



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

# UK Government Legislative Programme 2004-05

The Queen's Speech will be delivered on 23 November 2004. While the content of the Speech is not known, this paper identifies areas for bills and draft bills that, on the basis of information already in the public domain, may be included in the legislative programme for the 2004-05 parliamentary Session.

Annex 1 contains details of the Welsh Assembly Government *Cabinet Proposals for Primary Legislation*, endorsed by Plenary on 17 March 2004.

November 2004





# **UK Government Legislative Programme 2004-05**

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Cynulliad National  
Cenedlaethol Assembly for  
Cymru Wales



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**Members' Research Service: Research Paper**  
**Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil**



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## The UK Government Legislative Programme 2004-05

### 1 The UK Government legislative programme

At the beginning of each parliamentary Session, the UK Government announces, in the Queen's Speech, the legislation and draft legislation it hopes to introduce during that session. This year, the Queen's Speech will be delivered on Tuesday 23 November. While the content of the Speech is not known, this paper identifies areas for bills and draft bills that, on the basis of information already in the public domain, may be included in the legislative programme for the 2004-05 parliamentary Session.

Bills included in the legislative programme may be adumbrated in a variety of ways, for example, by the publication of a draft bill in a previous Session, through White or Green Paper proposals, Ministerial announcement, or by proposals for primary legislation put forward by the Welsh Assembly Government.

Before the end of March each year, the Assembly Cabinet is required to put to plenary a motion setting out its proposals for primary legislation in the following parliamentary Session.<sup>1</sup> The primary legislative proposals that the Welsh Assembly Government put to UK Government for the coming parliamentary Session were:

- ◆ Commissioner for Older People (Wales) Bill
- ◆ Education (Miscellaneous Provisions) (Wales) Bill
- ◆ Housing (Suspension of Right to Buy) (Wales) Bill
- ◆ Local Government (Town and Community Councils) (Wales) Bill
- ◆ Public Services Ombudsman (Wales) Bill
- ◆ Tourism Accommodation (Registration) (Wales) Bill
- ◆ Transport (Wales) Bill

The Welsh Assembly Government also indicated that it would take up with the Secretary of State the possibility of a Wales-only bill on smoking in public places, if the Private Member's Bill introduced by Baroness Finlay failed to become law.<sup>2</sup> The Bill completed its stages in the House of Lords but time was not found for it to receive its second reading in the Commons on 15 October 2004. It may therefore be regarded as lost for this Session.

#### 1.1 *Assembly scrutiny of the legislative programme*

Soon after the Queen's Speech, time will be found for a plenary debate with the Secretary of State for Wales on the legislative programme outlined. The motion for this debate will remit bills and proposals for bills of particular importance to Wales to relevant Subject Committees for consideration and report.<sup>3</sup>

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<sup>1</sup> Standing Order 33.11

<sup>2</sup> National Assembly for Wales, Record of Proceedings 17 March 2004. Full details of the *Cabinet's Proposals for Primary Legislation 2004-05* are available at Annex A.

<sup>3</sup> Standing Order 6.6(iv)

### *1.1.1 The role of Subject Committees*

Under Standing Order 6.6(iv), motions remitting bills to Subject Committees should require committees to report on them. Reports will then be laid and may be debated in plenary and drawn to the attention of relevant Welsh Assembly Government Ministers.

In addition, some committees have submitted their reports through parliamentary, as well as governmental, channels in an attempt to secure amendments to bills or to influence parliamentary debate. To do so effectively, Subject Committees will need to act swiftly once bills have been remitted as the time available to scrutinise bills, agree reports and to submit these at an appropriate stage in a bill's progress is likely to be extremely limited.

Whether introduced into the House of Commons or Lords, bills are likely to reach their first committee stage (when detailed clause by clause scrutiny is conducted) within a matter of weeks of their being published. The bills remitted to Subject Committees by plenary in 2003 typically began their committee stage around 4 sitting weeks after first being published. Amendments can be made at later stages in a bill's progression through both Houses but earlier submission of a report will increase the opportunity for the views of Assembly committees to influence parliamentary debate.

### *1.1.2 Draft bills*

Following recommendations from the Select Committee on the Modernisation of the House of Commons, it is now increasingly common for bills to be published in draft form to allow pre-legislative scrutiny over a period of months. There is less immediate pressure of time and more potential for Assembly committees to give detailed consideration to draft bills whether formally remitted to them by plenary or not.

### *1.1.3 Joint working with the Welsh Affairs Committee*

Following a change to Standing Orders approved in June 2004, a Subject Committee of the Assembly may now invite members of the House of Commons Welsh Affairs Committee to attend and participate in its proceedings. In a corresponding change to parliamentary procedure, the Welsh Affairs Committee can also invite members of Assembly committees to take part in its proceedings. This system of 'reciprocal enlargement' was used by the Welsh Affairs Committee and the Economic Development and Transport Committee to undertake joint scrutiny of the *Draft Transport (Wales) Bill* earlier this year.

## 2 Bills that may be included in the legislative programme for 2004-05

A list of possible bills, which may be included in the legislative programme for 2004-05, is presented below.

### 2.1 *Public Services Ombudsman (Wales)*

In November 2002, a consultation was launched on a proposal to bring together the separate Offices of Welsh Administration Ombudsman, Health Service Commission Wales and the Commission for Local Administration in Wales to create a unified Ombudsman's jurisdiction for Wales, led by a single individual.<sup>4</sup> A further consultation paper on a public services ombudsman for Wales was published in October 2003 aimed at shaping a precise remit of the new office.<sup>5</sup>

A *Public Services Ombudsman (Wales) Bill* was included in the Welsh Assembly Government's list of proposals for primary legislation approved by plenary in March 2004.

It had been the case that statute precluded one person from holding all three offices simultaneously. However, the *Regulatory Reform (Local Commissioner for Wales) Order 2004: Ombudsman Appointments in Wales*, which came into force in September, removed that restriction.<sup>6</sup> In its report on this Order, the House of Commons Regulatory Reform Committee challenged the Secretary of State for Wales's view that interim arrangements for the structure of ombudsmen's services in Wales following the passage of the Order would be sustainable "indefinitely". The Committee was of the view that a proper 'statutory footing' was needed and recommended that 'the Government should include a *Public Services Ombudsman (Wales) Bill* in its legislative programme for the 2004-05 Session'.<sup>7</sup>

### 2.2 *Commission for Equality and Human Rights*

Legislation may be brought forward to establish a Commission for Equality and Human Rights as outlined on 12 May 2004 in a White Paper published by the Department for Trade and Industry, *Fairness for All: A New Commission for Equality and Human Rights*.<sup>8</sup>

The new commission will replace the three existing commissions on disability, race and sex with a new single equality body, which will incorporate other equality strands such as sexual orientation, religion, age and transgender, as well as human rights.

The White Paper states that,

the CEHR's structure and operational work must enable effective interplay between work at GB-wide and devolved levels. The overall strategy for the CEHR should reflect and be informed by Scottish and Welsh priorities and experience.

<sup>4</sup> Welsh Assembly Government, *Ombudsman's Services in Wales: Time for Change*, Consultation Paper. <http://www.wales.gov.uk/keypubconsultation/content/ombudsman/coverlet-e.htm>

<sup>5</sup> Welsh Assembly Government, *A Public Services Ombudsman for Wales*, Consultation Paper. <http://www.wales.gov.uk/keypubconsultation/content/ombudsman/cons-2003-e.pdf>

<sup>6</sup> *Regulatory Reform (Local Commissioner for Wales) Order 2004: Ombudsman Appointments in Wales* [http://www.hmso.gov.uk/cgi-bin/muscat\\_highlighter\\_first\\_match](http://www.hmso.gov.uk/cgi-bin/muscat_highlighter_first_match)

<sup>7</sup> House of Commons, Regulatory Reform Committee, 10<sup>th</sup> Report, 2003-4. HC900 <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmdereg/900/90002.htm>.

<sup>8</sup> Department for Trade and Industry, *Fairness for All: A New Commission for Equality and Human Rights*, White Paper <http://www.dti.gov.uk/access/equalitywhitepaper.pdf>

The key features of the CEHR's work which will enable this approach are:

- ◆ the establishment of offices of the CEHR in Wales and Scotland to help the body maintain close working relationships with both the devolved administrations and intermediary organisations delivering services locally;
- ◆ provision for the appointment to the CEHR Board of one Board member with special knowledge of Wales and one with special knowledge of Scotland. These appointments will be made with the agreement of the Welsh Assembly Ministers and Scottish Executive Ministers respectively to underpin close working with the Commission;
- ◆ provision for the establishment of a Wales committee and a Scotland committee to set priorities for and oversee the work of the CEHR in Wales and Scotland;
- ◆ a requirement for the CEHR to prepare reports on its activities in Wales and Scotland to be laid before the National Assembly for Wales and the Scottish Parliament respectively. This will help the CEHR to work in partnership with the Welsh and Scottish administrations on their equality work.

A plenary debate on the proposals took place in the National Assembly on 28 September 2004.<sup>9</sup>

### **2.3 National Lottery**

Two of the National Lottery's distributors, the New Opportunities Fund and the Community Fund have undergone an administrative merger and are now operating as the Big Lottery Fund. The Department for Culture Media and Sport has indicated that it intends to bring forward legislation to legally merge these bodies as soon as parliamentary time allows.<sup>10</sup> A public consultation is currently taking place to help determine the direction and future funding policy of the Big Lottery Fund.

### **2.4 National Identity Cards**

In November 2003, the Home Secretary announced that the UK Government had decided to introduce a national identity cards scheme.<sup>11</sup> Proposals were initially set out in *Identity Cards: the Next Steps* in November 2003.<sup>12</sup>

A draft bill on identity cards was published by the Home Office on 26 April 2004<sup>13</sup> and was considered by the Home Affairs Select Committee. The Committee published its report on the Bill on 30 July 2004.<sup>14</sup>

<sup>9</sup> National Assembly for Wales RoP 18 September 2004

<sup>10</sup> Department for Culture Media and Sport, *The Big Lottery Fund: Position Paper*, August 2004, <http://www.culture.gov.uk/NR/rdonlyres/eal44xhb3kpxfrhmkx7mslcusv4fvurrlabg6mlcm2qbsctv2sg6commmyfb5mk3xa4ffwdi2mpkkzdjpf23jizya/Positionpaper%2eBIG%2eLOT%2eFUND1.pdf>

<sup>11</sup> HC Deb 11 November 2003 c171

[http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo031111/debtext/311114.htm#3111104\\_spm2](http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo031111/debtext/311114.htm#3111104_spm2)

<sup>12</sup> *Identity Cards: The Next Steps*: [http://www.homeoffice.gov.uk/docs2/identity\\_cards\\_nextsteps\\_031111.pdf](http://www.homeoffice.gov.uk/docs2/identity_cards_nextsteps_031111.pdf)

<sup>13</sup> Draft Identity Cards Bill Cm6178

[http://www.homeoffice.gov.uk/docs3/draft\\_idbill2604.pdf](http://www.homeoffice.gov.uk/docs3/draft_idbill2604.pdf)

<sup>14</sup> Home Affairs Committee, *Identity Cards*, 30 July 2004, HC 130-I 2003-04: <http://www.publications.parliament.uk/pa/cm/cmhaff.htm>

The Home Secretary has argued that the proposed identity card scheme will benefit individuals and society by:

- ◆ providing a more effective means of accessing public services;
- ◆ combating illegal immigration and illegal working; and
- ◆ tackling identity fraud.

Under the current proposals no one would be initially forced to carry the card but they would have to register for a new look passport priced at £77 or a drivers' licence containing biometric data, or else register for a separate ID card. The decision on whether to make it compulsory to carry an identity card is being left until later.

The introduction of an identity card scheme is not a devolved matter. However, in giving evidence to the Home Affairs Committee, the First Minister said that:

We will consider the implications for Wales of the Home Secretary's proposals for identity cards as these proposals are firmed up. But, as the Home Secretary has announced, decisions on the use of these cards to access services for which the Welsh Assembly Government is responsible will be a matter for this administration. I used the opportunity of an Assembly Question to provide reassurance to people in Wales that their access to public services will not, in the foreseeable future, be dependent on the possession of an identity card.<sup>15</sup>

## **2.5 Correctional Services**

The Home Office White Paper, *Reducing Crime – Changing Lives*<sup>16</sup>, which was published on the same day in January 2004 as Patrick Carter's correctional services review report, *Managing Offenders - Reducing Crime*<sup>17</sup>, indicated the Government's intention effectively to merge the Prison and Probation Services into a single National Offender Management Service (NOMS).

NOMS became operational in June 2004 and a strategy paper was published in July 2004 setting out the Government's plans for the service.<sup>18</sup> A *Correctional Services Bill* is likely to introduce:

- ◆ a statutory framework that would allow these organisational changes to be phased in;
- ◆ increased financial penalties for crimes that do not go to court;
- ◆ a system of progressive "day fines" for court cases, which would replace community services and would be based on an offender's ability to pay;
- ◆ a statutory framework for the use of "satellite tracking" of offenders and of polygraph testing for the management of sex offenders in the community;
- ◆ instructions for judges to give the minimum sentence of at least two years to anyone carrying a knife with intent to use it in a criminal act.

<sup>15</sup> Home Affairs Committee, *Identity Cards*, 30 July 2004, HC 130-I 2003-04, paragraph 110

<sup>16</sup> <http://www.homeoffice.gov.uk/docs2/changinglives.pdf>

<sup>17</sup> <http://www.homeoffice.gov.uk/docs2/managingoffenders.pdf>

<sup>18</sup> Reducing Re-offending National Action Plan  
[http://www.homeoffice.gov.uk/docs3/reoffending\\_contacts.pdf](http://www.homeoffice.gov.uk/docs3/reoffending_contacts.pdf)







am pleased to announce today that we will consult local authorities on voluntary reward schemes for household recycling.<sup>38</sup>

In July 2004, the Department for Environment, Food and Rural Affairs issued a consultation document, *Clean Neighbourhoods*<sup>39</sup>, on its legislative proposals in this area.

## **2.10 Inland Revenue and HM Customs & Excise**

During a Treasury Select Committee meeting on 13 October 2004, David Varney, Chairman of HM Customs & Excise and the Inland Revenue, indicated that his department was discussing with the Treasury the introduction of legislation to effect the merger of the Inland Revenue and HM Customs & Excise.<sup>40</sup>

There may also be a bill introduced to establish an independent prosecuting authority for Customs and Excise as recommended by the Butterfield Report<sup>41</sup>, as indicated by the Economic Secretary to the Treasury, John Healey MP, in the following written answer:

Legislation will be required to establish fully the independent prosecuting authority and we aim to introduce this in the course of this year.<sup>42</sup>

The functions of HM Customs & Excise and the Inland Revenue are not devolved matters. However, the the Social Justice and Regeneration Committee have discussed the impact of changes within HM Customs & Excise on substance misuse and crime in Wales.

## **2.11 Transport (Wales)**

The Government is expected to bring forward legislation regarding transport in Wales. Following the publication of the draft *Transport (Wales) Bill* on May 27 2004<sup>43</sup>, the Wales Office and the Welsh Assembly Government carried out a joint consultation exercise, which ended in August 2004.<sup>44</sup>

The draft Bill proposed:

- ◆ enhancing the powers of the National Assembly for Wales in relation to transport to enable it to develop and implement a safe, integrated efficient and economic transport system for Wales;
- ◆ placing on the National Assembly a general transport duty and a requirement to prepare and publish a Welsh Transport Strategy; and
- ◆ an enhanced role for the Assembly in relation to rail services and facilities and a power of direction over the Strategic Rail Authority (SRA) for services in Wales. Furthermore, the Assembly would be given a specific power to give financial

<sup>38</sup> Rt Hon Margaret Beckett MP, "Cleaner, greener, safer neighbourhoods", Labour Party website, 26 September 2004 [http://www.labour.org.uk/ac2004news?ux\\_news\\_id=ac04mb](http://www.labour.org.uk/ac2004news?ux_news_id=ac04mb)

<sup>39</sup> <http://www.defra.gov.uk/corporate/consult/clean-neighbourhood/index.htm>

<sup>40</sup> Treasury Committee, *The Merger of Customs & Excise and the Inland Revenue*, Uncorrected Oral Evidence, 13 October 2004, HC 556-iii 2003-04, Q205: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmtreasy/uc556-iii/uc55601.htm>

<sup>41</sup> [http://www.hm-treasury.gov.uk/newsroom\\_and\\_speeches/speeches/statement/butterfield03\\_report\\_index.cfm](http://www.hm-treasury.gov.uk/newsroom_and_speeches/speeches/statement/butterfield03_report_index.cfm)

<sup>42</sup> HC Deb 10 May 2004, c145W:

[http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040510/text/40510w40.htm#40510w40.html\\_wqn2](http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040510/text/40510w40.htm#40510w40.html_wqn2)

<sup>43</sup> Draft Transport (Wales) Bill Cm 6195 [http://www.walesoffice.gov.uk/transport\\_bill.pdf](http://www.walesoffice.gov.uk/transport_bill.pdf)

<sup>44</sup> [http://www.walesoffice.gov.uk/transport\\_letter\\_e.pdf](http://www.walesoffice.gov.uk/transport_letter_e.pdf)

assistance in respect of air services and airport facilities, where the services or facilities would not otherwise be provided.

Earlier this year, the Economic Development and Transport Committee (EDT) and the Commons Welsh Affairs Committee undertook joint pre-legislative scrutiny of the draft Bill. Both Committees published their recommendations on July 19 2004.<sup>45</sup> The EDT Committee noted that the *Transport (Wales) Bill* could not be considered in isolation and would probably have to be amended in the light of the Government White Paper on the future of rail published on July 15 2004 (see section 2.12).

The Welsh Affairs Committee recommended that a *Transport (Wales) Bill* should be considered as a vehicle to confer on the National Assembly the broadest appropriate range of powers in the field of transport.

## 2.12 Railways

Publishing the White Paper, *The Future of Rail*, on July 15 2004<sup>46</sup>, the Secretary of State for Transport and Scotland, Rt Hon Alistair Darling MP, announced that the Government intended to take more direct control of the national rail system in order to reduce bureaucracy and poor planning. He indicated that the Government would try to bring forward these changes "as soon as possible".<sup>47</sup>

The main feature of such a bill would be the winding up of the Strategic Rail Authority (SRA), with the majority of its functions, including all its financial obligations, being transferred to the Secretary of State. This would have implications for a *Transport (Wales) Bill* if this were to give the National Assembly powers of direction over the SRA.

## 2.13 Road Safety

In July 2004, the UK Government published a White Paper, *The Future of Transport*.<sup>48</sup> Further details were given by the Minister for Transport, David Jamieson MP, in evidence to the Commons Transport Select Committee on July 14 2004.<sup>49</sup> The key elements addressed by the Minister were new powers to deal with:

- ◆ drink driving, including roadside evidential breath testing;
- ◆ speeding, including variable fixed penalties and an increase in the range of penalty points from two to six; and
- ◆ uninsured drivers, by allowing the police to use automatic number plate reading technology.

<sup>45</sup> Draft Transport (Wales) Bill: 4<sup>th</sup> report of the Welsh Affairs Committee 2003-04 HC759

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/759/75902.htm>

Draft Transport (Wales) Bill: Report of the Economic Development and Transport Committee July 2004

<http://www.wales.gov.uk/keypubasemecondevtan/content/tb-report-e.pdf>

<sup>46</sup> *The Future of Rail*, July 2004, Cm 6233

<http://www.dft.gov.uk/railways/whitepaper/>

<sup>47</sup> HC Deb 15 July 2004 c1547-64

<sup>48</sup> *The Future of Transport* Cm 6234 <http://www.dft.gov.uk/strategy/futureoftransport/>

<sup>49</sup> Oral evidence to the Transport Select Committee 14 July 2004 HC 105-iii

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmtran/uc105-iii/uc10502.htm>

These measures are intended to improve road safety and to achieve the targets set in the UK Government's ten-year strategy road safety strategy, *Tomorrow's roads – safer for everyone*.<sup>50</sup>

In Wales, the Assembly Government produced a consultation document *Safe Roads, Safe Communities* in 2001 and a final *Road Safety Strategy for Wales* in January 2003.<sup>51</sup> This strategy includes the UK targets for casualty reduction.

## 2.14 *An Integrated Rural Agency*

In July 2004, the Secretary of State for Environment, Food and Rural Affairs, Rt Hon Margaret Beckett MP, told the House of Commons:

... As recommended by Lord Haskins, we will establish an integrated agency to deliver our policy objective of a healthy countryside valued and used in a sustainable way. The new agency will be a powerful, independent statutory non-departmental public body, building on the world-class strengths of English Nature, the Countryside Agency and the Rural Development Service. Its remit will be the integrated management of our natural heritage that the challenges and environmental threats of the 21st century demand. That will include biodiversity, landscape, and the sustainable use of the countryside, including recreation and access. It will have a remit to carry out its functions within a sustainable development context. It will work closely with the Regional Development Agencies—and elected regional assemblies, if established—to ensure that the natural environment is taken into account in regional policy making and activity.

The formal establishment of the integrated agency will require primary legislation. I hope to introduce legislation next year and to publish a draft Bill, as an early step. In the meantime, while each of the three bodies will remain responsible for their own statutory duties, they will come together into a confederation of partners by April next year. To help that partnership working, I will move the Rural Development Service from the policy core of DEFRA and give it the autonomy that befits a major delivery body.<sup>52</sup>

The geographical coverage of a new agency would be England only. In Wales, equivalent functions are delivered by the Countryside Council for Wales, the Welsh Development Agency and the Welsh Assembly Government.

## 2.15 *Ratification of the European Constitution*

A bill will be required to give effect to the EU Constitution in UK law through amendment of the 1972 *European Communities Act*, and to provide that those changes to the Act can only come into force after approval in a referendum.<sup>53</sup>

Possible implications for Wales if the Constitution is adopted are increased scrutiny of breaches of subsidiarity (ensuring issues are dealt with at the most appropriate level of government). This may include the setting up of a European Grand Committee involving Members from the Assembly, the Scottish Parliament and the House of Commons. The Constitution also includes the first ever reference in a European treaty to regional and local self-government, and recognises and gives more power to the Committee of the Regions.

<sup>50</sup> Tomorrow's roads – safer for everyone. March 2004

[http://www.dft.gov.uk/stellent/groups/dft\\_rdsafety/documents/page/dft\\_rdsafety\\_504644.hcsp](http://www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/page/dft_rdsafety_504644.hcsp)

<sup>51</sup> Welsh Assembly Government, January 2003, *Road Safety Strategy for Wales*

<http://www.wales.gov.uk/subitransport/content/road-safety-e.htm>

<sup>52</sup> HC Deb 21 July 2004 cc330-331

<sup>53</sup> The EU Constitutional Treaty: Process, FCO web-site

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1091037618592>



### 3.4 *Constitutional Reform Bill*

The *Constitutional Reform Bill* that was introduced in the House of Lords on 24 February 2004 and then referred to a select committee will also be subject to a carry-over motion in the House of Lords.<sup>58</sup>

The Bill has four main themes:

- ◆ judicial independence;
- ◆ abolishing the office of Lord Chancellor;
- ◆ establishing a Supreme Court;
- ◆ creating a judicial appointments commission.

The Supreme Court would take over the powers of the judicial committee of the Privy Council to rule in devolution cases. It would, therefore, be the Supreme Court that resolves disputes about the authority of UK Parliament, Scottish Parliament and the National Assembly for Wales.

### 3.5 *Mental Capacity Bill*

A motion to carry over the *Mental Capacity Bill*, if it fails to be completed in this Parliamentary Session, was approved on 11 October 2004.<sup>59</sup> The Bill is currently nearing completion of its committee stage in the Commons.

The Bill, which was introduced into the House of Commons in June 2004, will make new provision relating to persons who lack capacity, for example, as a result of dementia or brain injury or where the incapacitating condition has been present since birth. The Bill extends to England and Wales and as drafted, places the majority of duties and powers on the Department for Constitutional Affairs and the Lord Chancellor. However, it also includes some regulation making powers and duties for the Assembly.<sup>60</sup>

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<sup>57</sup> Joint Committee on the Draft Disability Discrimination Bill  
[http://www.parliament.uk/parliamentary\\_committees/dddb.cfm](http://www.parliament.uk/parliamentary_committees/dddb.cfm)

<sup>58</sup> Procedure Committee, *Programming of Legislation*, Fourth Report, 14 July 2004, HC 325 2003-04, Q302, Ev86

<sup>59</sup> HC Deb 11 October 2004 c122

<sup>60</sup> Further information on the provisions of the Bill and how it relates to Wales are available from the Welsh Assembly Government paper to the Health and Social Services Committee, *Mental Capacity Bill*, 14 July 2004, HSS(2)-10-04(p. 6)  
[http://www.wales.gov.uk/servlet/HealthAndSocialServicesCommittee?area\\_code=37D6A89F00087B550000121400000000&document\\_code=N00000000000000000000000022485&p\\_arch=post&module=dynamicpages&month\\_year=7|2004](http://www.wales.gov.uk/servlet/HealthAndSocialServicesCommittee?area_code=37D6A89F00087B550000121400000000&document_code=N00000000000000000000000022485&p_arch=post&module=dynamicpages&month_year=7|2004)

## 4 Other draft bills published in 2003-04

This section lists any other draft bills that have been published in the current session and a brief summary of their progress so far.<sup>61</sup>

### 4.1 *Draft Criminal Defence Bill*

A draft Bill, proposing the introduction of means testing for those facing criminal charges in the magistrates' courts and the transferring of responsibility for administering legal aid to the Legal Services Commission, was published for consultation in May 2004.

The Bill was considered by the Constitutional Affairs Committee<sup>62</sup>, which recommended the publication of draft secondary legislation prior to the introduction of a Bill.<sup>63</sup>

The Department for Constitutional Affairs, the Legal Services Commission and the Prime Minister's Strategy Unit are currently reviewing the legal aid system, focusing on how best to provide legal help to those who need it in the longer term. The review will report to Ministers in early 2005, after which a bill may be expected.

The administration of the legal system is not a devolved matter, though the impact of such legislation is likely to be of interest to Members of the Social Justice and Regeneration Committee.

### 4.2 *Draft Mental Health Bill*

The Department of Health published the draft *Mental Health Bill* on 8 September 2004. It is currently subject to pre-legislative scrutiny by a Joint Committee<sup>64</sup>, due to report its findings by March 2005. The draft Bill is designed to update the *Mental Health Act 1983* by introducing a new legal framework for the treatment of people with mental disorders in England and Wales.

The Assembly's Health and Social Services Committee held a scrutiny session of the draft Bill on 14 October 2004 and will be reporting its findings to the National Assembly and to the Assembly Government Minister for Health and Social Services. The Committee's report will also be sent to Lord Carlile, Chair of the Joint Committee.

### 4.3 *Draft Animal Welfare Bill*

The draft *Animal Welfare Bill* was published by the Department for Environment, Food and Rural Affairs in July 2004.<sup>65</sup> The main purpose of the Bill is to bring together and modernise legislation to promote the welfare of vertebrate animals that are domesticated, kept, or held in captivity by man. The draft Bill takes forward the principles contained in the *Animal Health and Welfare Strategy for Great Britain*, published in June 2004<sup>66</sup>. The Bill extends to England and Wales. All of the regulation and order making powers contained in the Bill will be exercised by the Assembly in Wales. The Bill affects Wales

<sup>61</sup> The draft Bills on Charities, Disability Discrimination, Gambling, Identity Cards, School Transport and Transport (Wales) are covered in section 2.

<sup>62</sup> Constitutional Affairs Committee, *Draft Criminal Defence Service Bill*, 27 July 2004, HC 746-I 2003-04: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/746/74602.htm>

<sup>63</sup> *Ibid*, para 6

<sup>64</sup> Joint Committee on the Draft Mental Health Bill  
[http://www.parliament.uk/parliamentary\\_committees/jcdmhb.cfm](http://www.parliament.uk/parliamentary_committees/jcdmhb.cfm)

<sup>65</sup> Draft Animal Welfare Bill, Cm 6252 <http://www.official-documents.co.uk/document/cm62/6252/6252.pdf>

<sup>66</sup> <http://www.defra.gov.uk/animalh/ahws/default.htm>



and England in the same way, except for different clauses relating to the making of codes of practice (reflecting the different procedures that apply to issuing codes in each country).

The House of Commons Environment, Food and Rural Affairs Committee is conducting pre-legislative scrutiny of the draft Bill.<sup>67</sup>

#### **4.4 Draft Regional Assemblies Bill**

The draft *Regional Assemblies Bill* was published by the Office of Deputy Prime Minister on 22 July 2004<sup>68</sup> and is currently being considered by the House of Commons ODPM Committee. The draft Bill sets out the Government's approach to regional governance and proposals for the powers and functions of elected regional assemblies.

#### **4.5 Draft Single European Currency (Referendum) Bill**

The draft *Single European Currency (Referendum) Bill* was published by the Department for Constitutional Affairs on 10 December 2003.<sup>69</sup> The inclusion of a Bill setting up a referendum on the single currency in this year's Queen's Speech is generally considered to be possible but unlikely.

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<sup>67</sup> Details of progress are available on the Committee website available at:

[http://www.parliament.uk/parliamentary\\_committees/environment\\_food\\_and\\_rural\\_affairs/efra\\_draftanimalwelfarebill.cfm](http://www.parliament.uk/parliamentary_committees/environment_food_and_rural_affairs/efra_draftanimalwelfarebill.cfm)

<sup>68</sup> Draft Regional Assemblies Bill, Cm 6285 <http://www.official-documents.co.uk/document/cm62/6285/6285.pdf>

<sup>69</sup> Draft Single European Currency Bill, Cm 6081 <http://www.dca.gov.uk/elections/euro/secbill.htm>

## 5 Other issues

### 5.1 Smoking

The Daily Telegraph reported in October that the Secretary of State for Health, Rt Hon John Reid MP, is preparing to publish a Public Health White Paper in November, but it is expected to stop short of a total ban on smoking in public places.<sup>70</sup>

A Private Member's Bill on smoking in public places was introduced by Baroness Finlay of Llandaff in the House of Lords in December 2003.<sup>71</sup> The Bill completed its stages in the House of Lords but time was not found for it to receive its second reading in the Commons on 15 October 2004. It may therefore be regarded as being lost for this Session.

The Welsh Assembly Government's proposals for primary legislation, endorsed by plenary in March 2004, indicated that:

The Assembly Government therefore endorses the spirit of Baroness Finlay's Bill, and should it fail to become law for any reason, the Cabinet will want to take up with the Secretary of State the possibility of a Wales-only Bill coming forward from the UK Government on the Assembly's behalf.

### 5.2 Marine Bill

In a speech on 14 September 2004 focusing mainly on climate change, the Prime Minister said in his opening remarks that:

Over the coming months we will take forward the wider sustainable development and environment agenda. Margaret Beckett is working on a comprehensive DEFRA 5 year programme to be released this year and a new sustainable development strategy for early next year. This will deal with, amongst other matters, issues of waste, recycling, sustainable agriculture, all aspects of biodiversity; and fishing, and will set out policies in each key area. For example, on the marine environment, I believe there are strong arguments for a new approach to managing our seas, including a new *Marine Bill*.<sup>72</sup>

Support for a *Marine Bill* came from the Environmental Audit Select Committee's report *Environmental Crime: Wildlife Crime*<sup>73</sup> published on 7 October 2004, which included the following recommendation:

We look forward to seeing the draft UK Marine Bill currently being prepared by WWF-UK and would encourage DEFRA to work closely with WWF-UK on fine-tuning the draft and securing parliamentary time to take the Bill forward.

<sup>70</sup> "Reid accused over passive smoking report", *The Telegraph*, 18 October 2004

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/10/18/usmoke.xml&sSheet=/portal/2004/10/18/ixportaltop.htm>

<sup>71</sup> Smoking in Public Places (Wales) Bill (HL) 2003/04

<sup>72</sup> Prime Minister, "PM Speech on Climate Change" No 10 website, 14 September 2004:

<http://www.number-10.gov.uk/output/page6333.asp>

<sup>73</sup> Environmental Audit Committee. *Environmental Crime: Wildlife Crime*, 7 October 2004, HC 605, 2003-04:

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmenvaud/605/60502.htm>

### 5.3 Civil Service

The House of Commons Public Administration Select Committee published a draft *Civil Service Bill* as part of a committee report in January 2004.<sup>74</sup>

The press release accompanying the publication of the report stated, 'this is believed to be the first time that a Parliamentary Select Committee has developed and published its own Bill' and the Committee recommended that the Government bring forward legislation before the end of the 2003-04 Session.<sup>75</sup>

The Government has indicated its intention to publish a draft bill on several occasions since then.<sup>76</sup>

Staff working for the National Assembly for Wales remain part of a unified UK civil service so any legislation drawn up along the lines suggested by the House of Commons Public Administration Select Committee would apply in Wales.

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<sup>74</sup> Public Administration Select Committee, 1<sup>st</sup> Report 2003-4.

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmpublicadm/128/12802.htm>

<sup>75</sup> House of Commons, PASC, Press Release, 5 January 2004.

[http://www.parliament.uk/parliamentary\\_committees/public\\_administration\\_select\\_committee/pasc\\_03\\_04\\_pn\\_04.cfm](http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pasc_03_04_pn_04.cfm)

<sup>76</sup> For example, HC Deb 21 January 2004 c1343 and HC Deb 22 July 2004 c494

## **6 Annex 1: Assembly Cabinet's proposals for primary legislation, 2004-05**

### **Debate on Primary Legislation bids, 17 March 2004** **NDM1873 Karen Sinclair (Clwyd South)**

Standing Order 31.10 requires the Cabinet to put its proposals for Westminster primary legislation to Plenary before 31 March each year.

To propose that the National Assembly for Wales acting under Standing Order 31.9:

1. Endorses the Cabinet's proposals for Bills in the next Parliamentary session as set out in the document laid in the Table Office and e-mailed to Assembly Members on 10 March 2004; and
2. Requests the Cabinet to pursue these proposals with the UK Government and press for primary legislation, which reflects the particular needs of Wales and respects the role of the Assembly.

### **Cabinet's proposals for primary legislation, 2004-05**

#### **Commissioner for Older People (Wales) Bill**

The Bill would establish a new Commissioner, who would safeguard and promote the best interests of older people in Wales. The Commissioner would be enabled to assist older people to enforce their rights, empowering them to reach their full potential as active citizens. The Assembly would be able to refer matters to the Commissioner for his/her consideration, but could not require the Commissioner to act on such referrals or limit his/her ability to act in relation to such referrals. The Commissioner would have a range of duties including to promote awareness of matters relating to the best interests of older people; to take such steps as he/she considered appropriate with a view to encouraging good practice in the treatment of older people; and to keep under review the adequacy and effectiveness of law and practice relating to the welfare of older people and the adequacy and effectiveness of services provided for older people by the relevant authorities. The Commissioner would be able to take on individual cases, and could support individuals in taking court action in certain circumstances. General powers would include discretion to undertake research, to issue and publish information and guidance, to conduct investigations and to make representations to any body or person about any matter concerning the best interests of older people.

The Bill would place a duty on the Assembly to fund the Commissioner and the Commissioner's office. There would be likely to be an initial one-off cost of £0.5m to set up the office, and thereafter annual running costs of the order of £1.25m each year.

#### **Education (Miscellaneous Provisions) (Wales) Bill**

The Bill would provide powers for limits to be placed on junior class sizes similar to those in existence for infant class sizes. It would rationalise the legislative underpinnings of the primary school breakfast scheme and those for the Assembly Learning Grant. It would enable the Higher Education Funding Council for Wales and the National Council of ELWA to act jointly and on each other's behalf and to second staff to one another, and it would provide for HEFCW to support improved governance in HE and to exercise planning functions as a last resort to secure partnerships between institutions in line with policy established by the Assembly Government in 'The Learning Country' and 'Reaching Higher'. It would also provide Estyn with powers of inspection for youth and community

work training within the HE system, and clear up some technical statutory anomalies in respect of Estyn. It would require FE institutions to produce and publish annual statements on governments and management.

There would be limited financial implications for the Assembly, the most significant of which would be funding to reduce junior class sizes, (but some baseline provision has already been made for this). The provisions for HEFCW and ELWA should have no significant cost implications. There would be some small costs for Estyn in inspecting youth and community training in HE. The costs of the primary school breakfast scheme will be considered fully following evaluation of the pilot scheme which will be underway in 2004-05.

### **Housing (Suspension of Right to Buy) (Wales) Bill**

The Bill would enable the National Assembly to designate areas of housing pressure where the Right to Buy (RTB) could be suspended. The Housing Act 1985 permits landlords disposing of properties in rural areas to impose a covenant limiting the freedom of the purchaser (and his successors in title) to re-sell the property. Last year the Assembly made an Order extending the list of rural areas where covenants on re-sale may be imposed. The Assembly has also used other secondary legislation powers to reduce the maximum discount allowed under the RTB to £16,000 in all parts of Wales. However, there is no provision in the Act allowing the RTB to be suspended in areas of 'housing pressure'. Primary legislation is therefore required to introduce a power of this nature.

There would be no significant financial implications for the Assembly in this proposal. Where the RTB was suspended, landlords (mainly local authorities but also some registered social landlords) would not receive any sale receipts, but would continue to receive rents. Hence the financial outcome for them should be broadly neutral.

### **Local Government (Town and Community Councils) (Wales) Bill**

The Bill would implement those recommendations of the recent research study on the role and functions of community and town councils which require amendments to legislation. The purpose of the Bill would be to enable local councils in Wales to deliver a wider range of services and actions locally, increase the effectiveness of their representational role and ability to work in partnership with other bodies, and enable the Welsh Assembly Government directly to fund local councils' activities. The Bill would among other things repeal the provision in the Local Government Act in 1972 enabling community councils to be disbanded; provide a power enabling the Assembly to introduce an accreditation procedure for individual or groups of local councils (local councils would be required to meet certain minimum standards before taking on additional functions); provide powers to amend the list of functions on which local councils have a statutory right to be consulted, and require principal authorities to review their community areas within every 4 years and submit a report to the Assembly and to the Local Government Boundary Commission.

There would be some limited financial implications for the Assembly from this Bill, the most significant of which would be the provision by the Assembly of direct grant assistance to councils. Local councils' increased service responsibilities would be undertaken with the agreement of, and funding from, their county or county borough councils. The increased localisation of service provision should result in an increase in the range and quality of local services.

## **Public Services Ombudsman (Wales) Bill**

The Bill would create a new single Ombudsman's jurisdiction for Wales, incorporating the existing 3 Ombudsman posts (Local Government Commissioner, Health Service Commissioner and Welsh Administration Ombudsman) into one. This would enable the post holder to investigate complaints of maladministration against any of a wide range of public bodies in Wales, including the Assembly, ASPBs, Health Service Bodies and Local Authorities. The existing Ombudsmen's powers of investigation and report would be carried over into the new Public Service Ombudsman's jurisdiction, and additional powers would be given to enable the Ombudsman to issue guidance on good administrative practice.

The Assembly already finances all 3 existing Ombudsmen's offices either directly or via the Local Government Finance Settlement, and the creation of a single Ombudsman's jurisdiction should have no financial impact on the Assembly (although some reorganisation of budgetary lines would be necessary). The reform holds out the prospect of a substantially more effective Ombudsman's service for people in Wales at no extra cost.

## **Tourism Accommodation (Registration) (Wales) Bill**

The Bill would, by amending or repealing part or all of Section 17 of the Development of Tourism Act 1969, create a new enabling power for the Assembly to establish a tourist accommodation registration scheme in Wales. It would also include the power to make subordinate legislation setting out the basis upon which accommodation is to be registered. Accommodation registered under the scheme would be subject to periodic inspection. The registration and inspection arrangements would be designed to ensure that minimum standards in the provision of tourist accommodation are met and maintained. The Minister for Economic Development and Transport presented the detailed proposals for this Bill to the Economic Development and Transport Committee on 25 February and the matter was debated on plenary on 3 March.

The scheme can be designed to be self financing, but there may be start up costs. Detailed decisions on these issues will be for consideration by the Assembly Government in drawing up subordinate legislation once the primary legislation is in place.

## **Transport (Wales) Bill**

The Transport (Wales) Bill would provide the Assembly with a coherent set of transport powers for the first time, enabling the Welsh Assembly Government to take forward its integrated transport policy. The Bill would include strengthened powers in relation to transport planning and implementation, with a new requirement on the Assembly to publish a national transport strategy and a duty on local authorities to prepare local plans or to work together to produce regional plans. It would also include a power to establish one or more joint transport authorities, to discharge specific local authority transport functions over 2 or more local authority areas. The Bill would greatly strengthen the Assembly's powers in relation to the railways, with a power to give directions and guidance to the Strategy Rail Authority, powers to make payments to, and enter into binding agreements with the Authority, as well as a power to appoint a member of the Authority. Finally the Bill would contain a general power to allow the Assembly to make both revenue and capital payments to transport operators.

The planning powers envisaged in the Bill would have some minor cost implications for local authorities. If it were decided to proceed with establishment of a joint transport



authority, most of the costs would be met by transfer of existing staff, but a Headquarters Team and some augmentation to create an effective organisation would be required, costing up to £1m annually (including overheads). There would be a small increase in administrative costs for the Assembly arising from the SRA-related proposals, as well as a cash-neutral transfer of programme resources (relating to subsidy payments to the train operating company).

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Note:

The Cabinet is also aware of Baroness Finlay's Private Member's Bill in the House of Lords on smoking in public places. This proposal originated in a motion put down by backbench Assembly Members, which was endorsed by the Assembly in January 2003. The Assembly Government therefore endorses the spirit of Baroness Finlay's Bill, and should it fail to become law for any reason, the Cabinet will want to take up with the Secretary of State the possibility of a Wales-only Bill coming forward from the UK Government on the Assembly's behalf.