions of the Assembly

Functions are transferred to the **Assembly** following the *Wales Act 1978* precedent under Part II of the Bill rather than to a separate Executive. A number of clauses in Part II of the Bill reflect drafting in local government legislation, in respect of contracts entered into by the Assembly, or inquiries relevant to its functions, for example and there are many other parallels with the local government model.

Clauses 21-27 provide for the transfer of certain functions exercisable by a Minister of the Crown⁸³ in relation to Wales, through Order in Council⁸⁴ The areas to be transferred are listed in Schedule 2:

SCHEDULE 2

⁸¹ See Research Paper no. 97/120 *The European Parliamentary Elections Bill*

⁸² See Research Paper no. 95/74 *The Parliamentary Boundary Review for England*

⁸³ including Scottish Ministers (Clause 23(9))

⁸⁴ NB only those functions exercised by Ministers are transferred, not those exercised by public bodies etc

FIELDS REFERRED TO IN SECTIONS 22 AND 56

1. Agriculture, forestry, fisheries and food.
2. Ancient monuments and historic buildings.
3. Culture (including museums, galleries and libraries).
4. Economic development.
5. Education and training.
6. The environment.
7. Health and health services.
8. Highways.
9. Housing.
10. Industry.
11. Local government.
12. Social
13. Sport and recreation.
14. Tourism.
15. Town and country planning.
16. Transport.
17. Water and flood defence.
18. The Welsh language.

Therefore the Bill avoids the detailed enumeration of executive functions set out in the *Wales Act 1978*.⁸⁵ A draft Order in Council listing executive functions should be available during the passage of the Bill, probably at committee stage.

The Order in Council must be laid before each House for affirmative resolution before the first ordinary [full] election of the Assembly. **Clause 21** allows the Assembly to acquire functions as a result of this Bill and the Order in Council and also as a result of future enactments. **Clause 22** provides the mechanism for the transfer after the first election of the Assembly and also provides for the concurrent exercise of powers by the Assembly and a Minister of the Crown, for example in the implementation of EC Directives **Clause 23**

⁸⁵ See Research Paper 97/60 *Wales and Devolution* for details

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provides that powers to make subordinate legislation transferred by Order in Council under Clause 22 will continue to be exercisable by the Minister in relation to implementing EC obligations of the UK, or dealing with matters arising. It also provides that an Order transferring functions to the Assembly which are exercisable beyond the land area of Wales is only exercisable with the consent of the Minister previously using the function. . **Clause 104** provides that the Assembly has no power to carry out acts incompatible with the ECHR and **Clause 107** enables the Secretary of State to prevent actions incompatible with international obligations.

Under **Clause 33** the Assembly may support culture in Wales (museums, libraries etc) and **Clause 34** gives the Assembly power to make representations generally about Wales.

E: The role of the Secretary of State and resolution of disputes

The role of the Secretary of State is only briefly covered in the Bill; **Clause 32** requires the Secretary of State to consult the Assembly about the Government's legislative programme, but only 'as soon as is reasonably practicable after the beginning of each session of Parliament' and consultations are not required if the Secretary of State considers that the contents of a bill make it inappropriate. His role under Part IV is covered in the section on financial provisions. Under **Clause 75** the Secretary of State is entitled to attend and participate in any proceedings of the Assembly (but not a committee)**Clause 75(3)** entitles the Secretary of State to documents which are made available to Assembly members who are not members of the Executive Committee. There is no equivalent to the broad powers in sections 34 and 35 of the *Wales Act 1978* enabling the Secretary of State to prevent or require action affecting reserved powers held at Westminster, or to revoke subordinate legislation made in Wales affecting a reserved matter. Instead there is provision in **Schedule 6** for disputes about "devolution issues"⁸⁶ to be resolved at law. Different procedures will apply in each part of the UK. The final court of appeal on devolution issues will be the Judicial Committee of the Privy Council This broadly follows the outline in the White Paper.

F: Income and expenditure (clauses 80-89)

General principles

The Bill is expected to have no effect on overall levels of public expenditure. The Assembly will take on responsibility for most of what is now the Welsh Office budget, which is currently worth some £7 billion per annum. However, the Secretary of State will reserve an

⁸⁶ para 1 of Schedule 6 defines a devolution issue as a "question whether a purported or proposed exercise of any function by the Assembly is, or would be, within the powers of the Assembly (including a question whether a purported or proposed exercise of a function by the Assembly is, or would be, incompatible with Community law or any of the Convention rights) or a question whether the Assembly has failed to comply with any Community obligation which is an obligation of the Assembly. The *Notes on Clauses* comments that the Schedule does not restrict any other rights in law to challenge the Assembly's exercise of its functions.

appropriate sum for the running costs of his or her own office, to carry out their continuing functions. The overall budget of the Assembly will be determined in a similar way to the current Welsh Office budget.⁸⁷

The Assembly's budget will fall in to two parts: agriculture spending and the 'block'. Agriculture spending is mainly on national programmes such as the Common Agricultural Policy, which the Assembly will not be able to vary. As at present, the amount of funding for such programmes will be determined by the UK Government and the European Commission. The remaining funding – representing around 96% of the total – represents the block. After deduction of the Secretary of State's running costs, the Assembly will be able to allocate the remainder of the block between services as it chooses. The White Paper stated:⁸⁸

D.12 Annual changes to the Welsh Block will be calculated by the population-based formula used at the moment. These arrangements based on the Block and formula have worked in practice, producing fair settlements for Wales in annual public expenditure rounds and allowing the Secretary of State for Wales to take his spending decisions in accordance with Welsh needs and priorities. The Government will publish the rules under which the Barnett formula currently operates, and the purely technical changes to them that need to be made from time to time. The formula will be up-dated from time to time to take account of population changes. Any other changes will only be on the basis of a full study of relevant spending needs, to be carried forward in consultation with the Assembly.

During a Public Expenditure Survey (PES) round departmental control totals are determined for the following three years. The starting points for years one and two are the existing plans from the previous PES round. The baseline for year three is determined by the Treasury using rules applied to all departments. Typically, this might involve a percentage up-lift on year two. Thereafter, the Barnett formula applies to the Welsh, Scottish and Northern Irish blocks.

The Barnett formula works as follows. If there are changes to the budgets of Whitehall departments relating to services for which the Assembly is responsible, then a fixed proportion of the change is applied to the Welsh block. At present, the proportion is 6.02%, which represents the relative populations of England and Wales in 1991. Thus, for example, if £1 billion were added to the health budget for England, £60.2 million would be added to the Welsh block.⁸⁹ Generally, there would be no requirement for the Assembly to use any additional resources in the same way as in England. The same procedure would apply in the event of expenditure reductions.⁹⁰

⁸⁷ *Explanatory and Financial Memorandum* - source:

⁸⁸ *A Voice for Wales*, Cm 3718

⁸⁹ For the purposes of the formula, the block is treated as excluding aggregate external finance (AEF) for local authorities but including authorities' total standard spending (TSS).

⁹⁰ A fuller description of the Barnett formula is included in Research Paper No 97/78, *Public Expenditure in Scotland and Wales*.

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It is important to note that the Barnett formula does not determine the overall size of the block, but only provides that the block mirrors negotiated changes in Whitehall departments' budgets. The major determinate of the block would appear to be its size in the previous year. Nor does the Barnett formula represent an allocation of expenditure on the basis of expenditure needs. The last official needs assessment was conducted in the late 1970s, when devolution was last the subject of legislation.⁹¹

The Barnett formula does not have a statutory basis and is only mentioned in the Explanatory and Financial Memorandum and not in the Bill itself. In previous years it has not been possible to tell from published sources how the Barnett formula has been applied. In *A Voice for Wales* the Government stated that:

- the formula would be up-dated from time to time to take account of population changes.⁹²
- any other changes would be preceded by a needs assessment carried-out in consultation with the Assembly.⁹²
- the Secretary of State will inform the Assembly of the way in which the formula has been applied each year.⁹³

Decisions taken by the Assembly will sometimes have financial implications for government departments. Similarly, government departments may, on occasion, implement policies that will lead to additional costs for the Assembly. The Government intends that the long-standing convention whereby the body whose decision results in higher costs meets those costs should apply to the Assembly. Where such decisions are made by the UK Government there will often be automatic compensation for the Assembly via the Barnett formula.⁹⁴

The present Government has stated its commitment to the current arrangements for determining the Welsh block. For example, the following exchange took place at Oral Questions on 27 November:⁹⁵

8. **Mr. Randall:** If he will make a statement on the future of the Barnett formula.

Mr. Darling: The Government have made it clear that they intend to keep the existing arrangements. The Government's position was clearly set out in the two White Papers on which the referendum campaigns in Scotland and Wales were fought and won.

⁹¹ HM Treasury, *Needs Assessment Study – Report*, 1979

⁹² Cm 3718, *op cit*, para. D.12

⁹³ Cm 3718, *op cit*, para. D.8

⁹⁴ Cm 3718, *op cit*, para. D.11

⁹⁵ HC Deb vol 301 27.11.97 c.1080

However, in a recent speech to the Wales Conservative Council, the Shadow Constitutional Affairs Spokesman, Michael Ancram, stated:⁹⁶

[...] The Bill fails to guarantee an appropriate level of funding for Wales – indeed, it only states that ‘the Secretary of State shall from time to time make payments to the Assembly out of money provided by Parliament of such amounts as he may determine’. In other words, the Assembly is dependent – each year – upon the goodwill of the Secretary of State.

Moreover, this omission is despite a clear statement of intent in the White Paper that the Barnett formula should be preserved. If the Government has already dropped such an assurance from the legislation, and in light of its impending comprehensive review of public spending, there is absolutely no reason to believe that the current government will give Wales a fair deal. I am not surprised, therefore, that the Institute for Welsh Affairs last week called for the Barnett formula to be enshrined in legislation. They are right to be worried. For the Bill contains no statutory provisions relating to the Barnett formula, let alone enshrining it. A mere mention in the financial memorandum protects nothing.

The Assembly will not only be dependent upon the goodwill of the Secretary of State for its funding. It will also be reliant upon his ability to secure a fair deal for Wales each year in the public spending round. With most of his powers in the hands of the Assembly, the Secretary of State will be a ghostly apparition of his former self in Whitehall.

Now imagine that the neutered Secretary of State belongs to a party which does not control the Assembly of Wales: what chance (and, indeed what incentive) would he have to fight for additional resources to give to his political opponents?

The Bill in detail

Clause 80 empowers the Secretary of State for Wales and other ministers or departments to make payments to the Assembly to finance its activities. The amounts are to be determined by the Secretary of State and the other ministers or departments involved. The Assembly will therefore be funded indirectly by the Secretary of State, etc. rather than by funds voted directly by Parliament. **Clause 89** removes any statutory references that presume direct funding.

Clause 81 requires the Secretary of State to lay a written statement before the Assembly by the end of November each year setting out the Assembly’s budget for the following financial year. The statement will include details of funds granted by other ministers or departments; will show the amounts that the Secretary of State estimates will be granted by the Assembly to local authorities in the form of basic and supplementary credit approvals; and will state the amount retained by the Secretary of State as running costs for their office.

Clause 82 allows the Secretary of State to lend the Assembly up to £500 million from the National Loans Fund to meet temporary deficits in the Assembly’s cashflow or to provide the Assembly with a working balance of funds. Interest will be charged on the loans. With

⁹⁶ Conservative Party press notice 1558/97 dated 29 November 1997

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Treasury consent, the Secretary of State can increase the maximum level of loans by order. Such orders would be subject to affirmative resolution of the House of Commons only. **Clause 83** requires the Secretary of State to prepare annual accounts of such loans and to submit them to the Comptroller and Auditor General for audit.

Clause 84 allows the Treasury to require that specified monies received by the Assembly should be paid to the consolidated fund (the 'Exchequer'). This power does not extend to non-domestic rate (and related) payments.

Clause 85 limits the purposes for which the Assembly can incur expenditure. It can only undertake expenditure in, or in connection with, the exercise of its functions or where it has statutory authority to undertake spending for a stated purpose. The Assembly is empowered to make grants, loans or guarantees if it considers that these will secure, or help to secure, its objectives (i.e. the ends it seeks in exercising its functions). The Assembly can attach terms and conditions to such financial assistance and, in particular, can stipulate the circumstances in which all, or part of, a grant is repayable.

Clause 86 requires that, before the start of each financial year, the Assembly makes a written statement showing its proposed level of spending, the purposes of such spending and its expected income from the Secretary of State, other ministers or departments and other sources. The statement must include details of the amounts that the Assembly expects to allocate to local authorities in the form of basic and supplementary credit approvals and must be published as soon as practicable after it is made.

Under other provisions contained in the Bill (see clause 22), the Assembly may acquire the power to make loans from the National Loans Fund (NLF). **Clause 87** sets out the terms on which such loans can be made. Where the power to make such loans has been transferred from a Minister of the Crown, the sums will be construed as being issued to the Minister who will pay them to the Assembly. Where the Minister was previously required to make repayments of capital and interest to the NLF, the Assembly is required pay such sums to the Minister for payment to the NLF. The interest rate charged on such loans cannot be lower than the lowest rate charged on other NLF loans made that day. **Clause 88** requires the Secretary of State to prepare annual accounts of such loans and to submit them to the Comptroller and Auditor General for audit.

G: The Auditor General for Wales

Clauses 90 to 103 provide for the audit of the Assembly generally. Provision is made for the appointment of an Auditor General for Wales (“AGW”), their staffing and remuneration, their access to documents and the preparation and audit of the Assembly’s annual accounts and their dealings with the Audit Committee of the Assembly and the Comptroller and Auditor General (C& AG).

The proposed responsibilities of the AGW are broadly analogous to those carried out by the Comptroller and Auditor General (C& AG) in general under s6 of the *National Audit Act 1983*. For comparative purposes, it may be useful to outline these tasks. The Comptroller and Auditor General's full title is "Comptroller General of the Receipt and Issue of Her Majesty's Exchequer and Auditor General of Public Accounts". As the Comptroller General he authorises the issue of public funds to Government Departments and other public sector bodies. As Auditor General his statutory duties are to certify the accounts of all Government departments and a wide range of other public sector bodies; to examine revenue and store accounts; and to report the results of his examinations to Parliament. He also has wide statutory powers to carry out, and report to Parliament on, examinations of economy, efficiency and effectiveness in the use of resources by those bodies he audits or to which he has rights of access. The examinations are generally referred to as value for money (VFM) examinations.⁹⁷

The AGW will require Treasury approval for a number of things, such as the content and preparation of the Assembly’s accounts, appointment of key staff, such as the Assembly’s principal accounting officer and their responsibilities.

Clause 98 (s6) provides that the principal accounting officer and any additional accounting officers may owe responsibilities to the Assembly and/or the Assembly Audit Committee and to the House of Commons and/or the Public Accounts Committee.

Clause 100 allows the AGW to investigate the economy, efficiency and effectiveness of the Assembly’s use of its resources. It provides for dealings between the AGW and the Assembly Audit Committee about such investigations and for the AGW to report the results of them to the Assembly.

⁹⁷ Source; NAO

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H: Freedom of Information

It is envisaged that the Assembly will be subject to the proposed legislation on freedom of information which will be outlined shortly in a White Paper. The Bill does not provide for the Assembly to establish its own FOI scheme, but a number of clauses relate to the provision of information. Both staff and members of the Assembly will be subject to the *Official Secrets Act 1989* (Clauses 35 and 79), as the staff will be civil servants and the members will carry out executive functions. The Treasury is empowered to require information from the Assembly under **Clause 115** where the information is required for the exercise of Treasury functions.

Under **Clause 69(1)** the standing orders would have to contain provision for all meetings of the Assembly and its committees (and sub-committees) to be held in public, although committee meetings would be exempt from this requirement in circumstances specified in standing orders. Reports of the proceedings of the Assembly and its committees would have to be published as soon as reasonably practicable [69(3)]; again, there would be an exemption in respect of committee meetings which were not held in public. Arrangements would have to be made for public inspection of background papers which were relevant to proceedings, subject to exemptions to be set out in standing orders [69(4)]. **Clause 112** would require the Assembly to make similar arrangements in respect of any document it publishes.

Similar provision exists in local government legislation. The *Local Government (Access to Information) Act 1985*⁹⁸ provides the following exemptions to the access to information rules:

i) Confidential Information

The public and press *must* be excluded during the consideration of agenda items where "confidential information" is likely to be discussed. "Confidential" means information provided by the Government on a confidential basis or information which may not be disclosed because of statutory restrictions or a court order. The local authority *must not* disclose this information to the public at any time.

ii) Exempt information

The authority *may* decide to exclude members of the public and press where "exempt information" is to be discussed. "Exempt" includes information concerning particular employees or tenants of the authority or particular service users; information relating to the education, adoption or care of particular children; certain details of pending contracts involving the authority; information relating to the prevention and investigation of crime; details of counsel's opinion obtained by the authority; and information which would reveal the authority's intention to serve a statutory notice. Information in this category *may* be withheld by the authority if it chooses, subject to certain qualifications.

⁹⁸ The 1985 Act inserted a new part, Part VA, into the *Local Government Act 1972*

The current Bill, however, appears to give the Assembly greater discretion to determine which matters should be exempt from the rules on freedom of information. Another difference concerns the requirement that the Assembly make available for public inspection any document which it publishes. The local government provision only requires that documents be made available when they are relevant to meetings. A great deal of information in local authorities' possession is therefore exempt. The extent to which Clause 112 of the Bill will be significant is likely to depend on the definition of "publication."

There may be further complications in that the Assembly and its staff will be dealing with central government departments and some complex arrangements may be necessary to ensure a degree of confidentiality for government documents before a report is made available to a committee, and therefore to the public or non -majority party member of the committee. The Commission which will draw up the standing orders may need to consider these aspects.

I. The Implementation of EC Law

Clauses 23, 30 and 105 to 107 of the Bill establish the relationship between the Welsh Assembly, EC law and other international obligations of the UK.

In joining the EC, member states accepted *inter alia* the primacy of EC law over national law. As the European Court of Justice acknowledged in 1964:⁹⁹

By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply

By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.

Member States have had to accept the direct applicability of the Treaties and of the instruments of Community law, which are enforceable in national courts. Governments and sub-national governments at regional and local level in the Member States are responsible for implementing EC law correctly. Since EC law becomes national law, breaches are dealt with by the national courts.

⁹⁹ (Costa v ENEL [1964] ECR 585)

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EC law and the provisions of the Treaties are given legal effect in the UK by virtue of the European Communities Act 1972 (ECA). For the obligations of treaties such as the EC Treaties and the acts emanating from them to become enforceable in UK courts, provision must be made in UK law. The 1972 Act provides this authority and has been amended on several occasions to take account of the requirements of successive Community Treaties (most recently to allow for the implementation of parts of the Amsterdam Treaty).

Directly effective regulations and decisions are also given statutory authority in the UK under Section 2(1) of the ECA, without the need for further enactment, as was the whole body of EC law already in force at the time Britain joined the Community in 1973. For EC legislation which is not directly applicable, directives, for example, Section 2(2) of the 1972 Act provides the means to implement them in the UK, either by statute or more commonly by Order in Council. Schedule 2 of the Act sets out some exceptions, such as provisions which would increase taxation. EC Law takes precedence over UK law and if the latter is found by the European Court of Justice to be incompatible with the former, then the Government is obliged to remedy the situation by amending or repealing the existing UK law.

Clause 23(4) of the Bill stipulates that although there would be a transfer of powers of Ministers to the Assembly with regard to subordinate legislation under section 22, the Minister would continue to be responsible where necessary for implementing EC obligations under the ECA, including matters arising from section 2(1) of the 1972 Act. Although the Assembly would have the power to implement EC legislation in certain areas, this would give the Secretary of State the power to *direct* the implementation of EC law in Wales, and to ensure proper implementation. The Assembly would not have legal personality in the EU and ultimately the Westminster Government would be responsible for the UK's EU obligations.

Section 2(2) of the ECA designates a Minister of the Crown or government department to regulate on EC law. Under clause 30 of the Bill this would include the Welsh Assembly, which would have powers to make regulations without the need for parliamentary approval, unless the S.I. contained regulations made by the minister or Government department. The latter situation might apply in the case of very important directives, or for instruments which contained an element of commonality, with Scotland, for example. Thus, where the Assembly and the Secretary of State act jointly, the Westminster Parliamentary procedures would apply.

The supremacy over national law of EC law and other international obligations such as adherence to the Council of Europe's European Convention on Human Rights means that any laws passed by the Welsh Assembly would have to take account of the UK's international obligations so as not to contradict them. This is set out in clauses 105-107 of the Bill. In the case of EC law, any conflict between the two could mean that the UK would be in breach of Treaty obligations and possibly subject to a ruling of the European Court of Justice. The Secretary of State would again have a directing role here to ensure that there was no incompatibility between the subordinate legislation implemented by the Assembly and the UK's EC, Council of Europe and other international obligations.

Appendix I

Election and referendum statistics

1. Additional Member System

The electoral system proposed for the Welsh Assembly involves forty members elected on a first-past-the-post basis (one from each of the current Westminster parliamentary constituencies) and an additional twenty members elected from local party lists (four from each of the five Assembly electoral regions (AERs)¹⁰⁰). Electors will have two votes, one for the first-past-the-post member and a separate vote for the additional member. The votes cast for each party in the additional member section will be counted within the five AERs and the four seats from each will be allocated so that the total representation from each area — including members returned for individual constituencies — corresponds as closely as possible to the share of the votes cast for each party in the additional member section of the ballot. See section II C p.39 for detailed methodology).

Table 1 shows how the sixty seats in the Assembly would be allocated on the basis of voting in the general election on 1 May 1997 by assuming that people vote in the additional member section of the ballot exactly as they did for their first-past-the-post members¹⁰¹. Of the twenty seats allocated on the additional basis, thirteen would be won by the Conservatives who won no seats on the first-past-the-post basis but secured 20% of votes. Looking at total seats won, Labour and the Conservatives would be slightly over-represented and the other parties under-represented.

Of course, this analysis is fairly crude because people may vote differently in Assembly elections from general elections. In addition, electors can split their two votes. ‘Ticket-splitting’ can occur for a number of reasons (preventing single-party dominance, dislike of local candidates), but will perhaps be most common where voters think that their party of first preference is unlikely to win a first-past-the-post seat but more likely to win an additional member seat from the list section. In this case, voters may vote tactically in the first-past-the-post section but for their party of choice in the additional member section.

The likelihood of such ticket-splitting is borne out in a recent analysis by Democratic Audit which polled 622 people in Wales in the few days after the general election and asked them how they would cast their votes in an Assembly election¹⁰². The survey found that there

¹⁰⁰ Built-up from the five existing European Parliament constituencies in Wales which contain between seven and nine Westminster seats.

¹⁰¹ In practice, this is extremely unlikely to be the case; in addition, the more representative electoral system itself may encourage people to vote for smaller — and new — parties, thereby affecting the index of proportionality.

¹⁰² Source: Dunleavy et. al. *Devolution Votes: PR Elections in Scotland and Wales* (Democratic Audit Paper No. 12, September 1997), Table 9

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would be little change in the allocation of first-past-the-post seats compared with the general election, but that because of ticket-splitting, the distribution of additional member seats would be completely different. The survey showed Plaid Cymru winning three additional member seats rather than none, the Conservatives gaining four fewer seats, and Labour winning one more seat (Liberal Democrats unchanged).

Proportionality

The ‘index of proportionality’ is a measure of how closely the seats allocated to each party correspond to the votes cast for it¹⁰³ — in an election where each party received exactly the same share of seats as votes, the index would equal 100. As such, it can only be calculated on the basis of an actual election result, and the index will vary within any given system from election to election. The score for the current first-past-the-post system was 79 in Great Britain as a whole based on the recent general election¹⁰⁴.

The estimate for the Welsh Assembly is 91, assuming that votes cast in both the first-past-the-post and additional member sections were as in the 1997 general election. The same system (AMS) is proposed for the Scottish Parliament. However, there are relatively more additional than first-past-the-post members (56 and 73 respectively), and seven, rather than four, additional members in each Parliamentary electoral region. For both these reasons, the Parliament would be somewhat more representative, with an index of proportionality score of 94 (again assuming that votes cast in both the first-past-the-post and additional member sections were as in the 1997 general election)¹⁰⁵.

2. Referendums: 1979 and 1997

Tables 2 and 3 show, respectively, the results of the referendums in Wales in 1979 and 1997 in each electoral area. Table 4 shows the change in voting for and against devolution between the two referendums. A full explanation of the referendums results can be found in Research Paper 97/113 *Results of Devolution Referendums*.

The number of people voting ‘yes’ increased from 20.3% in 1979 to 50.3% in 1997. The proportion of the electorate voting ‘yes’ rose from 11.8% in 1979 to 25.2% — one in four — in 1997. If there had been a 40% threshold in 1997, the Welsh Assembly would not have been approved.

¹⁰³ It is calculated as 100 minus the sum of the difference between the share of the seats won by each party and its share of the votes cast (divided by 2).

¹⁰⁴ Source: Dunleavy et al *Making Votes Count* (Democratic Audit Paper No. 11, September 1997), p5

¹⁰⁵ *ibid.*

The turnout in 1997 was 50.1%, well below the turnout in 1979 of 58.3%¹⁰⁶. The turnout in 1997 was also well below the turnout in the May general election of 73.5%¹⁰⁷.

Local results

In 1979, none of the eight counties voted for devolution. In 1997, eleven of the twenty-two unitary authority areas voted in favour of an Assembly and eleven against. As in Scotland, none of the counties met the 40% threshold in 1979 for the proportion of the electorate voting 'yes'. In 1997 as well, none of the areas had more than 40% of the electorate voting for an Assembly.

The change in the proportion of voters voting 'yes' between 1979 and 1997 ranged from 20 %-points in Clwyd and Gwynedd to 39 %-points in West Glamorgan.

There was virtually no correlation between turnout and the proportion of people voting 'yes' in either 1979 or 1997. There was a slightly stronger — but still very weak — connection between how areas voted in 1979 and how they voted in 1997.

¹⁰⁶ for proper comparison, 1979 figure *unadjusted* for purposes of calculating whether 40% of those eligible had voted in favour (the threshold set in the Wales Act); in Wales as a whole, the electorate was reduced by 18,300 for deaths, students and nurses registered at more than one address and convicted prisoners in prison.

¹⁰⁷ Sources: HC Library Research Paper 97/49, Table 10 & Rallings and Thrasher *Britain Votes 6* (pre-publication copy)

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Table 1

Welsh Assembly under AMS assuming 1997 general election result (a)

	Con	Lab	LDem	PC	Other	Total
<i>Votes cast:</i>						
North Wales	85,554	166,144	41,517	49,904	10,765	353,884
Mid & West Wales	63,769	116,151	56,479	61,777	9,378	307,554
South Wales West	42,178	184,464	30,090	15,969	8,313	281,014
South Wales Central	70,502	201,900	41,037	19,382	14,615	347,436
South Wales East	55,142	218,276	30,897	13,998	11,861	330,174
Wales	317,145	886,935	200,020	161,030	54,932	1,620,062
<i>Seats won on first-past-the-post basis:</i>						
North Wales	0	7	0	2	0	9
Mid & West Wales	0	4	2	2	0	8
South Wales West	0	7	0	0	0	7
South Wales Central	0	8	0	0	0	8
South Wales East	0	8	0	0	0	8
Wales	0	34	2	4	0	40
<i>Seats won on additional basis:</i>						
North Wales	3	0	1	0	0	4
Mid & West Wales	3	1	0	0	0	4
South Wales West	2	1	1	0	0	4
South Wales Central	3	0	1	0	0	4
South Wales East	2	1	1	0	0	4
Wales	13	3	4	0	0	20
<i>Total seats won:</i>						
North Wales	3	7	1	2	0	13
Mid & West Wales	3	5	2	2	0	12
South Wales West	2	8	1	0	0	11
South Wales Central	3	8	1	0	0	12
South Wales East	2	9	1	0	0	12
Wales	13	37	6	4	0	60
Share of seats (%)	21.7%	61.7%	10.0%	6.7%	0.0%	100.0%
Share of votes (%)	19.6%	54.7%	12.3%	9.9%	3.4%	100.0%
Seats if exactly proportionate	12	33	7	6	2 (c)	60
<i>Change from current system</i>	<i>-1</i>	<i>-4</i>	<i>1</i>	<i>2</i>	<i>2</i>	<i>0</i>
Index of Proportionality (b)	91.0					

Notes: (a) assumes votes cast in both first-past-the-post and additional member sections were as in 1997 general election (no other constituency-level data available on which to base estimates).

(b) calculated as 100 minus the sum of the difference between each party's % of seats and % of votes (divided by 2); in an electoral system where each party received exactly the same share of seats as votes, the index would equal 100.

(c) the Referendum Party would have won 1 and possibly 2 seats, but many small parties would not be entitled to any seats, even in a strictly proportionate system (the quota at the last General Election would have been just under 27,000 votes (votes cast divided by 60 seats, plus one).

Sources: House of Commons Library Elections database

"A Voice for Wales" (Cm 3718), Annex C

Table 2
Welsh Devolution Referendum, 1 March 1979

(a) alphabetical list

Do you want the provisions of the Wales Act 1978 to be put into effect?

	Turnout (a)		Yes			No		
	%	number		% vote	% elect.		% vote	% elect.
Clwyd	51.1	145,503	31,384	21.6	11.0	114,119	78.4	40.1
Dyfed	64.6	159,796	44,849	28.1	18.1	114,947	71.9	46.5
Gwent	55.3	176,758	21,369	12.1	6.7	155,389	87.9	48.7
Gwynedd	63.4	108,520	37,363	34.4	21.8	71,157	65.6	41.6
Mid Glamorgan	58.6	230,943	46,747	20.2	11.9	184,196	79.8	46.7
Powys	66.0	53,345	9,843	18.5	12.2	43,502	81.5	53.8
South Glamorgan	58.7	166,016	21,830	13.1	7.7	144,186	86.9	51.0
West Glamorgan	57.5	158,497	29,663	18.7	10.8	128,834	81.3	46.7
Wales	58.3	1,199,378	243,048	20.3	11.8	956,330	79.7	46.5
<i>adjusted (b)</i>	58.8				11.9			46.9

(b) ranked by % of voters voting yes

Do you want the provisions of the Wales Act 1978 to be put into effect?

	Turnout (a)		Yes			No		
	%	number		% vote	% elect.		% vote	% elect.
Gwynedd	63.4	108,520	37,363	34.4	21.8	71,157	65.6	41.6
Dyfed	64.6	159,796	44,849	28.1	18.1	114,947	71.9	46.5
Clwyd	51.1	145,503	31,384	21.6	11.0	114,119	78.4	40.1
Mid Glamorgan	58.6	230,943	46,747	20.2	11.9	184,196	79.8	46.7
West Glamorgan	57.5	158,497	29,663	18.7	10.8	128,834	81.3	46.7
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Gwent	55.3	176,758	21,369	12.1	6.7	155,389	87.9	48.7
Wales	58.3	1,199,378	243,048	20.3	11.8	956,330	79.7	46.5
<i>adjusted (b)</i>	58.8				11.9			46.9

(a) excludes spoilt ballots (3,309 in Wales as a whole).

(b) electorate reduced by 18,300 when calculating whether 40% of those eligible had voted in favour; reductions were for deaths, students and nurses registered at more than one address and convicted prisoners in prison.

Source: FWS Craig *British Electoral Facts, 1832-1987*

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Table 3

Welsh Assembly Referendum, 18 September 1997

(a) alphabetical list

	Turnout (a)		Yes			No		
	%	number		% vote	% elect.		% vote	% elect.
Isle of Anglesey	56.9	30,744	15,649	50.9	29.0	15,095	49.1	27.9
Bridgend	50.6	50,804	27,632	54.4	27.5	23,172	45.6	23.1
Caerphilly	49.3	63,671	34,830	54.7	27.0	28,841	45.3	22.3
Cardiff	46.9	107,116	47,527	44.4	20.8	59,589	55.6	26.1
Carmarthenshire	56.4	75,234	49,115	65.3	36.8	26,119	34.7	19.6
Ceredigion	56.8	30,918	18,304	59.2	33.6	12,614	40.8	23.2
Conwy	51.5	44,890	18,369	40.9	21.1	26,521	59.1	30.4
Denbighshire	49.7	35,003	14,271	40.8	20.3	20,732	59.2	29.4
Flintshire	41.0	46,453	17,746	38.2	15.7	28,707	61.8	25.4
Vale of Glamorgan	54.3	48,389	17,776	36.7	19.9	30,613	63.3	34.4
Blaenau Gwent	49.3	27,165	15,237	56.1	27.7	11,928	43.9	21.7
Gwynedd	59.8	55,284	35,425	64.1	38.3	19,859	35.9	21.5
Merthyr Tydfil	49.5	21,828	12,707	58.2	28.8	9,121	41.8	20.7
Monmouthshire	50.5	32,995	10,592	32.1	16.2	22,403	67.9	34.3
Neath Port Talbot	51.9	55,193	36,730	66.5	34.5	18,463	33.5	17.4
Newport	45.9	43,189	16,172	37.4	17.2	27,017	62.6	28.7
Pembrokeshire	52.6	46,691	19,979	42.8	22.5	26,712	57.2	30.1
Powys	56.2	54,004	23,038	42.7	24.0	30,966	57.3	32.2
Rhondda Cynon Taff	49.9	87,563	51,201	58.5	29.2	36,362	41.5	20.7
Swansea	47.1	82,350	42,789	52.0	24.5	39,561	48.0	22.6
Torfaen	45.5	31,610	15,756	49.8	22.7	15,854	50.2	22.8
Wrexham	42.4	41,023	18,574	45.3	19.2	22,449	54.7	23.2
Wales	50.1	1,112,117	559,419	50.3	25.2	552,698	49.7	24.9

(b) ranked by % of voters voting yes

	Turnout (a)		Yes			No		
	%	number		% vote	% elect.		% vote	% elect.
Neath Port Talbot	51.9	55,193	36,730	66.5	34.5	18,463	33.5	17.4
Carmarthenshire	56.4	75,234	49,115	65.3	36.8	26,119	34.7	19.6
Gwynedd	59.8	55,284	35,425	64.1	38.3	19,859	35.9	21.5
Ceredigion	56.8	30,918	18,304	59.2	33.6	12,614	40.8	23.2
Rhondda Cynon Taff	49.9	87,563	51,201	58.5	29.2	36,362	41.5	20.7
Merthyr Tydfil	49.5	21,828	12,707	58.2	28.8	9,121	41.8	20.7
Blaenau Gwent	49.3	27,165	15,237	56.1	27.7	11,928	43.9	21.7
Caerphilly	49.3	63,671	34,830	54.7	27.0	28,841	45.3	22.3
Bridgend	50.6	50,804	27,632	54.4	27.5	23,172	45.6	23.1
Swansea	47.1	82,350	42,789	52.0	24.5	39,561	48.0	22.6
Isle of Anglesey	56.9	30,744	15,649	50.9	29.0	15,095	49.1	27.9
Torfaen	45.5	31,610	15,756	49.8	22.7	15,854	50.2	22.8
Wrexham	42.4	41,023	18,574	45.3	19.2	22,449	54.7	23.2
Cardiff	46.9	107,116	47,527	44.4	20.8	59,589	55.6	26.1
Pembrokeshire	52.6	46,691	19,979	42.8	22.5	26,712	57.2	30.1
Powys	56.2	54,004	23,038	42.7	24.0	30,966	57.3	32.2
Conwy	51.5	44,890	18,369	40.9	21.1	26,521	59.1	30.4
Denbighshire	49.7	35,003	14,271	40.8	20.3	20,732	59.2	29.4
Flintshire	41.0	46,453	17,746	38.2	15.7	28,707	61.8	25.4
Newport	45.9	43,189	16,172	37.4	17.2	27,017	62.6	28.7
Vale of Glamorgan	54.3	48,389	17,776	36.7	19.9	30,613	63.3	34.4
Monmouthshire	50.5	32,995	10,592	32.1	16.2	22,403	67.9	34.3
Wales	50.1	1,112,117	559,419	50.3	25.2	552,698	49.7	24.9

Note: (a) excludes spoilt ballots (3,999 in Wales as a whole).

Source: Welsh Office & *The Western Mail* (20 September 1997)

Table 4
Change in voting for/against devolution in Wales, 1979 and 1997
ranked by change in % of voters voting yes

	Yes						No					
	% of Vote			% of Electorate			% of Vote			% of Electorate		
	79	97	change	79	97	change	79	97	change	79	97	change
<i>1979 areas</i>												
West Glamorgan	18.7	57.8	39.1	10.8	28.3	17.5	81.3	42.2	-39.1	46.7	20.6	-26.1
Gwent & Mid Glamorgan	16.7	51.3	34.6	9.5	25.1	15.6	83.3	48.7	-34.6	47.6	23.8	-23.8
Dyfed	28.1	57.2	29.1	18.1	31.6	13.5	71.9	42.8	-29.1	46.5	23.7	-22.8
South Glamorgan	13.1	42.0	28.8	7.7	20.6	12.8	86.9	58.0	-28.8	51.0	28.4	-22.6
Powys	18.5	42.7	24.2	12.2	24.0	11.8	81.5	57.3	-24.2	53.8	32.2	-21.6
Clwyd & Gwynedd	27.1	47.4	20.3	15.1	23.3	8.3	72.9	52.6	-20.3	40.7	25.9	-14.7
Wales	20.3	50.3	30.0	11.8	25.2	13.4	79.7	49.7	-30.0	46.5	24.9	-21.6
<i>adjusted (a)</i>				11.9						46.9		

(a) electorate reduced by 18,300 when calculating whether 40% of those eligible had voted in favour; reductions were for deaths, students and nurses registered at more than one address and convicted prisoners in prison.

1997 results fitted to 1979 areas on the following basis:

Clwyd & Gwynedd (Anglesey, Conwy, Denbighshire, Flintshire, Gwynedd, Wrexham) -- 1997 area *excludes* communities of

Llanrhaeadr-ym-Mochnant, Llansilin and Llangedwyn (formerly in Glyndwr DC in Clwyd, now in Powys UA)

Dyfed (Carmarthenshire, Ceredigion, Pembrokeshire)

Powys (Powys) -- 1997 area *includes* communities of Llanrhaeadr-ym-Mochnant, Llansilin and Llangedwyn (formerly in Glyndwr DC in Clwyd, now in Powys UA)

Gwent & Mid Glamorgan (Bridgend, Caerphilly, Blaenau Gwent, Merthyr Tydfil, Monmouthshire, Newport, Rhondda Cynon Taff, Torfaen) -- 1997 area *excludes* communities of

Wick, St Bride's Major and Ewenny (formerly in Ogwr BC in Mid Glamorgan, now in Vale of Glamorgan UA) and *excludes* community of Pentyrch

(formerly in Taff-Ely BC in Mid Glamorgan, now in Cardiff UA)

South Glamorgan (Vale of Glamorgan, Cardiff) -- 1997 area *includes* communities of Wick, St Bride's Major and Ewenny (formerly in Ogwr BC in Mid Glamorgan,

now in Vale of Glamorgan UA) and *includes* community of Pentyrch (formerly in Taff-Ely BC in Mid Glamorgan, now in Cardiff UA)

West Glamorgan (Neath & Port Talbot, Swansea)

Recent Research Papers on related subjects include:

97/132	The <i>Government of Wales Bill</i> : Operational Aspects of the National Assembly	04.12.97
97/130	The <i>Government of Wales Bill</i> : The National Assembly's Partners	04.12.97
97/126	Devolution and Europe	04.12.97
97/113	Results of Devolution Referendums (1979 & 1997)	10.11.97
97/97	Time Spent on Government Bills of Constitutional Significance	01.08.97
97/92	Scotland and Devolution	29.07.97
97/82	The local elections of 1 May 1997	27.06.97
97/78	Public Expenditure in Scotland & Wales	09.06.97
97/61	The Referendums (Scotland and Wales) Bill [Bill 1 of 1997-98]	20.05.97
97/60	Wales and Devolution	19.05.97
97/53	The Commons committee stage of 'constitutional' bills	20.05.97