

National Assembly for Wales

Welsh Provisions in Westminster Bills: An update

July 2011

Following the UK General Election in May 2010 and the subsequent Queen's speech announcing the new Government's legislative programme, the Research Service published papers outlining key Welsh provisions when relevant Westminster Bills were published. These have related to the *Localism Bill*, the *Public Bodies Bill*, the *Police and Social Responsibility Bill*, the *Health and Social Care Bill* and the *Education Bill*.

This paper provides an update on the provisions in Bills currently going through Westminster.

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Research Service
National Assembly for Wales
Cardiff Bay
CF99 1NA

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July 2011

Alys Thomas

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Welsh Provisions in Westminster Legislation: An update

1. Introduction

Following the UK General Election in May 2010 and the subsequent Queen's speech announcing the new Government's legislative programme, the Research Service published papers outlining key Welsh provisions when relevant Westminster Bills were published.

Some of those provisions were clauses conferring "framework powers" on the National Assembly for Wales, allowing it to make Measures under Part 3, Schedule 5 of the *Government of Wales Act 2006* ("the 2006 Act"). However, following the Yes vote in the referendum on 3 March 2011 and the Assembly's approval of the *Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Saving Provisions and Modifications) Order 2011*¹ on the 29 March 2011, the National Assembly now has the legislative competence to make Acts of the Assembly in 20 subjects. This paper, therefore, provides an update on the provisions in Bills currently going through Westminster which are no longer relevant to the devolution settlement as it stands in Wales as of 5 May 2011.

There are also developments in respect of provisions relating to Wales in Bills which do not arise from the referendum result. Updates will also be provided on these developments.

¹ [*Government of Wales Act 2006 \(Commencement of Assembly Act Provisions, Transitional and Saving Provisions and Modifications\) Order 2011*](#),

2. The Localism Bill

2.1. Framework Powers

The first version of the *Localism Bill* was published in December 2010. A copy of the original Research Service paper can be seen [here](#). The Bill gave the National Assembly for Wales legislative competence in respect of three matters²:

- local referendums on proposed council tax levels;
- planning applications and enforcement;
- the Housing Revenue Account (HRA) and Housing Revenue Account Subsidy (HRAS) system in Wales

The Welsh Government issued an Explanatory Memorandum³ which explained that the matters listed in the framework powers in the Bill are not set out in the same detail in Schedule 7 of the *Government of Wales Act 2006* but they already fall within the broader subjects in the Schedule. Specifically:

- matters 11.9 to 11.11, relating to local authority accounts, borrowing and subsidy in respect of their housing functions, would come within the subject Housing and housing finance in paragraph 11 in Part 1 of Schedule 7;
- matter 12.19, relating to referendums on Council Tax increases, would come within the subject —Local government finance in paragraph 12; and
- matters 18.4 to 18.7, relating to planning applications and enforcement action would come within the subject —Town and country planning in paragraph 18.

The Memorandum further explained:

This means that in the event of an affirmative vote in the referendum (due to be held on 3 March 2011), the Assembly would be able to legislate in relation to these matters.⁴

As a result of the Yes vote in the referendum these clauses have been removed from the Bill.

2.2. England and Wales Provisions

A number of provisions will apply to both Wales and England. These include:

² Wales Office, *Welsh Secretary welcomes Localism Bill to switch powers to communities*, 13 December 2010

³ [Written Statement by Carl Sargent AM, Minister for Social Justice and Local Government, Jane Davidson AM, Minister for Environment, Sustainability and Housing and Jocelyn Davies AM, Deputy Minister for Housing and Regeneration, *The Localism Bill*, 14 December 2010.](#) Welsh Assembly Government Memorandum about Framework Powers for Wales in the Localism Bill, December 2010

⁴ Ibid.

- ensuring that councillors are not prevented from taking part in decisions where they have expressed a view on related issues (Predetermination);
- requiring local authorities to publish senior pay policy statements;
- repealing duties for local authorities to promote understanding of local democracy and make schemes for handling petitions;
- requiring ballots on all proposals for Business Rate Supplements, and enabling local authorities to give discretionary Business rate discounts;
- changing the way local housing authorities may discharge the main homelessness duty under the *Housing Act 1996*.

The original Bill also contained provisions requiring a Legislative Consent Motion (LCM) in the National Assembly. These included the local authority pay accountability provisions, the repeals relating to local democracy and petitions and the homelessness provisions. The LCM was passed by the Assembly on 8 February 2011. The Minister for Social Justice and Local Government, Carl Sargeant stated:

This is a procedural motion, namely a legislative consent motion, and I move it as the lead Minister and the conduit between the Westminster Government and the Assembly Government on this specific Bill. Thank you for the opportunity to explain the background to this LCM in relation to the Localism Bill, Llywydd. We have had an active discussion with the UK Government on the contents of the Bill and areas of particular interest to Welsh Ministers. The LCM is required because several of the Bill's provisions fall within the Assembly's legislative competence in relation to devolved areas. The consent motion refers to a number of relevant provisions in the Localism Bill: clauses 21 to 26 look at local government pay accountability; clauses 27 to 28 abolish the duty to promote local democracy and the petitions duty; clauses 124 to 125 consider the discharge of homelessness duties in the private rented sector; and clause 150 transfers functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency. The Assembly Government holds the view that an LCM is required on the issues identified.⁵

Following amendments to the Bill during its passage through the House of Commons a Supplementary LCM was passed by the Assembly on 14 June 2011.

The Bill contained provisions applicable to Fire and Rescue Authorities (FRAs) in England to provide a general power in relation to the exercising of their functions and purposes incidental to those functions. It also proposed to give them limited powers to charge for their services. A whole series of amendments were tabled by the UK Government to extend those provisions to Wales after legislative competence over Fire and Rescue Services was transferred to the National

⁵ RoP, 8 February 2011,

Assembly as a result of the referendum. The Legislative Competence Memorandum states:

It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity and will allow the Welsh Ministers to introduce appropriate legislation in accordance with Welsh priorities and concerns.⁶

The Bill will also confer additional subordinate legislative powers which will enable Welsh Ministers to make orders modifying existing legislation with a view to removing restrictions which would otherwise limit the new general power of FRAs. These include power for Welsh Ministers by order to amend, repeal, revoke or disapply statutory provisions that prevent or restrict the relevant FRAs from exercising the general power or overlap with that general power. There is also a power to prevent FRAs doing anything specified in the order or to make it subject to conditions. The National Assembly for Wales Legal Service noted the novelty of the new arrangements which apply to Orders in this part of the Bill.

The novelty of the new arrangements which would apply to orders relating to FRAs under the new section 5C is that when a draft order is laid before the Assembly it must be accompanied by a memorandum from the Welsh Ministers providing a reasoned recommendation as to whether negative, affirmative and super-affirmative procedures should apply and it will be open to the Assembly to decide on a case by case basis. This will be done by the Assembly, within 30 days (not including recesses or dissolutions) of the draft order being laid, imposing a requirement that affirmative or super-affirmative procedure should apply. If no such requirement is imposed, then negative procedure will automatically apply.

A requirement that affirmative or super-affirmative procedure should apply will be imposed by a resolution of the Assembly or a recommendation of an Assembly committee. The new clauses set out details of these alternative procedures and the calculation of time periods.⁷

The charging power will be in the form of a new section 18A to be inserted in the *Fire and Rescue Services Act 2004*, and will be subject to limitations set out in the Act. The most significant of these is that there can be no charging for extinguishing fires, or protecting life and property in the event of fires, except in respect of fires “which are at sea or under the sea.”. Again there is an order making power for Welsh Ministers to disapply the charging power in relation to actions of a particular kind or for a particular period.

⁶ Welsh Government, *Legislative Consent Memorandum: Localism Bill*, LCM-LD8550, June 2011.

⁷ Legal Services, *Supplementary Legislative Consent Motion in relation to the Localism Bill*, Legal Briefing, June 2011.

Responding to a question on the LCM during the debate in Plenary on 14 June 2011, the Minister, Carl Sargeant stated:

Turning to today's legislative consent motion in detail and the issues relating to the fire and rescue authorities, the general power of competence for FRAs will allow them the freedom to do whatever they consider appropriate to achieve a beneficial outcome for the emergency services. You are quite right to say that the power to charge has existed in the past, but this Bill provides an opportunity to make slight changes. The core functions of the fire and rescue services are fire safety, firefighting, rescue and protection in relation to road traffic accidents and other emergencies specified by Order of the Minister. They remain processes whereby no charges will be placed upon a person. However, these powers will give fire and rescue authorities the opportunity to enter into joint ventures with other emergency service providers and joint commercial ventures to develop redundant fire station buildings and so on. It will give them greater flexibility to deliver for their communities.

On section 89 regarding provision and assistance for community groups, the community right to buy is intended to provide new powers to communities to help them to save local facilities and buildings that offer potential for community use. These buildings could include the local shop or village pub, disused factory or school. County councils and county borough councils in Wales will have the right to identify the property assets that they feel are of particular value. This legislative consent motion will place a power, not a duty, on the Minister, so funding will be around the power to give and seek advice, as opposed to placing a duty on the relevant Minister.⁸

A supplementary legislative consent motion was passed by the Assembly on 12 July 2011 arising from further UK Government amendments to the Bill. It referred tenancy deposit schemes and, secondly, to the licensing of houses in multiple occupation.⁹

The Bill was passed by the House of Commons on 18 May and is currently at committee stage in the House of Lords. A summary of clauses applying to Wales can be seen in **Annex 1**.¹⁰

⁸ RoP, 14 June 2011

⁹ RoP, 12 July 2011

¹⁰ [Localism Bill 2011, as brought from the House of Commons on 19th May 2011 \[HL Bill 71\], Explanatory Notes.](#)

3. Public Bodies Bill [HL]

3.1. *The Bill*

The *Public Bodies Bill [HL]* is an enabling bill which means it will not itself make any changes to public bodies. The Research Service's paper on the original bill can be seen [here](#). It will:

- create a legal framework that will enable UK Government departments to implement the majority of public bodies reforms that require legislation and that are not already covered in other departmental bills.
- create legislative powers which give ministers the ability to abolish or merge bodies; modify a body's constitutional or funding arrangements; or transfer its functions elsewhere.
- give Secretaries of State the necessary powers to take forward changes to their bodies in secondary legislation when they are ready to do so.

The Bill extends to England, Wales, Scotland and Northern Ireland. An order made under the Bill altering legislation **may** also extend to the devolved countries.

The Bill has completed its passage through the House of Lords where it was subject to considerable amendment and had its First Reading in the House of Commons on 10 May 2011. The Second Reading took place on 12 July 2011.

The House of Commons Library has produced a [paper on the Bill](#) as amended in the House Lords.¹¹

3.2. *Merger of Environmental Bodies*

Clause 13 sets out the power of Welsh Ministers to bring forward orders to modify certain environmental public bodies in Wales:

- the Countryside Council for Wales;
- the Welsh devolved functions of the Environment Agency;
- the Forestry Commissioners;
- and the functions of a Welsh Flood and Coastal Committee.

Clause 14 allows Welsh Ministers, by order, to abolish the following public bodies:

- agricultural dwelling-house advisory committees;
- agricultural wages committees;
- the Environment Protection Advisory Committee;

¹¹ HC Library, *Public Bodies Bill* [Bill 188 of 2010-12], Research Paper, 11/50, 13 June 2011

- and the regional and local fisheries advisory committee.

The Secretary of State's consent is required for an order under clauses 13 or 14 which transfers a function to, or confers a function on, the Environment Agency

Clause 20 sets out the procedure by which orders under the legislation can be made by Welsh Ministers. Welsh Ministers are required to lay a draft order and an explanatory document.

Speaking for the Government in the Lords, Lord Henley explained that these clauses had been requested by the Welsh Government:

to enable them to give effect to possible institutional changes flowing from their ongoing review of how environmental policies are delivered in Wales. This review is linked to wider policy proposals to develop a more integrated ecosystems approach to managing the natural environment in Wales.¹²

On 8 March 2011 the Assembly passed a Legislative Consent Motion allowing the UK Government to bring forward amendments to the Bill in devolved matters. The First Minister told Plenary that:

The UK Government has tabled an amendment to clause 9 of the Bill so that any Order that is made by a UK Minister under clauses 1 to 6 that engages the Assembly's legislative competence will require the Assembly's consent, thus giving the Assembly a full opportunity to consider the implications of any such proposals. Prior to the Bill's being introduced in the House of Lords in October, we agreed with the UK Government the inclusion of Order-making powers in clauses 13 and 14 to enable Welsh Ministers to modify and transfer the functions of the Countryside Council for Wales, the Environment Agency, and the Forestry Commission. We have since agreed Government amendments to extend those powers to regional flood and coastal committees.

The UK Government has also agreed to table amendments that remove from Schedules 1 to 6 to the Bill all bodies for which Welsh Ministers alone are responsible, instead giving Welsh Ministers comparable Order-making powers in relation to those bodies. The bodies concerned include the Welsh national park authorities and internal drainage boards that are wholly, or mainly, in Wales. The inclusion of these powers in the Bill will enable Welsh Ministers to pursue a more integrated approach to delivering environmental policies in Wales.¹³

The First Minister also noted that:

During the parliamentary passage of the Bill, additional safeguards have been proposed regarding the consultation and scrutiny of Orders made under the Bill. As a result, Orders that are made under this Bill will be subject to the superaffirmative procedure. This will

¹² HL Debates, 4 April 2011 c.1542

¹³ RoP, 8 March 2011

equally apply to Orders that are made by Welsh Ministers, requiring a draft Order to be laid before the Assembly following a 12-week consultation on the Order.¹⁴

However, in the House of Lords, Labour peer Lord Rowlands expressed concern that making detailed legislation about the Order powers of Welsh Ministers best lay with the Assembly, not Parliament:

What is remarkable is that here we are, post referendum, with power having been transferred to legislate in Cardiff on this and other issues, yet in a Bill of this House we are writing out in detail the procedures that Welsh Ministers have to go through to justify and consult. In other words, we are writing into Welsh Ministers' responsibilities the super-affirmative procedures that we are applying to UK Ministers. Putting aside the general merits of the issue, I think that it is quite extraordinary that at this moment in time we are seeking to write into a Bill a remarkable clause that lays out in great detail the responsibilities of Welsh Assembly Ministers to consult. Again, I respectfully suggest that that should be the decision of the Assembly.¹⁵

The Bill also places restrictions on Welsh Ministers:

- Clause 21 states that the order making powers included in the Bill cannot be used to create or authorise the creation of a power to make subordinate legislation, a power of forcible entry, search or seizure, or a power to compel the giving of evidence. This does not prevent the repeal and re-enactment of a power.
- Clause 22 requires the consent of a charity or other person not otherwise exercising public functions unless they have consented. An order may not transfer or delegate a function as set out in subsection 3 to a person not otherwise exercising public functions. The functions in subsection 3 are: a function of a tribunal in exercising the judicial power of the state; a power to make subordinate legislation; a power of forcible entry, search or seizure; a power to compel the giving of evidence; or any other function which would necessarily interfere with or otherwise affect the liberty of an individual.
- Clause 23 places restrictions on the creation of criminal offences by orders under the Bill. Orders under the legislation may not, in relation to any transfer or modification of functions, create or authorise the creation of a criminal offence where the offence is punishable by a term of imprisonment, or a fine, which exceeds certain limits. This does not prevent the repeal and re-enactment of an offence

¹⁴ Ibid.

¹⁵ HL Debates, 4 April 2011 c.1546

3.3. S4C

S4C has been moved from Schedule 4 to the Bill (as a body, where Ministers may make an Order to modify funding arrangements) to Schedule 3. It was also listed in Schedule 7 as a body that could be moved to other Schedules where it could be subject to abolition, merger or changes to its constitutional arrangements by Ministerial Order. However, the UK Government agreed an amendment and withdrew Schedule 7.

In the Report stage debate on 28 March 2011, Lord Wigley moved an amendment (29A) which sought to limit the power of ministers to modify the constitutional arrangements of Welsh language television, Sianel Pedwar Cymru (S4C), in the event that Amendment 34B, moved by Lord Roberts of Conwy, was agreed. The effect of 34B is to add S4C to Schedule 3: *the list of public bodies whose constitutional arrangements ministers have power to modify*. He argued that this would enable the planned changes to the governance and funding of S4C to be put into effect. Lord Wigley was concerned about the independence of the S4C from the BBC under the proposed arrangements. The House of Lords defeated Amendment 29A by 197 votes to 162 – a Government majority of 35. Members of the Lords agreed without voting to Amendment 34B.¹⁶

On the 11 July the Rt Hon Jeremy Hunt MP, Secretary of State for Culture, Olympics, Media and Sport, issued a Written Statement ahead of the Second Reading debate in the Commons. It stated:

It is now the Government's intention to table an amendment after Second Reading of the Public Bodies Bill which will add the relevant provision for removing the RPI/funding link to the face of the Bill, instead of in schedule 4, as at present. The decision to reduce payments to S4C was taken as part of the comprehensive spending review in line with efforts to reduce the fiscal deficit as early as possible. It predated the requirement to consult on orders which was added to the Public Bodies Bill at Committee Stage in the House of Lords. However, the implication is that the Government would not be able to consult meaningfully in relation to the changes to funding arrangements as would have been required by clause 10 of the Bill.

This amendment does not impact on the Government's commitment to consult publicly on changes to the governance arrangements to S4C. It is simply a change to the proposed legislative mechanism by which funding changes will be made. Indeed, it gives Parliament the opportunity to debate the change as part of the passage of primary legislation. This amendment will also give greater clarity and assurance on the Government's commitment to S4C in the long term. The new clause will for the first time set in statute a requirement that S4C receives sufficient funding for it to be able to fulfil its statutory, and vitally important, role as an independent Welsh language broadcaster.

¹⁶ HL Debates, 28 March 2011, Cols.1004-1022

As S4C remains listed in schedule 3 of the Bill, which provides for the power to modify constitutional arrangements, there is still the requirement under clause 10 of the Bill to consult on the order that will change the broadcaster's governance arrangements. The Government will make an announcement about this consultation in due course. In the interim, discussions with S4C and the BBC Trust on the details of the partnership model are ongoing, and progress is encouraging following the appointment of the new chair of S4C.

I should like to reiterate that there is no change to the Government's unerring commitment to a strong future for Welsh language programming and to S4C as an independent service. The Government are committed to ensuring that S4C will be funded at a level sufficient to ensure that it can fulfil its statutory remit and we intend to put this expectation on the statute book so that it is a legal requirement. Furthermore, the Government have also committed to a review of S4C's strategy and finances before the end of the comprehensive spending review period, in order to inform future funding levels for S4C and to ensure that the new partnership with the BBC represents the best model for the long-term stability and growth of S4C.¹⁷

3.4. Other amendments

As noted above, the Bill was extensively revised during its passage through the House of Lords. Other amendments of interest to Wales include:

- Amendments to require the consent of the devolved parliaments and assemblies rather than with the devolved Ministers before making Orders within those bodies' competencies. Clause 9 limits the powers of Ministers to make orders in relation to devolved matters. It specifies that an order under clauses 1 to 5 would require the consent of the Scottish Parliament, the Northern Ireland Assembly, or the National Assembly for Wales if it made provision within the competency of the relevant devolved administration or if it modified the functions of certain office holders within the administration.
- the Government was defeated on an amendment to remove the "Chief Coroner, Deputy Chief Coroners, Medical Advisers to the Chief Coroner and Deputy Medical Advisers to the Chief Coroner" from Schedule 1 of the Bill. The amendment was moved by Baroness Finlay of Llandaff, a Crossbench peer.
- The Government was also defeated on an amendment to remove the Youth Justice Board for England and Wales from Schedule 1.
- An amendment was passed to place the Administrative Justice and Tribunals Council and the Civil Justice Council in Schedule 2.

¹⁷ HC Debates, 11 July 2011, col2WS-3WS

- All bodies mentioned in the schedules are now subject to a five-year sunset clause, which means that authority to amend them is confined to the current Parliament and future Governments must either renew the legislation or pass their own.

An amendment to remove Consumer Focus from the Bill failed but the First Minister told Plenary:

with regard to Consumer Focus. I can confirm that the UK Government has confirmed that it would support bespoke arrangements in the devolved administrations if proposals were forthcoming. I wrote to Francis Maude on 17 February to request a UK Government amendment to give Welsh Ministers an Order-making power to establish a new body to take on consumer protection functions in Wales, including any functions of the National Consumer Council transferred to the Welsh Ministers under the Bill. We look forward to a positive response with regard to that.¹⁸

During the Second Reading Debate on the Bill in the House of Commons, Mark Williams, the MP for Ceredigion stated:

Members on the Government Benches have spoken about Citizens Advice and the new functions it would assume from Consumer Focus. Again, in Wales this issue is particularly pressing because the current structure of Citizens Advice does not lend itself to Welsh governance. There is a separate structure in Scotland, which allows for Scottish matters to be looked at differently, but that is not the case in Wales, where policy work is led from London. Consumer Focus Wales wants an amendment led by the Department for Business, Innovation and Skills to give Assembly Ministers the power to determine the structure they want—a power not to acquire new powers, but to determine a Welsh structure.¹⁹

¹⁸ RoP, 8 March 2011.

¹⁹ HC Debates, 12 July 2011, col 234

4. Police and Social Responsibility Bill

The *Police Reform and Social Responsibility Bill* received its First Reading in the House of Commons on 30 November 2010. The Research Service's paper on the original Bill can be seen [here](#).

Key provisions in the Bill include:

- replacing police authorities with directly elected police and crime commissioners to be introduced from May 2012;
- making changes to the *Licensing Act 1993* to give more powers to local authorities and police to deal with any premises that are causing problems;
- introducing a system of temporary bans for new psychoactive substances - so-called 'legal highs' such as GBL and BZP - whilst the health issues are considered by independent experts;
- restoring the right to non-violent protest around Parliament whilst ensuring that Parliament Square remains accessible to all by repealing sections 132-138 of the *Serious Organised Crime and Police Act (SOCPA) 2005* and prohibiting encampments and other disruptive activity on Parliament Square;
- amending the process for issuing private arrest warrants for universal jurisdiction offences.

Neither policing nor licensing, the main policy areas covered by the Bill, are devolved in Wales. However, some clauses in the Bill provide for distinct arrangements for Wales, notably for Assembly Members to be appointed by Welsh Ministers to each Police and Crime Panel. Explanatory Notes suggest that these appointments would be subject to approval by the National Assembly for Wales but there would appear to be no provision for this on the face of the Bill.

However, the Minister for Social Justice and Local Government had made a statement in October 2010 which set out the opposition of the Welsh Government to the proposals for the creation of police commissioners. The Bill includes proposals to set up joint committees of local authorities in each police area (known as Police and Crime Panels) in order to scrutinise the Police Commissioners. The Assembly already had the legislative competence to make law to provide for local authority joint committees to be established for particular purposes, which is why an LCM was required.

The Welsh Government, therefore, found itself bringing forward an LCM with which it was not in agreement. The Minister stated:

This is the final legislative consent motion for today, on the more difficult issue facing us, relating to the proposals for police and crime commissioners. Members will be aware that the Police Reform and Social Responsibility Bill currently before Parliament will abolish police authorities and replace them with directly elected police and crime commissioners. Members

will also know that the Welsh Assembly Government is fundamentally opposed to these proposals in principle. I made our position clear in my statement to Members in October last year, and do not intend to repeat our objections in detail today, except to say that it remains our view that the case for change has not been made by the Westminster Government.²⁰

The motion stated:

To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that those provisions relating to Police and Crime Panels in Part 1 of the Police Reform and Social Responsibility Bill, as introduced into the House of Commons on 30 November 2010, so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.²¹

The vote was For 17, Abstain 15, Against 23. The Cabinet and Deputy Ministers abstaining.

Following the rejection of the LCM by the Assembly a note on the Assembly intranet stated:

Now that the Assembly has declined to approve the Legislative Consent Motion relating this Bill, it will be for the UK Government to consider how to respond. **The UK Government's guidance to Whitehall Departments says that, in the event that an LCM is not passed by the National Assembly, 'the UK Government would, subject to collective agreement being secured, need to table an appropriate amendment removing the relevant provisions before the Bill reaches its final stage in the House of introduction.'** [*RS emphasis*] But this is unprecedented territory as neither the Assembly nor the Scottish Parliament or Northern Ireland Assembly has never [sic] declined to approve an LCM or its equivalent before.

There is no legal obstacle to the Home Office proceeding with its proposed legislation on Police and Crime Panels. The Westminster Parliament continues to be paramount even in relation to areas of law-making which have been devolved. But a decision to press on to legislate on a devolved field against the wishes of a devolved legislature would be unprecedented and would raise important issues relating to devolution not only in relation to Wales but also in relation to Scotland and Northern Ireland.

Alternatively, it would be open to the UK Government to accept the decision of the Assembly by amending its bill to retain the principle that Police Commissioners in Wales must be subject to local scrutiny, but leaving the detailed arrangements for how that scrutiny is to be carried out to be decided by laws made by the Assembly.²²

²⁰ RoP, 8 February 2011

²¹ Ibid.

²² [National Assembly for Wales Intranet, Legislative Consent Motion, 10 February 2011 \[Accessed 11 February 2011\]](#)

Naturally, the Assembly's stance was discussed during the Bill's discussion in Parliament. The Rt. Hon. Paul Murphy MP stated:

Not very long ago, the National Assembly for Wales took the unprecedented decision not to give legislative consent to part 1. That, in my experience-which goes back a few years in such matters-is entirely unprecedented. It has never happened before. As a consequence, the Communities and Culture Committee of the National Assembly has asked for the deferment of part 1. Its headline recommendation reads:

"We recommend that the Welsh Government has dialogue with the UK Government to persuade it to defer introducing those aspects of the bill related to the abolition of Police Authorities, and establishment of Police Commissioners and Police Crime Panels in Wales, at least until the effectiveness of their impact in England has been assessed."

That is not a million miles away from new clause 4, which asks for the deferral of the commencement until such an assessment has been made by HMIC. That is why I support the new clause.²³

Mr Murphy was of the view that the issue was "now about the relationship between the United Kingdom Government and the devolved Administrations". He suggested to the Minister that the Welsh Government would invoke the Joint Ministerial Committee, which is in place to ensure that disputes are resolved between the United Kingdom Government and the devolved Administrations.²⁴

The policing Minister, Nick Herbert MP later stated

The right hon. Member for Torfaen [Mr Murphy] referred to the National Assembly for Wales Communities and Culture Committee request for a deferment of the provisions and asked whether the Government have held discussions with the Welsh Assembly Government. I must reassure him that, right from the beginning, we have sought such discussions and to respect the devolved arrangements in Wales. I have met the Minister responsible, as has the Home Secretary, and our officials have had a great deal of discussion.

The Assembly Government have made it clear that they do not favour police and crime commissioners, but of course, policing is a reserved matter, and the House of Commons has decided that police and crime commissioners should apply in England and Wales-that is what the Bill says. The question is whether we can find arrangements that respect those aspects of the devolution settlement that are within the competence of the Welsh Assembly.....

I very much regret that the Welsh Assembly did not pass that [Legislative Consent] motion, but I repeat that we have at all times sought to address the Welsh Assembly Government's proper concern, while recognising that it is equally proper that the House of Commons decides on that reserved matter. Saying that we must always follow a request from the devolved Parliament or one of the Assemblies for a deferment is tantamount to saying that

²³ HC Debates 30 March, Col 386

²⁴ Ibid. col 387

the matter is no longer reserved. For so long as the matter is reserved, I believe that the right decisions have been taken.²⁵

The Policing Minister described the rejection of the LCM as “self-defeating:

The motion sought to put in place the special arrangements for police and crime panels in Wales, on which the Welsh Assembly Government would have representation. I emphasise to the right hon. Gentleman that we really tried to reach an arrangement and to respect the devolution settlement.²⁶

On Third Reading the Home Secretary, the Rt. Hon. Theresa May MP, explained, in response to an intervention from Elfyn Llwyd MP, how the Bill would be amended to preclude the need for an LCM.

Mr Llwyd: The reason they did not endorse it is quite simply because they do not believe in the idea of a directly elected police commissioner. They did not want the panels and so voted against the proposal. Unfortunately, this place decided to ride roughshod over their wishes and the wishes of democratically elected people in Wales, thus showing little of the respect agenda and acting in a hugely undemocratic way.

Mrs May: That is not correct. It is precisely because we respect the Assembly's decision that we are removing police and crime panels from local government structures in Wales. The Assembly had the opportunity to put in place a legislative consent motion that would have enabled that to take place. Such a motion was tabled by the Welsh Assembly Government, but they then chose not to support it, even though they had put it forward. As a result, the view of the Welsh Assembly was that police and crime panels should not form part of the local government structure in Wales. Instead, the PCPs will be freestanding bodies.

I want to make it clear that in taking a power to appoint those freestanding bodies I will not be telling, instructing or forcing any authority to do anything. I will invite local authorities to nominate a member to the PCP for each force area, and if an authority fails to nominate a member, I will invite members directly while having regard to the political balance within the force area. I think that the amendments will ensure that the appropriate checks and balances on police and crime commissioners can apply in all force areas in England and in Wales.²⁷

However, during its passage through the House of Lords the UK Government suffered two defeats. Notably, the UK Government was defeated on an amendment put down by a Liberal Democrat peer requiring the commissioners to be appointed by a panel rather than elected. Peers approved it by a majority of 12. A Home Office spokesman was quoted as saying that while it would consider the debate in the Lords, the UK Government will look to redress this when the Bill returns to the House of Commons. The Third Reading of the Bill in the House of Lords took place on the 20 July 2011.

²⁵ Ibid. cols392-3

²⁶ Ibid.

²⁷ HC Debates, 31 March 2011, col 326

5. Health and Social Care Bill

The *Health and Social Care Bill* received its First Reading at Westminster on 19 January 2011. It introduces far reaching changes to the organisation of the National Health Service (NHS) in England. However, it also contains some provisions that relate to Wales, Scotland and Northern Ireland. Most of the provisions contained in the Bill extend to England and Wales only, but apply only to England. Some provisions apply only to Wales, others extend to the whole of the UK. The Welsh provisions were mainly technical or dealing with cross border issues. Provisions abolishing or reforming certain health bodies also affect Wales. The Research Service's paper on the original Bill can be seen [here](#).

Proposals in the Bill for changes to NHS in England have proved controversial, placing strains on the Coalition Government, and on 4 April 2011 the Health Secretary, the Rt. Hon. Andrew Lansley MP made a statement to the House of Commons announcing that there would be a break in the passage of the Health and Social Care Bill. The Bill had received its second reading on the 31 January 2011 and had completed its committee stage in the House of Commons on 31 March 2011.

The UK Government set up an independent group to review the Health and Social Care Bill. The group was known as the NHS Future Forum and consisted of 45 members. The group reported its findings and recommendations to the Government on Monday 13 June 2011.

On 21 June 2011 the House of Commons agreed a programme motion re-committing certain clauses to the Public Bill Committee that had previously scrutinised the Bill.

In Parliament Welsh MPs have raised questions about the impact of the Bill on Wales. During the Public Bill Committee stage, Owen Smith MP questioned the Minister about the proposed reform of NICE:

My final and most important point is about Wales. Wales is not mentioned in this part of the Bill. Scotland has a different system—it has the Scottish Medicines Consortium—for assessing medicines, and Wales has the All Wales Medicines Strategy Group. The reality, however, is that the AWSMG is a much less well-resourced and much smaller body, which is unable to provide the enormously powerful service that NICE does in assessing all medicines. If NICE guidance does not have a mandatory effect across the board, or if there is less NICE guidance, because it is tied up with price negotiation, the AWSMG will have to pick up the tab and try to do that role for Wales. I will be interested to hear the Minister's comments on that in particular.²⁸

²⁸ HC PBC Debates 29 March 2011 col 1177

The Minister, Paul Burstow MP replied:

I have saved the best for last—NICE in Wales. NICE is an England-only body, but Wales will have access to NICE products and may also contract independently with NICE for Wales-specific products. That is a devolved matter for Wales, which will be able to use the expertise of NICE, because it is well respected, under those contracting arrangements²⁹.

Mr Smith responded:

Owen Smith: I am grateful for that clarification. The Minister is entirely accurate in his description of the situation in legislation, but in the real world the All Wales Medicines Strategy Group and the NHS in Wales rely greatly on taking NICE guidance and applying and assessing it. In a world post value-based pricing, will NICE still provide that guidance or will its role be restricted to price setting and, in that case, will there be less NICE guidance in the public domain for the AWMSG to take advantage of?³⁰

The Minister replied:

Paul Burstow: I do not believe that there is any reason to suppose that that will be the outcome of the changes to value-based pricing.³¹

Welsh MPs have also touched on the Bill in Welsh Questions. On 11 May 2011 Hywel Williams MP asked:

Hywel Williams (Arfon) (PC): What discussions she has had with ministerial colleagues and the Welsh Assembly Government on cross-border implications of the provisions of the Health and Social Care Bill.

The Parliamentary Under-Secretary of State for Wales (Mr David Jones): My right hon. Friend the Secretary of State and I have discussed the Health and Social Care Bill with ministerial colleagues and with Welsh Assembly Ministers.³²

Owen Smith MP asked about the future of the National Patient Agency.

Owen Smith (Pontypridd) (Lab): The Minister will be aware that one of the other destabilising effects of the Health and Social Care Bill is the abolition of the National Patient Safety Agency, whose job was to monitor patient safety in England and Wales. In England its job will be taken over by the national commissioning board, but what provision has been made for transferring its responsibilities in Wales to ensure patient safety? If the job is given to the National Assembly, will extra funds be made available for the purpose?

Mr Jones: As the hon. Gentleman will know, the existing cross-border protocol is supported by an annual transfer of funds—currently £5.9 million—to the Assembly Government, and an additional payment of some £12 million was made in the last two financial years. These matters will have to be discussed with Welsh Ministers once the new Assembly Government has been established.³³

²⁹ Ibid.col 1182

³⁰ Ibid.

³¹ Ibid.

³² HC Debates11 May 2011 col 1151

³³ Ibid.

6. The Education Bill

The *Education Bill* was introduced by the Secretary of State for Education, the Rt. Hon Michael Gove MP, on 26 January 2011. The Research Service's paper on the original Bill can be seen [here](#).

In relation to Wales, the Bill sought to insert four new Matters into Field 5 (Education) of Schedule 5 to the *Government of Wales Act 2006* which would have provided the National Assembly with additional legislative powers in the following areas:

- matter 5.15A: Professional standards – including training, professional development, performance management and qualifications;
- matter 5.15B: Professional conduct, recruitment, disciplinary proceedings, registration and the required levels of health and fitness for teachers and the wider education workforce;
- matter 5.15C: Accreditation of providers of training for teachers and the wider education workforce; and
- matter 5.6A: Funding of pre-16 education or training in Wales.

The Bill also sought to amend Matters 5.15(c) and 5.16(c) to extend the legislative powers of the National Assembly to cover the training of all the persons listed in Matter 5.15A, and not just the training of teachers and specialist training assistants for schools.

As a result of the Yes vote in the referendum on 3 March 2011 these clauses have been removed from the Bill.

The Bill also contains provisions that will confer powers on Welsh Ministers in relation to student finance and boarding provisions in schools and colleges. Additional functions are also given to Welsh Ministers as a result of the abolition of the General Teaching Council for England (GTCE) and the Training and Development Agency for Schools (TDA).

The clauses remaining in the Bill relevant to Wales are:

- Clause 13, which imposes reporting restrictions in relation to allegations by a pupil that a teacher has committed a criminal offence, is concerned with criminal justice and so applies to and affects England and Wales in the same way.
- Clause 72 gives the Welsh Ministers the same powers in relation to interest rates on student loans as it gives to the Secretary of State.

- Clause 73 gives the Welsh Ministers the same powers in relation to course fees for part-time students at higher education institutions as it gives to Secretary of State.

On 1 March 2011 the Assembly passed a legislative consent motion in relation to the following clauses:

- Clause 4, which makes new provision in respect of exclusion of pupils in England, and makes the necessary amendments to section 52 of EA 2002 (exclusion of pupils) because it will now only apply to Wales.
- Clauses 14 to 17, dealing with the abolition of Training and Development Agency for Schools (TDA), ensure that, in relation to Wales, the Welsh Ministers have the same powers, subject to the same constraints, as they previously exercised through the TDA.
- Schedule 2 widens the powers that Welsh Ministers have to share information with the General Teaching Council for Wales.
- Clause 42 makes the same change to the definition of boarding provision in Wales as in England, but makes further particular provision in relation to Wales. It enables Welsh Ministers to take steps to determine whether a child's welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in Wales, in circumstances where their duty to do so has been suspended by virtue of section 87A of CA 1989.
- Clause 44 which deals with repeal of the power to complain to the Local Commissioner. Section 409 of EA 1996 applies to England and Wales and provides for local authorities to consider complaints about the curriculum. This section was repealed in error for both England and Wales by ASCLA 2009. The repeal has only been commenced in fourteen local authority areas in England as part of the new Local Government Ombudsman complaints service, and clause 44 has the effect that section 409 is repealed in England and restored in respect of Wales.
- Clause 47 (determination of permitted charges) which has the same effect in Wales as in England.
- Clause 64, concerning the abolition of the YPLA, as this clause repeals sections 68 and 69 of ASCLA 2009 which enable the YPLA to make arrangements with the Welsh Ministers for the provision of certain services in Wales.³⁴

³⁴ [Education Bill as brought from the House of Commons on 11th May 2011 \[HL Bill 67\] Explanatory Notes.](#)

A supplementary legislative consent motion was passed on 14 June 2011 in relation to clause 58, which was inserted by UK Government amendment during the House of Commons Report stage. It concerns the remission of fees at Academy boarding schools.

During the debate, the Education Minister, Leighton Andrews AM stated:

As we understand it, no pupils currently benefit from the policy, and the State Boarding Schools' Association has stated that it is not aware of any fees being remitted since the 1990s. However, we believe that the policy should be in place and that local authorities should be clear about their responsibilities under the legislation. Therefore, I consider it to be appropriate to deal with these provisions within the Education Bill in Westminster. They are minor changes and this enables us to put the provisions in place.³⁵

The Bill is currently at committee stage in the House of Lords.

³⁵ RoP, 14 June 2011.

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