
The Powers of the National Assembly for Wales: issues and questions for consultation

Background

The Commission was appointed in July 2002. Its job is to produce an independent report by the end of 2003. This report will contribute to decisions on the future of the National Assembly and the way Wales is governed in the future.

In preparing our report we want to have the benefit of the views and experience of as many individuals and organisations as possible, especially from Wales but also from elsewhere.

As a first step we would like to invite you to send us a written statement of your views – we may then wish to explore these in meetings with you later.

The Commission's Terms of Reference include two distinct elements relating to

1. the powers
2. the electoral arrangements

of the National Assembly for Wales. This consultation relates to the first of these – the Commission will be issuing a further paper dealing with electoral issues later.

The questions set out below are intended to help recipients in commenting on the issues but the aim is not to limit debate. If there are any other issues which you feel are relevant to the Terms of Reference and which the Commission should consider please feel free to include them in your response.

The Powers of the National Assembly for Wales: issues and questions for consultation

November 2002

Members of the Commission

Chair: Rt Hon Lord Richard of Ammanford QC: previously Leader of the House of Lords, EEC Commissioner, Member of Parliament and UK Ambassador to the United Nations.

Eira Davies: from Wrexham, Managing Director of a web publishing business. Member of the Board of S4C and of Coleg Llandrillo Cymru.

Tom Jones: farmer from Welshpool, Powys. Chair of Wales Council for Voluntary Action, member of the Countryside Council for Wales and Chair of the Millennium Stadium Charitable Trust.

Dr Laura McAllister: Senior Lecturer in Public Administration and Politics, School of Management, University of Liverpool. From Bridgend, lives in Liverpool.

Peter Price: Member of European Parliament. Member of National Assembly Standing Orders Commission. Solicitor, part-time Chairman of Employment Tribunal. Lives in Cardiff.

Ted Rowlands: Former MP for Merthyr Tydfil and Rhymney and Cardiff North. Welsh Office Minister and Minister at the Foreign Office. Lives in Carmarthenshire.

Vivienne Sugar: Local Government Consultant, former Chief Executive of the City and County of Swansea. Lives in Swansea.

Huw Thomas: from Colwyn Bay. Director of Taro Consultancy Ltd, and former Chief Executive of Denbighshire County Council. RNID Trustee for Wales, Lay Member of Law Society Council and consumer member of Hearing Aid Council.

Sir Michael Wheeler-Booth KCB: retired Clerk of the Parliaments at Westminster. Member of the Royal Commission on House of Lords Reform and of National Assembly Standing Orders Commission. Special lecturer Magdalen College Oxford.

Paul Valerio: First Lord Mayor of Swansea in 1982. Councillor, City of Swansea. Retired from family business in the amusement industry. Lives in the Gower.

The Commission's approach

The Commission is keen to take a very practical approach- focusing on detailed examples of how things work at the moment and how they could be improved. It intends to base its conclusions on evidence of the practical implications of the powers currently delegated to the Assembly and contributions on this will be of great value. To this end it would be helpful to know:

- in what practical ways do the powers of the Assembly, or the limits on its powers, impinge on you, your organisation or the people whom you serve and what are the best examples of this from your point of view?

Are the powers of the National Assembly sufficient to meet the needs of Wales?

The Government of Wales Act 1998 provides Wales with a specific form of executive devolution. The Act gives the National Assembly the power to make secondary legislation ie make rules and regulations and implement decisions – but these must be within the scope and policy direction set out in the laws passed by the Westminster Parliament. The power to make primary legislation ie to put in place and implement new policies which need to be enforced through laws, remains at Westminster.

Therefore when the Welsh Assembly Government wishes to see changes in the laws which govern for example the provision of education or health services in Wales – it requires the agreement of the Government in Westminster to include these changes in its legislative programme either as Bills specific to Wales, or as part of a wider England and Wales Bill.

This raises a number of issues of principle –about the accountability of the Assembly and its ability to formulate and implement policies. The Commission will be seeking to address these issues in a practical way – to find out what difference the formal law-making powers have made and are likely to make in future.

The terms of reference cover both the breadth and depth of the powers – ie the range of matters over which the Assembly has the power to act and the extent of its powers in relation to them.

The questions for consultation are:

- does the Government of Wales Act provide the Assembly with the powers it needs to operate effectively and meet the expectations of the people of Wales?

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- whether, and if so how, the powers should be extended, strengthened or changed and whether they should include tax varying powers.

Structure and working arrangements of the National Assembly

Under the Government of Wales Act the National Assembly is constituted as a single body which combines the functions of

- a. introducing policies and implementing them by proposing new laws (the executive function)
- b. scrutinising and passing subordinate legislation (the legislative function).
- c. holding government to account .

In most countries and regions across the world these functions are divided between two bodies – Government and Parliament.

One of the advantages envisaged for the Assembly model was that it would work in a less confrontational way than is traditional in Parliamentary models, be more transparent and accountable and would be able to develop broader consensus on how to proceed, based on gaining the support of Members across the political parties, for example through the Subject Committees, as well as groups outside the Assembly.

However since 2001 the Assembly has in practice adopted a way of working which is close to the Parliamentary model with a clear separation between the roles of the executive arm – now exercised by the First Minister and Cabinet - and the parliamentary arm – the Presiding Office. This move away from the original concept of a single, consensual body was made possible by changes introduced during the passage of the Government of Wales Act.

The questions here relate to the connection between the scope of the Assembly's powers and its structure and working arrangements:

- if the Assembly were to acquire greater law making powers – is it inevitable that it would need to be reconstituted on the Parliamentary model?
- if so what organisational changes would be needed to support this model and what would be the gains and losses from making this change?

The Relationship between the Assembly in Cardiff and the Parliament at Westminster

At present the process of law making is shared between the Assembly and the Westminster Parliament. Parliament passes primary legislation for Wales in consultation with the National Assembly. Assembly Members, Members of Parliament and Peers all play a part in debating the policy proposals and in scrutinising the detailed clauses of each Bill. Doing this effectively requires consultation and timetabling arrangements which can be complex. The questions for consultation are

- how effective has the Assembly been in influencing UK Government policy making in relation to Wales – what are the practical examples which illustrate the strengths and weaknesses of the process?
- what are the advantages and disadvantages in principle of having a law making process which is shared between Cardiff and Westminster and what are the respective contribution of AMs, MPs and Peers?
- what would be gained or lost if powers to make fundamental policy changes through primary legislation were passed from Westminster to Cardiff?
- how would Welsh interests be affected if the role of Welsh MPs were to be reduced as a consequence of the acquisition of primary law making powers by the National Assembly?

The Role of the UK Government and the Secretary of State for Wales

Under the present shared law making arrangements the Secretary of State for Wales has a pivotal role in providing the link between Cardiff and Westminster. The Wales Office is responsible for overseeing Welsh interests in the UK Government's legislative programme, taking the lead on Welsh Bills and legislation affecting Wales in England and Wales Bills and representing Wales in the UK Cabinet. This role would change if the balance of responsibility for law-making moved from Westminster to Cardiff. The question is

- how would Welsh interests be affected if the Secretary of State's role was reduced as a consequence of the acquisition of primary law making powers by the Assembly?

Relations between the Assembly and Whitehall

Under the present shared model of primary law making much depends on the working relationships between officials in Cardiff and Whitehall, as well as between AMs and MPs as mentioned above, who are involved in framing and implementing laws which affect Wales. Officials of the Assembly Government need to understand and influence the way new primary legislation could affect Wales and officials in Whitehall need to understand devolution and how the things they do might affect Wales. The Commission will be looking at a number of case studies to see how this works in practice. The question for consultation is:

- what would be gained or lost if there was a clearer separation between England and Wales in policy development and implementation?

The financial context

The National Assembly for Wales currently operates within a set of financial arrangements common to all the devolved governments in the UK . Under this system the Assembly and the other devolved bodies receive increases in their budgets each year in line with the increases set for the English departments with responsibilities comparable to those of the Assembly. The costs of the devolved structures (the Parliament in Scotland and the Assemblies in Wales and Northern Ireland) are met from within the resulting budgets.

These arrangements have been in place since the 1970s and have provided the financial framework for the three different models of devolution which exist in the UK. Changing them would require the agreement of the UK Government and the three devolved governments.

The Commission will be carrying out research to establish the range of costs which could be involved if the National Assembly were to acquire additional powers. These could include the costs of any additional Members which could be needed as well as the costs of strengthening the support and research functions.

The questions for consultation at this stage are:

- how should we evaluate the costs and benefits of moving to a different form of devolution in Wales?
- what are the benefits which should be included in this evaluation – and what values should be attached to them?

Funding streams

In some policy areas there is uncertainty about funding streams in relation to areas where responsibilities that are devolved overlap with responsibilities that remain within the control of the UK Government -

- is this an issue for you or your organisation – if so what have been the practical problems and how might they be resolved?

Submitting evidence

Responses to this paper should be sent to richard.commission@wales.gsi.gov.uk or to the Secretary to the Commission at

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1-6 Saint Andrews Place
Cardiff
CF10 3BE

Responses are sought by the end of **February 2003**. It would be helpful if as many contributions as possible could be received before this date so that where responses call for further discussion in oral evidence sessions these can be added to the Commission's forward programme.

Evidence will be published and made available on request unless contributors indicate that they would prefer their evidence to remain private. Individuals and organisations providing written evidence are of course free to publish it on their own account as a contribution to public debate.

Commission on the Assembly's Powers and Electoral Arrangements

Terms of Reference

The Welsh Assembly Government's document *Putting Wales First* contained a commitment to

establish an independent Commission into the powers and electoral arrangements of the National Assembly in order to ensure that it is able to operate in the best interests of the people of Wales. This review should investigate inter alia the extension of proportionality in the composition of the Assembly, and of the relevant competencies devolved.

The Commission's detailed terms of reference are as follows.

Assembly powers

The Commission should consider the sufficiency of the Assembly's current powers, and in particular

- whether the Assembly's powers are sufficiently clear to allow optimum efficiency in policy-making;
- whether both the breadth (*ie the range of issues over which it has control*) and the depth (*ie the capacity to effect change within those issues*) of the Assembly's powers are adequate to permit integrated and consistent policy-making on issues where there is a clear and separate Welsh agenda;
- whether the mechanisms for UK Government policy-making as regards Wales, and the arrangements for influence by the Assembly on these, are clear and effective, and in particular whether they correct any apparent shortcoming from the previous item;
- whether the division of responsibility between the Assembly and the UK Government places inappropriate constraints on Whitehall policy-making, both on matters over which the Assembly has control and otherwise.

The Commission should consider any possible financial implications arising from the implementation of its proposals.

Electoral arrangements

The Commission should consider the adequacy of the Assembly's electoral arrangements, and in particular

- whether the size of the Assembly is adequate to allow it to operate effectively within a normal working week, and without placing undue pressure on Members;
- whether the means of electing the Assembly, including the degree of proportionality, adequately and accurately represents all significant interests in Wales;
- whether any changes which may be recommended to the Assembly's powers make either necessary or desirable changes to the size of the Assembly or the means of electing it .

Report

- The Commission should report on its deliberations, including its recommendations on the above matters, by the end of 2003. It may make interim reports or recommendations if it sees fit.

Procedural matters

- The Commission is to be free from any influence from either the Welsh Assembly Government or the Assembly as a whole. It shall determine its own agenda and priorities within these terms of reference.
- The Commission may determine its own working procedures. However, it should:
 - invite oral and/or written evidence from any who wish to provide it;
 - accept such evidence in either English or Welsh;
 - meet in public unless those giving evidence request otherwise or unless, in exceptional circumstances, the Commission resolves to meet in private;
 - publish periodic accounts of its proceedings and evidence received.
- The Commission has no power to compel any person to give evidence or to see any documents other than those available under the Assembly's freedom of information policy or similar equivalent regimes.

Secretariat

The Commission will be supported by a Secretariat comprising seconded Assembly civil servants.