

Chapter 8 – The National Assembly for Wales and Parliament

8.1 OVERVIEW

- .1.1 In this chapter we use the principles outlined in Chapter 3 to assess whether there should be changes in the law relating to the National Assembly for Wales and how inter-parliamentary relations could be improved. Our terms of reference specifically enjoined us to look for ways in which the present constitutional arrangements could be changed so that the “would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales”. We were, however, excluded from considering “the structure of the National Assembly for Wales, including issues relating to the election of Assembly Members”.

8.2 CURRENT POSITION

The structure and procedures of the National Assembly for Wales

- 8.2.1** In 1998 the Government of Wales Act created a 60 member National Assembly for Wales. This Assembly continued under the Government of Wales Act 2006, but became a separate legal entity from the Welsh Government. The original and unusual mix between an executive and a scrutiny body had not been well thought through and was never sustainable. The National Assembly for Wales now has the classic parliamentary purposes of representation, scrutiny of government and public bodies, and legislation.
- 8.2.2** National Assembly business is conducted through Plenary sessions twice a week and Committee sessions. Important stages of primary legislation are considered in Plenary; there are debates on topics initiated both by the Welsh Government and the opposition parties; Ministers are held to account through question time and questions on statements, and a number of other scrutiny activities take place.
- 8.2.3** The structure and purpose of the National Assembly’s Committees has changed several times since 1998. With the attainment of legislative powers in the Fourth Assembly, the number of Committees was reduced, and subject committees took on responsibility for scrutinising relevant legislation also. At present the Assembly has 10 Committees. Committees have a formal role in the consideration of primary legislation as well as scrutinising the Welsh Government and devolved public bodies. There are also a number of committees with specific functions similar to those found in other legislatures. Examples are the Public Accounts Committee, the Business Committee and the Standards Committee. The National Assembly is given freedom to design a committee structure based on its priorities. However,

there is a requirement to ensure that key functions listed in Standing Orders are delivered by the committee structure.

- 8.2.4** The committee remits are broad and, in the main, cut across Ministerial portfolios. However, committees have the flexibility to examine any issue of relevance to the broad remit defined by their titles and are not constrained in examining any issue of relevance. European issues are mainstreamed into the work of the Constitutional Affairs Committee and the five “thematic” committees. The five subject-based committees have been established with the purpose of undertaking multiple streams of work by establishing formal sub-committees and informal group as well as operating as a full committee. Scrutiny and legislative work is expected to take place simultaneously.
- 8.2.5** National Assembly procedures are generally governed by Standing Orders. The Government of Wales Act 2006 made provision for the Secretary of State for Wales to make Standing Orders up until the National Assembly convened after the 2007 election. Since then the Assembly has been able to amend or suspend Standing Orders (subject to a two-thirds majority) and has done on several occasions.
- 8.2.6** The Government of Wales Act 2006 continues the provisions in the 1998 Act for the Secretary of State for Wales’s participation in National Assembly proceedings. While the Secretary of State is not allowed to vote in the National Assembly, he or she is entitled to participate in proceedings, and to have copies of any document made available to Assembly Members or relating to any proceedings of the National Assembly made available to him or her.
- 8.2.7** The Secretary of State is also required by the Government of Wales Act 2006 (as he was by the 1998 Act) to consult with the National Assembly on the UK Government’s legislative programme as soon as is practically possible following the Queen’s Speech, normally within a month. He or she is also required to participate at least once in plenary session as part of this consultation, which normally immediately follows the presentation of the UK Government’s legislative programme.
- 8.2.8** Additionally the Secretary of State is required to make a statement of estimated payments to the National Assembly. He or she must make a statement each financial year and lay it before the National Assembly.

Legislative Competence in relation to the National Assembly for Wales

- 8.2.9** Some matters relating to the National Assembly for Wales are devolved. Schedule 7 of the Government of Wales Act 2006 lists the following matters relating to the National Assembly as within the competence of the National Assembly (Subject 13):

Complaints about Assembly members (including provision for and about an office or body for investigating such complaints and reporting outcomes of investigations). Assembly Commission. Salaries, allowances, pensions and gratuities for and in respect of Assembly Members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy

Counsel General. Meaning of Welsh words and phrases in Assembly Measures and Acts of the Assembly, in subordinate legislation made under Assembly Measures and Acts of the Assembly and in other subordinate legislation if made by the Welsh Ministers, the First Minister or Counsel General. Private legislation in the Assembly. Financial assistance for political groups to which Assembly members belong. The Welsh Seal. Arrangements for printing of Acts of the Assembly, of subordinate legislation made under Assembly Measure or Acts of the Assembly and other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General.

- 8.2.10** While Schedule 7 does not mention any exceptions to this Subject, other parts of the Government of Wales Act 2006 prescribe certain restrictions and constraints on the Assembly that it is not itself able to alter. These include provisions in respect of National Assembly elections; terms of office of AMs; disqualification; oath of allegiance; the Presiding Officer and Clerk; how Committees are composed; the Audit Committee; standing orders; participation by UK Ministers in Assembly proceedings; integrity (including roles of regional AMs); power to call witnesses and defamation.

The Capacity of the National Assembly for Wales

- 8.2.11** Of the 60 members who sit in the National Assembly for Wales, 13 are currently Ministers, the limit set in the Government of Wales Act 2006. This is 21.7 per cent of the National Assembly's membership. An additional member could be added to the Cabinet as Counsel General (this is an appointment which does not have to be given to an Assembly Member). If the Counsel General were an Assembly Member, almost a quarter of the Assembly would hold government office.
- 8.2.12** Forty-four Assembly Members currently participate in the National Assembly's five main Committees (excluding the Welsh Ministers and Deputy Ministers, the Presiding Officer, and the Leaders of the Conservative and Plaid Cymru Groups). Of these 44, 14 currently serve on one Committee, 24 on two, and six on three. In order to ensure proportional representation on the Committees smaller parties have a higher level of demand on their Members, but there are also only 16 members of the majority party who must provide the majority on each committee. This leads to severe strains, as was frequently mentioned to us both by observers of the Assembly and Assembly Members themselves.

Welsh representation in Parliament

- 8.2.13** Wales returns 40 Members of Parliament, currently elected from the same constituencies as the 40 constituency Assembly Members. The recent Parliamentary Voting Systems and Constituencies Act would have harmonised the number of electors per constituency throughout the UK, reducing the number of Members of Parliament from 650 to 600, and would have meant ten fewer MPs for Wales. The impact would have been greater for Wales than any other part of the United Kingdom as Wales currently has the fewest

electors (and population) per MP. The reduction of the number of MPs has been postponed until at least 2018.

- 8.2.14** There are four main forums for discussion of Welsh matters in the House of Commons. The first is the Welsh Affairs Committee, comprised of 12 MPs broadly reflecting the wider party balance in the Commons and not necessarily elected from Welsh seats. Its terms of reference are to examine matters within the responsibility of the Secretary of State for Wales, including relations with the National Assembly. The second is the Welsh Grand Committee, comprised of all 40 Welsh MPs and up to five additional MPs. This meets from time to time at the behest of the Secretary of State to discuss issues relevant to Wales. The third is the five-weekly questions to the Secretary of State, in which all members of the House of Commons can participate. The fourth is the very rarely used Welsh Parliamentary Party, convened by the longest serving Member from Wales. Unlike the other three forums, there is no administrative support given to the Welsh Parliamentary Party and its proceedings are not in law “proceedings in Parliament”.
- 8.2.15** There is no official nor definitive list of Peers from Wales or those with an interest in Wales. The House of Lords does not have a specific forum for consideration of Welsh matters.

Inter-Parliamentary Relations

- 8.2.16** The main formal link between Parliament and the National Assembly is the inter-governmental convention relating to Legislative Consent Motions. This is the means by which the National Assembly gives the UK Parliament consent to legislate in areas where the National Assembly has competence. The negotiation of these motions, and agreement or otherwise about whether they are necessary, is in practice conducted between the UK Government and Welsh Governments. Any Legislative Consent Motion is then tabled in the Assembly by the Welsh Government.
- 8.2.17** There are also a number of less formal ways in which members of both legislatures work together, ranging from cooperation at constituency level through to the formal mechanism under which joint meetings can be held between the Welsh Affairs Committee and Assembly Committees, or forums such as the British Irish Interparliamentary Body or the regular meetings of the Speakers and Presiding Officers of the UK’s legislatures.

Evidence Box

Key Facts

Procedures in the Scottish Parliament and the Northern Ireland Assembly

- 8.2.18** Procedurally the Scottish Parliament is governed by Standing Orders originally agreed by the Scottish Parliament in 1999 and amended several times since. The rules of the Northern Ireland Assembly reflect the history of a divided community. Neither the Scottish Parliament nor the Northern Ireland Assembly are able to change certain aspects of the law under which they were established and operate. Thus it was necessary for the Scotland Act

2012 to make some minor changes to the arrangements for the election of the Presiding Officer and Deputy Presiding Officers recommended by the Calman Commission.

- 8.2.19** There is no power for the relevant Secretary of State to take part in Scottish Parliamentary or Northern Ireland Assembly proceedings and there is no provision for them to present the UK legislative programme to the Parliament or Assembly. There are other differences between the statutory constraints. In the case of Northern Ireland these largely stem from the need to secure cross-community buy-in. It is less easy to see justification for differences between Wales and Scotland.

Capacity of UK and other Legislatures

- 8.2.20** With its 60 members, or one member per 51,000 of the Welsh population, the National Assembly is more stretched than either the Scottish Parliament (129 members, or one member for every 41,000 members of the public) or the Northern Ireland Assembly (108 members, or one member for every 17,000 members of the public).
- 8.2.21** While it is necessary to be cautious in drawing conclusions from other countries' practices, some relevant figures for regional and national legislatures are set out, and put in context, in a valuable paper published recently by the Electoral Reform Society and the UK Changing Union project.¹
- 8.2.22** In its 2004 report, the Richard Commission recommended the capacity of the National Assembly for Wales be increased to 80 members. The Electoral Reform Society and UK Changing Union project paper proposes an Assembly of around 100. It calculates that this would cost an extra £10.1 million annually.

8.3 ASSESSMENT

- 8.3.1** The size and capacity of the Assembly is a contentious issue on which there is no overall consensus in Wales. Robust views are expressed against any suggestion that numbers need to be increased, and political parties are naturally cautious about making any recommendations that might appear to support the case for more politicians. It is all the more incumbent upon us to come to a view on this question.
- 8.3.2** The National Assembly is small in relation to the Scottish Parliament, the Northern Ireland Assembly and its international comparators. We are clear that this causes problems for effective governance. What may have been appropriate before the Assembly had a full legislative role is less appropriate now. There is simply not sufficient strength in depth, given the number of Members on more than one committee, specialism is difficult and the scrutiny that keeps governments on their toes is less easy. This problem will grow if the important new powers we recommended in our Part 1 Report, and are recommending in this report, are given.

¹ Size Matters: Making the National Assembly more effective

- 8.3.3** Other possible remedies such as unelected, non-voting Members, are problematic. Greater flexibility on the number and membership of committees; increased research staff and better use of Assembly Members' time are not adequate solutions, though they may provide some relief.
- 8.3.4** For it fully to use its new powers, including those recommended by the Commission for the future, the NAW will require more backbench government and opposition members able to scrutinise Welsh Government legislation and policy. The Scottish Parliament has sometimes struggled to do this adequately because of its size.
- 8.3.5** Consideration needs to be given to the implications of recommending increasing the size, including the read-across to changing the voting system;
- 8.3.6** It is not part of our role to comment on the size of the House of Commons or the number of councils in Wales. But as the law presently stands, there will in due course be ten fewer MPs representing Wales, and there are many indications that there will be fewer councillors in the Wales of the future. The cost savings that would flow from 10 fewer MPs and a number of Welsh councillors equivalent, say, to the number in Scotland would far outweigh an increase in the number of Assembly Members. If the cost of politics can fall but the outcomes of the political process be more effective, that is a goal worth attaining.
- 8.3.7** The legislative provisions that govern the operation of the National Assembly itself, as contained in the Government of Wales Act 2006, reflect an earlier stage of devolution. Some of them even date back to the 1998 Act. We have asked ourselves whether, in the light of our principles, it remains appropriate for these provisions to remain. In this context, we have received important evidence from the Presiding Officer of the Assembly.
- 8.3.8** It seems to us particularly open to question as to whether a legislative restriction that does not apply to the Scottish Parliament should apply in Wales now that the National Assembly has the same fundamental functions and powers as the Parliament in Edinburgh.² The Presiding Officer mentioned in this context
- Passing the powers to call an extraordinary general election or to vary election dates by one month from the Secretary of State to the Presiding Officer, and to give the Assembly a role in its own electoral arrangements
 - Introducing flexibility as to the size of the Assembly Commission
 - Allowing the Assembly to decide itself as to the composition of its committees, including what the Act calls the Audit Committee
 - Removing the requirement for a Code on relations between regional and constituency Members

² There are well-known particular community issues in Northern Ireland which mean that it is not appropriate to consider legislative restrictions on the Northern Ireland Assembly in this context.

- Giving the Assembly greater power to regulate its own standards of conduct

We believe that the presumption in each of these cases should be that the law in Wales should be the same as that in Scotland.

8.3.9 The Presiding Officer also made some proposals that do not reflect practice in Scotland so far as we understand it. Some of these appear uncontroversial. For example, she proposes

- To remove the requirement for the Assembly to meet within seven days of a general election so allowing more time for any necessary coalition-building
- To provide that a by-election should be held within three months of a vacancy coming to the Presiding Officer's notice
- To remove some restrictive provisions affecting the Presiding Officers of the Assembly
- Less prescription of notices to witnesses by the Clerk
- Right of Assembly to be notified of references of legislation to Supreme Court and to intervene as of right
- Clarification of powers to remove the Auditor General for Wales
- Joint Statutory Instruments to be made bilingually

In each of these cases, we believe that the presumption should be that the UK Government should seek to amend the law in the way the Presiding Officer proposes.

8.3.10 Some areas are more controversial, but we believe that change is now desirable. Under the 1998 Act, the Assembly had no primary powers and under the first stage under the 2006 Act, there remained a role for Parliament in deciding on the Assembly's legislative competence. The Westminster legislative programme was therefore of direct relevance to the Assembly. However, given the changes in powers of the National Assembly since the 2011 referendum, it does not any longer seem appropriate that there should be a statutory duty on the Secretary of State for Wales to make an annual legislative statement to the National Assembly or that he or she has the power to participate in proceedings if he or she so wishes. Nor is it appropriate for the Secretary of State to have any wider powers to block Assembly Bills from receiving Royal Assent than is the case in Scotland.

8.3.11 We do, however, want excellent relationships to be fostered between the National Assembly and UK Government Ministers. We believe that it is important that UK Government Ministers, and especially the Secretary of State for Wales, regularly attend Assembly proceedings and that they be invited to do so, and we welcome the Presiding Officer's view that the Secretary of State should continue to consult the Assembly about the UK Government's legislative programme.

8.3.12 Some of the Presiding Officer's other proposals may require wider consideration than in Wales alone. For example, she proposes amending the law on disqualification so that a candidate is not required to relinquish a

disqualifying office until elected. It may only be appropriate for such a change to be made if it affected all candidates for all elected offices. Her proposal to extend the privilege of Assembly Members in respect of the law of defamation or of contempt of court, and her view that the grant-making power of the Assembly in the interest of public awareness should be widened, may also raise wider issues. Nevertheless, we believe that these proposals also deserve careful consideration by the UK Government.

- 8.3.13** There are two areas where we understand that the UK Government has already agreed to change – the proposal that Assembly terms should be five years rather than four, and the removal of the bar on standing for a regional and a constituency seat. These changes are welcome.
- 8.3.14** As far as nomenclature is concerned, the Presiding Officer believes that the statutory designation of the legislature should be as a Parliament, and she (and the Welsh Government) wish to see the statutory designation of Welsh Assembly Government replaced by “Welsh Government”. In this area, we believe that it is appropriate for the legislature and the government to decide themselves what they should be called.
- 8.3.15** Whatever changes are made, it is essential that a strong link between the National Assembly and UK Parliament continues and is fostered. This is particularly the case in relation to UK or England and Wales legislation because the UK Parliament is still able to, and frequently does, legislate in non-devolved and devolved matters either on behalf of Wales, or in a way that affects citizens of Wales. It is also desirable more generally that legislatures work together co-operatively.
- 8.3.16** We recognise the vital role that Members of both Houses of Parliament play in promoting the interests of Wales in the United Kingdom. This is, of course, particularly true of Welsh MPs. The Clerk of the House of Commons told us that Welsh issues were represented well in the House of Commons, both in the Chamber and especially at Committee level.
- 8.3.17** More could perhaps be done institutionally in the House of Lords to promote Welsh interests, despite the fact that peers have no territorial role. We do, however, recognise the work that many peers do on behalf of Wales. Future appointments to the House should reflect fairly the proportion of the United Kingdom population domiciled in Wales, and any reformed Chamber should also represent Wales appropriately.
- 8.3.18** The need for improved inter-parliamentary cooperation was widely recognised. This is particularly the case on Legislative Consent Motions (LCM), where the ambition should be to increase accountability and transparency. In this context, we welcome the recent agreement between the authorities of the Assembly and of both Houses of Parliament that mean that the decision of the Assembly on the LCM is recognised officially on the agenda of the two Houses as the Bill proceeds. The Presiding Officer suggested that there should be a further step: that the convention on LCMs should become a statutory rule. While this would clearly affect Scotland and

Northern Ireland as well, we can see a strong case for LCMs to have a formalised status in law.

- 8.3.19** One further practical step would be for all government public Bills at Westminster to contain a statement by the Minister in charge as to the Bill's relevance, applicability and effects in Wales. This would be in addition to what is already contained in the Explanatory Memorandum attached to Bills. A similar practice could be adopted in the National Assembly so that there is a published assessment of any implications for other parts of the United Kingdom of each Assembly Bill.
- 8.3.20** Good general working relations are essential to both the National Assembly and the UK Parliament. It is essential that these relationships are fostered and maintained beyond the LCM process especially in relation to Parliamentary and National Assembly Committees. A number of interesting ideas were put to us by the Study of Parliament Group, and we welcome the support of the Presiding Officer and the Speaker of the House of Commons for increased committee-to-committee co-operation, and their willingness to contemplate quite radical proposals for joint committee proceedings. Less radically, we hope that invitations from either legislature to Ministers and other Members to attend its proceedings as witnesses will always be regarded positively. The way that good relations between the federal and provincial/state legislatures in Canada and Australia provide international examples of what can be done well.
- 8.3.21** Some witnesses told us that parliamentarians are not regularly informed about the work of the National Assembly. If that is correct, it is regrettable, and we hope that the Assembly Commission will consider what it might do to remedy this so that parliamentarians are regularly informed about its legislative and committee work.
- 8.3.22** One particular concern was raised with us by Members of Parliament who represent seats in England that border Wales. Their constituents may be affected by things that happen just across the border (for example, development of a plant with noxious emissions) or need to use public services in Wales. In the case of water provided in England by suppliers regulated in Wales, their constituents may be affected in England by decisions of Welsh Ministers. When these border MPs make representations about such matters to Welsh Ministers, they ought to be treated with exactly the same consideration as Assembly Members. The same ought to be the case for Assembly Members from border areas raising issues with Ministers responsible for England, though in that case, Welsh MPs can also raise the relevant issue with the Minister.
- 8.3.23** The report of the McKay Commission contained a number of recommendations of great relevance to Wales. [more after response]
- 8.3.24** As well as the Parliament in London, the European Parliament contains representatives of Wales and legislates on matters of great importance to the people of Wales. We welcome the existence of a National Assembly office in Brussels and we commend its work. The proposal of the Study of Parliament

Group for an inter-legislature forum to discuss EU matters deserves wider consideration.

8.3.25 The proposal that the annual financial statement to the Assembly should be presented by the Welsh Government rather than the UK Government appears to be sound. [not sure where this comes from]

8.3.26 A number of people responding to our call for evidence argued that, even though the National Assembly for Wales is technically a subordinate legislature within the United Kingdom, its existence should not depend on the UK Parliament alone. The British Constitution does not allow for the entrenchment of any law except in the sense that a law can achieve a perceived constitutional status. Even though the UK Parliament would still have the power to abolish the National Assembly, the Assembly has now in our view achieved a constitutional status that means it has become inconceivable that Parliament would be able to abolish the Assembly without a clear mandate from the people of Wales.

Recommendations

- we recommend a menu of short-term options should be considered for increasing the capacity within the existing Assembly, including greater flexibility on the number and membership of committees, increased research staff and better use of Assembly Members' time;
- we recommend that beyond that, the two Governments should consider increasing the size of the Assembly taking into account the wider context of political representation in Wales and taking into account the Richard Commission and Williams Commission, any future changes to the number of MPs and any implications for the electoral system. Between 80 and 100 members would be more in line with international norms than the current 60
- we recommend that the Assembly and Secretary of State should agree appropriate engagement on the UK Government's legislative programme, rather than based on the legislative requirement for the Secretary of State's appearance before the Assembly; that the unused right for the Secretary of State to participate in the Assembly should be removed, and that the Secretary of State's power to prevent Assembly Bills proceeding for Royal Assent should be reduced;
- we recommend that prescriptions affecting the National Assembly for Wales in GOWA 2006 should be reviewed and amended or repealed where no longer appropriate. This should be done on the basis of the detailed memorandum provided to us by the Presiding Officer. In particular, there should be a presumption in favour of adopting changes that bring the Assembly in line with the Scottish Parliament. If the Assembly wishes to change its name to Welsh Parliament, this should be respected;
- we recommend that there should be improved inter-parliamentary cooperation to increase mutual understanding of the work of the Assembly and both Houses of Parliament, especially in terms of committee-to-

committee co-operation and information-sharing, and that the Legislative Consent Motion procedure should be formalised;

- we recommend that there should be a detailed statement published with every government-proposed Parliamentary Bills on its implications for Wales; and similarly with Assembly Bills in relation to any implications for the wider UK;
- we recommend that the House of Lords should ensure adequate consideration of Welsh matters, and that future appointments to the House should fairly represent Welsh-domiciled people. Any reformed second Chamber should also represent Wales fairly;
- we recommend that the annual financial statement to the Assembly should be presented by the Welsh Government rather than the UK Government;
- we recommend that the devolution settlement should recognise that the National Assembly is permanent, reflecting the settled will of the great majority of the Welsh people;