

# 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 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 as well as taking on a much wider role. The original unusual mix between an executive and a scrutiny body had perhaps not been as well thought through as it might and it 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 primary legislative powers in the Fourth Assembly, the number of Committees was reduced, and subject committees took on responsibility for scrutinising relevant legislation as well as scrutinising the Welsh Government and devolved public bodies. At present the Assembly has 12 Committees.<sup>1</sup> As well as Committees with a legislative/scrutiny role, 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 of Conduct Committee. The National Assembly has freedom to design a committee structure based on its priorities. However, there is a requirement to ensure

---

<sup>1</sup> There is also a Committee of the whole Assembly

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, with committees having the flexibility to examine any issue of relevance to their remit. European issues are mainstreamed into the work of the Constitutional and Legislative Affairs Committee and the thematic or subject-based committees. These can, at least in theory, undertake multiple streams of work by establishing formal sub-committees and informal groups as well as operating as a full committee. Scrutiny and legislative work is expected to take place simultaneously, but legislative work is a requirement while scrutiny is an option. There is always a risk that a heavy legislative workload will squeeze out proactive scrutiny work.
- 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 a number of 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 or she was by the 1998 Act) to consult with the National Assembly on the United Kingdom 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 United Kingdom 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 this statement each financial year and lay it before the National Assembly.

**Box 8.1: Evidence on Procedures of the National Assembly**

[To follow]

- 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 Welsh Ministers. 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.<sup>2</sup> These include provisions in respect of National Assembly elections; terms of office of Assembly Members; disqualification; oath of allegiance; the Presiding Officer and Clerk; how Committees are composed; the Audit Committee; standing orders; participation by United Kingdom Ministers in Assembly proceedings; integrity (including roles of regional Assembly Members); 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 currently hold ministerial office as First Minister, Minister or Deputy Minister. This is the limit set in the Government of Wales Act 2006 and it represents 21.7 per cent of the 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 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;

---

<sup>2</sup> By virtue of Government of Wales Act 2006, Schedule 7, Part 2, paragraph 5

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.

**Box 8.2: Evidence on the capacity of the National Assembly for Wales**

The Presiding Officer stated that *'given the weight of responsibility resting with the Institution, and the unavoidable scale of the workload faced by Members, I am in no doubt that the number of Assembly Members should be increased from 60 to 80'*.

The UK Changing Union Partnership noted that *'research indicates that the Assembly is below the 'floor size' that would allow Members to undertake effectively all necessary functions. With the granting of primary legislative powers under the 2006 Government of Wales Act, there can be no justification for this state of affairs to continue. Should the Assembly acquire further powers, the case for an increase in the number of Assembly Members in our view becomes unanswerable'*.

Professor John Williams of Aberystwyth University stated that *'the capacity of the Assembly to scrutinise legislation is restricted by the limited number of AMs available to undertake that role'*. He queried whether *'a standing body appointed to scrutinise and advise the appropriate Assembly Committee (could) provide the necessary additional support? This would not undermine the democratic accountability of the Assembly, but would rather enhance its ability to ensure that legislation is fit for purpose'*.

The Electoral Reform Society recommended *'an increase in the number of Assembly Members'* and noted that *'it is vital to democratic policy outcomes that we have sufficient oversight and scrutiny capacity in order to shape those outcomes so that they serve the people of Wales as well as possible'*. It stated that *'it is clear that the size of the Assembly means that there are not enough people to provide effective scrutiny already'*. The Society, however, did not recommend *'a Second Chamber for Wales'*.

The Church of Wales expressed concern that *'in-depth scrutiny of important legislation may suffer because there are not enough back-bench AMs to carry out all the necessary tasks. Where large numbers of AMs have to be part of the government, it is hard for them to be sufficiently independent'*.

In its evidence, Unite Wales noted that *'as earlier raised by the Richard Commission and others, the existing 60 Assembly Members is not sufficient enough to effectively scrutinise the legislative and departmental work of the Welsh Government'*. It acknowledged that *'there is a case for an increase in the number of Assembly Members'* and that it had *'previously supported having 80 elected members in the National Assembly for Wales'*.

The Law Society noted that *'current complement of just 60 Assembly Members is too few'* and that the *'figure compares unfavourably with the Parliament in Scotland which has 129 and the Northern Ireland Assembly which has 108'*. It added that *'this is an issue which if not addressed when the powers of the National Assembly for Wales are widened will intensify'*.

In its evidence to the Commission, The Institute of Welsh Politics stated that there *'is already a strong case for increasing the number of AMs elected to the NAFW'*. It added that *'any further transfer of competencies to the NAFW makes increasing the number of elected representatives essential if the body is to undertake its legislative and scrutiny functions effectively'*. The institute recommended that *'the number of AMs be increased from 60 to 80'*.

The Wales noted that it is *'hard to disprove that substantial capacity constraints arise from having such a relatively small number of AMs'*. It added that at *'some stage the core capacity issues will have to be addressed, otherwise there will be an inevitable continued impact on the profile, effectiveness and legitimacy of the Assembly'*. The Group proposed a number of shorter-term

alternatives for increasing capacity in the National Assembly for Wales including 'Assembly Associate', 'Overhang' seats, and changes to the dual candidacy ban'.

### 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 Parliamentary Voting Systems and Constituencies Act 2011 would have harmonised the number of electors per constituency throughout the United Kingdom, reducing the number of Members of Parliament from 650 to 600. This 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 or definitive list of Peers from Wales or of those with an interest in Wales. The House of Lords does not have a specific forum for consideration of Welsh matters, though Peers can propose debates or introduce legislation or ask questions about matters to do with Wales within the United Kingdom Government's responsibility. The Wales Office currently has a Minister in the Lords, but this had not been the case previously either in the case of the Wales Office or the former Welsh Office.<sup>3</sup>

### Inter-Parliamentary Relations

- 8.2.16** The main formal link between Parliament and the National Assembly is through Legislative Consent Motions. These are the means by which the National Assembly gives the United Kingdom 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 United Kingdom and Welsh Governments. Any Legislative Consent Motion is then tabled in the Assembly by the Welsh Government.

---

<sup>3</sup> Lord Brecon was Minister of State for Welsh Affairs from 1957 till 1964, when the Wales Office was created after the General Election of that year

**8.2.17** There are also a number of less formal ways in which members of both legislatures work together, ranging from cooperation by individual Members at constituency level through to the formal mechanism under which joint meetings can be held between the Welsh Affairs Committee and Assembly Committees. There are also wider forums such as the British Irish Interparliamentary Assembly or the regular meetings of the Speakers and Presiding Officers of the United Kingdom's legislatures.

**Box 8.3: Evidence on Legislative Consent Motions and Inter-Parliamentary relations**

On the Legislative Consent Motion process, the Presiding Officer welcomed the *'formalisation of what is currently an inter-governmental convention relating to LCMs'*. Noting that *'we rely on the Welsh Government to negotiate with the UK Government what provisions should or should not find their way into UK Bills, to lay the Motion and related Memorandum on the UK Bill, and to communicate the consent (or lack of) granted to the UK Government'*. The Presiding Officer added that *'whilst our main focus should be on holding the Welsh Government to account on its actions in relation to LCMs, this should not preclude us from seeking better inter-parliamentary communication. For example, the effectiveness of our scrutiny would be strengthened through a formal inter parliamentary agreement on the legislative consent convention and the EU Protocol on the application of the principles of subsidiarity and proportionality'*.

The Speaker of the House of Commons was *'happy for the House to endorse'* the recommendation of the Welsh Affairs Committee that the Standing Orders of the House provide for the Speaker to lay before it any formal communication conveyed to him or her from the National Assembly for Wales.

In its evidence, the Wales Study Group of the Study of Parliament Group noted that the *'means of communication between the Assembly and the two Houses of the UK Parliament are controlled almost entirely by the two governments. We believe it is a regrettable aspect of the current constitutional arrangements that there is so little formal opportunity for exchanges of views between the legislators themselves in the three bodies involved'*.

On inter-Parliamentary relations, the Presiding Officer stated that *'the Presiding Officers and Speaker meet on a regular basis and I would certainly support the creation of a wider, structured forum for dialogue between the legislatures. It seems to me that we could learn from the approach we take within the UK and devolved legislatures to engaging with the European Parliament and Institutions when it comes to inter-institutional dialogue'*.

The Speaker of the House of Commons stated that *'there may be a case for a more widely-based and structured forum focused on intra-UK questions of policy and legislation, and the meetings of the presiding officers may be one forum in which this could be further explored. I would certainly be sympathetic to a proposal to explore options for such an organisation should your Commission propose this, and should there be support in principle from the devolved legislatures'*.

The Wales Study Group of the Study of Parliament Group stated that it believed *'that the time has arrived for there to be a more structured forum focussed on intra-UK devolved legislature dialogue about the operation of the devolution settlement, to promote the exchange of information and best practice and to examine specific policy topics of shared concern'*.

#### Procedures in the Scottish Parliament and the Northern Ireland Assembly

- 8.2.18** Standing Orders govern the proceedings of both the Scottish Parliament and the Northern Ireland Assembly. In the latter case, several provisions reflect the history of a divided community. Neither the Scottish Parliament nor the Northern Ireland Assembly is 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 as 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 United Kingdom 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 and would not be appropriate in Wales. It is less easy to see justification for differences between Wales and Scotland.

#### Capacity of United Kingdom 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 United Kingdom Changing Union project.<sup>4</sup> This suggests that the National Assembly is also more stretched than its international comparators, especially those where the executive is drawn from the members of the legislature.
- 8.2.22** In its 2004 report, the Richard Commission recommended the capacity of the National Assembly for Wales be increased to 80 members. This figure was supported in her evidence to us by the Presiding Officer. The Electoral Reform Society and United Kingdom Changing Union project paper proposes an Assembly of around 100. It calculates that this would cost an extra £10.1 million annually.

---

<sup>4</sup> *Size Matters: Making the National Assembly more effective*

## 8.3 ASSESSMENT

### Size of the Assembly

- 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 (though it was questioned even then) is certainly 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 to the Assembly.
- 8.3.3** Possible remedies to the capacity gap other than creating more Assembly Members have been suggested. One is to add unelected, non-voting members to committees, or to create a second Chamber. These are democratically problematic and we do not recommend them. Greater flexibility on the number and size of committees; increased research staff capacity; and better use of Assembly Members' time, are other suggested remedies. Each may bring some relief, and we hope that the Assembly will consider them. However, they cannot provide the long-term solution needed.
- 8.3.4** We are convinced that the National Assembly requires more backbench members who will be able to scrutinise Welsh Government legislation and policy more thoroughly. It is important to stress that this scrutiny role is as much a role of government backbenchers as it is of opposition members. There are some excellent examples in the House of Commons of independent-minded government MPs exercising a scrutiny role that cannot always be comfortable for government, but which is vital for good governance.
- 8.3.5** We believe that the Assembly should contain at least 80 Members, and possibly up to 20 more. We do not propose a definite figure within that range: consideration needs to be given to the implications of increasing the size, especially the read-across to the changes to the voting system that would be necessary. There are also practical matters to take into account, like the adaptability of the Assembly Chamber, which can, we understand, be adapted to house 80 Members but which may not easily accommodate more. We also recognise that an Assembly even of 100 will not allow the sort of specialisms to develop that are seen in the House of Commons: the larger



Scottish Parliament is sometimes seen as by some commentators as struggling to perform its scrutiny role as well as it should.

- 8.3.6** The annual cost of an increase in the range we suggest would be between £5.3 million and £10.1 million.<sup>5</sup> We believe that this cost will in any case be off-set by the scrutiny benefits. As we said in our First Report, “good scrutiny means good legislation and good legislation pays for itself” – an assertion that has since been backed by academic analysis.<sup>6</sup> However, there may well also coincidentally be a reduction in the numbers of elected members from Wales in other institutions.
- 8.3.7** 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 indications that there will be fewer councillors in the Wales of the future. The cost savings that would flow from 10 fewer MPs and, say, a number of Welsh councillors commensurate with the number in Scotland would outweigh the cost of an increase in the number of Assembly Members. Increasing the number of Assembly Members will mean that the outcomes of the political process become more effective. If coincidentally there are cost savings from fewer politicians in other institutions, that should temper some of the criticism our recommendation is bound to receive from those who do not appreciate the vital role that an effective legislature plays in good government.
- 8.3.8** Before leaving this issue, we need to explain why we regard the size of the Assembly as not excluded from our terms of reference, as we have heard a view that the exclusion of the “structure of the National Assembly for Wales” from our remit means excluding any recommendation on the Assembly's size. On the narrow linguistic point, we are quite clear that size and structure are different concepts. Objects of different size can have the same structure. No-one suggested that the ‘structure’ of the House of Commons was altered the reduction of the number of seats provided for under the Parliamentary Voting Systems and Constituencies Act 2011. What would alter structure would be, say, a proposal that Ministers should not be Assembly Members. More generally, what is clearly within our terms of reference is anything that we believe will enable the Assembly to better serve the interests of Wales. It is our clear judgement that, without its enlargement, the Assembly cannot serve the interests of the people of Wales as it ought.

#### Legislative constraints on Assembly

- 8.3.9** 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 believe that the important

---

<sup>5</sup> See *Why size matters* p. 19

<sup>6</sup> Per Petterson-Lidborn in *Journal of Public Economics* 2012, quoted in *Why size matters*

evidence from the Presiding Officer of the Assembly should be given special consideration.

**8.3.10** 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.<sup>7</sup> 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
- 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.

**8.3.11** The Presiding Officer also made some proposals that are not, as we understand it, intended to reflect practice in Scotland. 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 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 United Kingdom Government should seek to amend the law in the way the Presiding Officer proposes.

**8.3.12** 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 nor that he or she should have

---

<sup>7</sup> There are well-known particular community issues in Northern Ireland that mean that it is not appropriate to consider legislative restrictions on the Northern Ireland Assembly in this context.

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.<sup>8</sup>

- 8.3.13** We do, however, want excellent relationships to be fostered between the National Assembly and United Kingdom Government Ministers. We believe that it is important that United Kingdom 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 United Kingdom Government's legislative programme.
- 8.3.14** There is one duty of the Secretary of State that the United Kingdom Government itself recognises may be a historical anomaly: the duty to make the annual financial statement to the Assembly. This should be presented by the Welsh Government rather than the United Kingdom Government.
- 8.3.15** 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 United Kingdom Government.
- 8.3.16** There are two areas where we understand that the United Kingdom 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.
- 8.3.17** 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.

#### Interparliamentary relations

- 8.3.18** Whatever changes are made, it is essential that a strong link between the National Assembly and United Kingdom Parliament continues and is fostered. This is particularly the case in relation to United Kingdom or England and Wales legislation because Parliament is still able to, and frequently does, legislate in non-devolved and devolved matters either on behalf of Wales, or

---

<sup>8</sup> We deal separately with the Secretary of State's powers in respect of Assembly legislation affecting water interests in England

in a way that affects citizens of Wales. It is also desirable more generally that legislatures work together co-operatively.

- 8.3.19** 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.
- 8.3.20** 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.
- 8.3.21** 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. The Presiding Officer also drew our attention to the fact that LCMs in Wales have a narrower applicability than in Scotland and she called for the relevant Devolution Guidance Note to be amended so that the two systems are brought in line. We support this.
- 8.3.22** 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.
- 8.3.23** Good general working relations are essential to both the National Assembly and the United Kingdom 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 Wales Group of 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.

- 8.3.24** 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. Face-to-face meetings are also important, and we believe that the Houses of Parliament should facilitate visits by Assembly Members by giving them entry passes - the Assembly does this to facilitate visits to the Assembly by Members of Parliament. The Speaker of the House of Commons told us that he would invite the House's Administration Committee to consider this issue if we were to recommend that he did so. We are grateful for this, and so recommend.
- 8.3.25** 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.
- 8.3.26** The report of the McKay Commission contained a number of recommendations of great relevance to Wales. It is not for us to comment on those recommendations so far as they apply to the House of Commons's consideration of laws affecting England,<sup>9</sup> though we believe that the Commission's recommendation of a Devolution Committee of the House of Commons that could consider the consequences of United Kingdom decisions on cross-border effects, hold United Kingdom/English ministers to account, evaluate LCMs and how they work in practice and raise awareness of the implications of devolution, is consonant with our own recommendations.
- 8.3.27** 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 the National Assembly's EU 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.

#### *Constitutional permanence of National Assembly*

---

<sup>9</sup> Or "England-and-Wales" as the Commission refers to legislation that may actually affect only England but which, for technical reasons, is part of the law that applies in the jurisdiction of England and Wales

**8.3.28** A number of people responding to our call for evidence pointed to the overwhelming popular support in Wales for devolution and 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 United Kingdom 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 United Kingdom 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**

- R.65** 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 size of committees, increased numbers of research staff and better use of Assembly Members' time;
- R.66** we recommend that the size of the Assembly should be increased to between 80 and 100 Members. This should take into account the wider context of political representation in Wales. The practical implications, and those for the electoral system, will need further consideration;
- R.67** we recommend that the Assembly and Secretary of State should agree appropriate engagement on the United Kingdom 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; that the Secretary of State's power to prevent Assembly Bills proceeding for Royal Assent should be reduced; and that the annual financial statement to the Assembly should be presented by the Welsh Government rather than the United Kingdom Government;
- R.68** we recommend that prescriptions affecting the National Assembly for Wales in the Government of Wales Act 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;
- R.69** 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 (including attendance by Ministers from each administration at Committees of the other legislature); that information-sharing should be improved; that Assembly Members should be given parliamentary passes, and that the Legislative Consent Motion procedure should be formalised and apply as widely as the same procedure does in Scotland;
- R.70** we recommend that there should be a detailed statement published with every government-proposed Parliamentary Bill on its implications for Wales; and that there should be a similar practice in respect of Assembly Bills in relation to any implications for the wider United Kingdom;
- R.71** we recommend that Members of Parliament representing constituencies bordering Wales who raise cross-border issues that affect their constituents should be accorded the same courtesies by Welsh Ministers as Assembly Members receive. This should apply equally to Assembly Members raising issues in England that affect their constituents;

**R.72** 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;

**R.73** we recommend that it should be recognised that the National Assembly is permanent, so long as that is the will of the majority of the people of Wales.