

Government of Wales Bill: Operational Aspects of the National Assembly

Research Paper 97/132

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 8–9 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 97/130, *The Government of Wales Bill: The National Assembly's Partners*, 4.12.97, deals with the Bill's provisions relating to certain public bodies ('quangos'), local government and the new role of the Welsh Development Agency. 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 various aspects of the Bill's provisions on the organisation and operation of the proposed national Assembly, such as its location, procedures and practices, legislative power and its Members' remuneration. A list of the Bill's order-making powers is contained in Appendix 1.

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I Summary

The *Government of Wales Bill* is due to have its second reading on Monday 8 December. Its provisions follow substantially the Government's devolution scheme as set out in the July White Paper, *A Voice for Wales* (Cm 3718).

This Paper examines a number of internal 'operational' issues of the proposed National Assembly for Wales (hereafter 'Assembly'), including:

- *Location of the Assembly:* At the time of writing, the Government had decided not to establish the Assembly at Cardiff City Hall because it was unable to agree financial terms with Cardiff Council, and was examining alternative sites in Cardiff and elsewhere.
- *Division of legislative power:* A key component of the devolution scheme is that primary legislation will continue to be enacted at Westminster, while the Assembly will have power to make secondary legislation in relation to devolved functions.
- *Assembly procedures and practices:* The Government is keen for the Assembly to be a 'modern, inclusive' body, and to operate in ways that will not simply replicate Westminster or local government. The processes for the creation of the Assembly's standing orders are examined here.
- *Wales/UK relationships:* The relationships between the Assembly (including its Members and leaders) and the UK Parliament and UK Government are of crucial importance to the devolution scheme. The extent to which representational links are set out in the Bill is examined here, and a list of Ministerial order-making powers contained in the Bill is given in Appendix 1.
- *Assembly Members' remuneration:* The provisions of the Bill on this topic are briefly examined.

II Location of the National Assembly

The white paper¹ stated that the Assembly's "headquarters would be in Cardiff," but that it would "maintain a visible presence throughout Wales" (para 4.44):

The Government proposes that the Assembly's headquarters should be located in Cardiff. It will be important for the Assembly to maintain a visible presence throughout Wales, for example by making use of modern communications technology.

The Government's estimate of the Assembly's start-up costs were set out in a paper in July:²

WELSH ASSEMBLY ESTIMATED COSTS OF ESTABLISHMENT

	Estimated cost £'000	
	Minimum	Maximum
Acquisition of building & associated Capital works	8,500	13,500
Fitting-out costs: furniture etc...	1,200	1,200
Fitting-out costs: IT & Telecoms	2,500	2,500
TOTAL START-UP COSTS	12,200	17,200

According to this paper, the costs of establishment "depend heavily on the building chosen. A number of sites are under consideration, with acquisition and conversion costs ranging from £8.5m to £13.5m, and fitting-out costs adding £3.7 million. The cost of a new building would be around £12.5m."

Cardiff City Hall was the Government's preferred option³, but it was unable to reach an agreement with Cardiff County Council. The Welsh Secretary, Ron Davies, described Cardiff Council's decision as "painfully misguided and wrong" and suggested that the

¹ *A voice for Wales*, Cm 3718, July 1997, para 1.5

² Deposited Paper 5217, 23.7.97

³ See, for example, *Western Mail*, 7.11.97, "Welsh Assembly will be based in City Hall"

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Assembly may have to have a temporary home initially: "It may well be that we will have to find temporary accommodation in Cardiff, perhaps by modifying existing buildings."⁴

The WO press notice issued when the Bill was published explained the Government's position:⁵

Why won't the Assembly be located at City Hall, Cardiff?

City Hall is a fine building, but it is in poor condition. Cardiff City Council was offered the market value assessed by the District Valuer -- £3.5 million -- but this was refused. Including this offer price, the total cost of establishing the Assembly in City Hall would have amounted to some £32 million over 5-7 years. To have met the Council's asking price would have implied a cost of over £40 million for the Assembly to have been based at City Hall -- and represented very poor value for money for the people of Wales.

What now?

There are a number of options available that would include Cardiff. The intention is to consult before a final decision is taken.

The Secretary of State has explained the financial background to his decision:⁶

Mr. Ron Davies: The full cost of bringing City Hall, Cardiff into a suitable condition for the Assembly was estimated at just over £32 million on the basis of purchase at the District Valuer's market valuation of £3.5 million. The minimum cost of adapting and equipping City Hall for a modern Assembly building would have been £8.5 million taking account of the building's grade 2* listing. Further essential repairs, refurbishment and upgrading would cost £20 million which could be spread over a period of years.

These costings are based upon a schedule of accommodation requirements prepared by my officials covering both refurbishment and adaptation. A calculation was prepared on that basis by my professional property advisers. I have placed a copy of that schedule in the Library of the House

The leader of Cardiff Council, Russell Goodway, has explained the council's policy: "All the council has asked for is the amount of money it will cost us to replace that accommodation to put our staff in. We do not wish to profit out of the transaction but clearly we cannot expect the people of Cardiff alone to fund the establishment of a Welsh Assembly."⁷ A fuller explanation of the council's position is set out in a briefing document, substantially reproduced in Appendix 2 of this Paper.

⁴ "Davies considers option of a temporary home", *Western Mail*, 28.11.97. See also "Cardiff risks own goal on assembly site", *Guardian*, 1.12.97

⁵ WO PN W97540-dev, 27.11.97, Q&A section

⁶ HC Deb vol 301c683, 28.11.97. The schedule is available as Deposited Paper 5560

⁷ *BBC News Web Site*, 27.11.97 (http://news.bbc.co.uk/hi/english/uk/newsid_34000/34653.stm)

There have been some original suggestions for the location of the Assembly.⁸ For example, several Members suggested, during a meeting of the Welsh Grand Committee on 18 November, that the Assembly should also meet in North Wales.⁹ Gareth Thomas agreed that the Assembly should be located in Cardiff, but suggested that it should have a North Wales office: "it would be eminently sensible to have a physical presence for the Assembly in North Wales" (c32). Lembit Opik said that "a roving Assembly is also a tremendously good idea" (c35), and had previously suggested that the Assembly should meet in different venues around Wales, stating that "the Welsh Assembly is a body not a building. With modern technology there is no reason why we cannot use the opportunity of meeting in different venues to demonstrate a practical and symbolic commitment to all corners of Wales."¹⁰ Others have proposed that the Assembly could meet in central Wales, perhaps in Machynlleth, where Owain Glendower held his parliament in 1404.¹¹ Dafydd Wigley said (c28):

I was disappointed-as were many other people that our capital city did not deliver a yes vote. I do not, however, accept the argument that the Assembly should therefore be based in Carmarthen, Caernarfon, Machynlleth or elsewhere. Cardiff is our capital city, but I must say to its people, "Please remember that your capital city has a responsibility to the rest of Wales-to the north, the west and mid Wales." The Assembly will bring to Cardiff many hundreds of jobs that would not otherwise have existed, and I hope that the good people of Cardiff will be conscious of their responsibility to other parts of Wales-I am sure that they will be.

At the time of writing, the Government's latest thinking was set out in a consultation paper on Thursday 4 December Mr Davies announced in a written answer on Thursday 4 December that he would be publishing a consultation paper on the location of the Assembly on Monday 8 December, and that he would be making available to Members a pre-publication copy on 4 December (in advance of the second reading debate on 8-9 December). The paper is entitled *The National Assembly for Wales: Accommodation Options* (deposited paper 5601)

⁸ Other than the presumably less serious suggestions such as Liverpool, Shrewsbury and even the Royal Yacht Britannia. See for example, "Give the Welsh a capital city -- but not in Wales", *Guardian*, 4.12.97

⁹ *North Wales and the Government's proposals for a Welsh assembly*, Welsh Grand Committee, 18.11.97. As the white paper proposed, the Bill requires the Assembly to set up regional committees, including one for 'North Wales': *cl 62*

¹⁰ "Assembly should be mobile," *Western Mail*, 6.10.97

¹¹ "Clerk calls for debate," *Western Mail*, 6.10.97

III The division of legislative power

The white paper stated clearly that "Parliament will continue to be the principal law maker for Wales"¹² and the division of legislative power was described (para 1.11):

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.

and the Q&A notes to the Welsh Office press release on publication of the Bill said:¹³

Does the Bill allow for further powers to be transferred to the Assembly?

The Government's policy is that the Assembly will acquire the powers which are currently exercised by the Secretary of State for Wales. The means by which the Assembly would acquire powers (through a Transfer Order made by Parliament) could in principle be used to transfer further functions. It is also open to Parliament to confer new powers on the Assembly when it makes new legislation.

Does this mean that the Assembly could acquire primary law-making and tax-raising powers?

No. The White Paper did not suggest this and the Bill does not provide for it. However, the Assembly will have an important role in preparing subordinate legislation for application in Wales.

The fact that the power of enacting primary legislation for Wales will continue to reside in Westminster/Whitehall means that MPs for Welsh constituencies will have a continuing role in Welsh matters, including those where the Assembly has secondary legislative powers. Thus two groups of Welsh representatives will have a role on legislation affecting Wales, those at Westminster and those in the Assembly. The precise extent of the relative input of the two groups will depend on the form of the relevant legislation, and in particular its split between statute and delegated legislation. At one extreme, legislation on a particular policy area (even in devolved matters) could provide very little or no scope for relevant secondary legislation, thereby keeping the legislative function primarily at Westminster. At the other extreme, a statute may leave virtually every aspect of a policy topic to secondary legislation (even in a statute where the policy as it applies to other parts of the UK is set out in fuller detail on its face), thereby giving the Assembly full scope to set and enact policy.

¹² *A voice for Wales*, Cm 3718, July 1997, para 3.37

¹³ WO PN W97540-dev, 27.11.97

In practice much, if not most legislation will follow some form of course between these two extremes. The white paper said that, "the Government will consider, in drafting each Bill that it introduces into Parliament, which of the new powers it contains should be exercised in Wales by the Assembly. This could include giving the Assembly responsibility for bringing the Bill's provisions into force in Wales. As a general principle, the Government expects Bills that confer new powers and relate to the Assembly's functions, such as education, health and housing, will provide for the powers to be exercised separately and differently in Wales; and to be exercised by the Assembly. The final terms on which an Act is implemented, including the means by which it is brought into force, will remain a matter for Parliament."¹⁴

The notes to the Current Law annotated edition of the *Wales Act 1978* neatly summarise the issues involved in the legislative arrangements under this form of devolution, had the 1970s provisions come into force:¹⁵

The conferment of powers of subordinate legislation on the Assembly deserves a brief general comment. The creation of primary and secondary legislation can be regarded as part of a single process of creating laws to regulate the matter in question. The Bill is drafted on the Department's instructions. Where resort to delegated legislation is thought by the Department to be necessary to achieve the aim of the legislative scheme, the regulations will be made by the Department itself, normally after consultation with affected interests. In some cases the Department responsible for the Bill will have to study the matter in greater detail before the regulations can be made. Having made the regulations, the Department is well placed from its experience of their effect and the functioning of the scheme in question to decide whether amendment of the Act itself is necessary. It is a criticism of this scheme of devolution therefore that this overall responsibility for legislation and administration is to be divided between Whitehall and Cardiff. Furthermore, in the operation of this scheme a good deal of inconsistency will doubtless be found between Acts in the extent to which powers of subordinate legislation are devolved to the Assembly. Acts of Parliament were not of course drafted with a sensible distribution of functions between Whitehall and Cardiff in mind. Probably some amendments will be found necessary. Certainly future Acts will have to be drafted with the role of the Assembly in making subordinate legislation in mind.

¹⁴ *op cit*, para 3.39

¹⁵ *Current Law Statutes Annotated 1978*, note to s21

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A. Secondary legislation

The white paper explained what secondary (often called 'subordinate' or 'delegated') legislation is (p27):

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.

Further discussion of the nature of delegated power is contained in Research Paper 94/16, 28.1.94, *The Deregulation and Contracting Out Bill*, especially Part II):

B. Assembly procedure for secondary legislation

The white paper described the procedure for secondary legislation (including the role of the various Assembly committees established in the Bill):

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.

and:

4.23The 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.

Other than certain instruments (such as those made jointly by a Minister and the Assembly), Assembly subordinate legislation will not be subject to (Westminster) Parliamentary procedures, such as the laying requirements, or affirmative or negative procedure (*clause 43*). Standing orders are to provide for subordinate legislation procedure in the Assembly (*clause 63*), including '**regulatory appraisals**' (i.e. "the likely costs and benefits of complying with [Assembly legislation]": *cl 64(1)*) to take place before a draft of any proposed legislation is laid before the Assembly, and where such costs "are likely to be significant", the appraisal is to be published, and "appropriate consultation (including consultation with representatives of business) is carried out" (*cl 64(3)*). Further provisions as to procedure (such as the making of Assembly legislation) are set out in *clauses 65-67*.

As already noted, the white paper envisaged that the preparation of proposed Assembly legislation would be a matter for the Assembly's subject committees and Executive Committee, but this is not stated expressly in the Bill, as presumably it is a matter for standing orders under *clause 63*. The Bill does, however, provide for a '**subordinate legislation scrutiny committee**' (*clauses 59-60*)¹⁶, to consider draft Assembly legislation and "report to the Assembly whether or not the special attention of the Assembly should be drawn to it" under any of the grounds specified in standing orders (*cl 59*). This is similar to the scrutiny procedure at Westminster where the Joint Committee on Statutory Instruments scrutinises instruments on the following criteria:¹⁷

- (i) that it imposes a charge on the public revenues or contains provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (ii) that it is made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts, either at all times or after the expiration of a specific period;
- (iii) that it purports to have retrospective effect where the parent statute confers no express authority so to provide;

¹⁶ Neither the First Secretary nor any Secretary can be a member of this committee: *cl 60(3)*

¹⁷ S.O. no. 151(1).

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- (iv) that there appears to have been unjustifiable delay in the publication or in the laying of it before Parliament.
- (v) that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where an instrument has come into operation before it has been laid before Parliament;
- (vi) that there appears to be a doubt whether it is *intra vires* or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it made.
- (vii) that for any special reason its form or purport calls for elucidation;
- (viii) that its drafting appears to be defective; or on any other ground which does not impinge on its merits or on the policy behind it; and to report its decision with the reasons therefor in any particular case.

Plaid Cymru have suggested an alternative legislative process, described as a 'fast-track procedure':¹⁸

At a press conference at Westminster today, attended by Ieuan Wyn Jones MP (Ynys Môn) and Elfyn Llwyd MP (Meirionnydd Nant Conwy), the party's MPs propose a fast-track procedure for Welsh Bills in the House of Commons to deal with the problem of the very weak legislative powers being provided for the Assembly. The new procedure would enable the Assembly to deal quickly and comprehensively with subjects where it only has partial responsibility, such as education and health.

As part of the plan, there would be a new role for the Welsh Grand Committee, which would debate and amend bills proposed by the Assembly by a two-thirds majority, subject to a final vote by the whole House of Commons. The new plan would mean that Wales wouldn't be part of the legislative log-jam at Westminster and Bills would receive proper scrutiny from people directly interested

The new procedure for Welsh Bills which Plaid Cymru are putting forward is:

- (1) Proposal from Welsh Cabinet
- (2) Consideration in Assembly specialist committee
- (3) Decision by Assembly: two thirds majority required to send the Bill on to the House of Commons
- (4) Second Reading in Welsh Grand Committee
- (5) Committee Stage in Welsh Grand
- (6) Report and Third Reading in Commons
- (7) Lords
- (8) Royal Assent.

¹⁸ "Fast track for Wales", Plaid Cymru PN 27.11.97

C. Assembly-Westminster/Whitehall relationships

The Government's policy provides for a number of links between Wales and Westminster in legislative matters. The white paper says that "the Government's proposals will allow the Assembly to seek to influence legislation which is being considered at Westminster."¹⁹ For example, *clause 32* requires the Secretary of State "as soon as practicable after the beginning of each session of Parliament" to undertake appropriate consultations with the Assembly "about the government's legislative programme for the session."²⁰ According to the white paper (para 3.38):

It will be open the Assembly to debate the programme and to prepare a response. The Secretary of State for Wales will be able to attend Assembly debates on the legislative programme. The Assembly will also have a general capacity to debate matters of interest to Wales, and to make its views known to Parliament.

The Bill provides that the Secretary of State is entitled to attend and participate in any proceedings of the Assembly, though not to vote or attend or participate in committee meetings (*clause 75*). The recent IWA report had suggested that it would be more appropriate for the Secretary of State to attend by invitation rather than as of right.²¹

4.16A final, perhaps presentational point, but one that is highly symbolic, is that it would be more appropriate that the Secretary of State should be invited to attend and address the Welsh Assembly rather than that he or she should be entitled as of right to attend the Assembly and take part in its activities. In this way the danger that excessive authority would be arrogated de facto to the Secretary of State, to which we have referred in Paragraph 4.13, would be diminished.

The Constitution Unit has criticised the devolution scheme's proposed division of legislative power, describing it as 'executive devolution':²²

The weakness of executive devolution

The Welsh Assembly will have no law-making power, but will take over the executive responsibilities currently exercised by the Secretary of State for Wales (health, education, local government, transport, agriculture, industry and training etc.). In these policy areas the Assembly will operate within a legislative framework set by Westminster. Within this framework it will have power to make rules and regulations by secondary legislation. For example, Westminster can prescribe that there should be a National Curriculum; the Welsh Assembly could then settle the details of the school curriculum in Wales. It could not decide that there should be no National Curriculum; and Welsh Office ministers are disingenuous when they say that the Welsh Assembly could have resisted the poll tax or the

¹⁹ *op cit*, para 3.38

²⁰ Unless the Secretary of State "considers that there are considerations relating to the bill which makes it inappropriate for him to do so": *cl 32(4)*

²¹ Institute of Welsh Affairs, *Making the Assembly work*, Nov 1997 p.15

²² R Hazell, *Constitution Unit commentary on the Welsh white paper*, Sept 1997, pp 1-2

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introduction of nursery vouchers through refusing to make the necessary implementation Orders. Once the rates had been abolished by Westminster a Welsh Assembly would have had to introduce the poll tax: unlike the Scottish Parliament, it would have had no choice. If Wales is to have the freedom to develop distinctive policies for Wales, or to resist national initiatives from London, it must have legislative power.

Executive devolution is unlikely to be stable or long lasting, because it is so heavily dependent on co-operation between Cardiff and Westminster:

- a well intentioned Westminster Parliament might confer broad delegated powers; a different Parliament (perhaps controlled by a different party) might leave no room for local discretion or choice
- Welsh bills risk losing their place in the intense Whitehall competition for legislative time, when the UK government may have a different agenda and other priorities
- in future Welsh committees in the Westminster Parliament can still be packed with non-Welsh MPs (as happened under the previous government) in order to get the government's legislation through
- schemes for Welsh legislation will be prepared in Whitehall by officials who no longer share responsibility for their implementation in Wales: the crucial link - and feedback - between administration and legislation will be broken.

Keith Patchett, a leading constitutional lawyer in Wales, has examined this in more detail (based on Labour's proposals when in Opposition) and set out what he saw as the current and proposed lines of Welsh influence in Whitehall, especially in legislative matters:²³

²³ K Patchett, "Power and politics", *IWA Agenda*, Winter 1996/7, pp 16-17

Table 1: Wales' influence in Whitehall with the existing Welsh Office arrangements

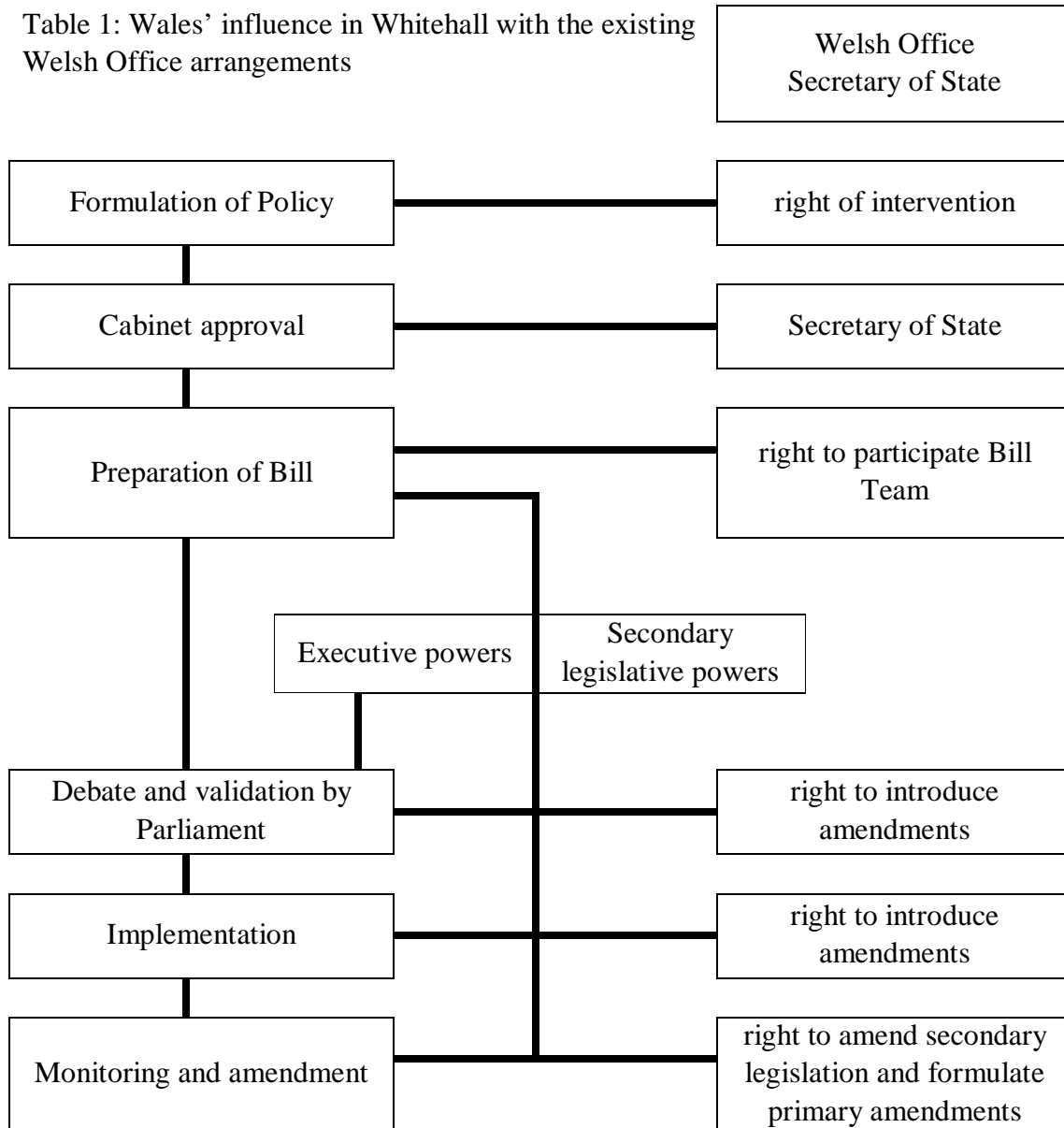
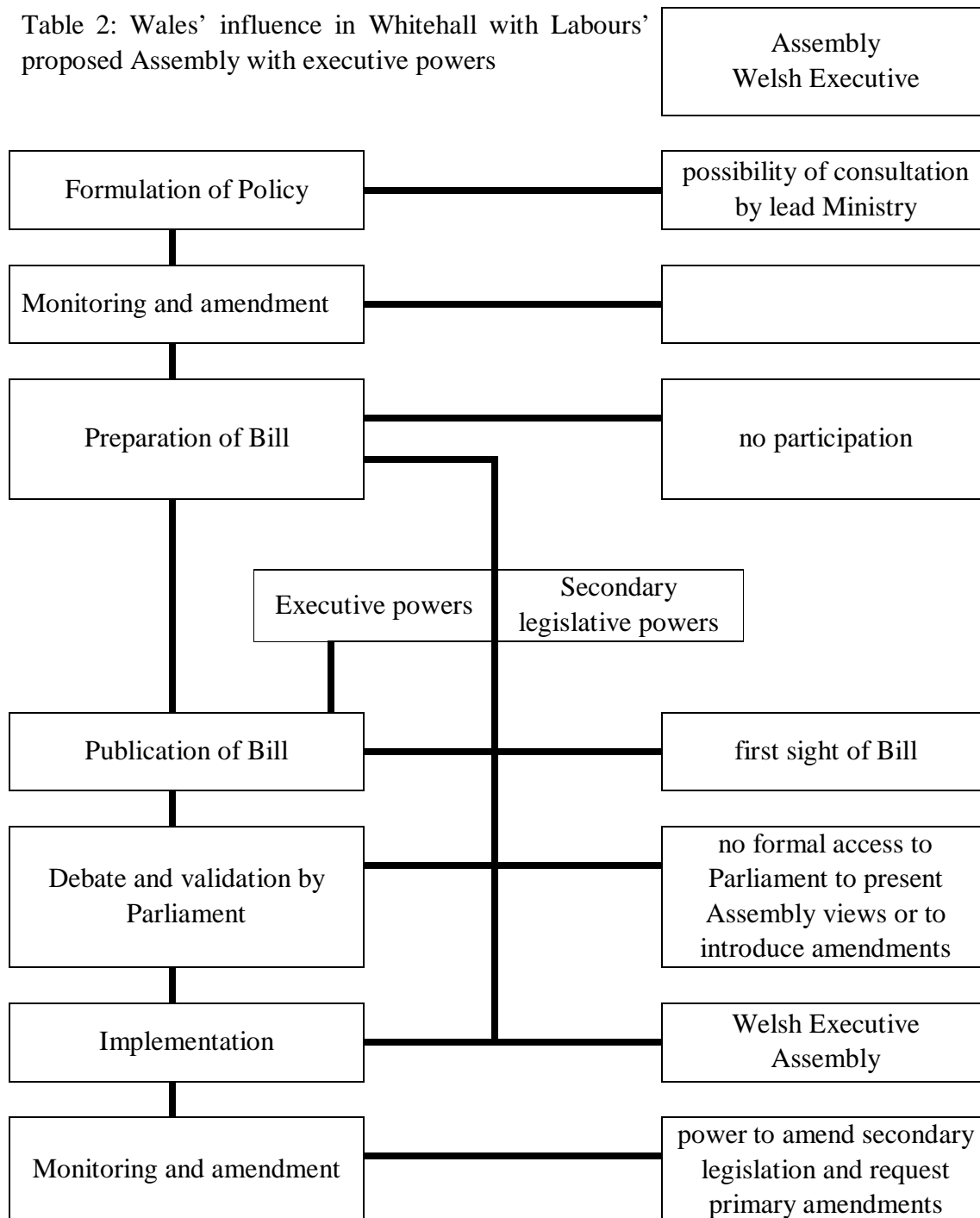


Table 2: Wales' influence in Whitehall with Labours' proposed Assembly with executive powers



He concluded (p.17):

In our system, major policy change is made through primary legislation. If, as is suggested here, an executive Assembly is poorly placed to influence the contents of that legislation, it could be handicapped in developing its own policies for Wales on important social and economic issues.

No argued case against primary legislative powers is made in either of the Labour Party's policy documents on a Welsh Assembly. They do not explain how the apparent weakening of Welsh input into primary law-making might be overcome in the absence of those powers. Perhaps we should be told before we are asked to vote in the referendum.

Ron Davies defended Labour's approach, in an article in the same journal, and, having examined Welsh legislative procedure and practice, concluded:²⁴

Given that this is the case, given that the statutory right of consultation will ensure that Wales' voice is always heard, given the dynamic effect devolution will have on all our political parties, given Labour's commitment to ensure all Westminster legislation will, wherever possible, reflect the demands of devolution, it is clear that Labour's proposals will help create a new, meaningful Welsh democracy.

²⁴ R Davies, "The tools for the job", *op cit*, pp 18-21

IV Assembly procedure and practice

The white paper and the Bill set out various principles and criteria for the operation of the Assembly. Several times in the white paper the Government stressed that the Assembly should be a modern, inclusive institution, in various ways including its elections and its working practices. For example chapter 4 opens with this: "The Government wants the Assembly to be a modern, progressive and inclusive democratic institution. ... and will include provisions in the Bill establishing the Assembly that will ensure that it goes about its work in an effective and accountable way, supported by suitably qualified and experienced staff."²⁵ Later in this chapter, the Government states that "the Assembly will be a new type of democratic institution and will need to develop new working arrangements which reflect its unique role. It will need to innovate and to draw upon best practice in both central and local government and the private sector" (para 4.12). At the press conference for the launch of the Bill, the Welsh Secretary, Ron Davies, said:²⁶

The National Assembly for Wales will be a new and effective form of government. It will be based on modern working and political practices for the good of the whole of Wales. I hope to see political parties working together in a positive way and the development of structures which will allow people as individuals as well as other groups -- local government, both sides of industry, the voluntary sector -- to get their voice heard The new National Assembly will be modern, open and accountable. Neither Westminster nor local government will provide the model: the National Assembly will make a fresh start based on the best practices from around the world. It will harness new technology and modern working practices to take Welsh democracy forward to the new millennium.

There are three stages in the preparation of the Assembly's working practices and procedures: work by an initial advisory group during the passage of the Bill, work by Commissioners once the Bill is enacted on standing orders for the Assembly's initial meeting, and any revisions by the Assembly itself thereafter.

The Welsh Office announced, on publication of the Bill, that the groundwork for the preparation of standing orders would begin quickly: "The Secretary of State will make an announcement very shortly about the establishment of an advisory group to prepare the way for the Commission."²⁷ The group would be a non-statutory body, which the Q&A guide to the Bill (attached to the Press Notice) explained would comprise of "members of the main political parties in Wales and representatives of key interest groups. The members of the advisory group will be announced shortly." There may well be some overlap between the membership of the advisory group and the statutory Commissioners, but it is assumed that the

²⁵ *A voice for Wales*, Cm 3718, July 1997, para 4.1

²⁶ WO PN W97540-dev, 27.11.97

²⁷ WO PN, *op cit*

Nolan principles for fair and open recruitment and appointment will apply to the statutory posts.²⁸

Mr Davies provided more detail on the advisory group in his opening speech to the Welsh Grand Committee on 18 November:²⁹

The Assembly ushers in a new era for Wales, bringing new, distinctive and inclusive politics. The Bill will set a framework, but the Assembly's working methods will be just as important. Many of those methods will be set out in the Assembly's Standing Orders. To set the scene for the statutory commission, which will be established once the Bill has Royal Assent, we will write the Standing Orders and I intend to set up an informal advisory group of representatives of the main political parties in Wales and other key interests. We will make sure that there is a strong input from the north.

The advisory group will provide the framework for the information that will go to the advisory committee and will need to build a consensus. I make no apologies for saying that the new Assembly must be a force for resolving differences, not a focus on disagreements. In particular, it must listen to the voice of the north. It may wish to visit the north to take evidence from organisations and individuals who want an immediate input into the Assembly's working practices or Standing Orders on the problems of geography, poor communications and distance.

Ms Julie Morgan (Cardiff, North): Can my right hon. Friend assure me that the advisory group will be inclusive of all people in Wales and obviously, that includes women? The case has been well made that the Assembly will be inclusive and will represent everyone in Wales. The advisory group on Standing Orders will be an important means of showing that inclusivity.

Mr. Davies: I can give my hon. Friend that assurance. I am in discussion with a wide variety of interests to ensure that the advisory committee is broadly representative. I have mentioned the political parties, but the different cultures and geographical areas of Wales must also be represented. I want to make sure that there is an appropriate gender balance on the committee.

I cannot give the exact size and composition of the group now, but I can say that I expect there to be fewer than a dozen members. I hope that the first meeting will take place before Christmas. I will announce the names of the chairman and members as soon as possible. Consultation is under way and it will probably take two or three weeks before I am able to make a final announcement. My hon. Friend's case is strong. She has been a forthright and committed advocate of gender equality and I can assure her that the advisory committee will not disappoint her.

The process of developing the committee's advice is a foretaste of the new politics in that it does not ignore our differences but listens to and reflects them. I am confident that we can create a Welsh Assembly in which historic divisions and diversity can be accommodated. It will create a better, healthier democracy for the whole of our country, north and south.

Winding up the WGC debate, the junior minister, Peter Hain, responded to a number of suggestions from Members about the operation of the devolution scheme (c41):

²⁸ On which see Research Paper 96/72, *The Quango debate*, 14.6.96

²⁹ *North Wales and the Government's proposals for a Welsh Assembly*, 18.7.97, c16

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The hon. Member for Ynys Môn stressed the new politics, which I think we have seen in operation this morning. We want that new approach to develop and increase. The hon. Member for Montgomeryshire (Mr. Ôpik) made some important points about celebrating cultural diversity. We do not want the new Assembly to have a monolithic unity: we want it

to be pluralistic and to engage in the new politics. I was particularly interested in the Hon. Gentleman's proposal for a youth Parliament—he might have put himself up as a candidate—and by his argument that it would bring young people and women from all parts of Wales into the new, exciting, democratic era in Welsh politics.

During Welsh questions, Mr Davis announced that John Elfed Jones would chair the advisory group.³⁰

Mr. Ron Davies: The Government of Wales Bill was published on 27 November. The Second Reading debate will take place next week and I hope the Royal Assent will be granted by the summer.

In the interim, I have decided to appoint an advisory group to consider the standing orders and other procedures of the Assembly. We want a dynamic, modern and inclusive institution, fit for the new millennium. I am pleased to announce that John Elfed Jones, a distinguished figure in Welsh business and public life, has accepted my invitation to be the chairman of that advisory group.

He gave further details in a written answer that day:³¹

MS JACKIE LAWRENCE (Preseli Pembrokeshire): To ask the Secretary of State for Wales, what progress has been made in establishing an independent body to advise on matters relating to the Welsh Assembly. [17480]

MR RON DAVIES: The White Paper stated that a multi-party Commission would be appointed to draft the Assembly's first standing orders. I propose to appoint that Commission following Royal Assent to the Government of Wales Bill. In the meantime I propose to set up an advisory group to assist me in preparing guidance to the Standing Orders Commission. The national Assembly Advisory Group will consider matters such as: the Assembly's decision-making arrangements, its business procedures, and the responsibilities of Assembly members. There will be opportunities for organisations and individuals around Wales to put their views to the advisory group. The group will include members from different political parties as well as individuals with expertise in a range of fields such as business, local government and the voluntary sector. I am pleased to announce that the Chairman of the National Assembly Advisory Group will be John Elfed Jones CBE. He is currently chairman of International Greetings plc and a former chairman of the Welsh Language Board and of Welsh Water. He has extensive experience of both the private and public sectors in Wales. I am sure he will make an excellent chairman of the group. I expect to announce the names of the other members of the group shortly.

Commissioners are to be appointed by the Secretary of State "to prepare a draft of standing orders to have effect when the Assembly first meets" (*clause 49(1)*). There are to be between five and nine Commissioners (*clause 50(1)*), holding office on such terms (including allowances and expenses) as the Secretary of State decides (*clause 50(2)*), and are removable by the Secretary of State (*clause 50(3)*). The Secretary of State can issue guidance to the Commissioners on the form and content of the draft standing orders and the deadline for their submission by them (*clause 50(4)*), and must publish any such guidance (*clause 50(6)*). Once submitted, the draft standing orders are to be considered by the Secretary of State, who can

³⁰ HC Deb vol 302 cc 340-1, 3.12.97

³¹ transcript answer not yet in Hansard at time of writing:

make the initial standing orders for the Assembly either in the form submitted or "with such modifications as he considers appropriate" (*clause 49(3)*). According to the white paper, the Commission³² would be wound up when it has completed its task (p26).

The assembly's standing orders must give effect to certain principles and criteria, including

- **Preservation of order** (*clause 68*): including provisions for excluding Assembly Members from the proceedings of the Assembly or its committees
- **Openness** (*clause 69*): (a) all proceedings of the Assembly are to be held in public, as are committee meetings except in specified circumstances, (b) publication of a report of the proceedings of the Assembly, and of its committees other than those not held in public, (c) all documents relevant to Assembly (or committee) business to be open to inspection by the public, and (d) investigation of complaints alleging maladministration by the Assembly³³
- **Accountability** (*clause 70*): (a) specifying circumstances for attendance of Assembly Members at committees of which they are not members, (b) oral and written questioning of the First Secretary and other Secretaries and (c) all documents relevant to Assembly (or committee) business to be open to inspection by Assembly Members.
- **Integrity** (*clause 71*): (a) register of Assembly Members' registrable interests (as defined in standing orders), (b) declaration of relevant interests in Assembly/committee proceedings, and (c) prohibition of paid advocacy. Breach of these integrity requirements is to be a criminal offence, with offenders liable on summary conviction to a fine up to level 5 on the standard scale (currently £5,000): *cl 71(6)-(8)*

In addition to these requirements, the Bill directs the Assembly to act in certain ways or do or establish a number of other things for its operation, including:

- ◆ **Equality of English and Welsh languages** (*clause 46*): "so far as is both appropriate in the circumstances and reasonably practicable", and the Assembly "shall have regard to any guidelines under s9, *Welsh Language Act 1993*. The Assembly's standing orders are to be made in both languages
- ◆ **Equality of opportunity for all people** (*clause 47*): "Appropriate arrangements" to be made for the conduct of its business with "due regard to the principle"
- ◆ **Election of presiding officers** (*clause 51*): The presiding officer and deputy presiding officer (who can be known by titles provided in standing orders) cannot be from the same party

³² While the white paper talked of a 'Commission', the Bill refers only to 'Commissioners'.

³³ The white paper said that the Bill would provide for the PCA (the 'Parliamentary Ombudsman') to investigate complaints about the Assembly (para 4.39).

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- ◆ **Election of Assembly First Secretary** (*clause 52*): also known as Prif Ysgrifennydd y Cynulliad
- ◆ **Establishment of committees** (*clause 53*) Certain committees³⁴ are required to be set up, including 'subject committees' (*cls 56-8*), 'executive committee' of First Secretary (its chair) and the Secretaries (*cl 58*), 'subordinate legislation scrutiny committee' (*cls 59-60*), Audit Committee (*cl 61*), and 'regional committees' including one for North Wales (*cl 62*)
- ◆ **Subordinate legislation procedures** (*clauses 63-7*)³⁵
- ◆ **Provision of documents relevant to Assembly business to Secretary of State** (*clause 75(3)*): The Secretary of State is entitled to attend and participate in Assembly proceedings, but not to vote, nor attend committee or participate in committee proceedings (*cl 75(1)-(2)*)

In addition to specific functions and powers transferred to it, the Assembly is empowered to do certain things, including:

- ◇ **Consider any matter affecting Wales** (*clause 34*)
- ◇ **Support of culture** (*clause 33*): including museums, art galleries and libraries, the Welsh language, and arts, crafts sport or other cultural or recreational activities in Wales
- ◇ **Appointment of staff** (*clause 35*): Assembly staff are to be civil servants (unlike staff of the UK Parliament or the proposed Scottish Parliament, but as enacted for the Welsh Assembly under the *Wales Act 1978*)
- ◇ **Holding of inquiries** (*clause 36*): "into any matter relevant to the exercise of any of its functions"
- ◇ **Participation in legal proceedings** (*clause 37*)
- ◇ **Supplementary powers** (*clause 39*): "The Assembly may do anything (including the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the exercise of any of its functions"
- ◇ **Agency arrangements** (*clause 40*): for the exercise of functions (other than the making etc of subordinate legislation) and provision of services

³⁴ Other than the Audit Committee, the committees are to be known by the titles provided in standing orders.

³⁵ On which, see section II of this Paper

V. Wales/UK representational relationships³⁶

In any system of multi-tiered government the relationships between the various tiers (and their institutions and participants) are of crucial importance, and this is especially so in a devolved arrangement where one tier remains constitutionally supreme (unlike federalist arrangements where each tier is sovereign within its own jurisdiction), and, as in the Welsh devolution scheme, where only one tier retains the right to make primary legislation. These issues are often subsumed in the term 'West Lothian Question', which dealt specifically with the 'parliamentary' relationships in a devolved area.³⁷ This section of this Paper seeks to provide a flavour of these issues.

The recent Institute of Welsh Affairs report dealt with this matter.³⁸

4.1 A critical element in the effective working of the Assembly, its Executive and its officials will be how in practice they organise their relations with the British government machine in Westminster and Whitehall. This raises two related issues:

- (i) The ability of the Assembly to influence legislation passing through Westminster; and
- (ii) the role of the Secretary of State for Wales in acting as an intermediary, between the Assembly and Westminster and Whitehall.

Elected representatives act on behalf of those who elected them in many ways other than by participation in legislative processes. Where matters (including those relating to Wales) remain with Westminster, Welsh MPs will presumably continue to act in the Westminster/Whitehall scene as now. In addition, the Assembly and its Members will no doubt wish to air their views on such matters where relevant, and *clause 34* states that "The Assembly may consider, and make appropriate representations about, any matter affecting Wales."

Much of this form of exchange may well be through the medium of the **Secretary of State**, as envisaged by the white paper (paras 3.34-36):

A continuing role for the Secretary of State

3.34 With the establishment of an Assembly, the Secretary of State for Wales will 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 will also sit on relevant Standing Committees of the House of Commons considering legislation which affects Wales.

³⁶ See also in this context the section of this Paper on the Assembly's legislative powers (section II)

³⁷ See generally, Research Paper 95/95, Sept 1995, *The West Lothian Question*

³⁸ IWA, *Making the Assembly work*, Nov 1997, p12

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3.35 Under the Government's proposals the Secretary of State will be able to work in 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.

3.36 This partnership will need to be mirrored at official level. The Secretary of State's team of officials will work closely with officials in other government departments and the Assembly.

In addition to their continuing legislative functions, Westminster MPs will, according to the white paper, retain a representational role on Welsh affairs (paras 3.44-45):

Parliamentary scrutiny of Welsh affairs

3.44 The House of Commons currently has its own mechanisms for considering and debating Welsh matters and for exercising scrutiny over the executive's activities in Wales. These include the Welsh Affairs Select Committee which scrutinises the responsibilities of the Secretary of State; the Welsh Grand Committee, a forum for discussion of Welsh issues; and the annual St David's Day debate where Welsh matters are discussed on the floor of the House. The Welsh Grand Committee's deliberative function will in part be replaced by the Assembly. It will be for the House of Commons to consider whether the Committee, and the Welsh Affairs Select Committee, should nevertheless have a continuing role.

3.45 The Secretary of State will continue to be accountable to Parliament for his actions through the normal mechanisms 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.

The Opposition has continued to highlight what it regards as the unstable nature of the Government's Welsh devolution scheme. In a recent speech to the Welsh Conservative Council entitled 'An unsettled Bill for an unsettled nation', Michael Ancram, claimed that "it remains unclear how the Secretary of State could remain in the cabinet; what the role of Welsh MPs would be at Westminster; and how deadlock could be avoided between different parties in London and Cardiff After devolution, Wales will inevitably lose its strong voice at Westminster and Whitehall.."³⁹

The IWA report made suggestions for a close relationship between the devolved bodies and Westminster/Whitehall:⁴⁰

4.15 For all these reasons, therefore, it would be in the strong interest of Wales if, from the start, the legislation signalled an intent that the Assembly and its officials should be directly and closely involved in discussions with Whitehall Departments and Westminster. This involvement should

³⁹ Conservative Party PN 1558/97, 29.11.97, pp 4,5

⁴⁰ *op cit*, pp 14-15

encompass both the development of policy and the progress of primary and secondary legislation through the Houses of Parliament. This could be achieved in four ways:

(i) By establishing in law the principle of concordats between the Assembly and the Whitehall departments. This should provide for the involvement of the Assembly in negotiations on policy development and the passage of legislation through Parliament. Concordats may well differ between Whitehall departments. Even so, it would be helpful, from the point of view of information and elucidation, for the Bill to contain a model for such concordats setting out the basic features of the relationship.

(ii) By establishing over time conventions whereby backbench Welsh MPs and Welsh Peers serve as the means by which the Assembly makes its position clear in debates on primary and secondary legislation in Parliament. This role accorded to MPs and Peers would be in place of the Secretary of State and his or her spokesperson in the Lords as is proposed in the White Paper.

(iii) By establishing procedures through which additional powers to make secondary legislation on matters relating to new Acts of Parliament can be conferred by Order in Council, with a general requirement that the Order cannot be made until the Assembly has been consulted about the delegated law making powers that are proposed for it in the draft Order.

(iv) By establishing procedures whereby the Assembly will be able to use the services of Whitehall Departments that the Welsh Office has relied upon until now. One example is the Treasury Solicitor who has immense expertise in litigation involving Government, especially in judicial review cases about the exercise of executive powers. Among Parliamentary Counsel there should be one or more officials specialising in drafting Welsh secondary legislation. The Assembly should not be expected to establish legal services of its own to deal with such matters, and certainly not in the early years of its life. Co-operation that already must be custom and practice between the Welsh Office, the Treasury and other Departments in such matters should be continued once the Assembly takes over the Welsh Office role, and the legislation should provide for this.

The Welsh Secretary has defended his proposals in this respect during the July debate on the white paper:⁴¹

The existing constitutional arrangements allow us as Welsh Members neither to take the decisions ourselves nor to challenge the decision makers. It is a myth to claim that the right hon. Members for Wokingham and for Richmond, Yorks were held accountable in this Parliament for their actions in Wales.

We propose to legitimise that undemocratic and unaccountable regime with a new democracy, with an Assembly directly elected by and answerable to the people of Wales, sensitive to Welsh needs as expressed through the ballot box rather than to an alien ideology expressed through an over-centralised Government with an attendant flotilla of quangos. There has long been scope for Wales to do its own thing, but we have seen where that can lead when that desire for diversity is not in tune with local values.

I shall put our Assembly proposals in the overall context of the governance of the United Kingdom. Wales will remain an integral part of the United Kingdom. Parliament will make primary legislation for Wales. The Secretary of State will remain a member of the Cabinet, and Welsh Members will be in the House of Commons, in full force. The Assembly will be able to make its views known and contribute effectively to public debate as well. These proposals add to Wales's opportunities to gain a

⁴¹ HC Deb vol 298 cc1120-1, 25.7.97

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hearing in the United Kingdom, not reduce them. The charge that Wales will be marginalised or sidelined is simply wrong.

The fact that the Secretary of State for Wales will no longer have to make decisions on important but essentially local issues, such as planning matters, appointments and road schemes, will free him or her to make a more effective contribution on behalf of Wales at a strategic level.

Mrs. Teresa Gorman (Billericay): Is it not true that Welsh Members were elected to make decisions about housing and education, for example? If the Government's proposals were to go through, those elected to this place to represent Wales would be marginalised, in the sense that they would no longer have a say when it came to vital decisions on housing and education, which the Welsh people sent them to Westminster to decide upon.

Mr. Davies: In part, the theory may be correct that Welsh Members are elected to take decisions on matters such as housing. Our experience over the past two decades, however, is that we, Welsh Members, do not take such decisions, and that is the problem. Decisions relating to the administration of housing, economic development, education and the health service in Wales are not taken by Welsh Members.

Primary legislation passes through the House, and we are involved in that legislative process. That is true of the past, in the sense that we were opposing proposed legislation. Administration and detailed application of policies in Wales, however, has never been carried out in accordance with the direct wishes of the people of Wales.

For the Opposition, Mr Ancram responded (cc1134-5):

Marginalisation is the most immediate threat facing Wales under these proposals. It is simply naive to believe that, were Wales to have an Assembly as proposed, the voice of Wales at Westminster and in Government would remain undiminished, let alone enhanced. The main Welsh voice at the centre of government and power would, to put it bluntly, be castrated.

The Secretary of State would be no more than a messenger boy, a voice without power or influence, a broken reed, bleating on the margins of Cabinet government, because the harsh reality of government is that, when someone abdicates his powers and gives away his responsibilities in an environment that has both in abundance, he is left with no influence and no ability to attract attention.

The extent of the Secretary of State's abandonment of power and responsibility is most chillingly summed up in paragraph 1.19 of the White Paper:

"The Secretary of State will retain a small team of civil servants to support his work"-

a small team for a non-job; a sounding board for a tinkling cymbal.

Incidentally, we are told that Welsh Questions will continue in the House. What on earth are they going to be about if all the matters that normally come up at Welsh Questions have been devolved to a Welsh Assembly? Perhaps we could have an answer to that. What is the House's role going to be in terms of questioning the Secretary of State about what is happening in Wales?

If the voice of Wales at the centre of government will have been eunuched, what of the Members of Parliament? The first cry at Westminster will be who speaks for Wales-Assembly members, who, according to the answer to a parliamentary question will be on more than £80,000 a year in terms of salaries and allowances for their glorified council jobs, or Members of Parliament? In Wales the voices will be local, and at Westminster the Welsh voices will, in the nature of politics, become increasingly irrelevant. History demonstrates that with chilling impact. The tragic reality is that "A

Voice for Wales", in terms of the wider influence of Wales, would quickly become an introverted voice that would end up speaking only to itself, because no one else would be listening. In a necessarily outward-looking world, the Welsh people would pay a heavy price for what the Secretary of State, euphemistically and improbably, referred to on Tuesday as,

“a real say in the way public services in Wales are run.”

The concept that more local levels of government more closely represent local opinion than Members of Parliament is not one that I readily accept, not least because of the work that many Labour Members do in that regard. It is an insult to them to claim otherwise.

The choice for me is between the genuine and effective democratic accountability over Welsh affairs exercised by Welsh Members of Parliament and the expensive talking shop, stacked under the additional member system, with vested and extremely well-paid party interests, which the White Paper offers.

VI. Assembly Members' remuneration

The white paper set out the principles for Members' remuneration:⁴²

Members' pay and allowances

4.46 Members of the Assembly will receive a salary. Their job will be demanding and full-time, and will require high-calibre individuals. The Government will invite the independent Senior Salaries Review Body to set their salaries in the first instance. The Board's recommendations will need to take account of the additional responsibilities of the leader of the Assembly and of those members who are leading or chairing committees. Thereafter the Government will expect movement in their salaries to be linked to changes in the salaries received by MPs. Assembly members' expenses will be in accordance with a scheme which will be prepared by the Assembly: the scheme will be subject to the approval of the Secretary of State for Wales.

These provisions are contained in *clauses 16-19* of the Bill. Following the setting of initial levels by the Secretary of State, the Assembly is empowered to pay salaries and allowances at levels it from time to time determines (approved by at least two-thirds of those voting in support of the relevant motion), including higher levels for the Secretaries and First Secretary (and, presumably, the presiding and deputy presiding officers).

Provision is also made for the Secretary of State to limit the remuneration of those Assembly Members with 'dual (or more) mandates', e.g. as MP, MEP, peer or member of any other specified public body (*cl 17*). The level of the reduction is not set in the Bill, but will be set by order by the Secretary of State. For example, MEPs who are also MPs receive only 1/3 of an MP's ordinary salary (rather than the full amount) in addition to their Westminster salary.⁴³

⁴² *A voice for Wales*, Cm 3718, July 1997

⁴³ s1, *European Parliament (Pay and Pensions) Act 1979*

The detailed estimates of the cost of members' remuneration (including allowances etc.) was set out in a Welsh Office paper deposited in the Library on 23 July.⁴⁴

<i>Assembly Members:</i>	(£ thousands)
Members' Salaries	2,226
Non-wage and pension costs for the above	467
Members' travel and subsistence	600
Members' office costs	1,815
Members' residence allowances	200
Ex-Members' compensation	20
 <i>Subtotal</i>	 5,328 (31.1.)

Members' salaries and allowances total £5.3 million for an Assembly of 60 Members. Members' salaries would be based on recommendations of the Senior Salaries Review Body in the first instance, but for planning purposes we have assumed the same basic salary as used by Cardiff Business School in its estimate of Assembly costs (£35,000 per Member), plus higher rates for committee chairmen and other senior figures. The Assembly's allowance scheme would be subject to the Secretary of State for Wales's approval; based on comparable allowances for MPs, we have assumed £1 0,000 per member for travel and subsistence, based on return journeys to constituencies at current Welsh Office rates plus an addition to cover committees' travel costs, and £25,000 for office costs. Those members from outside the Glamorgans and Gwent would also receive £8,000 per year to cover the cost of a residence in Cardiff, based on current market rents. The cost of compensating retired and defeated members is based on Exchequer contributions to the parallel Commons scheme.

The SSRB applied the following analysis in its most recent review of MPs' pay:⁴⁵

- General principles 28.** We have applied the following general principles to the determination of pay levels:
- (i) pay should not be so low as to deter suitable candidates or so high as to make pay the primary attraction of the job;
 - (ii) pay should reflect levels of responsibility rather than workload;
 - (iii) whereas those with outside interests should not be deterred from entering Parliament, those who choose to make Parliament a full-time career should be adequately rewarded to reflect their responsibilities;
 - (iv) pay should not be augmented in an attempt to compensate MPs for job insecurity, which is not unique to MPs,
 - (v) The basic Parliamentary salary should continue to be the same for all MPs,
 - (vi) there should be no pay progression linked to length of service.

⁴⁴ Deposited Paper 5217, 23.7.97

⁴⁵ *Review of Parliamentary pay and allowances*, 38th report, Cm 3330-I, July 1996, pp9-11

- (vii) a clear distinction must be made between salary and reimbursement of expenses.

Parliamentary salaries 29. We have examined various approaches to setting pay levels. In evidence a number of factors have been specifically mentioned as being relevant to an appropriate judgement:

- workload,
- incentives to recruitment and retention;
- comparisons with earnings of constituents;
- comparisons with earnings of functionaries and officials with whom MPs customarily deal;
- comparisons with those with similar responsibilities.

30. There is no doubt that the work load of conscientious MPs is heavy, but heavy workloads can be found in many walks of life and at in many different levels of salary. It is difficult also to look at Parliamentary salaries in terms of straightforward recruitment and retention as understood in other fields. Pay cannot be set by reference to a recognisable "market rate". There is no evidence of a shortage of persons willing to seek selection as candidates for Parliamentary seats; nor is there any way in which the quality of MPs can readily be assessed.

31. But concerns have been expressed in evidence about the difficulty of attracting into Parliament high quality candidates with Ministerial potential, particularly from a successful business background. Some have also stressed that recent curbs on outside interests have adversely affected the financial situation of many MPs. Like the Nolan Committee, we recognise that outside experience may well be of value to the House; but those who choose to make Parliament a full-time occupation should be adequately rewarded to reflect their responsibilities. MPs' pay should not be set to "compensate" for any perceived loss of outside income.

32. We were told that comparisons with earnings of constituents or of those with whom the MP deals should be taken into account as a factor in determining pay levels. We disagree. We believe that, of all the factors mentioned, the relative responsibilities of an MP should carry most weight.

33. The majority of those who gave evidence took the view that comparators for MPs' pay should be in the public sector/professional arena: head teachers, police superintendents, doctors, civil servants. We share this view. Hay carried out a detailed comparability exercise which reviewed the MP's job description and matched it to the Hay remuneration database. Their results are set out in full in Volume 2, section I of this report. As noted in the Hay study, salaries for those public sector comparators most frequently quoted fall in a range between £38,000 and the mid-£50,000s.

34. Hay found that the MP's job had not changed substantially since 1983, although they noted an increase in the proportion of constituency work relative to other Parliamentary activities. They drew attention to the fact that a range of differing levels of work and responsibility exists among MPs, and adopted a responsibility level in the middle of the range for purposes of comparison. We saw no reason to change the system whereby basic Parliamentary pay is the same for all MPs; we therefore support Hay's approach. For constitutional and practical reasons we have discounted the possibility of performance-related pay for MPs, whatever its utility may be elsewhere. Their study led Hay to the view that a Parliamentary salary within the range of £43,000 to £47,000 would be appropriate.

35. We also commissioned an update of the international comparisons of Parliamentarians' pay carried out in 1983. There are always caveats attached to such exercises, since Parliamentarians' responsibilities are not the same in different legislatures. But a salary in the lower £40,000s would

place the United Kingdom MPs around the international average in terms of purchasing power parity (see Volume 2, section 3b, 1 para 13).

36. It has been noted both in the 1983 TSRB report and in the subsequent announcement by the Leader of the House that "the level of pay is a matter of judgement". However the result is arrived at, it should be generally perceived as reasonable and fair. The 1983 TSRB report took account of most of the factors which have emerged in evidence to this review - international comparability, heavy Parliamentary workloads, increased lobbying and constituency expectations, and the need to attract able candidates - in setting its recommended pay level of £ 19,000. Parliament did not reject this sum as inappropriate but, as an act of voluntary pay restraint, voted for a Parliamentary salary of £ 15,308 in 1983, with further staged increases leading to a salary of £18,500 in 1987. Had the TSRB recommendation of £19,000 per annum been accepted in 1983 and subsequently uprated by the percentage factors which were actually applied each year, it would have produced a Parliamentary salary of some £42,300 today, as compared with the current £34,085.

37. We have concluded in the light of all the evidence, and in particular of the factors set out above, that it is now appropriate to adjust the Parliamentary salary to £43,000.

Recommendation 1: that the salary for Members of Parliament be set at £43,000.

A recent press report suggested that Assembly Members could receive a total package of around £100,000, and the First Secretary around £130,000.⁴⁶ The Constitution Unit has questioned the 'full-time' nature of Assembly membership, as suggested in the white paper:⁴⁷

In one respect the White Paper does not follow the local government model. It states that members of the Assembly will receive a salary, because their job will be demanding and full time (para 4.46). This is asserted without argument. But in Australia and Canada the smaller provincial parliaments comparable to the Welsh Assembly sit for only 50 to 60 days a year; and membership is not a full time occupation. Nor should it necessarily be full time in Wales. Membership should certainly be salaried; but in terms of time, the question has to be which is likely to attract higher calibre members - a full time occupation, which restricts membership to career politicians; or part time, which would enable people to combine membership of the Assembly with another career?

⁴⁶ "Top salaries on offer in 'New Wales'", *Western Mail*, 28.11.97

⁴⁷ R Hazell, *Constitution Unit commentary on the Welsh White Paper*, Sept 1997, p4

Appendix 1. Order-making powers in the Bill

What follows is a list of provisions (including those in other enactments) on the face of the Bill (though not in its schedules relating to public bodies/functions) which grant an order-making power of some kind (and other powers/duties) either to the Secretary of State (or other Minister) or to the Assembly.⁴⁸ There may be other such powers inherent in the provisions of the Bill, but not appearing on its face, such as those which may be contained in other enactments referred to in the Bill.

Some of the order-making powers allow a Minister or the Assembly to amend or repeal existing primary legislation. A clause which expressly⁴⁹ grants this sort of power is commonly called a 'Henry VIII Clause' and is clearly a power of potential constitutional and practical significance. Normally these are *ad hoc* powers in legislation, but were, in a sense, institutionalised in one context in the form of 'deregulation orders' made under the *Deregulation and Contracting Out Act 1994*, and special Parliamentary procedures were created for their scrutiny which recognised the special nature of such powers.⁵⁰ 'Henry VIII' clauses are noted in the following list by '**H8**'. Orders in Council (in practice by a Secretary of State) are noted by '**OinC**'.

Orders subject to affirmative procedure in both Houses (*clause 144(2)-(3) or otherwise*)

<i>Clause 11:</i>	Provisions about elections: SofS (H8: cl 11(3)(a)-(b))
<i>Clause 12(1)(b):</i>	Designation of disqualifying offices for membership of Assembly: (OinC) ⁵¹
<i>Clause 22:</i> ⁵²	Transfer of functions from a Minister to Assembly: (OinC) (H8: cl 22(3))
<i>Clause 31:</i>	Provision for consultation with Assembly over public appointments, if of H8 form: <i>cl 31(7)-(8)</i> (OinC)
<i>Clause 74(5):</i>	Amendment of Sch 4 list of bodies whose officers/members may be summoned or required to produce documents for Assembly: SofS
<i>Clause 96(5):</i>	Transfer to AG for Wales of C&AG's accounts functions, (if of H8 form: <i>cl 96(6)</i>): SofS
<i>Clause 107(2):</i>	Direction that Assembly take action to give effect to international obligation: SofS (following consultation with the Assembly: <i>cl 107(6)</i>)
<i>Clause 107(3):</i>	Revocation of Assembly secondary legislation made (or revocable) by Assembly if incompatible with international obligations: SofS (following consultation with the Assembly: <i>cl 107(6)</i>)

⁴⁸ The list is descriptive of the relevant powers, and Members should consult the relevant provisions of the Bill for full details of the scope and application of the powers.

⁴⁹ There are a number of other provisions (e.g. *cl 26(8)*), which allow orders to contain, e.g., 'transitional', 'supplementary' and similar provisions.

⁵⁰ See generally Research Papers 94/16, 28.1.97, and 94/116, 22.11.94

⁵¹ Affirmative procedure (*cl 12(5)*), except if Order varying or revoking a previous Order "if the Assembly has resolved that the Secretary of State be requested to recommend the making of the Order in Council" (*cl 12(6)*).

⁵² This clause, along with the following clauses, provides the basis for the Assembly's own power to make subordinate legislation, and generally to exercise devolved functions.

<i>Sch 6 para 34(1):</i> <i>(cl 108)</i>	Powers/rules etc re 'devolution issue' proceedings in Judicial Committee of Privy Council: (OinC) (only if of H8 form: <i>para 34(2)</i>)
<i>Clause 125(3):</i>	Further provision for abolition of DBRW (if of H8 form: <i>cl 125(4)</i>)
<i>Clause 131(3):</i>	Further provision for abolition of LAW (if of H8 form: <i>cl 131(4)</i>)
<i>Clause 135(3):</i>	Further provision for abolition of Housing for Wales (if of H8 form: <i>cl 135(4)</i>)
<i>Clause 136(1):</i>	Provision for accounts, audit and report of certain public bodies (if of H8 form: <i>cl 136(4)</i>)
<i>Clause 136(6):</i>	Amendment of list of public bodies in <i>sch 13: SofS (H8)</i>
<i>Clause 138(1):</i>	Transfer of functions of C&AG to (or also to) the AGforWales (if of H8 form: <i>cl 138(3)</i>): SofS
<i>Clause 141:</i> ⁵³	Power to amend other enactments by order: SofS (H8)
<i>Clause 143:</i>	Power to make transitional/supplementary etc. provisions, if of H8 form: SofS

Orders subject to affirmative procedure in the Commons (*clause 144(4)*)

<i>Clause 82(6):</i>	Increase of Assembly's borrowing limit (currently £500m: <i>cl 82(5)</i>): SofS
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Orders subject to affirmative procedure in both Houses and Assembly (*clause 22(4)*)⁵⁴

<i>Clause 22(4)(b):</i>	Variation or revocation of previous transfer of Ministerial functions OinC to Assembly: (OinC)
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Orders subject to negative ('annulment') procedure⁵⁵ (*clause 144(5)-(6) or otherwise*)

<i>Clause 3(1):</i>	Appointment of polling day for first ordinary election: SofS
<i>Clause 3(3):</i>	Variation of polling day for future elections: SofS
<i>Clause 3(4):</i>	Dealing with combined elections: SofS
<i>Clause 15(5):</i>	Amendment of sum (currently £5,000) as security for costs by applicant in election proceedings: SofS
<i>Clause 17(1):</i>	Limitation of remuneration of Members with 'dual mandate' (inc. membership of specified public bodies: <i>cl 17(1)(c)</i>): SofS
<i>Clause 17(2)(b):</i>	Specification of allowances for limitation purpose: SofS
<i>Clause 26(1):</i>	Transfer of Ministerial property and other right/liabilities to Assembly: SofS

⁵³ This is the general 'Henry VIII' clause of the Bill. The powers under this clause can also be subject to annulment procedure (cl 141), where only subordinate legislation is affected.

⁵⁴ The Assembly's affirmative procedures will be determined by its own standing orders (*cl 63*), which may well not replicate Westminster procedures.

⁵⁵ Unless a draft has been approved by both Houses (*clause 144(5)*)

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- Clause 26(4):* Provision of continuation by Assembly of anything begun by a Minister: **Sof S**
- Clause 26(5):* Provision for anything done by Minister to be as if done by Assembly: **SofS**
- Clause 26(6):* Provision for substitution of Assembly for Minister in any legal document or proceedings: **SofS**
- Clause 31:* Provision for consultation with Assembly over public appointments, unless of **H8** form (*cl 31(9)*) (**OinC**)
- Clause 38:* Application of *Local Government (Contracts) Act 1997* (with or without modifications) to Assembly contracts: **SofS**
- Clause 48(1):* Appointment of date etc. of Assembly's first meeting: **SofS**
- Sch 5 para2:* Treatment of HMCISW as if it were a government department: **SofS** (*cl 104*)
- Clause 107(1):* Direction that Assembly not take proposed action incompatible with international obligations: **SofS**⁵⁶
- Sch 6 para 34(1):* Powers/rules etc re 'devolution issue' proceedings in Judicial Committee of Privy Council: (**OinC**) (only if not of **H8** form: para 34(2))
- Clause 122(4):* Transfer of DBRW staff to WDA: **SofS**
- Clause 125(3):* Further provision for abolition of DBRW (unless of **H8** form: *cl 125(4)*): **SofS**
- Clause 128(4):* Transfer of staff of LAW: **SofS**
- Clause 131(3):* Further provision for abolition of LAW (unless of **H8** form: *cl 131(4)*): **SofS**
- Clause 132(5):* Transfer of staff of Housing for Wales: **SofS**
- Clause 135(3):* Further provision for abolition of Housing for Wales (unless of **H8** form: *cl 135(4)*): **SofS**
- Clause 136(1):* Provision for accounts, audit and report of certain public bodies (unless of **H8** form: *cl 136(4)*)
- Clause 138(1):* Transfer of functions of C&AG to (or also to) the AGforWales (unless of **H8** form: *cl 138(3)*): **SofS**
- Clause 143:* Power to make transitional/supplementary etc. provisions, unless of **H8** form: **SofS**

Other orders required to be laid before Parliament (*clause 144(7)*)

- Clause 107(1):* Orders which only revoke previous orders under this provision: **SofS**

No Parliamentary procedure⁵⁷

- Clause 125(1):* Abolition of DBRW: **SofS**

⁵⁶ Unless order merely revokes previous *cl 107(1)* order, in which case order need only be laid before Parliament: *cl 144(7)*

⁵⁷ Generally commencement provisions

- Clause 131(1):* Abolition of LAW: **SofS**
Clause 135(1): Abolition of Housing for Wales: **SofS**
Clause 148(1): Commencement of certain provisions: **SofS**

Directions/determinations etc. by Ministers⁵⁸

- Clause 16(1)(b):* Level of Members' salaries, before Assembly's first determination: **SofS**
Clause 16(2)(b): Level of Members' allowances, before Assembly's first determination: **SofS**
Clause 18(1)(b): Level of former Members' pensions, allowances etc., before Assembly's first determination: **SofS**
Clause 35(5): Sums to be paid by Assembly to Min for Civil Service re pensions etc of Assembly staff: **MCS**
Clause 49: Making of initial standing orders: **SofS**
Clause 50: Operation of, and guidance to Commissioners: **SofS**
Clause 80: Making of payments to Assembly by SofS or other minister/department
Clause 81: Statement of account of clause 80 payments etc.: **SofS**
Clause 82: Loans to Assembly by SofS
Clause 83(1): Preparation of *cl* 82 loan accounts: **SofS** (subject to Treasury direction re form)
Clause 83(3): Examination etc of loan accounts by **C&AG**
Clause 88: Preparation of accounts of Assembly lending: **SofS** (subject to Treasury direction re form)
Clause 92(6): Sums to be paid by Assembly to Min for Civil Service re pensions etc of staff of Auditor General for Wales: **MCS**
Clause 97: Preparation of annual accounts by Assembly: **Treasury**
Clause 98: Designation of Assembly's accounting officers: **Treasury**
Clause 99: Information in accounts of 'Assembly subsidiaries': **Treasury**
Clause 115: Provision of information by Assembly to Treasury: **Treasury**
Clause 124(6): Size of DBRW after its functions cease: **SofS**
Clause 130(6): Size of LAW after its functions cease: **SofS**
Clause 134(7): Size of Housing for Wales after its functions cease to exist: **SofS**

Appointments by Secretary of State

- Clause 20(2):* Person to administer oath, before Assembly's first appointment
Clause 49(1): Commissioners to draft initial standing orders

⁵⁸ No Parliamentary procedure, but must be published "as soon as is reasonably practicable after it is given" (e.g. *cl 16(8)*; *cl 18(6)*)

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Orders by the Assembly (*clause 43*)⁵⁹

- Clause 28(1)*: Transfer of functions of Welsh health authority to Assembly (**H8**: cl 28(9))
- Clause 28(5)*: Abolition of Welsh health authority when all functions transferred (**H8**: cl 28(9))
- Clause 29(1)*: Transfer of Welsh public bodies to Assembly, local authority or other public body (**H8**: cl 29(7))
- Clause 29(2)*: Abolition of functions of public bodies (**H8**: cl 29(7))
- Clause 29(3)*: Abolition of public bodies when all functions transferred/abolished (**H8**: cl 29(7))
- Clause 29(5)*: Alteration of membership of public bodies (**H8**: cl 29(7))
- Clause 30(2)*: Regulations under s2(2), *European Communities Act 1972* (to implement EC law)
- Clause 30(4)*: Regulations under s56, *Finance Act 1973* (fees for services under EC obligation)
- Clause 110(7)(e)*: Bodies to be local authorities for membership of Partnership Council (following consultation with the Council)
- Clause 114(2)*: Welsh text in Assembly subordinate legislation to have same meaning as equivalent English text

Order-making powers in other enactments

- Sch 1 paras 3 and 9 (clause 2(2))*: Orders in Council under the *Parliamentary Constituencies Act 1986* re determination and review of constituencies/regions (**OinC**)

⁵⁹ Assembly orders are not generally subject to Parliamentary procedure, except in certain circumstances set out in *cl 43(4)-(6)*. Those under *clause 30* (Community law regulations) will be subject to Parliamentary procedure if the relevant SI also contains regulations made by a Minister or government department. (*cl 30(3),(5)*).

Appendix 2 Cardiff Council's briefing on the City Hall site⁶⁰

CITY HALL AND THE ASSEMBLY

YOUR QUESTIONS ANSWERED

Question: Why didn't the County Council accept the Welsh Office offer?

The Council has put forward innumerable options to the Welsh Office in order to allow the City Hall to be purchased within budget, including a valuation based on the compulsory purchase code. None of these were acceptable to the Welsh Office. Even if the Council had the legal powers to bridge the gap of £10 million (which we don't) or if we had the money (which we don't) it is hard to imagine that we could persuade Cardiff taxpayers that they alone in Wales should spend so much money at the expense of vital services like Education, Childrens Services and Care in the Community.

Ten million pounds represents the equivalent of 400 Teachers or 1000 Home Carers or the entire Social Services budget for Childrens Services.

Question: What was wrong with the market value of the building?

The City Hall is not an empty building on the open market. It is a working building and even the District Valuer records that it is a special purchase. In this respect he says "transfers between public authorities are dealt with on the basis of the compulsory purchase code". We don't need to be compelled to sell it - this is what we want - it is readily available for the Assembly. But we do need to cover our relocation costs - no more no less.

Question: How did you come up with the figure of £14.2 million?

We did not come up with the £14.2 million figure. The Government's own Valuer did. The figures break down into Building costs, Land Acquisition costs, Professional Fees and removal and relocation costs (See Appendix for detailed costs).

Question: Why wasn't the funding problem identified earlier on rather than at such a late stage?

The County Council informed both the Secretary of State and the Welsh Office of the costs involved as early as last May after the General Election. Correspondence between

⁶⁰ December 1997, extracts

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the Council and the Welsh Office shows that the real costs of relocation were identified and the Welsh Office was asked to review the properties owned in Cardiff by all their government bodies, e.g. Crickhowell House, in order to come up with a solution.

Question: Why can't your staff stay where they are?

We currently have 507 staff in temporary accommodation - Wood Street and the former Mid Glamorgan County Hall. We decided to sell Wood Street 2 years ago as part of the Millennium Stadium development. The area was needed for access and egress to the new National Stadium. Cardiff was prepared to make that cash contribution of over £3.5 million for a National Stadium for Wales.

Mid Glamorgan County Hall is held on a short term lease from the new owners, Cardiff University, expiring on 31" March 1999. All these staff would in the normal course of events return to City Hall after the European Summit.

Question: What has happened to the £3.1 million that the Council got for the Wood Street building?

The County Council has, contributed that money and more to help fund the Millennium Stadium Riverwalk, which in turn helped to secure the Millennium Commission funding for Wales.

Question : How come you can accommodate the staff elsewhere for the European Summit?

The County Council has agreed with the Foreign Office and the Welsh Office to vacate the building for the European Summit. The Council had to enter into a short term agreement with the University of Cardiff to use Mid Glamorgan County Hall and to leave Wood Street standing until after the European Summit. This is again part of our commitment to bring the Summit to Wales.

Question : Why can't the County Council make a gesture or a special case for the City Hall?

We did consider this but local authorities are bound by statute and we do not have the legal powers to take such action. Even if we did have the legal powers, the only way to fund it would be to reduce services to the people of Cardiff to fund an all-Wales facility.

Question : Surely the long term economic benefits outweigh the short term costs?

We accept that the Assembly will create substantial economic benefits for Cardiff in general, but it will not actually produce money for Council services. However in recognition of these benefits to Cardiff and Wales, the Council has offered £3 million of its own money towards the relocation package.

Question: Why does the Welsh Office say that the refurbishment will cost £17 million?

We have looked at the Welsh Office costs and identified £7.5 million which will have to be spent wherever the Assembly goes, e.g. on IT, furnishings and fittings. The justification for that spending is a matter for the Welsh Office. We are aware that the £2.5 million being spent on the City Hall in preparation for the European Summit will bring it to a good enough standard to accommodate European Heads of State. The £2.5 million is based on actual contractors' prices. On a similar basis by spending a further £2.5 million the accommodation can be brought up to five star condition and the existing Council Chamber adapted to accommodate up to 80 Assembly Member plus a public gallery for 100. In this way the historic Banqueting Hall could be preserved and retained for Wales.

Question: How much is being spent on the City Hall refurbishment for the European Summit?

£2.5 million. Tendered contract prices have now been received.

Question: How much does the Council think the refurbishment costs to make it suitable for the Assembly will be?

£5 million including the £2.5 million already committed for the European Summit.

Question: You say you want the Assembly in Cardiff but what are you doing to find alternative locations?

Until Monday night it was the Welsh Office who had been looking at the alternatives while the Council had been asked to provide information and details purely on the City Hall option.

Indeed we were not allowed to be part of the discussions on the other options despite repeated requests to be involved in the examination of alternative options. It is now clear the people of Wales want the Assembly in Cardiff and we are currently doing all we can to come up with the right solution for Wales.

Question: Can the Council offer the Assembly a temporary home in Cardiff?

Yes, in fact as long ago as 1995 the Council offered the use of the City Hall Chamber

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entirely free of charge as a meeting place for a Welsh Assembly until a permanent home is found. This offer has been repeated throughout the negotiations with the Welsh Office.

Question: Aren't you worried about the image of Cardiff as a result of this row?

The Council has been encouraged by the level of understanding and support for its position both in and outside Wales. We have the interests of Wales at heart but we cannot ask the people of Cardiff alone to meet the cost of the Assembly from their Council services. We have done everything in our power to avoid the situation and will continue to work with the Welsh Office to bring the Assembly to the most appropriate location in Cardiff.

BASIS OF COSTING FOR RELOCATING TO NEW ACCOMMODATION

A. Building Costs

1. Office Accommodation		10,489 sq. metres @ £1,060 per metre	11,118,340
2. Carpet Store	}	storage space for	
	}	Ballot Election	78 sq. metres }
	}	forms and	210 sq. metres }
3. Folding Room	}	building materials	@ £1,060 p.m. 243,600
		Sub Total	11,444,620

B. Land Acquisition Cost

3.5 acres @ £300,000 per acre (See Appendix A - VOA letter)	1,050,000
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C. Professional Fees

Agreed at 12% of costs = the standard basis for such fees (See Appendix B - VOA letter)	1,379,354
Sub Total	13,993,974

Plus removal and relocating costs including associated technical requirements estimated £200,000	320,000
TOTAL	<u>14,193,974</u>