

National Assembly for Wales
Assembly Commission

The Future of the Assembly: ensuring its capacity to deliver for Wales

January 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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Assembly Commission

The Assembly Commission serves the National Assembly to help make it a strong, accessible and forward-looking democratic institution and legislature that delivers effectively for the people of Wales. Its role is to provide the National Assembly with the staff, property and the services required to fulfil this role.

The Commission consists of the Presiding Officer and four Assembly Members, one nominated by each of the four party groups represented in the Assembly.

The Assembly Commission is responsible for ensuring that property, staff and services are provided for the Assembly. Our goals are to provide Members with outstanding parliamentary support, facilitate engagement with the people of Wales and use resources wisely. We take a strategic view of the services Members need to undertake their role in light of the challenges they face. It is this experience that we wish to bring to bear on the constitutional debate.



Dame Rosemary Butler AM (Welsh Labour)

Presiding Officer and Commission Chair, taking lead responsibility for communications and professional development for Members and their staff.



Angela Burns AM (Welsh Conservatives)

Commissioner with responsibility for budget, governance (including Audit and Risk Assurance Committee membership) and links with the Remuneration Board. Angela also has responsibility for the improvement of services to Assembly Members and the Commission's role as the employer of Assembly staff.



Peter Black AM (Welsh Liberal Democrats)

Commissioner with responsibility for ICT, broadcasting and e-democracy; the Assembly estate and sustainability.



Sandy Mewies AM (Welsh Labour)

Commissioner with responsibility for education services, front of house, the Assembly's facilities, retail, catering and security. Sandy also has responsibility for the Commission's statutory equality functions.



Rhodri Glyn Thomas AM (Plaid Cymru)

Commissioner with responsibility for the Assembly's Official Languages, legal services and Freedom of Information.

Introduction

The United Kingdom is in the midst of a period of huge constitutional change. Fundamental questions are being asked about the nature of the Union itself, the powers of its parliaments and the size and powers of each tier of its national and local governance. It is against this backdrop that the Assembly Commission presents this report on one particular aspect of that debate – the capacity of the National Assembly.

First and foremost, it is our view that the size of the institution, and its system of election, should be matters for the Assembly itself to decide rather than the Westminster parliament. We therefore wish to see this matter tackled urgently and the devolution of those powers at the earliest possible opportunity.

When those powers rest with the Assembly, and debate within Wales begins in earnest, the position of the Commission will be that the number of elected Members in the Assembly must be increased. Our argument is driven by the desire to give Members a realistic opportunity to scrutinise the policy, administration, spending and legislative proposals of the Welsh Government as robustly as the people of Wales deserve.

With only 60 Members, the National Assembly is small by any objective local, national or international comparison. Assembly Members are thinly spread, especially in their committee work, and these pressures will only intensify as our legislative and fiscal responsibilities increase.

We believe that the optimum size lies somewhere in the range between 80 and 100 Members. The maximum cost of a legislature of that size would represent just 0.4% of the Welsh Block. In our view, this is a modest and reasonable price to pay for effective democratic representation. As the Silk Commission put it, “Good scrutiny means good legislation, and good legislation pays for itself.”

The Assembly is responsible for authorising some £15 billion of expenditure to fund the delivery of public services in Wales. With just 60 Assembly Members accountable for the development and scrutiny of legislation, for scrutiny of the Welsh Government’s policies and public service delivery, and for representing the interests of tens of thousands of constituents, the exposure and pressure on individual Assembly Members is significant and continuous. We want this Assembly to be a strong, accessible and forward looking democratic institution and legislature that delivers for the people of Wales. Much has been achieved by Assembly Members to deliver this since the Assembly was established. However, the strength and success of Welsh devolution in the future will be at risk if we do not take steps to match the size of the institution to the size of the task.

The paper is arranged in three parts:

- Part 1 sets out our position with regard to the size of the National Assembly;
- Part 2 includes our current best estimates of the costs for the Assembly of an increase in the number of Members;
- Part 3 argues for some specific alterations to the statutory regime in which the Assembly Commission operates in order for us to better promote public understanding of devolution and democracy in Wales.

Part One – the size of the National Assembly for Wales

Background

With only 60 elected Members, the Assembly has fewer Members than many local authorities in Wales and is the smallest of the devolved UK parliaments. It is also small by international standards.

Research for the *UK Changing Union* project¹ shows that the average size of the lower chambers of EU parliaments is 267 members. For countries serving populations of between 1 and 6 million people it is just over 140. The research suggests that an Assembly of 100 Members would be typical for a sub-national legislature in Europe representing more than three million people.

The Northern Ireland Assembly provides a useful comparator for the Assembly in Wales. Currently the Northern Ireland Assembly has 108 Members (MLAs) with a population of under 2 million people. However, the recent Stormont House Agreement suggests that the number of MLAs should be reduced to 90. This would mean that the electoral representation in Northern Ireland would still be higher per head of population than is currently the case in Wales.

Nearly a decade ago, the Richard Commission on the Powers and Electoral Arrangements of the National Assembly called for an increase in the size of the Assembly. In a unicameral Assembly with primary legislative powers, Richard felt that an increase to 80 Members by 2011 would be essential if the Assembly was to discharge its roles of holding the Government to account, representing the people of Wales and making laws for Wales effectively. The recommendations made by Richard in relation to the Assembly's powers have been largely implemented whereas those relating to its size have not.

The Government of Wales Act 2006 (the Act), created entirely separate legislative and executive institutions in Wales and gave the 2007-11 Assembly powers to make primary law via a process involving the UK government and parliament. The 'yes' vote in the referendum held in 2011 released the Assembly from that process so that, since the start of the Fourth Assembly in 2011, it has been free to legislate independently on any devolved matter.

The rapid evolution continues:

- the Wales Act (2014) is a further significant step forward, most obviously in the devolution of fiscal responsibilities;
- in its recent judgment on the Agricultural Sector (Wales) Act 2014, the Supreme Court made clear that it views the Assembly's power to legislate in much broader terms than many had previously believed;
- the Silk Commission recommended that the competence of the Assembly should be extended to take in powers over transport, broadcasting, teachers' pay, sewerage, energy consents, youth justice, policing and, in the longer term, other justice powers.

The Welsh Government has signalled its intention to make use of its new fiscal powers by bringing forward a Tax Collection and Management Bill in this Assembly. This will pave the way for the replacement of UK Stamp Duty Land Tax and Landfill Tax with new, devolved Welsh taxes from 2018. The Office for Budget Responsibility estimates that receipts from the taxes currently being devolved to the Assembly by the Wales Bill amount to more than £2 billion this year.

¹ See *Size Matters*, a report of the UK's Changing Union project, a joint initiative between the Wales Governance Centre at Cardiff University, the Institute of Welsh Affairs, and Cymru Yfory/Tomorrow's Wales.

Legislative workload

The volume and complexity of legislative scrutiny being undertaken by the Assembly is increasing significantly and rapidly. It will reach its highest ever level between now and end of the Fourth Assembly and we expect it to remain at that level into the Fifth Assembly. The key features of this increase are

- More Bills. Between January 2015 and June 2015 the Assembly will concurrently be considering 11 Bills (with a peak of 12 Bills in April 2015, a 50 per cent increase on the previous maximum of 8 under parallel consideration);
- Bills of greater size and complexity. Assembly Bills are now comparable with those of the UK Parliament in terms of size and complexity (see, for instance, the 200-section Social Services and Well-being Act and the 146-section Housing Act). In addition, of course, the entire legislative procedure in the Assembly – from introduction, through scrutiny and amendment to final approval – is undertaken bilingually. Our Acts carry equal legal status in both Welsh and English;
- More subordinate legislation flowing from powers in Acts of the Assembly;
- More Legislative Consent Memoranda, which at the moment receive only the briefest scrutiny despite their far-reaching policy and constitutional implications; and
- Legislation that is broader in scope: driven by factors such as the introduction of fiscal powers, the Supreme Court's judgements on competence and the move to a reserved powers model.

Committees

Since the election of 2011, the Assembly has been able to exercise the full extent of the legislative powers catered for in the Act and so has legislative autonomy in 20 broad areas of public policy. The impact on Members of that legislative authority has been significant, not only in terms of workload, but also in the range and specialism of the skills and support they require.

In terms of formal business, the pressure and constraint caused by the small number of Members is most obviously manifested in the work of the committees. It is here that the responsibility for holding the Welsh Government to account, and for the detailed examination and amendment of a much wider and more significant programme of legislation than ever before, most obviously falls.

Our committee structure meets one of the basic principles of good parliamentary operation in that all aspects of government policy, legislation or expenditure are open to scrutiny. To do so, remits have to be extremely broad and, out of necessity rather than choice, we combine responsibilities that are carried by separate committees elsewhere (we have no independent procedure committee, for instance). There is little doubt, therefore, that the effectiveness of our committee system is constrained because of the number of Members available and, hence, the breadth of each committee portfolio.

Including its Business Committee (the formal channel for the organisation of parliamentary business and oversight of procedure) the Assembly has 12 permanent committees.

The size of each of these is shown below:

Children, Young People and Education	10 members
Communities, Equality and Local Government	10 members
Enterprise and Business	10 members
Environment and Sustainability	10 members
Health and Social Care	10 members
Finance	8 members
Public Accounts	8 members
Constitutional and Legislative Affairs	5 members
Scrutiny of the First Minister	5 members
Business Committee	5 members
Petitions	4 members
Standards of Conduct	4 members

When first established, the Assembly had more, and larger, committees. Today, we have slimmed the structure back to the bone and it is hard to see how either of those two basic parameters – the number of committees or their size - could be reduced further.

The number of Assembly Committees

The Public Accounts Committee is the only Assembly Committee statutorily required by the Act.

The majority of Welsh Government subject responsibilities are overseen by the five principal 'policy' committees and the Constitutional and Legislative Affairs Committee (CLA).

The policy committees have dual responsibility for both policy and legislative scrutiny i.e. they undertake the work conducted by separate Select Committees and Public Bill Committees in the House of Commons. The main driver for this design is to bring the policy expertise of Members to bear on the examination of policy and legislation in the round. The reality is that, even if the Assembly wished to adopt a model along Westminster lines, this would be difficult given the number of Members available for committee work.

To allocate the majority of Welsh Government policy responsibilities between just five committees requires them each to have extremely broad remits. In each case a committee covers more than one ministerial portfolio. To broaden any of their remits further, in order to reduce the number of committees, would not be credible if they are to provide effective oversight of government action and legislation.

The Constitutional and Legislative Affairs Committee arguably covers the work of 5 equivalent Westminster committees. It undertakes the scrutiny of all subordinate legislation made by Welsh Ministers, from a merits as well as a technical perspective, examines Legislative Consent Memoranda,

is responsible for the scrutiny of European legislation and some of the First Minister's policy responsibilities, and undertakes more general inquiries within its remit.

The Finance Committee and Committee for the Scrutiny of the First Minister are fundamental to the Assembly's oversight of the Welsh Government and neither could be removed without significantly weakening the scrutiny performance of the institution.

The Petitions Committee is one of our most effective mechanisms for engaging with the people of Wales and feedback from all involved demonstrates that it is a model of best parliamentary practice in this regard.

The Standards Committee is critical in upholding high standards of conduct and ethics in the behaviour of Members and the Assembly's public reputation.

The size of Assembly Committees

If the number of committees in the Assembly is already at the minimum credible, could the number of Members on each be reduced? Again, our view is that we have already pushed our capacity to its limit, given the need for effective operation and the constraints placed upon us by the Act.

The Act makes certain provisions in respect of our committees. In particular, section 29(2)(a) requires that, so far as reasonably practicable, the membership of each committee reflects the overall political balance of the Assembly.

With the current political make up of the Assembly, the closest reflection of party balance would be achieved with a committee of twelve Members². When establishing committees, the Assembly is able to stray from this requirement for strict proportionality provided that there is at least a two-thirds consensus to do so. In practice, to date, the Assembly has done so only when there is unanimity across the parties. If that level of support cannot be found, the Act sets out a detailed formula for the establishment of a committee membership³. That formula guarantees strict proportionality and, consequently, larger committees.

The Assembly has taken conscious decisions in respect of the size of each of its committees so as to balance the responsibilities they carry with the practical reality of having so few Members available. Committees dealing with the bulk of legislation and policy oversight have ten Members – sufficient to approximate to party balance whilst also allowing the creation of sub-committees and working groups to maximise the volume of work they can undertake. Other oversight committees, where voting is less frequent, are smaller. Those dealing with largely apolitical matters are smaller still. These variations in size reflect negotiations and compromises made by individual parties willing to accept underrepresentation on a committee in order to make the whole system viable.

Clearly the Assembly will always need to have in place safeguards to ensure that its committee system is robust in its scrutiny of government and that all parties have appropriate voice and influence in committees. Ideally, how it achieves these goals should be matters decided by the Assembly itself, not forced upon us by legislation. At present, though, we must function within the restrictions of the Act. That means, in our view, that we have no further scope to reduce committee sizes in order to free up capacity in any meaningful way.

² Realistically, it is unlikely that any electoral outcome would result in a significantly lower 'best fit' size.

³ Commonly known as the d'Hondt mechanism and specified in Section 29 of the Act.

The burden on individual Members

The Assembly is a unicameral legislature. Its Members, therefore, have to address every aspect of parliamentary responsibility without the safety net of a revising chamber to cause them to think again. They must get it right every time, first time.

Of the 60 Members of the Assembly, not all are able to undertake committee work. Most obviously, some Members hold executive responsibilities as members of the Welsh Government. The Act places a limit on the number of Members in the Government at 14⁴. A small number of other Members, such as the Government Chief Whip and some party leaders, do not sit on any committees at present and neither does the Presiding Officer, other than as chair of the Business Committee. The Deputy Presiding Officer chairs the CLA committee.

Consequently, the work of the committees, most of which meet every week, is currently undertaken by just 43 Members. Ten of those Members sit on three committees, a further 21 on two, and the remaining 12 on only one.

The Scottish Parliament has 17 committees. Of the 128 MSPs, 4 sit on three committees, 41 on two and 41 on only one.

By way of illustration, the Chair of the Children and Young People Committee also sits on the Finance Committee and the Committee for the Scrutiny of the First Minister; the Chair of the Petitions Committee is also a member of the Constitutional and Legislative Affairs Committee and the Environment and Sustainability Committee.

In the Assembly, this degree of overlap and commitment is commonplace though it would never apply to, say, the Chair of a Select Committee in Westminster. In the House of Commons, well over 500 MPs are without executive or office holder roles and so available to undertake scrutiny and legislative work in committee and plenary. In Scotland, the equivalent figure is 113 MSPs and in Northern Ireland, 82 MLAs.

The breadth and volume of committee work and the unavoidable doubling up for most Members inevitably means that they cannot give every aspect of their work the priority it deserves. Reading time is a luxury, let alone the opportunity to reflect properly on research and evidence ahead of meetings. The inevitable result of this pressure is to reduce the quality of scrutiny and constrain the development of alternative policy proposals.

In addition to these extensive committee demands, the majority of Members are active every week in plenary – again, in contrast to larger parliaments where the opportunity to question or participate in statements or debate will come along less frequently.

Many Members inevitably have multiple roles, as office holders and party spokespeople. Currently, 34 Members hold a remunerated office (as members of the Welsh Government, Presiding Officers, committee chairs, Assembly Commissioners, party leaders and business managers). Like any legislature, the Assembly relies upon these key office holders to drive its work if it is to be effective. The roles are common to any parliament and executive, irrespective of size, and so represent a higher proportion of total membership in such a small institution, adding to the capacity challenges we face.

⁴ Today, 12 AMs are members of the Welsh Government

In 2004, the Richard Commission recommended that:

*the aim should be for Members to sit on one subject committee each in order to develop subject expertise and facilitate weekly meetings (or more where business necessitates this)*⁵

Clearly, we are nowhere near that modest and sensible aspiration. The Assembly's current structure contains 109 fundamental roles for Members:

1 Presiding Officer

1 Deputy Presiding Officer

4 Assembly Commissioners

14 members of the Welsh Government

3 non-Government Party Leaders

3 non-Government business managers

83 committee members

As we have demonstrated, populating this system with just 60 Members is unsustainable.

An increase to 80 Members would still result in significant doubling up of roles for many Members.

An increase to 100 Members would bring the Assembly close to the ideal position where every Member would be able to concentrate properly on their committee, executive or office holder role.

During the passage of the Wales Bill through the House of Lords, arguments were put forward in favour of an Assembly as large as 120 Members⁶.

⁵ *ibid* p258.

⁶ See, for example, amendments tabled to the Wales Bill 2014 House of Lords debate 13 October 2014 c65

Conclusion

With only 60 Members, the National Assembly is under powered and over stretched. It is small by any objective local, national or international comparison; its Members are thinly spread in their committee work especially; and its legislative and fiscal responsibilities are increasing. Assembly Members face a weekly cycle of committee work, demanding a high level of specialised policy, legislative, financial and procedural expertise, timetabled around two plenary sessions where a high level of attendance and participation is the norm, added to for many by the demands of key leadership roles upon which the institution relies.

An Assembly of 80 Members would still be low for a small European state or a sub-national legislature representing more than three million people. Though the position would be improved, significant capacity constraints would continue.

An increase to 100 Members would bring the Assembly closer to the European norm and to the ideal position where every Member would be able to develop specialist expertise and concentrate solely on their principal role, be that as office holder, spokesperson or committee member.

The expectations evident on Members today, let alone any extension of the Assembly's powers and responsibilities, make the case for more Members compelling.

In the view of the Assembly Commission, the Assembly needs to have between 80 and 100 Members if it is properly to hold the Welsh Government to account or to scrutinise the growing volume of policy and legislation for which the institution is responsible.

The size and electoral arrangements of the National Assembly should be matters decided by the institution itself and with full consultation with the people of Wales. We wholeheartedly endorse, therefore, the Presiding Officer's call for these matters to be devolved in full to the Assembly at the earliest possibility after the 2015 UK General Election.

Part Two – costs associated with an increase to the size of the National Assembly

The Assembly Commission has considered the direct costs that would arise from an increase in the size of the Assembly. Any such estimates must be treated with caution as actual cost will depend on a range of factors, from practical decisions on Commission staffing and priorities through to the impact of the electoral system and outcome on the make-up of the Assembly. Any figures, therefore, must be seen as indicators of the broad magnitude of cost rather than as precise predictions.

We have produced additional cost estimates for three scenarios - 80, 90 and 100 Members – making a number of assumptions about the functioning of business in the Assembly. In essence the Commission has assumed that increased membership would be accompanied by increases in the number of committees and the number of political groups. It also assumes that a further plenary session would be held every week.

Our estimates are split into three categories which can be calculated with varying degrees of certainty:

- The annual recurrent costs that we can most confidently predict will have to be met with a given number of Members. They include Member and support staff salaries (including pension and national insurance contributions) and allowances and other costs such as for Member office accommodation.
- Big ticket infrastructure costs which relate primarily to office accommodation costs in Cardiff for Members and staff and costs of providing ICT equipment to Members. A critical and potentially significant element not included at the moment is the estimated cost of adapting the existing Siambr to accommodate more Members. We are undertaking further work on this aspect. Of course, a future Assembly might consider alternative IT and seating arrangements for the Siambr which could have an impact on any future cost.
- Variable costs relating primarily to staff and services provided by the Assembly Commission. These are hardest to predict as the Commission at the time would have its own priorities for service delivery and value for money.

Combining these three elements allows us to present a range of cost estimates for each scenario. The first two categories can be regarded as core and largely unavoidable. The third set is more discretionary and flexible in nature and so its inclusion gives the upper limit of our estimates.

Our work so far suggests the following ranges (not including costs of adapting the Siambr):

Size	Range of estimated additional cost in the first year
80 Members	Additional costs of £7m - £9m, of which £<1m are one-off costs.
90 Members	Additional costs of £11m - £13m, of which £1m are one-off costs.
100 Members	Additional costs of £14m - £17m, of which £1m-2m are one-off costs.

The current budget of the Assembly Commission amounts to some £52.6 million and represents just 0.3% of the Welsh Block. The maximum cost associated with a move to 80, 90 or 100 Members would shift that figure to 0.4% of the Block. In our view, this would still represent a modest and reasonable price to pay for effective democratic representation and would be offset by the benefits of more effective policy, legislative and financial scrutiny.

Part Three - the promotion of public understanding of devolution and democracy in Wales

One of the four strategic goals of the Assembly Commission is to engage with the people of Wales by encouraging interest in the work of the Assembly and facilitating involvement with our legislative work. What is evident from our experience in this field is how challenging it is to explain the powers and legislative competence of the Assembly in simple terms, particularly given the extraordinary pace of change through three different systems of governance in fourteen years. This is a barrier to public understanding that is not helpful.

Above all, a clear constitutional settlement would ease our task and strengthen people's engagement in the democratic process. We therefore welcome the current Secretary of State's commitment to the introduction of a reserved powers model. Below are some further practical steps that would facilitate our engagement with the public and the communication of a straightforward, coherent message about the role of the Assembly. Many of these points have already been made publicly by the Presiding Officer and the Silk Commission:

- We wish to see the amendment of the existing power of the Assembly Commission to promote public awareness of: “the current or any pending system for the election of Assembly members, and the current or any pending system of devolved government in Wales⁷.” We would like to see this updated to provide a more general power relating to the system of devolved government in Wales and widened to clarify that it includes the power to promote democratic participation at all levels. This would put beyond doubt the ability of the Commission to promote public understanding of important issues for our democracy in Wales, such as any future income tax referendum.
- The Commission believes the Assembly should be made permanent in line with the Smith Commission's recommendation for the Scottish Parliament. Both institutions should be treated equally in this respect and their permanence enshrined in the same way.
- The Government of Wales Act 2006 contains many provisions relating to the role of the Secretary of State for Wales and the relationship between the Assembly and UK Government that reflect the constitutional position a decade ago rather than today. We would like to see these requirements removed, in line with the calls made by the Presiding Officer, so as to modernise the relationship between the Secretary of State for Wales and the National Assembly for Wales. We believe that doing so would be beneficial to all and would make the position far more understandable to the general public.
- As we have already argued, we believe that matters relating to the size and election of the Assembly should be devolved to the institution itself, rather than being legislated for in Westminster. Having already initiated a national conversation with young people to gather views on the registration to vote of 16 and 17 year olds, the Commission would also like to see all other matters relating to elections in Wales devolved to the Assembly.

⁷ Government of Wales Act 2006 Schedule 2, para 5(1).

