



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

Government of Wales Bill 2005-06

Abstract

This paper provides background briefing on the *Government of Wales Bill 2005-06* which received its First Reading in the House of Commons on 8 December 2005.

The Bill gives effect to the proposals in the White Paper *Better Governance for Wales*: to formally separate the Executive and legislative parts of the Assembly; reform existing electoral arrangements; and enhance the legislative powers of the Assembly.

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Government of Wales Bill 2005-06

Alys Thomas

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Executive Summary

The *Government of Wales Bill* takes forward the proposals included in the White Paper, *Better Governance for Wales*, published in June 2005. In particular:

- ◆ The Bill introduces an unusual way of legislating. The Assembly will be able to pass "Assembly Measures" to legislate, so long as it relates to a matter that has been specified in an Order in Council as falling within its competence. The Secretary of State will have the power to block an Assembly Measure in some circumstances. The Assembly itself will bid for the Orders in Council that specify its competence, and the Secretary of State has a wider power to block these.
- ◆ The Bill also provides for primary legislative powers ("Assembly Acts"), but these will not come into force unless approved in a referendum and, before that, by both Houses of Parliament and by a two-thirds majority in the Assembly. The referendum would be unusual in that it would be commissioned by Order in Council rather than by a separate Act of Parliament.
- ◆ The Bill effects a formal separation between the legislature and the executive. As a result of this, the existing institution called "the National Assembly for Wales" will cease to exist, and its body corporate status will disappear. A new legal personality must be created to enable the new legislature, also called the National Assembly for Wales, to enter contracts, hold property and perform other legal acts. The Bill achieves this by establishing an Assembly Commission, modelled after the House of Commons Commission and the Scottish Parliamentary Corporate Body.
- ◆ The Bill also sets up a new Welsh Consolidated Fund.
- ◆ The Bill makes a number of changes to electoral arrangements. By far the most controversial is the prohibition on candidates simultaneously standing in a constituency election and appearing on a regional list. The same system is in operation in Scotland and the Government currently has no plans to change it there.

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Government of Wales Bill 2005-06

1 Introduction

The Government of Wales Bill was introduced into the House of Commons on 8 December 2005 and is due to receive its Second Reading on 9 January 2006. The National Assembly for Wales is scheduled to discuss the Bill in Plenary on 18 January. The Bill gives effect to the proposals set out in the White Paper, *Better Governance for Wales*, which was published in June 2005. These are: to effect formal separation between the Executive and Legislative parts of the Assembly; to make changes to electoral arrangements to the Assembly and to enhance the Assembly's legislative powers.

2 Background

2.1 The Richard Commission

The Richard Commission on the Powers and Electoral Arrangements of the National Assembly for Wales was appointed by the First Minister in July 2002 to review:

- ◆ the scope of the Assembly's powers: whether they are adequate to meet the needs of Wales; and
- ◆ the number of elected Assembly Members and their method of election.

The Chair, Lord Richard of Ammanford, was appointed by the First Minister, four members were nominated jointly by the leaders of the four political parties in the Assembly and five were chosen through public advertisement and interview.

The Report was published in March 2004 and its key recommendations were that:

- ◆ there should be a legislative Assembly for Wales;
- ◆ in the interim, the framework delegated powers approach should be expanded as far as possible with the agreement of the UK Government and Parliament;
- ◆ if a legislative Assembly is constituted, tax-varying powers are desirable, but not essential;
- ◆ to exercise primary powers, the Assembly needs an increase in membership to 80 Members;
- ◆ the Assembly should be reconstituted as a separate legislature and executive;
- ◆ the present voting system cannot sustain an increase to 80, and the best alternative is the Single Transferable Vote system;
- ◆ these changes should be in place by 2011, or sooner if practicable.

2.2 Assembly Response to the Report of the Richard Commission

Further to the publication of the Richard Commission report in March 2004, the National Assembly for Wales passed a resolution in October 2004¹, calling on the First Minister to urge the Secretary of State for Wales to bring forward proposals to amend the *Government of Wales Act 1998* for the following purposes:

¹ RoP, 6 October 2004, p.33

<http://assembly/rop/ROP/Plenary%20Session/2004/October/rop041006fv7.pdf>

- ◆ the separation of the legislative and executive arms of the National Assembly for Wales and the distribution of powers between the two arms;
- ◆ enhanced legislative powers; and
- ◆ the correction of some anomalies in the electoral system for the Assembly.

2.3 Labour Party Manifesto 2005

In the 2005 General Election the Welsh Labour Party manifesto stated that:

In a third term we will legislate for a stronger Assembly with enhanced legislative powers. We will improve the accountability of Ministers by ending the confusing corporate status of the Assembly, thereby ensuring that the people of Wales know who is responsible for the decisions taken in their names.

The manifesto also contained a commitment to reform the Assembly's electoral system.²

Commenting on the commitment to introduce a *Government of Wales Amendment Bill* in the Queen's Speech, the Secretary of State for Wales, the Rt.Hon. Peter Hain MP stated:

We will introduce a Bill following publication of a White Paper to develop democratic devolution in Wales, with our clear commitment to enhance the Assembly's powers while reforming its structure and electoral system to make a more accountable legislature for the people of Wales.³

2.4 Better Governance for Wales White Paper

In June 2005 the UK Government White Paper, *Better Governance for Wales* (Cm.6582) was published. It set out how the UK Government intended to fulfil these policy commitments. The paper proposed a formal separation of the executive and legislative branches of the Assembly by ending its status as a corporate body and changing the nature of executive authority so that the First Minister and Ministers are appointed by the Monarch. It also proposed to legislate in order to prevent candidates standing in constituencies as well as on the regional list.

With regard to the legislative powers of the Assembly, the UK Government proposed to increase these in three stages by:

- ◆ Ensuring that primary legislation is drafted in a consistent way in relation to Wales and one that gives the Assembly maximum discretion in making its own provisions, so called 'framework powers'.
- ◆ Introducing primary legislation to put in place a procedure that will enable Parliament to give the Assembly powers to modify legislation or make new provision on specific matters or within defined areas in currently devolved functions. This will involve Orders in Council being made at the Assembly's request and passed by Parliament using the affirmation procedure.
- ◆ Introducing the possibility of primary legislative powers if approved by votes in both Houses of Parliament, the Assembly and in a referendum.

² The Welsh Labour Manifesto 2005, *Wales: Forward not Back*, pp.108-110

³ Wales Office Press Release, *New Government 'hits the ground running' with bumper Queen's speech for Wales – Peter Hain*, 17 May 2005: http://www.walesoffice.gov.uk/pn_20050517.html

2.5 *Better Governance for Wales White Paper Committee*⁴

Following the release of the White Paper, the Assembly established a committee to consider the proposals set out for the proposed new structure and its legislative powers. The Committee reported back to the Assembly in Plenary on 21 September 2005 before submitting its report to the UK Government in mid September.⁵

The Committee took evidence from a wide range of witnesses including party leaders; committee chairs; the Permanent Secretary; trade unions; senior parliamentary officials from Scotland and Westminster and academics. Much of the evidence given probed the likely procedures for an Order in Council in the Assembly and in Westminster and the resulting changes in the volume and nature of the work of the Assembly in committees and plenary.

2.6 *Welsh Affairs Committee Inquiry*⁶

The House of Commons Welsh Affairs Committee began an inquiry into the White Paper in October 2005. The Report was published on 13 December 2005. Its recommendations are included in **Annex 1**. The Parliamentary timetable meant the inquiry concluded outside of the consultation period set out for the White Paper but the Report stated:

We trust that the Government and Members of the House will wish to draw upon our Report and its findings during the Second Reading debate and the debate in Committee on the Bill during its passage through Parliament.⁷

The Report made a number of observations and recommendations which will be alluded to in the paper. A key point made by the Committee was that it felt that a draft Bill would have been more appropriate.

We are not convinced that the deadline of the 2007 National Assembly elections would have debarred the Government from publishing a draft Bill and still completing the Parliamentary process for the Bill in this very long session. Given that it is a constitutional Bill, we are disappointed that the Government have shied away from its commitment to publish draft legislation on this occasion.⁸

⁴ Better Governance for Wales White Paper Committee, *Report of the Better Governance for Wales White Paper*, LD3999, 13 September 2005.

<http://www.wales.gov.uk/keypubassembettergov/content/bgw-report.pdf>

⁵ RoP p47, 21 September 2005

<http://assembly/rop/ROP/Plenary%20Session/2005/September/rop050921fv7.pdf>

⁶ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-2006.

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmwelaf/551/55102.htm>

⁷ *Ibid.*, p.7, para. 16.

⁸ *Ibid.*, p.10. para. 29.

3 Structure of the Bill

The Bill transposes and modifies the *Government of Wales Act 1998* as well as delivering the new structures, powers and electoral arrangements. The reasons for this were set out by the Secretary of State when he appeared before the Welsh Affairs Committee in November.

Mr Crabb: In response to our concerns about the complexity of the proposals, Alan Cogbill assured us that the Bill will be "coherent and free standing". What do you understand that phrase to mean?

Mr Hain: I think he meant there would be one single Government of Wales Act. There is an existing Government of Wales Act 1998 but, as my memorandum makes clear, around 120 of the clauses in the new Bill - to become an Act, we hope - will be transposing and modifying the existing legislation. There will be around 40 new clauses, mainly dealing with the enhanced powers and the reforms there. Rather than cross-referencing the whole time, the Parliamentary Council advised us it is better to have a single piece of legislation which would be, as it were, the Bible for devolution.⁹

The Bill has 6 Parts, 164 Clauses and 8 Schedules. The Parts of the Bill relate to:

- the National Assembly for Wales;
- the Welsh Assembly Government;
- Assembly Measures;
- Acts of the Assembly;
- Finance and Miscellaneous and Supplementary issues.

4 Part 1: The National Assembly for Wales

The Bill provides for the establishment of a legislative body called the National Assembly for Wales and for its membership. The corporate body as created by the *Government of Wales Act 1998* ceases to exist.

Apart from the proposed changes to the rules regarding dual constituency and list candidacy (covered on page 26 of this paper), the Bill largely re-enacts the provisions relating to the election of the 60 Members of the Assembly seen in the 1998 Act. A new provision, equivalent to s.3 of the *Scotland Act 1998*, is made by clause 5 of the Bill to allow for an extraordinary Welsh general election to be held (see page 11 of this paper).

4.1 The Presiding Officer and the Clerk

As in the *Government of Wales Act 1998*, the Bill provides for the election of a Presiding Officer (PO) and a Deputy Presiding Officer (DPO). The Bill modifies the requirement in the 1998 Act that the PO and DPO should not 'represent the same party' to require that they should not be from the same political group or both be members of political groups with an executive role. Therefore, if a coalition government were formed, at least one would need to be appointed from a political group in opposition.¹⁰ However, the Bill does allow for this to be changed by two-thirds resolution in the Assembly.

⁹ Ibid. Minutes of Evidence, 10 November 2005, Q.189

¹⁰ *Government of Wales Bill*, Bill 100, 2005-06, Clause 25.

The Presiding Officer's functions under the Bill are listed in **Annex 2**.

The Bill requires the appointment of a Clerk of the Assembly.¹¹ The functions of the Clerk under the Bill can be seen in **Annex 3**.

4.2 *Standing Orders*

When the White Paper was published the proposal that the Secretary of State should make Standing Orders on behalf of the Assembly was the subject of considerable debate. In evidence given to the Assembly's Better Governance for Wales Committee the First Minister explained how he hoped the process would operate:

The Secretary of State has been quite clear that he does not want the job of drawing up the Assembly's Standing Orders, but he may need to be involved in resolving any stalemate that could arise. So, if the Assembly can come together to prepare a new set of Standing Orders that are appropriate to the consequences of the Bill, as and when it gets passed, and provided that we have solid evidence of cross-party consensus on it, I am sure that the Secretary of State can sign it off. He has to have a reserve power in case we cannot come to an agreement. That is the dilemma that we all face. We all accept on principle that it is better for the Assembly to do it than the Secretary of State, but how do we get going here, post Bill, if there is no agreement on Standing Orders. I hope that we can resolve that in advance of the next Assembly elections.¹²

In its Report the Better Governance for Wales Committee stated:

We are confident that Members will be able to come together to write a set of Standing Orders which will govern our proceedings in the new Assembly. The Bill may need to contain default powers to allow the imposition of Standing Orders if no agreement can be achieved – we cannot have an Assembly elected in 2007 without Standing Orders – but we are confident that these default powers will not need to be invoked. If they were invoked, it would do nothing for the credibility of our institution. **We recommend that the Bill contain only default powers to allow the imposition of Standing Orders in areas where the Assembly has not been able to agree.**¹³

The Welsh Affairs Committee, while accepting the legal requirement for the Secretary of State formally to make the first set of new Standing Orders, pronounced itself "less convinced with the need for that Office to be the final arbiter of any disagreement over those Orders". It instead recommends that the Bill should include provisions to ensure that the Presiding Officer, subject to the approval of the Secretary of State for Wales, be the arbiter on Standing Orders for the National Assembly.¹⁴

Paragraph 18 of Schedule 11 of the Bill sets out how the new Standing Orders are to be made. They must be made by the Secretary of State by 31st March 2007 but this formal procedure allows for the current Assembly itself to draft the Standing Orders of the new body. In making the Standing Orders, the Secretary of State must give effect to proposals submitted to him by the Assembly (as currently established) no later than 28th February 2007, provided that those proposals have been approved by a two-thirds voting majority in the Assembly. As a minimum, the Standing Orders have to include the mandatory provisions required by the Bill (listed in **Annex 4**). Both the Standing Orders made by the

¹¹ Ibid. Clause 26

¹², RoP, 11 July 2005, Better Governance for Wales Committee, p.33
<http://www.wales.gov.uk/keypubrecordproceedings/content/bgw-050711.htm>

¹³ Better Governance for Wales Committee, *Report of the Committee on the Better Governance for Wales White Paper*, LD3999, 13 September 2005, para 130

¹⁴ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, p.23, para. 81.

Secretary of State, and the Assembly's proposals as to what provisions they should include, must be made in both English and Welsh.

4.3 Assembly Commission

A key change arising from the re-constitution of the National Assembly as a legislative body, distinct from the Executive, is the need to establish an Assembly Commission to enable administrative and legal arrangements to be made for employing staff, holding property, purchasing services, entering into contracts and so on.

Such arrangements already exist in Scotland and Westminster. The *Scotland Act 1998* required the creation of the Scottish Parliamentary Corporate Body (SPCB)¹⁵. The SPCB is made up of the Presiding Officer; and four other members of the Scottish Parliament elected by the Parliament. It appoints the Clerk and other staff of the Parliament and considers and makes decisions on a wide range of issues to do with the running of the Parliament including the allocation of its budget. The House of Commons Commission is responsible for its finances and staff and was created by the *House of Commons (Administration) Act 1978*. It requires that the Commission should have six members: the Speaker as Chairman; the Leader of the House; a Member of the House nominated by the Leader of the Opposition (normally the Shadow Leader of the House); and three other Members none of whom may be a Minister.

The Bill creates an Assembly Commission comparable to the SPCB and the House of Commons Commission. It provides for the establishment, membership and functions of the Commission and for it to provide the Assembly (or to arrange for the Assembly to be provided) with the staff, property and services required for the its purposes.

The Commission will consist of the Presiding Officer and four other Assembly Members. Detailed arrangements for the Assembly Commission are set out in Schedule 2. The Measure making powers covered in Part 3 of the Bill will allow the Assembly to confer further functions on the Commission.

As with the staff of the House of Commons and the Scottish Parliament, the staff of the Assembly (current Assembly Parliamentary Service staff), will be employed by the Commission and so will no longer be civil servants. Schedule 2 Paragraph 3 of the Bill requires that the procedures for recruitment and selection and the terms and conditions of Assembly staff must be 'broadly in line' with those of the Welsh Assembly Government.

4.4 Committees

In regard to the current operation of Assembly Committees, the White Paper observed that while devolution had ensured greater scrutiny of Government in Wales, committee engagement in policy development as well as scrutiny, can lead to insufficient time for questioning Ministers. Furthermore, as noted by the Richard Commission Report, some committees find it difficult to switch from a consensual approach to one more appropriate to the scrutiny of Ministers.¹⁶ The White Paper set out the UK Government's belief that legal separation of Ministerial executive authority from the National Assembly will facilitate more detailed scrutiny of Ministers' actions.¹⁷ In order to achieve this the White Paper proposed to remove the requirement for Ministers to sit on Assembly Subject Committees in the 1998 Act.¹⁸ The Bill also places Deputy Ministers on a statutory footing for the first

¹⁵ *Scotland Act 1998*, s.21.

¹⁶ Wales Office, *Better Governance for Wales*, White Paper, June 2005. Para .1.15

¹⁷ *Ibid.* Para.2.1

¹⁸ *Government of Wales Act 1998*, s.57(4))



time. The Better Governance for Wales Committee drew attention to the impact of excluding Ministers and Deputy Ministers on the pool of Members available to sit on committees:

In an Assembly of 60 Members, if one party of, say, 30 forms a Government, it may have 13 Ministers and Deputy Ministers and one of the Presiding Officers. That would leave only 16 other Members of the Government party to make up the majority on all committees. We assume that committees' workloads are to increase significantly. If committees meet weekly, then it will be impossible to have Members serving on more than one principal committee and perhaps one subsidiary committee. In these circumstances, to distribute 16 Members around committees so that they form half of each means that we could only have three principal committees of 10 Members, or four of eight, or five of six".¹⁹

The White Paper also undertook to deliver 'a more wide-ranging reform' which would allow the Assembly to decide for itself the number, membership and roles of its committees, in line with the position in Scotland. Clause 28 of the Bill provides for this greater freedom by allowing the Assembly by its Standing Orders, to make provision for the establishment of committees, and for such committees to establish sub-committees.²⁰ Standing Orders must make provision about the membership, chairing and procedure of committees and sub-committees and may make provision for excluding an Assembly member from the proceedings of a committee or sub-committee if the Assembly member is not a member of the committee or sub-committee. However, in line with what was highlighted in the White Paper, the Bill does not specify what those committees should be so there is no requirement for the creation of subject committees, a legislation committee or of a north Wales regional committee as in the *Government of Wales Act 1998*. As stated in the White Paper, the only committee specified in the Bill is the Audit Committee.²¹ The Bill states that the Audit Committee cannot be chaired by an Assembly Member from a political group with an executive role.

4.5 Composition of Committees

Clause 29 of the Bill relating to the composition of committees is more prescriptive than both the 1998 Act and the blueprint set out in the Government's White Paper. The White Paper stated that, 'The Assembly should generally be able to establish such committees as it sees fit, in accordance with its Standing Orders. The only legislative control which should be required would be to lay down the principle that in determining the membership of such committees as the Assembly chooses to set up it should have regard to the balance of the political parties in the Assembly'. This was analogous to the situation in the Scottish Parliament where the *Scotland Act 1998* makes only basic reference to committees. Most requirements on committees in Scotland are left to Standing Orders. The requirement for regard to be had to the balance of the parties in the Scottish Parliament when deciding the make-up of committees is included in the Act.²²

Clause 29 requires that the allocation of seats on committees between different political groups must be made according to a formula – the d'Hondt formula, named after the Belgian mathematician and psephologist who invented it. The formula is used to calculate the allocation of regional list seats in Assembly elections and in the *Northern Ireland Act 1998* to allocate committee chairs and deputy chairs in the Northern Ireland Assembly. In Scotland, an attempt was made to apply d'Hondt principles to committee membership at

¹⁹ Better Governance for Wales Committee, *Report of the Committee on the Better Governance for Wales White Paper*, LD3999, 13 September 2005, para 46.

²⁰ *Government of Wales Bill 2005-06*, Clause 28.

²¹ *Ibid*, para.2.14-17; Clause 30.

²² *Scotland Act 1998*, Schedule 3 paragraph 6(2).



the outset but this was abandoned when changes were made to accommodate the minority parties with a single member (an account is included in **Annex 5**).²³ d'Hondt principles are, however, used in allocating Members to the equivalent of the Business Committee and selecting Conveners (chairs).²⁴ West Germany ceased using the d'Hondt method to distribute Committee seats in the Bundestag in 1970. The current Bundestag website states that the system was changed because it "tended to favour the larger parties".²⁵

One body which does use the d'Hondt formula to select its committees is the European Parliament but this is not prescribed by its Rules of Procedure. Committees of the European Parliament range between 25 and 78 MEPs.

The formula is set out below:

The first seat on each committee is allocated to the political group with the largest number of Assembly members.

The second seat is then allocated by comparing the figure X produced in relation to each political group by the formula:

$X = A/(B + 1)$ where:

A = the number of seats in the Assembly currently held by members of the political group; and B = the number of seats on the committee that are already allocated to members of that political group.

After the first seat is allocated to the largest political group X will be equal to A /2 for that group and will be equal to A for all the others. The second seat on the committee is to be allocated to the political group which has the highest value for X at this stage.

B is then adjusted for the party to which the second seat has been allocated and X is re-calculated for each political group and the revised value of X for each group is compared. Once more the political group with the highest value of X is allocated the next seat on the committee.

The process is repeated until all the seats on the committee have been filled.

Subsection (7) requires Standing Orders to specify how ties (i.e. cases where the calculation produces the same figure for X for two or more political groups) are to be resolved.

The Bill allows Standing Orders to provide for the provisions requiring allocation of seats by d'Hondt formula to be disappplied in relation to a particular committee provided the proposal to do so is supported by two-thirds of the Assembly members voting.²⁶

In addition, Standing Orders must, so far as is reasonably practicable, having regard to the total number of committee seats available, ensure that every Assembly member is entitled to be a member of at least one committee, and that the total number of committee seats allocated to each political group is at least equal to the number of Assembly members belonging to that group.²⁷

The following table illustrates the effect of applying the d'Hondt formula in its pure form to the current make up of the Assembly. In practice, Standing Orders would need to provide for the modification of the formula's effect as described below. The effect of the formula in

²³ Scottish Parliament, Official Report, 17 June 1999.

²⁴ Scottish Parliament, Parliamentary Bureau.

²⁵ German Bundestag website

http://www.bundestag.de/htdocs_e/orga/03organs/03elders/01elderinf.html

²⁶ *Government of Wales Bill, 2005-06*, Clause 29(8)

²⁷ *Ibid.*, Clause 29 (9) (b).

the current Assembly would mean, for example, that a 6 Member committee would contain 4 Labour Members and one each from Plaid Cymru and the Conservatives. A 7 Member committee would see the addition of a Liberal Democrat Member, an eighth seat would go to Plaid Cymru²⁸ and so on.

Table 1: Numbers on committees, using d'Hondt formula, and percentage this represents

Total number of members on committee	Numbers chosen by d'Hondt					Percentage representation				
	Lab	PC	Con	LD	Other	Lab	PC	Con	LD	Other
<i>overall balance</i>	29	12	11	6	2	48.3	20.0	18.3	10.0	3.3
6	4	1	1	0	0	66.7	16.7	16.7	-	-
7	4	1	1	1	0	57.1	14.3	14.3	14.3	-
8	4	2	1	1	0	50.0	25.0	12.5	12.5	-
9	5	2	1	1	0	55.6	22.2	11.1	11.1	-
10	5	2	2	1	0	50.0	20.0	20.0	10.0	-
11	6	2	2	1	0	54.5	18.2	18.2	9.1	-
12	7	2	2	1	0	58.3	16.7	16.7	8.3	-

Source: Members' Research Service

The need to modify the application of the formula to ensure that all AMs are members of committees raises a number of issues, such as:

- ◆ how Standing Orders will be drafted to allow for this and the balance they will find between the strict application of the formula at one extreme and modification that is so extensive as to leave the formula irrelevant at the other;
- ◆ the committees to which the formula and modifications should apply;
- ◆ how the allocation of committee seats would operate if the Assembly were to choose a model of ad hoc legislative committees to consider Assembly Measures, rather than the Scottish model of scrutinising legislation in permanent subject committees.

4.6 Power to call

Section 74 of the *Government of Wales Act 1998* relates to the power of the Assembly and its committees to require attendance and production of documents. These powers are limited to members and staff of bodies listed in Schedule 5 of the Act, such as ASPBs. In contrast, the comparable sections of the *Scotland Act 1998* refer to the power to summon "any person".²⁹

The Bill strengthens the power of the Assembly to summon people to give evidence and to produce documentation, extending the power to "any person". It states:

- 1) Subject as follows, the Assembly may require any person—
 - (a) to attend Assembly proceedings for the purpose of giving evidence, or
 - (b) to produce for the purposes of the Assembly (or a committee of the Assembly or a sub-committee of such a committee) documents in the possession, or under the control, of the person, concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions.

²⁸ There is, in fact, a tie between the Liberal Democrats and Plaid Cymru for the seventh place – the example assumes that smaller parties would receive the first seat arising from ties.

²⁹ *Scotland Act 1998*. Ss.23-26

The Assembly may, therefore require any "person"³⁰ to attend Assembly proceedings to give evidence, or to produce documents which are in that person's possession or control, concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions and provided the person in question is involved in the exercise of functions or the carrying on of activities in relation to Wales.

However, some exemptions are specified:

- ◆ Current or former members of staff of the Welsh Assembly Government, or current or former secondees. Where such a person is required to give evidence or produce documents, then any of the Welsh Ministers, the First Minister or the Counsel General can issue a direction that the person summoned need not comply, and that a specified replacement is to comply instead. This means that it is for the Welsh Ministers to decide which of their staff should appear before the Assembly or its committees. Welsh Ministers will ultimately be answerable to the Assembly for their decisions to direct that a different member of staff from the one identified by the Assembly is to appear.
- ◆ Current or former Ministers of the Crown, or on anyone serving, or who has served, in a Minister of the Crown's department, in relation to the exercise of the functions of a Minister of the Crown.
- ◆ Current full-time judges are immune from being required to give evidence or produce a document. Other current and former members of courts (e.g. lay magistrates and Recorders), and current or former members of tribunals, are immune only in relation to the exercise of their functions as such.

4.7 Corporate Duties on the Assembly

The *Government of Wales Act 1998* places a number of statutory duties on the Assembly in relation to its interface with Local Government, the Voluntary Sector and Business³¹ and in terms of its requirement to promote and mainstream Equality of Opportunity and Sustainable Development.³²

The White Paper stated:

Some specific statutory duties are laid on the Assembly as a corporate whole by the Government of Wales Act. Examples are those requiring it to publish an annual report on its arrangements for securing equality of opportunity in discharging its functions, and to make a scheme setting out how it proposes, in the exercise of its functions, to promote sustainable development. Since these functions are to be exercised in future by Welsh Assembly Ministers rather than by the Assembly as a whole, the corresponding duties will also fall on Ministers. In the same way, Ministers will in future be responsible for discharging the various duties currently laid on the Assembly to establish partnership or consultative arrangements with business, local government and the voluntary sector (although it would of course remain possible for AMs, including those from opposition parties, to attend such meetings at Ministers' invitation).³³

The Better Governance for Wales Committee Report recommended that separate equality of opportunity duties should be placed upon the Government and the Assembly Commission as is appropriate to their different roles, and that both be required to lay a report annually before the Assembly. It also recommended that obligations relating to

³⁰ "Person" is intended to have the same meaning as in the Interpretation Act 1978, i.e. it applies to public bodies and officers, as well as to private bodies such as companies, trusts etc.

³¹ *Government of Wales Act 1998*, Ss.113-115

³² *Ibid.* S.120,121

³³ Wales Office, *Better Governance for Wales*, White Paper, June 2005. Para.2.13

5 Part 2: The Welsh Assembly Government

Part 2 of the Bill, with Schedule 3, establishes the Welsh Assembly Government (Llywodraeth Cynulliad Cymru) as a separate entity from the National Assembly for Wales. The Welsh Assembly Government comprises the First Minister (Prif Weinidog)³⁸, other Welsh Ministers (Gweinidogion Cymru), and Deputy Welsh Ministers (Dirprwy Weinidogion Cymru) and the Counsel General to the Welsh Assembly Government (Cwmsler Cyffredinol i Lywodraeth Cynulliad Cymru). The Welsh Assembly Government remains accountable to the National Assembly.

A key difference from the *Government of Wales Act 1998* is the way in which the First Minister and the Cabinet are appointed. Currently the Assembly delegates power to the First Minister and he, in turn, delegates power to Ministers. This theoretically allows for the possibility of what the current First Minister once termed 'the nuclear option' of the Assembly taking back the powers delegated to the First Minister. The White Paper stated:

That is, in the Government's view, far too insecure a foundation on which to build effective government for Wales in a sustainable way. It means, for example, that on a single vote in plenary, the Assembly could move from a Ministerial to a committee-based model of decision-making.³⁹

5.1 Appointment

The Bill provides for the First Minister to be elected by the Assembly and then appointed by the Monarch on the recommendation of the Presiding Officer.⁴⁰ The First Minister may then, with the approval of the Monarch, appoint Welsh Ministers⁴¹ and Deputy Ministers⁴² from among Assembly Members. Unlike in Scotland, these appointments need not be approved by the Assembly itself. The Bill places a limit of 12 on the number of Ministers and Deputy Ministers, excluding the First Minister and Counsel General.⁴³

The Bill provides for the appointment of a Counsel General to the Welsh Assembly Government who will act as a legal adviser and its representative in the courts.⁴⁴ This role is analogous with the role of the Attorney-General and Solicitor General in the UK Government. The Counsel General will be appointed by the Monarch on the recommendation of the First Minister but the recommendation for the appointment must be approved by the Assembly. The person appointed need not be a member of the Assembly, although an Assembly Member could serve as Counsel General (the First Minister, Ministers and Deputy Ministers are expressly forbidden to do so in the Bill). The Explanatory Notes to the Bill describe the office as "of 'ministerial' status" but the holder is not one of the 'Welsh Ministers'.⁴⁵

The Better Governance for Wales Committee noted the new status of the Counsel General but indicated the need for clarity with regard to legal advice for the Assembly rather than the Assembly Government.

The Counsel General, as a Minister, will not be the appropriate source of legal advice to the Presiding Officer, committees, Members and the Legislature's staff. It will be

³⁸ The Welsh language terminology is included in the Bill.

³⁹ Wales Office, *Better Governance for Wales* White Paper, June 2005. Para.2.4

⁴⁰ *Government of Wales Bill* 2005-06, Clause 46.

⁴¹ *Ibid.*, Clause 48.

⁴² *Ibid.*, Clause 50.

⁴³ *Ibid.*, Clause 51.

⁴⁴ *Ibid.*, Clause 49.

⁴⁵ *Government of Wales Bill*, Explanatory Notes (Bill 100-EN) para.229.



very important, however, that sound legal advice is available to them. For example, we would expect the Presiding Officer to need to take advice on the legality of draft legislation, just as the Government does. This is what happens in Scotland. This will be a matter which the new Commission, and, in advance of it, the House Committee, will need to consider. There is also a reference in the White Paper to the Counsel General having the power "to refer to the courts any issue as to whether the Assembly (acting as a legislature) [is] acting within [its] legal powers". It will be important for the legislation to make it clear that the Counsel General will not be in a position to go beyond the sorts of powers which the Lord Advocate has in respect of the legal competence of the Scottish Parliament, and that he or she will not, for example, have any special ability to call into question before the courts the decisions of the Presiding Officer. **We recommend that there be a clear separation between the role of Counsel General and the legal advice to the Assembly.**⁴⁶

5.2 Choosing the First Minister

While the First Minister is appointed by the Monarch, the Bill sets out the procedure for the Assembly to choose the First Minister. The Bill provides for the Assembly to nominate one of its members for appointment as First Minister and for the Presiding Officer to recommend the appointment of that person to the Monarch.⁴⁷

Nomination of an Assembly Member for appointment as First Minister is triggered by one of these events:

- ◆ the holding of a poll at a general election;
- ◆ the Assembly resolving that the Welsh Ministers no longer enjoy the confidence of the Assembly;
- ◆ the First Minister tendering resignation to the Monarch;
- ◆ the First Minister dying or becoming permanently unable to act or to tender resignation;
- ◆ the First Minister ceasing to be a member of the Assembly, other than on a dissolution (e.g. by resigning from the Assembly).

Once one of these events occurs, the Assembly must nominate a First Minister before the end of the period of 28 days after the occurrence of the event in question. If the Assembly fails to make a nomination within the period allowed, then the Secretary of State is required to propose a day for the holding of an extraordinary general election.⁴⁸

5.3 Dismissal

The First Minister can remove Ministers and Deputy Ministers from office at any time and they cease to be Ministers if they resign as Assembly Members.

If the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly, the Bill provides that all Welsh Ministers and Deputy Welsh Ministers resign with immediate effect. The First Minister remains in office with all the functions of that office and of the Welsh Ministers generally, until the Assembly nominates a First Minister (or re-nominates the same person as First Minister). The First Minister could therefore, during that period, appoint Ministers if this were necessary for the efficient and effective administration of government, for example in case of emergencies.

⁴⁶ Better Governance Wales Committee, *Report of the Committee on the Better Governance for Wales White Paper*, LD3999, 13 September 2005, para.18

⁴⁷ *Government of Wales Bill 2005-06*, Clause 47.

⁴⁸ *Ibid.*, Clause 5.

5.4 *The Name of the Government*

The Bill states that the Welsh Assembly Ministers collectively will be known as the Welsh Assembly Government. This was a matter of some disagreement in the Better Government Wales Committee between some of the Members and the Assembly Government. Its Report stated:

Many of our witnesses disliked this title. Professor McAllister called the name “ugly and, at times, confusing”. The Leader of Plaid Cymru also thought the term “rather perpetuates the current confusion”, and expressed his preference for the term “Welsh Executive”. The Leader of the Welsh Liberal Democrats and the Leader of the Welsh Conservatives also favoured the term “Welsh Executive”. The First Minister argued that retaining the title “Welsh Assembly Government” was intended to keep things simple, and we acknowledge that the title now has some currency. However, he did not press any argument of principle for the title. Indeed, there are reasons for change: “Welsh Assembly” was deliberately avoided in 1998 because of the somewhat exclusive sense in the adjective “Welsh”. And to describe a Government as an “Assembly Government” is to risk perpetuating the mixing of the two branches. We do not talk of the “UK Parliamentary Government”. Ashok Ahir of the BBC made it clear that the greater the distinctness between the names of the two successor institutions, the easier it would be for the media to explain. We understand that “Welsh Executive” does not find favour with some, who argue for “Government of Wales”. However, the United Kingdom Government might find that title too difficult to contemplate. Clearly there is no consensus on this issue. **We propose that the Bill allows the Welsh Assembly Government to change its title itself in the future if a consensus can be established.**⁴⁹

⁴⁹ Better Governance for Wales Committee, Report of the Better Governance for Wales White Paper, 13 September 2005, p.14, para. 20.

6 Legislative Powers

The White Paper included proposals for a 3 stage process towards the Assembly acquiring primary legislative powers.

Stage 1 would involve conferring wider powers on the Assembly to make subordinate legislation under the current settlement.

Stage 2 (addressed by Part 3 of the Bill) is an Order in Council mechanism which would allow Parliament to confer enhanced legislative powers on the Assembly in relation to specified subject matter within devolved fields.

Stage 3 (addressed by Part 4 of the Bill) authorises the Assembly to make law on all the matters within its devolved fields of competence without further recourse to Parliament, subject to a referendum.

In an article in the *Western Mail* publicising the launch of the Bill the Secretary of State noted that the Bill will put primary legislation powers for Wales on the Westminster statute book for the very first time.⁵⁰

6.1 Stage 1: Framework Powers

The First Stage flagged up in the White Paper does not require the Bill to be enacted and indeed it is already being implemented through the existing settlement. The Report of the Better Governance for Wales Committee stated:

The White Paper is clear that there will be no delay in bringing this particular proposal into force. It tells us that "the Government intends immediately, in drafting primary legislation relating to Wales, to delegate to the Assembly maximum discretion in making its own provisions, using its secondary legislative powers". The First Minister told us that, as far as he was aware, London Departments were now aware of this new principle, and were implementing it, and Hugh Rawlings said that all Bill teams had been informed.

The first example of a "framework" provision of this kind is contained in the *NHS Redress Bill*, which was introduced in the House of Lords on 12 October 2005. Explanatory Notes to the *NHS Redress Bill 2005* state:

Clause 17 of the Bill gives a regulation-making power to the National Assembly for Wales. The broad framework power enables the National Assembly by regulations to make any provision that could be made by an Act of Parliament (subject to certain limitations) with regard to providing a mechanism for the out-of-court settlement of claims in tort arising out of services provided as part of the health service in Wales.⁵¹

In a reply to an oral question in Plenary, the First Minister gave an assurance that the UK Government was applying this approach across the board.

Glyn Davies: I am concerned about the mechanism by which we ensure that maximum framework powers are contained in Bills. Will you give a commitment that you want to see maximum framework powers in the Bills? To ask a more difficult question perhaps, as a result of your discussions, can you give an absolute commitment that the Secretary of State for Wales is also committed to maximum framework powers in all Bills that affect Wales

⁵⁰ Rt. Hon. Peter Hain MP, "Another new dawn for devolution", *Western Mail*, 8 December 2005.

⁵¹ *NHS Redress Bill* [HL] 2005-06

Rhodri Morgan: Absolutely, and it is the second of those questions that is material, rather than the first: namely the Secretary of State for Wales's commitment, and the fact that he can give that commitment as Leader of the House on behalf of Her Majesty's Government as a whole. Obviously, that is dealt with at the Westminster end. It is Westminster that brings forward England and Wales Bills, and it is the commitment to follow that practice, even in advance of the new Bill, that is material here. The Government is operating on that basis. New Bills that are being introduced into the Houses of Parliament now, are being done on the basis of framework provisions for Wales, when that is in a devolved area.⁵²

6.2 Stage 2: enhanced Legislative Competence for the National Assembly (Orders in Council and Assembly Measures)

Part 3 of the Bill introduces the new mechanism proposed in the White Paper, by which legislative competence will be conferred on the Assembly by way of Orders in Council. The Assembly's legislation in exercise of these functions will be known as Assembly Measures.

6.2.1 Assembly Measures

The Bill gives the Assembly the power to make a type of subordinate legislation in relation to Wales called "Measures of the National Assembly for Wales" in English, or "Mesurau Cynulliad Cenedlaethol Cymru" in Welsh. The ultimate right of Parliament to legislate in relation to Wales, even on a matter over which legislative competence has been conferred on the Assembly, is preserved.

6.2.2 Legislative Competence

Clause 93 of the Bill, along with Schedule 5, sets out the extent of the Assembly's power to make Measures (the Assembly's "legislative competence"). Provided it complies with the limits set by Clause 93 and by Schedule 5, an Assembly Measure can have the same effect as an Act of the UK Parliament. In other words it can, for example, modify existing Acts of Parliament or other enactments and it can make new provision not covered by existing statutes.

A provision of an Assembly Measure is within the Assembly's legislative competence if:

- ◆ the provision in question relates to one of the "matters" specified in Part 1 of Schedule 5; and
- ◆ the provision in question applies only in relation to Wales, and does not confer, impose, change or remove (or give anyone else the power to confer, impose, change or remove) functions exercisable other than in relation to Wales; or
- ◆ if it provides for the enforcement of a Measure, is appropriate to make a Measure effective or is otherwise consequential on a Measure.⁵³

A list of devolved fields and the "matters" referred to are set out in Schedule 5, Part 1. The list broadly follows that in Schedule 2 to the *Government of Wales Act 1998*, with additions reflecting further functions allocated to the Assembly since 1999. The Schedule shows that the Assembly could make Measures relating to the internal arrangements of the Assembly straightaway (Field 13) but other matters will be added to reflect the framework powers the Assembly has acquired and if and when the Assembly acquires further powers through Orders in Council. A complete list of Fields and Matters listed in Schedule 5 can be seen in **Annex 6**.

⁵² RoP, 29 November 2005, pp.11-12

⁵³ *Government of Wales Bill 2005-06*, Clause 93(4)&(5).

Clause 94 provides for the amendment of Schedule 5 through Orders in Council. These can:

- ◆ add to, remove or change the fields set out in Part 1 of Schedule 5;
- ◆ list a matter or a further matter under a field, or remove or change a matter already listed;
- ◆ amend Parts 2 or 3 of Schedule 5, which set out general restrictions on the making of Assembly Measures, and exceptions to those restrictions.

A field can not be added to Schedule 5 if it is one in which no functions are exercisable by the Welsh Ministers, the First Minister or the Counsel General.

6.2.3 Procedures for Orders in Council

The Secretary of State fleshed out his thoughts on the Bill's procedures for Orders in Council in his Written Memorandum to the Welsh Affairs Committee:

In circumstances where the Assembly Government has initiated the proposal, the main stages will normally include:

- ◆ Preparation of a draft Order in Council following discussion between the Welsh Assembly Government, relevant Whitehall Departments, and the Wales Office. This will focus on ensuring there is clarity about the vires/scope of the Order in Council and confidence that it will give the necessary legislative competence to enable the Assembly Government's policy objective to be achieved.
- ◆ Pre-legislative (non-statutory) scrutiny of a preliminary draft Order by the National Assembly and Parliament. The precise nature of pre-legislative scrutiny undertaken by the National Assembly and Parliament will be a matter for those two institutions to determine. The processes will not be prescribed in the Government of Wales Bill. This stage will enable modifications to be made to the draft, if necessary, in the light of comments made.
- ◆ The formal (statutory) processes for the National Assembly and both Houses of Parliament to give their approval to the final draft Order in Council, modified as appropriate following the pre-legislative scrutiny processes. At this stage the Order in Council will not be amendable as both the National Assembly and Parliament will need to approve identical text.⁵⁴

The Secretary of State also added that the Welsh Affairs Committee "will no doubt have a particular interest in considering and setting out its views on the pre-legislative scrutiny arrangements which should operate in Westminster" and flagged up the "useful work" it had done in examining draft bills affecting Wales jointly with Assembly Committees. He concluded: "The House may decide it wishes the Committee to continue this approach in relation to Orders in Council."

The Welsh Affairs Committee took issue with the fact that the line of communication relating to Orders in Council lay with the Government and that the Secretary of State would hold the power to refuse requests for Orders in Council received from the Assembly. Its report states:

⁵⁴Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, *Written Memorandum from the Secretary of State for Wales and the First Minister for Wales, EV57, p.3, para.10.*



Orders in Council may be instigated not only by the Welsh Assembly Government, but also by individual Assembly Members or National Assembly Committees. Should a Welsh Assembly Government request be refused we can see some logic in the Secretary of State responding to the First Minister. However, that logic does not apply to Orders in Council that have been instigated through the non-Government route. The procedure for a refusal needs to be consistent. In light of the fact that the National Assembly, as the legislature will approve all Orders in Council, we consider it more appropriate for the response be sent to the Presiding Officer and not the First Minister.

6.2.4 Procedures for Assembly Measures

When the Better Governance for Wales Committee sat there was considerable discussion about what the procedures would be for making Orders in Council and Assembly Measures. The Better Governance for Wales Committee Report stated:

Our inquiry has thrown up some very contrasting views on the processes for Orders in Council, both in the Assembly and in Parliament. As the Clerk of the House of Commons put it, "how it would work exactly is not clear in the White Paper". Professor Miers's evidence suggested that the process of obtaining an Order in Council would be complex, lengthy and fraught with obstacles. He described a procedure where a motion of great detail is put to the Assembly. Effectively he seemed to envisage a draft Order in Council, which set out its intention in detail, going through an evidence-taking and legislative procedure in the Assembly. The Order in Council would then pass through the Secretary of State filter, with the Secretary of State possibly wishing to modify aspects of the Order in Council to ensure it was "legally and constitutionally unimpeachable". He then suggested that parliamentary committees would apply the rigour which has been shown by the Delegated Powers and Regulatory Reform Committee to the Order in Council, with special attention to any Henry VIII powers. Professor Patchett thought that "at least in the early stages, more probably for a longer period, the Orders in Council will not be simple documents at all".⁵⁶

The Bill imposes certain requirements in relation to the introduction into the Assembly of proposed Assembly Measures.⁵⁷ It states that a proposed Assembly Measure may, subject to provisions of Standing Orders, be introduced by the First Minister, any of the Welsh Ministers, any Deputy Welsh Minister, the Counsel General or any Assembly Member ("Private Members' legislation").

The person in charge of a proposed Assembly Measure must, on or before the Measure's introduction, make a statement expressing their view that the provisions in the Measure are within the Assembly's legislative competence.

The Presiding Officer of the Assembly must, on or before introduction of a proposed Measure, decide whether or not it is within the Assembly's legislative competence and state that decision.

The Bill requires the Assembly's Standing Orders to contain certain provisions in relation to the consideration and passing of Assembly Measures, one of which is that a Measure must, generally, pass through three stages. This is in line with procedure in Westminster and in Scotland where the *Scotland Act* requires a three stage Bill scrutiny process, with the detail of these defined by the Parliament's Standing Orders.

⁵⁵ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, p.39, para.132.

⁵⁶ Better Governance Wales Committee, *Report of the Committee on the Better Governance for Wales White Paper*, LD3999, 13 September 2005.

⁵⁷ *Government of Wales Bill 2005-06*, Clause 96.

- ◆ There must be a general debate and a vote on its general principles.
- ◆ There must then be a stage involving consideration of and a vote on, the details of the Measure, corresponding to the committee stage of a Bill at Westminster and in Scotland.
- ◆ There must be a stage at which members can vote on whether to pass the Measure in its final form, equivalent to the Third Reading at Westminster.⁵⁸

However, the Bill states that Standing Orders may allow a different procedure in the case of Measures which fall within certain categories, namely those which restate the law, those which repeal or revoke spent enactments and "private" Assembly Measures⁵⁹. In the case of the first two, Standing Orders may permit a streamlined procedure whilst in the case of "private" proposed Measures procedures they could include an opportunity for individuals affected to make representations to the Assembly, as in the case of private Parliamentary Bills.

Standing Orders must include provision that a proposed Assembly Measure can only be passed if the text of the proposed Measure is in both English and Welsh (although Standing Orders may specify exemptions).

Once a proposed Measure has been passed by the Assembly, the Clerk submits it for approval by the Queen in Council. Once it has been approved the Clerk must write the date of that approval on the text of the Measure, must publish the instrument by which the Measure was approved and must, in accordance with Standing Orders, notify the Assembly of the date of the approval.

The Bill gives the Secretary of State the power to intervene and prohibit the Clerk from submitting a proposed Measure for approval if he or she has reasonable grounds to believe that its provisions:

- ◆ would have an adverse effect on matters which are not within the legislative competence of the Assembly;
- ◆ might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England; would have an adverse effect on the operation of the law as it applies in England; or
- ◆ would be incompatible with any international obligation or the interests of defence or national security.

6.2.5 *Scrutiny of Secondary Legislation*

In his Memorandum to the Welsh Affairs Committee, the Secretary of State said:

The National Assembly for Wales is an elected legislative body with extensive scrutiny procedures for dealing with subordinate legislation made under framework provisions. We will ensure that this position is maintained in the future in relation to any broad law-making powers conferred on the Assembly under framework provisions. The intention is that any such powers contained in Acts of Parliament enacted before the Government of Wales Bill itself becomes an Act would transfer to the Assembly, rather than to the Welsh Ministers in May 2007. This would be achieved by converting them, by means of an Order, into Assembly Measure-making powers. Other powers previously conferred on the Assembly by Acts of Parliament – ie the usual powers which Whitehall Ministers have to make statutory

⁵⁸ *Government of Wales Bill 2005-06*, Clause 97(1).

⁵⁹ Note: there is a difference between 'Private Members' legislation, which will allow individual AMs to introduce their own Assembly Measures, and 'private' Assembly Measures which would have only local or personal, rather than general, effect. The Bill does not *require* the Assembly to have any procedures for private Assembly Measures.

instruments, orders, regulations, directions etc – will generally be transferred to Welsh Ministers for future exercise.⁶⁰

The Better Governance for Wales Committee Report raised the issue of how secondary legislation made by Welsh Ministers after 2007 should be scrutinised stating that "it would be preposterous for Welsh Ministers to have *more* powers to make secondary legislation than their Whitehall equivalents." It concluded that:

Where the Assembly has already been given powers which are more extensive than Whitehall Ministers, those powers should, post 2007, reside with the Assembly as a whole, rather than the Welsh Ministers. These framework powers should be implemented by Assembly Measure, a process which we will describe when we discuss Stage 2. We do not underestimate the difficulties in drafting the forthcoming Wales Bill which this will cause, but **we recommend that any secondary legislative power which has been given to the Assembly since 1999 or which will be given by primary legislation from now on should, if that power is more extensive than powers given to Whitehall Ministers, only be exercisable by Assembly Measure after 2007, and that Standing Orders ensure effective scrutiny of any powers directly vested in Assembly Ministers by Westminster.**⁶¹

There are currently three ways in which Parliament approves secondary legislation at Westminster:

- ◆ Legislation which may be made and come into effect without any reference to Parliament or that which is laid before Parliament but on which there are no parliamentary proceedings.
- ◆ Negative instruments that are laid before Parliament and may come into effect immediately or at a future date unless either House resolves that the instrument is annulled.
- ◆ Affirmative instruments that come into effect after they have been approved by a resolution both Houses of Parliament.⁶²

In the 2001-2002 session of Parliament, which was a comparatively long session, 262 Affirmative Instruments were approved and 1,468 negative instruments were laid.

6.3 Stage 3

Part 4 of the Bill give the Welsh Ministers the power, by Order, to bring into force the Bill's Assembly Act provisions (Stage 3) following endorsement in a referendum. The Order must be approved by the Assembly.⁶³

6.3.1 Referendum

The triggering of the referendum is subject to an Order in Council which must be approved by the Assembly, the House of Commons and the House of Lords. However, before such an Order can be laid it requires more than two-thirds of Assembly Members to have voted a resolution in favour. Nor can it be laid until the Secretary of State "has undertaken such consultation as the Secretary of State considers appropriate".⁶⁴

⁶⁰ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, *Written Memorandum from the Secretary of State for Wales and the First Minister for Wales, EV57. p.2, para.6.*

⁶¹ Better Governance for Wales Committee, *Report of the Committee on the Better Governance for Wales White Paper*, LD3999, 13 September 2005, p.32, paras.68 & 69.

⁶² ROGERS, R. AND WALTERS, R., 2004. *How Parliament Works*. 5th ed. London: Pearson-Longman.

⁶³ *Government of Wales Bill 2005-06*, Clause 104.

⁶⁴ *Ibid.*, Clause 102.

Once the resolution is passed the First Minister must ensure that it is presented in writing to the Secretary of State who is required, within 120 days, to either lay before Parliament a draft Order in Council which will initiate a referendum, or give formal notice refusing to do so which sets out the reasons for that refusal.

6.3.2 *Acts of the Assembly*

As soon as the Assembly Act provisions have come into force following the approval an order made by the Welsh Ministers, Part 3 of the Bill relating to Assembly Measures will cease to have effect and the Assembly will no longer have the power to make Measures. The vehicle for laws that might formerly have been made by Assembly Measure will, from then on, be Acts of the Assembly. Assembly Measures which have already been enacted will continue to be law.

The Bill confers on the Assembly the power to make legislation in relation to Wales called "Acts of the National Assembly for Wales", or "Deddfau Cynulliad Cenedlaethol Cymru".⁶⁵ They are referred to in the Bill as Acts of the Assembly. It also confirms that the power of the UK Parliament to legislate in relation to Wales, if it chooses to do so, will not be affected.

A proposed Act of the Assembly (to be known as a Bill) will become law when:

- ◆ it has been passed by the Assembly (or "approved" by the Assembly, in the case of a Bill which has been reconsidered), and
- ◆ it has received Royal Assent.

Clause 107 and Schedule 7 set out the extent of the Assembly's power to make Acts:

- ◆ the provision in question must relate to one or more of the subjects listed under any of the headings Part 1 of Schedule 7.
- ◆ the provision in question must not fall within any of the exceptions listed in Part 1 of Schedule 7;
- ◆ the provision in question must apply only in relation to Wales, and it must not confer, impose, change or remove (or give anyone else the power to confer, impose, change or remove) functions to be carried out in relation to countries other than Wales (e.g. England).

Schedule 7 Part 1 sets out "Subjects" which would be within the legal competence of the Assembly and the "Exceptions". For example, the Assembly would be able to legislate on the Welsh Language ("Subject" 20 of Schedule 7) but not on Welsh language broadcasting (listed as an exception under "Subject" 3, Culture). This arrangement contrasts with the *Scotland Act 1998*, which lists reserved powers outside the legislative competence of the Scottish Parliament. The Secretary of State and the First Minister outlined the reasoning for this in their Memorandum to the Welsh Affairs Committee. They drew attention to the fact that Scotland had its own "legal jurisdiction" and "an ability on the part of its legislature to change basic principles of law and specific rules which have a general impact across almost all day-to-day activities is consistent with this situation". Wales, however, forms part of a single unified England and Wales jurisdiction with a common courts system, judges who can act throughout the two countries and lawyers who practice in a way which does not distinguish between England and Wales. Although, the Assembly may be able to make laws which apply in relation to activities in Wales

⁶⁵ Ibid., Clause 106



under Part 4 of the Bill, these will be part of the general law of the jurisdiction of England and Wales. The Memorandum continues:

If the Assembly had the same general power to legislate as the Scottish Parliament then the consequences for the unity of the England and Wales legal jurisdiction would be considerable. The courts would, as time went by, be increasingly called upon to apply fundamentally different basic principles of law and rules of law of general application which were different in Wales from those which applied in England. The practical consequence would be the need for different systems of legal education, different sets of judges and lawyers and different courts. England and Wales would become separate legal jurisdictions.

The model of the *Scotland Act 1978*, rather than the *Scotland Act 1998* is, therefore, deemed more appropriate for Wales by the UK Government for reasons of complexity arising from its lack of distinct legal jurisdiction.⁶⁶

⁶⁶ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, Minutes of Written Evidence, *Written Memorandum from the Secretary of State for Wales and the First Minister for Wales, EV57. Annex 2, p.9*

7 Part 5: Finance⁶⁷

7.1 *The Welsh Consolidated Fund*

The Bill establishes the Welsh Consolidated Fund (WCF), into which the funds voted by Parliament to the Secretary of State for Wales will be paid.⁶⁸ Sums may normally only be paid out of the WCF on the authority of a Budget resolution passed by the Assembly. Thus, the creation of the WCF provides the mechanism whereby the Assembly will control the use of resources by the Welsh Ministers and other bodies and offices funded directly from the WCF.

The Bill requires the Secretary of State to lay a written statement (Statement of Estimated Payments) before the Assembly at least four months before the beginning of each financial year.⁶⁹ The statement must contain an estimate of the total payments that the Secretary of State will pay into the WCF in that financial year. It must also contain an estimate of how much will be paid to the Welsh Ministers, the First Minister or the Counsel General in that financial year (whether by Ministers of the Crown, government departments or other persons), together with any other information that the Secretary of State considers appropriate. The statement must also show how much of the Welsh Block Grant voted to the Secretary of State for Wales by Parliament the Secretary of State proposes to deduct to meet the expenses of the Secretary of State's own department, the Wales Office, before paying the remainder into the WCF.

The Secretary of State gave further clarification about the Welsh Consolidated Fund in a Supplementary Memorandum to the Welsh Affairs Committee:

The size of the Welsh Consolidated Fund will be determined in essentially the same way as the Welsh Block is currently, and will be accounted for transparently to enable scrutiny. However payments out of the Welsh Consolidated Fund will only be made if authorised by a Budget Resolution passed by the Assembly. The only exceptions to this will be the distribution of National Non-Domestic Rates and the costs of the Auditor General for Wales and Public Services Ombudsman for Wales. The independence of these office-holders from the Welsh Assembly Government will be assured through arrangements whereby their costs will be charged directly on the Welsh Consolidated Fund (and therefore not subject to a vote in the Assembly), though these will be transparent arrangements to ensure that both bodies account publicly for their funding requirements.⁷⁰

Payments out of the WCF which have been authorised (or deemed authorised) by a Budget resolution of the Assembly, still cannot be made except to meet expenditure of a "relevant person", or expenditure payable out of the WCF by virtue of legislation. A "relevant person" for these purposes is defined, in subsection (3), as any of:

- ◆ the Welsh Ministers, the First Minister or the Counsel General;
- ◆ the Assembly Commission;
- ◆ the AGW, or
- ◆ the Public Services Ombudsman for Wales

Clauses 124 and 125 of the Bill set out the process of Budget resolutions. For each financial year, the First Minister or another Welsh Minister must move a Budget motion in

⁶⁷ The Members' Research Service will shortly be producing another Research Paper with a detailed focus on financial aspects of the Bill.

⁶⁸ *Government of Wales Bill 2005-06*, Clause 116 & 117.

⁶⁹ *Ibid.*, Clause 118.

⁷⁰ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, Supplementary Written Memorandum, 18 November 2005, EV80.

the Assembly. Normally, the Budget resolution for each financial year will be approved by the Assembly in the previous financial year. The Budget motion must seek the Assembly's approval for:

- ◆ how much, in terms of resources, can be used on the services and purposes specified in the motion in the financial year to which it relates;
- ◆ how much, in terms of accruing resources, any of the relevant persons (for which see above) can retain (rather than paying those resources into the WCF) for use on the services and purposes specified in the motion; and
- ◆ how much money can be paid out of the WCF in the relevant financial year for use on those services and purposes.

The Bill provides that as a minimum, there must be one Budget motion per year, known as the "annual Budget motion". As stated above, this will normally be moved and passed before the beginning of the financial year to which it relates. However, supplementary Budget motions may be moved in relation to a financial year. These may be moved before the beginning of the financial year to which they relate, in the financial year to which they relate, or in a subsequent financial year. They may authorise additional resources to be made available for the services and purposes specified in the annual Budget resolution or they may specify new services and purposes, and allocate resources to those. They can also authorise any of the relevant persons to retain further amounts of resources, on top of those which the annual Budget resolution allowed them to retain, rather than paying these into the WCF. And finally, as with annual Budget motions, supplementary Budget motions can seek authority for the issue of cash out of the WCF.

The Bill requires the budget for the Assembly Commission to be set on a motion from the First Minister or one of the Welsh Ministers. The Better Governance for Wales Committee endorsed the principle set out by the Commonwealth Parliamentary Association/World Bank Institute Study Group on Administration and Financing of Parliament, that 'parliaments should have control of, and authority to set and secure, their budgetary requirements unconstrained by the Executive'⁷¹

⁷¹ Better Governance for Wales Committee, *Report of the Committee on the Better Governance for Wales White Paper*, LD3999, 13 September 2005, p.16, para 23.

8 Changes to the Electoral System

The White Paper stated that individuals should no longer be able to be candidates in constituency elections and at the same time be eligible for election as regional members from party lists. The Bill lays down rules in relation to entitlement to be a candidate for Assembly constituencies and electoral regions at a general election. A person may not be a candidate for more than one constituency; a person may not be included by a registered political party in its list of candidates for more than one electoral region. Nor may a person who is a candidate for any constituency be included in any of a party's regional lists. Similarly, a person may not be an individual candidate for an electoral region if that person is also a candidate for any constituency or on any list of candidates submitted by any registered political party for any electoral region.⁷²

The Bill also requires Standing Orders to make provision, either directly or by a code or protocol, about the different roles and responsibilities of Assembly constituency and regional members. Assembly regional members are to be prohibited from describing themselves in a way suggests that they are Assembly constituency members, and vice versa.⁷³

These proposals have proved highly contentious with a clear split between the Governments in Cardiff and Westminster and the Opposition parties. The Governments' contention is that the provisions will tackle what has been termed the "Clwyd West problem". In that constituency, five candidates stood for election in the 2003 National Assembly elections. One candidate was successful in becoming the constituency Member, while another three became Assembly Members as additional candidates elected from their respective parties' regional lists. The Government's view is that such an outcome "devalues the integrity of the electoral system in the eyes of the public and acts as a disincentive to vote in constituency elections".

The Better Governance for Wales Committee did not include the proposals in its remit and the Welsh Affairs Committee, while conceding that 'the Committee found little support for the Government's proposed solution to this problem, i.e. to ban dual candidacy', it concluded:

Taking into consideration evidence to the Committee, informal feedback from the public and written evidence submitted to the Committee, we support the proposals for electoral reform as laid down in the White Paper.⁷⁴

In its response submitted to the Wales Office on the White Paper the Electoral Commission⁷⁵ challenged the Government's assertion that there was widespread disquiet about the "Clwyd West" question:

In the time available to respond to the White Paper, it has not been feasible for us to commission public opinion research on the issue of dual candidacy. Drawing on our quantitative and qualitative research on public attitudes to the National Assembly election in 2003, however, we note that the 'Clwyd West problem as described in the White Paper did not emerge in any of our attitudinal research about voting in the election. As our research included unprompted questions to the public about their

⁷² *Government of Wales Bill*, 2005-06, Clause 7.

⁷³ *Ibid.*, Clause 36(6)

⁷⁴ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-2006, pp.44-46, paras. 150, 156.

⁷⁵ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, Minutes of Evidence, Electoral Commission Submission, EV37.

http://www.walesoffice.gov.uk/2005/bqfw/bqfw_electoral_commission_the_y_comisiwn_etholiadol.pdf

reasons for voting or not voting, this may suggest that there was in fact low public salience of the issue at the time.

It also outlined some international comparisons, estimating that there were about 30 countries with mixed or additional member electoral systems (AMS). It stated:

Compensatory systems with lists, like that used for the National Assembly elections, normally explicitly or implicitly permit dual candidacy. They normally require that in the event of double success, the successful candidate must sit as a member for the constituency.

It went on to state that to the best of its knowledge prevention of dual candidacy had only been tried in the Ukraine, prior to the 2002 Parliamentary elections there. It had also been considered in Quebec (Canada) in 2003. Although the Quebec review acknowledged concerns that defeated constituency candidates were being 'recycled' as regional AMs, the review board concluded that dual candidacy should be mandatory.

In his evidence to the Welsh Affairs Committee the First Minister said that the Electoral Commission had made "some poor unsupported claims" and he challenged their international evidence.⁷⁶

Dr Jonathan Bradbury of Swansea University and Dr Meg Russell of the Constitution Unit stated in their written evidence to the Welsh Affairs Committee that:

The Welsh system has most in common with the systems recently proposed in New Brunswick and Prince Edward Island in Canada. Both have considered reform in the context of a Westminster system, in which the simple plurality voting system has been used in single member districts. In New Brunswick the proposal has been for an almost identical 2/3 constituency 1/3 list seats split in an assembly of very similar size to the Welsh Assembly. The expectations are that reform would relax the dominance of a single party, guarantee the existence of an effective opposition, as well as allow a range of executive outcomes. It is precisely in this system that the proposal to disallow dual candidacy has also been made.

The lesson to draw from this discussion is that one should be very careful how one places the NAW into comparative perspective. Comparison with MM systems⁷⁷ as a whole is problematic given the fact that the bulk are of the MMM type⁷⁸. Even within the family of MMP⁷⁹ electoral systems the National Assembly system is quite distinctive and has relatively few close comparators.

Several witnesses who gave evidence to the Welsh Affairs Committee, including the Electoral Commission and academic witnesses, raised concerns about the perception that the changes are being made for reasons of partisanship. For example, Dr Richard Wyn Jones and Dr Roger Scully of Aberystwyth University stated in their written submission:

Any changes [*to the Electoral System*] that create the perception of partisanship—of being done to serve interests of some parties against others—are therefore highly problematic by definition, and may well undermine public confidence. At the very least,

⁷⁶ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, Minutes of Evidence, 10 November 2005.Q252

⁷⁷ Mixed Member

⁷⁸ Mixed member Majoritarian

⁷⁹ Mixed-Member Proportional (MMP) systems where half or some portion of the seats in the legislature are elected from single member districts, and half are allocated on a compensatory basis to insure that each party receives the same proportion of seats as its proportion of the total vote.



such changes should have other compelling, overwhelming advantages if they are to be justifiable.⁸⁰

The Electoral Reform Society, while accepting the critique of AMS, concluded:

We are nevertheless deeply concerned that the proposal of the White Paper is one that will do little if anything to improve the electoral system, is one that will have little impact on the Labour Party in Wales, but is one that will be of great disadvantage to the opposition parties in Wales which fight constituency seats but generally rely on list seats for their representation. Some might surmise that, given the very flimsy democratic reasons for the White Paper's proposals, the real intention is to put obstacles in the way of the Government's opponents. We would hope that any Government would be extremely cautious in proposing changes which are likely to be to its electoral advantage, but where the Government holds a majority on only 35% of the vote (and only 42.7% of the vote in Wales) we would be opposed to any change on which there was not a broad consensus.⁸¹

When the Secretary of State appeared before the Committee he strongly refuted the charge of partisanship.

The idea that this is a party-biased proposal is simply flatly wrong. There are six Labour Assembly Members, currently, including three ministers, who are in directly elected constituency seats who are vulnerable to losing those seats on swings of less than 3%. Now you could say that as a Government and Welsh Labour as the party and the author of that policy, we are effectively discriminating against at least six of our own members but we do not have the ability to give them the lifebelt of standing in both categories.⁸²

⁸⁰ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, EV14, Written Evidence, 18 October 2005.

⁸¹ *Ibid.*, EV.84, Written Evidence, 10 November 2005.

⁸² Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06, Minutes of Evidence, 10 November 2005.

9 The Role of the Secretary of State

The Bill contains a continuing role for the Secretary of State for Wales in aspects of the relationship with Westminster and the UK Government. Some of these have already been touched on above and a list of relevant clauses can be found in **Annex 7**.

The Bill retains a clause⁸³ entitling the Secretary of State for Wales to participate, but not to vote, in proceedings of the Assembly, and to have access to documents relevant to those proceedings. The Bill also states that Standing Orders may make provision for the participation of other Ministers of the Crown and of civil servants in proceedings, and for them to have access to documents and information relevant to their participation. Again there is to be no entitlement to vote.⁸⁴

The Bill also retains the requirement for the Secretary of State for Wales to consult the Assembly about the UK Government's legislative programme and must participate in a plenary session of the Assembly at least once in the session. The Secretary of State can participate by actually attending the plenary session, or by video link. Where, after the beginning of the session, it is decided that a bill should be introduced into Parliament and that bill has not been included in the Secretary of State's initial consultation with the Assembly, then the Secretary of State must consult the Assembly about it (unless it appears to the Secretary of State to be inappropriate to do so).

10 Miscellaneous Powers

10.1 Power of Well-being

Clause 60 empowers the Welsh Ministers to do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of Wales. Local authorities have similar powers under section 2 of the *Local Government Act 2000*.

At a recent meeting of the Local Government and Public Services Committee, the Welsh Local Government Association gave evidence on how the power was being utilised by Local Government:

Firstly, the power was intended to give authorities legal capacity to achieve their social, economic and environmental objectives, and provide a 'safety net' where there were uncertainties over legal capacity in a complex and incremental legislative framework. Secondly, the power gave legitimacy and authority to the community leadership role of local government as set out in the Act, in the leading of local partnerships to achieve common ends under community strategies and other local strategies, and in the delivery of flexible services of its own to meet shared local objectives. The experience of the use of the power demonstrates that the second of these two characteristics has been the more significant.

The WLGA deemed the power to be important for local authorities in providing a "legal comfort" to authorities in interpreting the legislative framework and in being assured of the legal capacity to act.⁸⁵

⁸³ *Government of Wales Bill 2005-06*, Clause 32 (1).

⁸⁴ *Ibid.*, Clause 32 (3) (b)

⁸⁵ National Assembly for Wales, Local Government and Public Services Committee Paper, (LGPS(2)-12-05(p4)), 30 November 2005. <http://www.wales.gov.uk/assemblydata/N000000000000000000000000038350.pdf>



10.2 Power over Culture etc

Clause 61 re-enacts a similar section in the 1998 Act. It states that the Welsh Ministers may do anything which they consider appropriate to support Welsh Culture. However, the clause is drafted in more specific way and lists specified aspects of culture: archaeological remains in Wales, ancient monuments in Wales, buildings and places of historical or architectural interest in Wales, historic wrecks in Wales, arts and crafts relating to Wales, museums and galleries in Wales, libraries in Wales, archives and historical records relating to Wales, cultural activities and projects relating to Wales, sport and recreational activities relating to Wales, and the Welsh language.

10.3 Other Powers

The Better Governance for Wales Committee Report recommended that section 33 of the 1998 Act be re-enacted in respect of the Legislature. Section 33 allows the Assembly to consider and make representations about any matter affecting Wales. The Bill retains this provision in clause 62 in respect of the Welsh Assembly Government. However, if the WAG may make representations about any matter affecting Wales, it follows that the Legislature (to which the WAG will be accountable) may do so also.

A Annex 1 Welsh Affairs Committee Report on the Better Governance for Wales, White Paper: Conclusions and Recommendations⁸⁶

Government White Paper

1. The reconstitution of our Committee and the Parliamentary timetable meant that our inquiry concluded outside of the consultation period set out for the White Paper. However, we trust that the Government and Members of the House will wish to draw upon our Report and its findings during the Second Reading debate and the debate in Committee on the Bill during its passage through Parliament. (Paragraph 16)
2. We welcome the intention of the Wales Office to introduce a coherent and freestanding Bill and hope that it will bring a greater level of clarity to the devolution settlement for Wales. (Paragraph 23)
3. Whilst we welcome the publication of the White Paper, it is short on the detail necessary for proper pre-legislative scrutiny. A draft Bill would have been more appropriate. We are not convinced that the deadline of the 2007 National Assembly elections would have debarred the Government from publishing a draft Bill and still completing the Parliamentary process for the Bill in this very long session. Given that it is a constitutional Bill, we are disappointed that the Government have shied away from its commitment to publish draft legislation on this occasion. (Paragraph 29)

Welsh Statute Book

4. We agree that a "Welsh statute book" would be highly beneficial and reiterate our predecessor's view that a clear and comprehensive register of Welsh legislation should be a requirement of the devolution settlement. Furthermore, we add our voice to that of the National Assembly Committee in recommending that the Governments in both London and Cardiff agree on the means by which a "Welsh statute book" can best be made available. (Paragraph 30)

Separation of the Legislature and the Executive

5. We welcome the proposals to make formal the separation of the Legislature and the Executive of the National Assembly for Wales. (Paragraph 35)

Assembly Ministers

6. We conclude that the approval of Ministers by Plenary of the National Assembly is an attractive proposition and therefore we recommend that provisions to that effect be included in the Bill. (Paragraph 36)

Dissolution of the National Assembly

7. We conclude that a mechanism to dissolve the National Assembly in the event of a stalemate between the political parties is a sensible and pragmatic suggestion. Therefore we recommend that the Bill include provision for the National Assembly to dissolve itself in the event of being unable to appoint a Welsh Assembly Government. (Paragraph 40)

Deputy Ministers

⁸⁶ Welsh Affairs Committee, *Government White Paper, Better Governance for Wales Report*, 13 December 2005, HC551, 2005-06.

8. We agree with the proposal to put Deputy Ministers on a statutory footing. That statutory footing will need to include a clear definition of the roles and responsibilities of the Deputy Ministers. The Government must be alive to the fact an increase in the payroll vote of the National Assembly will have an impact on the size of the backbench body and the potential to cause strains on the scrutiny functions (Paragraph 41)

Numbers of Ministers and Deputy Ministers

9. We believe that a statutory upper limit for the number of Ministers including Deputy Ministers is a sensible approach to the composition of the National Assembly, and we welcome the decision of the Wales Office to include provisions to that effect on the face of the Bill. (Paragraph 42)

Title of the Welsh Assembly Government

10. Concerns remain that the current title of the Welsh Assembly Government may have the potential to continue the confusion over the status of the Executive and the Legislature. In respect of the Bill, we believe that Welsh Executive would be a more appropriate term to use in Statute. (Paragraph 49)

Size of the National Assembly

11. The Government has taken a strong line against the possibility of increasing the number of Assembly Members from 60 to 80. However, a 60 Member Assembly may not prove sufficient to carry out its scrutiny and legislative roles. In that event, the National Assembly for Wales and Parliament may at some date in the future wish to reassess the size of the National Assembly, at which time the electoral process will also need to be considered. (Paragraph 57)

12. With respect to Committees, we reiterate the concerns raised with us that the 60 member limit on the National Assembly and the size of the National Assembly payroll vote has the potential to place serious strains on the National Assembly Committees' ability to carry out its scrutiny of the new Welsh Executive. The Government will need to be alive to this potential danger when it introduces its Bill. (Paragraph 60)

Committees of the National Assembly

13. The structure of the Committee System in a reformed National Assembly will be a matter for that institution to decide. However, as Members of Parliament for Welsh constituencies, we recognise the important role that the regional committees have played in taking the National Assembly out of Cardiff to other parts of Wales. We recommend that this important part of the Regional Committees' work is retained in any new Committee structure. We further recommend the retention of the statutory provision for a North Wales Regional Committee. (Paragraph 62)

14. We agree with the Government's proposals to remove Ministers from being members of scrutiny Committees of the National Assembly. However, we note the recommendation of the National Assembly Committee that flexibility on this issue is necessary with respect to legislation and other specific Committees. We look to the Government to ensure that the necessary flexibility is contained within the Bill. (Paragraph 66)

15. We recommend that provisions equivalent to Sections 23 to 26 of the Scotland Act be enacted in respect of the powers of Committees of the National Assembly for Wales. (Paragraph 68)

16. We agree with the National Assembly Committee that the Welsh Assembly Government should send either a Minister or an official when a National Assembly committee insists on attendance by Government witnesses. (Paragraph 70)

17. The use of co-opted members is a matter for the National Assembly. However, we agree that, should the National Assembly wish to continue with that practice, the protection of those Members needs to be made explicit. We look to the Government to ensure that co-opted Members of National Assembly Committees are protected from defamation to the same level as Members of the National Assembly, when serving on Committees. (Paragraph 73)

Standing Orders of the National Assembly

18. We understand the legal requirement for the Secretary of State for Wales to give statutory effect to the Standing Orders for the National Assembly for Wales. We are less convinced with the need for that Office to be the final arbiter of any disagreement over those Orders. We believe that the Presiding Officer of the National Assembly, not a Government Minister of another institution, is a more appropriate location for that role. Therefore we recommend that the Government include in the Bill, provisions to ensure that the Presiding Officer, subject to the approval of the Secretary of State for Wales, be the arbiter on Standing Orders for the National Assembly. (Paragraph 81)

Human Resources

19. It would be undesirable to include in the Bill provisions for specific increases in staff for the National Assembly as they have yet to be identified in detail. Furthermore, future demand will best dictate the level of necessary resources. However, it is clear, that in moving from the Corporate Body model to a "free-standing" legislature, enhancements will be necessary to support Assembly Members in their new tasks. We look to the Government to provide those resources where they are clearly necessary. (Paragraph 85)

20. In its Report the National Assembly Committee welcomed the separation of Government and National Assembly Staff but recommended that the Bill include "a Statutory 'broadly in line' provision" with respect to the salaries of National Assembly staff. We agree with the recommendation of the National Assembly Committee. (Paragraph 87)

National Assembly Committee Recommendations

21. We note the recommendations of the National Assembly Committee in relation to the statutory duties of the National Assembly, the special provision for the Welsh language and the examination of the Resource Budget. We look forward to hearing the response of the Government on those recommendations. (Paragraph 93)

Legislative Proposals: Stage 1

22. Should Wales-only Bills continue to be introduced to Parliament, we would expect the Government to maintain its policy of publishing them first in draft form so that they could be subjected to pre-legislative scrutiny by this Committee in conjunction with the appropriate Committee of the National Assembly. (Paragraph 96)

23. We look to the Wales Office to play an active and visible role in the education of Government Departments in this respect. We recommend that the Wales Office, in its response to this Report, set out clearly, the precise procedures that are in place to ensure that those roles are carried out effectively. (Paragraph 100)

24. We recommend that the Wales Office supply the Committee with quarterly memoranda setting out those Bills which contain significant Welsh clauses. (Paragraph 101)

25. We recommend that the Wales Office include under the heading Territorial Extent in the Explanatory Notes to Bills, a statement listing the clauses in Bills that relate to Wales; and explaining how the Government's new commitment to more permissive legislation for Wales has been enacted in relation to those clauses. (Paragraph 103)

Legislative Proposals: Stage 2

26. We recommend that when submitting a proposal for a draft Order in Council for pre-legislative scrutiny the Wales Office also provide a detailed explanatory note which would make clear the scope of the proposal, the practical effects of the proposal on Wales, and the legislative authority that would pass to the National Assembly. (Paragraph 108)

27. We recommend that any proposal for a draft Order in Council be laid before the Parliament. Once it is laid, we recommend that it must lie before Parliament for a period of 60 days, not including any time during which parliament is dissolved or prorogued, or either House is adjourned for more than four days. We recommend that a draft Order consequent on the proposal may not be laid before Parliament until the end of that period. (Paragraph 110)

28. Therefore we recommend that provisions similar to those for the Scottish Grand Committee under Standing Order 115 should be made for the Welsh Grand Committee. (Paragraph 118)

29. We believe that, in principle, all draft Orders in Council should be debated on the floor of the House. Therefore we recommend that Standing Orders be amended to disapply Standing Order No.118 in respect of draft Orders in Council made under the proposed new Act. Should there be a general agreement that a draft Order be referred to the Welsh Grand Committee the Minister could, on such an occasion, table a motion to refer it to that Committee. (Paragraph 120)

30. The Secretary of State has an important role to play in facilitating the progress and passage of Orders in Council. In particular, he will provide advice and support to ensure that Orders in Council are drafted correctly, and conform to Parliamentary rules. We are not convinced that it is necessary for him to act as a filter, and use those powers to refuse to lay an Order in Council based on its policy aspirations. A request from the National Assembly, if it is in order, should be submitted for the approval of Parliament, not for the approval of the Secretary of State. Therefore we recommend that the Secretary of State's powers be limited to refusing Orders in Council on the basis of procedure, and not on the merits of the policy aspiration. (Paragraph 131)

31. Orders in Council may be instigated not only by the Welsh Assembly Government, but also by individual Assembly Members or National Assembly Committees. Should a Welsh Assembly Government request be refused we can see some logic in the Secretary of State responding to the First Minister. However, that logic does not apply to Orders in Council that have been instigated through the non-Government route. The procedure for a refusal needs to be consistent. In light of the fact that the National Assembly, as the legislature will approve all Orders in Council, we consider it more appropriate for the response be sent to the Presiding Officer and not the First Minister. (Paragraph 132)

Legislative Proposals: Stage 3

32. We note the proposal for a post-legislative referendum, and its approval by Parliament using the Order in Council procedure. That approach would avoid the need



for further primary legislation, and the inevitable delays that such a route would cause. However, the Order in Council mechanism would not allow the question to be put in the referendum to be amended, nor would it allow for the possibility of a number of questions to be put. Therefore, the new Bill that will be presented to Parliament will represent the only opportunity for all Members of Parliament to consider that wording in detail. The wording of that question should be straight forward and therefore one that should survive any length of time between the enactment of the Bill and a possible future referendum. Therefore we recommend that the wording of the question for the referendum be included on the face of the Bill (Paragraph 136)

33. In the event of a referendum returning a majority "No" vote, we agree that a long period of reflection would be necessary. It would be wrong for a series of referenda to be held solely to attempt to force a particular decision. The Bill will need to contain explicit provision to stop repeated referenda in the event of a "No" vote. The period between a "No" vote and a second referendum is open to debate, but we consider two National Assembly terms as an appropriate time-gap before a referendum is called for a second time. (Paragraph 137)

34. We note the Government's preference for the 1978 model for the definition of any future transfer of primary legislative powers for the National Assembly. (Paragraph 142)

35. A two-thirds majority in the National Assembly in favour of a referendum would represent a clear broad consensus that there was general support for a referendum. In the absence of any further opinion poll "evidence", it would rightly be the basis for submitting an Order in Council to trigger that referendum. Therefore, we remain unconvinced that the Secretary of State could draw upon any other demonstration of support or otherwise that would give him a clearer insight into whether the trigger should be pulled or not. For that reason we do not consider it appropriate for that Office to have the power to refuse a request for a referendum. Rather it would be for Parliament to decide on the fate of that request. We recommend that the power of refusal by the Secretary of State be excluded from the Bill. (Paragraph 145)

Electoral Reform

36. Taking into consideration evidence to the Committee, informal feedback from the public and written evidence submitted to the Committee, we support the proposals for electoral reform as laid down in the White Paper. (Paragraph 156)



B Annex 2 Presiding Officer's Functions in the Bill ⁸⁷

The Presiding Officer's functions under this Act include:

Clause 10(4)	Fixing the date of an election in the event of a constituency vacancy.
Clause 11(2)	Receiving notification of the filling of a regional member vacancy.
Clause 15	Receiving notification of a member's resignation.
Clause 24(5)	Deciding questions arising under the Standing Orders about the political group (if any) to which a member belongs.
Clause 27(2)(a)	Membership of the National Assembly for Wales Commission ("the Assembly Commission").
Clause 38(5)(a)	Receiving notification of the issue of a direction by a Welsh Minister or the Counsel General to a current or former member of staff of the Welsh Assembly Government (or person with an equivalent status) that the person need not give evidence or produce documents to the Assembly, its committees or sub-committees.
Clause 40(1)	Administering the oath or affirmation to anyone giving evidence in Assembly proceedings.
Clause 46(5)	Designating a person to act as First Minister (on the recommendation of the Welsh Ministers) if the First Minister's office is vacant, the First Minister is unable to act or the First Minister has ceased to be an Assembly Member.
Clause 47(4)	Recommending to Her Majesty the Assembly's choice as First Minister.
Clause 96(3)	Stating whether the provisions of a proposed Assembly measure are, in the view of the Presiding Officer, within the Assembly's legislative competence.
Clause 109(3)	Stating whether the provisions of an Assembly Bill are, in the view of the Presiding Officer, within the Assembly's legislative competence.
Schedule 2, Paragraph 1(1)	Membership of the Assembly Commission.
Schedule 2, Paragraph 7(a)	Such functions as the Assembly Commission delegates to the Presiding Officer.
Schedule 2, Paragraph 11(2)	Presiding at meetings of the Assembly Commission.
Schedule 8, Paragraph 8(4)(a)	Certifying to the Assembly that the Auditor General is unable to certify or report on accounts (or statements).

⁸⁷ Explanatory Notes to the Bill (Bill 100-EN) p.23, para.112

C Annex 3 The Clerk's Functions in the Bill⁸⁸

The Clerk's functions under the Bill include:

Clause 31(8)	Responsibility for publishing Standing Orders.
Clause 38(1)	Giving notice to persons who are by virtue of Clause 37 required to attend the Assembly, its committees or sub-committees or to produce documents.
Clause 98(3)	Receiving notification from the Counsel General or from the Attorney General that a proposed Measure is not to be referred to the Supreme Court.
Clause 99(2)(a)	Notifying the Counsel General and the Attorney General that the Assembly has resolved to reconsider a proposed Measure which has been referred to the Supreme Court and in relation to which the Supreme Court has made a reference to the European Court of Justice.
Clause 100(5)	Receiving notification from the Secretary of State that no order is to be made prohibiting the Clerk from submitting a proposed Measure for approval by Her Majesty in Council.
Clause 101(1)	Submission of proposed Assembly Measures which have been passed by the Assembly for approval by Her Majesty in Council.
Clause 101(5)	Recording the date of the approval by Her Majesty in Council of an Assembly Measure on the text of the Measure.
Clause 101(6)	Publishing the Order in Council by which an Assembly Measure is approved.
Clause 111(3)	Receiving notification from the Counsel General or from the Attorney General that an Assembly Bill is not to be referred to the Supreme Court.
Clause 112(2)(a)	Notifying the Counsel General and the Attorney General that the Assembly has resolved to reconsider an Assembly Bill which has been referred to the Supreme Court and in relation to which the Supreme Court has made a reference to the European Court of Justice.
Clause 113(5)	Receiving notification from the Secretary of State that no order is to be made prohibiting the Clerk from submitting a proposed Assembly Act for approval by Her Majesty in Council.
Clause 114(1)	Submitting Assembly Bills for Royal Assent, receiving notification of Royal Assent and
Clause 114(5)	Recording the date of Royal Assent on the text of Acts of the Assembly.
Clause 114(6)	Notifying the Assembly of the date of Royal Assent to an Act of the Assembly.
Clause 137	Principal accounting officer for the Assembly Commission.
Schedule 2, Paragraph 7(b)	Such functions as the Assembly Commission delegates to the Clerk.

⁸⁸ Ibid. pp.26-7, para.119



D Annex 4 Standing Orders ⁸⁹

The Bill requires that Standing Orders are made for the following:

Clause 10(8)	Determining the date on which a constituency vacancy is treated as occurring.
Clause 23(2)	Specifying the person before whom Assembly members are to take the oath or make the affirmation of allegiance.
Clause 27(3)	Appointment of the four members (other than the Presiding Officer, who is appointed automatically) of the Assembly Commission.
Clause 28(3)	Provision about the membership, chairing and procedure of the Assembly's committees and their sub-committees - note that such provision must, in relation to committees, meet the requirements of clause 29.
Clause 36	Provisions in relation to registration and declaration of members' interests, prohibition of paid advocacy and for defining (or providing for the definition by code or protocol) the respective roles and modes of description of constituency and regional Assembly members.
Clause 97	Procedures for scrutinising proposed Assembly Measures.
Clause 109	Procedures for scrutinising Assembly Bills.

The Bill also empowers (but does not oblige) Standing Orders to be made covering, amongst others, the following matters:

Clause 20(6)(a)	Provisions for remuneration of Assembly members (including provisions conferring functions on the Assembly Commission).
Clause 21(3)(a)	Provisions for limiting the salaries of Assembly members (including provisions conferring functions on the Assembly Commission).
Clause 25	Provisions for the exercise of the Presiding Officer's functions by the Deputy Presiding Officer, or by any other person where both the Presiding Officer and Deputy Presiding Officer are unable to act or their offices are vacant; and participation by the Presiding Officer and Deputy Presiding Officer in Assembly proceedings.
Clause 28(1)	Provision for the appointment of committees to the Assembly, and for those committees to have the power to appoint sub-committees.
Clause 28(4)	Exclusion from the proceedings of Assembly committees and their sub-committees of Assembly members who are not members of those committees and sub-committees.
Clause 31	Exclusion of members from Assembly proceedings, and withdrawal of members' rights and privileges.
Clause 34	Participation of the Counsel General (if not an Assembly member) in Assembly proceedings.
Clause 37(7)(b)	Power of committees or sub-committees to call for witnesses and documents.
Clause 40(1)	Administration of the oath or affirmation to witnesses in Assembly proceedings.
Clause 40(4)	Payment of allowances and expenses to witnesses in and those producing documents for Assembly proceedings.
Clause 53(7)(a)	Remuneration of Welsh Ministers, Deputy Welsh Ministers and the Counsel General (including provisions conferring functions on the Assembly Commission).

⁸⁹ Ibid., pp.31-32, paras.143, 144. The list is not exhaustive.

E Annex 5: Experiences of the d'Hondt system in the Scottish Parliament

Scottish Standing Orders were drawn up following the recommendations of the Scottish Parliament Consultative Steering Group which recommended that:

In making recommendations on Committee membership to the Plenary, the Business Committee must have due regard to the balance of parties within the Parliament. Selection of members must not be on the basis of random selection.

The Business Committee, having due regard to the balance of parties within the Parliament, should propose the political party from which a Committee's Convener should be elected. The Committee's members would then elect their Convener subject to that limitation.⁹⁰

Scottish Parliament Standing Orders state:

1. The membership of each committee shall be decided by the Parliament on a motion of the Parliamentary Bureau.
2. Each committee other than a Private Bill Committee shall have at least 5 but not more than 15 members.
3. A member may indicate to the Parliamentary Bureau his or her interest in serving on a particular committee.
4. In proposing a member to be a committee member, the Parliamentary Bureau shall have regard to the balance of political parties in the Parliament and, where that member has expressed an interest in serving on that committee, to his or her qualifications and experience as indicated by him or her.

However, early in the life of the Parliament the intention had been to apply 'd'Hondt principles'. In the debate⁹¹ on the selection of committee members in the first Parliament on 17 June 1999, the Parliament Minister, Tom McCabe MSP stated:

The Parliamentary Bureau asked the four party business managers if they could reach agreement on this potentially difficult issue and they undertook to discuss the matter. In the background of those discussions was the desire that Messrs Harper, Sheridan and Canavan⁹² could be accommodated on a committee within the Parliament. Clearly, in determining the size of the committees, we had to strike a balance between the need to manage MSPs' time for their chamber and constituency commitments and the time that they would spend in committee.

We agreed to use the d'Hondt formula for the allocation of committee places. That formula would not provide any places for Messrs Canavan, Harper or Sheridan, but the parties were determined to resist that. In a spirit of fairness, they were determined to find some formula that would allocate a place to each of those three members.

The d'Hondt formula would have allocated six places on an 11-member committee to the Labour party. To Labour's credit, it immediately recognised that, as it does not have a majority in this chamber, it would not be fair for it to have six places. We therefore agreed to reduce our representation on committees to five places. To their credit, other parties responded by reducing their representation. That ensured that places would be available for Messrs Canavan, Sheridan and Harper.

The allocation of places on committees has been difficult for all parties. Of Labour members, 22 indicated an interest in the Social Inclusion, Housing and Voluntary Sector Committee, 21 in the Education, Culture and Sport Committee, 15 in the

⁹⁰ Scottish Parliament Consultative Steering Group <http://www.scotland.gov.uk/library/documents-w5/rcsg-07.htm>

⁹¹ Scottish Parliament, Official Report, 17 June 1999.

⁹² <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-99/or011009.htm#Col623>

⁹² Robin Harper MSP, Scottish Green Party, Tommy Sheridan MSP, Scottish Socialist Party and Denis Canavan MSP.



European Committee, 16 in the Equal Opportunities Committee and 13 in the Transport and the Environment Committee. Similar figures apply to the other parties, so some members will clearly be disappointed that they did not get on the committee of their first choice.

The proposed allocation is based on a consensual approach and—more important—on the best principles of the consultative steering group report.

The principle that Robin Harper, Tommy Sheridan and Dennis Canavan should each secure a committee place is sound; it is supported by all parties on the Parliamentary Bureau. If the places are not on the committees of their first choice, that applies equally—as I have demonstrated—to members of every other party in the Parliament.

A further exchange took place on 17 January 2001.⁹³

Mr McCabe:...It is also worth remembering that, since the start of the Parliament, we have done our best to achieve a fair balance and distribution across the parties. We have done our best to ensure that the parties are as fairly represented as possible. I think that all parties have been happy to be guided by the d'Hondt principles, but I underline the word "guided".

Michael Russell (South of Scotland) (SNP): Can the Minister for Parliament outline those principles? The key principle of d'Hondt—this is the reason why we have the system—is to allocate places fairly, so that no party has a major advantage according to its proportion. Does the minister accept that his proposal will give 53 per cent of the convenerships to a party with 43 per cent of members? That is contrary to the principles of d'Hondt.

Mr McCabe: D'Hondt has never been applied in its purest form—and not applying d'Hondt in its purest form has always been to the disadvantage of Labour. Mr Russell fails to mention that the d'Hondt formula, applied in its purest form on an 11-member committee, would give Labour six members on that committee. That was immediately recognised as unfair. Labour immediately conceded that it would accept having five members on an 11-member committee, and would depend on its coalition partners to form a majority on committees.

That underlines the point that we have never applied purely the principles of d'Hondt. Furthermore, in ensuring that d'Hondt was not purely applied, in the interests of fairness, Labour again sacrificed its pick of convenerships in order to move other parties further up that pick.

⁹³ Scottish Parliament Official Report, 17 January 2001, cols.289-90.
<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-01/or100302.htm>

F Annex 6: Matters listed in Schedule 5

Field 1: agriculture, fisheries, forestry and rural development

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Field 6: environment

Field 7: fire and rescue services and promotion of fire safety

Field 8: food

Field 9: health and health services

Field 10: highways and transport

Field 11: housing

Field 12: local government

Field 13: National Assembly for Wales

Matter 13.1 In connection with investigating complaints about the conduct of Assembly members and reporting on the outcome of such investigations to the Assembly.

Matter 13.2 Conferral of functions on the Assembly Commission for and in connection with facilitating the exercise by the Assembly of its functions (including the provision to the Assembly of the property, staff and services required for the Assembly's purposes).

Matter 13.3 Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister.

Matter 13.4 Provision for and in connection with the creation and maintenance of a register of interests of Assembly members and the Counsel General.

Matter 13.5 Provision about the meaning of Welsh words and phrases in—

- (a) Assembly Measures,
- (b) subordinate legislation made under Assembly Measures, and
- (c) subordinate legislation not so made but made by the Ministers, the First Minister or the Counsel General.

Matter 13.6 Provision for and in connection with the procedures for dealing with proposed private Assembly Measures, including, in particular—

- (a) procedures for hearing the promoters of, and objectors, to proposed private Assembly Measures,
- (b) the persons who may represent such promoters and objectors, and the qualifications that such persons must possess,
- (c) the imposition of fees for and in connection with the promotion of proposed private Assembly Measures, and
- (d) the assessment of costs incurred in connection with proposed private Assembly Measures.

Field 14: public administration

Field 15: social welfare

Field 16: sport and recreation

Field 17: tourism

Field 18: town and country planning

Field 19: water and flood defence

Field 20: Welsh language



G Annex 7: Clauses relating to the Secretary of State

The table below shows some of the clauses relating to the Secretary of State for Wales in the Bill.

Clause 4 (1)	Power to vary the date of a general election
Clause 5 (1)	Extraordinary general elections: proposal of day for holding a poll.
Clause 13	Power to make provision about elections etc.
Clause 32 (1)	Participation by UK Ministers etc. The Secretary of State for Wales is entitled to attend proceeding of the Assembly but not to vote.
Clause 33	Consultation on the UK Government's legislative programme
Clause 94 (6)	Amendment of Schedule 5: First Minister must give Secretary of State written notice of draft Order in Council and a copy after it has been passed by Assembly.
Clause 94(7)	Secretary of State must either lay the draft Order in Council before parliament or write to the First Minister explaining reasons for refusing to do so.
Clause 100	Power to intervene in certain cases. Secretary of State may make an Order prohibiting the Clerk from submitting a proposed Assembly Measure for approval by the Monarch in Council. This applies in cases where the proposed Measure: <ul style="list-style-type: none"> a) would have an adverse effect on matters which are not within the legislative competence of the Assembly; b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England; c) would have an adverse effect on the operation of the law as it applies in England; or d) would be incompatible with any international obligation or the interests of defence or national security.
Clause 103 Schedule 6.	Proposal for a referendum by Assembly. 103(2) First Minister must give written notice to the Secretary of State. 103(3) Within 120 days of notice being given the Secretary of State must either lay an Order in Council or write to the First Minister giving notice of refusal and reasons.
Clause 113	Power to intervene in certain cases. Secretary of State may make an Order prohibiting the Clerk from submitting a proposed Assembly Bill for approval by the Monarch in Council. This applies in cases where the proposed Measure: <ul style="list-style-type: none"> a) would have an adverse effect on matters which are not within the legislative competence of the Assembly; b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England; c) would have an adverse effect on the operation of the law as it applies in England; or d) would be incompatible with any international obligation or the interests of defence or national security.
Clause 118	Statement of estimated payments. Secretary of State must make a statement each financial year and lay it before the Assembly.
Clause 121	Lending by Secretary of State
Clause 122	Accounts relating to loans
Clause 149	Power to make consequential provision. Enables the Secretary of State by order, to make provision which is considered appropriate in consequence of any provision made by or under an Assembly Measure or Act, or any provision of subordinate legislation made by the Welsh Ministers, the First Minister or the Counsel General, or any provision of subordinate legislation made by a person other than a Minister of the Crown under an Act of Parliament where the statutory instrument is required to be laid before the Assembly.
Clause 151	Intervention in case of functions relating to water etc. Allows the Secretary of State to intervene where the exercise of (or failure to exercise) devolved functions by the First Minister, the Welsh Ministers or the Counsel General, or by



	anyone else upon whom such functions have been conferred by an Assembly Measure or Act, might have a serious adverse impact on water resources, supply or quality in England.
Clause 157(2)	Interpretation
Schedule 4 Paras.(3) (4)	Transfer of Ministerial property, rights and liabilities: Power to make specific transfers; Supplementary.
Schedule 11 Para, 18	Transitional Provisions: 18(1) Secretary of State to make Standing Orders no later than 31 March 2007. 18(2) Must give effect to Assembly proposals but 18(5) can make modifications to proposals: a) in order to give full effect to what appears to the Secretary of State to be the policy contained in the proposals, or b) in consequence of other provision to be included in Standing Orders under this paragraph.