



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

Welsh Assembly Government bids for primary legislation

Abstract

This paper provides background briefing on the annual debate on Assembly Government bids for primary legislation at Westminster.

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Welsh Assembly Government bids for primary legislation

1 Introduction

Prior to 2001-02, Assembly Government bids for primary legislation were made through private correspondence with the UK Government. In a Memorandum submitted to the House of Lords Committee on the Constitution in February 2002, the First Minister stated:

As with the relationship in general, consultation on proposed primary legislation has broadly worked well. This approach has yielded Bills making significantly different provision for Wales, such as this [2001-2002] session's Education Bill, and the first major piece of Wales-only legislation for some years (the Children's Commissioner for Wales Act 2001). Again, there are also examples of where the system has worked less well: where a Bill has treated the Assembly less favourably than UK Ministers, particularly as regards "Henry VIII" clauses. Those are not typical by any means. But if the settlement is to remain in robust health, it is important that that primary legislation continues to reflect the Assembly's interests and respect its role.¹

A change in Standing Orders from 2001-02 required the Assembly Government to formally submit its proposals for primary legislation. These proposals must first be approved by the Assembly in Plenary. Standing Orders 33.11 and 33.12 state:

33.11 No later than 31 March each year, the Assembly will consider a motion under Standing Order 33.9 proposed by a Minister. Such a motion will set out the Assembly Cabinet's proposals for primary legislation in the following session of the UK Parliament or, if the Cabinet has no such proposals, will invite the Assembly to note that fact.

33.12 If the Assembly approves a motion under Standing Order 33.9 or 33.11, the First Minister shall as soon as possible communicate its terms to the Secretary of State for Wales. The First Minister or a Minister shall report to the Assembly from time to time on the response of the UK Government to the Assembly's proposals and on the progress of any Bill or amendments proposed by the Assembly which the UK Government agrees to bring forward.²

Annex B of the concordat between the Assembly Cabinet and the Wales Office deals with Primary Legislation affecting Wales describes how the Assembly Government must then submit approval bids to the Secretary of State for Wales to pursue further at a UK Government level::

The Assembly is free to request the UK Government to introduce primary legislation at any time. Such requests will be considered in the context of the parliamentary timetable for the prospective legislative programme.

Under Assembly Standing Order 23.12 [now 33.12], the First Minister will communicate to the Secretary of State the terms of any resolution of the Assembly requesting the UK Government to make or amend primary legislation. The Assembly Cabinet will not address any such requests directly to other Government Ministers. Assembly Ministers will copy to the

¹ First Minister's Memorandum to the House of Lords Constitution Committee Inquiry on Devolution, Cabinet Paper CAB (01-02) 33. February, 2002.

[http://www.wales.gov.uk/organicabinet/content/CabMeetings/papers/CAB\(01-02\)33_hol.pdf](http://www.wales.gov.uk/organicabinet/content/CabMeetings/papers/CAB(01-02)33_hol.pdf)

² National Assembly for Wales, Standing Orders.

<http://www.wales.gov.uk/keypubstandingorders/index.htm>



Secretary of State any representations they make to other UK Ministers on matters relating to primary legislation.³

The annual debates on primary legislative bids from previous years can be seen here:

2001

Record of Proceedings, 13 March 2001, *The Queen's Speech*, pp.28-55.

<http://www.wales.gov.uk/assemblydata/3AAFB06D000A8B87000050040000000.pdf>

2002

Record of Proceedings, 19 March 2002, *Welsh Assembly Government's Proposals for Bills*, pp.77-115.

<http://www.wales.gov.uk/assemblydata/3CA0A6E9000E93B600000B4400000000.pdf>

2003

Record of Proceedings, 12 March 2003, *Future Primary Legislative Bids*, pp.32-57.

[http://www.wales.gov.uk/assemblydata/N00000000000000000000000000008223.pdf](http://www.wales.gov.uk/assemblydata/N00000000000000000000000008223.pdf)

2004

Record of Proceedings, 17 March 2004, *Primary Legislative Bids*, pp.37-70.

[http://www.wales.gov.uk/assemblydata/N000000000000000000000000000018982.pdf](http://www.wales.gov.uk/assemblydata/N000000000000000000000000018982.pdf)

2005

Record of Proceedings, 16 March 2005, *Primary Legislative Bids*, pp.38-85.

[http://www.wales.gov.uk/assemblydata/N000000000000000000000000000029719.pdf](http://www.wales.gov.uk/assemblydata/N0000000000000000000000000029719.pdf)

³ Concordat between the Cabinet of the National Assembly for Wales and the Wales Office, 2001.
<http://www.wales.gov.uk/keypubconcord/content/concordats/osswe.htm>

2 Assembly bids for primary legislation 2001-02 to 2005-06

The table below lists the bids for primary legislation laid before Plenary by the Assembly Government and approved between 2001-02 and 2005-06. Some have been unsuccessful and others have been addressed through provisions in England and Wales legislation. Wales only Acts and Bills are discussed fully in section 3.

For 2001-02 session	
Health and Well-Being (Wales) Bill	Successful; provisions in <i>National Health Service Reform and Health Care Professions Act 2002</i> and <i>Health (Wales) Act 2003</i> .
Education (Wales) Bill	Partly successful; some provisions included in the <i>Education Act 2002</i> .
St David's Day Bill.	Unsuccessful.
Census (Amendment) Wales Bill.	Unsuccessful, but administrative arrangements to enable the Assembly to influence census forms being made in concordat with the Office of National Statistics.
For 2002-03 Session	
Common Land (Wales) Bill.	Bid not pursued because of DEFRA commitment to seek legislative time for England and Wales legislation (<i>Draft Commons Bill</i>) introduced in 2004-05.
Sunday Licensing (Wales) Bill.	Successful; provisions contained in <i>Licensing Act 2003</i> .
St David's Day Bill.	Unsuccessful.
Land Use Planning Bill.	Successful; separate provisions for Wales contained in <i>Planning and Compulsory Purchase Bill</i> .
Education Bill.	Partly successful; some provisions contained in the <i>Education Act 2002</i> ; others unsuccessful.
Audit (Wales) Bill.	Successful. <i>Public Audit (Wales) Act</i> passed in 2004.
Housing Ombudsman (Wales) Bill.	Successful; separate provisions for Wales included in <i>Housing Act 2004</i>
Passenger Transport Bill.	Unsuccessful.
For 2003-04 session	
Education (Miscellaneous Provisions) (Wales) Bill.	Unsuccessful
Public Services Ombudsman (Wales) Bill.	Successful; <i>Public Services Ombudsman (Wales) Bill</i> introduced in the 2004-05 session (see below).
Tourism Accommodation (Registration) (Wales) Bill.	Unsuccessful (see below).
Transport (Wales) Bill.	Successful; Transport (Wales) Bill introduced in the 2004-05 session (see below).
Prohibition of Smoking in Public Places Bill.	Private Member's Bill proposed in the House of Lords: fell. Private Member's Bill introduced in the House of Commons in February 2005 by Julie Morgan MP: fell. However, separate provisions for Wales in the <i>Health Bill</i> currently before Parliament.



For 2004-05 session	
Commissioner for Older People (Wales) Bill.	Bill introduced in the House of Lords after the General Election in May 2005. Currently in the House of Commons.
Education (Miscellaneous Provisions) (Wales) Bill (To place limits on junior class sizes similar to those for infant class sizes. It would legislate for a primary school breakfast scheme, the Assembly Learning Grant, and would enable more integrated working between Higher Education Funding Council for Wales and ELWa. It would provide Estyn with powers of inspection for youth and community work training within the HE system . The Bill would also require FE institutions to publish annual statements on government and management.)	The Welsh Assembly Government has addressed these issues through means other than primary legislation.
Housing (Suspension of Right to Buy) (Wales) Bill.	So far unsuccessful.
Local Government (Town and Community Councils) (Wales) Bill.	So far unsuccessful but a proposal for 2006-07 (see below).
Public Services Ombudsman (Wales) Bill.	Successful. <i>Public Services Ombudsman (Wales) Bill</i> (HL). Received Royal Assent in April 2005.
Tourism Accommodation (Registration) (Wales) Bill.	Unsuccessful (see below).
Transport (Wales) Bill.	Successful; <i>Transport (Wales) Bill</i> introduced in the 2004-05 session. Failed to receive Royal Assent before Parliament was dissolved but reintroduced in the 2005-6 Session. <i>Transport (Wales) Act</i> passed in February 2006
For 2005-06 Session	
Commissioner for Older People (Wales) Bill [HL] 2005-06	Successful. Currently before Parliament (March 2006).
Government of Wales Bill	Successful. Currently before Parliament. (March 2006).
Housing (Suspension of Right to Buy) (Wales) Bill	So far unsuccessful
Local Government (Town and Community Councils) (Wales) Bill	So far unsuccessful.
Tourism Accommodation (Registration) Bill	The draft bill will no longer be published this spring and was withdrawn on 18 January 2006.
Welsh Language Schemes Regulator (Wales) Bill	So far unsuccessful.

Further information on Bills currently before Parliament that have been remitted to Committees of the National Assembly for Wales can be seen in Members' Research Service Paper 06/009: *Bills under consideration by Assembly Committees.*

3 Wales-only Acts and Bills

3.1 Acts

Five Wales-only Acts have been passed by Parliament since the outset of devolution in 1999. These are:

◆ *Children's Commissioner for Wales Act 2001*

The post of Children's Commissioner for Wales was created by provisions within the *Care Standards Act 2000*. The 2001 Act:

- set out the principal aim of the Commissioner as safeguarding and promoting children's rights and welfare;
- empowered the Commissioner to consider and make representations to the National Assembly for Wales on any matter affecting the rights and welfare of children in Wales;
- introduced a power to review the exercise of functions of the National Assembly and other persons;
- extended the power of the Commissioner to examine particular cases of children and to assist in particular cases by applying those powers to a wider range of bodies; and
- extended the power to review and monitor arrangements for complaints procedures, whistle – blowing and advocacy by applying it to a wider range of bodies in Wales providing services to children.

◆ *Health (Wales) Act 2003*

The Act:

- made provision about Community Health Councils in Wales;
- established and made provision about the Wales Centre for Health;
- made provision for the establishment of Health Professions Wales.

◆ *Public Audit (Wales) Act 2004*

The Act enabled there to be a single public audit body for Wales, headed by the Auditor General to be known as "the Wales Audit Office". It has responsibility for the financial and performance audit of the Assembly; its sponsored bodies and a number of other publicly funded bodies; health bodies (primarily NHS Trusts and Local Health Boards) and local government bodies in Wales. The Act includes provisions intended to safeguard the constitutional independence and democratic accountability of local government.

◆ *Public Services Ombudsman (Wales) Act 2005*

The Act created a single Ombudsman service for Wales, combining the three current offices of the Commissioner for Local Administration in Wales, Health Services Commissioner for Wales and Welsh Administration Ombudsman into one service.

◆ *Transport (Wales) Act 2006*

The Act gave the Assembly the powers it needs to take forward its integrated transport policies.

- places a duty on the Assembly to promote safe, integrated, sustainable, efficient and economic transport;
- place a duty on the Assembly to publish a Wales Transport Strategy;
- ensures that the local transport plan system is modified, making it an effective vehicle for the implementation of the Wales Transport Strategy;
- makes provision for joint working arrangements and for joint transport authorities, so that local authority transport functions are carried out on a regional basis;
- empowers the Assembly to secure the provisions of public transport services, where such services would not otherwise be met;
- provides a specific power to give financial assistance in respect of air services and airport facilities, where the services or facilities would not otherwise be provided; and
- gives the Assembly powers to establish a Public Transport Users' Committee for Wales.

3.2 Bills

The current legislative programme contains three Wales only Bills. The *Transport (Wales) Bill* had not received Royal Assent before Parliament was dissolved in 2005, but was subsequently passed in February 2006.

◆ *Commissioner for Older People (Wales) Bill [HL] 2005-06*

The Bill establishes an office of Commissioner for Older People in Wales that has powers and duties comparable to the Children's Commissioner in Wales. The role of the Commissioner is to safeguard and promote the interests of older people in Wales. The Bill is currently before the House of Commons.

◆ *Government of Wales Bill 2005-06*

The White Paper, *Better Governance for Wales*, was published in June 2005. It set out the Government's plans:

- to abolish 'corporate body' status of the Assembly and give effect to separation;
- implement changes to the Additional Member system used for Assembly elections, and
- provide for enhanced legislative powers for the Assembly.

The Bill was published in early December 2005 and completed its passage through the House of Commons on 28 February 2006.⁴

⁴ MRS, *The Government of Wales Bill 2005-6*, Research Paper, 06/001, 2006.
<http://www.wales.gov.uk/keypubmrs/content/06-001.pdf>

4 Proposals for primary legislation 2005-06

The Welsh Assembly Government has published its proposals for primary legislation for the 2005-06 session of Parliament which are to be debated in Plenary on 15 March 2006. It has two proposals:

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

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. In 2003 the Assembly made an Order extending the list of rural areas where covenants on re-sale may be imposed. *The Housing Act 2004* has given landlords a "right of first refusal" to repurchase properties offered for sale within 10 years of the original disposal under the Right to Buy legislation (RTB). However, repurchase must be at current market value.

The Assembly has also used its secondary legislative 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'. This requires primary legislation.

Under the proposal, areas of housing pressure (rural or urban) would be considered for designation following application to the Assembly Government by local housing authorities, which would need to provide supporting evidence. If approved, suspension would be for a period of 5 years, but could be renewed for a further period(s).

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

The Bill would enable the Assembly Government to implement those recommendations of the Aberystwyth research study on the role and functions of community and town councils which require amendments to legislation. The policy objective would be to enable local councils in Wales to deliver a wider range of services and actions locally, and increase the effectiveness of their representational role and their ability to work in partnership with other bodies.

The Bill would among other things amend the provisions in the *Local Government Act 1972* to put in place more rigorous requirements which would need to be met before community councils could be disbanded; introduce a lower threshold for establishing new community councils; provide a power enabling the Assembly Government 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); require councils to advertise vacancies to be filled by co-option; provide powers to amend the list of functions on which local councils would have a statutory right to be consulted; require principal authorities to review their community areas every 10-15 years and report to the Local Government Boundary Commission; and give local councils a new power to enable them to promote or improve the economic, social and environmental well-being of their areas; and provide a power for the Assembly Government to fund local councils directly or provide them with special grant.

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



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