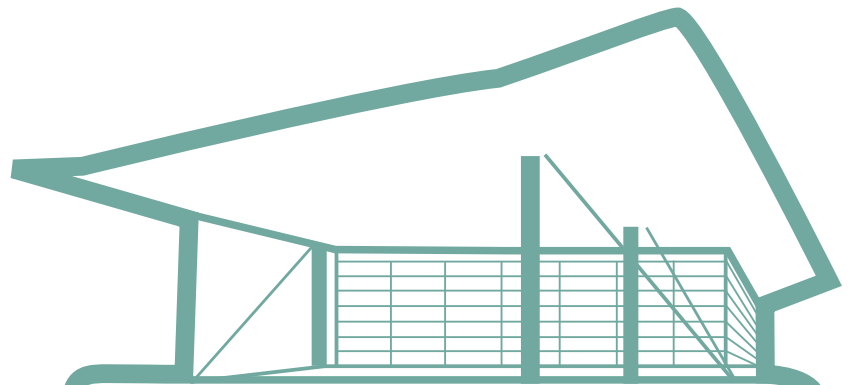


all Wales convention



Report

www.allwalesconvention.org





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Chair's Thanks

When Rhodri Morgan invited me to Chair the All Wales Convention, I didn't hesitate - I accepted immediately.

The future governance of our nation and how it should now move forward is a vital topic for Wales. Politics is bread and butter, and affects us all. Moreover, for me, it was an opportunity to put something back into Wales after a long period representing the United Kingdom as a whole.

I'm very grateful to colleagues on the Executive Committee for their hard work and contributions which eased the adoption of an unanimous report. My thanks also go to the secretariat of the Convention for their unstinting support.

For me, the last two years have gone really quickly. It has been an enjoyable adventure, a chance to get to all parts of our wonderful country - from Newborough to Newport, from Haverfordwest to Flint, and from Bala to Llandrindod Wells - to discuss the key issues relevant to devolution. We travelled extensively, met each of the local authorities, and offered anyone, anywhere in Wales, an opportunity to comment on any aspect of our remit.

My particular thanks go to those individuals and organisations in Wales, and beyond, who took up our invitation to get informed and get engaged. It is their evidence and contributions which provide the basis for our report, which was prepared and delivered without any predetermined agenda.

It is now for Ministers in the first instance to consider this report and its recommendations. We believe that the issues raised merit serious consideration, not just by elected representatives, but by the people of Wales.

A handwritten signature in black ink, reading 'Emyr Jones Parry'.

Executive Summary

- i. The Welsh Assembly Government **set up** the All Wales Convention to assess public views on the primary law making powers which the National Assembly for Wales should enjoy.
- ii. The First Minister and Deputy First Minister appointed Sir Emyr Jones Parry as the Chair of the Convention in October 2007. An Executive Committee of 16 members, chosen to be broadly representative of the people of Wales, was appointed in July 2008 to steer the work of the Convention. All those who participated in the subsequent activities of the Convention became part of the Convention.
- iii. The Executive Committee analysed **the present constitutional arrangements** and the achievements of devolution to date. It developed a **communications and consultation strategy** to reach as many of the Welsh electorate as possible, using an understandable summary of the provisions of the Government of Wales Act (GoWA) 2006. This drew on the network of key Welsh organisations, arranged public events throughout Wales, encouraged the participation of young people, provided a formal consultation process, and included an interactive website. The Convention hosted a lively debate on **facebook®**. In aggregate, comments were received from 608 organisations and individuals, and a number of separate organisations distributed information to their members. (Chapter 1)
- iv. The background to the **current devolution settlement** in the context of wider devolution in the United Kingdom, and the phased approach in Wales, culminating in GoWA 2006, are set out in Chapter 2. It describes the executive devolution which has already occurred, the existing powers to make secondary legislation, and the National Assembly for Wales's currently limited powers to make primary laws, obtained in different ways with the agreement of the UK Parliament.
- v. Potentially, the National Assembly for Wales can now ask for primary law-making powers in part of any one of the 20 defined areas of Welsh life set out in GoWA 2006 and obtain the powers with the approval of the UK Parliament (section 2.3). There is also the option of obtaining primary law-making powers across all 20 areas all at once, but this would require the approval of a majority of the Welsh electorate voting in a referendum. **The choice therefore for the public debate focused on two alternatives:**
 - **Firstly, the current arrangements, where the National Assembly for Wales acquires powers to make laws step by step, with the permission of the UK Parliament (Part 3 of GoWA 2006);**
 - **Or for the National Assembly for Wales to get powers to make laws in all 20 areas all at once after an affirmative vote in a referendum (Part 4 of GoWA 2006).**

- vi. In either case, the issue is the allocation of existing powers between Westminster and the National Assembly for Wales, and the speed at which some of these powers should be transferred to the National Assembly for Wales.
- vii. The National Assembly for Wales could, by a two thirds majority, vote for the calling of a referendum. Both Houses of Parliament would then need to endorse the holding of a referendum and agree the question to be put. **If there were a “yes” vote, then Part 4 would come into effect.**
- viii. The evidence submitted covered the different arguments and observations relevant to these options (Chapter 3). This suggested that there were differing views on the extent of positive benefits which derive from devolution, and that the devolution settlement itself was seen to be complex.
- ix. The evidence indicated that, although financing often figured in public comment, the likely impact of a move to Part 4 would be broadly cost neutral.
- x. **Opinions were received on the two routes by which the National Assembly for Wales is currently acquiring powers to make primary law:**
 - Legislative Competence Order (LCO) route (section 3.4)
 - Framework Bills route (section 3.5)
- xi. It was not recognised by most people that, since May 2007, **Framework Bills have provided more powers** for the National Assembly for Wales than the LCO route. The Framework Bill procedure is speedier, and can provide primary legislative powers or confer executive functions directly on Welsh Ministers. But the approach is opportunistic, rather than strategic, and requires a relevant UK Parliamentary Bill to which the provision to grant the primary law making power can be added. The National Assembly for Wales has no involvement in the consultation between the Welsh Assembly Government and Whitehall on the drafting of the Framework Bill.
- xii. The report details **how the LCO process works and its evolution**. Views were polarised, with a majority believing that the LCO process is cumbersome and slow. **The Convention therefore commends continuing improvements in the operation of the LCO process** and encourages Welsh Assembly Government / Whitehall engagement and close cooperation between those carrying out scrutiny in the National Assembly for Wales and in Westminster.
- xiii. The **scrutiny** exercised by the National Assembly for Wales and Westminster is examined in section 3.6. Scrutiny should be proportionate, recognising the provisions of GoWA 2006 and separate electoral mandates. There seemed general agreement that recent changes have improved scrutiny within the National Assembly for Wales. Under Part 4, as the LCO procedure would not apply, resources within the National Assembly for Wales currently devoted to scrutinising LCOs

would be released to focus on draft legislation. **However, a more sustained effort on scrutiny is needed under Part 3 or 4, with opportunities as well for the National Assembly for Wales to consider proposals for changing its competencies that are to be included in any UK Bill.**

- xiv. Whether Wales has **the capacity** in numbers and skills to implement Part 4 is discussed in section 3.7. **The evidence suggests that the extra adaptation necessary to implement Part 4 should be manageable**, and the resource costs essentially unaffected. The legislative process will evolve further under Part 4, and importantly, capacities across the board currently devoted to the LCO process would be released to concentrate on actual legislation.
- xv. **The powers of the three devolved administrations** of the United Kingdom are compared in section 3.8. Essentially, only Wales has powers devolved specifically to it, while for Scotland and Northern Ireland, the formula assumes that those nations acquire all that has not been specifically reserved for Westminster.
- xvi. The rule of law is basic to democracy and laws should be adopted by a transparent process. Citizens should be able to access an accurate record of the body of Welsh law - a one-stop-shop. **The Convention recommends the creation of a single accessible record of all law applicable in Wales. Efforts should continue to ensure that the administration of justice in Wales better reflects devolution** (section 3.9).
- xvii. Detailed **provisions of Parts 3 and 4 of GoWA 2006** are considered in section 3.10, in particular the role of potential limitations on the use of powers. The choice on the table in a referendum is whether to implement Part 4 as it is. If required, the content of Part 4 could be amended before or after any referendum. If Part 4 were to come into effect after a “yes” vote, the National Assembly for Wales’s new powers would have been endorsed by the electorate. The Convention recommends that any subsequent change in the content of Part 4 should recognise the enhanced status of the National Assembly for Wales.
- xviii. The relative merits of Part 3 and 4 are assessed in section 3.11. **The Convention is convinced that Part 4 offers substantial advantage over the present arrangements in Part 3.** It would offer greater efficiency, permit a strategic approach to the drafting of the legislation, provide greater clarity, be more consistent with the rule of law and democratic tradition, and reflect the emerging maturity of the National Assembly for Wales.
- xix. Several other important issues were raised. Chapter 4 covers local authorities, policing, the Third Sector, the United Kingdom dimension and the European Union context. These may be little affected by the possible changes in the devolution settlement in Wales, but some practical recommendations and observations are made.

- xx. The arguments that were heard from the people of Wales about devolution and a **possible referendum on further powers** are considered in Chapter 5. This chapter reports the social research undertaken and sets out some of the data gained.
- xxi. **The conclusions and recommendations of the Convention's work are all brought together in Chapter 6.** They stem from a robust, impartial examination of all the evidence received. The key points relevant to a referendum follow.
- xxii. **The evidence showed that the people of Wales support for and acceptance of devolution is solid. Our polling results showed 72% favour the present devolution or more.**
- xxiii. **Through the consultation process it became clear that the public has limited knowledge of the procedures and issues associated with GoWA 2006. Much more needs to be done to inform the electorate** and this should be central to the conduct of any referendum campaign. Democracy requires that information be provided, the arguments be presented, and the electorate given the opportunity to be better informed. Every effort should be made to ensure issues are presented in clear, accessible language, and great care taken in the choice of terms, in order to best communicate what is at stake.
- xxiv. **Declared voting intentions in a referendum on Part 4 showed, in Wave 2 of our research, some 47% in favour and 37% against an affirmative vote, a margin of 10 percentage points** (plus or minus 3 percentage points, allowing for errors in the polling sample). However, these results should be interpreted with caution, as many factors affect voting intentions in any referendum. The polling results suggested that the voters in a referendum would be particularly influenced by developments and issues within Wales. Voting intentions are also influenced, and for some it is particularly important, by their basic attitudes, and indeed more fundamental positions e.g. Wales as a nation or the integrity of the United Kingdom. A referendum campaign which tapped into such values would be more likely to evoke support.
- xxv. **The judgement of the Convention is that a "yes" vote in a referendum is obtainable.** However, the evidence collected underlines that there can be no certainty about this.
- xxvi. The work of the Convention suggested that, if a referendum is to be held in good time before the National Assembly for Wales elections in May 2011, then **a decision should be taken by June 2010.**
- xxvii. **The Convention commends its recommendations to the Welsh Assembly Government** and believes that they deserve serious consideration by all involved in the governance of Wales. While attention will naturally focus on the Convention's support for the implementation of Part 4 and on the prospects for

a referendum, it urges its other recommendations to be implemented on their own merits. **It believes that the governance of the nation and the democratic process are vital issues**, not just for elected representatives, but for the people of Wales, and advocates a continuing wide ranging public debate.

Chapter 1

Purpose of the All Wales Convention

1.1 Background

- 1.1.1 The *One Wales* Programme of Government, the coalition document of the Welsh Assembly Government included a commitment to set up an All Wales Convention.
- 1.1.2 Under the terms of the agreement, both political parties committed to “proceed to a successful outcome of a referendum for full law-making powers”, the preparations for which would include the setting up of an All Wales Convention, based on wide representation from civil society.¹ To note: Under the provisions of the Government of Wales Act (GoWA) 2006, the transfer of a discrete set of legislative power to the National Assembly for Wales would follow directly if a majority of the people of Wales voting in a referendum supported that change.
- 1.1.3 In October 2007, the First Minister and Deputy First Minister appointed Sir Emyr Jones Parry as the Chair of the Convention. Sir Emyr had recently retired from his post as the United Kingdom’s Permanent Representative to the United Nations in New York.
- 1.1.4 Following Sir Emyr’s appointment, an Establishing Committee was set up to determine how the Convention would operate. The Committee was made up of Assembly Members (AMs) and Members of Parliament (MPs) from both the Labour Party and Plaid Cymru. The Committee was chaired by Nick Ainger (MP for Carmarthen West and South Pembrokeshire) and Helen Mary Jones (AM for Llanelli).
- 1.1.5 The Establishing Committee and Sir Emyr met between December 2007 and March 2008 and agreed draft Terms of Reference for the All Wales Convention. Their report was presented to the First Minister and the Deputy First Minister on 13 March 2008. A copy of this report can be found on the Convention’s website at www.allwalesconvention.org.
- 1.1.6 The First Minister and Deputy First Minister accepted the proposed Terms of Reference for the Convention which were to:
 - Raise awareness and improve understanding of the current arrangements for devolved government in Wales and of the provisions of Part 4 of the Government of Wales Act 2006, and their future implications for the governance of Wales.
 - Facilitate and stimulate a widespread, thorough and participative consultation at all levels of Welsh society on the issue of primary law-making powers.
 - Prepare an analysis of the views expressed and the evidence presented through this process.

- Assess the level of public support for giving the National Assembly for Wales primary law-making powers.
- Report to the One Wales Government on its findings, with recommendations relevant to the holding of a referendum.

1.1.7 The Convention comprised the whole of the consultation and engagement process, and anyone who got involved in the debate was regarded as a participant in the Convention.

1.2 Executive Committee

1.2.1 The First Minister and Deputy First Minister recruited an Executive Committee to steer the work of the Convention. The membership was announced in July 2008, and included four members recruited through an open competition; four members nominated by political parties; and eight members nominated by stakeholder organisations in Wales. These organisations were chosen by the First Minister and Deputy First Minister on the basis that they covered a broad representation of the people of Wales.

1.2.2 All committee members were recruited according to Public Appointment requirements and the Nolan Principles. Membership of the Executive Committee was voluntary, but in line with public appointment terms and conditions, members were entitled to claim expenses for travel and subsistence costs. A list of committee members can be found at Annex A. Sir Emyr Jones Parry was also Chair of the Executive Committee.

1.3 Structure and Set Up of the Convention

1.3.1 The role of the Executive Committee of the Convention was to devise and implement a work programme to deliver the Terms of Reference.

1.3.2 The Committee was supported in its work by a Secretariat made up of civil servants on loan from the Welsh Assembly Government.

1.3.3 A document setting out the Convention's ways of working was produced. The Committee and Chair, in relation to their roles in the Convention, had no separate legal status, and were therefore not able to enter into contracts on the Convention's behalf. Decisions on contracts to support the work programme were taken by the Committee, and entered into on its behalf by the Welsh Assembly Government according to its procurement processes and procedures.

1.3.4 The Convention was further supported by expert civil servants (e.g. lawyers, social researchers, and communications staff) from within the Welsh Assembly Government who provided the Committee with advice when requested. This support was advisory only, responsibility for the work programme and the qualitative aspects of the work were entirely for the Committee.

- 1.3.5 The Welsh Assembly Government provided an initial budget of £1.5 million for the Convention over three years from April 2008. The final cost of the Convention's work is expected to be less than £1.3 million in total - covering two financial years - 2008/09 and 2009/10.

1.4 Work Programme

- 1.4.1 As an Executive Committee we first set about determining our work programme to meet the Terms of Reference.
- 1.4.2 We agreed that as well as focusing on the remit set out within the Terms of Reference, we should also be prepared to consider other relevant issues of importance which might arise to ensure all aspects of the debate were discussed.
- 1.4.3 In all our deliberations we have worked with impartiality, giving full consideration to all sides of the debate. We made every effort to ensure our work was conducted in an open and transparent manner, and that we were accessible to the public - through putting our evidence on the website, publishing notes of our Committee meetings, and making sure Committee Members were present at all of our public events to discuss the issues with the public face to face. We encouraged views on any aspect from anyone, anywhere in Wales. Evidence submitted to the Convention has been subject to robust scrutiny - identifying and addressing the arguments raised.

1.5 Preparation

- 1.5.1 Initially we reviewed the history, achievements and challenges of devolution, in particular to understand the complexity of the devolution settlement. We distilled its provisions into straightforward comprehensible accounts which we used extensively as quarries for placed articles, speeches, interviews, and on numerous other occasions. We, the members of the Committee, deliberately had disparate backgrounds, and indeed knowledge. This preparation was invaluable in equipping us with sufficient understanding as we began our work across Wales.

1.6 Communications and Consultation Strategy

- 1.6.1 To meet our objectives on raising awareness and engendering debate we knew we needed a strong and wide ranging communications and consultation strategy. We wanted to reach as wide a cross section of the Welsh public as possible. To do so, we used a wide variety of methods. These included:
- A stakeholder engagement policy which encouraged key organisations to use their own existing networks to distribute information about the Convention to its members.
 - A programme of public events, visiting each local authority area in Wales.
 - A formal written consultation exercise inviting organisations and individuals to submit written evidence to the Convention.

- Formal oral evidence gathering sessions in different parts of Wales giving individuals and organisations the opportunity to present their evidence to the Committee in person.
- A wide ranging communications campaign, including advertising the Convention through local papers and local radio, and encouraging individuals to get involved.
- A schools engagement strategy which invited schools to participate in the Convention's work.
- Meetings with each of the local authorities in Wales.
- A series of public appearances by the Chair and members of the Committee at conferences and events arranged by other organisations in Wales which helped to stimulate debate and encourage involvement.
- An interactive and informative website, including a discussion forum and online forms to help people get engaged in the debate.
- A lively debate on **facebook**®.

Stakeholder Engagement

- 1.6.2 Vital to effective outreach was our work with key stakeholders - organisations and individuals who were able to reach deeply into their communities. These included local authorities, organisations such as the Wales Council for Voluntary Action (WCVA) to reach the extensive volunteer community in Wales, and the Welsh Rugby Union who shared our information with clubs in Wales.
- 1.6.3 Stakeholder organisations agreed to disseminate information on our behalf, by placing articles in their own newsletters. As well as reaching people in this way, we also attended a number of events organised by our stakeholders - and spoke directly to community groups and leaders about the work we were doing and how they could contribute.
- 1.6.4 More information on organisations we worked with and the stakeholder events we attended can be found at Annex C.

Public Events

- 1.6.5 We wanted to get out and meet the people of Wales, so we planned a programme of public events that took us to every part of Wales. We aimed to be as imaginative as possible, visiting unlikely places, and putting together an innovative programme with different events, held at different times of the day, aimed at attracting different audiences.
- Question Time events - aimed at attracting a wide audience, these events included a brief presentation, followed by a panel answering questions from the audience on different aspects of the debate. Panellists from all walks of life - including politicians, councillors, local business people, and academics - helped to make the debates lively and entertaining.

- Discussion Group events - again the presentation, followed by the opportunity for everyone to have their say through a mixture of open debate and group work at tables, including written contributions. In this way, we gathered many opinions and not just from those with the confidence to speak in public.
- Roadshow events - we went directly to people in shopping centres and persuaded them, as they went about their daily business, to complete our questionnaires and give us their views.
- Family day - a special event in Merthyr Tydfil that gave people with children the opportunity to join in the debate. At the Cwm Golau Integrated Children's Centre, we provided crèche facilities to free up parents to join in and discuss the issues that were important to them.

1.6.6 In total we held 23 public events where we spoke to over 1700 people. More information on these events can be found at Annex D.

Evidence Gathering

- 1.6.7 Between November 2008 and August 2009 we conducted a formal evidence gathering process and invited people to submit written evidence to us. Consultation questions were issued to aid people in their deliberations. We accepted any evidence submitted that covered these questions or any other issues of relevance to the debate. A copy of these questions can be found at Annex E. In total we received written evidence from 608 organisations and individuals. More information on who submitted evidence can be found at Annex F. We also received 1,925 completed questionnaires.
- 1.6.8 We held 13 formal evidence gathering sessions where we heard evidence from 76 individuals and organisations, at venues throughout Wales. The sessions were open to the public to observe. More information about these sessions can be found at Annex G.
- 1.6.9 Copies of all of the evidence submitted to us, and transcripts of all of the oral evidence sessions were published on our website. We would like to thank everyone who submitted evidence to us. We have tried to reflect this evidence throughout this report. Whilst most contributors identified themselves, online respondents and contributors we met during road shows or public meetings were not obliged to do so. We have included some of these anonymous contributors where we judged them to represent good arguments made in good faith.

Communications and Publicity Campaign

- 1.6.10 Engaging with the public was a core objective of our work. We did this in a variety of ways.
- 1.6.11 We developed a leaflet as an introduction to our work, setting out the options available to people in a simple, easy-to-read format. The leaflet was distributed to libraries through papurau bro and stakeholder organisations. In total we distributed

over 60,000 leaflets. A list of the organisations that distributed these leaflets can be found at Annex H. We also developed a DVD explaining the current devolution settlement and what a move to further powers might mean. The DVD was shown on our website, at our public events and other stakeholder events we attended.

- 1.6.12 We wrote articles and arranged interviews for our Chair and the Committee which were published in organisation newsletters and local authority newspapers.
- 1.6.13 We had an extensive radio campaign to raise awareness of the Convention and to highlight the public events programme - inviting members of the public to join in the debate. Adverts were placed on regional radio stations throughout Wales. We also placed advertorials in local newspapers prior to our public events.

Schools and Young People

- 1.6.14 Because involving young people in this debate was very important, we sought to communicate with them through a variety of means.
- 1.6.15 We sent information to every secondary school in Wales inviting participation in a competition for students - giving them an opportunity to tell us what they thought of the issues at hand. Representatives from the winning school, Ysgol Morgan Llwyd, Wrexham, were invited to Cardiff to meet with Sir Emyr in September. A copy of their winning entry can be found online at www.allwalesconvention.org.
- 1.6.16 We looked to engage with Wales' young people at the Urdd Eisteddfod which was held in Cardiff Bay during May 2009. Sir Emyr met with a group of Urdd members from schools including Gwynllyw, Bryn Tawe and Brynrefail for an informal discussion about the future powers of the National Assembly for Wales at the Wales Millennium Centre. We held a special Question Time session with pupils from two Cardiff secondary schools, Fitzalan and Plas Mawr, and Sir Emyr co-judged the Urdd School and Aelwyd Public Speaking Competitions at which there was a set All Wales Convention themed question - "Should the National Assembly for Wales get more law-making powers?"
- 1.6.17 We sent a letter and copies of our leaflet to the members of Urdd Gobaith Cymru aged 16-25, informing them of our work and encouraging them to get involved.
- 1.6.18 We spoke to students at Universities asking them to join in the debate and quiz the Chair on the issues around devolution that affected them.
- 1.6.19 We also met up with young people at the Council for Education and World Citizenship event held in Tŷ Hywel on 12 May 2009. Students from a number of schools in Wales attended the event which included a presentation in the afternoon from one of our Committee members, who talked about our role and remit and explained why it was important for young people to be involved in the debate.
- 1.6.20 Funky Dragon advertised the Convention on their website and we took part in their residential event in Carmarthenshire in April 2009.

Website (www.allwalesconvention.org)

- 1.6.21 Access to the internet is widespread among all sections of the people of Wales. Our website was a key tool for communicating with the public, and disseminating information. It set out what the debate was all about - through a series of case studies outlining the views of members of the public and through articles and documents explaining the debate in clear and concise terms.
- 1.6.22 Making the site interactive enabled members of the public to join in the debate and tell us what they thought online. In total we received responses from over 400 people, each of whom helped to provide the evidence for this report. All the responses we received can be found on our website.
- 1.6.23 We also set up a group on the social networking site **facebook**® which allowed a different participation. 836 people joined the group which hosted some lively debate. Topics discussed included whether or not Wales should have a second chamber to scrutinise the National Assembly for Wales, the level of political confidence in Wales, the Barnett Formula and the option of granting the National Assembly for Wales tax varying powers.

1.7 Social Research

- 1.7.1 It was important to the work of the Convention to have data and statistics to complement the evidence we were gathering from other sources. We therefore commissioned formal research to examine attitudes to and understanding of devolution in Wales.
- 1.7.2 The main objectives of the research were to:
 - Establish current levels of understanding about the Welsh Assembly Government's remit and existing powers.
 - Ascertain current levels of understanding about further law-making powers.
 - Explore the factors influencing opinions for and against giving the National Assembly for Wales further powers.
 - Establish what information citizens require about the issue of primary law-making powers, in what format and test the impact of our communications materials before they are rolled out.
- 1.7.3 The results from this research can be found throughout the document, in support of the relevant issues and arguments, and are discussed in more detail in Chapter 5. A copy of the Executive Summary of our Social Research and the full research report can be found online at www.allwalesconvention.org.

¹ One Wales - A progressive agenda for the government of Wales 27 June 2007

Chapter 2

The Current Devolution Settlement

- 2.1.1 Although responsibilities in certain areas had been devolved to the Welsh Office since 1964, building upon the specific policies already in place in Wales, devolution with a National Assembly for Wales was introduced as part of a series of constitutional developments in the United Kingdom in 1999. Asymmetry was magnified, with different arrangements in each of the four nations.
- 2.1.2 In the case of Scotland, all matters were devolved to Edinburgh with primary legislative powers for the Parliament, save for those which were specifically reserved to Westminster.² In the case of Wales, the mirror image applied: all responsibilities remained at Westminster, save those which were specifically devolved to the National Assembly. At this point, the National Assembly for Wales had no primary legislative powers.
- 2.1.3 The Northern Ireland model was different again but shares with Scotland, the principle that certain “excepted” areas, remain within the competence of the UK Government.³

2.2 The National Assembly for Wales

- 2.2.1 It was the Government of Wales Act 1998 (GoWA 1998) which established the National Assembly for Wales as a corporate body. The Act provided for certain existing responsibilities of the Secretary of State for Wales to be transferred to the National Assembly for Wales. These included the power to make subordinate legislation and exercise various executive functions. Separate Orders in Council, known as Transfer of Functions Orders, were the means by which these functions were transferred to the National Assembly for Wales which was not granted primary law-making powers at this time.
- 2.2.2 Although these executive functions were vested in the National Assembly for Wales, in practice they were delegated to Assembly Ministers (referred to as Assembly Secretaries until 2000) who exercised them on behalf of the National Assembly for Wales under its scrutiny. The making of Assembly general subordinate legislation could not be delegated to the Assembly Ministers, and such legislation therefore was always made following a vote by the National Assembly for Wales in plenary. In March 2002, as a result of a resolution passed by the National Assembly for Wales, the Assembly Ministers collectively became known as the Welsh Assembly Government to distinguish themselves from the wider National Assembly for Wales.

2.3 Devolution of law-making powers

- 2.3.1 The most recent phase of devolution to Wales resulted from GoWA 2006, and came into effect following the National Assembly for Wales elections in May 2007. This formally and legally separated the National Assembly for Wales and Welsh Assembly Government. The executive functions which had originally been delegated to the National Assembly for Wales were transferred to the Welsh Ministers who, together with the Counsel General and Deputy Welsh Ministers, make up the Welsh Assembly Government. It is to those Ministers that any further executive powers may now be given. Welsh Ministers are now answerable to the National Assembly for Wales which scrutinises their actions and some proposed legislation, an arrangement more in keeping with the Westminster Parliamentary model.
- 2.3.2 While the National Assembly for Wales lost its executive functions, it acquired a new power, the right to pass primary laws - that is laws which are self standing and are not secondary laws to implement specific Acts of Westminster.
- 2.3.3 These self standing laws are called Measures and have the same effect in Wales as Acts of the UK Parliament. GoWA 2006 set out a list of 20 areas, called Fields (the "20 Fields"), which corresponded to the areas of policy which had been administratively devolved to Wales. The National Assembly for Wales can acquire the power to pass a Measure in part of one of the Fields through a procedure set out in GoWA 2006. It is only when that procedure has been completed and Parliament has agreed the transfer of the particular power that the National Assembly for Wales would then be competent to consider a legislative proposal - it is understood that individual approvals would only be given to the National Assembly for Wales to acquire power over part of a Field, to be known as a Matter.
- 2.3.4 The twenty Fields are:
- agriculture, fisheries, forestry and rural development
 - ancient monuments and historic buildings
 - culture
 - economic development
 - education and training
 - environment
 - fire and rescue services and promotion of fire safety
 - food
 - health and health services
 - highways and transport
 - housing
 - local government
 - National Assembly for Wales
 - public administration
 - social welfare

- sport and recreation
- tourism
- town and country planning
- water and flood defence
- Welsh language

2.3.5 The scope of Matters inserted under the Fields varies. An example of a Matter which is quite widely drawn, listed under the “social welfare” Field, is:

“social care services for ... (a) children; (b) persons who care for, or are about to care for, children; (c) young persons [i.e. persons between the ages of 18 and 25]; (d) persons formerly looked after (i) who have attained the age of 25, and (ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training”.

2.3.6 The list of Matters is continuously updated, and represents, at a given time, the extent of the National Assembly for Wales’s legislative competence i.e. those areas where it can pass Measures. If there is a proposal to take forward a Measure in relation to one or more of the Matters listed under the 20 Fields, a “purpose and effect” test is applied to confirm that a proposed Measure correctly relates to Matters in Schedule 5, having regard to the purpose of the provision including its effect in all of the circumstances.

2.3.7 There are two routes by which the legislative competences of the National Assembly for Wales to pass Measures can be augmented incrementally. Firstly, this can be done through a UK Parliamentary Act. This route usually starts with a proposal by the Welsh Assembly Government to the UK Government that such a provision (known as framework provisions, inserting a Matter in Schedule 5) should be included in a UK Parliamentary Bill. When passed as an Act of the UK Parliament, this would insert the particular Matter(s) into Schedule 5. This is an opportunistic approach negotiated between governments. The Act is considered under Westminster’s procedures, and the National Assembly for Wales has no formal role in that process.

2.3.8 Secondly, the Legislative Competence Order (LCO) route can add a Matter. The basic statutory requirements relating to LCOs are that they should contain a description of the Matter or area where the National Assembly for Wales is to have legislative competence, and that they should be approved by the National Assembly for Wales and by both Houses of Parliament. The formal statutory process, therefore, begins with a request from the National Assembly for Wales to the Westminster Parliament seeking agreement to add a Matter or Matters under one or more of the Fields. The request is channelled via the Secretary of State for Wales who has a veto on future progress: he / she has discretion as to whether to lay any draft LCO before Parliament, but has to give reasons for any refusal to do

so. The arrangements set out in GoWA 2006 mean that both Houses of Parliament have a veto on the granting of the proposed powers. In the House of Commons, the Welsh Affairs Committee has a significant role in the consideration of the LCO. At the end of the process, provided the National Assembly for Wales and both Houses of Parliament have agreed the draft LCO, the LCO is made by Her Majesty in Council, and the additional Matters are added to Schedule 5.

- 2.3.9 Both routes create the right for the National Assembly for Wales subsequently to legislate through the passing of a Measure. More information can be found in section 3.3.

2.4 Option for further devolution of law-making powers

- 2.4.1 GoWA 2006 provides another option for the National Assembly for Wales to acquire law-making powers. Rather than accrue powers incrementally, the right to legislate in all 20 areas can pass to the National Assembly for Wales collectively, at once. The Act provides for the possibility of a referendum of the Welsh electorate to decide whether competence in all 20 areas should be transferred to the National Assembly for Wales immediately and without further ado if there is an affirmative vote in a referendum.
- 2.4.2 In the case of a “yes” vote, the portion of GoWA 2006 which provides for the National Assembly for Wales to pass Measures (Part 3 and Schedule 5) would fall away and another portion (Part 4 and Schedule 7) would come into force. The National Assembly for Wales’s legislative competence would then relate to the Subjects listed under the twenty headings set out in Schedule 7 to the Act. These headings correlate to the Fields set out in Schedule 5, and the Subjects represent the full range of policy areas which are considered to be devolved, based on the areas where the Welsh Assembly Government already has devolved executive competence.
- 2.4.3 In terms of the laws passed by the National Assembly for Wales, there would be a change of nomenclature but not of substance. The National Assembly for Wales would pass Acts rather than Measures, but both types of law share the characteristic that they can make any provision that could be made by an Act of Parliament - provided that they make provisions that are within the competence of the National Assembly for Wales and do not breach any of the general restrictions that apply.

2.5 Process for calling a referendum

- 2.5.1 While GoWA 2006 allows for the UK Government to initiate a referendum independently of the National Assembly for Wales, the more likely scenario is that the referendum would be initiated by the National Assembly for Wales and Welsh Assembly Government. In which case the following process would apply:

- 40 Assembly Members (two-thirds) must vote for the resolution to call a referendum to proceed any further.
- The First Minister notifies the Secretary of State for Wales in writing of the National Assembly for Wales's resolution.
- The Secretary of State for Wales then has 120 days to decide whether to proceed with the request for a referendum, or to refuse to do so - in which case the Secretary of State for Wales must give notice in writing to the First Minister of his / her decision not to proceed (with reasons why). If the Secretary of State for Wales wants to proceed, then he / she must use the 120 day period to consult as appropriate on the proposal for a referendum, and this must include consultation with the Electoral Commission on the wording of the referendum question.
- The Secretary of State for Wales lays before Parliament a draft Order in Council making provision for calling a referendum, and the question to be put, and the First Minister lays the same draft Order before the National Assembly for Wales. Again two-thirds of the National Assembly for Wales must vote to support it, and a simple majority in both Houses of Parliament. The draft Order must specify (i) the referendum question, (ii) date of the referendum, (iii) referendum period, i.e. period during which special provisions relating to conduct of referendum campaigns apply, and (iv) provisions relating to funding and cost of the referendum.
- The draft Order is then submitted to Her Majesty in Council for formal approval.

2.5.2 The time it would take between deciding to call a referendum and the referendum actually taking place would be approximately 9 months.

2.5.3 The referendum period would last about 10 weeks - this would include 28 days of formal campaigning, but also the time prior to that required for organisations to register as permitted participants with the Electoral Commission, and for permitted participants to be designated as lead campaign groups, etc.

2.5.4 The exact cost cannot at this stage be accurately calculated. However, the largest cost would be for the 'fees and charges' for local returning officers / counting officers. The closest comparator would be the recent European elections - the costs in Wales for holding this election in June 2009 (counting officer fees) came to approximately £4.9 million.⁴

2.5.5 Other costs would include the grants allocated to each official campaign - which would be granted by the Electoral Commission. As a comparison, the sums given for the North of England referendum in 2004 were £100,000 per campaign (Yes and No) - a similar limit would probably be recommended for a referendum under GoWA 2006.

2.6 Moving from Part 3 (Assembly Measures) to Part 4 (Assembly Acts) of GoWA 2006

- 2.6.1 In the event of a “yes” vote in a referendum, GoWA 2006 provides for the Welsh Ministers to make the necessary order to bring the Assembly Act provisions into force.
- 2.6.2 Bringing the Assembly Act provisions into force would mean that Part 3 and Schedule 5, which support the current arrangements, would fall away. However, any Assembly Measure which had been enacted before then would continue to be valid.
- 2.6.3 The Welsh Ministers would need to consider and address the following issues to ensure a smooth transition to the new arrangements:
 - Whether there is a need for saving provisions, which would keep some of the provisions in Part 3 alive to make sure that the Measures that are already in existence work as they should, e.g. the provision stating that all Assembly Measures are to be judicially noted (which means they have to be recognised as valid law by the courts).
 - Whether there is a need for transitional provisions to enable the move from Part 3 to Part 4, e.g. to deal with Assembly Measures that have almost completed their passage into law, but which have not quite made it in time before the Assembly Act provisions come into force.
 - Whether there is a need to amend Schedule 7, to account for areas where the exceptions to competence applied in Schedule 5 are less restrictive than those already specified in Schedule 7. This could be done by means of an Order in Council under section 109 of GoWA 2006, with the agreement of both the National Assembly for Wales and both Houses of Parliament.⁵

2.7 Nature of law-making powers under Part 4 of GoWA 2006

- 2.7.1 The potential law-making powers under Part 4 of GoWA 2006 are sometimes termed “full law-making powers” or compared to the Scottish powers. This is erroneous. The implications of this term are discussed in Chapter 5. The powers are those relevant to the 20 areas where policy-making is already devolved to Wales. They are not full and are transferred on a different basis from that for Scotland.⁶ Any of the three means by which powers are granted to the National Assembly for Wales add to the powers exercised in Wales by permitting the National Assembly for Wales to enact primary legislation in the areas already administratively devolved to Wales. They do not widen the powers to policy areas that are not currently devolved, but they do extend devolution in a given area.

2.8 Mechanisms for increasing the devolved areas of policy

- 2.8.1 It is possible to increase the devolved areas of policy beyond those outlined in paragraph 2.3.4. Currently the scope where Welsh Ministers can exercise

executive functions can be increased through a Transfer of Functions Order which would require the approval of both Houses of Parliament, or simply by giving Welsh Ministers new executive functions in an Act of the UK Parliament. If in this way, Welsh Ministers were given functions that fall outside the 20 existing Fields, then it would be possible, by Order in Council, to add new Fields to Schedule 5, covering those functions, opening up the possibility of the National Assembly for Wales acquiring law-making powers in those new Fields. In addition, the Assembly could acquire law-making powers in new Fields directly through provisions in UK Acts.

- 2.8.2 If Part 4 were in force, an Order in Council could be used to give the National Assembly for Wales powers to pass Acts in new subject areas, irrespective of whether Welsh Ministers already had powers in those areas. Transfer of Function Orders could still be used to give new executive powers to Welsh Ministers, as could UK Acts of Parliament.

² See paragraph 3.8.1

³ See paragraph 3.8.3

⁴ Figure provided by the Electoral Commission

⁵ Considered in more detail in Chapter 3

⁶ See paragraph 2.1.2

Chapter 3

The Results and Evidence Received

- 3.1.1 Devolution was intended to bring government closer to the people, to recognise particular circumstances and differences within the United Kingdom, and to permit policies and decisions which better reflect that variety and diversity. It should also be about modernisation of the democratic model, improving governance, encouraging closer relationships between the governed and the governing with better access to politicians, and improved delivery of public services.
- 3.1.2 Government in Wales has operated in a new way and increasingly so, since 1999. Decisions in devolved areas are now made by Welsh Ministers in Wales for Wales, answerable to the National Assembly for Wales. Ministers and officials are more accessible to organisations and individuals in Wales, and Wales is adopting different policies responding to Welsh needs.
- 3.1.3 Among many examples:
- The Tir Gofal Agri-Environmental scheme is highly regarded.
 - Agricultural diseases such as blue tongue and foot and mouth have been proactively tackled.
 - Single Farm Payments in Wales are fixed differently.
 - A new Foundation Stage for children from 3 to 7 years.
 - The development of a Welsh Baccalaureate qualification.
 - An Older People's Strategy including a dedicated Commissioner.
 - A Children's Commissioner.
 - A particular approach to occupational health, tackling underlying causes.
 - A programme for improved North-South links.
 - Communities First - a long term initiative to tackle the most deprived areas of Wales.
 - A strategy to tackle substance misuse.
 - Sizeable new housing developments now include some social housing.
 - Higher Education Fee support for Welsh domiciled students studying at Higher Education Institutions in Wales.
- 3.1.4 Yet it became evident in early discussions that, despite the efforts of the National Assembly for Wales and the Welsh Assembly Government, the positive benefits of devolution were not fully appreciated. When asked, consultees would point to free prescriptions, free bus and swimming passes, reduced fees at Welsh universities and the like. But knowledge of individual tailored policies was largely lacking, other than by those directly involved in the particular sector. There was often a tendency more to criticise the National Assembly for Wales in Cardiff than to appreciate the

growing benefits of devolution. A deficit of effective communications across Wales exacerbated the difficulty in understanding the process of devolution.

- 3.1.5 A bigger impediment was the very complexity of that process. This was underlined by the results of our Social Research.⁷ The distinction between the roles of the National Assembly for Wales and the Welsh Assembly Government, was frequently misunderstood, partly because of the use of the adjective 'Assembly' before Government. But, much more difficult to understand was the distinction between delegated secondary legislation in the devolved areas, and primary legislation, and indeed, the meaning of the terms. The process of transferring these powers to the National Assembly for Wales was perceived as even more complex.
- 3.1.6 For local authorities, the principle of devolution implies that if decisions are to be taken closer to the people, then they should be taking more of them.
- 3.1.7 The Third Sector clearly wishes to be more engaged, and welcomes the improved access to Ministers. However it finds the arrangements complex so that engagement is made more difficult. For its part, the civil service has been less engaged in outreach in Wales, because this has been a role considered to be more appropriate for Ministers.
- 3.1.8 The approach in Westminster and Whitehall has become more cautious since the passing of GoWA 2006. Developments in Scotland, the impact of global issues such as climate change or energy security, and perhaps some bureaucratic clawback, have all served to produce greater scrutiny of proposals to transfer powers to the National Assembly for Wales.
- 3.1.9 This was some of the background against which we began our journey to raise awareness and stimulate debate throughout Wales on the issue of primary law-making powers. The more we consulted and discussed, the greater our appreciation grew, both of the complexity of the issue and the range of opinions and understanding among the people of Wales.
- 3.1.10 Nonetheless, the people of Wales' support for and acceptance of devolution has consistently grown, as polls have demonstrated.⁸ But it is reasonable to assume that if asked to endorse substantial legislative powers for the National Assembly for Wales, the electorate will more critically examine the performance of both the Welsh Assembly Government and the National Assembly for Wales. Their understanding and judgement on the use of existing powers may well influence their views on the granting of further powers. This was something we specifically asked people about in our consultation questions. The people of Wales are also likely to want to know what these new powers would be used for. What would be the benefit to individuals from the transfer of legislative powers to the National Assembly for Wales? We therefore posed that question frequently, and tried to identify examples of the potential use of further legislative powers. The responses included:
 - The British Medical Association argued to us that Part 4 would permit legislation on organ donation, mental health reform and Health Impact Assessments.

- Professor Cole, of the Wales Transport Research Centre of the University of Glamorgan, set out the present division of responsibilities between the Department of Transport and Welsh bodies, and argued that Part 4 would permit the National Assembly for Wales to legislate for an integrated transport policy for Wales. The objective would be accessible and affordable modes of travel which are both sustainable and would become the preferred means of travel in Wales. The same example was picked up by the Institute of Welsh Affairs (IWA).
- The IWA cited Public Health legislation and a legislative approach to the Welsh landscape as examples of possible Part 4 action.
- The IWA also noted that Part 4 would permit the National Assembly for Wales to legislate in some areas where the Scottish Parliament has acted since 1999 e.g. parental involvement in School Education; Inspection of Children's Services and Social Work Services; and Accessibility of Education.
- WCVA suggested protection of vulnerable adults and alcohol misuse.
- The Labour Party suggested a comprehensive Measure addressing the Health of the Nation, legislation which would underpin the development of a new generic health worker in rural Wales and legislation to create a common governance framework for the education of 16 - 19 year olds, wherever that education was received.

3.2 Costs of devolution

- 3.2.1 The issue of how much devolution costs and how much further powers would cost was a recurring issue during public sessions, and a particular concern of those critical of devolution and of the National Assembly for Wales. Even though the results of our social research showed that people's concerns regarding the cost of devolution had died down somewhat since the 1997 referendum, it was still a fairly significant issue in the evidence sent to us by the public. Public Affairs Cymru and the Wales Women's National Coalition, highlighted that potential cost implications of getting further powers could be an issue during the current economic climate.
- 3.2.2 Cymru Yfory felt that the cost savings of moving to Part 4 would be a strong argument in favour of more powers, as they considered that the amount of time and resources spent on the LCO system (which would not be a factor if Part 4 were in place) was substantial and unnecessary. The frequent allegation from other evidence submitted was that there was an overly bureaucratic and financial expansion post 1999. This argument was also put forward by members of the public at our events.
- 3.2.3 The block grant from the Treasury to the Welsh Assembly Government increased from £6.8 billion in 1998/9⁹ to £15 billion in 2009/10.¹⁰ But these amounts stemmed from the application of the Barnett formula, an outcome independent of devolution. Over the same period, aggregate British public expenditure rose from £333 billion¹¹ to £671 billion.¹²

- 3.2.4 Post devolution, some of the block grant to Wales covered the resource budget of the National Assembly for Wales, which by 2008/09 totalled £46.2 million.¹³ This compares with the total cost of £498 million in 2008/09 to run both Houses of Parliament.¹⁴ The cost of our institutions is part of the essential cost of the democratic model we choose.
- 3.2.5 We have sought with some difficulty to un-bundle the costs associated with legislation, and to establish the net effect if Part 4 of GoWA 2006 were to enter into force. The Welsh Assembly Government estimated that the cost of policy officials' time spent on getting powers through LCOs and Framework Powers in UK Bills in 2008/09 was £1.07 million,¹⁵ and that the cost of the legal staff involved in the same work was £0.91 million.¹⁶ This makes a total annual cost of £1.98 million in Welsh Assembly Government staff costs for 2008/09 on the acquisition of powers through LCOs and Framework Bills - this work would not be needed should the National Assembly for Wales move to Part 4.
- 3.2.6 When asked whether the Welsh Assembly Government would need to increase its policy capacity should Part 4 of GoWA 2006 be implemented, Dame Gill Morgan, the Permanent Secretary to the Welsh Assembly Government, stated "I believe that we would have sufficient capacity, given the savings we would make in not having to follow the Part 3 process".¹⁷ She also noted that should Wales move to Part 4, staff resources would be freed to deal with the drafting and passing of Assembly Bills, and estimated that between ten and twelve items a year could be delivered within the current resource.
- 3.2.7 The First Minister indicated that some additional legislative counsel may be needed over time to work on drafting Assembly legislation. If so, some additional legal resource may also be needed to support the legislative counsel - some of which could come from reallocation of existing resources. The estimated cost of the additional time spent in this area, by legislative counsel and lawyers, could be up to £688,000 a year (at current rates).
- 3.2.8 A move to Part 4 could produce some savings in Whitehall. The Wales Office's role in handling LCOs would cease. However, they would continue to have a monitoring role in terms of Assembly primary legislation under Part 4. Whitehall officials, who currently consider draft LCOs covering their Departmental interest, would not need to do so under Part 4. We have been unable to quantify the resulting savings, because data on time spent was not available, and each LCO is in itself different.

Summary

- 3.2.9 This evidence suggests that while costs are an important dimension, in particular for the public's perceptions, the likely impact on the National Assembly for Wales of a move to Part 4 would be, broadly speaking, financially neutral in terms of current budget allocations. In Whitehall, there should be a small, but unquantifiable, release of capacity if consideration of LCOs were no longer needed.

- 3.2.10 Should the National Assembly for Wales move to Part 4, the saving for the Welsh Assembly Government of £1.98 million from not having to go through the processes of acquiring powers through LCOs and Framework Powers in UK Bills would likely be reallocated to the formulation of policy and drafting of Assembly Bills.

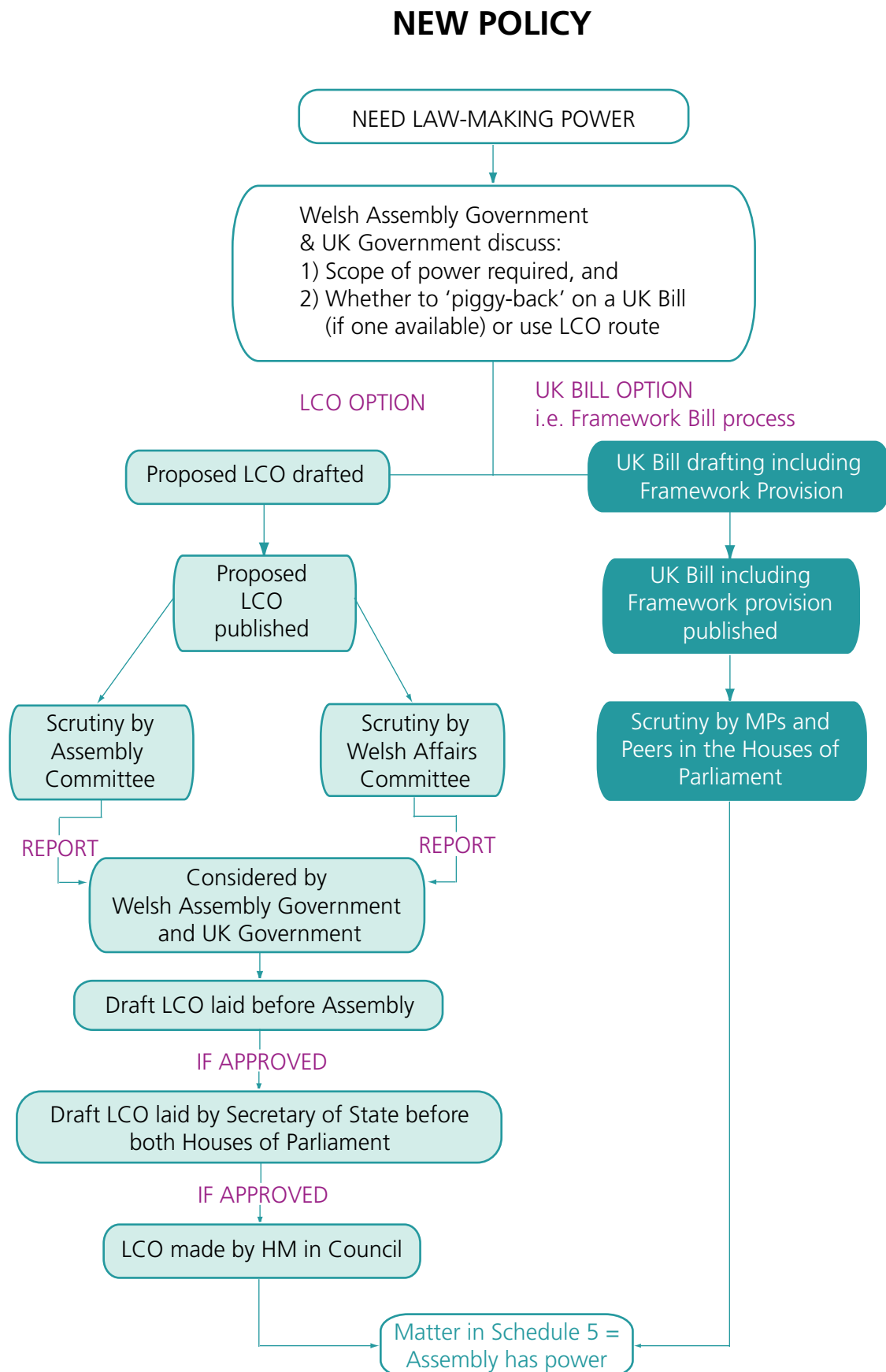
3.3 Routes for the National Assembly for Wales to acquire Measure making powers

- 3.3.1 As described earlier, the National Assembly for Wales can acquire powers to pass Measures through one of two routes:
- The Legislative Competence Order (LCO) route,¹⁸ or
 - The UK Framework Bill route.¹⁹

This is set out in generic terms in chart 3.1, but is discussed in more detail in section 3.4.

- 3.3.2 When GoWA 2006 came into force (in May 2007), Schedule 5 already contained 17 Matters. Six of these were on the face of GoWA 2006 when it was enacted (Matters 13.1 to 13.6, relating to Field 13 'The National Assembly for Wales's); the other 11 were added through conversion into Matters of certain Assembly powers contained in Acts which pre-dated GoWA 2006 (Matters 5.1 to 5.10 relating to 'Education and Training' and Matter 9.1 relating to 'Health and Health Services').
- 3.3.3 Since May 2007, more Matters have been added to Schedule 5 through the UK Framework Bill route than through the LCO route. As of 20 July 2009, the start of the National Assembly for Wales's summer recess, 28 new Matters had been added to Schedule 5 - 12 through LCOs,²⁰ and 16 through UK Framework Bills.²¹ Therefore as of 20 July 2009, there were a total of 45 Matters listed under Schedule 5.
- 3.3.4 However, as overwhelmingly the evidence we received addressed the LCO route, we consider this next.

Chart 3.1 - routes for the National Assembly for Wales to acquire Measure-making powers



3.4 Legislative Competence Orders

- 3.4.1 The LCO process is the route by which both the National Assembly for Wales and the Houses of Parliament approve the transfer of discrete Measure-making powers to the National Assembly for Wales. As such it was important that we consulted widely and took evidence on its operation and scope, and on the principle underlying the process.
- 3.4.2 An extensive process has grown around the basic statutory requirements set out in GoWA 2006, with the aim of smoothing the passage of the LCO, and ensuring that it is subject to detailed scrutiny before it is made. Therefore, Welsh Assembly Government proposed LCOs are normally subject to early consultation and agreement of a draft between the Welsh Assembly Government and UK Government, before the proposed LCO is even published. Once published, it is subject to pre-legislative scrutiny by an Assembly Committee, the Welsh Affairs Committee of the House of Commons and the House of Lords Constitution Committee. It is only once this pre-legislative scrutiny is completed that a final draft LCO is published and starts on the statutory process of approval by the National Assembly for Wales and both Houses of Parliament.
- 3.4.3 The LCO procedure, therefore, usually encompasses the following stages:
- The proposed order is formulated at the initiative of the Welsh Assembly Government or an Assembly Member. It is understood that this must conform to the requirements of GoWA 2006 and relate to one of the 20 Fields.
 - A draft of the proposed order is agreed between the Welsh Assembly Government and the UK Government.
 - Pre-legislative scrutiny then follows in the appropriate National Assembly for Wales Committee, the Welsh Affairs Committee of the House of Commons and the House of Lords Constitution Committee. Interested parties can make submissions at this stage.
 - The UK Government and the Welsh Assembly Government consider and respond to the scrutiny reports, and then clear and agree to the text of a draft LCO.
 - This is then submitted for the approval of the National Assembly for Wales and both Houses in Westminster. In the House of Commons, it is the practice for the LCO to be considered in Committee rather than on the floor of the House.
 - When those steps have taken place, the draft LCO is presented to Her Majesty the Queen in Council for formal approval, after which it is enacted and comes into force.
- 3.4.4 In the case of the proposed Welsh Language LCO, the Secretary of State for Wales has varied the usual procedure by asking that the proposal be considered by the Welsh Grand Committee, at the pre-legislative scrutiny stage, and subsequently debated on the floor of the House of Commons.
- 3.4.5 Since GoWA 2006 came into force following the National Assembly for Wales elections in May 2007, the Welsh Assembly Government have proposed 11 LCOs,

AMs have proposed nine, and one has been proposed by a National Assembly for Wales Committee. Not all of these proposed LCOs have progressed.

- As of 20 July 2009, only four of the LCOs proposed by the Welsh Assembly Government had made it onto the statute book: those relating to Additional Learning Needs, Vulnerable Children, Domiciliary Care and the Red Meat Industry. The other seven LCOs were still in progress.
- LCOs proposed by Assembly Members are not guaranteed Welsh Assembly Government backing, and of the nine proposed in the first two years (as of 20 July 2009), two were in progress and three remained to be introduced. The other four will not progress at all as one was withdrawn and three were not supported by the Welsh Assembly Government.
- The one LCO proposed by a National Assembly for Wales Committee (put forward by the Assembly's Enterprise and Learning Committee) was still under consideration at that time.

- 3.4.6 The Welsh Assembly Government, Assembly Commission and Welsh Affairs Committee, as those most directly involved in the process, were generally upbeat about the first 2 years of operation, although recognising that arrangements were not without problems. The First Minister said that "critics could naturally describe it as cumbersome, but we are gradually making it work...we are gradually smoothing out that initial fear of what is this strange animal that is neither Assembly legislation nor is Westminster legislation. It is a request for a transfer of the power to legislate".²²
- 3.4.7 The Welsh Affairs Committee also felt that the LCO process was working well, and getting better with experience. They stated "it is the general view of the Committee that the process is working well and increasingly so over time, thanks in large part to our consensual approach within the Committee and our partnership approach with Assembly committees".²³
- 3.4.8 We wanted to know what our consultees thought about the process, its efficiency, the resources devoted to it, and how it could be made more efficient. We received wide ranging evidence.
- 3.4.9 Some, including the Wales Women's National Coalition and RSPB Cymru highlighted the complexity of the LCO process, generally seeing it as a negative feature. One member of the public felt that "it is a model of over-intricacy that can only be described as Byzantine. If we judge it against the criteria of openness, simplicity and value for money it fails on all three. It is not a model for good governance". He added "at this point it is not enough to claim, as some prominent politicians have done, that getting a few LCOs through the system is proof that the system 'works'".²⁴
- 3.4.10 How did this relative complexity affect the ability of organisations and the public to engage with the LCO process? Most thought that it inhibited participation. Cymdeithas yr Iaith stated "our members took a strong interest in the transfer of powers but the process is such a complicated one that it is very difficult in the first

place for us to get used to and understand the process, and then to communicate that to our members".²⁵

- 3.4.11 A member of the public commented "it makes no logical sense that legislative powers of the National Assembly...are currently available, but only through a very protracted and complex process".²⁶
- 3.4.12 The Law Society stated that the LCO process "...has too many stages and takes too long because of the involvement of both the National Assembly and Westminster. The point of Wales gaining primary law-making powers through Orders in Council was to speed up the process but the procedures adopted in Westminster to pursue an LCO are more complex and time-consuming than securing time for Wales only clauses in Westminster Bills".²⁷ Plaid Cymru and NFU Cymru had similar concerns about the length of the process.
- 3.4.13 The Deputy Minister for Social Services, responded to criticism of the time taken to pass LCOs by stating "while I'm sure that there are steps which could be taken, such as joint working between scrutiny committees, to improve the process, there is also need to recognise the complexity and political sensitivity of some of these items of legislation".²⁸
- 3.4.14 The Welsh Affairs Committee felt that it should be no surprise that the process is complex, as law-making is inevitably a complex process, and stated "the public in Wales needs to understand the system in order to engage with the process, but any system which changes the rules according to which people are governed can only be simplified to a certain extent without risking the essential checks and balances which ensure fairness and equal treatment under the law".²⁹
- 3.4.15 The role of the Welsh Affairs Committee in the LCO process, and whether or not they hold the process up, was questioned by some. However, Nick Ainger MP felt that, like all MPs, members of the Welsh Affairs Committee are elected representatives, and that as such they should be able to express their views in the course of scrutinising LCOs. He argued that "...I think that you cannot take the politician out of this process and, yes, they will have views, you cannot avoid that, they will have views. They are not there to rubber-stamp, they are also there to ask questions and scrutinise".³⁰
- 3.4.16 It was also felt that timetabling considerations in both Westminster and the National Assembly for Wales caused delays in the process. The First Minister and the Welsh Affairs Committee felt that more could be done to coordinate the timetables of both the National Assembly for Wales and Westminster to speed up the process.
- 3.4.17 When it came to time for consultation on draft LCOs, something of a paradox emerged. It was felt that, as the LCO process exists, stakeholders should be given the opportunity to give their views, and given enough time to do that; but of course, this can add to the length of the process.
- 3.4.18 WCVA felt that consultation on LCOs was not effective enough in reaching all who might be affected - they had calculated an average of 17 responses to each LCO

consultation up to May 2009. But they also acknowledged that it may be more difficult to consult effectively on a LCO, as opposed to a Measure, because a LCO is not about taking forward a specific legislative proposal.

- 3.4.19 The scope or breadth of an LCO needs to be decided at an early stage - case by case. We asked whether the scope of the legislative power to be given to the National Assembly for Wales should, necessarily, be framed by reference to the specific Measure or Measures that it was subsequently to empower.
- 3.4.20 The Deputy Minister for Social Services, stated that “it is fundamentally important to have a clear view at the outset about which topics the LCO is intended to cover and which it is not. Where the topic that the LCO covers is relatively limited, as was the case with the Domiciliary Care LCO, agreement is easier to achieve since the scope is easily defined and understood. Where an LCO covers a broad area of policy, greater care is needed to identify and explain the topics on which it would allow the Assembly to legislate”.³¹
- 3.4.21 The First Minister and Deputy First Minister explained that they had chosen to propose a mix - some LCOs with a relatively broad, and some with a narrow scope. LCOs with a narrower scope, perhaps not surprisingly, have tended to proceed to completion more quickly. The First Minister stated “the wider it is, the greater the numbers of Whitehall departments that need to have a detailed look at it, whereas if it is a fairly narrow one, it can probably be done by one or two. So that is also an issue”.³²
- 3.4.22 We received detailed evidence about how lawyers and policy officials deal with the LCO process. They explained the considerations involved in drafting LCOs and how they differed to those for drafting Measures. Also, how the unpredictability and therefore difficulty with timetabling the LCO process can sometimes have repercussions for their work on drafting Measures. They also explained that, although the foreseen purpose for which powers are being sought must be covered by the scope of the LCO, the powers transferred also needed to be a coherent and sensible set of powers which sit naturally together.³³
- 3.4.23 A number of people and organisations that gave evidence felt that LCOs should be broad in scope, rather than specifically anticipating a possible Measure. RSPB Cymru expressed frustration at how tightly drawn some LCOs are “...LCOs are so tightly defined they are almost Measures. You can probably only make one or two pieces of legislation under them, which means we could have many thousands of LCOs and never be in a situation that would add up to a coherent set of powers”.³⁴
- 3.4.24 However, the Confederation of British Industry Wales (CBI) would welcome more consideration of what legislative powers might be used for, and stated “we have taken part in the process of LCO scrutiny on a few occasions. The reluctance to discuss the likely end uses of the powers to be acquired has made this a frustrating experience”.³⁵
- 3.4.25 The Deputy First Minister felt that what the power would be used for should not be the issue, and stated “... when it gets to Westminster the question is not whether

that is the right thing for the Assembly to do in terms of policy direction, but is it appropriate that the Assembly should have the powers? Sometimes it does stray into, 'What are you going to do with it when you have got it?'.³⁶ This was echoed in evidence given by Cymdeithas yr Iaith and Kirsty Williams AM.

- 3.4.26 The First Welsh Legislative Counsel confirmed that that there had been greater critical scrutiny of the exact extent of the competence conferred by each LCO, and this had had repercussions for the drafting of LCOs, including making them more difficult to draft and the process more time consuming.
- 3.4.27 For some, the key question was whether, in principle, a system of transferring legislative powers to the National Assembly for Wales in a piecemeal fashion could be justified at all.
- 3.4.28 One member of the public felt that "the situation is too complicated, and discussions between Cardiff and London use too many resources and put too much emphasis on constitutional details at the expense of developing policy".³⁷
- 3.4.29 The Wales Women's National Coalition were in favour of a move to Part 4 but recognised that the LCO system might prove attractive to some, because "you've obviously got a lot of process and control ...so those who might not feel full confidence in the ability or the capacity, or the appropriateness of Welsh Assembly Government would welcome that process and control".³⁸
- 3.4.30 The discretion of the Secretary of State for Wales as to whether to lay a draft LCO before Parliament for approval was also an issue of principle for some. For example, the Welsh Liberal Democrats stated that "...it sets a bad precedent for the future by establishing that the Westminster Government should be entitled to over-rule the will of the Assembly",³⁹ whilst Plaid Cymru felt that issues might arise if there were parties of different political colour in power in Cardiff and London.

Summary

- 3.4.31 The LCO process was conceived to permit an incremental transfer of legislative power to the National Assembly for Wales, and to do so after careful case by case consideration in Westminster and in the National Assembly for Wales and the Welsh Assembly Government. We have noted the results of the process to date. Practice is evolving with experience. The Welsh Assembly Government is more engaged with Whitehall, and efforts have been made to address the disadvantages of the system. Scrutiny in Westminster and the National Assembly for Wales has sharpened up legislative intentions, and pre-legislative scrutiny in the National Assembly for Wales has made a novel, positive contribution to eventual outcomes.
- 3.4.32 We received a substantial body of criticism of the concept, part practical and part principled. Scrutiny arrangements in the Commons could vary from the purely technical approach of the Statutory Instruments Committee (is the proposed LCO consistent with the letter of GoWA 2006?) to posing the question whether the intent of the consequent legislation is likely to be what the people of Wales want?

- 3.4.33 Many, particularly the Third Sector, criticised what they saw as the cumbersome, somewhat opaque, sometimes lengthy, inaccessible nature of the process. Many pointed out that the resources devoted to achieving an LCO would be better spent on the consideration of the actual legislation. The scope of LCOs was also a factor, with good legislation suggesting a broadly drafted LCO permitting subsequent flexibility.
- 3.4.34 There was also the objection in principle of, in 2009, having to seek this case by case approval of Westminster. Many argued that the maturity of the National Assembly for Wales, the powers already enjoyed by the other devolved administrations, and the case for democratic accountability of the Welsh Assembly Government and the National Assembly for Wales, all pointed to the implementation of Part 4.
- 3.4.35 We note greater engagement by the Welsh Assembly Government in Whitehall, and that the Welsh Affairs Committee has been modifying its arrangements with increased cooperation between the Committee and its National Assembly for Wales counterparts. Joint scrutiny had a role in some cases.

3.5 Framework Bills

- 3.5.1 Attention tends to focus on the National Assembly for Wales acquiring powers through LCOs. Yet, since GoWA 2006 was enacted, more Matters have been added to Schedule 5 through Acts of Parliament than through LCOs.
- 3.5.2 UK Parliamentary Bills can contain proposals for new Matters to be added to Schedule 5 of GoWA 2006. Such provisions are sometimes referred to as Framework Powers; therefore Bills containing such provisions are sometimes referred to as Framework Bills. UK Parliamentary Bills can also be used to confer executive functions directly on Welsh Ministers, as the Welsh Affairs Committee pointed out in their evidence “a significant proportion of the powers devolved by means of Westminster Bills are executive powers devolved to the Welsh Assembly Government Ministers alone, which would not allow Assembly Members (whether Government or backbench AMs) to propose Measures in the relevant policy area.”⁴⁰
- 3.5.3 Welsh provisions in UK Parliamentary Bills dealing with policy areas devolved in Wales, can therefore consist of Measure making powers for the National Assembly for Wales, or executive powers for Welsh Ministers, or a combination of both. UK Bills can also make specific provision for change in Wales, but this is much rarer, and probably unlikely to happen now that there is the potential for the National Assembly for Wales to make its own primary legislation.
- 3.5.4 Obtaining Measure-making powers through Framework Bills offers advantages to the Welsh Assembly Government if there is a convenient Bill on which to attach the provision which enables the particular power to be transferred to the National Assembly for Wales, precisely because it can be easier and less time consuming.

- 3.5.5 Mark Williams MP argued that “Framework powers have been more successful in that they have allowed functions to be transferred in a more straightforward way, but they are limited in scope.”⁴¹
- 3.5.6 Community Housing Cymru (CHC) and Public Affairs Cymru felt that this route had proved successful in transferring powers from Westminster to the National Assembly for Wales, with CHC stating that “producing Measures, following provisions in UK Bills, may have been more effective than the LCO process to date in terms of acquiring further powers for the Assembly”. They added that the Framework Bills route is “the most effective way of broadening the areas in which the Assembly can pass legislation”.⁴²
- 3.5.7 Welsh provisions in UK Bills are generally agreed, at the drafting stage, between the UK Government and the Welsh Assembly Government. As a result of this, much of the evidence we received on Framework Bills considered lack of scrutiny by the National Assembly for Wales, and subsequently a lack of transparency as disadvantages of using Framework Bills.
- 3.5.8 Whilst some felt that the Welsh Assembly Government could have made more use of Framework Bills to acquire powers, others had serious concerns about this process. Professor Dermot Cahill, head of Bangor University Law School thought this route “...worrying in many respects. First of all, the notion that competencies can be conferred more quickly through Acts of Parliament than through LCOs is disturbing because it implies that, for whatever reason, the relevant ‘Welsh’ clauses receive far less attention when contained in an Act of Parliament. At best this is because more Parliamentary time is devoted to English issues”. He was also concerned about the lack of transparency and accountability, which with the discouragement of openness meant that “matters will only be able to be introduced through inter-governmental negotiations behind closed doors”.⁴³
- 3.5.9 RSPB Cymru were also concerned about the lack of scrutiny of devolution of powers to Wales through Acts - the particular example they used was the Marine and Coastal Access Bill which they felt might result in a potential shortfall in the provisions for Wales. “Whilst powers coming to Wales through LCOs are scrutinised in detail, there is more limited scrutiny of powers coming to Wales through Acts of Parliament. There may be a number of reasons for this, but two we have encountered... are rather limited understanding by parliamentarians of how certain Bills affect Wales, and a lack of detail available on how provisions will be implemented in Wales, making it difficult for stakeholders to scrutinise the effectiveness of the legislation”.⁴⁴
- 3.5.10 Adam Price MP recognised the importance of Framework Powers in his oral evidence, but was also critical of the lack of scrutiny, from Westminster and from the National Assembly for Wales “...where is the opportunity for real pre-legislative scrutiny for Framework Powers at the National Assembly for Wales? Assembly Members have far more expertise these days because of the nature of their work and the work in committees in terms of Welsh policy, and yet they do not get to influence those Framework Powers because, even if they are published in draft form, there is very little opportunity there”.⁴⁵

- 3.5.11 Lack of transparency and scrutiny were also raised as issues in relation to the conferral of executive functions on Welsh Ministers through UK Bills - particularly the lack of opportunity for the National Assembly for Wales or its Subordinate Legislation Committee to scrutinise such proposals. While it is the convention that a Legislative Consent Motion would be laid before the National Assembly for Wales, to obtain its consent to any proposal in a UK Bill falling within an area where the National Assembly for Wales already has powers to pass Measures, no such consent is sought for provisions giving executive powers to Welsh Ministers in other policy areas which are devolved. So, for example, Welsh language policy is devolved and Welsh Ministers make decisions on it, but a UK Bill could give further powers to the Welsh Ministers in this area without the National Assembly for Wales's consent, because the National Assembly for Wales does not yet itself have powers to make law relating to the Welsh language.
- 3.5.12 The National Assembly for Wales's Subordinate Legislation Committee, in the course of its *Inquiry into the Scrutiny of Subordinate Legislation and Delegated Powers* (May 2009), considered how they could tackle the issue of making sure they had the opportunity to scrutinise executive powers given to Welsh Ministers. Janet Ryder AM confirmed that, historically, her committee does not systematically scrutinise and may not even have been made aware of powers about to be transferred to Welsh Ministers in UK Bills. For their part, the Welsh Affairs Committee confirmed that they have no formal role in the scrutiny or consideration of Welsh clauses in UK Bills.
- 3.5.13 Marie Navarro and David Lambert of Cardiff Law School and Wales Centre for Governance expressed concerns about the lack of scrutiny by the National Assembly for Wales of law-making powers conferred on it through UK Parliamentary Acts. Further, they expressed concern about the practice of conferring executive functions directly on Welsh Ministers through UK Parliamentary Acts, and stated that in 2007-08 "the Assembly Government obtained executive powers under six Acts for which there was no parliamentary control in the form of affirmative or negative resolution procedure debates given to the Assembly. The existence and role of the Assembly as a legislature was therefore totally ignored six times that parliamentary year".⁴⁶
- 3.5.14 It is for Westminster to set its timetable and priorities for legislation. Of course for the Welsh Assembly Government to be able to use the framework route there needs to be a suitable Bill, where procedurally, a transfer provision can be added. It does not follow that there will be such a Bill corresponding to the key priorities of the Welsh Assembly Government, or that what may be possible, would be a top priority for the Welsh Assembly Government and not just an opportunistic vehicle for transferring a power.
- 3.5.15 Some of the evidence, including that from the Plaid Cymru Parliamentary Group, CHC, and Mark Williams MP commented on this opportunistic approach. One member of the public stated "the reliance on amendments to UK (or England & Wales) Acts to transfer power, is dictated to by political priorities and legislative timetables in London rather than the need of the Welsh public, and leaves us to beg for crumbs from the Westminster table".⁴⁷

Summary

- 3.5.16 Taking into account all the evidence, it seems clear that UK Parliamentary Bills have been a convenient, speedy and more productive way to transfer legislative powers to the Welsh Assembly Government and the National Assembly for Wales. The process of agreeing Welsh provisions in UK Bills is, for the most part, inter-governmental, and its use, by definition, is dictated by Westminster's priorities and timetable. The National Assembly for Wales has no scrutiny role, whether the proposals are for Measure-making powers for the National Assembly for Wales or executive powers for Welsh Ministers, or both.
- 3.5.17 This means that the National Assembly for Wales has no formal say in the scope of the Measure-making powers they acquire through Framework Bills. They might identify that a Bill going through Parliament proposes to add a Matter or Matters to Schedule 5, and they might decide to make representations on the proposals, but they have no status in terms of deciding whether the Matter or Matters will be included or not.
- 3.5.18 The use of UK Bills to confer executive functions on Welsh Ministers also raises a unique set of issues. On the one hand, practically speaking, it is necessary for Welsh Ministers to acquire powers in this way: in those areas where the National Assembly for Wales does not (yet) have powers to pass Measures, the Welsh Ministers' executive powers can only be updated through provisions in UK Bills. On the other hand, the National Assembly for Wales is the democratically elected legislature whose function is to scrutinise the way in which the Welsh Assembly Government carries out its executive functions, therefore it would seem logical for the National Assembly for Wales to have a say in what executive powers should be entrusted to the Welsh Ministers.
- 3.5.19 One possible solution to this dilemma would be that, where there is a recognised need for Welsh Ministers' powers to be updated, this is facilitated by inclusion of a Measure-making power in the UK Bill, rather than executive powers given directly to the Welsh Ministers. In practice, however, this is not always feasible: either because there are not the resources available in both Whitehall and Welsh Assembly Government to agree the scope of the Measure-making power to be included in the UK Bill, or because the executive functions need to be updated quickly, in which case waiting for a Measure to be passed to update them would result in unacceptable delay.
- 3.5.20 Framework Bills have successfully and rapidly brought powers to the National Assembly for Wales, and in greater numbers than under the LCO procedure. But the process is opportunistic in nature requiring a suitable UK Bill to which the proposed transfer can be added. Timetable and priorities are more in the hands of Whitehall and Westminster, and it is the Welsh Assembly Government which steers the process in Cardiff without any National Assembly for Wales involvement, and therefore with no effective democratic scrutiny in Wales.

3.6 Scrutiny

- 3.6.1 Democracy assumes effective, thorough scrutiny of the executive and legislative actions of government, and the adoption of acceptable laws through a transparent, accountable procedure. In Wales, under the current devolution settlement, there are potentially 7 different areas where effective scrutiny is desirable:
- Draft LCOs.
 - Draft Measures.
 - Welsh Ministers' subordinate legislation.
 - Draft EU implementing legislation (where such legislation is to be implemented by Welsh Ministers through subordinate legislation).
 - Annual UK Government legislative programme.
 - UK Parliamentary Bills containing framework provisions (where we have noted the National Assembly for Wales has no formal role).
 - Draft EU legislation.
- 3.6.2 Under GoWA 2006 the National Assembly for Wales acquired responsibility for scrutinising Measures and subordinate legislation proposed by the Welsh Assembly Government. The National Assembly for Wales also has a formal role in the scrutiny and approval of draft LCOs, and is entitled to be consulted by the Secretary of State on the UK Government's legislative programme. The effectiveness of this scrutiny is a test of the current legislative system. A robust system is a precondition for the entry into force of Part 4, where a unicameral National Assembly for Wales would have the power to pass Acts.
- 3.6.3 Currently, the National Assembly for Wales carries out scrutiny in committees, although LCOs and draft Measures are also, of course, subject to debate and approval in plenary. Five permanent Legislation Committees are now responsible for scrutinising the current LCO and Measure-making processes. In addition the Subordinate Legislation Committee considers the technical aspects of all statutory instruments or draft statutory instruments made or proposed to be made by the Welsh Ministers and reports on whether the National Assembly for Wales should pay special attention to the instrument or draft. Janet Ryder AM, Chair of the Subordinate Legislation Committee, considers it one of the most important committees in the National Assembly for Wales. In her evidence she stressed how the Committee's remit had changed dramatically in recent months and that it now also considers "the delegation of powers to Welsh Ministers in primary legislation, whether that comes through an Assembly Measure or whether that is a power that is transferred in Westminster".⁴⁸ The scrutiny of Framework Bills is discussed in more detail in section 3.5.
- 3.6.4 Within the UK Parliament, scrutiny of draft LCOs is normally carried out by the Welsh Affairs Committee in the House of Commons, and by the Joint Committee on Statutory Instruments and the Constitution Committee of the House of Lords.

- 3.6.5 Paragraph 3.4.3 sets out the stages for a proposed LCO and the scrutiny carried out in the National Assembly for Wales. When the National Assembly for Wales has gained powers, and when a Measure has been proposed, the steps for its scrutiny are:
- General principle of a proposed Measure is considered by a Legislation Committee (although it is possible that this could also be done by the full National Assembly for Wales). At the same time it is considered by the Subordinate Legislation Committee and by the Finance Committee. A report is prepared for the National Assembly for Wales and a vote is taken in plenary as to whether the National Assembly for Wales agrees the general principles of the proposed Measure.
 - If approved in plenary, it is referred back to the Legislation Committee, which debates, and as necessary amends, the proposal before reporting to the National Assembly for Wales.
 - The National Assembly for Wales considers the proposed Measure, which can be further amended at this stage if required.
 - Final vote in plenary when the National Assembly for Wales approves the proposed Measure in its final form.
- 3.6.6 The effectiveness of present scrutiny arrangements in the National Assembly for Wales and what would be entailed under Part 4 was a key topic within the evidence we received.
- 3.6.7 Many contributors thought the present system was working well and an improvement compared to the arrangements that were in place previously. The First Minister in his evidence stated that he believed that the current National Assembly for Wales system of five permanent legislation committees “is a much better machine. It is bringing factory production methods, if you like, into the scrutiny process. So far, so good. It is working far, far better than the previous system”.⁴⁹
- 3.6.8 Others, including some members of the public also felt that the National Assembly for Wales’s levels of scrutiny were getting better with experience.
- 3.6.9 The current LCO process incorporates pre-legislative scrutiny by a National Assembly for Wales Committee, the Welsh Affairs Committee and potentially the House of Lords Constitution Committee. Some found this level of scrutiny reassuring, stating “the advantage of sticking with the current system is that it gives the people who deliver it as well as the public the time to understand it, and in terms of the civil service to work with it and make it better. In some ways by having to work via the LCO system it could be argued that any Welsh legislation has been worked through even more thoroughly making it better, more considered law”.⁵⁰
- 3.6.10 Nick Ainger MP believed that whilst the current system of scrutiny by both the National Assembly for Wales and Westminster was complex it was “actually performing the function of a legislature, or two legislatures, extremely well; in other words, giving proper scrutiny to legislation”.⁵¹

- 3.6.11 Many felt the involvement of the Welsh Affairs Committee to be important to the scrutiny process. The CBI argued that “the role of the Secretary of State for Wales, the Welsh Affairs Committee and Welsh MPs adds to the scrutiny process in a meaningful way”. They felt strongly that giving Welsh MPs the opportunity “to consider future legislation is an advantage of the current system and should contribute to ensuring good quality legislation”.⁵²
- 3.6.12 The Welsh Affairs Committee itself felt it had a clear role in the pre-legislative scrutiny process, and that its role was to “test the provisions of the proposed Order against the evidence that is given to us,” and to “ensure [it] is fit for the purpose for which it is designed”.⁵³
- 3.6.13 Many thought the joint scrutiny in both the National Assembly for Wales and Westminster was a real advantage of the current system, and one that was working well. Gwenda Thomas AM, with specific experience as the Minister responsible for the Domiciliary Care LCO, confirmed that the “joint scrutiny session... was extremely helpful. It facilitated co-operation between Westminster and the National Assembly and common understanding of issues”.⁵⁴
- 3.6.14 However, both the Welsh Affairs Committee and the Assembly Commission commented that, although the idea of joint scrutiny sessions was appealing, it was not necessarily practical or feasible, in part due to the pressure on MPs to be in Westminster and AMs to be in Cardiff Bay for the bulk of the week.
- 3.6.15 Several people also commented on the duplication of scrutiny, between the National Assembly for Wales and Welsh Affairs Committee. Kirsty Williams AM, Leader of the Welsh Liberal Democrats did not consider the current system efficient. “One of the drawbacks of the current system is the ridiculous scenario where you have witnesses who come and give evidence to an LCO Committee of the National Assembly for Wales, and then within ten days the very same witnesses are giving evidence to the Welsh Affairs Committee in London”.⁵⁵
- 3.6.16 Much of the evidence we received centred on whether there were sufficient Assembly Members to provide the level of scrutiny needed - both under the current system and if further powers were granted to the National Assembly for Wales. Peter Price, who sat on the Richard Commission believed that there was currently a clear “lack of scrutiny capacity in the Assembly”.⁵⁶
- 3.6.17 Janet Ryder admitted her concerns that the AMs are stretched because there are so few of them and they are forced to “sit on committees simultaneously...because there are just not enough physical bodies ... to service the amount of work that is being done”.⁵⁷
- 3.6.18 Many others commented on their concerns that with only 60 AMs there was little capacity for scrutiny once you remove the members of the Cabinet, Deputy Ministers and Presiding Office - which left only 42 Members to fill the scrutiny role. In his evidence Peter Price stated that “the mathematics provide

an overwhelming case for increasing the number of members of the Assembly". He went on to argue that the AMs should "as an absolute minimum...increase... to 80 members".⁵⁸ This feeling was echoed in the evidence provided by many others including NFU Cymru, Sustrans, and CHC.

- 3.6.19 Others felt that 60 AMs would be sufficient to provide the right level of scrutiny, but there was recognition that improvements in the practice of scrutiny were desirable.
- 3.6.20 With regard to the scrutiny requirements of the current system, the First Minister stated "people have said that 60 Assembly Members is not enough. I think it is; it just needs new ways of working...I think with more efficient ways of working, we can manage with 60".⁵⁹
- 3.6.21 Kirsty Williams AM made a similar point and stated "Assembly Members have to alter the way in which they work". Questioned about whether she thought the National Assembly for Wales had the capacity to scrutinise if Part 4 were implemented, Ms Williams responded by saying that, whilst she believed it would undoubtedly be easier with additional members, she thought "the Assembly will adapt to meet the challenge even within the resources we have at the moment".⁶⁰
- 3.6.22 The Assembly Commission felt that there were currently sufficient staff to support Members within the National Assembly for Wales to provide the required level of scrutiny, and that this area of work would not increase with the introduction of Part 4. In their opinion "there would be no capacity issues within the Assembly that would prevent us from moving to Part 4, if the people of Wales so wish".⁶¹
- 3.6.23 Some of the evidence emphasised that the scrutiny capacity devoted to the LCO process diverted resources that could otherwise be engaged on consideration of actual legislation.
- 3.6.24 Cymru Yfory were concerned that AMs were spending so much of their time scrutinising LCOs they did not have the capacity to scrutinise "actual legislation in the form of Measures and for proper scrutiny of WAG Ministers".⁶² They also expressed the view that the Welsh Affairs Committee's resources were similarly stretched.
- 3.6.25 Some of the evidence emphasised that the absence of a second chamber underlined the need for robust scrutiny arrangements within the National Assembly for Wales.
- 3.6.26 A member of the public argued that whilst the tendency for MPs in Westminster to push through legislation using the Parliamentary Whips is compensated for by detailed scrutiny and debate in the House of Lords there "is no second chamber in Wales to take over this role if the Welsh Assembly is given 'full powers' and the Welsh Affairs Committee ceases to scrutinise legislation before it is debated".⁶³

- 3.6.27 Whilst another stated “as a single chamber [the National Assembly for Wales] lacks the checks, balances and public scrutiny that any such body seeking additional powers should enjoy”.⁶⁴
- 3.6.28 We noted a few proposals to create a second chamber in the National Assembly for Wales. Councillor Chris Holley thought that a second chamber could be made up of representatives of Community Councils and the like, or be “...an elected second chamber...which advised on legislation or advised on policy”.⁶⁵ Others had similar ideas including one member of the public who suggested “a second chamber of elders”,⁶⁶ WCVA who thought having external members of Committees would improve the scrutiny capacity, and a group of Professors from Cambridge University who advocated a “small non-political second chamber...of members appointed for limited non-renewable terms of 5 or 8 years by the major non-political organisations in Wales”.⁶⁷ This subject was also debated extensively on **facebook**®.

Summary

- 3.6.29 Effective scrutiny is vital. It requires both sufficient quality and capacity to meet the different requirements. The areas where scrutiny is required, and by whom, also need to be considered, to ensure that scrutiny results in improved outcomes.
- 3.6.30 Views on the robustness of present arrangements differed, but there seems general agreement that recent changes have improved scrutiny within the National Assembly for Wales. Naturally the effectiveness has been enhanced with experience in responding to the new role stemming from the implementation of GoWA 2006. AMs are developing more expertise, and of course would have to react further if Part 4 were to be introduced. However, some argued that the present size of the National Assembly for Wales provides insufficient capacity.
- 3.6.31 There are no provisions in GoWA 2006 to increase the number of AMs, which was recommended by the Richard Commission. An increase could only come about as a result of a new Act of the UK Parliament. So if Part 4 were to come into effect after a referendum, the National Assembly for Wales of 60 members would need to fulfil all the necessary scrutiny requirements. More sustained effort on scrutiny will be needed, and systems put in place to ensure rigorous automatic procedures. We do not consider that scrutiny can be ad hoc and limited as is now the case for European Union legislation.
- 3.6.32 Under Part 4, resources devoted to scrutiny of LCOs, both in Committee and Plenary, would be released and available for scrutiny of Assembly Bills. This would help towards a sustained effort on scrutiny. More secretariat resources would be needed for Committees undertaking scrutiny of Assembly legislation. The Assembly Commission has provided evidence that it considers it already has the capacity within its staff to support such scrutiny, taking into account the staff who would be released from providing support on the LCO process.
- 3.6.33 Some evidence we received expressed concern that there is not a second chamber, akin to the House of Lords, to scrutinise the National Assembly for Wales’s actions.

However, a particular feature of the National Assembly for Wales's processes is the willingness to undergo pre-legislative scrutiny where interested parties and experts offer views on emerging draft proposals. This is very much to be encouraged in a unicameral system, ensuring that a wide cross-section of experts and interested individuals have the opportunity to provide input to the National Assembly for Wales's proposed legislation.

- 3.6.34 The LCO process is subject to dual pre-legislative scrutiny in the National Assembly for Wales and in Westminster. Its supporters welcome the scrutiny provided by the Welsh Affairs Committee. We note that under conventional House of Commons arrangements, Committees usually have a majority of Members from the Government party. However, this contrasts with the scrutiny arrangements for Measure-making powers given to the National Assembly for Wales through framework provisions in UK Bills, where there is some (but not usually detailed) scrutiny of the powers through the customary arrangements for the consideration of Bills in the Houses of Parliament, but no scrutiny dimension within the National Assembly for Wales. There is, therefore, a lack of consistency in the amount of scrutiny given to proposals for Measure-making powers, and in the case of framework provisions in UK Bills, there is no recognition of the democratic mandate of the National Assembly for Wales.

3.7 Capacity

- 3.7.1 Operating the present constitutional settlement draws on the resources of the National Assembly for Wales, the Welsh Assembly Government, the civil service, civil society, the law profession, and more. We asked the question whether there was sufficient capacity to implement competently Part 4 of GoWA 2006 if there were an affirmative vote in a referendum. By capacity we mean the capability to fulfil responsibilities, which requires both sufficient numbers and the necessary mix of skills needed to power this enhanced devolution. We should have in mind that the change to Part 4 would release all the resources currently used for the LCO process which would instead be devoted to the preparation of actual legislation i.e. Acts under Part 4.
- 3.7.2 Much of the evidence submitted related to the ability of the National Assembly for Wales to provide the level of scrutiny necessary for the legislative process to be effective. We deal with this separately because of its importance. A recurring theme was a perceived concern at the calibre of individual AMs.
- 3.7.3 The capacity of the Assembly Commission (the staff employed to support the National Assembly for Wales) and the Welsh Assembly Government civil service have increased over the decade to meet requirements.
- 3.7.4 "The capacity of these various bodies has increased over recent years to the extent that the pre-devolution Welsh Office would not recognise the current WAG civil service or Parliamentary Service. Nevertheless there are inevitable capacity issues that arise as greater and different powers are devolved. However, capacity is

growing with experience and the need for a further increase in capacity should not be the reason for delay, rather there should be an organic growth in capacity to cope with political developments”.⁶⁸

Assembly Commission

- 3.7.5 When considering the requirements for Assembly Commission staff, it was recognised that the need was two-fold - both generally in supporting Committees administratively, and more specialist staff in relation to legislative drafting. Janet Ryder AM mentioned the need for more research and administrative staff to support the scrutiny process, “I suppose we would say that we do dip in and dip out because we do not have the resources. We need more research support staff”.⁶⁹
- 3.7.6 The Assembly Commission doubted that there would be a need for a step change in staffing levels and stated that “the question of whether there should be a transition from Part 3 of GoWA 2006...to Part 4...ought not, however, to be influenced one way or the other by any concerns about capacity within the staff of the Assembly. All the necessary skills are already in place to deal with the consideration of Acts of the Assembly were there to be a move in that direction and any net increase in the volume of legislative work to be supported could be accommodated by the staff who will, by the end of the current term of the Assembly, already be in place to support the Assembly’s existing legislative activity. The staff of the National Assembly for Wales is fully equipped either for a continuation of the status quo or, alternatively, for the coming into force of Part 4 of GoWA 2006, if the Welsh electorate should so decide”.⁷⁰

Civil Service

- 3.7.7 At first sight the civil service within the Welsh Assembly Government has increased very substantially from some 2,600 in 2000 to about 6,050 in 2009. This headline figure is misleading because of successive mergers which brought staff from a number of Assembly Government Sponsored Bodies (for example the Welsh Development Agency) into the Welsh Assembly Government. If staff absorbed into the civil service as part of the mergers were taken out of the equation, the increase would have been from 2,600 to 3,412. The civil service has two essential functions - policy work, including advice to Ministers and implementation of policies, and the delivery of public services in Wales. Officials in the Welsh Assembly Government cover the full range of devolved responsibilities, and there are fewer senior staff to match the numbers available in a Whitehall Department of State. So some capacity deficit is inevitable within the devolved administrations, who cannot match arithmetically, the numbers available in a given Department in Whitehall for a particular responsibility. More generally, concerns were expressed to us about capacity.

- 3.7.8 Peter Price believed “Ministers and the National Assembly have often been too ambitious in trying to do things differently in too many Fields, with too little resource. If you approach things on the basis that we ought to be doing something different in Wales because we have devolution, it leads to an activity beyond the capacity of the civil service to shape the ideas and then thereafter to implement them. I think that ambition has sometimes held things back”.⁷¹
- 3.7.9 Others including Wales Women’s National Coalition, and the Farmers’ Union of Wales all expressed concern about whether the civil service had sufficient capacity to deal with a move to Part 4, and a member of the public believed that further powers should not come to Wales until the civil service had time to develop the necessary skills and experience, and stated “the Welsh political scrutiny system and capacity on the civil service side needs time to develop the skills and experience necessary to deliver Welsh Acts”.⁷²
- 3.7.10 The Welsh Centre for International Affairs however felt that because staff would no longer be required to deliver the LCO system, a move to full law-making powers “would not necessarily cost more in human resources than the current settlement”.⁷³
- 3.7.11 Senior officials who submitted evidence on behalf of the Welsh Assembly Government argued that there would be no need for a big step change in the level of staffing.
- 3.7.12 Dame Gill Morgan stated “in summary, Part 3 requires a significant call on Welsh Assembly Government resources. As such, should there be a move to Part 4 and Schedule 7 this resource would be available for other work meaning that the capacity of policy officials, central co-ordination officials, Legal Services and the Office of Welsh Legislative Counsel currently allocated to LCOs could be released to work on Assembly Bills. Whether the cost of primary powers would be greater, less or cost neutral compared with operating the current settlement would be largely dependent on the government of the day’s legislative commitments. However, I would estimate that between ten and twelve items a year could be delivered with the current resources, subject to the additional Legislative drafting capacity which would be needed incrementally as highlighted to you by the First Minister in his oral evidence earlier this year”.⁷⁴
- 3.7.13 The First Minister estimated that up to six additional legislative counsel might be needed to deal with drafting requirements under Part 4. The Director of Legal Services for the Welsh Assembly Government estimated that up to four lawyer posts would be required to correspond to that increase. Across the civil service the effectiveness, systems and structures are probably more important than the actual numbers. The Welsh Assembly Government was frequently criticised, by local authorities, in discussions with us for an apparent lack of a joined up approach, and a tendency, shared by Ministers and Officials, to working in silos. The Permanent Secretary is addressing this concern. Director Generals now have horizontal responsibilities and are charged with ensuring effective collective delivery of policy and services.

- 3.7.14 The TUC called for a study to be undertaken prior to the adoption of new powers to “ensure staff have the knowledge and skills to draw up and progress new laws”.⁷⁵ Others, such as Sustrans felt the issue was more around reallocating resources effectively, whilst the Welsh Liberal Democrats went further and felt the need for a separate Welsh Public Service.

Legal Practitioners

- 3.7.15 The demands of devolution on law are set out in section 3.9. The Law Society highlighted the issue of a lack of practitioners specialising in Welsh public law and the need to rectify this. They argued “the legal community in Wales is embracing devolution. We are seeing a growing number of practitioners specialising in ‘Welsh public law’. However, there remains a need for their number to grow and for an increase in the support available to them through education and training”.⁷⁶

Summary

- 3.7.16 The nature of government generally within the United Kingdom, the demands made of it, and the requirement for better public services with measurable outputs, all have imposed heavy pressure for change, and will continue to do so. Devolution is an added dimension. Arrangements within the Welsh Assembly Government and in the National Assembly for Wales changed with the implementation of GoWA 2006, and change continues. We note the improvements being put in place within the public sector, and note that the emphasis on engagement, service delivery and policy capability will have to intensify under the current powers of GoWA 2006. For the civil service, the extra adaptation necessary to implement Part 4 should be manageable. The extra resource costs ought to be limited to those identified for the legal services. For its part, the National Assembly for Wales is confident that it could cope with the implementation of Part 4.
- 3.7.17 There is a perceived lack of capacity to deal with the current legislative process. To tackle it, some favoured increasing the capacity, while others thought that better training would be particularly helpful. But it was generally felt that Part 4 would be simpler to understand and an easier process with which to engage. Importantly, it would release capacities across the board which are currently devoted to the LCO process.
- 3.7.18 Part 4 would also increase the continuing demands on all aspects of the legal profession and provide further opportunities and challenges.

3.8 Comparison with other devolved administrations

- 3.8.1 The Scottish Parliament was established by the Scotland Act 1998. It can legislate on any area not specifically reserved to the UK Government, including criminal justice and the legal system. The main areas reserved to London are fiscal and monetary policy, financial services, immigration and asylum, national security, foreign affairs, and social security. Moreover devolution in Scotland is funded by

a block grant from Her Majesty's Government as in Wales and Northern Ireland, but unlike the latter two, the Scottish Parliament, which comprises 129 members, has the power to increase or decrease the basic rate of income tax set applicable in Scotland by varying the rate set by the UK Government by up to three pence in the pound.

- 3.8.2 The Scottish National Party's (SNP) White Paper, *Choosing Scotland's Future - A National Conversation*, was published on 14 August 2007 with a draft Bill for a referendum on Scottish independence in 2010. The SNP Scottish Government commitment to holding a referendum on Scottish independence is not supported by the other main Scottish political parties. In the autumn of 2007, the then leader of the Scottish Labour Party proposed the establishment of an independent Scottish Constitutional Commission. This Commission, chaired by Sir Kenneth Calman, was set up in spring 2008, with a remit to recommend changes to serve the people of Scotland better, improve financial accountability and secure the position of Scotland within the UK. The Calman Commission published its final report in June 2009, which included a number of recommendations, particularly on revenue raising powers. These, like the Barnett formula are not issues for the All Wales Convention, but are being addressed by the Holtham Commission (the Independent Commission on Funding & Finance for Wales).
- 3.8.3 The Northern Ireland Assembly, comprising 108 members, was established by the Northern Ireland Act 1998. The Northern Ireland Assembly can legislate on any area that is not excepted or reserved to the UK Government. In Northern Ireland terminology:
- "Transferred" matters are those within the legislative competence of the Assembly - i.e. the Assembly has the power to pass Acts in certain areas.
 - "Excepted" matters are those which will remain with the UK Government, for example, defence, foreign affairs, fiscal and monetary policy, immigration and asylum.
 - "Reserved" matters are those where UK Government consent is required for any Northern Ireland Bill and the UK Government retains the power to nullify subordinate legislation. Examples of reserved matters include criminal law, civil aviation, and the civil service. The devolution of policing and justice powers is, under the St Andrews Agreement of 13 October 2006, envisaged at an early date.
- 3.8.4 There are distinct differences therefore in the powers and capacities of the three devolved administrations. The powers of the legislature and executive in Scotland and Northern Ireland are more extensive than those in Wales and from 1999 have included the right to pass primary legislation. Again in both, Westminster legislation focuses on identifying the areas reserved for London - if an area is not reserved, then it falls to the competence of the devolved administration. In Wales if the powers for the National Assembly for Wales are not provided for, then they stay in Westminster.

- 3.8.5 The situation in Scotland was raised in many of the contributions which we received. Most thought that devolution in Scotland was much clearer than that in Wales. Cymdeithas yr Iaith, among others, felt that in Scotland the clarity of what was devolved and what was reserved made things much simpler, and that they “are clear where they are not able to make Acts”.⁷⁷
- 3.8.6 There was also a general feeling that the differences in the settlements of Scotland and Wales are unfair. One member of the public stated “Wales should have an Assembly with powers comparable to Scotland and Northern Ireland. There is no reason for us to have a weaker form of devolution”.⁷⁸
- 3.8.7 It was also argued that as a result, since devolution, Scotland had been able to do much more in comparison with Wales. The First Minister told us that “Scotland had gone from passing five Acts of Parliament a year before devolution, via Westminster, to 15 Acts of Parliament a year, on average, since the Scottish Parliament was re-established in 1999”.⁷⁹
- 3.8.8 As a direct comparison with Wales the Plaid Cymru Parliamentary Group stated that “in its first four year term the Scottish Parliament passed 62 Acts. Thus far, 18 months into the four year term, the Assembly and Westminster have passed 2 Measures and 3 LCOs”.⁸⁰
- 3.8.9 On the other hand it was argued that Scotland’s experience resulted from a long tradition of separate legal and educational systems, and a body of Scottish law enacted by Westminster over the years. It was also acknowledged that the approach adopted for Scotland (and Northern Ireland) was not on the table for Wales. Cymru Yfory recognised that “the Scottish model would...necessitate extensive rewriting of the Government of Wales Act to enable that to happen”.⁸¹
- 3.8.10 It would also be complex, as Wales forms part of a single unified England and Wales jurisdiction with a common courts system. Laws passed by the National Assembly for Wales apply in relation to activities in Wales, but these are part of the general law of the jurisdiction of England and Wales. A joint Memorandum from the Secretary of State for Wales and the First Minister for Wales, dated 10 November 2005, argued that if the National Assembly for Wales had the same general power to legislate as the Scottish Parliament, then as time went by, in practice England and Wales would become separate legal jurisdictions. It was also argued that because certain areas such as criminal justice and the courts are not generally devolved in Wales, the list of subjects reserved to London would have to be longer and would be more complex if the Scottish approach were taken in Wales. The result was GoWA 2006 which based the potential primary legislative powers on those areas which had already been devolved administratively to Wales.

Summary

- 3.8.11 Devolution in the United Kingdom is asymmetric with different arrangements in each of the constituent nations. There is no English-wide devolution. Devolution in Wales is evolving, but is on a different basis to that for Scotland and Northern

Ireland, where the focus has been on identifying areas to be reserved for London. In Wales, the issue is to agree what specific powers should be devolved to the National Assembly for Wales.

3.9 Legal System

- 3.9.1 The rule of law is basic to democracy. It requires that laws should be adopted by a transparent process, accepted by an electorate, and produce an outcome which is supported and implemented. Law should be certain, technically sound, and generally accessible to those to whom it applies. It should also meet a moral test and conform to general principles e.g. respect for human rights. It is also fair to ask whether a law is needed, whether desired outcomes can be delivered by other means, and to assess any implications of the proposed law for proportionality, the burden it imposes on the individual, business and organisations as well as whether it meets the sustainable development test set out in GoWA 2006. It is also preferable, not only that the process of law-making and law itself should be clear, but that there should be an unambiguous and understandable division of responsibility between those legislatures and governments who have the powers to make law.
- 3.9.2 While a number of areas of public policy are devolved in Wales, with potential for the National Assembly for Wales to have primary legislative powers in these areas, basic principles of law such as contract, tort and criminal justice are not devolved. So, under the current devolution settlement, the National Assembly for Wales does not have any powers in relation to serious violent crime, but it is possible for it to attach criminal penalties to laws that it makes within the devolved policy areas. At present, there are limits on the penalties it could impose:
- A maximum sentence of two years imprisonment (for conviction on indictment).
 - A maximum sentence of twelve months imprisonment or a fine up to level 5 on the penalty scale (for summary conviction).
- But, under Part 4, these limits would not apply.
- 3.9.3 The Welsh Assembly Government also has a role in developing prevention of crime strategies because of its responsibilities relating to community safety. This blurring of responsibilities emphasises the need for cooperation across devolved and non-devolved areas, and agreement among those concerned as to who is responsible for what.
- 3.9.4 The fair rule of law ensures justice. As devolution progresses, more laws applicable only in Wales are created. A strong, competent legal profession is needed to service this aspect of the devolution settlement and the implementation of the body of law. Moreover in a unicameral assembly, recourse to the Courts is an ultimate check on activity within the devolved administration. Legal services in Wales represent a significant contribution to economic activity, vital to the economic and social development of the nation.

- 3.9.5 It was important for us to explore how devolution has impacted on the legal system, and legal practitioners, in Wales. The Law Society hosted a particularly useful seminar for us in Cardiff on 17 April 2009 which gave us a good understanding of the legal issues arising as a result of devolution. We also received a number of pieces of evidence dealing with legal issues and the legal system in Wales.
- 3.9.6 The Law Society indicated that the legal community in Wales was aware of the need to adapt to devolution: “We are seeing a growing number of practitioners specialising in ‘Welsh public law’. However, there remains a need for their number to grow and for an increase in the support available to them through education and training”.⁸²
- 3.9.7 There were, however, concerns in the voluntary sector that they do not have access to the level of legal expertise that they need to help them to navigate the current devolution settlement, and that this is partly due to the lack of enough legal experts in the field. WCVA stated “there appears to be a shortage of constitutional lawyers to work with third sector organisations who may wish to propose new legislation. This is both due to lack of capacity and cost”.⁸³
- 3.9.8 Jane Williams, of Swansea University’s School of Law, had identified the needs of the profession in Wales. These included ensuring that the education of lawyers develops the essential skills necessary to service a 21st century economy, that lawyers maintain a high level of understanding of public law and constitutional change, and that public servants should sufficiently understand the legal and constitutional framework within which they are working.
- 3.9.9 Professor Dermot Cahill provided evidence on the importance of the need for education and training to increase so that lawyers had both a greater understanding of devolution and also the ability to work and draft legislation bilingually. He also confirmed that some progress had already been made in addressing this training deficit.
- 3.9.10 However, to date, the needs of the profession in Wales are not fully met. There remains a skills deficiency, particularly in commercial activity and the complex, high value specialist work connected with Corporate Finance, Banking, Insurance, Mergers, IT and more. Meeting these requirements is important for devolution, economic transformation, and developing a modern profession, tailored to the needs of the modern Wales.
- 3.9.11 Wales is obviously part of the jurisdiction of England and Wales. Although termed the law of England and Wales, the system is London-centric, and Wales has tended to be treated as part of England. However since devolution, there have been changes, more often than not at the initiative of an individual, rather than as part of a coherent response to a devolved Wales.
- 3.9.12 So, Lord Judge is the Lord Chief Justice of England and Wales; there is now an Administrative Court in Wales with an office in Cardiff, a more appropriate venue to consider any challenges to decisions of the National Assembly for Wales,

and both divisions of the Court of Appeal sit in Cardiff regularly. The Association of Judges of Wales supported the development in Wales of the institutions of the law, and considers it important that as much as possible of litigation which arises in Wales is heard in Wales. Wales has, since 2007, been an administrative unit of Her Majesty's Court Service.

- 3.9.13 Yet there is scope for more change, particularly to recognise that the administration of justice in Wales is a bilingual function. Work on a new IT programme for Magistrates' Courts in England and Wales was nearly complete when it was realised that insufficient thought had been given to the use of Welsh language. It was remedied but at greater cost than incorporation at the planning stage. A similar problem had arisen earlier in relation to Crown Courts. These issues arise more from insufficient thought and knowledge than deliberate policy.
- 3.9.14 Devolution has brought opportunities to the legal profession in Wales, which is reacting positively. Capacity and skills need to be built up so that opportunities can be exploited. New avenues of work and opening up any future challenges should be met competitively and positively. There is no lack of talent available in Wales and outside.
- 3.9.15 The issue of jurisdiction was addressed at the legal seminar in Cardiff, particularly by Justice Roderick Evans, and in various pieces of written and oral evidence. Should Wales have its own jurisdiction? Jurisdiction can be indicated by a defined territory, a distinct body of law, or a separate structure of courts and legal institutions. Within the British Isles, the various jurisdictions are different and none are self-contained. Each has developed in its own way for particular and / or historical reasons.
- 3.9.16 The case for a separate jurisdiction was highlighted in evidence submitted by R. Gwynedd Parry, Senior Lecturer in Law at Swansea University. He felt that the case in favour was based on the need to develop and normalise the democratic model in Wales, with the Welsh Legislature's and Executive's actions being scrutinised by Welsh Judges in Welsh Courts. He also saw potential advantages in terms of increased efficiency and cohesion for the administration of justice in Wales, and an increased ability to respond to any legal skills deficit.
- 3.9.17 Plaid Cymru and Cymru Yfory also felt that there was a case for a separate legal jurisdiction for Wales, to support it in building up a distinctive body of law for Wales following a move to Part 4.
- 3.9.18 Generally, there appeared to be a consensus that while it might be sensible at some point in the future to consider whether there should be a separate jurisdiction, it would not be necessary to operate a separate jurisdiction to support a move to give the National Assembly for Wales powers to pass Acts under Part 4 of GoWA 2006. This view was shared by Justice Roderick Evans, R. Gwynedd Parry, and Professor Dermot Cahill.

- 3.9.19 Professor Dermot Cahill was of the view that "...a Welsh jurisdiction is not an inevitable by-product of a Referendum and a move to Part IV powers. A jurisdiction cannot simply emerge, and the matter is one that would have to be addressed by Parliament. This means that it is an entirely separate debate".⁸⁴
- 3.9.20 So, while the question of whether a unified jurisdiction remains sustainable will eventually have to be addressed, as divergences between the law applying in England and Wales increase, he felt that there is no reason why a separate jurisdiction would be required on implementation of Part 4.
- 3.9.21 In the legal seminar, Mr Justice Roderick Evans was also of the view that a separate jurisdiction is not required, but that administrative steps could be taken to ensure that the differences applying in Wales are properly taken into account in the legal system.
- 3.9.22 Having considered all the evidence, we conclude that there is a growing concept of Wales having more of its own legal personality. Certainly it needs appropriate legal institutions and systems to support the progress of devolution and the developing legislative competence of the National Assembly for Wales. A legal check is needed on the activity of both legislature and executive, preferably with adjudications and remedies more available in Wales. But a separate Welsh jurisdiction is not a precondition for the development of increased legislative competence for the National Assembly for Wales, even if the National Assembly for Wales had the substantial powers of the Scottish model. Moreover the courts in England and Wales are fully competent to consider cases involving the laws of England and Wales, the laws of Wales only and relevant considerations from European Union or common law more generally. So while it is essential that the legal structures in Wales keep pace with political devolution and that the legal capacity is strengthened, consideration now of a separate Welsh jurisdiction is not necessary for the further development of the democratic model in Wales. But as more and more legislation is enacted in Wales over time, the case for a separate jurisdiction will strengthen. However, whether that issue develops, it is vital that the administration of law in Wales takes account of Welsh legislation and is more sensitive to devolution.
- 3.9.23 Access for the citizen to the growing body of Welsh law is essential. The overlapping nature of England and Wales and Wales-only primary and subordinate legislation complicates the picture. And there are at least 10 means by which law applicable in Wales can be made. Despite its cardinal importance, there is no single accessible record where the people of Wales and beyond, lawyers or business can verify the legislation which applies in Wales, including importantly, legislation made by Welsh Ministers.

- 3.9.24 Looking forward, Lord Justice Thomas, in the legal seminar on 17 April 2009, set out five key issues for a devolved Wales with a law-making National Assembly for Wales. He put it in terms of:
- Clarity as to who is responsible for what in terms of government and law-making.
 - Confidence that powers can be handled well.
 - Capability in the necessary legal skills.
 - Capacity: sufficient capable lawyers and draughtsmen, who understand policy requirements, and policy officers aware of legal aspects.
 - Career path in law to attract the range and quality of legal expertise which Wales needs.

Summary

- 3.9.25 The challenge of devolution for law and the legal profession in Wales is being met, but the rule of law and access to that law is crucial to democracy. This requires greater clarity, access for the citizen to an accurate record of the body of Welsh law, and the development of the capacity, education, and training required to take advantage of new opportunities. This is a necessary response to the changing requirements in Wales. The delineation of powers and the exercise of power is fundamental to the rule of law, its implementation, and the public's respect for and understanding of it. As devolution progresses full account must be taken of the role and standing of the judiciary in Wales.

3.10 A comparison between the provisions of Part 3 and Part 4 of GoWA 2006

- 3.10.1 The choice is about whether to remain with gradually increasing law-making powers for the National Assembly for Wales under Part 3, or move straight to greater law-making powers under Part 4. But what, really, are the differences between Part 3 and Part 4, and do they provide clarity and precision in terms of setting out what the National Assembly for Wales's law-making powers are?
- 3.10.2 The National Assembly for Wales's legislative competence - its law-making powers - is currently defined by Part 3 and Schedule 5 of GoWA 2006 (Part 3). If there were a "Yes" vote in a referendum, Part 4 and Schedule 7 of GoWA 2006 (Part 4) would come into force, and the National Assembly for Wales's legislative competence would be defined by Part 4 instead.
- 3.10.3 The following table sets out the main differences between the National Assembly for Wales's law-making powers under Part 3, and the powers that it would have if Part 4 were in force:

Part 3	Part 4
National Assembly for Wales laws are called Measures.	Proposed laws of the National Assembly for Wales would be called Bills, and enacted laws would be called Acts.
National Assembly for Wales can pass Measures which relate to Matters listed under 20 Fields set out in Schedule 5 of GoWA 2006.	National Assembly for Wales would be able to pass Acts which relate to Subjects listed under 20 headings in Schedule 7 of GoWA 2006.
The 20 Fields are based around the Welsh Ministers' executive powers, and therefore describe broadly the areas where there is executive devolution to Wales.	No difference, the 20 headings are based around the Welsh Ministers' executive powers, and therefore describe broadly the areas where there is executive devolution to Wales.
Apart from six Matters listed on the face of GoWA 2006 when it was enacted, Matters are added gradually through framework provisions in UK Parliamentary Bills or through the LCO process. There were 45 Matters included in Schedule 5 at 20 July 2009.	Subjects are already listed under all 20 headings in Schedule 7. Broadly speaking, they are based around the areas where Welsh Ministers have executive powers.
As the National Assembly for Wales can only pass Measures in relation to Matters, and Matters are being added gradually, there are a number of areas where Welsh Ministers can make executive decisions, but the National Assembly for Wales cannot make laws. The picture changes from time to time, as new Matters are added to Schedule 5.	If Part 4 and Schedule 7 were in force, devolution of law-making powers would, generally speaking, catch up with devolution of executive powers - the National Assembly for Wales would be able to make laws in all the areas where Welsh Ministers have powers.

- 3.10.4 The fundamental difference, therefore, between Part 3 and Part 4, is that under Part 4, the National Assembly for Wales would be able to enact primary law in areas where executive powers are already devolved, without the need to go through a process of acquiring further law-making powers through UK Bills or LCOs.
- 3.10.5 If Part 4 were in force, then devolution of law-making powers would, in effect, catch up all at once with the scope of the existing devolution of executive functions to Welsh Ministers.

- 3.10.6 To a large extent, this could also eventually be the end result if Part 3 remains in force, with the National Assembly for Wales drawing down law-making powers gradually through the LCO process and provisions in Framework Bills. But in an individual Field there is no guarantee that all the powers transferred gradually through those two means would add up to all the potential power in that Field as set out in Schedule 7 to Part 4. To ensure completeness of powers acquired through the LCO process, the last LCO in that Field would need to contain a general provision that it is transferring all the residual powers not already transferred so as to take up everything available in Part 4.
- 3.10.7 We recognise the political and technical achievement of Parts 3 and 4, the significance of the establishment of the National Assembly for Wales as a law-making body, and the importance of the powers which, without further Westminster approval, would be transferred en bloc to the National Assembly for Wales if there were an affirmative vote in a referendum.
- 3.10.8 Yet, specific issues have been raised with us regarding the clarity and precision of the powers under both Part 3 and Part 4, and how well the law-making process currently works under Part 3, or would work under Part 4. These are:
- The way in which the law-making powers of the National Assembly for Wales under Part 3 have developed so far, potentially leading to a lack of coherence in the package of powers that the National Assembly for Wales has at any one time.
 - The impact of Exceptions and General Restrictions on the clarity of the powers in both Part 3 and Part 4.
 - How the transition from Part 3 to Part 4 would work, if Part 4 were to come into force, including whether this could give rise to operational difficulties, arising from anomalies in the law-making powers transferred to the National Assembly for Wales under Part 3 compared to the law-making powers of the National Assembly for Wales under Part 4.
 - Whether the model of legislative competence in Scotland (where the Parliament can pass laws on anything that is not reserved) is clearer than the model of legislative competence in Part 4 (where the National Assembly for Wales can only legislate on specified devolved Subjects).

Development to date of National Assembly for Wales's law-making powers under Part 3

- 3.10.9 The National Assembly for Wales currently has law-making powers in relation to the Matters inserted in Schedule 5 to GoWA 2006. As previously explained, these Matters have been inserted either by LCOs or Framework Bills (with some Matters actually on the face of GOWA 2006 when it was enacted, or inserted before it came into force by means of a conversion order - section 3.3).
- 3.10.10 While the Welsh Assembly Government does, of course, pursue LCOs which would deliver law-making powers in areas where it has policies to take forward, there is also an element of opportunism in the Measure-making powers the National Assembly for Wales acquires through Framework Bills. Add to this the fact that

framework provisions are drafted by Parliamentary Counsel, whereas LCOs are drafted by Welsh Legislative Counsel, and there is the potential for a lack of coherence and consistency in the totality of law-making powers drawn down to the National Assembly for Wales under Part 3.

- 3.10.11 Marie Navarro and David Lambert of Cardiff Law School have argued that there is a lack of coherence in the nature of the legislative powers of the National Assembly for Wales under Part 3. They consider that many of the Matters in Schedule 5 are too detailed, and cite the Education Field, where as at 20 July 2009, 19 Matters were listed. This compares with the description of the National Assembly for Wales legislative competence in relation to education and training under Part 4 - this is simply:

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

Exception: Research Councils.’

- 3.10.12 It does seem to be the case that some Matters are narrower than others. For example, the following are two of the Matters listed under the Social Welfare Field, one of which is described in more detail (Matter 15.1) and deals with a narrower remit, than the other (Matter 15.3):

Matter 15.1:

Charges levied by local authorities for social care services provided or secured by them and payments in respect of individuals with needs relating to their well-being so that they, or persons looking after them, may secure social care services to meet those needs.

This Matter does not include charges and payments for residential care.

Matter 15.3:

Adoption services and special guardianship support services.

- 3.10.13 We accept that the Welsh Assembly Government, the UK Government, officials, Legislative Counsel and Parliamentary Counsel, work together to minimise inconsistencies within Schedule 5. However, the two different routes for adding Matters to Schedule 5, and the opportunistic approach to acquiring powers through framework provisions in UK Bills, inevitably has an effect on the coherence and overall consistency of the Measure-making powers given to the National Assembly for Wales under the current system.

3.10.14 In addition, it does not seem possible to predict with accuracy how long it will take to acquire powers, particularly through the LCO process, and the content of Part 3 (Schedule 5) does not, therefore, develop in a planned and controlled way. As Marie Navarro of Cardiff University Law School told us “Schedule 5 is inherently unsettled in its nature. It develops in fits and starts. In developing incoherently in this way almost half of the Fields have no powers and others have only 1, for example the control of red meat in Agriculture. Trying to ascertain the existing legislative powers of the Assembly is difficult and democratically unhelpful”.⁸⁵

Exceptions and General Restrictions: impact on clarity of Part 3 and Part 4

- 3.10.15 Exceptions and General Restrictions apply under both Part 3 and Part 4. General Restrictions are absolute - the National Assembly for Wales simply cannot pass a law which breaches a General Restriction. They tend to be about fundamental principles or constitutional issues. Two examples of general restrictions, which apply under both Part 3 and Part 4, are that Measures (or Acts, if Part 4 were in force) cannot make changes to any of the provisions of the European Communities Act 1972, or of the Human Rights Act 1998.
- 3.10.16 Exceptions, on the other hand, are not absolute restrictions. Where non-devolved policy areas overlap with one of the 20 Fields,⁸⁶ those non-devolved areas are carved out as Exceptions. If an Exception is relevant to a proposed National Assembly for Wales law, then a judgement has to be made as to what the purpose of the proposed law is: if it is about the policy area where the National Assembly for Wales has law-making powers, then the proposed law can go ahead, but if it is really about the non-devolved subject matter of the Exception, then it cannot go ahead.
- 3.10.17 Under Part 3, Exceptions are added to Schedule 5 along with Matters to which they might be relevant. So, when an LCO or framework provision in a UK Bill is being negotiated between the Welsh Assembly Government and UK Government, the issue of whether Exceptions are required will form part of the negotiation. The Welsh Assembly Government Director of Legal Services has confirmed that the starting point for negotiations is that legislative competence should broadly follow the existing boundaries of devolved and non-devolved Ministerial responsibilities.
- 3.10.18 For example, the second version of the proposed Environment LCO introduced an Exception for “nuclear energy and nuclear installations”. This Exception is intended to be a floating Exception, which would apply across all the Matters listed in Schedule 5, rather than being limited to the Environment policy area only.
- 3.10.19 Part 4, on other hand, comes as a complete package of legislative competence, therefore Schedule 7 already contains the Exceptions which it was considered were necessary to carve out non-devolved areas from the Subjects where the National Assembly for Wales would have legislative competence. All the Exceptions in Schedule 7 are floating Exceptions, and therefore they apply across all the Subjects listed in Schedule 7.

For example, under Heading 20 (Welsh language) in Part 1 of Schedule 7, there appears the Subject “Welsh language”. That is the devolved subject-matter over which the National Assembly for Wales would acquire the power to pass Acts. Underneath that Heading the following Exception is listed:

“Use of the Welsh language in courts.”

At first sight it may appear to the casual reader that this is the only Exception in this area and that the Assembly would have competence over Welsh broadcasting (S4C).

However, under Heading 3 (Culture) other Exceptions are specified and one of those is:

“Broadcasting”.

Although the Exception “Broadcasting” sits under a different Heading to “Welsh language” it is as relevant to the Subject of “Welsh language” as the Exception “Use of the Welsh language in courts”. Therefore, broadcasting in the Welsh language would not be within the legislative competence of the National Assembly for Wales, as it is considered not to be a devolved subject-matter.

- 3.10.20 In terms of the application of Exceptions, therefore, there is little to choose between Part 3 and Part 4 with regard to their impact on the clarity of the powers given to the National Assembly for Wales. Floating Exceptions apply under both and Exceptions are necessary to carve out those areas that are not devolved.

Minister of the Crown function restriction

- 3.10.21 The General Restriction which has been raised with us as causing most concern is the Restriction on the National Assembly for Wales making law which confers functions on a Minister of the Crown (i.e. UK Government Minister) or which modifies or removes a function of a Minister of the Crown.
- 3.10.22 In this context, Ministers of the Crown mean Ministers (including Secretaries of State) in Her Majesty’s United Kingdom Government and who are covered by the Ministers of the Crown Act 1975. Functions of Ministers of the Crown could include powers to make subordinate legislation to fill in the detail of a legislative framework set out in a UK Act of Parliament, or powers to make decisions on certain issues, or to set the policy direction for others working on aspects of public policy.
- 3.10.23 Minister of the Crown functions still exist in some areas, near the dividing line between what is devolved and what is not devolved in Wales. This is because devolution in Wales started from the position of transferring executive functions

from Ministers of the Crown to the National Assembly for Wales, with each function to be transferred listed in a Transfer of Functions Order. The framework in GoWA 2006 for the National Assembly for Wales's law-making powers has been built around the transferred executive functions, rather than deciding on broad areas of policy which should be devolved. As a result, any Minister of the Crown functions which have not been transferred through Transfer of Functions Orders remain in existence, often in the areas where there is some overlap between devolved and non-devolved policy areas.

- 3.10.24 The General Restriction relating to Minister of the Crown functions, therefore, is intended to ensure that where the National Assembly for Wales proposes a Measure (or Bill) then any Minister of the Crown function which might impact upon the proposal is considered before proceeding with the proposal. The problem with this General Restriction is that it seems to introduce an element of uncertainty into the scope of the National Assembly for Wales's law-making powers. There is no composite list of relevant Minister of the Crown functions, therefore how can there be clarity on the extent of the National Assembly for Wales's law-making powers, whether under Part 3 or Part 4?
- 3.10.25 We have considered in some detail how Minister of the Crown functions affect negotiations on the scope of legislative competence given to the National Assembly for Wales under Part 3, using the proposed Environment LCO as an example. The view of the Welsh Assembly Government Director of Legal Services was that Minister of the Crown functions themselves were not obstacles, but rather were an indication of the boundary between devolved and non-devolved areas.
- 3.10.26 In developing proposals for LCOs, therefore, Minister of the Crown functions can be a starting point and guideline in negotiations, alongside other considerations. In the case of the Environment LCO, the Welsh Assembly Government Legal Services identified existing Minister of the Crown functions relevant to those areas which were seen as candidates for future Measure provisions. This enabled the Welsh Assembly Government policy officials to negotiate with their counterparts in the UK Government over the precise extent of the powers to be given to the National Assembly for Wales, and to ensure non-devolved policy areas were not included.
- 3.10.27 Generally, with regard to both LCOs and framework provisions in UK Bills, we are struck by the fact that the UK Government raises understandable issues regarding areas where there is overlap between devolved and non-devolved areas, but there is a tendency for the UK Government to be protective and anticipate potential problems, and therefore to feel more comfortable with retaining power. A similar situation exists at the parliamentary level, with the Welsh Affairs Committee tending to question exactly what new powers will be used for, and expressing concern about what the policy outcome might be.
- 3.10.28 When considering the impact of the Minister of the Crown Restriction on the National Assembly for Wales's ability to pass Acts under Part 4, it is significant that the impact is less than it is currently under Part 3. Under Part 4, the National Assembly for Wales actually has flexibility to remove or amend Minister of the

Crown functions, if it needs to do so for the purpose of proceeding with a Bill which is making provision in a devolved area.

- 3.10.29 The table below explains the differences between the way in which this Restriction works under Schedule 5 (in relation to Assembly Measures) and under Schedule 7 (in relation to Assembly Acts):⁸⁷

Type of Provision	Assembly Measure	Assembly Act
Confer or impose a function on a Minister of the Crown (or Treasury)	No	Yes if Secretary of State agrees
Modify or remove a function of a Minister of the Crown (or Treasury)	Yes if the Secretary of State agrees	<i>New functions put in place after the National Assembly for Wales acquires primary powers:</i> Yes - no restriction.
		<i>Functions already in place when the National Assembly for Wales acquires primary powers:</i> Yes:- (a) where that is a consequence of what the Act is doing - e.g. where the Act confers the function on the Welsh Ministers instead of the Minister of the Crown; OR (b) if the Secretary of State agrees.

- 3.10.30 As well as the greater scope for primary legislation powers under Part 4, compared to Part 3, the Welsh Assembly Government Director of Legal Services has confirmed that the Minister of the Crown functions are less intrusive. This accords with the principle that a National Assembly for Wales with primary legislative powers approved in a referendum should be less constrained in the exercise of its powers.

Transition from Part 3 to Part 4

- 3.10.31 A “yes” vote in a referendum under GoWA 2006 would mean that the provisions in Part 4 would come into force, once the necessary Order had been made by the Welsh Ministers.
- 3.10.32 There would be a clean break between Part 3 and Part 4: once Part 4 came into force, all proposals for the National Assembly for Wales to legislate would be taken forward as Bills of the National Assembly for Wales. However, it is important to note two points:
- Any Measures enacted before the day on which Part 4 came into force would remain valid and operational.
 - The Welsh Ministers’ Order, specifying a date for Part 4 to come into force, could also include some transitional provisions to ease the move from Part 3 to Part 4; and possibly some saving provisions, for example, to keep in place arrangements that are necessary to support the validity and operation of existing Measures (such as the provision for Measures to be judicially noticed and therefore recognised as law by the courts).

Anomalies in Part 3 law-making powers compared to Part 4 law-making powers

- 3.10.33 The issue here is whether the piecemeal transfer of law-making powers to the National Assembly for Wales under Part 3, is resulting in some anomalies in the extent of the powers transferred in specific areas under Part 3 when compared with Part 4.
- 3.10.34 The Subjects which describe the legislative competence of the National Assembly for Wales under Part 4 are intended to correspond to the policy areas where Welsh Ministers have executive powers. They reflect a snapshot of what those executive powers were when GoWA 2006 was being developed, and are drafted in quite general terms.
- 3.10.35 The Matters which are inserted into GoWA 2006 to give the National Assembly for Wales powers to pass Measures under Part 3 are also intended to reflect the executive powers of the Welsh Ministers. It might be assumed, therefore, that Matters under Part 3 would correspond exactly to the Subjects describing law-making powers under Part 4.
- 3.10.36 However, the Matters and Exceptions under Part 3 tend to describe the scope of the law-making power in more detail than is found under Part 4. This detailed description often has a narrowing effect, so that the legislative competence under Part 3 is narrower than under Part 4. But the opposite can also be true. An Exception carved out of the Matter under Part 3 in particular detail rather than in broadly worded terms, can sometimes result in the law-making power transferred under Part 3 being wider than the equivalent power under Part 4.

3.10.37 This phenomenon could give rise to potential difficulty if Part 4 came into force, as it raises the prospect that the National Assembly for Wales would not be able to legislate by Act to amend certain provisions of a pre-existing Measure.

3.10.38 These anomalies are, to date, relatively minor, as illustrated by the Child Trust Fund example.

Currently, in Schedule 7 of GoWA 2006 there is an Exception covering “Child trust funds”. It would not, therefore, be within the competence of the National Assembly for Wales to pass an Assembly Act that makes provision about child trust funds. However, under Part 3 of GoWA 2006, a similar Exception has been introduced in respect of Measures. That Exception reads:

“Child trust funds, apart from subscriptions to such funds by-

- *the council of a county or county borough council in Wales, or*
- *the Welsh Ministers.”.*

This is intended to remove any doubt that where the National Assembly for Wales’s competence under Part 3 of GoWA 2006 is otherwise wide enough to do so, the National Assembly for Wales can make provision in a Measure about such subscriptions to child trust funds.

3.10.39 There are two ways in which these anomalies could be dealt with in the event of a move to Part 4. The first is to use the mechanism in GoWA 2006 to amend Schedule 7 by Order in Council, to account for any additional devolved competence that the National Assembly for Wales had under Part 3 and Schedule 5. The content of such an Order would have to be agreed by both the National Assembly for Wales and both Houses of Parliament. The second is to amend Schedule 7 through a UK Parliamentary Act.

Comparison with the Scottish model

3.10.40 Some of those providing evidence argued for a move to the Scottish model: legislative competence over everything except those areas reserved to the UK Government, rather than legislative competence over those areas which are specified as devolved. NFU Cymru, for example, felt that the Scottish model would be clearer and less ambiguous, “it is regrettable that Schedule 7 powers rather than stating what the devolved institutions in Wales cannot do (along the lines of the Scottish model) instead set out what the National Assembly can do. A ‘if it’s not out it’s in’ model would probably be preferable and less ambiguous than a ‘if it’s not in it’s out’ model”.⁸⁸

3.10.41 We did not set out to consult specifically on the advantages and disadvantages of the Scottish model. However, it was raised by a number of people at our public events, on the online forms submitted through our website, and in the qualitative

research we carried out in focus groups. As such, we have to acknowledge that this is a significant issue for many in Wales, who ask why the model for devolution is different here. We note later⁸⁹ that the term ‘full law-making powers’, associated with Part 4, is wrongly assumed to correspond to the powers Scotland has enjoyed since 1999.

Summary

- 3.10.42 Some uncertainty as to the extent of the National Assembly for Wales’s powers under Part 4 is inevitable, given the pattern of delegating executive powers to Ministers, and the fact that the blueprint for law-making powers is broadly based on the mapping of those executive powers.
- 3.10.43 Uncertainty arises in terms of law-making powers, where devolved Matters butt up against or overlap with non-devolved Matters. In these areas, Exceptions are specified to protect the non-devolved Matters, and a judgement has to be made as to whether a proposed law is really about a devolved Matter or about the non-devolved Exception. It is for lawyers and other specialists to consider and advise on these more difficult aspects.
- 3.10.44 The General Restrictions which apply to the use of law-making powers under both Part 3 and Part 4 are, for the most part, understandable and easily justifiable, because they protect basic principles such as human rights.
- 3.10.45 The General Restriction relating to Minister of the Crown functions is more difficult to explain, as it has arisen as a result of the way in which devolution has happened in Wales - based initially on transfer of individual executive powers. We are satisfied that:
- At the LCO or Framework Power negotiation stage, the effect of Minister of the Crown functions is to help indicate where the boundary between devolved and non-devolved areas lies. It is possible to agree at this stage that Minister of the Crown functions in this area no longer need to be exercised by the UK Government Minister, or conversely, it is possible to agree that the function should not be devolved, and an Exception should be negotiated so that it falls outside the legislative competence of the National Assembly for Wales.
 - At the Measure stage, the National Assembly for Wales is not able to remove or amend a Minister of the Crown function, unless the Secretary of State agrees.
 - This would change under Part 4: if the provisions of an Assembly Bill cut across a Minister of the Crown function, then the National Assembly for Wales would have scope to remove or amend it if it would otherwise prevent the National Assembly for Wales from taking forward a proposal that is within its legislative competence. This means that the Minister of the Crown function Restriction is not significant in terms of the operation of Part 4, as it would not be an obstacle to the progress of Assembly Bills.

- 3.10.46 Possible slight differences between the competence under Part 3 and Part 4 are easily remedied, by Order in Council or UK Parliamentary Act. Any changes to increase the competence under Part 4, should at least match any additional competence that has been given to the National Assembly for Wales under Part 3. To the extent that Exceptions apply to both Parts 3 and 4, it is important that the authority of the National Assembly for Wales should be respected and any Exceptions minimised, consistent with the legitimacy conferred by the endorsement of the Welsh electorate.
- 3.10.47 Bearing in mind our terms of reference, and the provisions of GoWA 2006, the choice on the table is whether to proceed to a referendum where an affirmative vote would result in the implementation of Part 4 as is. Some have argued to us that this outcome would be clearer, if prior to any referendum, the content of Part 4 had been amended through an Order in Council the content of which would have been agreed by the National Assembly for Wales and both Houses of Parliament. If Part 4 were in operation, its content could still be amended under the same procedure, if this turned out to be desirable. If, however, there were a wish at any stage to move to the Scottish model, then Parliament would have to legislate through a new UK Act. It would then be for Parliament to decide whether a referendum was relevant.

3.11 Consideration of the relative merits of Part 3 and Part 4 of GoWA 2006

- 3.11.1 Part 3 involves acquiring law-making powers for the National Assembly for Wales gradually through both the LCO process and Framework Bills. The LCO dimension of Part 3 was designed to permit the incremental transfer of primary legislative powers to the National Assembly for Wales as needed, after careful consideration by the Welsh Assembly Government, the National Assembly for Wales, UK Parliament and interested parties. For the supporters of the current system, it is right that Westminster is involved, case by case, as it is its sovereignty which is being transferred to the National Assembly for Wales, and its involvement provides a useful check and balance. They argue that the gradual nature of the process gives the National Assembly for Wales and the Welsh Assembly Government the opportunity to develop capability and experience, and the process is, by its nature, dynamic and evolutionary. The system's complexity and the time taken for measured scrutiny was seen by some as an advantage. After all, Westminster processes are themselves opaque, measured, complex and varied. Its procedures and powers have evolved, literally over centuries, therefore why not allow the National Assembly for Wales's processes time to develop?
- 3.11.2 The political attraction of the provisions in GoWA 2006 was that they were a dynamic means of building up the legislative powers of the National Assembly for Wales. It appears that the government of the day took the view that it would not get parliamentary agreement to transfer a block of powers immediately, and that such a transfer was not sufficiently favoured in Wales. Better to let public support

for devolution and the National Assembly for Wales grow, and with that increase, build up the powers of the National Assembly for Wales gradually.

- 3.11.3 The bulk of the evidence presented to us in favour of Part 3 were arguments in favour of the LCO process and the principle of acquiring powers gradually. These arguments are also effectively part of the case against moving to Part 4, together with some of the issues raised in Chapter 5. It is also evident that if the National Assembly for Wales wanted the power to legislate a particular policy, one or more LCOs could deliver the necessary powers if Westminster agreed.
- 3.11.4 The general view of the Welsh Affairs Committee was that the current process was working well and continuing to improve. Some organisations and individuals were strong supporters of the current system, with the CBI believing it to be “the one that best serves the needs of the business community”⁹⁰ because of the scrutiny undertaken as part of it.⁹¹ One member of the public felt “the incremental receiving of power means we can use them in the best possible way, without becoming confused and unclear by making lots of legislation in one big swoop”.⁹²
- 3.11.5 Lord Tristan Garel-Jones, writing on behalf of a number of “Welsh exiles”, believed “that the arrangements that exist at present for the Assembly to acquire legislative powers gradually are satisfactory in principle”.⁹³ Whilst a member of the public felt that “new powers should not be rushed, but introduced within an agreed timescale. Devolution in Wales must move slowly but surely”.⁹⁴
- 3.11.6 Other organisations gave a balanced view in favour and against Part 3 and Part 4, including UWIC who felt that the benefit of sticking with the current system would give the National Assembly for Wales the “opportunity to work out the practical implications of devolution” but also recognised that the benefit of moving to Part 4 would give the National Assembly for Wales “greater scope to make quicker changes to policy in Wales”.⁹⁵
- 3.11.7 The advantages of using Framework Bills to give powers to the National Assembly for Wales are discussed in section 3.5. Essentially, the advantages are that acquiring powers through Framework Bills is easier and less time-consuming than obtaining powers through LCOs. However, this is not really an argument in favour of Part 3, but rather an argument for using Framework Bills instead of LCOs.
- 3.11.8 Argumentation against the current arrangements in Part 3 focused on the complexity of the LCO process and the time taken to deliver effective legislation. Additional arguments highlighted problems associated with Framework Bills, lack of clarity over where powers lie, and the way in which the list of powers in Part 3 is developing.
- 3.11.9 The British Medical Association did not support the current system, and drew on its experiences of implementing the smoking ban in Wales, “whereas Wales was at the forefront of calling for such a ban, with petitions and much political activity in the National Assembly, ultimately the ban was only implemented marginally ahead of that in England, even though Wales had started this process much earlier”.⁹⁶

- 3.11.10 The Wales TUC set out in their evidence both the positive and negative aspects of Part 3. Whilst they acknowledged that “there are advantages to the current system, not least that built in to the process is additional legislative scrutiny from parliament bringing with it extra capacity and expertise”, they were also conscious that the system was “complex, difficult to understand, and difficult to communicate”.⁹⁷
- 3.11.11 One comment we received was that “the current situation is difficult to understand and too slow in dealing with the urgent issues. It’s difficult to know who is responsible for what”.⁹⁸
- 3.11.12 Whilst one member of the public felt that the National Assembly for Wales “should have more law-making powers but with steady progress, and then if they can prove themselves they should have more”;⁹⁹ Dafydd Iwan felt this argument was a mistake and compared it to sending the Welsh rugby team “out onto the field without boots and telling them ‘show us that you can play well without boots, and we will give you boots for the next game’”.¹⁰⁰
- 3.11.13 The Law Society felt the current system had not quite worked in the way they had anticipated and stated “it was expected that Schedule 5 would grow quickly and that if there were no referendum to move to Part 4 Schedule 5 could grow to provide powers as wide as Schedule 7 in time. It is apparent from the Matters which have been inserted to date that this is not possible. Firstly, the time taken for powers to be inserted is generally slow particularly due to the procedures adopted in central government and Westminster. Secondly, there is no coherence to the expression or extent of the Matters which have been inserted into Schedule 5 to date”.¹⁰¹
- 3.11.14 One source felt strongly that under the current system “the Assembly must devote a substantial amount of time making a case for extra powers rather than considering the actual laws needed in Wales and ensuring effective scrutiny of Assembly Ministers”.¹⁰²
- 3.11.15 Community Housing Cymru was highly critical of the current process and felt the “gradual increase in powers means that the Assembly’s competence is in a constant state of flux, which is not conducive to either efficiency or transparency”.¹⁰³
- 3.11.16 The Federation of Small Businesses, Keep Wales Tidy and the General Teaching Council for Wales, all felt that the current system was lengthy and over-complicated, whilst RSPB Cymru and the Public Service Ombudsman for Wales had concerns that it was often unclear where responsibility for powers lay.
- 3.11.17 The arguments in favour of Part 4, for the most part, are the case against Part 3.
- 3.11.18 In addition, there were two arguments in favour of Part 4 which stood out. Firstly good law should be above all clear and accessible, and adopted by a comprehensible process, with the division of powers is understood and known.
- 3.11.19 The Law Society made this point and stated “the advantage of moving to Part 4 is that Schedule 7 is a clearer and more comprehensive list of the subjects (with clear

restrictions) within which the National Assembly will have competence to legislate. The rule of law requires that law is certain. More certainty would be achieved under more comprehensive law making powers".¹⁰⁴

- 3.11.20 A member of the public felt that "the current settlement is complex and confused, giving legislative powers in a clear cut way brings clarity and makes government comprehensive and practicable".¹⁰⁵
- 3.11.21 Secondly, today's policy-making needs to be holistic and strategic. Legislation needs to cover complex and diverse issues to be effective. A good example is climate change. A policy reaction should be comprehensive and therefore legislation to be efficient ought to cover the different areas touched by climate change e.g. transport, energy, environment, agriculture, buildings regulations, and more. The powers within Part 4 would permit without further ado, a comprehensive draft covering all the relevant issues. But under the present arrangements, a rational policy would require drawing down powers from at least six Fields through six different LCOs in order to be able to table a draft Measure capable of addressing all the relevant issues. And as that draft Measure was then debated, what if a particular power in one of the Fields had not been sufficiently widely drawn to cover the requirements of the proposed legislation?
- 3.11.22 Some of the evidence, including that from Shelter Cymru and Plaid Cymru, emphasised how they felt that having full law-making powers would enable Wales to tackle issues more strategically - specifically around the subjects of homelessness, and the environment.
- 3.11.23 Supporting arguments include the length of time taken to agree LCOs, and the resources deployed, which only get the powers to the National Assembly for Wales and which would be better spent on considering actual draft legislation and avoiding unnecessary duplication.
- 3.11.24 The Wales Women's National Coalition and the Royal College of Nursing (RCN) believed that giving the National Assembly for Wales law-making powers all at once would mean legislation could be made more quickly and be much more comprehensible. The RCN stated "This has the advantage of being simple to understand and will allow for effective legislation without unnecessary delay".¹⁰⁶
- 3.11.25 Viewed against the rights enjoyed by other devolved administrations, some wondered why Wales should be treated differently and much less generously. Others felt that moving to Part 4 "would not only be fair to Wales as a country, but also give it a much easier structure to implement and administer".¹⁰⁷ Whilst one member of the public stressed that the current process "puts Wales in a humiliating position constantly seeking 'a little more' from Westminster. We need to either achieve effective devolution or abandon the concept".¹⁰⁸
- 3.11.26 Students from Ysgol Morgan Llwyd, who won the schools competition run by the Convention felt strongly that "Westminster's failure to put sufficient trust in Wales and the Assembly's ability to legislate appropriately, whilst presuming that Scotland has the ability to do so, has to a large extent undermined the development which

has already seen as regards decentralisation in Wales, and has downgraded the status of Wales politically without reason".¹⁰⁹

3.11.27 For many members of the public it was degrading that the National Assembly for Wales is unique in that it has to seek Westminster approval piecemeal when the principle of devolution has been voted by Parliament and is in practice much more advanced in Scotland and Northern Ireland. "The current settlement is complex and - worse - depowers our National Assembly as we go cap in hand to the UK Parliament for approval for each and every piece of legislation".¹¹⁰

3.11.28 Adam Price MP was one of those who argued that Part 4 would produce a greater accountability to the people of Wales. "I think it would actually improve structures of democratic accountability in Wales and strengthen the system of democracy that we have".¹¹¹ This was also expressed by members of the public, one of whom felt "that an Assembly with full law-making powers would make Wales a better place to live with a more equal society and would also help to maintain and even encourage our culture to grow".¹¹²

Summary

3.11.29 The balance of arguments above favours a move to Part 4.

⁷ Chapter 5

⁸ Institute of Welsh Politics (IWP) & GfK NOP - National Assembly for Wales - Public Attitudes Survey 2008 (October 2008).)

⁹ Public Expenditure Statistical Analyses 2003 HM Treasury

¹⁰ Welsh Assembly Government Draft Budget 2010-2011

¹¹ Public Expenditure Statistical Analyses 2003 HM Treasury

¹² Public Expenditure Statistical Analyses 2009 HM Treasury

¹³ National Assembly for Wales Commission Budget for 2008/09

¹⁴ Written answer from Baroness Royall, the Chancellor of the Duchy of Lancaster, in response to a query from Viscount Tenby - 10 August 2009

¹⁵ Dame Gill Morgan, Permanent Secretary - letter to Sir Emyr Jones Parry 18 June 2009

¹⁶ Jeff Godfrey, Director of Legal Services, Welsh Assembly Government - letter to Sir Emyr Jones Parry 4 September 2009

¹⁷ Dame Gill Morgan, Permanent Secretary - letter to Sir Emyr Jones Parry 18 June 2009

¹⁸ see paragraph 2.3.8

¹⁹ see paragraph 2.3.7

²⁰ 12 Matters were added as a result of four LCOs having been completed: Education and Training 2008, Social Welfare 2008, Social Welfare and Other Fields 2008, and Agricultural and Rural Development 2009

²¹ 16 Matters were added as a result of framework powers included in 5 Framework Bills / Acts: Further Education and Training Act 2007, Local Government and Public Involvement in Health Act 2007, Education and Skills Act 2008, Local Transport Act 2008, and Planning Act 2008

²² Oral evidence of the First Minister and Deputy First Minister - Newport 2 April 2009

²³ Written evidence of the Welsh Affairs Committee - 22 July 2009 pp10-13

²⁴ Written evidence of Michael Haggett - 31 January 2009 p6 & p15

²⁵ Oral evidence of Cymdeithas yr Iaith - Cardiff 11 June 2009

²⁶ Written evidence of Llywelyn Rhys - 20 August 2009

²⁷ Written evidence of the Law Society Wales - 16 February 2009 pp4-5

²⁸ Written evidence of Gwenda Thomas AM, Deputy Minister for Social Services - 22 April 2009 p2

²⁹ Written evidence of the Welsh Affairs Committee - 22 July 2009 p3

³⁰ Oral evidence of Nick Ainger MP - Cardiff 25 June 2009

³¹ Written evidence of Gwenda Thomas AM - 22 April 2009 p1

³² Oral evidence of the First Minister and Deputy First Minister- Newport 2 April 2009

- ³³ Taken from the evidence of Jeff Godfrey, Director of Legal Services and Thomas Watkin, First Welsh Legislative Counsel, Welsh Assembly Government - Cardiff 14 May 2009
- ³⁴ Oral evidence of RSPB Cymru - Cardiff 25 June 2009
- ³⁵ Written evidence of the CBI Wales - 3 March 2009 p4
- ³⁶ Oral evidence of the First Minister and Deputy First Minister - Newport 2 April 2009
- ³⁷ Member of the public, Aberystwyth Public Event - 4 March 2009
- ³⁸ Oral evidence of Wales Women's National Coalition - Cardiff 11 June 2009
- ³⁹ Written evidence of the Welsh Liberal Democrats - 30 January 2009 p6
- ⁴⁰ Written evidence of the Welsh Affairs Committee - 22 July 2009 p5
- ⁴¹ Written evidence of Mark Williams MP - 30 January 2009 p1
- ⁴² Written evidence of Community Housing Cymru - 29 January 2009 pp6-7
- ⁴³ Written evidence of Professor Dermot Cahill, Head of Bangor University Law School - 3 August 2009 p4
- ⁴⁴ Written evidence of RSPB Cymru - 3 March 2009 p2
- ⁴⁵ Oral evidence of Adam Price MP - Cardiff 20 March 2009
- ⁴⁶ Marie Navarro and David Lambert, Agenda Spring 2009 p35
- ⁴⁷ Written evidence of Mike Morgan - January 2009 p2
- ⁴⁸ Oral evidence of Janet Ryder AM, Chair of the Subordinate Legislation Committee - Cardiff 25 June 2009
- ⁴⁹ Oral evidence of the First Minister and Deputy First Minister - Newport 2 April 2009
- ⁵⁰ Written evidence of member of public - 28 January 2009 pp44-45
- ⁵¹ Oral evidence of Nick Ainger MP - Cardiff 25 June 2009
- ⁵² Written evidence of the CBI Wales - 3 March 2009 p4
- ⁵³ Written evidence of the Welsh Affairs Committee pp8-9
- ⁵⁴ Written evidence of Gwenda Thomas AM - 22 April 2009 p1
- ⁵⁵ Oral evidence of Kirsty Williams AM, Leader of the Welsh Democrats - Newport 2 April 2009
- ⁵⁶ Oral evidence of Peter Price - Newport 2 April 2009
- ⁵⁷ Oral evidence of Janet Ryder AM - Cardiff 25 June 2009
- ⁵⁸ Oral evidence of Peter Price - Newport 2 April 2009
- ⁵⁹ Oral evidence of the First Minister and Deputy First Minister - Newport 2 April 2009
- ⁶⁰ Oral evidence of Kirsty Williams AM, Leader of the Welsh Democrats - Newport 2 April 2009
- ⁶¹ Oral evidence of the Keith Bush, Chief Legal Adviser and Director of Legal Services and Adrian Crompton, Director of Assembly Business, Assembly Commission - Cardiff 5 February 2009
- ⁶² Written evidence of Cymru Yfory - 20 November 2009 p14
- ⁶³ Written evidence of Dr Huw Llewelyn - 25 June 2009 p2
- ⁶⁴ Written evidence of Nicholas Pain - 15 May 2009
- ⁶⁵ Oral evidence of Councillor Chris Holley - Swansea 10 March 2009
- ⁶⁶ Oral evidence of Dylan Edwards - Cardiff 4 June 2009
- ⁶⁷ Written evidence of Professor Sir John Meurig Thomas, Professor Sir David Williams and Professor Sir Dillwyn Williams - 30 March 2009 pp1-2
- ⁶⁸ Written evidence of Unison - 2 March 2009 p5
- ⁶⁹ Oral evidence of Janet Ryder AM - Cardiff 25 June 2009
- ⁷⁰ Oral evidence of the Assembly Commission - Cardiff 5 February 2009
- ⁷¹ Oral evidence of Peter Price - Newport 2 April 2009
- ⁷² Written evidence of a member of the public - 28 January 2009 p5
- ⁷³ Written evidence of the Welsh Centre for International Relations - 31 January 2009 p1
- ⁷⁴ Dame Gill Morgan, Permanent Secretary - letter to Sir Emyr Jones Parry 18 June 2009
- ⁷⁵ Written evidence of the Wales TUC Cymru - 30 January 2009 p7
- ⁷⁶ Written evidence of the Law Society Wales - 16 February 2009 p7
- ⁷⁷ Oral evidence of Cymdeithas yr Iaith - Cardiff 11 June 2009
- ⁷⁸ Written evidence of Dafydd, a member of the public - 21 August 2009
- ⁷⁹ Oral evidence of the First Minister and Deputy First Minister - Newport 2 April 2009
- ⁸⁰ Written evidence of Plaid Cymru Parliamentary Group - 29 January 2009 p8
- ⁸¹ Written evidence of Cymru Yfory - 20 November 2009 p19
- ⁸² Written evidence of the Law Society Wales - 16 February 2009 p7
- ⁸³ Written evidence of WCVA - 2 February 2009 p8
- ⁸⁴ Written evidence of Professor Dermot Cahill - 3 August 2009 p6
- ⁸⁵ Written evidence of Marie Navarro, Cardiff Law School - 26 April 2009 p1
- ⁸⁶ See paragraph 2.3.4
- ⁸⁷ Taken from a letter to Sir Emyr Jones Parry from the Director of Legal Services, Welsh Assembly Government - 4 September 2009
- ⁸⁸ Written evidence of NFU Cymru - 16 January 2009 p6
- ⁸⁹ See paragraph 5.5.4
- ⁹⁰ Oral evidence of CBI Wales - Newport 2 April 2009
- ⁹¹ See paragraph 3.6.11

- ⁹² Written evidence Shachi Nathdwarawala - 22 June 2009
- ⁹³ Written evidence of Lord Tristan Garel-Jones - 31 March 2009 p4
- ⁹⁴ John Harvey, Cardiff Public Event - 25 June 2009
- ⁹⁵ Written evidence of University of Wales Institute Cardiff - 20 January 2009 p3
- ⁹⁶ Written evidence of the British Medical Association Wales - 28 January 2009 p2
- ⁹⁷ Written evidence of Wales TUC Cymru - 30 January 2009 p6
- ⁹⁸ Member of the public, Aberystwyth Public Event - 4 March 2009
- ⁹⁹ Gwyneth Flanagan, Pembrokeshire Public Event - 6 March 2009
- ¹⁰⁰ Oral evidence of Dafydd Iwan, Chair of Tai Gwynedd - Caernarfon 25 February 2009
- ¹⁰¹ Written evidence of the Law Society Wales - 16 February 2009 p6
- ¹⁰² Written evidence of a member of the public - 26 January 2009
- ¹⁰³ Written evidence of Community Housing Cymru - 29 January 2009 p4
- ¹⁰⁴ Written evidence of the Law Society Wales - 16 February 2009 p6
- ¹⁰⁵ Lyn Davis Thomas, Cardiff Public Event - 25 June 2009
- ¹⁰⁶ Written evidence of the Royal College of Nursing - 29 January 2009 p5
- ¹⁰⁷ Written evidence of Union of Welsh Independents - 2 February 2009 p3
- ¹⁰⁸ Member of the public, Workers' Education Association Llanelli Branch event - 19 February 2009
- ¹⁰⁹ Ysgol Morgan Llwyd schools competition entry - 30 March 2009
- ¹¹⁰ Written evidence from Peter, member of the public - 15 January 2009
- ¹¹¹ Oral evidence of Adam Price MP - Cardiff 20 March 2009
- ¹¹² Written evidence of Kelvin Owen - 3 March 2009

Chapter 4

The Broader Impact of Devolution

- 4.1.1 Devolution has not only created new institutions, it has helped foster a more self-confident, positive Wales. Its implementation touches on the responsibilities of other institutions and organisations, and is part of major constitutional devolution of the United Kingdom. While these aspects, were not directly relevant to our terms of reference, they came up frequently as part of our efforts to consult as broadly as possible. Because they were raised with us, and indeed were the subject of particular evidence, and as they are relevant to the overall debate on devolution, we include these subjects within this chapter.

4.2 Local Authorities

- 4.2.1 The 22 local authorities and some 750 community and town councils are the bedrock of democracy in Wales, and provide many of the public services. We wanted their perception of devolution and if possible, to test views on future powers of the National Assembly for Wales. We already had the Presiding Officer of the Welsh Local Government Association (WLGA) on the Executive Committee and we took evidence from the WLGA formally. More importantly, the All Wales Convention visited all 22 local authorities in Wales to meet with Councillors to explain the work of the Convention and give them a chance to have their say.
- 4.2.2 GoWA 1998 established the relationship between the National Assembly for Wales and local government in Wales placing a duty on the National Assembly for Wales to sustain and promote local government in Wales. GoWA 1998 also required the National Assembly for Wales to establish a Partnership Council for Wales comprising representatives of the National Assembly for Wales and local government. Under GoWA 2006, the National Assembly for Wales's responsibilities in this respect, transferred to Welsh Ministers.
- 4.2.3 Most Councillors from whom we heard were of the opinion that the Welsh Assembly Government 'micro managed' them and that even though Westminster had devolved power to the National Assembly for Wales, the National Assembly for Wales hadn't subsequently devolved powers to local authorities.
- 4.2.4 The Presbyterian Church of Wales and Kirsty Williams AM both felt that decisions were best made as close to the people as possible, and supported power being devolved to local authorities.
- 4.2.5 It was acknowledged that there was confusion over the different responsibilities of the local authorities and the Welsh Assembly Government and that more understanding was needed. The frustrations felt by some in local government had

led to calls for the creation of a Memorandum of Understanding setting out the relationship between the Welsh Assembly Government and local authorities.

- 4.2.6 Other issues that were raised included ambiguity over funding streams and an excess of policy consultation by the Welsh Assembly Government. There was also criticism of what was seen as unnecessary bureaucracy. The complexity over educational funding was a specific example cited. The Cabinet Member for Education in Merthyr Tydfil County Borough Council argued persuasively against having to bid against more than one hundred hypothecated funds administered by the Welsh Assembly Government. They felt the bureaucratic effort was wholly disproportionate and any allocated funds, usually small, were then narrowly tied to a particular project, hence the feeling of micromanagement. Whilst when pressed, representatives conceded that it was for the Welsh Assembly Government to set broad strategy which local authorities should implement, they also argued that they knew best how to tailor that implementation to local circumstances and needs. However, most recognised that the Welsh Assembly Government was entitled to insist on effective delivery and ultimately had to deal with underperforming local authorities.
- 4.2.7 We received many and different views about the merits of moving to Part 4 of the GoWA 2006. It would mean that the National Assembly for Wales would be competent directly to legislate on local government issues. In our meetings with local authorities, a rough show of hands approach suggested that a small majority of those we met favoured the current arrangements under Part 3.
- 4.2.8 There were anxieties amongst local authorities that if the National Assembly for Wales gained more powers they would still not devolve any further powers to local government, or that they would try to take over some local authority responsibilities. However, in his evidence the Deputy First Minister stated that he did not “think that the transferring of further powers to the Assembly would be any threat to local democracy...certainly there would be no intention to take further powers away from local government”.¹¹³
- 4.2.9 Gwynedd Council was supportive of moving to Part 4, Schedule 7 and felt there could be a very specific role for local authorities in contributing to the scrutiny of legislation in Wales, whilst a Councillor in Neath wanted Part 4 so that the Welsh Assembly Government would stop taking powers from the local authorities.

Summary

- 4.2.10 Many of these concerns and perceptions are probably inevitable and understandable. But as financial pressures mount, so too will the risk of increased tensions. The need therefore for a more real, aware relationship between the Welsh Assembly Government and the local authorities is obvious. But this for the most part is independent of the merits of Part 4.

4.3 Policing

- 4.3.1 The four Police Authorities in Wales are accountable to the Home Secretary, and the Crown Prosecution Service, the police's partner in the criminal justice system, is an England and Wales body. This involvement with England is mutually beneficial, especially in responding to emergencies and policing major sporting events. However, many aspects of police work touch on devolved areas which fall within the Welsh Assembly Government's responsibilities, particularly: crime reduction; youth crime and anti social behaviour; domestic violence; arrangements for mentally disordered offenders and their social supervisors; the development and implementation of strategies against substance misuse; and transport and roads policy.
- 4.3.2 Further, the key partners of the police in the wider policing world, such as local government and health, are devolved; and crucially, operating in the Welsh Language is often a vital every day requirement.
- 4.3.3 So the particular challenge for the police in Wales is how a non-devolved service operates in a largely devolved environment, but yet enjoys coherence of strategy, accountability and funding.
- 4.3.4 Funding of the police in Wales reflects this complexity. Some 40% of the revenue funding for the Welsh police authorities comes from the Home Office which operates a single police funding mechanism, subject to particular formulae. The Welsh Assembly Government then provides some 30% under a formula which takes account of the further income which each Authority obtains through the police precept element of council tax (another 30%). Capital funding is provided by the Home Office for e.g. buildings, vehicles, IT systems. Additional grants are also provided by both Home Office and Welsh Assembly Government, mostly for dedicated purposes.
- 4.3.5 Co-operation between police forces, particularly on operational policy, is crucial and appears to be working well, both among the forces in Wales, with English forces, and with UK agencies. A good working relationship has been established between Welsh Assembly Government and the police service in Wales. The forces in Wales are accountable to the Home Office for performance against common England and Wales standards and targets, but local targets and objectives can be added by the Welsh Assembly Government. For the present dispositions to work efficiently, it is imperative that the Home Office take fully into account the particular characteristics and challenges of Welsh policing, but it is not evident that this is always so, for instance the Association of Chief Police Officers (ACPO) felt that the Home Office introduced its new performance management framework for policing and community safety (APACS) in April 2008 without undertaking adequate consultation with Welsh Assembly Government and the police forces in Wales.
- 4.3.6 ACPO further considered that a closer working relationship and better consultation between the Home Office and Welsh Assembly Government would help to reduce difficulties caused by different agendas set by Whitehall and Welsh Assembly Government.

- 4.3.7 ACPO also felt that consideration needed to be given to the impact that recent developments under the devolution settlement in Wales might have on the Welsh police's relationship with the Home Office and with the police forces in England. They felt that the National Assembly for Wales's new law-making powers would inevitably lead to a divergence between the English and Welsh police forces, and this must be handled with care to ensure that there is no decrease in the standard of policing in Wales. They were also concerned about the Welsh Assembly Government's proposals to impose duties on the Chief Constables in Wales through the Local Government Measure which was enacted in June 2009, which they felt set a legal precedent, which could open the door to further duties being placed by the National Assembly for Wales on the police in Wales - albeit within their area of devolved competence.
- 4.3.8 This report is not the place to argue for the unification of the Welsh forces or for the devolution of responsibility for policing in Wales. The present distribution of responsibilities will be unaffected by any introduction of Part 4. Cooperation across forces and the need for strategic arrangements to meet serious global challenges are essential. The issue for us is whether current arrangements can be improved and indeed clarified, given the impact of devolution on policing in Wales. Can performance targets be made more pertinent to the actual role of the Welsh forces?

Summary

- 4.3.9 There is scope for a closer working relationship and more systematic consultation between the Home Office and Welsh Assembly Government. It is important that the Home Office consistently factors in the particular circumstances of Welsh policing, its aims, and funding requirements. Arrangements between the Home Office, the Welsh Assembly Government, police forces and Police Authorities in Wales should ensure adequate consultation in all areas where policing duties touch on devolved areas, to avoid any uninvited consequences. Systems should not be reliant upon individuals just happening to be aware of Welsh practice. The Wales Office, as a UK Department of State, has a role to represent the interests of Welsh policing in London, and to reflect UK Government views back to Wales. More routine Home Office consultation of the Wales Office is desirable. The police forces need a champion and consultations should be further developed across the board.

4.4 The Third Sector

- 4.4.1 The Third Sector is very broad, and includes community associations, self-help groups, voluntary organisations, charities, faith-based organisations, social enterprises, community businesses, housing associations, cooperatives and mutual organisations, as well as many others.
- 4.4.2 In the evidence we received, there was unanimous agreement within the Third Sector that access to government had improved hugely with devolution,

with the potential for greater impact on policy development. This was echoed by a member of the public at the roadshow event in Cardiff who said “we now have much better access to policy makers and can get things done - we couldn’t do that in Westminster”.¹¹⁴

- 4.4.3 However, it was also argued, by the Welsh Food Alliance in particular, that whilst access was greatly improved, the efforts of the Third Sector to engage had not always had the expected results, and that increased engagement didn’t necessarily translate into the implementation of change.
- 4.4.4 There was also broad agreement that the National Assembly for Wales and the Welsh Assembly Government tried to consult widely. But again paradoxically, many complained at the volume of consultation, and doubted whether the process was real, and whether decisions had already been taken before consultation began.
- 4.4.5 In relation to both of these issues, a significant concern raised by the Third Sector was its own lack of capacity to engage with and fully understand how the complex legislative process works. Lack of resources denied them necessary expertise, and as a result many felt at a disadvantage in participating in the process.
- 4.4.6 WCVA and Sustrans expressed concern that organisations were having to duplicate their efforts in the current system and were spending their time focused on the wrong element of the process. Sustrans, using their own experience as evidence felt their time “would have been better spent considering the details of an Assembly Measure. Instead we... spent sixteen months proceeding with the LCO only for the proposal to stall”.¹¹⁵
- 4.4.7 In considering the Carers LCO, WCVA said “Carers Wales... have said they can only speak positively about the system really because it has worked for them and helped them to achieve their aim. That is not to say they might not have liked it to be done quicker and that actually if the power had been devolved in the first place they would now be seeing the outcomes of a Measure rather than just having the power devolved”.¹¹⁶
- 4.4.8 Keep Wales Tidy stated that “there is a lack of capacity within many sectors for engaging with the powers of the National Assembly. In the case of civil society there is a great desire to engage with and support this process and the Assembly Government and Assembly should find ways of enabling this to happen”.¹¹⁷
- 4.4.9 It was widely felt from evidence from members of the Third Sector that GoWA 2006 had placed new demands on organisations across Wales to engage with the law-making process which stretched their capacity. The Powys Association of Voluntary Organisations (PAVO) stated that “for a CVC [Community Voluntary Council] such as PAVO, the devolution settlement has created new demands upon our resources as we have had to expand our capacity to engage with the new agenda (both in terms of the raft of new policies that have emerged since devolution but also in our role in supporting Powys’ Third Sector to engage)”.¹¹⁸

- 4.4.10 WCVA believed that “even larger voluntary organisations...have capacity issues when it comes to campaigning, lobbying and influencing; even where there is a person in post who is responsible for that element of work”.¹¹⁹
- 4.4.11 However, many argued that the issue was not about increasing the staff within the Third Sector, but in helping the existing staff to better understand the processes and how they could influence most effectively. RSPB Cymru believed that “if the system of governance were more straightforward and transparent it might mean that resources that are currently spent supporting civil society to understand the current system could then be deployed in other ways such as helping the sector to develop policy proposals and play a greater role in scrutiny”.¹²⁰

Summary

- 4.4.12 The contribution and involvement of the Third Sector is a key element of the democratic process. Its role increases the quality of legislation, encourages more effective implementation, and provides a useful scrutiny accountability dimension.
- 4.4.13 Devolution has brought benefits to the Third Sector in Wales in terms of greater access to government, therefore greater potential to influence policy. However, the Third Sector does have some concerns about how quickly and efficiently new policy translates into change on the ground, and that the current system could mean effort being misplaced in scrutinising proposals for National Assembly for Wales powers rather than focusing on how those powers should be used.

4.5 The UK Dimension

- 4.5.1 The data shows the people of Wales to be increasingly comfortable with devolution. Our survey showed that over 70% favour the present arrangements or more powers. Those who favoured devolution did so with Wales as part of the United Kingdom with either a National Assembly for Wales with limited law-making powers or a parliament with greater powers. Those who favour the pre 1997 situation or independence have diminished. Some 8% in our social research support independence.
- 4.5.2 Those who favour a devolution model firmly anchored on the basis of Wales remaining a constituent nation of the United Kingdom, do so because of its perceived benefits, economic, financial and political. For them, the people of the United Kingdom are bound together by shared identity, histories, values and family ties. Its nations are inter-populated, and share citizenship, the rule of law, and hard earned freedoms and rights. Globalisation and external challenges are better faced together, stronger as the Kingdom of four nations than divided. Devolution is meant to harness our individual national identities and allow diversity within the UK.
- 4.5.3 Precisely because devolution permits decisions which reflect the specific circumstances and interests of Wales, it follows that over time differences will

emerge across national borders. This is particularly true in education, health, and transport, areas of special concern to people in Wales living close to Offa's Dyke. Therefore it is important that cross-border issues are fully considered, and as far as possible unintended disadvantages are reduced.

- 4.5.4 As the Presbyterian Church of Wales stated, "we live together in the wider community of the UK and the range of services provided in Wales cannot and should not be self contained to the detriment of people in the community. General quality standards are necessary and cross-border provision is especially important in some parts of Wales".¹²¹
- 4.5.5 The Welsh Affairs Committee has, over the past two years, undertaken an inquiry into cross-border public services. They examined further and higher education; healthcare; and transport. In their evidence to us they stated that they "uncovered problems relating to the understanding and observation of the devolution settlement within Whitehall, and poor consultation with Welsh stakeholders including Welsh MPs and the Welsh Assembly Government, as well as others".¹²²
- 4.5.6 In relation to the provision of cross-border health services, there was some evidence that members of the public were experiencing problems in accessing healthcare. EN Hodges a Community Councillor from Rhosddu stated that, "being close to the Anglo Welsh Border...only this last week problems were aired in the local press about prescriptions for residents of Wales with Doctors in England, and vice versa".¹²³
- 4.5.7 When approached to provide additional information, Wrexham County Borough Council and Powys County Council both highlighted the problems they also faced in relation to healthcare, and also drew attention to other cross-border issues, including those relating to the economy, transportation and animal welfare issues.
- 4.5.8 Dame Gill Morgan considered that "for historical and geographical reasons there are, and always will be, patients who will travel across the English-Welsh border to receive their healthcare".¹²⁴ She confirmed that a Protocol for Cross-Border Healthcare Commissioning is in place, issued jointly between the Welsh Assembly Government's Minister for Health and Social Services, and the UK's Department of Health. The protocol is followed by Local Health Boards with a border with England, and is intended to smooth out problems arising from differing health policies and funding regimes either side of the border.
- 4.5.9 Some of the differences highlighted in the evidence we received were inevitable consequences of delivering different policies on either side of the border. Some appear to be unintended consequences where implications were not sufficiently thought through, or sometimes not even considered.
- 4.5.10 A recurring theme was the need for decision making which was more coordinated, more coherent and transparent. Greater consideration of this aspect was desirable in the National Assembly for Wales, and also increased awareness of devolution within Whitehall Departments.

- 4.5.11 However Adam Price MP felt that parts of the UK Government and Parliament were not prepared to accept devolution, and stated “there is a sense in which Westminster as an institution, Whitehall as a governmental institution, and even indeed some individual Westminster MPs just are not prepared to accept the political reality that we have democratic devolution and they are not very good at letting go, that that decision has been made”.¹²⁵
- 4.5.12 It was also recognised that in devolved areas of policy, there can be mutual benefit in co-ordinating strategies across England and Wales, or across the UK - especially in areas such as health and education. This was noted in the evidence we received from the University of Wales Institute, Cardiff (UWIC) who stated that there had been a “recent tendency by the UK Government to take unilateral decisions in relation to research assessment policy, which though devolved, can only be organised on a UK basis to be effective”.¹²⁶ In addition, a member of the public stated “we should be working together in the UK to solve the problems that face us rather than indulging in introspection and introducing further differentiating complexities”.¹²⁸

Summary

- 4.5.13 We were often told of the need for greater engagement between the Welsh Assembly Government / National Assembly for Wales and Whitehall / Westminster. We agree with this, and where steps are being taken to improve contacts, we welcome them. Such steps are for example, facilitating the consideration of and agreement to LCOs. It should also improve policy making and delivery of services.
- 4.5.14 Devolution is producing a more confident, outward looking Wales. Wales’ participation in European Union issues reflects this, with a more assertive, positive involvement which is bringing benefits to Wales. This mutual respect between the devolved administration and Whitehall is good. Formal understanding between all the devolved administrations and the UK Government is set out in a separate Memorandum of Understanding. There are also a series of departmental-specific concordats between the Welsh Assembly Government and Whitehall. These do not appear to be living documents, and more might be made of them, in the spirit of policy-making which should reflect the highest standards, shared experience, and the closest co-operation.
- 4.5.15 Public service delivery within the Welsh Assembly Government, must be competitive, outward looking, exchanging talent and experience within the UK. It also has a special responsibility to understand the concerns and aspirations within Wales, to have real contacts with local authorities and civil society (for example), so that it can genuinely represent the interests of Wales.
- 4.5.16 Hitherto since devolution, the UK Government has been working with governments in the National Assembly for Wales where the First Minister has belonged to the same political party. However the smooth functioning of devolution should be independent of such coincidence.

4.6 The European Union (EU) Context

- 4.6.1 The UK is one of 27 Member States of the European Union (EU). In their oral evidence the European Commission (EC) explained Wales' status within the EU as "...the UK for us is the Member State and Wales itself does not have a legal status within the EU, other than being part of the UK".¹²⁸
- 4.6.2 Issues around the EU arose in a number of submissions. For the National Assembly for Wales and the Welsh Assembly Government, the EU dimension is very important. It is the UK Government which sits in the EU Council of Members and which ordinarily speaks for the UK and the devolved administrations, so influencing the formation of UK policy and negotiating positions is essential if Welsh interests are to be furthered. And of course, EU funding is an important revenue source for Wales. We therefore devoted an evidence session to EU issues.
- 4.6.3 The Welsh Assembly Government explained the relationship between Wales, the UK Government and Europe and stated "the devolution settlement recognises that many of the powers devolved to Wales are directly related to and influenced by decisions taken at EU level. The Assembly Government is responsible for implementing EU legislation falling within its remit and it may not act or legislate contrary to EU law".¹²⁹
- 4.6.4 Some EU law may be implemented in Wales by Welsh Ministers or by the National Assembly for Wales. Where they have the relevant powers Welsh Ministers can do so. Where it has powers the National Assembly for Wales may do so. Welsh Ministers may acquire power to implement EU law in the following ways:
- Under a Transfer of Functions Order transferring to them Minister of the Crown powers.
 - In or under an Act of the UK Parliament.
 - By means of a Designation Order which within a prescribed area would enable the Welsh Ministers to use the powers in section 2(2) of the European Communities Act 1972 to implement the EU requirements.
 - In or under an Assembly Measure or Assembly Act.
- 4.6.5 If the Assembly has Measure-making powers in the relevant area, then it would be possible for the Assembly to pass a Measure either to implement the EU requirements itself or, as above, by giving relevant powers to Welsh Ministers to implement the EU legislation. As the Assembly's competence to pass Measures is currently limited the scope for this to be done is also limited but it would increase in the future as the Assembly gains more extensive law-making powers.
- 4.6.6 The agreed framework between the UK Government and the devolved administrations is set out in a Memorandum of Understanding and a Concordat on Co-ordination of EU Policy Issues.
- 4.6.7 The formal machinery for Wales to influence EU policy and legislation include:
- The formal Cabinet Office process to identify UK interests and determine negotiating positions.

- Welsh Ministers may attend the Council of Ministers in Brussels as part of the UK delegation with the agreement of the Secretary of State concerned. If they speak, it is an agreed UK position and on behalf of the UK.
- Wales is represented by the First Minister on the Joint Ministerial Committee on Europe which is a UK wide Strategic Committee to discuss policy towards the EU and meets four times a year.
- the Welsh Assembly Government has an office in Brussels which works closely with the UK Permanent Representative to the EU.

4.6.8 It is primarily through the UK position that Wales influences EU policy. Even though the Memorandum of Understanding states that the UK Government aims to include the devolved administration as fully as possible, it is not a legally binding document and some decisions taken might not be favourable to Wales. However, the Welsh Assembly Government is positive about the relationship with the UK Government and their access to discussions on EU policy, and the Welsh Assembly Government also seeks to influence the EU Commission directly through its Brussels Office.

4.6.9 Some of the evidence however suggested that Wales could be more influential. The FUW and NFU Cymru felt strongly that Wales and the Rural Affairs Minister should lead on issues where Wales is affected more than any other part of the UK. Tom Jones, Welsh representative on the European Economic and Social Committee felt that this already happens and stated “generally speaking I think there seems to be a good understanding there where the UK Minister will allow the Welsh Minister to go along and speak on...Matters where they may affect Wales more than England, or on hill farming matters, where again Wales or Scotland may have particular issues”.¹³⁰

4.6.10 Wales currently receives some half a billion pounds per year of EU funding, of which £200 million comes from Structural Funds. It has been acknowledged that the current programme period for Convergence Funding comes to an end in 2013 and that Wales would face intense competition for Objective 1 funding from 2014 onwards. However, changes in the powers of the National Assembly for Wales would have no effect on the process for EU funding.

Summary

4.6.11 Should Part 4 come into effect, there will be no substantive impact on the EU dimension for Wales. There would be no impact on EU funding or on the mechanisms for influencing EU policy. However, under Part 4, there would be an additional option for implementation of EU legislation in devolved areas in Wales. These could be implemented through Assembly Acts as an alternative to implementation by Welsh Minister through subordinate legislation.

¹¹³ Oral evidence of the First Minister and Deputy First Minister - Newport 2 April 2009

¹¹⁴ Ceri Jones, Cardiff Public Event - 23 June 2009

¹¹⁵ Written evidence of Sustrans Cymru - January 2009 p5

- ¹¹⁶ Oral evidence of WCVA - Cardiff 11 June 2009
- ¹¹⁷ Written evidence of Keep Wales Tidy - January 2009 p8
- ¹¹⁸ Written evidence of PAVO - 31 March 2009 p2
- ¹¹⁹ Oral evidence of WCVA - Cardiff 11 June 2009
- ¹²⁰ Written evidence of RSPB Cymru - 3 March 2009 p7
- ¹²¹ Written evidence of the Presbyterian Church of Wales - 23 April 2009 p2
- ¹²² Written evidence of the Welsh Affairs Committee - 22 July 2009 p2
- ¹²³ Written evidence of EN Hodges - 1 March 2009 p1
- ¹²⁴ Dame Gill Morgan, Permanent Secretary - letter to Sir Emyr Jones Parry 18 June 2009
- ¹²⁵ Oral evidence of Adam Price MP - Cardiff 20 March 2009
- ¹²⁶ Written evidence of University of Wales Institute, Cardiff - 5 December 2008 p2
- ¹²⁷ Written evidence of Robert Evans - 30 July 2009 p1
- ¹²⁸ Oral evidence of Andy Klom, Head of Office, European Commission in Wales - Cardiff 10 June 2009
- ¹²⁹ Written evidence of Welsh Assembly Government officials - 9 June 2009 p1
- ¹³⁰ Oral evidence of Tom Jones - Llandrindod Wells 11 June 2009

Chapter 5

Issues Relevant to the Holding of a Referendum

- 5.1.1 Our consultation with the public and stakeholders, and the social research that we commissioned, raised a number of issues relevant to the holding of a referendum. These included: the timing of a referendum; difficulties relating to communicating information to the public in Wales; and findings from our social research and wider consultation on the public's attitudes towards devolution, National Assembly for Wales powers and the holding of a referendum.

5.2 Timing of a referendum

- 5.2.1 The One Wales agenda for the government of Wales set out a commitment to "proceed to a successful outcome of a referendum... at or before the end of the Assembly term".¹³¹ This would mean holding a referendum before May 2011.
- 5.2.2 The Electoral Commission has advised that generally a referendum should not be held on the same day as an election as it risks confusing the voter. However, they have stated that each case would be looked at on merit and no firm recommendation has been made.
- 5.2.3 Arguably, a referendum should not be held within 3 months of an election. The process for calling and holding a referendum takes approximately nine months in total. If a referendum is to be held within the timetable set out in the One Wales agenda, then a decision on whether or not to call a referendum would need to be made by June 2010.

5.3 Communicating information to the public

- 5.3.1 An informed electorate, a vigorous and reported public debate, the opportunity to hear and express diverse views, full accurate information on the actions of government and the legislature - these are essential elements of democracy. In a more limited way, effective communication with the people of Wales was vital to our work as the Convention. It was a basic challenge in explaining the devolution settlement and the complexities of what is on offer under GoWA 2006.
- 5.3.2 Because of the importance of communication, the need to ensure better informed citizens, and the relevance of knowledge of GoWA 2006 for a referendum, we dedicated an oral evidence session to the issue, and received much written evidence too.

- 5.3.3 Many members of the public commented to us that they wished for clearer and more consistent communication about what the National Assembly for Wales does. One member of the public commented “I think more needs to be done to make people aware of the Assembly and what it has done, and what the future holds”,¹³² whilst another had more specific requirements and stated “I have a learning disability - I am interested in politics in Wales, but there are not enough types of information available in easy read format and the information is too complicated”.¹³³
- 5.3.4 But this is part of a wider problem - how to communicate effectively across Wales when communications are limited.
- 5.3.5 The majority of media consumed in Wales originates outside Wales. Welsh media is dominated by the BBC. Many, including the Welsh Affairs Committee, have argued that the lack of an alternative voice to BBC Wales was leading to an “information gap”. This will be exacerbated as ITV Wales’ output collapses and BBC Wales faces financial pressures. Our research found that it was from TV news that some 60% of respondents obtained their information on potential powers available to the National Assembly for Wales under GoWA 2006. 20% of respondents followed developments in national newspapers, but it is important to note at this point that 85% of the daily morning papers bought in Wales are produced in London, with scant reporting of political developments in Wales.
- 5.3.6 One view expressed was that “Wales suffers from a significant media deficit, with the overwhelming majority of morning newspapers read in Wales being published in England with a focus on English issues, often printing stories that have little or no relevance to the devolved Welsh position, further muddying the waters”.¹³⁴ Keep Wales Tidy, the TUC, and the General Teaching Council for Wales made similar points.
- 5.3.7 Radio has a small but significant audience, and local radio too is important. Real Radio, although committed to Welsh news, highlighted the constraints including financial, that commercial radio stations face when covering political news stories, especially as content decisions can often be taken outside of Wales.
- 5.3.8 These factors obviously impacted on the effectiveness of our own communications campaign. We devised an initial, and we hoped comprehensive, strategy, but as we progressed with our work, so we had to be flexible to respond to the different challenges and opportunities. Getting material into Welsh newspapers required consistent effort. A first succinct letter to commercial newspapers throughout Wales was only published by six of them. By the end we succeeded with most through a mix of persistence and advertorials - a combination of an advert for which we paid, that opened up space for a more editorial type article on the Convention.
- 5.3.9 Our communications strategy was also helped by the contribution of stakeholders and their existing networks, which broadened the dissemination of our material. This and our website maximised the offer for anyone, from anywhere in Wales, to give us any opinion on any aspect of our work. But, of course, making the offer did not guarantee take-up.

- 5.3.10 For their part, both the National Assembly for Wales and the Welsh Assembly Government have put substantial resources into communications, both of a general nature and in specific policy areas.
- 5.3.11 The Assembly Commission explained that one of their goals was to promote and widen engagement in devolution. They aimed to “translate what is a pretty arcane technical exercise into language which is more easily understandable by the public at large”.¹³⁵
- 5.3.12 But the messages are not getting through. One member of the public felt that the National Assembly for Wales does too little to promote itself and should be more political, this he believes would engage more people in politics, “one of the problems with the Assembly is that it doesn’t see its role as being a kind of Public Relations one and pushing why we should have the Assembly and all the good work that it is doing”.¹³⁶
- 5.3.13 Similarly the Equality & Human Rights Commission believed that the Welsh Assembly Government needs to improve its communications “Welsh Assembly Government policy is high level and communication and cascading of information is not always adequate”.¹³⁷ As one member of the public also stated, “there is a need for the Assembly to be clearer about what it does. Then it can start to communicate why it needs more power”.¹³⁸

5.4 Social Research

- 5.4.1 This consideration of the media and the evidence we received was very relevant to our work on the electorate’s approach to further powers for the National Assembly for Wales. We wanted to supplement the evidence with data and statistics, analytically and professionally obtained. We therefore commissioned formal social research to examine attitudes to and understanding of devolution in Wales.
- 5.4.2 Our aims were twofold:
- To obtain the most up to date information on people’s attitudes and understanding of the National Assembly for Wales and devolution in general.
 - To investigate people’s opinions on increasing the powers of the National Assembly for Wales, and to try to identify what external events and factors might impact on people’s attitudes and opinions.
- 5.4.3 The main objectives of the research were to:
- Establish current levels of understanding about the Welsh Assembly Government’s remit and existing powers.
 - Ascertain current levels of understanding about further law-making powers.
 - Explore the factors influencing opinions for and against giving the National Assembly for Wales further powers.
 - Establish what information citizens require about the issue of primary law-making powers, in what format, and to test the impact of our communications materials.

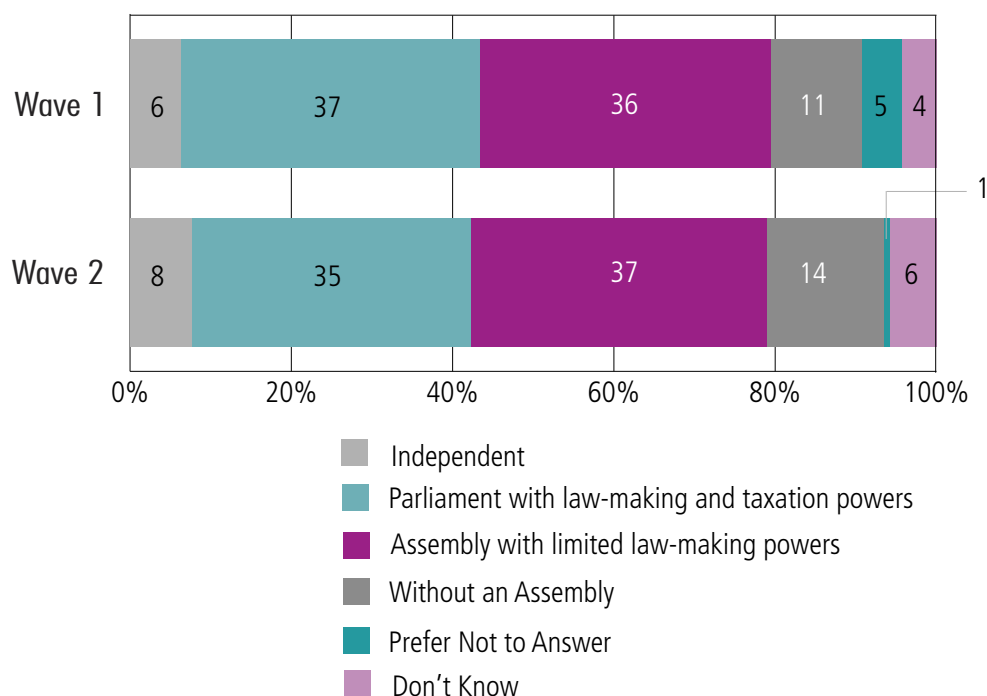
- 5.4.4 The research was conducted using two methodologies. Twenty qualitative discussion groups, and two quantitative telephone surveys each of over 1500 participants throughout Wales.
- 5.4.5 The first stage was conducted between November and December 2008. Exploratory focus groups and an initial survey (wave 1) were conducted to give us some baseline data which would establish people's awareness levels before we began our main programme of activity. The results of this interim stage were published in March 2009 and helped to mould our communications strategy.
- 5.4.6 A second set of research (wave 2) was conducted between April and July 2009. This consisted of more in-depth deliberative discussion groups which looked into the information we were providing in greater detail and invited participants to discuss the issues at length. We also conducted a second survey (wave 2) which was obviously a more up to date snapshot, but also sought to establish whether opinions had changed. In this survey we also tried to ascertain if the economic recession and media attention on politicians' expenses had effected people's consideration of the issues.
- 5.4.7 A full copy of the final Social Research report can be found on the internet at www.allwalesconvention.org. We now summarise the key findings.
- 5.4.8 Of those polled, 44% in the first wave, and 40% in the second, thought they had at least a fair amount of knowledge of how Wales is governed. Men, the over 55s, and those in social grades AB (which are referenced in the glossary, Annex B) were more likely to consider themselves to have a fair amount of knowledge. In the first wave, 52% expressed themselves satisfied with the Welsh Assembly Government, and 21% dissatisfied, but we did not attempt to break down these views by political party. Nor do we have direct comparisons with views on other levels of government.
- 5.4.9 In both waves of the research, nearly 80% of respondents correctly agreed that the National Assembly for Wales "has some powers to make laws in a number of areas of Welsh life and these powers can be expanded with the agreement of the UK Parliament". Similarly around 70% were correct in disagreeing that it was not true that the National Assembly for Wales can pass any laws on any subject it wishes. There was therefore some basic understanding of the National Assembly for Wales's powers, but this knowledge was not consistent e.g. 50% of respondents wrongly thought that the National Assembly for Wales could change the basic rate of income tax. Men, those in social grades AB, people who consider that they know much about how Wales is governed, and those most likely to vote were the groups most likely to give the correct answers to these questions. The qualitative research suggested that people had a general sense, rather than a concrete understanding of the National Assembly for Wales's powers. Overall the evidence pointed to considerable confusion about the National Assembly for Wales's current powers. About a quarter of respondents were aware of possible changes to the National Assembly for Wales's powers. We should not be surprised by this since Kalitowski's work for the Hansard Society¹³⁹ reports a similar lack of knowledge of Westminster.

- 5.4.10 These perceptions of the National Assembly for Wales's powers were in the context of an overall vague knowledge of the National Assembly for Wales itself and its activities. The same group above (social grades AB) was likely to be better informed. However the qualitative research supported the notion of a growing acceptance of the National Assembly for Wales, and of devolution more generally. This view was influenced by awareness of policies associated with the National Assembly for Wales, such as the smoking ban and student financial support. The ban on smoking in public places was identified in other evidence we received, as an issue where, the National Assembly for Wales, despite being at the forefront of the political pressure for such a ban, was only able to legislate after getting the necessary powers some years later.
- 5.4.11 The research set out to identify views about the devolution settlement for Wales. The survey findings support the notion, found in the qualitative research of a growing acceptance of the National Assembly for Wales and for devolution. In wave 2 of the quantitative survey, 37% thought Wales should remain part of the United Kingdom, with its own elected National Assembly for Wales with limited law-making power, and 35% thought Wales should remain part of the United Kingdom, with its own elected Parliament with law-making and tax raising powers. So 72% favour present or somewhat increased devolution. This is consistent with the other research.¹⁴⁰ Similarly, our research shows that support for independence and the pre-1997 arrangements has continued to fall since 1997. In the second wave of research we found 8% favoured an independent Wales and 14% wanted Wales to be part of the United Kingdom without an elected National Assembly for Wales, down from 13% and 37% respectively in 1997 polling.

Chart 5.1 - Statements that came closest to respondents' views of how government should work in Wales (wave on wave comparison)

Constitutional preference

D2. Which of these statements comes closest to your view?



Base: All respondents (Wave 1 - 1,650, Wave 2 - 1,553)

What were the attitudes to increased powers for the National Assembly for Wales?

5.4.12 An effort was made qualitatively to elicit unprompted attitudes prior to offering information to participants. Those who gave an immediate positive response favoured as many powers as possible in Wales and promotion of Welsh interests and identity, sometimes accompanied by a negative view of Westminster. The strong attachment of the people of Wales to the Welsh nation is reflected in the CANS report by Richard Wyn Jones and Roger Scully.¹⁴¹ The same emotional reaction was shown by those strongly against increased powers for the National Assembly for Wales. They emphasised their British identity, their desire for Wales to remain within the United Kingdom, and some instinctive anti Assembly views: waste of money; jobs for the boys; favours Welsh speakers; South Wales bias. A majority in the middle was cautiously optimistic about increasing the powers of the National Assembly for Wales. While they favoured devolution and would not rule out support for increased powers, this group had certain concerns about what

increased powers would mean. The participants in this group who favoured more powers thought Welsh policy-makers likely to have more understanding of the Welsh context, more funding would reach Wales, and the Welsh people would have more say in decision making. The unconvinced in this middle group lacked trust in the Assembly, worried about extra cost, and did not consider Wales ready to be financially independent from the United Kingdom. Overall these members of the central group inclined towards the status quo. The key anxieties about increased powers are British identity; lack of trust in the Assembly, and Wales' incapacity to be financially independent.

- 5.4.13 As well as these underlying views, attitudes are coloured by understanding or lack of understanding, of key concepts, and the perceived complexity of the subject matter. The current powers are little understood, still less the process for acquiring further powers. The term 'full law-making powers' was used in the research and intended to represent the full set of powers contained in Part 4 of GoWA 2006, as opposed to the incrementally increasing powers of Part 3. Critically 'full law-making powers' was not understood; indeed it appears in part to be misinterpreted as representing full independence for Wales. The problem of the lack of understanding of terminology applied also to standard constitutional terms. Words such as referendum, primary law-making powers, Acts, Measures and Schedules were often not understood by participants in the discussion groups. This lack of understanding fostered disengagement with the debate on increased powers and fed cynicism about politics generally.

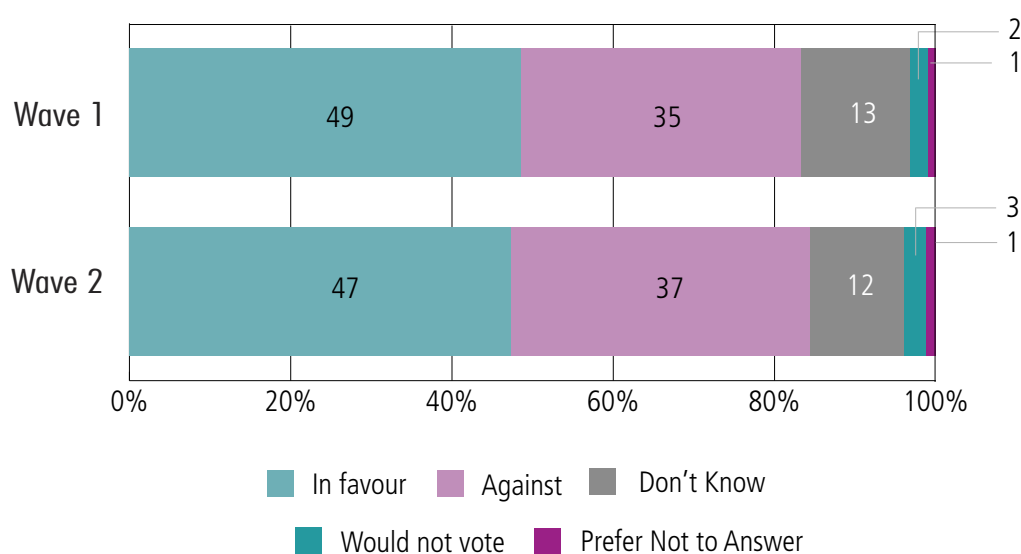
How would people vote in a referendum?

- 5.4.14 Prior to being asked this question, respondents were given brief basic information on the status quo and the option of a referendum. In a referendum, 48% in Wave 1 and 47% in Wave 2 said they would vote in favour of increased powers for the National Assembly for Wales, while 35% in Wave 1 and 37% in Wave 2 said they would vote against. This yields a majority of those voting "yes" of 13 percentage points and 10 percentage points respectively in each wave. Therefore of those who exercised a preference, some 56% would have voted affirmatively, but obviously this does not include 'don't knows' or those who said they would not vote.

**Chart 5.2 - Data on how respondents would vote in a referendum on giving the National Assembly for Wales full law-making powers.
(wave on wave comparison)**

Voting intentions

D3. If there were to be a referendum tomorrow on giving the National Assembly for Wales full law-making powers in these areas, how would you vote?



Base: All respondents (Wave 1 - 1,650, Wave 2 - 1,553)

- 5.4.15 Positive support was highest among 16-34 year olds, people in lower social groups and people who identified themselves as Welsh.
- 5.4.16 More than 10% of respondents did not know how they would vote but only 2% (wave 1) and 3% (wave 2) said they would not vote. In recent elections and previous referendums the proportion of the population who have not voted has been at least 30%. The analysis tried to look behind this headline figure of 56% (in 5.4.14) to see how people's propensity to vote would affect a possible outcome.
- 5.4.17 The likelihood to turn out to vote increases with: interest in politics, age, social grade, and knowledge of the way Wales is governed; it was greater amongst those who identified themselves as Welsh. We sought to correlate this likelihood to vote with voting intention in a referendum. "In favour" had a margin of 7 percentage points over a "no" vote for the least likely to vote. This difference rose to 28 percentage points for the moderately likely to vote. However the figure

dropped to 3 percentage points for those who were confident that they would turn up to vote. This narrowing of the difference was also reflected anecdotally in public meetings.

Table 5.1 How likelihood of voting would impact on voting intentions

Likelihood of voting	Percentage and number of participants in each category		If there were a referendum tomorrow on giving the National Assembly for Wales full law-making powers in these areas, how would you vote?					
			In favour	Against	% points difference in favour vs. against	Don't know	Would not vote	Prefer not to answer
Least likely to vote	26%	397	38%	31%	7%	19%	11%	1%
Quite likely to vote	22%	345	58%	30%	28%	12%	-	1%
Most likely to vote	49%	764	48%	45%	3%	6%	-	1%
Don't know	3%	47	-	-	-	-	-	-
Total	100%	1553	48%	38%	-	11%	3%	1%

- 5.4.18 Which factors might influence how people would vote in a referendum? We were interested both to identify these factors, and in particular, to try to determine whether economic recession and political developments in Westminster affected voting intentions. Findings from Wave 2 suggested that the voting behaviour is more likely to be influenced by Welsh, rather than the United Kingdom wide issues. 40% said that “how wisely the National Assembly for Wales spends money” was more important than “how wisely the UK Parliament spends public money” (19%). 38% said the “performance of the National Assembly for Wales” was more important while 17% considered the performance of the UK Parliament more important. 29% said they would be influenced by the performance of AMs and 20% by that of MPs. Those most likely to vote were more likely to be influenced by how wisely the National Assembly for Wales spends public money, and by the performance of AMs and the National Assembly for Wales. 16% of respondents said that none of these factors would influence their vote.
- 5.4.19 We probed the issues relating to voting intentions in the qualitative research. Some key questions emerged which reflected concerns and perceptions. Firstly: can Wales cope with independence from the United Kingdom, particularly financially - would Wales lose the backup of Westminster? Secondly: is the National

Assembly for Wales ready for this perceived major change, or is it too much, all at once? In short, would Wales be running before walking? Thirdly: is it relevant to me, will it bring me enough benefits to make it worth engaging with this complex issue?

5.5 Views relevant to the holding of a referendum

- 5.5.1 The qualitative research underlined the need for communications on increased powers to be simply presented, concise and jargon free. This was also reflected in the evidence submitted to us.
- 5.5.2 Incorrect terminology in the media was thought to fuel the confusion. Community Housing Cymru believed that there was confusion in terms of political terminology as the media interchange 'Assembly' and 'Assembly Government'. This view was supported by one member of the public who felt that there seemed "to be a real confusion between the Welsh Assembly Government and the Assembly itself...often compounded by media coverage",¹⁴² and echoed by another who stated "...confusion could be further dispelled if the term 'Welsh Assembly Government' was replaced by 'Welsh Government' or 'Welsh executive'".¹⁴³
- 5.5.3 We found a preference for communications that demonstrated the impact of the potential change on daily life in Wales, particularly in key areas like health, education and transport. Impartial communication was wanted, which demonstrated that people's opinions were sought and valued. Communications should address the feeling amongst people in Wales of being under-informed about the powers of the National Assembly for Wales, thus allowing them to come to an informed view in advance of any referendum. Research results emphasised the desire for information which brought home the relevance of potential change for the individual. The social research showed that information and its perceived meaning impacted on voting intentions in different ways.
- 5.5.4 Lack of understanding created misconceptions about the nature of the referendum question. This may persist after explanation, particularly if the vocabulary is confusing. Where the term "full law-making powers" was not understood, the default assumption appeared to equate this to an independent Wales. There was an anxiety that such a change would be too sudden and major, a concern felt even by those inclined to be positive about the National Assembly for Wales. Where there was misconception about independence or concern about sudden substantial change in Wales, cautious supporters of devolution inclined to the status quo. For this group, somewhat counter-intuitively, the effect of receiving more information was to increase a sense of caution, reflecting perhaps an innate risk aversion. More information can confuse and foster non-comprehension. This, along with technical jargon, risks disengagement and encourages switch off. Conversely visual elements can create interest and make information digestible.

- 5.5.5 More informed explanation is wanted, and in simple terms that are relevant to people's lives. One news paper editor told us that he sets a basic test for the inclusion of an article / report - "Would Mrs Jones be interested and would she derive a benefit?"
- 5.5.6 Information and communication are also an essential element for democratic choice. In its evidence to us, the Wales Women's National Coalition warned that "at a time of any referendum, a very thorough communication exercise would be essential in order to ensure full understanding of the impacts and limitations of this proposed change."¹⁴⁴
- 5.5.7 Much of the evidence received focused on the importance of educating the public about the different options a referendum would give. One member of the public stated, "we need more information before a decision can be made as to voting - we can't form a judgemental opinion",¹⁴⁵ whilst another said "I am not properly informed which suggests that I and others need a lot more education on the subject before the country is rushed into a referendum".¹⁴⁶
- 5.5.8 This was echoed by others who gave formal evidence, including Heledd Fychan and Eirian Wyn who both expressed concern over the lack of knowledge of the general public on the issues.
- 5.5.9 How information is presented is crucial, and in some circumstances, further information itself can encourage increased caution. The social research results identified some anxieties which could have a pivotal influence on people's willingness to vote affirmatively. Even if the concerns and perceptions may have only limited validity, they tend to encourage support for the status quo with gradual change.
- 5.5.10 Many of the conclusions emerging from the social research were reinforced by the evidence which we received on the referendum question. Diverse comments were made to us. Many organisations wished to see a referendum immediately - to give the people of Wales the chance to vote as soon as possible. This was also argued by True Wales, which was represented at most of our public events, contributing to the debate. Their leaflets alleged that the Convention had been set up to argue for a "yes" vote in a referendum. True Wales wanted a referendum to stop permanently what they regarded as a "disastrous slide towards independence".¹⁴⁷ They believed that the electorate should be asked to choose, regardless of what the expected outcome of that vote might be.
- 5.5.11 Cymdeithas yr Iaith believed a referendum should be called to allow the debate to begin properly. This was echoed by others who gave evidence, including one member of the public who felt the Labour party needed to call the referendum quickly as he felt a Conservative Government in Westminster would not be willing to do so.¹⁴⁸
- 5.5.12 Adam Price MP felt a delay in calling a referendum would give greater public exposure to problems between the National Assembly for Wales and Westminster, in delivering the LCO process. He argued that "public appetite for democratic

devolution could be negatively impacted by a display of constant debate and conflict between two respective governmental institutions”.¹⁴⁹

- 5.5.13 The Welsh Liberal Democrats stated that the “One Wales Government promised a referendum before 2011 and it is imperative that it does not renege on this promise”.¹⁵⁰
- 5.5.14 Many individuals and organisations, whilst supporting a referendum, were wary of the consequences if it were lost. Keep Wales Tidy, Wales TUC and the WLGA all expressed this concern. NFU Cymru went so far as to say that “rushing a referendum which is subsequently lost would be catastrophic for the credibility of Welsh devolution”.¹⁵¹ This was echoed by a member of the public who stated “it’s important to ensure that a referendum can be won before it is called. If a referendum were lost because it had been called too early, we would have to wait a long time before succeeding”.¹⁵²
- 5.5.15 Many felt that the current economic climate deserved consideration. The Presbyterian Church of Wales would “support holding the Referendum on the timetable proposed”,¹⁵³ but cautioned against the effects of the current economic climate. The Institute of Chartered Accountants felt that the current economic climate would make a referendum “an unwelcome distraction from coping with more pressing challenges”.¹⁵⁴
- 5.5.16 However, others disagreed and thought the current economic climate might make it easier to win a referendum because people would wish to see change, and one member of the public stated “the referendum needs to be held as soon as possible. The constant delays are no good for the institution or for people’s trust in the political system.”¹⁵⁵
- 5.5.17 The evidence we received and the interventions in our public events underlined the importance of the Welsh language to the debate. For many, the language was seen as an important part of Welsh culture and identity. Some others, notably in public meetings, were critical of what they considered an undue prominence for the language. This highlights the need for a positive, non-threatening, presentation of bilingualism.
- 5.5.18 At our events, and on our online forms, we asked members of the public and organisations to indicate whether they would vote for or against giving the National Assembly for Wales further powers (i.e. move to Part 4) if a referendum were called tomorrow. These figures represent the views of those who commented, and as such have no representative basis. But, they do give an indication of the views of those who engaged with us.

Table 5.2 Evidence received from participants in All Wales Convention on whether they would vote for or against a move to Part 4 of GoWA 2006 in a referendum

	For	Against	Unknown/ Not given	Total
Public - online forms, written and oral evidence and questionnaires	1532	884	144	2560
	60%	34%	6%	
Organisations - oral and written evidence	34	4	27	65
	52%	6%	42%	

- 5.5.19 Another factor that came out in the evidence was a focus on the political mood and the necessity for there to be political unity before a referendum is called. Nick Ainger MP believed strongly that without full political backing the referendum should not be called, and that unanimity within the Labour Party was vital, but not possible at the present time.
- 5.5.20 In his letter of 2 October 2008 Peter Hain felt strongly that the time was not right for a referendum. Indeed he went as far as to state that holding a referendum now would be a show of “bad faith to Parliament”, and strongly believed that Parliament would not agree to “trigger a referendum before or during 2011”. He stated that it was on this understanding that Parliament approved the Government of Wales Act in 2006, and that if a “referendum were held today, it would be lost”.¹⁵⁶
- 5.5.21 There was also much discussion over whether the referendum should be held on the same day as the National Assembly for Wales election. In discussions with us the Electoral Commission advised against this in theory as it risks confusing the voter, but stated that they would look at each proposition individually. There were differing views on this issue expressed to us, including from the Welsh Liberal Democrats who thought it would be unwise to hold the referendum on the same day as an election, going as far as to say that it would be “undemocratic and impractical”.¹⁵⁷ But one member of the public reflected a different view, arguing that holding the referendum on the same day as the National Assembly for Wales elections might help voter turnout.¹⁵⁸
- 5.5.22 The complexity of holding a referendum on a single issue, was also mentioned and views were expressed that other factors would always impact on how people would vote. Sustrans believed that “referendums are rarely fought on the issue at hand”,¹⁵⁹ whilst Peter Price stated that “what grips the public and the true subject matter of the referendum are miles apart”.¹⁶⁰ There was also a call from some members of the public for the referendum to question “whether the Assembly should have any law-making powers at all”.¹⁶¹

5.5.23 As our report was going to print, the results of a YouGov internet poll of 1,078 adults, polled between 21 and 23 October 2009, were announced. Its broad findings were consistent with results we had obtained. Devolution was a settled will - a majority wanted major policy competencies invested at the National Assembly for Wales level; and 63% wanted the Assembly to have the same level of powers as the Scottish Parliament, compared to 28% who did not. Of those polled, 63% supported the holding of a referendum in Wales, with 20% opposed. If a referendum were to be held the day after the poll, 42% said they would vote yes, and 37% no. This contrast with the view on parity with Scotland is striking. This may be because parity with Scotland is a concept that people seem to find intuitively easy to understand, regardless of their interest or knowledge of politics. On the other hand, our research showed that the people of Wales find the present and proposed arrangements for devolution complex and confusing. In particular, 'full law-making powers' was a term understood by few. Indeed in our sample, one in four people equated the term with independence. This lack of clarity contrasts markedly with the simple (and perhaps simplistic) comparison with Scotland.

Summary

- 5.6.1 The people of Wales have accepted devolution. They know that devolution has been put in place, and that it represents some degree of self government. Despite a scant knowledge of detail, public attitudes appear to have settled in favour of devolution, with few supporting either independence or the pre-1997 Welsh Office arrangements. Individuals may have some more detailed knowledge where it directly connects to their lives. There appears to be a substantial appetite for increased devolution, with solid support for primary law-making powers.
- 5.6.2 The evidence presented in this chapter brings out a number of factors which might influence the way in which people would vote in a referendum. When we looked at these issues in detail during the qualitative part of our social research, it was apparent that certain underlying views could influence people's attitudes. These included:
- Fears that further powers might lead to independence for Wales, and that the country would not be able to cope without the support of the UK (financially and more generally).
 - Belief that Welsh policy-makers would better understand the Welsh context.
 - Attachment to the concept of the Welsh nation or support for a British identity.
 - Whether or not the National Assembly for Wales was ready for change - would it be too much, too soon; or conversely, that the National Assembly for Wales after 10 years now deserves these powers.
 - How any changes would be relevant specifically to the daily lives of the public.
- 5.6.3 People's concerns stemmed in large part from a lack of accurate and reliable information on the issues. Therefore, fundamentally, how information is communicated is crucial to ensuring people are engaged fully in this debate. Participants in our discussion groups were given benign explanations of Parts 3

and 4 before being asked to express a voting intention in any referendum. It is easy to see that how information, for example on the LCO process, is presented would impact directly on that express voting intention. The question of whether Westminster should retain necessary powers is quite different from whether London should have the ability to decide whether Wales can receive powers individually, one by one. Full law-making was equated with independence by around 20% of survey respondents. As only 14% support independence, a better understanding of the term full law-making powers therefore suggests that more people would vote “yes” in a referendum. But in any case, this apparent interpretation has obvious consequences for the campaigning in any referendum.

- 5.6.4 The evidence suggests that the complexity of the existing devolution settlement leads to incomprehension, messages are often inconsistent, and information is not getting through clearly to the people of Wales. For their part the National Assembly for Wales and Welsh Assembly Government will have to improve the effectiveness of their efforts. The fragmentation of the Welsh media, the over-reliance on the BBC, and the electorate’s preference to read national newspapers without much Welsh news, all underline the difficulties of putting relevant arguments and information to the people of Wales in the campaign which would run up to a referendum. Given people’s limited knowledge of the powers currently enjoyed by the National Assembly for Wales, it is not surprising that much opinion is not firmly set on what the future model should be.
- 5.6.5 The economic recession and political scandal which were extensively covered in the media during June and July 2009 may have influenced people’s interest in politics in general. However, responses to the questions during the second wave of our research (which took place during this time) suggested that these factors did not have a direct influence on attitudes to our debate. It would seem that opinions on constitutional arrangements in Wales are more influenced by Welsh factors than by what appeared to be UK-wide issues.
- 5.6.6 Historically, very few referenda in Europe have been single issue decisions. Voters have consistently been influenced by a variety of issues, current at the time of the referendum. We note that the period before any referendum will have included the election of a new First Minister, and will include a General Election as well, perhaps also a referendum in Scotland on Independence. These and any currently unforeseen events will undoubtedly impact on whether and the way in which people vote.
- 5.6.7 If a referendum is to be held before the next National Assembly for Wales elections and if it is to be, as suggested at least 3 months before those elections, then a decision to proceed to a referendum should be taken no later than June 2010. A referendum would be subject to the provisions of GoWA 2006 and the rules and advice of the Electoral Commission. It will, in the first instance, be for the Welsh Assembly Government and the Members of the National Assembly for Wales to consider whether they wish to call for a referendum.

- ¹³¹ One Wales - A progressive agenda for the government of Wales 27 June 2007
- ¹³² Member of the public, Swansea University event - 20 February 2009
- ¹³³ Member of the public, WCVA policy event January 2009
- ¹³⁴ Written evidence of Dr Ian Johnson - 30 January 2009 p8
- ¹³⁵ Oral evidence of the Assembly Commission - Cardiff 5 February 2009
- ¹³⁶ Oral evidence of Russell Deacon - Cardiff 5 February 2009
- ¹³⁷ Written evidence of Equality and Human Rights Commission - 29 May 2009 p9
- ¹³⁸ Member of the public, Newport public event 18 June 2009
- ¹³⁹ Kalitowski, Susanna, Parliament and the Public: Knowledge, Interest and Perceptions - November 2008
- ¹⁴⁰ Institute of Welsh Politics (IWP) & GfK NOP - National Assembly for Wales - Public Attitudes Survey 2008 (October 2008)
- ¹⁴¹ Richard Wyn Jones (Cardiff University) & Roger Scully (Aberystwyth University) - Citizenship after the Nation-State (CANS) (May 2009)
- ¹⁴² Written evidence of RM Samuel - 8 March 2009 p2
- ¹⁴³ Written evidence of Luke Nicholas - 28 January 2009 pp1-2
- ¹⁴⁴ Written evidence of Wales Women's National Coalition - 11 May 2009 p7
- ¹⁴⁵ Member of the public, Pembrokeshire Public Event 6 March 2009
- ¹⁴⁶ Written evidence of Lindsay Morgan - 14 April 2009 p3
- ¹⁴⁷ True Wales Leaflet - p2
- ¹⁴⁸ Written evidence of Michael Haggett - 31 January 2009
- ¹⁴⁹ Oral evidence of Adam Price MP - Cardiff 20 March 2009
- ¹⁵⁰ Written evidence of the Welsh Liberal Democrats - 30 January 2009 p11
- ¹⁵¹ Written evidence of NFU Cymru - 16 January 2009 p7
- ¹⁵² Member of the public, National Eisteddfod, Bala - August 2009
- ¹⁵³ Written evidence of the Presbyterian Church of Wales - 28 January 2009 p4
- ¹⁵⁴ Written evidence of The Institute of Chartered Accountants in England and Wales - 22 January 2009 p3
- ¹⁵⁵ Written evidence of Patrick McGuinness - 4 August 2009
- ¹⁵⁶ Peter Hain MP, Secretary of State for Wales - letter to Sir Emyr Jones Parry 2 October 2009
- ¹⁵⁷ Written evidence of the Welsh Liberal Democrats - 30 January 2009 p11
- ¹⁵⁸ Written evidence of Michael Haggett - 1 February 2009 p16
- ¹⁵⁹ Oral evidence of Sustrans - Cardiff 20 March 2009
- ¹⁶⁰ Oral evidence of Peter Price - Newport 2 April 2009
- ¹⁶¹ Diane Banner, Monmouth Public Event 14 May 2009

Chapter 6

Conclusions and Recommendations

- 6.1.1 Our principal recommendations pertain to the holding of a referendum, as set out in our terms of reference. The evidence submitted to us took us into wider areas, however. We have therefore made recommendations too, where we believe the evidence suggested that our comments could make a helpful contribution. These are set out in Section 6.4

6.2 The referendum issue

- 6.2.1 This has to be seen against a context of substantial support for devolution as it stands, and clear signs of an appetite for more. The heart of the issue is the speed at which existing legislative powers should be transferred to the National Assembly for Wales. It is about the allocation of powers, not the creation of new ones. Under the present implementation of GoWA 2006, powers are reaching the National Assembly for Wales in the two ways we have described in 3.3. We have discussed the merits of this approach in 3.11 and of the alternative, the implementation of Part 4, after an affirmative vote in a referendum.

- 6.2.2 **We are convinced that Part 4 offers substantial advantage over the present arrangements in Part 3. It would offer greater efficiency, permit a strategic approach to the drafting of the legislation, provide greater clarity, be more consistent with the rule of law and democratic tradition, and reflect the emerging maturity of the National Assembly for Wales.**

- 6.2.3 However it is not easy to assess how these arguments would resonate with public opinion, and how they would influence voting intentions in a referendum on a move to Part 4. The evidence leads us to believe that there would be more support for a “yes” vote when the extent of Welsh devolution is compared unfavourably to that in Scotland, and when attention is drawn to the need to repeatedly seek Westminster’s permission, before powers can be drawn down.
- 6.2.4 Notwithstanding the points made above, it is clear that **the public has scant knowledge of the procedures and issues associated with GoWA 2006. Much more needs to be done to inform the electorate, and this should be basic to the conduct of any referendum campaign.**
- 6.2.5 The initial reaction to providing explanations can reinforce the complexity of arrangements and instil caution. **We judge that democracy requires that information be provided, the arguments be presented, and the electorate given the opportunity to be better informed.** That should provide the best basis for a referendum. We believe that our work has made a contribution, but it has underlined how difficult it is. There is abundant scope for more information

to the electorate on what the referendum would be about, and what “yes” and “no” votes would mean.

- 6.2.6 Clarity of language is important here. We have tried to present complex procedures and terminology simply. It was a big challenge, but necessary to encourage the public to engage in the debate. Terms can easily be misinterpreted, and some provoke instinctive reactions, both affirmative and negative. Our work produced many such examples. “Full powers” was often misunderstood and rang alarm bells for some who associated it with independence. The term ‘independence’ itself, and the suggestion of a slippery slope towards it, had the same effect.

6.2.7 **We therefore recommend clear and accessible language in presenting these issues and great care in the choice of terms, in order to best communicate what is at stake.**

- 6.2.8 Cost, revenue from the UK Government, apprehension at sudden change, and the alleged calibre of AMs were important factors for those indicating that they would vote “no” in a referendum. On the other hand, comparison with Scotland, cap in hand to London, and the maturity of the National Assembly for Wales were strong factors which lead people towards a likely “yes” vote.

- 6.2.9 **Our research results showed 72% favour the present or somewhat increased devolution. Declared voting intentions in a referendum on Part 4 showed some 47% voting affirmatively against 37%, a margin of 10 percentage points, plus or minus a margin of error of 3 percentage points.** Some caution is needed to take account of the likely turnout, fewer than 3% of our sample said they would not vote - yet in a referendum we can assume at least 30% would not vote. Our evidence suggested that among the most likely to vote, the margin in favour would decrease, perhaps to as low a figure as 3 percentage points. The reasons for this may include the fact that older people are more likely to vote and are more cautious about the speed of change. These effects appear to have been countered in part in the 1997 referendum by a bigger propensity to vote among those who most strongly favoured devolution. More detailed analysis of our research findings showed that whether people identified themselves primarily as Welsh, British, or more usually as both, were factors which would influence likely turnout and voting preferences on this issue.

- 6.2.10 **This underlines the complexity of trying to assess voting intentions in any referendum.** More generally, a referendum is seldom a single issue for the electorate. Other factors inevitably influence intentions, and much would then depend upon the prevailing circumstances. **Our research results suggested that the voters would be more influenced by developments and issues within Wales.** National sentiments, and a sense that decisions on many issues affecting Wales should be taken in Wales rather in Westminster, were important. The results failed to show any impact made on voting intentions by the economic recession, or by public anger with politicians, even though the second poll was taken when that sentiment was particularly strong.

6.2.11 **Voting intentions are also influenced, and for some it is particularly important, by their basic attitudes, and indeed more fundamental positions e.g. Wales as a nation or the integrity of the United Kingdom. A referendum campaign which tapped into such values would be more likely to evoke support.**

6.2.12 But our results were only a snapshot of the views of the electorate in June / July 2009. Aspects of public opinion are transient. The politicians who will decide whether to seek a referendum may wish to commission a further poll to provide more up to date information.

6.2.13 **Our work suggested that, if a referendum is to be held in good time before the National Assembly for Wales elections in May 2011, then a decision should be taken by June 2010.** There is an opportunity for a referendum to be held. It also requires the political will to decide to hold one. The longer a decision is delayed beyond that date, the less likely will be the holding of a referendum before May 2011. We have noted that there will be a General Election, a new First Minister in Wales and possibly a referendum in Scotland on independence before that date. Any of these could have considerable impact on voting intentions.

6.2.14 A referendum would offer Part 4, and its contents. That is the choice on the table. We have concluded that this offers substantial advantage. We examined the content and clarity of Schedule 7, and recognised that Schedule 7 could be amended, before or after any referendum. We noted the technical difficulties of making its contents clearer, and we doubt that an effort to clarify it further would have any tangible effect on voting intentions.

6.2.15 **We recommend that, if Part 4 were to be implemented following an affirmative vote in a referendum, any change to the contents of Schedule 7, including the exceptions provided within it, should reflect the legitimacy which the National Assembly for Wales would have been given in that referendum.** Any change should therefore be in the direction of loosening constraints on the exercise by the National Assembly for Wales of its legislative powers, rather than to further constrain the National Assembly for Wales.

6.2.16 **Our judgement is that a “yes” vote in a referendum is obtainable, but the evidence we have collected underlines that there can be no certainty about this.**

6.2.17 The evidence suggests also that the margin between those in favour and those against a move to Part 4, taken together with the absence of much understanding of the terms of GoWA 2006 and the factors set out earlier, **indicates that a yes vote cannot be taken for granted.** Similarly, the campaigns (for and against), which should also be a means of providing better information to the people of Wales, and the circumstances at the time are crucial. So too is the credibility of the leadership of the cases put forward on either side of the debate. Who defines that debate and how it is presented, will be pivotal to the outcome of a referendum. **The result would be still to play for.**

6.3 Observations and recommendations which arise from other aspects of our remit

- 6.3.1 **The people of Wales are entitled to more and better information on the governance of the nation.** We recognise that both the National Assembly for Wales and the Welsh Assembly Government make determined efforts to this end, but they could be more effective. It is important that language is simple and easily understood. Ambiguity creates confusion, as is evident from the title “Welsh Assembly Government” - a simpler title clearly separating Ministers from the National Assembly for Wales is desirable. We urge a more concerted, effective attempt to reach all parts of Wales. We ourselves had only limited success, despite our efforts. **But an efficient and engaged democracy requires an informed electorate.** We have noted the difficulty of communication in Wales. The BBC is making a valiant effort to play its part, but we urge other elements of the media, including print media not based in Wales, to accept their responsibility to report on and encourage debate on the governance of Wales.
- 6.3.2 The operation of the LCO process dominated the evidence we received. We have brought out its merits and its disadvantages. After consideration of the evidence, we concluded that Part 4 was a better option. **We commend continuing improvements in the operation of the LCO process, and encourage Welsh Assembly Government / Whitehall engagement, and close co-operation between those carrying out scrutiny in the National Assembly for Wales and in Westminster.** The process is bedding down, and naturally, different LCOs raise different political and substantive issues. **We urge proportionate scrutiny which recognises both the provisions of GoWA 2006 and separate electoral mandates.** It is also necessary for Whitehall to be better informed, and more positive and accepting of the provisions of the Act. Parliament having legislated for devolution correctly needs to ensure that competences are respected, but having established a devolved administration, there should be a readier willingness by both Westminster and Whitehall to allow it to evolve. We heard of real and perceived criticisms of the process. **We urge a greater effort to speed up decisions, to make the system more transparent, and to avoid unnecessary duplication.**
- 6.3.3 **Effective scrutiny is at the heart of the democratic process, a point emphasised in evidence. A more sustained effort is needed under Part 3 or Part 4.** The National Assembly for Wales is adapting to this vital role, but we consider that more systematic, wide-ranging, and efficient scrutiny is desirable, and that the necessary resources should be devoted to it. **We were struck that the Framework Bill procedure has delivered more powers than the LCO process, but done so without any scrutiny by the National Assembly for Wales. This is undesirable. We believe that the Assembly should have the opportunity to consider proposals for changing its competencies that are included in any UK Bills.** We commend the National Assembly for Wales’s willingness to put in place pre-legislative scrutiny where interested parties and experts offer views on emerging draft proposals. This is very much to be encouraged in a unicameral system.

6.3.4 We looked at the capacity requirements and implications of moving to Part 4.
On the basis of the evidence we received we judged that the overall impact would be financially neutral, and that there would be little need to reinforce capabilities and capacities if Part 4 were in operation.

6.3.5 **We make no apology for emphasising the importance of the rule of law. This requires that the process of adopting laws should be transparent, comprehensible, acceptable, implementable, and accessible to all concerned.**

6.3.6 **Because it is strikingly difficult to access accurately the detailed law which applies in Wales, we recommend the creation of a single accessible record of all law applicable in Wales, which would provide authoritative and comprehensive detail.**

6.3.7 Responsibility here should lie with government, and the Welsh Assembly Government and the National Assembly for Wales should ensure that this is put in place. It need not have an advisory capability, but the people of Wales are entitled to know the application of all law ranging from that in non-devolved areas, law applicable only in Wales, laws made in whatever way under devolved powers, and statutory guidance having the force of law.

6.3.8 The application of law in Wales post devolution underlines the need for a more collaborative development of relevant provisions of all training - in both languages - on the law which applies in Wales. We welcome some changes which have been made in the administration of justice in Wales.

6.3.9 **We recommend a more informed, consistent approach which reflects better the Welsh dimension, Welsh legislation, and the politics of devolution.**

6.3.10 Within the legal profession, it is important that expertise be developed alongside the process of devolution to take advantage of emerging opportunities, and to contribute to all aspects of economic development.

6.4 Issues which arose during our work and which are little affected by any move to Part 4

6.4.1 We worked closely with local authorities who are an indispensable element of Welsh democracy and public life. They showed some frustration with perceived micro-management by the Welsh Assembly Government, but much of this reflected characteristic regional and hierarchical differences. There is a need for a more understanding and better working relationship between the Welsh Assembly Government and the local government, and perhaps a greater awareness of the difficulties which each faces, particularly as financial pressures mount.

6.4.2 **We recommend a reduction in the bureaucratic load imposed on both local authorities and the Welsh Assembly Government by some of the existing procedures, particularly in awarding grants within education.**

6.4.3 The United Kingdom dimension is important, both as a principle for many, and as a practical issue for those who live close to the border with England. **The effects of policies, (generated on either side of the border) can lead to unintended consequences. This aspect needs continuing attention.** As devolution evolves, so it is important that Wales has the capability to engage and negotiate with Whitehall, Westminster and the other devolved administrations. We encourage the continued need for excellence of staff, ability to recruit the best, and to deliver efficient and targeted public services in Wales. **Where it is decided that the circumstances of Wales require distinct policies, the Welsh Assembly Government needs the capability, both in making policy and in its implementation, to deliver effectively.**

6.4.4 We looked at Wales' role in the negotiation by the UK Government in the EU, at the implementation of EU legislation in Wales within devolved areas, and at EU funding in Wales. **We welcome the steps which have been put in place to ensure a strong effective involvement to the betterment of Wales.** We have commented separately on the scrutiny of proposed EU legislation.

6.4.5 Policing is a non-devolved responsibility, yet many aspects of policing in Wales come within the competence of the Welsh Assembly Government and the National Assembly for Wales. We welcome co-operation between the police forces in Wales and with those in England.

6.4.6 **We recommend that the Home Office take greater systematic account of Welsh devolution in addressing Welsh policing, that the working relationship and consultation between the Home Office and the Welsh Assembly Government be strengthened, and the existing Concordat reviewed. We note the role of the Wales Office in representing within Whitehall, the interests of Welsh policing.**

6.4.7 The Third Sector stressed to us the increased access to Government and Ministers stemming from devolution. They welcomed this and the opportunities of consultation. Like others they favoured simplicity and transparency of the legislative processes, which would permit them better to deploy their resources efficiently.

6.5 Closing Remarks

- 6.5.1 These recommendations and conclusions stem from the extensive evidence we received in a thorough consultation of the people of Wales. We therefore commend them to the Welsh Assembly Government and believe that they deserve serious consideration by all involved in the governance of Wales. Attention will naturally focus on our support for Part 4 to be implemented in place of the present arrangements, and on the prospects for a referendum. Whatever is decided on the holding of a referendum, we have made other recommendations which we believe would improve the operation of the present arrangements, and we hope that these will be implemented on their own merits.
- 6.5.2 The governance of the nation and the democratic process are vital issues, not just for elected representatives, but for the people of Wales. We hope our report will contribute to the continuing debate which needs to develop, involving all sections of Welsh society.

Annex A

Executive Committee Members

Sir Emyr Jones Parry GCMG (Chair)	Appointed by the First Minister and Deputy First Minister
Alex Aldridge OBE	Nominated by the Welsh Labour Party
Joan Asby OBE	Selected through open competition
Shan Ashton	Nominated by the Wales Women's National Coalition
Nick Bennett	Selected through open competition
Aled Edwards OBE	Nominated by the Faith Forum
Rhodri Evans	Nominated by the Young Farmers' Clubs in Wales
Meryl Gravel MBE	Nominated by the Welsh Local Government Association
Efa Gruffydd Jones	Nominated by Urdd Gobaith Cymru (from April 2009)
Laura Hayes	Nominated by Funky Dragon (until 12 January 2009)
Rob Humphreys	Nominated by the Welsh Liberal Democrats
Sally Hyman	Selected through open competition
John Jones	Nominated by the Wales Council for Voluntary Action
Harry Ludgate	Nominated by the Confederation of British Industry
Paul O' Shea	Nominated by the Wales TUC
Marc Phillips	Nominated by Plaid Cymru (until 20 October 2009)
Paul Valerio	Nominated by the Welsh Conservatives
Shereen Williams	Selected through open competition

Annex B

Glossary of Terms

AWC	All Wales Convention.
Welsh Assembly Government	The Government in Wales, which comprises the First Minister, other Welsh Ministers, Deputy Welsh Ministers, and the Counsel General.
National Assembly for Wales	The Legislature in Wales, made up of 60 Assembly Members.
Assembly Commission	The National Assembly for Wales Commission, which provides the Assembly with the staff, property and services it requires, and also represents it in any legal proceedings.
AM	Assembly Member.
MP	Member of Parliament.
Welsh Ministers	The First Minister, and the portfolio Ministers appointed by the First Minister. This term does not include the Counsel General or the Deputy Welsh Ministers.
Counsel General	The chief legal advisor to the Welsh Assembly Government, and its representative in the courts. The office is of “ministerial” status, but is not one of the “Welsh Ministers” (as defined in GoWA 2006). The office-holder does not have to be an Assembly Member, but is a member of the Welsh Assembly Government and attends Cabinet meetings by invitation.
First Welsh Legislative Counsel	A civil servant employed by the Welsh Assembly Government, responsible for the drafting of the Welsh Assembly Government’s legislative programme.
Primary Legislation	Acts of Parliament or Measures of the National Assembly for Wales, which can amend pre-existing law or make new law, and which will be enforced by the courts.
Subordinate Legislation	Legislation (e.g. statutory instruments) made by Welsh Ministers under powers conferred on them by Act of Parliament or Assembly Measure.
Legislature	Law-making body (Parliament, the National Assembly for Wales).
Executive	Body exercising governmental powers (UK Government, Welsh Assembly Government).

Judiciary	The body of judges responsible for interpreting and applying the law in courts of justice.
GoWA 1998	The Government of Wales Act 1998, which provided for the Assembly to be established, and came into force in 1999.
GoWA 2006	The Government of Wales Act 2006, which provided for legal separation of the National Assembly from the Welsh Assembly Government, transferred the Assembly's executive functions to Welsh Ministers, and provided for the Assembly to acquire powers to pass primary legislation.
Part 3	The part of the Government of Wales Act 2006 which sets out how the Assembly can acquire powers to pass primary laws - called Measures. It needs to be read with Schedule 5 for a full understanding of what the Assembly's law-making powers are.
Schedule 5	The schedule to GoWA 2006 that lists, under the 20 Fields, the Matters on which the Assembly currently has powers to pass primary laws.
LCO	Legislative Competence Order: an Order in Council, which adds Matters to Schedule 5 to give new Measure-making powers to the Assembly. It has to be approved by both the Assembly and Parliament before being made by Her Majesty in Council.
Framework Provisions (Framework Bills)	Provisions in UK Parliamentary Bills which contain proposals for new Matters to be added to Schedule 5 to GoWA 2006, thereby conferring Measure-making powers on the Assembly. (An alternative to LCOs as a way of conferring Measure-making powers on the Assembly).
Step by Step	The term used by the Convention to describe Part 3 - the way that the current devolution settlement brings Measure-making powers to the Assembly.
Field	The term used to describe one of the twenty areas of Welsh life (e.g. Health, Education, Transport etc) within which the Assembly could be given powers to make Measures.
Matter	The term used to describe the specific area of responsibility within a 'Field' about which the Assembly has Measure-making powers (e.g. higher education, social welfare).
Measure	The term used to describe a law enacted by the Assembly under the current devolution settlement.

Measure-making powers	The powers of the Assembly to make Measures (conferred on it by LCOs or framework provisions).
Part 4	The part of the Government of Wales Act 2006 which, read with Schedule 7, sets out the subjects on which the Assembly could pass primary laws, called Acts, if that is supported in a referendum. The referendum would decide whether Part 4 should be brought into force.
Schedule 7	The schedule to GoWA 2006 that sets out the list of subjects on which the Assembly would gain powers to pass Acts, if Part 4 came into force.
Referendum	The vote that would be taken by the people of Wales to determine whether Part 4 should be brought into force.
All at Once	The term used by the Convention to describe Part 4 - the way that the devolution settlement could work in the future after a "Yes" vote in a referendum, bringing legislative powers to the Assembly in one go (rather than 'step by step').
Full law-making powers	The powers to enable the enactment of laws / Acts.
The Wales Office	The department of the Secretary of State for Wales.
The Welsh Office	Established in 1964 - the administrative department of the Secretary of State for Wales prior to the establishment of the National Assembly for Wales in 1997.

Social Research - social grade definitions

- A Professionals, very senior managers in business or commerce or top-level civil servants.
- B Middle management in large organisations with appropriate qualifications, Principal officers in local government and civil service, Top management or owners of small business concerns, educational and service establishments.
- C1 Junior management, owners of small establishments and all others in non-manual occupations.
- C2 Skilled manual workers and manual workers responsible for other people.
- D Semi and unskilled manual workers, apprentices and trainees to skilled workers.
- E All those entirely dependent on the State long-term, through sickness, unemployment, old age or other reasons. Those unemployed for a period exceeding 6 months.

Annex C

Stakeholder Activities and Events

Events

17 April 2008	Wales Council for Voluntary Action (WCVA) third sector futures conference - Cardiff	Sir Emyr Jones Parry speech and panel discussion
28 April 2008	Institute of Welsh Affairs (IWA) and Cymru Yfory conference, <i>Assembly to Senedd</i> - Cardiff	Sir Emyr Jones Parry speech
9 July 2008	Capita's 6th Annual Governance in Wales Conference - Cardiff	Sir Emyr Jones Parry speech
21 July 2008	Royal Welsh Show - Builth Wells	Sir Emyr Jones Parry attended
8 August 2008	National Eisteddfod, Cardiff	Sir Emyr Jones Parry, Aled Edwards and Nick Bennett participated in Q&A session
11 September 2008	Carmarthenshire Partnership Annual Forum - Llanelli	Sally Hyman presentation
25 September 2008	Public Affairs Cymru event - Cardiff	Sir Emyr Jones Parry presentation
26 September 2008	Pembrokeshire Local Community Event - Haverfordwest	Sir Emyr Jones Parry presentation and discussion
9 October 2008	Caernarfon Community and Voluntary Group event - Caernarfon	Sir Emyr Jones Parry presentation and discussion
10 October 2008	Welsh Local Government Association Annual Conference - Llandudno	Sir Emyr Jones Parry speech
24 October 2008	Institute of Directors - Wales meeting - Swansea	Sir Emyr Jones Parry speech
24 October 2008	Council of Ethnic Minority Voluntary Sector Organisations (CEMVO) Local Community Event - Swansea	Sir Emyr Jones Parry speech
26 November 2008	Understanding Modern Government seminar - Cardiff	Nick Bennett presentation
27 November 2008	The Chartered Institute of Public Finance and Accountancy Wales Annual Conference - Cardiff	Sir Emyr Jones Parry speech

1 December 2008	Royal Welsh Winter Fair - Builth Wells	Aled Edwards participated in panel discussion hosted by Young Farmers' Club
11 December 2008	Confederation of British Industry (CBI) Wales Council Meeting - Cardiff	Sir Emyr Jones Parry key note speech
January 2009	Wales Council for Voluntary Action (WCVA) policy events - Cwmbran, Carmarthen, Llandrindod Wells, Rhyl	Rob Humphreys, Sally Hyman, John Jones and Alex Aldridge gave presentations and AWC workshops were held by the Secretariat
5 February 2009	Cardiff University student event - Cardiff	Sir Emyr Jones Parry speech and discussion
19 February 2009	Workers' Educational Association local community event - Llanelli	Sir Emyr Jones Parry speech and discussion
20 February 2009	Swansea University student event - Swansea	Sir Emyr Jones Parry speech and discussion
24 February 2009	Aberystwyth University student event - Aberystwyth	Sir Emyr Jones Parry speech and discussion
25 February 2009	Bangor University student event - Bangor	Sir Emyr Jones Parry speech and discussion
28 February 2009	One Voice Wales National Executive Committee Meeting - Newtown	Rob Humphreys presentation
3 March 2009	Understanding Modern Government seminar - Cardiff	Marc Phillips presentation
3 April 2009	Ysgol Uwchradd Bodedern school council meeting - Anglesey	John Jones attended
17 April 2009	Law Society seminar on legal aspects of the current constitutional settlement and impact of gaining powers to pass Acts under Part 4 of GoWA 2006	AWC Committee attended
18 April 2009	Funky Dragon Grand Council Residential - Carmarthenshire	AWC presentation and Seminar
20 April 2009	IWA <i>Devolution Decade</i> Conference - Cardiff	Sir Emyr Jones Parry chaired event
1 May 2009	Cyswllt Event - Cardiff	Nick Bennett participated in discussion group
12 May 2009	Council for Education and World Citizenship (CEWC) event - Cardiff	Sally Hyman presentation and AWC workshops

19 May 2009	Wales TUC Annual Conference - Llandudno	Sir Emyr Jones Parry speech
29 May 2009	Urdd Gobaith Cymru Eisteddfod, public speaking competition - Cardiff	Sir Emyr Jones Parry co-chaired; Aled Edwards Q&A session with schools
23 June 2009	Women's Institute's Public Affairs Conference - Newtown	Shan Ashton attended
29 June 2009	Capita's 7th Annual Governance in Wales Conference - Cardiff	Sir Emyr Jones Parry speech
6th July 2009	Bevan Foundation <i>One Wales, Two Years</i> Conference, Cardiff - Cardiff	Nick Bennett presentation
20 July 2009	Royal Welsh Show - Builth Wells	Sir Emyr Jones Parry attended
7 August 2009	National Eisteddfod, Bala	Sir Emyr Jones Parry, Aled Edwards and John Jones at Hawl i Holi event

Here are some examples of how organisations have supported us in publicising our work. We thank all those who have helped raise awareness of the Convention's devolution debate.

Articles and other activity

Community Housing Cymru	Article published in their newsletter <i>Cartref</i> and online
Confederation of British Industry (CBI) Wales	Conducted survey of members as part of the evidence submitted to the Convention
CEMVO	Article was published in their newsletter and online
Equality and Human Rights Commission	Information on the AWC was sent to various networks via e-newsletter
Farmers' Union Wales	An article was published in their newsletter <i>Y Tir</i> .
Football Association Wales (FAW)	Press release sent to all FAW members
Funky Dragon	Article published on the Funky Dragon website
Institute of Directors	Article published in their magazine
Merched y Wawr	Article in their magazine <i>Y Wawr</i> . Distributed information to members through their magazine
National Farmers' Union - Cymru	Article appeared in <i>Farming in Wales</i> and the NFU president released a press release welcoming the work of the All Wales Convention
One Voice Wales	Information published on the website
Presbyterian Church	Article published in their newsletter <i>Llais y Gymanfa</i>

The Royal National Institute for Deaf People (RNID)	Article published in their newsletter
TUC Wales	Information on the All Wales Convention sent to all members via an e-newsletter
Urdd Gobaith Cymru	Leaflet distributed to all members aged 16-25; Article included in May / June issue of Urdd magazine
Welsh Assembly Government	Information published in <i>Gwlad</i> magazine
WCVA	Published an article in the WCVA magazine, <i>network 8</i> , which goes to all member organisations
WLGA	Each Local Authority published an article on the All Wales Convention in their free paper
Welsh Rugby Union	WRU disseminated AWC leaflets to all member clubs
Women's Institute Wales	Posed question on AWC at their stand at the Royal Welsh Show
Young Farmers' Clubs Wales	Article published in <i>Cyffro</i> , the membership magazine and on website. Rhodri Evans case study included on YFC website and emailed to all members; Questions on the AWC were included in the National Public Speaking competition

Annex D

Public Events Held by the All Wales Convention

We needed to hold public events as widely as possible in Wales. But we recognised that these were only a small part of our overall effort to engage with the people of Wales. That was why our communications strategy and the many other techniques which we deployed were so important in order that taken together, we were maximising our efforts to reach the people of Wales.

Despite the fact that public events are notoriously difficult ways of engaging with people, we thought it was an extremely important part of our work - to get out and about throughout Wales, giving people the opportunity to speak to the Committee face-to-face, and join in the debate in their area.

But it can be difficult for people to find the time or inclination to attend public events, often thinking the events are not 'for them'. So we put together an innovative and creative programme of events, which offered a range of styles to suit different people. We held Question Times, discussion groups, Roadshows, and a family day. We held our events in locations and venues that may not have been used for this type of activity before. We went to schools, church halls, social clubs, leisure centres and shopping arcades. We also held our events at different times of the day, recognising that it's not always possible for people to come to events in the evening or the middle of the day. We came up against some criticisms for some of our choices, but they were aimed at encouraging as many people as possible from different parts of Wales to come along and join in. We knew we would not be able to get everywhere, but we tried through our choice of venue and location to give people as much opportunity as we could. We also wanted to make sure everyone, from all walks of life, would feel comfortable and welcome at our events.

We knew it would be a challenge to get people to come to some of our events so we did use some incentives when we could. We gave people a free curry when we held our first event in Port Talbot - which seemed only fair when we were expecting people to come out on a cold, wet, January evening. We also had a tea dance at an event in Denbigh to get people to come along in the afternoon, encouraging them to stay on afterwards for a bit of entertainment. And at the Family Day in Merthyr we gave some of the young mothers hand massages and manicures provided by students from the local college - to give them a treat as a thank you for giving up some of their precious time to join in our debate.

We reached over 1,700 people in total through our events, which was a great achievement. Many might never have engaged with this type of debate before but whose opinions and views were nonetheless extremely important and valuable to us.

Reports of all our events were published on our website - and the evidence we received through the debates and discussions held, and through the questionnaires people completed at our events have helped to formulate the arguments and conclusions you find in this report.

Following is a list of all the public events we held.

Date	Event
14 January 2009 Discussion group	Neath Port Talbot Sandfields Estate, Port Talbot, 82 participants
15 January 2009 Roadshow	Bridgend McArthur Glen Shopping Centre, Bridgend 199 participants
5 February 2009 Roadshow	Caerphilly Castle Court Shopping Centre, Caerphilly 131 participants
25 February 2009 Discussion Group	Conwy Venue Cymru, Llandudno, 37 participants
26 February 2009 Roadshow	Gwynedd Deiniol Centre, Bangor, 131 participants
26 February 2009 Question Time	Anglesey Eglwys Fach Community Centre, Newborough, Panel Members: Sir Emyr Jones Parry; Rev. Hywel Meredydd Davies (Menter Môn); David Lea-Wilson (Halen Môn); and Einir Young (Bangor University). 68 participants
4 March 2009 Question Time	Ceredigion Drwm, National Library, Aberystwyth, Panel members: Sir Emyr Jones Parry; Cllr Keith Evans (Leader -Ceredigion County Council); Tegwen Morris (Merched y Wawr); Ben Hallett (President - Aberystwyth Student Union) 64 participants

5 March 2009 Discussion Group	Carmarthenshire Quins Club, Carmarthen, 96 participants
6 March 2009 Roadshow	Pembrokeshire Farmers' Market, Haverfordwest, 116 participants
10 March 2009 Question Time	Swansea Grand Theatre, Swansea Panel Members: Sir Emyr Jones Parry; District Judge Ray Singh; Councillor Chris Holley (Leader - Swansea City Council); Professor R Gwynedd Parry (Swansea University.) 70 participants
24 March 2009 Question Time	Powys Monty Club, Newtown Panel Members: Sir Emyr Jones Parry; Gwynfor Thomas (YFC Montgomeryshire Federation), Philip Freeman (Powys Arts Forum), and Glyn Davies (former AM). 45 participants
1 April 2009 Question Time	Torfaen Cwmbran Stadium, Cwmbran Panel Members: Sir Emyr Jones Parry; Councillor Fred Wildgust (Torfaen Council); Dr Janet Wademan (Businesswoman); Richard Morgan (Torfaen Devolution Discussion Group). 48 participants
2 April 2009 Discussion Group	Rhondda Cynon Taf Pontypridd Rugby Football Club, Pontypridd 17 participants
21 April 2009 Discussion Group	Denbighshire Town Hall, Denbigh 27 participants
22 April 2009 Question Time	Flintshire Bryn Coch Primary School, Mold Panel Members: Sir Emyr Jones Parry; Jeremy Salisbury (Chair - CBI North Wales); Janet Ryder AM; Mark Isherwood AM; Councillor Tony Sharps (Deputy Leader - Flintshire County Council). 80 participants

23 April 2009 Discussion Group	Wrexham Glyndwr University, Wrexham 28 participants
13 May 2009 Family Day	Merthyr Tydfil Cwm Golau Integrated Children's Centre, Merthyr Tydfil 64 participants
14 May 2009 Question Time	Monmouthshire Monmouth Leisure Centre, Monmouth Panel Members: Sir Emyr Jones Parry; David Davies, MP; Adam Price MP; Terry Bayliss (Farmers First Plc and former Vice President of the Farmers' Union of Wales). 65 participants
10 June 2009 Discussion Group	Vale of Glamorgan Victoria Park Community Centre, Barry 23 participants
11 June 2009 Discussion Group	Blaenau Gwent Llanhilleth Miners' Institute, Abertillery 21 participants
18 June 2009 Discussion Group	Newport Newport Centre, Newport 26 participants
23 June 2009 Roadshow	Cardiff Queen Street, Cardiff 130 participants
25 June 2009 Question Time	Cardiff City Hall, Cardiff Panel Members: Sir Emyr Jones Parry; Helen Mary Jones AM; Nick Ainger MP; Most Rev Barry Morgan, Archbishop of Wales; Lord Tristan Garel-Jones; Professor Richard Wyn Jones (Cardiff University.) 170 participants

Annex E

Consultation Questions

While submissions are welcome on any matter that falls within the Convention's remit, we would particularly welcome your comments on the following:

1. In general, what level of understanding do you think there is in Wales of the current devolution settlement? For example:
 - Is the principle of separation of powers between the Welsh Assembly Government and the National Assembly for Wales ("the Assembly") understood: the executive role of the Assembly Government, and the Assembly's role in scrutinising the Assembly Government?
 - Are the devolved policy areas easily identifiable within Wales?
 - Is the distinction between the Welsh Assembly Government's executive authority in devolved policy areas, and the Assembly's legislative powers in some of those devolved policy areas, like health, understood?
 - The Assembly can, under the present system, gradually acquire legislative powers in a wider range of devolved policy areas. Is this widely recognised?
 - The Assembly carries out its scrutiny role in both plenary and Assembly committees. Is this appreciated?
2. What do you think has been the practical outcome of devolution in Wales? For example:
 - Can you give examples of where devolution has produced results that, in your opinion, better serve the people of Wales than would have been likely or possible before devolution?
 - Can you give examples of where devolution has *not* produced results that, in your opinion, better serve the people of Wales than would have been likely or possible before devolution?
 - Has devolution changed perceptions of Wales, either within or outside Wales, or both?
3. How well, in your view, does the current devolution settlement work? For example:
 - Do the current arrangements allow the Welsh Assembly Government to deliver effective government in devolved policy areas?
 - Do the current arrangements allow the Assembly to provide effective scrutiny of the Welsh Assembly Government?
4. How successful have the Welsh Assembly Government and the Assembly been in dealing with legislation for Wales? Please tell us about any experience or involvement you have had in the legislative process, and any Assembly Measures or pieces of subordinate legislation which have had an effect on any aspect of your life or work.

5. If there were a referendum under the Government of Wales Act 2006, the basic choice would be between sticking with the current arrangements for the Assembly to acquire legislative powers (to pass Measures) in devolved policy areas gradually, through a process where Westminster agrees to transfer powers block by block; or allowing the Assembly to exercise legislative powers (to pass Acts) in the full range of devolved policy areas immediately, by transferring those powers as a package. *[The current powers of the Assembly to pass Measures are as set out in Part 3 and Schedule 5 of the Government of Wales Act 2006; the option of giving the Assembly powers to pass Acts, following endorsement in a referendum, is set out in Part 4 and Schedule 7 of the Government of Wales Act 2006.]*
 - What do you think are the advantages and disadvantages of sticking with the current system, where the Assembly acquires powers to pass Measures gradually? What do you think of the process for acquiring powers to pass Measures, through either a Legislative Competence Order (LCO) or through including provisions in a UK Parliamentary Act?
 - What do you think are the advantages and disadvantages of moving to a system where the Assembly can pass Acts in the full range of devolved policy areas, without having to go through a process of adding powers gradually by agreeing LCOs or provisions in UK Acts?
 - Which of these options do you prefer, and for what reasons?
6. Do you feel that there are any bureaucratic or capacity issues, within the civil service, National Assembly Parliamentary Service, civil society or the legal community that would need to be addressed before powers to pass Acts could be transferred to the Assembly?
7. What do you think the impact of moving to allow the Assembly to pass Acts, as provided for in Part 4 of the Government of Wales Act 2006, would be on the legal system and legal profession in Wales?
8. Do you believe the time is now right for the people of Wales to be given the opportunity to make a judgment, through a referendum, on whether or not to introduce powers for the Assembly to pass Acts, as set out in Part 4 of the Government of Wales Act 2006?

Annex F

Written Evidence

Welsh Assembly Government, National Assembly for Wales, Assembly Commission and Welsh Affairs Committee

First Minister and Deputy First Minister
for Wales

Dame Gill Morgan DBE, Permanent
Secretary Welsh Assembly Government

Assembly Commission
Welsh Assembly Government

Dr Hywel Francis MP, Chair Welsh Affairs
Committee

Janet Ryder AM, Chair Subordinate
Legislation Committee

Sandy Mewies AM, Chair European and
External Affairs Committee

Gwenda Thomas AM, Deputy Minister
Social Services

Gareth Jones AM, Chair Enterprise and
Learning Committee

Organisations

Antur Waunfawr

Association of Chief Police Officers

Bangor University Law School

BBC

Big Lottery Fund

British Medical Association

Campaign for Welsh Post Stamps

Cardiff Law School

Celtic League

Children's Commissioner for Wales

Community Housing Cymru

Confederation of British Industry

Cymru Yfory

Electoral Commission

Electoral Reform Society

Equality and Human Rights Commission

Estyn

European Commission

Federation of Small Businesses

General Teaching Council for Wales

Institute of Chartered Accountants

Keep Wales Tidy

Law Society

Llais Cymru

National Farmers' Union Cymru

One Voice Wales

Parliament for Wales Campaign

Powys Association of Voluntary
Organisations (PAVO)

Presbyterian Church of Wales

Prince's Trust

Public Affairs Cymru

Public Services Ombudsman for Wales

Roman Catholic Bishops in Wales

Royal College of Nursing

RSPB Wales	University of Wales, Newport
Shelter Cymru	Urdd Gobaith Cymru
Sustainable Development Commission	Wales Centre for International Affairs
Sustainable Wales	Wales Council for Voluntary Action
Sustrans	Wales Transport Research Centre, University of Glamorgan
Together Creating Communities	Wales Women's National Coalition
TUC Cymru	Welsh Food Alliance
Undeb Cenedlaethol Athrawon Cymru	Welsh Scout Council
Undeb yr Annibynwyr Cymraeg	Yn Ein Blaenau
UNISON	Young Farmers' Clubs Wales
University of Wales Institute, Cardiff	

Politicians, Political Parties and Elected Officials

Plaid Cymru Caernarfon Branch	Plaid Cymru Parliamentary Group
Plaid Cymru, Penarth Branch	Rhosddu Community Council
Welsh Liberal Democrats	Cyngor Cymuned Llanddyfnan
Gwynedd County Council	Plaid Cymru
Councillor Jacqueline C Maskall, Overton-on-Dee Community Council	UK Independence Party Wales
Councillor Keith Morgan, City and County of Swansea Council	Plaid Cymru London Office
Councillor M. Davies	Mark Williams MP
Gwynedd County Council - signatories	Peter Hain MP
Councillor Richard Bertin, Vale of Glamorgan Council	Rt Hon Lord Roberts of Conwy

Members of the Public - written submissions

Alan Burns	Emrys Bowen	John Turner
Alan Jobbins	Eurfyl Lewis	Joshua Parry
Alan S Gould	F C Harbud	Judy Chaudhri
Alun Barnes	G R Evans	K R Clissett
Alwyn and Nesta Evans	Gareth Woodham	Kevin Burnell
Anne Sizmur	Geraint Williams	Professor Laura McAllister & Diana Stirbu
Anthony Jenkins	Gillian Thomas	Len Gibbs
Barry Archer	Gwynne E Jenkins	Len Walls
Bedwyr Griffiths	Haydn John Lloyd	Leslie Larsen
Bob Bartlett	Heledd Fychan	Lindsay Morgan
Brian Moylan	Howard Jeans	Lionel Jones
Cledwyn Williams	Howard Jenkins	Lisabeth Miles
Colin Ridyard	Hugh Morgan	Llywelyn Rhys
Dr Dafydd Huws	Huw Lewis	Lord Garel-Jones
Dafydd Williams	Dr Huw Llewelyn	Luke Nicholas
David B Lawrence	Huw Prys Jones	Madoc Batcup
David Geldart	Ian and Betty Bevon	Mair Jones
David Humphreys	Dr Ian Johnsnon	Mansel Rees
David Jones	Ian Scott	Mark Griffiths
David Layton	Ivor Cavill	Martin Evans
David Meurig Thomas	Mr J Brown	Martin H Dixon
David T Williams	Mrs J Coward	Councillor M. Davies
D C Sage	J Morgan	Michael Berresford
Dr Denzil S Jones	J Trefor Williams	Michael Edwards
Dewi Rhys-Jones	Miss Jane Jones	Michael Haggett
Dillwyn Williams	Jean Wynne	Michael Townson
Dylan Edwards	Jimmy Price	Mike Morgan
Edgar Pritchard	John Evans	Nigel Pearce
Miss E Harry	John H Tyler	Noel Lewis
Eirian J Williams	John James	Norman Jones
Eirwen Harry	John Oakley	Owain Wyn Jones

Miss P Thomas	Rhydian Fon James	Steve Williams
Pamela Jenkins	Robert Evans	T Elwyn Griffiths
Patricia Larsen	Roger Harris	T Eric Davies
Pat and Wynford Nicholas	Ron Staddon	Tim Thomas
Patrick Soper	Royston Jones	Tudor Eynon
Peter Davies	Dr Russell Deacon	Mr Vivian Parry Williams
Philip Howells	Russell Owen Padre	W D Owen
Philippa Ford	Sam Samuel	W Morgan
R Gwynedd Parry	Shaun Evans	W G Hopkins
R W Evans	Sian Thomas	William H George
R Wolstencroft	Dr Simon Moseley	Anonymous (x2)
Rhobert ap Steffan		

Members of the public - Online Forms

A Thomas	Andy (Caernarfon)	Celia Lewis
A Trimby	Andy (Swansea)	Cerith Rhys Jones
Adam Blacklock	Anna Victoria Harvey	Chad Rickard
Adam Daniels	Anne Wareham	Charlie Wolle
Adam Jones	Anthony Carter	Chris Davies
Alan Bevan	Anthony Powell	Chris Rowlands
Alan Cowley	Mr B Griffiths	Christina Anne Eastwood
Alan Lewis	B James	Mr C Thomas
Alan Lloyd	Barry Taylor	Christopher James Crompton
Alan Parker	Bernise Williams	Clive Ashman
Alan Speake	Bill Griffiths	Clive Evans
Aled Evans	Bob Roberts	Clive Thomas
Alistair Cook	Boyd Williams	Cllr Alun Llewelyn
Alun Evans	Brian Jones	Colin Hughes
Alun John Richards	Brian Phillips	Colin Ridyard
Andrew Brown	Brian Shepherd	Craig (Aberystwyth)
Andrew Eccleshare	Brian Sherwin	Craig (Bridgend)
Andrew O'Marah	C Hyett	Craig (Wolverhampton)
Andrew Torrance	Captain Rod McDonald	Craig (Swansea)

Craig ap Iago	David Pritchard	Gary Smith
Craig Hale	David Williams (Swansea)	Geoff Higgins
Crellin	David Williams (Whitland)	George Kelly
Cris Dafis	Derec Stockley	Gerald Wilson
Cris Haines	Desmond James	Gerry Reynolds
Dafydd Eveleigh	Dewi Owen Jones	Gerry S Rose
Dafydd Glyn Jones	Dilwyn Samuel	Gerwyn Morgan
Dafydd Lewis	DJ	Gerwyn Roberts
Dafydd Owen	Don Bell	Gillian Jones
Daniel Lawrence	Don Cullen	Gina Darling
Darren Jones	Dr Huw David Jones	Glyn
Darren Pardoe	Dyfir Gwent	Glyn Parry
Darren Rogers	Ed	Glyndwr Hughes
Dave Hayes	Edward Kent	GP Bevan
Dave Jones	Edward Thomas	Graham Morris
Dave Taylor	EH Jones	Gregory Lay
David	Eifion	Guto Llewelyn
David A Thomas	Elan Griffith	Gwen Owen
David Cole	Elanor Bateman	Gwynne I Job
David Ferrar	Eric Wyn Roberts	H Duckett
David Hibbert	Esme Le Comte	H E Williams
David Holmes	Evan Thomas	H Owen
David Hughes	Fred Lloyd	Hafina Clwyd
David Humphreys	G Curnell	Harri Davies
David J Thomas	G Madoc-Jones	Haydn John Lloyd
David Jonathan Wheeler	Gareth	Helen Tucker
David Jonathan Williams	Gareth Hillman	Hilary Evans
David Jones (Aberdare)	Gareth Hughes	Huw Morgan
David Jones (Llandinam Mid Wales)	Gareth Watkins	Huw Williams
David Jones (Llanelli)	Gareth Williams (Beddgelert)	Ian Johnson
David Lewis	Gareth Williams (Merthyr Tydfil)	Ian Parri
David Owen	Gareth Wood	Ian Scott

Ian Seaton	Judith Humphries	Mark O'Beirn
Ioan Bellin	Judy Phipps	Mark Roscrow
J Firth	Julia Aspden	Martin O'Sullivan
J Hughes	Julian Hoskins	Mathew Williams
J May	K Clements	Matthew Davies
J Morgan	K Lewis	Matthew Lloyd
James Cranshaw	Keith Blanchard	Maureen Bennett
James Maloney	Keith Parry	MD Thomas
James Thomas	Kelly Ladd	Medwyn Roberts
James Tuttle	Kelvin Owen	Meg Elis
Jamie Jones	Ken Barker	Meic Haines
Jane Griffiths	Ken Baynton	Meic Williams
Jane Z	Kevin	Meurig Parri
Janet Graham	Kevin O'Leary	Michael Andrews
Jeff Thomas	Lawrence Skuse	Michael Berresford
Jess Jones	Lee Jones	Michael Corbett
JF Dulong	Leighton Love	Michael Payne
Jim Keyse	Lesley Williams	Michael Sharp
Joan Willson	Linda Joseph	Morgan
John Howell	Linda Osborn	Murray MacFarlane
Reverend John Jones	Llew ap Gwent	Neil Beattie
John Kilbride	Llywelyn Rhys	Neil Reynolds
John Prosser	Luke Lewis	Nia Lloyd
John Southern	Luke Nicholas	Nicholas Pain
John Syer	Lyn David Thomas	Nicholas Rusbatch
John Turner	Malcolm Taylor	Nigel Morgans
John Tyler	Marek Lowther	Nigel Pope
John Vaughan Williams	Margaret Davies	Nona Evans
Jolyon Higgs	Mark	Norman Bond
Jon Gammond	Mark Brace	Owain Davies
Jon Tuck	Mark Cooke	Owain Sion Gwent
Jonathan Edwards	Mark Griffiths	Owen Bidder
JRL Forbes	Mark Hammond	Owen Davies

P Morse	Rob Jenkins	Stephen Goodland
P Taylor	Rob Phillips	Steve
Patrick McGuinness	Rob Raeder	Steve McGarvie
Paul Din	Robert (Canada)	Stuart Cane
Paul Dinwiddy	Robert (Swansea)	Sue Treseder
Paul Foode	Robert Herritty	Suku
Paul Matthews	Robert Hughes	Susan Leyshon
Paul Moorcraft	Robert Jones	T Hefin
Paul Williams	Robert Wynd	T Williams
Peter (Aberystwyth)	Roger Lewis	Terry Evans
Peter (Wales)	Ron	Thomas
Peter (Swansea)	Russell Jones	Thomas Potts
Peter Brennan	Russell Stubbs	Thomas Williams
Peter Clark	Ruth Gilbert	Tim Williams
Peter Weston	Ruth Susan Harris	Tom Peters
Peter Williams	S Boon	Tony Tanner
RA Griffiths	S Thomas	TRB
Ray Eynon	Sally Hall	Turner
Rebecca Rosenthal	Sam	Vaughan Williams (UK)
Rhodri Glyn	Sam Coates	Victor Martin J Hunt
Rhydian Fon James	Saskia Hamilton-Scott	Vivienne Hadley
Rhydian Mason	Scureton	W Llewelyn
Richard Coupe	Sean Hough	William David Pritchard
Richard John Morris	Shachi Nathdwarawala	William Quinn
Richard Jones	Sharon Mears	Winston Castle
Richard Lake	Shon Hughes	WR Williams
Richard Lewis ap Davies	Sian Bevan	Mrs Y Morris
Richard Sherwood	Sian Esmor Rees	Yvonne Dawkins
Richard Snelson	Sian Myrddin	Anonymous (x46)
Richard Vale	Simon	
Richard Vialls	Simon Watkins	
R I Davies	Steffan Phillips	
Mr RJ Edwards	Stephen	

Annex G

Oral Evidence Sessions

Date	Venue	Evidence received from
5 February 2009	Cardiff	<p>Dr Russell Deacon</p> <p><i>Assembly Commission</i> Adrian Crompton, Director of Assembly Business Keith Bush, Chief Legal Adviser and Director of Legal Services</p> <p><i>Association of Chief Police Officers (ACPO)</i> Chief Constable Barbara Wilding, Chair; Superintendent Tony Mathias</p> <p><i>Welsh Assembly Government</i> Professor Thomas Watkin, First Welsh Legislative Counsel</p>
26 February 2009	Caernarfon	<p>Eirian James</p> <p><i>Antur Waunfawr</i> Gill Wyn, Chair</p> <p><i>Waunfawr Community Council</i> Eurig Wyn, Chair</p> <p><i>Tai Gwynedd Housing Association</i> Dafydd Iwan, Chair</p>
5 March 2009	Carmarthen	<p><i>NFU Cymru</i> Dai Davies, President Huw Rhys Thomas, Assembly Advisor</p>
10 March 2009	Swansea	<p><i>City and County of Swansea Council</i> Councillor Chris Holley, Leader</p> <p>Gareth Woodham</p> <p>Sam Samuel</p>

20 March 2009	Cardiff	<p><i>Public Affairs Cymru</i> Darren Hughes, Chair Llinos Price, Policy Officer</p> <p><i>Sustrans</i> Lee Waters, National Director,</p> <p><i>Llais Cymru</i> James Maiden Margaret Minhinick</p> <p>Martin Fitton</p> <p>David B Lawrence</p> <p>Howard Jeans</p> <p>Adam Price MP</p>
2 April 2009	Newport	<p>Peter Price</p> <p><i>CBI Cymru</i> David Rosser, Chief Executive</p> <p><i>Welsh Liberal Democrats</i> Kirsty Williams AM, Leader</p> <p>David Meurig Thomas</p> <p><i>Welsh Assembly Government</i> Rt Hon. Rhodri Morgan, First Minister for Wales Ieuan Wyn Jones, Deputy First Minister</p>
23 April 2009	Wrexham	<p><i>Presbyterian Church</i> Mervyn Phillips, Chair Rev. Glyn Tudwal Jones, Secretary</p> <p><i>Glyndŵr University</i> Professor Michael Scott, Vice Chancellor Andrew Parry, Executive Advisor to the Vice Chancellor</p> <p>Trefor Jones, Lord Lieutenant of Clwyd</p>

15 May 2009	Cardiff	<i>Sustainable Development Commission</i> Peter Davies, Commissioner
		<i>General Teaching Council for Wales</i> Jacqui Turnbull, Deputy Chairperson Gary Brace, Chief Executive
		<i>Welsh Assembly Government</i> Jeff Godfrey, Director of Legal Services Professor Thomas Watkin - First Welsh Legislative Counsel
4 June 2009	Cardiff	<i>Telesgôp and Papurau Bro</i> Dyfrig Davies, Director of Operations
		<i>Real Radio</i> Sam Fleet, News Editor
		<i>BBC Wales</i> Menna Richards, Director Rhodri Talfan Davies, Head of Strategy and Communications Mark O' Callaghan, Head of News and Current Affairs
		<i>Welsh Local Government Association</i> Councillor John Davies, Leader Steve Thomas, Chief Executive
		<i>Western Mail</i> Alan Edmunds, Editor
10 June 2009	Cardiff	<i>Welsh Assembly Government</i> Emyr Roberts, Director General, Public Services and Local Government Delivery Des Clifford, Head of Brussels Office Elisabeth Jones, Deputy Director of Legal Services Cathy Presland, Head of Planning and Strategy, Welsh European Funding Office Reg Kilpatrick, Head of Local Government Policy David Powell, Head of Local Government Finance Division
		<i>European Commission</i> Andy Klom, Head of Office in Wales

11 June 2009	Cardiff	<i>Wales Council for Voluntary Action</i> Graham Benfield OBE, Chief Executive Michelle Matheron, Senior Policy Officer
		<i>Welsh Centre for International Affairs</i> Gareth Price, Chairman Stephen Thomas, Director
		<i>Cymdeithas yr Iaith</i> Menna Machreth, Chair Dafydd Morgan Lewis, Employed Officer
		<i>Equality and Human Rights Commission</i> Neil Wooding, Wales Commissioner Kate Bennett, National Director for Wales
		<i>Wales Women's National Coalition</i> Naomi Brightmore, Director
15 June 2009	Llandrindod Wells	Tom Jones
		<i>Farmers' Union Wales</i> Gareth Vaughan, President Dr Nick Fenwick, Director of Agricultural Policy
25 June 2009	Cardiff	<i>Cymru Yfory</i> Most Reverend Dr Barry Morgan, Archbishop of Wales Cynog Dafis Geraint Talfan Davies
		<i>One Voice Wales</i> Simon White, Chief Executive Councillor John Harvey
		Janet Ryder AM, Chair of the Assembly's Subordinate Legislation Committee
		Nick Ainger MP
		<i>RSPB Cymru</i> Dr Tim Stowe, Director in Wales Katie-Jo Luxton, Head of Conservation Policy
		<i>Plaid Cymru</i> John Dixon, Chair Gwenllian Lansdown, Chief Executive

Annex H

Dissemination of Leaflets on the All Wales Convention

The following organisations disseminated leaflets about the AWC to their members - either electronically or in hard copy. In total over 60,000 hard copy leaflets have been distributed.

Aelwyd Housing Associations	City and County of Swansea Council	Farmers' Union of Wales
All Wales Ethnic Minority Association	Clwyd Alyn Housing Association Ltd.	Field Studies Council
Bangor University	Coalfields Regeneration Trust	Fire Brigades Union Wales
Beaumaris Town Council	Coastal Housing Group Ltd.	First Choice Housing Association
Brecon Beacons National Park Authority	Communities First	Flintshire County Council
British Medical Association	Conwy County Council	Forestry Commission Wales
Bro Myrddin Housing Association	Countryside Council for Wales	Friends of the Earth Cymru
Bron Afon Community Housing	Cymdeithas Tai Cantref	Girlguiding Cymru
BTCV Cymru	Cymdeithas Tai Clwyd	Groundwork Wales
Cadwyn Housing Association Ltd.	Cymdeithas Tai Eryri	Grŵp Gwalia Cyf
Cardiff County Council	Cymdeithas Tai Hafan	Gwasg Morgannwg
Centre for Alternative Technology	Cynnal Cymru - Sustain Wales	Gwent Wildlife Trust
CEWC- Cymru	Cytûn	Hafod Trust
Ceredigion County Council	Denbighshire Libraries	Hawthorn Leisure Centre
Charter Housing	Disability Wales	Hirwaun Library
Charter Housing Association Newport	Energy Saving Trust	International Centre for Protected
Chartered Institute of Housing Cymru	Fairlake Properties Ltd & Gwent Homes	Isle of Anglesey County Council
Children in Wales	Family Housing Association Swansea	Keep Wales Tidy

Landscapes	Neath Port Talbot College	PAVO / Gennex
Learning Disability Wales	Neath Port Talbot Council	Pembrokeshire County Council
Linc-Cymru Housing Association	Neath Port Talbot Cultural Services	Pembrokeshire Housing Association
Llamau Housing Ltd	North Wales Filipino Association	Planning Aid Wales
Llanddyfnan Community Council	North Wales Housing Association	Plu'r Gweunydd
Llantrisant Leisure Centre	NUS Cymru	Polish Housing Society Ltd.
Llantrisant Library	NUT	Pontyclun Library
Llantwit Fardre Leisure Centre	OM Leisure Facilities	Pontypridd Library
Llanw Llŷn	Ordnance Survey	Porth Library
Llyfrgell Gartholwg	Papur Bro Dail Dysynni	Powys County Council
Mantais	Papur Bro Llafar Bro	Prifysgol Aberystwyth University
Melin Homes	Papur Bro Llais Aeron	Radnorshire Wildlife Trust
Menter Caerdydd	Papur Bro Lleu	Rheolwr PPI
Merlin Homes Ltd	Papur Bro Nene	Rhondda Fach Sport Centre
Merthyr Tydfil Housing Association	Papur Bro Papur y Cwm	RNID Cymru
MEWN Cymru	Papur Bro Papur y Dre	Shelter Cymru
Mid & South Wales Energy Efficiency Advice Centre	Papur Bro Seren Hafren	Sustainable Wales
Mid-Wales Housing Association Ltd.	Papur Bro Tafod Elai	Swansea Metropolitan University
Mudiad Ysgolion Meithrin	Papur Bro Y Ffynnon	Swansea University
Musicians' Union	Papur Bro y Glannau	Taff Housing Association
NAHT Cymru / National Association of School Leaders in Wales	Papur Bro y Pentan	Talbot Green Library
National Lottery	Papur Bro yr Hogwr	The Duke of Edinburgh's Award
National Youth Arts Wales	Papur Dre	The National Botanic Garden of Wales

The Newydd Housing Association	Trinity College Carmarthen	Wrexham County Borough Council
The Open University in Wales	UCAC	Wrexham Library
Tir Coed	Union of Shop, Distributive and Allied Workers	Y Glorian
Tonypandy Library	University of Wales	Young Conwy
Tonyrefail Leisure Centre	University of Wales Lampeter	Ysgol Gymraeg Llundain
Tonyrefail Library	Wales and West Housing Association	
Torfaen County Borough Council	Welsh Scout Council	