

The Government of Wales Bill: **The National Assembly's Partners**

Research Paper 97/130

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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 97/129 *Government of Wales Bill: Devolution and the National Assembly* 4.12.97 provides a general background to the Bill, summarising the White Paper provisions and looking at aspects such as elections, executive functions and finance. Research Paper 97/132 *Government of Wales Bill: Operational Aspects of the National Assembly* 5.12.97 deals with selected aspects including the location and Assembly members' pay, as well as the relationship with Westminster. See also 97/60 *Wales and Devolution* 19.5.97 for the 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 issues. 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 give a brief overview of the Bill's provisions on quangos operating in Wales, including NHS bodies, the winding up of Tai Cymru, and the new role for the Welsh Development Agency. It also looks at the proposals affecting local government and voluntary organisations.

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Summary

The general principles behind the White Paper¹ and the *Government of Wales Bill* are discussed in Research Paper 97/129 *The Government of Wales Bill: Devolution and the National Assembly*. However an important part of the Government's proposals related to what is called in the White Paper the Assembly's partners, that is, local government, voluntary organisations and quangos, including the newly reorganised Welsh Development Agency. This paper summarises the *Government of Wales Bill's* provisions in these areas. Reference should also be made to Research Paper 97/126 *Devolution and Europe* for the debate on the relationship between the Assembly and the European Union.

The White Paper proposed that the Assembly would become responsible for making appointments to public bodies remaining when the Assembly came into being, and that it should take over the Secretary of State's powers to issue directions to individual bodies. In addition the Assembly would be given powers to reorganise certain categories of quangos. There is provision for these proposals in the Bill.

The transfer of Tai Cymru (Housing for Wales) functions to the Secretary of State for Wales is provided for in the Bill, as foreshadowed in the White Paper. The Welsh Development Agency is to be restructured and the Development Board for Rural Wales and the Land Authority for Wales are to be wound up under Part V of the Bill, which implements the White Paper's proposals.

The White Paper asserted 'The Assembly and local government will work together to serve the people of Wales.(para 3.4.) The Assembly will take over responsibility for funding local government, and deciding how much it will be able to borrow and local government is expected to be involved in much of the Assembly's work. There was an expectation in the White Paper that more local councillors would be appointed to public bodies operating in Wales; this requirement would need to be inserted into the Standing Orders governing public appointments to take effect.(Standing Orders are to be drawn up by a statutory Commission discussed elsewhere in Research Paper 97/129).

Part V of the Bill requires the Assembly to make a scheme to promote local government and to establish a Partnership Council for Wales, consisting of members of the Assembly and members of local government. The Assembly is also required to create a scheme to promote the interests of voluntary organisations in Wales.

¹ *A Voice for Wales* Cm 3718

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I Quangos in Wales

A. Introduction

General background on development of quangos is given in Library Research Paper no. 96/72 *The Quango Debate*; and Research Paper 97/60 *Wales and Devolution* (p.19) summarised perceived problems with quangos operating in Wales. Research Paper 97/129 *The Government of Wales Bill; Devolution and the Assembly* contains background on the White Paper generally and reactions to it.

The Constitution Unit Report *An Assembly for Wales* (1996) commented that the debate about patronage and accountability in respect of NDPBs and locally appointed bodies had taken place with little awareness of the great range and variety of quangos and their different functions" (para. 259). The report noted the difference between executive and advisory NDPBs, tribunals and NHS bodies, explaining that the Secretary of State made appointments to 176 separate bodies. One quarter of these were England and Wales, GB or UK bodies to which the Welsh Secretary makes joint appointments or recommends suitable Welsh appointees to the main sponsoring departments. It noted that the 176 bodies were mainly "specialised, technical bodies operating in relatively narrow fields where the Government needs independent advice, with the members giving their time free and receiving only expenses" (para. 262)The Unit summarised quangos as follows:

The Different Types of Quango

Executive Bodies

- 263 Executive bodies carry out a range of executive functions that would otherwise be carried out by a mainstream part of elected government at either central or local level. A number distribute Government funding (Arts Council, Sports Council, Higher and Further Education Funding Councils, Tai Cymru); others promote economic development (Welsh Development Agency, Land Authority for Wales, Development Board for Rural Wales, Cardiff Bay Development Corporation); yet others set standards and act as regulatory bodies (Curriculum and Assessment Authority for Wales, Welsh National Board for Nursing, Midwifery and Health Visiting). They generally employ their own staff and control their own budgets. There are nineteen executive bodies listed in Appendix A operating under the control of the Welsh Office.

Advisory Bodies

- 264 Advisory bodies are largely bodies set up by Ministers to provide specialist advice which is not available within the department. Examples in Wales include the Agricultural Advisory Panel, the Ancient Monuments Board, Historic Buildings Council, Local Government Boundary Commission, the Welsh Economic Council, Welsh Industrial Development Advisory Board and Welsh Scheme for the Development of Health and Social Research. They do not normally employ their own staff or have a separate budget. There are 24 advisory bodies operating in Wales, the great majority of whose members give their time free.

Tribunals

- 265 Tribunals are bodies with jurisdiction in a specialised field of law. They are generally serviced by staff from the sponsoring department. In Wales there are four exclusively Welsh tribunals the Agricultural Land Tribunal, the Mental Health Review Tribunal for Wales, the Rent Assessment

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Panel, and the Valuation Tribunals (Wales). There are also many other tribunals with national jurisdiction, such as the Lands Tribunal.

NHS Bodies

266 Although NHS bodies are not normally classified as NDPBS, there seems no reason why they should be regarded or treated as different from them. They are responsible for significant amounts of public expenditure; some £2bn in 1993-94. Health also accounts for a large number of specialist advisory bodies: one-third of the 24 advisory bodies in Wales operate in the fields of health and medical education.

Training and Enterprise Councils

267 TECs are established as non-profit making private sector companies, limited by guarantee, with boards composed of local business people. They provide training programmes for unemployed and unskilled workers of the kind formerly delivered by the Manpower Services Commission and the Training Agency. Although not normally considered to be NDPBS, TECs have their budget

Concern about quangos had only focused on a few high profile executive bodies, in particular the Welsh Development Agency; the Development Board for Rural Wales; the Cardiff Bay Development Corporation; Land Authority for Wales and Tai Cymru. The Bill will merge three of these bodies, and wind up Tai Cymru; the Cardiff Bay is due to be wound up by March 2000 in any case. Critics of the devolution programme argue that these quangos would have been dealt with without an accompanying Assembly.

The White Paper emphasised the need to improve the accountability of quangos and increase their effectiveness, through transferring to the Assembly the Secretary of States powers of appointment (but following the Nolan principles of appointment on merit)² and powers of direction. The Assembly would be empowered to restructure quangos by powers specified in the Bill. The White Paper acknowledged that the Assembly's powers should apply only to selected bodies, and not to those operating at arm's length to guarantee their independence of decision making, such as the Higher Education Funding Council for Wales, or which exercise judicial or quasi judicial functions, or which were created by Royal Charter or Warrant, such as the National Library of Wales (para. 3.23-3.27).³

Other bodies operating in Wales would be invited to give evidence to the Assembly or its committees; the Assembly would not fund or otherwise control bodies such as the Health and Safety Executive or the Equal Opportunities Commission; even though these bodies made decisions with important implications for Wales. The Assembly would also be able to invite evidence from a series of regulatory bodies, such as the office of Electricity Regulation whose accountability would nevertheless remain to Parliament, and finally the Assembly would share powers with other departments over some bodies which covered England and Wales together, such as the Environment Agency (paras. 3-19-3.22).

² See Research Paper 96/72 *The Quango Debate* for details

³ The Institute of Welsh Affairs has argued in *Making the Assembly work* (November 1997) that there is an immediate difficulty with the Higher Education Funding Council for Wales being outside the review, with the Further Education Funding Council being within (p22) The IWA suggest that the Assembly be given as much discretion as possible to restructure quangos, including the necessary primary legislative powers.

The Assembly will therefore acquire significant powers over quangos operating in Wales; standing orders will govern appointments "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 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" (para. 3.17).

The White Paper commented that since 1979 continuing administrative devolution to Wales had taken place at the expense of local government, which had been given no real voice in the running of these newly appointed bodies. It proposed that the Assembly would be required to have regard to the interests of local government in exercising its responsibilities for public bodies in Wales (para 3.30) It did not make commitments to setting a minimum number of councillors who should be appointed to public bodies, but expected 'the Assembly to bring public bodies and local authorities into closer partnership by appointing more local authority members to their boards'. (para 3.6) There is no specific provision for this in the Bill, but it will be a consideration when the Standing Orders are drawn up by the statutory Commission provided elsewhere in the Bill.

The Assembly will presumably need to act with care over its appointments to avoid accusations of political partiality given the current preponderance of the Labour Party in Welsh local government. The Constitution Unit has expressed concerns that there may be a over-reaction against quangos, triggered by a few high profile scandals, and that "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 coordinating, rather than a service delivery role".⁴

The Constitution Unit also doubted whether sufficient money would be saved to meet the running costs of the Assembly:

Another respect in which public expectations are being unduly raised is the suggestion that the Assembly can be paid for by cutting the costs of the quangos. This looks suspiciously like creative accounting. The net saving from abolishing a quango lies only in the costs of supporting the board members. If the function is retained, the operating budgets and administrative costs of providing the service will remain the same; unless significant savings can be made in administrative costs (e.g. by merger) with no reduction in the quality of service. The total governance costs of all the quango boards in Wales amount to some £1-2m a year. The White Paper estimates the annual running costs of the Assembly to be between £15m and £20m a year.

⁴ *Constitution Unit commentary on the Welsh White paper* September 1997

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B. The Bill in detail

The Assembly will be given the power under **Clause 29** to reorganise certain Welsh public bodies listed in Schedule 3

SCHEDULE 3

PUBLIC BODIES SUBJECT TO REFORM BY ASSEMBLY

PART I

BODIES WHICH MAY LOSE OR GAIN FUNCTIONS

1. An agricultural dwelling-house advisory committee for an area wholly in, or consisting of, Wales.
2. An agricultural wages committee for an area wholly in, or consisting of, Wales.
3. The Ancient Monuments Board for Wales,
4. The committee established under section 11 of the Environment Act 1995 to advise about the carrying out in Wales of the Environment Agency's functions.
5. The Further Education Funding Council for Wales.
6. The sub-committee for Wales of the advisory committee for England, Wales and Northern Ireland constituted under section 32 of the Hill Farming Act 1946 to advise about the exercise of powers under that Act.
7. The Historic Buildings Council for Wales.
8. The Library Advisory Council for Wales (known as the Library and Information Services Council (Wales)).
9. The Qualifications, Curriculum and Assessment Authority for Wales.
10. The Wales Tourist Board.
11. The Welsh Development Agency.
12. The Welsh Industrial Development Advisory Board.
13. The Welsh Language Board.

PART II

BODIES WHICH MAY LOSE FUNCTIONS OR GAIN FUNCTIONS WITH CONSENT

14. The committees referred to in section 19(1) of, or paragraph 1(1)(a) or (b) of Schedule 6 to, the National Health Service Act 1977 (advisory committees for Wales).

PART III

BODIES WHICH MAY ONLY GAIN FUNCTIONS

15. The Countryside Council for Wales.
16. The Higher Education Funding Council for Wales.
17. The Welsh National Board for Nursing, Midwifery and Health Visiting.

PART IV

BODIES WHICH MAY ONLY GAIN FUNCTIONS AND ONLY WITH CONSENT

18. The Arts Council of Wales.
19. The National Library of Wales.
20. The National Museum of Wales.
21. The Royal Commission on Ancient and Historical Monuments of Wales.
22. The Sports Council for Wales.

It will have power to reduce their number, to merge them, to perform their functions itself or to delegate functions to local authorities. **Part IV** of the Bill merges the Development Board for Rural Wales and the Land Authority for Wales into the Welsh Development Agency. This Part also provides for the functions of Tai Cymru (Housing for Wales) to be transferred to the Secretary of State, and for it to be wound up. The White Paper also promised further non-statutory changes such as a reduction in the number of Training and Enterprise Councils, and the winding up of the Cardiff Bay Development Corporation and the Residency Body for Wales (para. 3.15).

Clause 31 allows for provisions requiring Minister of the Crown to consult the Assembly about public appointments. The public posts will be specified in an Order in Council. Consultation may be dispensed with if the appointment is urgent or temporary. The Bill does not specify the method of consultation.

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The White Paper proposed that the Assembly should become responsible for the Secretary of State's powers of appointment to quangos in Wales (numbering over 600 appointments), and for the Secretary of States powers to issue directions to individual public bodies (paras. 3.16-3.18). The Bill provides for this in clause 22 (transferring executive functions.) The White Paper also stated that the Assembly's standing orders would have to comply with the principles of open procedures and appointments made on merit in accordance with the Nolan recommendations.⁵ The Commission charged with drawing up the standing orders will need to incorporate these proposals.

Clauses 73-74 of the Bill allow the Assembly to require members or staff of bodies specified in Schedule 4 to give evidence to the Assembly, on oath if necessary. The bodies specified are a number of advisory and executive Non Departmental Public Bodies (NDPBs) which operate partly or wholly in Wales, the executive NDPBs set out in Schedule 3, the Audit Commission and health authorities in Wales. This power to invite evidence from a wider range of bodies was foreshadowed in para. 3.19 of the White Paper.

Clause 110 requires the Assembly to make a scheme to sustain and promote local government in Wales, and to establish a Partnership Council consisting of Assembly and local authority members to advise the Assembly and "those involved in local government in Wales" (Clause 110(3)(C)). Schedule 7 gives further details See below in section xx for further details.

Clause 111 requires the Assembly to make a scheme to promote the interests of voluntary organisations, but there is no requirement to establish a Partnership Council in this area. The scheme will specify how the Assembly proposes to provide assistance to monitor and consult with voluntary organisations. There has been very little press reaction to this aspect of the Bill. The White Paper stated "The Government expects that the Assembly will provide financial support for a range of voluntary organisations in Wales, as the Welsh office does now. The Assembly will be able to develop this partnership, and the Government will encourage it to harness the special contribution which the voluntary organisations can make it in a wide range of policy areas" (para 3.32) The Wales Council for Voluntary Action called in March 1997⁶ for the voluntary sector to be brought into the centre of government decision-making, and proposed a liaison committee of elected members alongside representatives of voluntary groups. It has also promoted the idea of a compact between the government and the voluntary sector in Wales.

⁵ See Research Paper no. 96/72 *The Quango Debate* for background

⁶ *Election Briefing* Wales council for voluntary action

II Housing for Wales (Tai Cymru)

A Background

Housing for Wales was established by the *Housing Act 1988*. When it became operational on 1 April 1989 it took over the responsibilities of the Housing Corporation in Wales; it has the same powers and functions in Wales as the Housing Corporation has in respect of England.⁷

Housing for Wales is the main body charged with regulating the activities of registered social landlords (RSLs)⁸ in Wales. RSLs that wish to obtain access to public funding (Social Housing Grant)⁹ must register with Housing for Wales. Once registered, a RSL loses some of its independence in return for public finance. Housing for Wales has extensive powers of scrutiny over RSLs' affairs; these powers, which were first introduced by the *Housing Act 1974*,¹⁰ were recently consolidated and strengthened by the *Housing Act 1996*.

The powers and duties of Housing for Wales can be classified as follows:

- Promotional and advisory functions. Before the *Housing Act 1996*, Housing for Wales had a duty to promote and assist registered housing associations and unregistered self-build societies.¹¹ This duty now applies only to unregistered and self-build societies.¹²
- Registering social landlords.
- Providing loans or channelling grants to registered social landlords and unregistered self-build societies.
- Regulating registered social landlords.
- Providing housing itself (a function that has not been exercised on any significant scale).

Behind Housing for Wales, as with the Housing Corporation in England, stands central government as paymaster. The current mixed funding regime¹³ is heavily dependent upon a continual stream of government funding; thus, the capacity of the government to influence RSL policy has been described as 'virtually unlimited'.¹⁴

⁷ *Housing Act 1988*, s.46, 59, schedule 6

⁸ These are mainly housing associations.

⁹ SHG

¹⁰ At this time these powers were exercised by the Housing Corporation.

¹¹ *Housing Associations Act 1985*, section 75

¹² *Housing Act 1996*, schedule 3, para 43

¹³ New development is financed by a mixture of private and public investment.

¹⁴ John Alder & Christopher Handy, *Housing Associations: The Law of Social Landlords*, 1997 ed. p.197

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The Secretary of State for Wales has specific statutory powers in relation to Housing for Wales and may also exercise influence informally and through powers of patronage. This has raised the question of the accountability of the organisation to parliament; although, as Alder and Handy point out, there can be little doubt that Housing for Wales, along with the Corporation and Scottish Homes, is susceptible to parliamentary scrutiny in relation to issues of finance.¹⁵ On the exercise of powers over RSLs Alder and Handy have noted:¹⁶

'In practice it does not really matter who formally exercises the powers. The policies and their method of implementation emanate directly from the DoE. The Housing Corporation merely cloaks in legal form the wishes of its political masters. For example, the DoE currently requires the Corporation to devote a large of its ADP [Annual Development Programme] to renovation projects in the interests of sustainable development. This devolution of formal power, apart from any administrative advantages it may have, is characteristic of the government strategy that dominated the 1980s. Ostensibly the role of the central state was to be reduced. In reality the power of the central state remained or increased but was exercised in diverse and indirect forms and with reduced accountability.'¹⁷

The Labour Party's 1997 Election Manifesto for Wales stated that:¹⁸

'The functions currently performed by the housing quango, Tai Cymru, will be made properly accountable to the Welsh assembly. The Welsh local authorities will be responsible for assessing housing needs and developing appropriate responses within all-Wales guidelines.'

Clauses 132 to 135 of the *Government of Wales Bill*, together with schedule 12, will provide the means of implementing this commitment.

B The Bill

Clause 132 provides for the functions of Housing for Wales, together with its property, rights and liabilities, to be transferred to the Secretary of State for Wales. This transfer will not automatically include contracts of employment (clause 132(5)) but the Secretary of State may, by order, make provision for the transfer of Housing for Wales's staff.

The transfer of functions under clause 132 will occur in accordance with the provisions of schedule 12. Schedule 12 amends existing statutes that refer to Housing for Wales.

Clause 133 contains transitional provisions relating to the transfer of the functions of Housing for Wales. Housing for Wales will continue to exercise its functions until these are transferred. Certain matters in progress (including legal proceedings) when the functions of Housing for Wales are transferred will be taken over by the Secretary of State for Wales.

¹⁵ *ibid*

¹⁶ References to the DoE and Housing Corporation apply equally to the Welsh Office and Housing for Wales.

¹⁷ John Alder & Christopher Handy, *Housing Associations: The Law of Social Landlords*, 1997 ed. p.198

¹⁸ *New Labour: because Wales deserves better*, p.26

Clause 134 obliges Housing for Wales to provide information and documents in order to facilitate the transfer of its functions. It will have to produce an annual report and accounts for the last financial year ending before its functions are transferred and also for the period between the end of the last financial year and the time when its functions are transferred. Facilities may be made available to Housing for Wales in order to enable it to fulfil these requirements; the Secretary of State may also give members of Housing for Wales 'appropriate remuneration' and 'allowances' for performance of their duties after its functions have been transferred.

After the transfer of functions the Secretary of State may, from time to time, reduce the numbers of members of Housing for Wales.

Clause 135 provides for the abolition of Housing for Wales (by order) when the Secretary of State is satisfied that its duties under clause 134 have been discharged.

C Responses to the Bill

The abolition of Housing for Wales and the establishment of a Welsh Assembly with responsibility for housing matters has generally been welcomed by housing organisations in Wales. A joint report written by Leighton Andrews (Board member of Housing for Wales) and Gareth Hughes (Director of the Welsh Federation of Housing Associations) identified the following advantages of the Assembly in regard to housing matters:¹⁹

'With a Welsh Office Minister having such a varied portfolio in order to cope there is a strong temptation to adopt policies direct from the Department of the Environment in Whitehall. Again the people of Wales could find themselves with a housing policy that was relevant to England but not relevant to Wales. Similarly, Welsh Members of Parliament are constrained by the needs of the Westminster timetable. Little time is available to deal with all the issues of Wales let alone the specific needs of housing.

The establishment of an Assembly would make a difference. The Welsh Assembly could choose to have an accountable Housing Committee with the Committee leader sitting in the Assembly's Executive Committee and as a consequence a truly Welsh approach to housing would hopefully emerge.'

In addition, it is hoped that the transfer of functions will provide a framework for an 'all Wales housing strategy' based on partnership between local authorities, associations and the Assembly.²⁰

¹⁹ *Housing and the Welsh Assembly*, 8 September 1997

²⁰ *ibid*

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John Puzey, Director of Shelter Cymru, has considered whether the Welsh Assembly will offer a more effective challenge to housing need in Wales than under the current arrangements:²¹

'No matter how you cut it, the problem for housing in Wales is a lack of resources to meet the current and backlog of demand and to improve conditions at any meaningful speed. On the debit side the Assembly will have no powers to raise additional public money for Wales, nor will it be able to introduce legislation which could fundamentally improve the rights of people in housing need or who are homeless. Although the Assembly will have powers to allocate its budget between services there is no reason to believe, at this point, that the UK policy and resources agenda, dominated by health and education, will be significantly different in Wales so any significant increase in resources for housing through re-allocation seems unlikely.'

Despite these misgivings John Puzey does see strategic advantages in the development of a new housing executive that is accountable to the Assembly and has described the ability to introduce secondary legislation as 'not insignificant'.²²

As an alternative to Housing for Wales there is some support for the development of a 'next steps' agency with responsibility for funding and regulating social housing. This idea has been promoted by those who fear that Housing for Wales's work in assisting associations attract private finance will be lost under the new regime. It is suggested that the 'agency' should be headed by a chief executive at arm's length from the Welsh Office but answerable to the Welsh Secretary who would 'lay down the ground rules'. Others prefer the idea of a housing department within the Welsh Office that is directly accountable to the Assembly.²³ Calls from the Welsh Local Government Association for the transfer of Housing for Wales's financing functions to be taken over by the principality's 22 local authorities has apparently not been taken on board;²⁴ local authorities will have an enhanced role in planning the provision of housing within their areas.

Leighton Andrews and Gareth Hughes believe that the Welsh Office and Housing for Wales officials have underestimated the potential savings to be derived from the abolition of Housing for Wales. Housing for Wales has reported that savings of £200,000 will result from the abolition of its board and on the deletion of one senior and a few junior posts. Andrews and Hughes have estimated additional savings that could result from:

- Immediate cuts in staff budgets of £100,000;
- 30% cut in development programme staff and related budgets;
- Annual efficiency savings target to be introduced of 10% per annum for three years on the remainder of the budget, saving £600,000 over three years.

²¹ 'Housing and the Assembly', *Welsh Housing Quarterly*, issue 28, 1997

²² *ibid*

²³ 'Independent living', *Inside Housing*, 31 October 1997

²⁴ 'Doors closing at Tai Cymru', *Housing Today*, 5 June 1997

Over three years they estimate that these plans would produce savings of some £3 million which could be used as a 'social housing dividend'.²⁵

III The National Health Service

A The White Paper

The White Paper, *A voice for Wales*,²⁶ made clear that a future Welsh Assembly would take over the Secretary of State for Wales' responsibilities for health and health services in Wales. The Assembly will be able to:

- decide the scale of financial resources for health from within its overall budget;
- monitor the health of the Welsh population and respond with policies to promote health and tackle ill-health;
- promote good practice in health services and hold NHS bodies in Wales to account for their performance;
- canvass and act upon the views of patients, staff and carers on the quality of health services;
- ensure that the NHS in Wales has an adequate workforce of well-trained staff.²⁷

In addition to these general powers and responsibilities, the White Paper also sets out a number of other specific powers which will be invested in the Assembly. It will be empowered to make secondary legislation under statutes passed in Westminster, issue guidance to the NHS in Wales and monitor the performance of NHS bodies, change the number of Health Authorities and NHS trusts in Wales, transfer Health Authority functions to itself (but not to local authorities) and appoint the chairs and non-executive directors of Health Authorities and trusts. The White Paper suggests that the power to make secondary legislation and to issue guidance could well mean that powers set out in primary legislation could be exercised quite differently in Wales from how they are in England, thus creating a distinctly Welsh National Health Service.

²⁵ *Housing and the Welsh Assembly*, 8 September 1997

²⁶ Cm 3718, July 1997

²⁷ *ibid*, para 3.28

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However, a number of areas are listed where the Assembly will not have the power to intervene with policy set in Westminster: these include arrangements for professional education and training and for pay and terms of conditions of NHS staff. The rationale given for these areas being excluded is that this will ensure that the NHS in Wales remains part of a truly national health service. The Assembly will, though, be represented on the appropriate national fora when such issues are discussed, in the same way as Welsh Office representatives would currently form part of working groups considering changes to UK-wide health issues. The point that the NHS in Wales should remain part of a UK-wide NHS was reiterated by the Welsh Secretary, Ron Davies at a conference of NHS managers, where he was reported as saying:

"NHS Wales will remain a full member of the NHS family. We have common principles. We will share research, experience, practice, a workforce trained to the same standards and moving around in a common labour market. It would be unthinkable for us to lose the benefits these bring."²⁸

The White Paper gives considerable emphasis to the need for unelected bodies in Wales to be subject to proper democratic control and to demonstrate their effectiveness and accountability. As well as promising the Assembly the powers to take to itself the functions of Health Authorities and to re-configure Health Authorities and trusts, the Government also announced its intention to review the number and configuration of NHS trusts *before* the Assembly is set up, with the aim of reducing "wasteful duplication", saving administrative costs, improving the standards of care and releasing extra resources for patient care. Two other bodies would also be abolished: the responsibilities of the Health Promotion Authority for Wales would be transferred to the Assembly, while the staff and responsibilities of the Welsh Health Common Services Agency (which is responsible for a range of services such as the blood service, NHS supplies and prescription pricing) could be transferred either to other NHS bodies or to the Assembly itself.

B Review of NHS trusts

There are currently 29 NHS trusts in Wales. The review of the number and pattern of trusts, promised in the White Paper, was first announced on 22 May by the Welsh health minister, Win Griffiths MP.²⁹ He stated that the aim of the review, along with the promised abolition of the "internal market" in the NHS, was to improve services for patients in Wales, and highlighted four areas which would be given priority in any reconfiguration of trusts:

- ensuring that emergency medical admissions are managed effectively;
- improving performance on waiting times;

²⁸ "Devolution will shake up NHS", *Healthcare Today*, September 1997 p.5

²⁹ Welsh Office press notice, W97183, 22 May 1997

- improving the provision of care for patients needing intensive treatment and high dependency units; and
- investing in existing programmes to improve cancer services."

It is generally expected that the review will lead to considerably fewer trusts; a similar process of restructuring health authorities in Wales initiated in 1994 led to the then 17 District Health Authorities and Family Health Services Authorities being reduced to just 5 combined Health Authorities.³⁰ Mr. Griffiths acknowledged that there was a great deal of nervousness in the NHS in Wales over the prospect of further structural reform, and emphasised the importance of ensuring that all interested bodies were involved in discussions with the Welsh Office. He also set an "ambitious timetable": the aim is to have the new configuration of NHS trusts in place by April 1999, before the elections to the Welsh Assembly take place.

The May announcement was followed by a draft project plan, *NHS Wales: a new agenda*, in July 1997, in which the Welsh Office set out proposed reconfiguration criteria and details of the process to be followed in carrying out the review. A finalised version of this plan was published on 30 September.³¹ The "strategic criteria" against which any new management model must be judged are listed as the ability to:

- improve the 'seamlessness' of care delivery to patients through reducing artificial barriers associated with divisions between, for example, acute, community and primary care services and health and social care services;
- improve the effectiveness of all resources used in the delivery of services and eradicate unnecessary duplication between services and sites;
- maximise the attention given to clinical effectiveness in service planning and delivery;
- improve links with primary care to support the development of a primary care led NHS;
- increase the attention given to health promotion and disease prevention services.³²

A number of "operational criteria" are also listed: these include factors such as the increased ability to recruit and retain staff, reduced management cost overheads and increased openness to the views of staff, patient and the public at large.

³⁰ Welsh Office press notice, W94476, 2 November 1994

³¹ Welsh Office Health Department, *NHS trust reconfiguration project plan*, September 1997

³² *ibid* para 3.2

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The process is to be led by the Welsh Office Health Department. A Steering Group has been set up to deal with "process issues", but final decisions will be made by Ministers. Health Authorities are responsible for co-ordinating discussions with NHS trusts and other interested parties in their areas; these parties are then asked to submit proposals for a model, or models, of trust configurations. The document emphasises that Health Authorities must consider configurations which cross Health Authority boundaries, and should enter into appropriate discussions with neighbouring Authorities in order to explore these possibilities. The Executive Committee of the Health Policy Board (which advises Ministers on the NHS in Wales) will then consider the proposals put forward by Authorities and trusts, and should make recommendations to Ministers by 31st March 1998. Ministers would consider these proposals during April, in time for the publication of a consultation document by 1 June. Statutory consultation (required by the *National Health Service (Consultation on Establishment and Dissolution) Regulations 1996*³³) could then take place between June and August 1998, with submission to Ministers by 21 September 1998 and transition to the new trusts beginning in October 1998. The new trusts would finally be formally established on 1 April 1999.

C Responses to the White Paper and the review of NHS trusts

Most comment on the proposal that the Welsh Assembly should take over control of the NHS has focussed on *how* the future Assembly may carry out its functions and how this might affect the NHS in Wales, rather than on the question of whether it is a good thing *per se* for the Assembly to have the proposed powers. The NHS Confederation in Wales (which represents Health Authorities and trusts) and the Welsh Division of the Institute of Health Service Management (which represents individual NHS managers) brought out a joint discussion paper in June this year which it hoped would make a "helpful contribution" to the debate. It made a number of key recommendations:

- the NHS in Wales should continue to be part of the "wider NHS";
- the Assembly should develop a new strategic planning framework to enable it to give a clear sense of direction to the NHS in Wales, for example in areas such as the identification of priorities, the definition of desired outcomes and the allocation of resources;
- public participation in planning and decision-making should be strengthened;
- since funding "continues to be a problem", the Assembly will have to work with health and social services "to find new and robust ways of reconciling growing needs and expectations, the cost of technological advances and available funding";

³³ SI 1996/653

- Health Authorities should retain sufficient local autonomy and flexibility to meet local needs and expectations;
- there is a need for increasing co-operation between Health Authorities and other local statutory and voluntary bodies, especially Local Authorities;
- there should be flexibility locally to improve job design and training, but health and social care staff should continue to be subject to nationally agreed educational and registration requirements.³⁴

Some of these points, in particular the last, were explicitly covered in the White Paper. However, the extent to which others (for example the extent to which the Assembly will provide a strategic direction and the relationship between the Health Authorities and the Assembly) will be met will depend very much on the Assembly itself.

The White Paper's announcement that the organisation Health Promotion Wales should be abolished and its powers transferred to the Welsh Assembly was welcomed in both the health service and general press as proof of a new, integrated approach to health.³⁵ Concern is often expressed that the NHS is only ever seen as an "illness service", with health promotion activities given far too low priority; giving the Assembly the functions of the organisation formerly responsible for promoting healthy lifestyles has been seen as a big step forward in recognising health promotion as a crucial part of the NHS. Other comment in the *Health Service Journal* and in the *Western Mail* concentrated on the capacity for an Assembly to make the NHS in Wales distinctly different from its English and Scottish counterparts; the *Western Mail* also particularly emphasised the benefits to be gained from more open government and from reduced bureaucracy.³⁶

The question of the reconfiguration of NHS trusts in Wales, on the other hand, has generated an enormous amount of comment. While the principle of looking afresh at the configuration of NHS trusts was welcomed by the British Medical Association and the NHS Confederation,³⁷ both counselled caution in the process: the BMA emphasised that "change should not be made for change's sake" and that reorganisation should not result in hospital closures, while the NHS Confederation emphasised that "the driving force behind [reconfiguration] must be the need to ensure optimum access, clinical effectiveness, quality and efficiency rather than concerns with managerial structure alone". The Welsh Institute for Health and Social Care felt that an operational case had not been made for yet another reorganisation and that the need for trust mergers was basically a political one. While some

³⁴ NHS Confederation in Wales and the Welsh Division of the IHSM, *Better health - better future: the Welsh Assembly and the NHS in Wales*, 4 June 1997

³⁵ "Restoring full health to the Welsh patient", *Western Mail*, 8 July 1997 p.8 & "Independence daze", *Health Service Journal*, 31 July 1997 pp 12-13

³⁶ *ibid*

³⁷ NHS Confederation in Wales, *op.cit* p.5 & "Doctors fear hospital closures", *Western Mail*, 11 September 1997 p.5

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enthusiasm has been expressed in the *Western Mail* for the savings in administrative costs which re-organisation might bring,³⁸ the same newspaper reported the Welsh Institute for Health and Social Care's calculation that at best the savings would only be £1.5 million annually, describing this as "only a drop in the ocean of overall budget".³⁹ It is certainly the case that the health press has recently published a number of articles suggesting that trust mergers may not always be the panacea they appear to be, and that if the costs of the stress and upheaval on staff are taken into account, mergers apparently desirable on financial or other grounds, might seem less attractive than at first glance.⁴⁰

Concerns have also been expressed over accessibility and the inconvenience caused to patients if they have to travel further for treatment; on the other hand, it should be emphasised (picking up the BMA's point earlier) that *trust* reorganisation need not necessarily mean *hospital* closure: trusts are administrative units and there is nothing to prevent several hospitals being managed centrally by one trust board. Nevertheless, pressure groups, for example in Powys, are expressing grave reservations about the idea of large district-wide trusts, fearing that it will lead to lower standards of care, and the shifting of funding away from the local area.⁴¹

Finally, the Government's decision to reconfigure NHS trusts in Wales *before* the creation of the Welsh Assembly has given rise to some comment. Dafydd Wigley MP, of Plaid Cymru, for example, suggested in the Welsh Grand Committee on 18 November that it was "nonsense" to press ahead with the reorganisation, if the Assembly were to be given powers to change the health structure in Wales: this might lead simply to yet another reorganisation after the Assembly had been established.⁴² The response of the Welsh health minister, Win Griffiths, however, was that clear commitments had been made in the Labour party manifesto to "deal with various problems in the health service in Wales" and that the Government felt it was right to "start that agenda, to get the changes under way, and then to give the Welsh Assembly the opportunity to review matters".

D The Government of Wales Bill

The mechanism by which the powers of the Secretary of State for Wales, including his powers concerning health, will be transferred to the Assembly has been described in Research Paper 97/129 *The Government of Wales Bill: Devolution and the Assembly*. Two other clauses of the Bill deal specifically with NHS issues: clauses 28 & 139. **Clause 28** makes provision for the reform of the Welsh Health Authorities, by permitting the Assembly transfer to itself some, or all, of the functions of a Welsh health authority (ie of any of the five Health

³⁸ eg "Restoring full health to the Welsh patient", *Western Mail*, 8 July 1997 p.8 & "The burden of proof on NHS mergers plan", *Western Mail*, 17 June 1997 p.12

³⁹ "Caution urged over NHS shake-up", *Western Mail*, 2 September 1997 p.9

⁴⁰ eg "Pain without gain", *Health Service Journal*, 18 September 1997 pp 13-16

⁴¹ "Strong opposition to health trusts", *Western Mail*, 29 September 1997 p.7

⁴² Welsh Grand Committee, 18 November 1997 c..3

Authorities, or of the two currently existing Special Health Authorities, Health Promotion Wales and the Welsh Health Common Services Agency). If all a health authority's functions were transferred in this way, the Assembly could then abolish it. In a conference speech in June, the Welsh Secretary, Ron Davies, had suggested that the Assembly might want to strengthen its capacity to provide strategic leadership by taking on some Health Authority responsibilities such as commissioning specialised services at the all-Wales level.⁴³

Clause 28(7) states that, while this new power over-rides the current legal requirement that there should be a Health Authority covering all parts of Wales, the requirement still remains that there must be a Community Health Council covering all parts of Wales. In other words, it would be legally possible for Health Authority functions in one part of Wales to be taken over directly by the Welsh Assembly, but there must still be a Community Health Council in that part of Wales, to provide support to patients and monitor the performance of local NHS services.

Clause 139 makes a technical change to the *National Health Service Act 1977*, to permit the Assembly, if it so wishes, to create a single Health Authority covering the whole of Wales.

IV Economic Development

A. Background

Clauses 118 to 131 of the Bill deal with economic development in Wales. At the present time there are three non-departmental public bodies (the Welsh Development Agency, the Development Board for Rural Wales and the Land Authority for Wales) which have similar and overlapping responsibilities within the field. This part of the Bill seeks to amalgamate the three bodies into a single all-Wales body with the objective of ensuring parity of availability of economic development services throughout Wales. The new body will be known as the Welsh Development Agency (WDA). The new WDA was described in the White Paper as a "new economic powerhouse" for Wales.

The following paragraphs outline the roles of the three bodies as they are presently constituted; the effect that the Bill will have on each of them; and a short discussion of some of the views expressed on the proposed changes.

⁴³ "Welsh assembly 'could take on HA roles' says Davies", *Health Service Journal*, 19 June 1997 p.16

B. Present Roles

1. Welsh Development Agency (WDA)

The WDA is a public body established in 1976 under the Welsh Development Agency Act 1975. The WDA can undertake a range of activities to fulfil its main objectives, which are:

- Inward Investment - to market Wales internationally as an attractive business location;
- Business Services - to increase the competitiveness and growth rates of Welsh companies;
- Property Development - to ensure that the needs of new and expanding businesses in Wales are met by the provision of a healthy industrial property market;
- Land Reclamation - to prepare land for development by both inward investors and indigenous companies, remedying hazards of contamination and ensuring the safety of communities and the natural environment;
- Urban Investment Grants - to encourage private sector development on run-down or derelict urban areas^{44,45}

To achieve these objectives the WDA is involved in a wide range of activities. These include facilitating properties for tenant companies, assisting in technology transfer between companies, offering certain financial products to businesses and providing specialist advice to businesses.

The WDA is organised into four divisions: three regional divisions covering north, west and south Wales and a fourth international division. The WDA does not have responsibility for economic development in the central/eastern part of the Principality: this lies with the Development Board for Rural Wales (DBRW). The International Division's main role is in attracting foreign direct investment to Wales, but it also provides assistance to Welsh companies wanting to do business abroad.

The WDA is financed by payments made as a grant-in-aid from the Secretary of State for Wales, and also by borrowings from the National Loans Fund, the European Coal and Steel Community and the European Investment Bank. The WDA also has a wholly-owned subsidiary, Welsh Venture Capital Ltd, which undertakes investments in venture capital projects.

⁴⁴ This last function was transferred from the Welsh Office to the WDA on 1 October 1996

⁴⁵ Welsh Office Departmental Report 1997 (Cm 3615)

2. Development Board for Rural Wales (DBRW)

The remit of the Development Board for Rural Wales (DBRW) is similar to that of the WDA. Established in 1977 under the Development of Rural Wales Act 1976, the DBRW has wide-ranging powers and responsibilities for the purpose of promoting the economic *and social* well-being of the people in the area of Wales for which it is responsible. The area – defined in terms of local authority districts as they existed prior to the introduction of unitary authorities in Wales – comprises the former districts of Brecknock, Montgomeryshire and Radnorshire in Powys, Ceredigion in Dyfed and Meirionnydd in Gwynedd.

The key objectives are:

- Industrial and Commercial Property Development - the DBRW is involved in the construction of industrial and commercial premises in areas both where there are shortages and also where there is little prospect of private sector involvement;
- Assistance to Business - to provide a range of business services for new and established companies through a network of business centres;
- Inward Investment - to market and promote rural Wales as a location for potential investors.

In achieving its objectives the DBRW aims to direct its work towards filling gaps in the market by either providing services that the market cannot deliver or by stimulating private sector investment. The DBRW is financed by payments made as a grant-in-aid from the Secretary of State, by borrowings from the National Loans Fund and from receipts. Receipts come mainly from rental income and the sale of property.

3. Land Authority for Wales (LAW)

Established in 1981, the Land Authority for Wales's (LAW) main aim is to acquire land for the purpose of promoting urban development, employment and social housing in areas of market difficulty. It operates in the fields of offices and retail property, industrial property, and both private and social housing. LAW receives no grant-in-aid, but in 1996/97 its land sales were expected to raise £22 million in income. During the financial year it repaid £2 million of loans from the National Loans Fund and the remaining balance of £1.9 million is expected to be paid off during the present financial year.⁴⁶

⁴⁶ Welsh Office Departmental Report, *ibid*

C. Provisions in the Bill

Clauses 118 to 120 provide for the functions that are presently exercisable by the DBRW and the LAW to be transferred to the WDA. This has the effect of extending the existing powers of the WDA in certain areas:

- To include in its aims the *social* development of Wales (previously, this had only been exercised by the DBRW in the parts of Wales for which it was responsible);
- To amend the functions of the WDA to refer to "business efficiency" rather than "industrial efficiency", which widens the scope of its functions;
- To add a new function, that of making land available for development;
- To provide the WDA with the power to make grants available for the carrying on of business undertakings, subject to the approval by the Secretary of State. The Welsh Office has until now, administered such grants.

Clauses 121 to 131 provide a framework for the merger of the DBRW and the LAW with the WDA. In the case of both bodies there are four stages in this process: cessation of functions, transitional arrangements, winding down, and abolition. Following the cessation of each body's functions, property and other assets, staff, rights and liabilities will be transferred to the WDA. The transitional arrangements ensure that there is continuity in the activities of both bodies during their winding down. This refers not just to activities such as the provision business advice or land development, but also any legal proceedings. Any actions undertaken by either the DBRW or the LAW in respect of their functions, property, rights and liabilities, and in effect before the cessation date, will have effect as if done by the WDA.

Clause 124 (DBRW) and clause 130 (LAW) require each body to prepare annual accounts for the last accounting year ending before their cessation and for the period between commencement of the new accounting year and cessation. The WDA will be required to comment on the activities of each body for the year that includes their respective cessations. Before abolition of each body can finally be completed the Secretary of State has to be satisfied that each body has discharged its duties with respect to the transfer of documents, information and the provision of final accounts. The order for the abolition of each body will be subject to the affirmative procedure.

The treatment of the DBRW and the LAW is, in most respects, identical. However, there are additional provisions made in respect of the LAW. Clause 126 sets out certain amendments to other legislation that are consequential upon the cessation of the LAW. These are needed to reflect the fact that the WDA will have taken over these functions.

D. Inward Investment in Wales

Government grants are often used as a carrot to overseas companies to invest in particular areas within the UK. There are no special grants for overseas companies investing in the UK, but they are able to apply for the normal forms of assistance available to UK businesses. At present the main form of aid provided by the UK government is regional financial assistance under s.7 of the Industrial Development Act 1982.

In 1996/97 offers of £76 million were made to foreign-owned companies in Wales for 47 projects estimated to cost £896 million.⁴⁷ These projects are forecast to create 6,545 new jobs and safeguard a further 4,774. These projects will be undertaken by overseas firms who have been operating in Wales for many years as well as those investing in Wales for the first time.

Concern has been raised in some quarters suggesting that the WDA has used unfair means to attract foreign inward investment to Wales at the expense of other parts of the United Kingdom as a whole. It has been suggested in the press that the subsidies provided to LG, a Korean company investing in South Wales, exceeded the Government's limit of grant aid being restricted to £17,000 per job created. It has also been alleged that the Treasury provided a special grant of up to £100 million to secure the investment. Alan Campbell MP is reported to have written to the Comptroller and Auditor General, Sir John Bourn, asking the National Audit Office to investigate the case.⁴⁸

The Government is looking at ways to prevent different parts of the UK attempting to outbid each other in order to attract projects:⁴⁹

Mr. Baldry: To ask the President of the Board of Trade if she will make a statement on the provisions of the concordat between Departments on inward investment.

Mr. Ian McCartney: Both the Scotland and Wales White Papers on Devolution indicated that there would be a Concordat on financial assistance. We are currently preparing a concordat between England, Scotland, Wales and Northern Ireland to ensure that financial assistance to industry remains within common UK guidelines and consultation arrangements. It will address the concern that public money should not be used to finance competition between different parts of the country.

A date for the publication of the concordat has yet to be announced.⁵⁰

⁴⁷ *Industrial Development Act 1982: Annual Report 1996/97*, HC 223 1997/98, table 8

⁴⁸ See, for instance, the article in the *Financial Times* dated 26 November 1997 entitled "Welsh dragon has English breathing fire"

⁴⁹ HC Deb 20 November 1997 c.281W

E. Views on the proposed changes

Concerns have been raised about whether an all-Wales WDA would represent the needs of rural Wales adequately. In the summer adjournment debate on the Welsh Assembly, Richard Livsey MP voiced these concerns:

". . . recognition of the issue of rural Wales is important. After the announcement of the demise of the Development Board for Rural Wales, there was a feeling of great unease in mid-Wales."⁵¹

The WDA is aware of these concerns. In a memorandum submitted to the Welsh Affairs Committee, the WDA state "the WDA attaches great importance to the development of coherent rural policies which bring in the expertise of the DBRW and build on this for the rural areas throughout Wales."

The director of the Confederation of British Industry (CBI) in Wales, Elizabeth Haywood, has commented on the proposals, saying:

"There should be a clear division of roles between the Assembly - strategic - and the (WDA) powerhouse - executive - to avoid conflict of interests and duplication of effort. If the powerhouse proves effective, there is a strong argument for expanding its remit, for instance to include tourism and the WTB and the Welsh Office Industry Department."⁵²

V The Welsh Assembly and Local Government

A. Introduction

Local government in the United Kingdom is subject to the doctrine of *ultra vires*: literally, "beyond the powers". That is to say, it is a creature of statute and its powers derive from its governing legislation. It may only undertake activities which are explicitly or implicitly sanctioned by that legislation, although within those limits it has discretion to act in the way it chooses (subject to observing certain principles of administrative law such as reasonableness). The Welsh Assembly will, in turn, be limited by its own governing legislation. The main statutes governing the institutional aspects of local government in Wales are the *Local Government Act 1972* and the *Local Government (Wales) Act 1994*, which provided for its reorganisation into a single-tier or *unitary* structure of 22 councils having most of the responsibilities previously exercised by the old county and district

⁵⁰ A parliamentary question has been tabled asking when the condordat will be published; this has not yet been answered.

⁵¹ HC Deb 25 July 1997 c1148

⁵² *Western Mail*, 3 December 1997 (page 2)

councils during the period 1974-1996. The powers and duties of local government regarding particular services are set out in separate Acts of Parliament such as the *Children Act 1989* and the *Education Act 1996*. Various powers are given to the Secretary of State for Wales under this body of legislation and it is these powers which the Assembly will inherit. The Assembly will also inherit various duties, such as the duty to fund local authorities.

At the same time there is a delicate balance in the relationship between local and central government which is underpinned by, but by no means restricted to, this one-way legal relationship. As Martin Loughlin puts it, "Local government has become a powerful agency of government within the administrative State, but... the price of this power is that the affairs of local government have become inextricably bound up with those of the centre."⁵³ Central government has entrusted councils to provide many of the "front-line" services of the welfare state, for example, and is consequently reliant on local government to implement policy and maintain standards. Loughlin notes that "In the course of business, certain informal 'rules of the game' or conventional understandings emerge and these tend to provide a better explanation of behaviour than the formal legal position" [op cit, p71].

The Welsh Assembly may inherit the legal framework wholesale, then, but the day to day intricacies of its relationship with local government will have to be built up from scratch. The White Paper suggests that the principle of subsidiarity will govern relations between the Assembly and public bodies in Wales, including local government: "By establishing the Assembly, the Government is moving the process of decision-making closer to the citizen: many more decisions about Wales will be made in Wales. By the same principle, decisions which local authorities now take for their local communities will continue to be taken locally" [para 3.2].

The tone set by the White Paper emphasises partnership, responsiveness, accountability, etc. It states [para 3.6] that the Government will:

- expect the Assembly to promote and foster local government in Wales in line with the European charter on local self-government which the Government has signed;
- ensure that the Assembly regularly reviews with local government how effectively this commitment is being observed;
- expect the Assembly to bring public bodies and local authorities into closer partnership by appointing more local authority members to their boards;
- give the Assembly the power to transfer functions exercised by some Welsh public bodies to local government;

⁵³ Legality and Locality, 1996, p 60

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- expect the Assembly to respect local government's powers; the Bill establishing the Assembly will not take functions away from local government (this could be done only by further primary legislation passed by Parliament).

Most of the points set out above are translated into legislation by the current Bill:

- Clause 110(1) would require the Assembly to set out and keep under review its strategy for sustaining and promoting local government in Wales [referred to in the Bill as the local government scheme].
- Clause 110(2) would require the Assembly to establish a body to be known as the Partnership Council for Wales (Cyngor Partneriaeth Cymru), consisting of members of the Assembly and of local authorities. The Partnership Council would be able to give advice to the Assembly about any of its functions or about any matters affecting local government. This would include the contents of the local government scheme. The Council would also be able to give advice to local government. Detailed provision concerning the membership and procedure of the Council is set out in Schedule 7.
- Clause 29 would enable the Assembly to transfer functions of various public bodies listed in Schedule 3 to other bodies listed in the Schedule, to a Welsh local authority or to itself. The explanatory memorandum printed at the front of the Bill states that "Welsh local authorities cannot lose functions under this clause.

The Cardiff University Devolution Group has pointed out that "The proposal for a Welsh Assembly itself was - and is - viewed with suspicion by some of the new authorities in Wales, who see it as a further possible threat to their functions and powers. The Assembly should give a high priority to winning the confidence of the new authorities and to help repair the damage done in the last 18 years to the civic culture of Wales. In part this can be done by restoring some of those powers and functions local government has had stripped away."⁵⁴ The provision of legal safeguards will perhaps be of some comfort to those who are wary of the role the Assembly might play in relation to local government. Nevertheless the tone and substance of the relationship between local government and the Assembly cannot fully be legislated for.

⁵⁴ Welsh Affairs Committee Inquiry into the Government's Devolution Proposals. Memorandum of Evidence from the Cardiff University Devolution Group, 1997, paras 361-2

The Welsh Local Government Association (WLGA)⁵⁵ sees the Government's devolution proposals for Wales as an opportunity to develop local authorities which:

- are actively engaged with their local communities and representative of their many interests;
- are empowered to secure the wide range of services which are necessary for successful and sustainable communities;
- provide comprehensive community leadership which is not limited by their role or capacity in directly delivering services;
- encourage and facilitate the contribution of others, through voluntary action and business enterprise, in serving local communities;
- provide the local strategic direction for all public agencies which are active in local communities.

This would clearly require a commitment from local government as well as from the Assembly. The WLGA believes that the creation of the Assembly will greatly enhance the potential for an effective partnership between central and local government in Wales: "The Secretary of State is accountable to Westminster and is bound by conventions of collective responsibility. As a result he is limited in his capacity to exercise policy discretion in Wales and also therefore limited in his capacity to engage responsively to the partnership needed by local government and local communities" [ibid, para 5].

B. Default Powers

Various powers exist allowing the Secretary of State to intervene when a local authority fails in a named statutory duty. These default powers are less wide-ranging than are sometimes supposed: there is no general power for the Government to "send in Commissioners" to take over all of an authority's functions, for example. In the past the Government's default powers have been used very rarely, although in England there has been a growing readiness to countenance direct intervention to enforce educational standards. A PQ of 11.4.84 set out a long list of the default powers which the Government was able to identify [HC Deb Vol 58, cc 249-255W]. Some of the more important default powers currently in force, which the Welsh Assembly would presumably inherit, are described below. Ministers also have the power in certain circumstances to order public inquiries into named local authority functions: these are not listed here.⁵⁶

⁵⁵ The Welsh Assembly: Implications for Local Government and Economic Development. Evidence to the House of Commons Select Committee on Welsh Affairs, 17.11.97, para 2

⁵⁶ In Scotland the Government has much wider powers to order inquiries and issue directions to local authorities which are in default of any of their statutory duties, under section 211 of the *Local Government (Scotland) Act 1973*.

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- ***Education Act 1996:*** the Secretary of State may issue "appropriate directions", enforceable through the courts, to an education authority or board of governors where he considers that it has failed to carry out any of its statutory duties [s497]. He may also give such directions as he thinks expedient where he believes that an LEA or board of governors has acted or is proposing to act unreasonably in exercising its powers [s496].
- ***School Inspections Act 1996:*** the Secretary of State can create an Education Association to take control of a failing school maintained by a local education authority [s33]. If a school fails to improve under the supervision of an Education Association, the Secretary of State has the power to order its closure [s38].
- ***Housing Act 1985:*** the Secretary of State may administer the Right to Buy scheme where tenants are having difficulty exercising their rights [s164].
- ***Housing Act 1988:*** Subject to a tenants' ballot the Secretary of State has the power to designate by Statutory Instrument an area of land as a Housing Action Trust [s60], thus removing housing within the area from local authority control.
- ***Children Act 1989:*** the Secretary of State may issue directions enforceable in the courts where an authority is in default of its duties to children under the Act [s84].
- ***Local Authority Social Services Act 1970:*** the Secretary of State may issue directions enforceable in the courts where an authority is in default of its community care responsibilities under the Act [s7D].
- ***Town & Country Planning Act 1990:*** the Secretary of State may, after a local inquiry, take over the power of the local authority to prepare a development plan [s51].
- ***Public Health Act 1936:*** the Secretary of State may issue directions enforceable in the courts where an authority is in default of its responsibilities under the Act, including the provision of mortuaries. He may take over these functions if the authority fails to comply [s322].

The Government is currently developing its plans to replace Compulsory Competitive Tendering with a new duty for local authorities to achieve "best value" for the public. On 2.6.97 the Secretary of State Ron Davies announced an extension to the existing moratorium on CCT in Wales which was introduced because of local government reorganisation [HC Deb Vol 295, cc32-3W]. CCT will be reintroduced for manual services and extended to professional services and housing management in a rolling programme between October 1998 and October 1999 in Wales. In the meantime, local authorities in Wales have been asked to come forward with best value proposals in advance of primary legislation. The Government's intention is that the best value system would require continuous improvements in councils' performance. The Principles of Best Value published in England on 2.6.97⁵⁷

⁵⁷ DETR News Release 197 "Better value for local authority services"

state that there should be provision for "intervention at the direction of the Secretary of State on the advice of the Audit Commission when an authority has failed to take agreed remedial action, or has failed to achieve realistic targets for improvement."

C. Local Government Finance

One of the major responsibilities which will be handed to the Assembly will be the distribution of government grant to local authorities. This will be subject to annual consultation with representatives of local government.⁵⁸

Central government grants constitute around 85% of total local authority spending in Wales. The main form of grant is RSG (Revenue Support Grant), which is currently distributed among the different councils using the Standard Spending Assessment. The SSA assesses councils' relative need to spend on local services. A range of demographic, physical, economic and social indicators are used to determine this, for example number of pupils, number of road miles, households lacking the exclusive use of basic amenities, sparsity/density of population etc. SSAs also provide the benchmark for council tax capping.

Although there is a statutory requirement to pay RSG to local authorities each year [ibid], the mechanism for so doing is not set out in statute, leaving the Welsh Assembly free to make radical alterations to the system if it so desires. The Government has reached agreement with the Welsh Local Government Association that independent research into the grant distribution system in Wales will be commissioned. The results of that research will be available to the Assembly and no fundamental change to the grant system is likely before the Assembly is established. The Assembly will also have the power to make changes to the proportion of the Welsh Office's current share of public finance which is allocated to local government as opposed to, say, the NHS. The Cardiff University Devolution Group has called for new criteria for budgeting need to be decided between the authorities and the Assembly, replacing "the present annual 'lottery' with a formula allowing for more forward financial planning by the unitary authorities."⁵⁹

⁵⁸ *Local Government Finance Act 1988*, section 78

⁵⁹ Welsh Affairs Committee Inquiry into the Government's Devolution Proposals. Memorandum of Evidence from the Cardiff University Devolution Group, 1997, para 367

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The Welsh Assembly will not be able to replace or supplement existing forms of local taxation (currently council tax and the uniform business rate). The Government is currently reviewing the current arrangements for local authority revenue raising as part of a wider review of local government finance.⁶⁰ The review will examine ways of making the council tax fairer and consultation will take place with business about returning the business rate to local control. Provision currently exists within section 5 of the *Local Government Finance Act 1992* to alter substantially the impact of the council tax by changing the banding system by means of secondary legislation, so the Welsh Assembly may inherit this power even if the Government decides not to make any radical council tax changes. There is no power to return business rates to local control using secondary legislation, however, so the Assembly will be bound by the Government's decision on this matter.

The local government finance review will also consider "the arrangements which will need to be put in place to abolish crude and universal capping while retaining reserve powers to control excessive council tax rises" [ibid]. The White Paper suggests that "the role of the Assembly in respect of council tax [capping] will depend on the outcome of this review" [para 3.9]. At present, capping is at the discretion of the Secretary of State, under Part I Chapter V of the *Local Government Finance Act 1992*.⁶¹ The White Paper states that the Welsh Assembly will also be responsible for determining how much local authorities can borrow under Part IV of the *Local Government and Housing Act 1989*.

Under *Local Government Finance Act 1982* the Secretary of State may order an extraordinary audit of a council if it appears to him that this would be in the public interest [s22]. The auditor has extensive powers to take action under Part III of the Act (including surcharge in specified circumstances) if, after such an audit, it appears that sums are missing from the accounts or that unlawful expenditure has been incurred.

⁶⁰ Department Of The Environment, Transport & The Regions press release "Review to take a fresh look at local government finance" 297/ENV, 25.7.97

⁶¹ See Research Paper 97/89 for further details of the council tax capping regime.

Recent Research Papers on related subjects include:

97/132	<i>The Government of Wales Bill: Operational Aspects of the National Assembly</i>	04.12.97
97/129	<i>The Government of Wales Bill: Devolution and the National Assembly</i>	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