



House of Commons  
Welsh Affairs Committee

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**The Government  
Response to the Fourth  
Report of the  
Committee: The  
Primary Legislative  
Process as it affects  
Wales**

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**Third Special Report of Session 2002-  
03**

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## The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales.)

### Current membership

Mr Martyn Jones MP (*Labour, Clwyd South*) (Chairman)  
Mr Martin Caton MP (*Labour, Gower*)  
Mr Huw Edwards MP (*Labour, Monmouth*)  
Dr Hywel Francis MP (*Labour, Aberavon*)  
Ms Julie Morgan MP (*Labour, Cardiff North*)  
Mr Albert Owen MP (*Labour, Ynys Môn*)  
Mr Adam Price MP (*Plaid Cymru, Carmarthen East and Dinefwr*)  
Mr Mark Prisk MP (*Conservative, Hertford and Stortford*)  
Mr Bill Wiggin MP (*Conservative, Lemonister*)  
Mrs Betty Williams MP (*Labour, Conwy*)  
Mr Roger Williams MP (*Liberal Democrat, Brecon and Radnorshire*)

### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Committee staff

The current staff of the Committee are James Davies (Clerk), Paul Derrett (Committee Assistant) and Sarah Colebrook (Secretary).

### Contacts

All correspondence should be addressed to the Clerk of the Welsh Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3264; the Committee's email address is [welshcom@parliament.uk](mailto:welshcom@parliament.uk)

# Third Special Report

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The Committee published its Fourth Report of Session 2002–2003 on 27 March 2003. The response from the Wales Office was received on 4 July 2003 and is published as the Appendix to this Report.

## Appendix

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### Introduction

The Government welcomes the Committee's interest in this matter. The Welsh devolution settlement provides that primary legislation in Wales is made in Westminster and it is important to examine the practice that has grown up since 1 July 1999. Devolution has meant more primary legislation relating specifically to Wales, with two Wales-only Acts - the Children's Commissioner for Wales Act 2000 and the Health (Wales) Act 2003 - and significant Wales-only clauses in legislation in relation to various matters including health, education and local government.

The Government's response to each of the Committee's recommendations is set out below.

#### *(a) Conferring powers on the National Assembly*

**There are many methods by which legislative powers can be conferred on the National Assembly. While we appreciate that one size may not fit all, greater consistency would certainly assist parliamentary scrutiny of the new powers to be given, and subsequent monitoring by the National Assembly of the use made of them. We recommend that wherever possible the Government confer powers directly on the National Assembly by new primary legislation rather than by the amendment of existing Acts or Orders.**

The Government is anxious to assist Parliamentary scrutiny of all legislation, including that which confers powers on the Assembly. There are some occasions where the nature of the powers being conferred means that the best approach is to amend existing legislation. However, where possible, the Government will prefer to confer powers on the Assembly directly. The decision will depend on the circumstances of each case.

#### *(b) Wales only Parts of Bills*

**The need for clear, accessible legislation should be a key objective of Government. This objective should extend to draft legislation and laws that affect Wales. We recommend that Bills affecting Wales should have a separate Part setting out the law as it affects Wales, save where that would result in major duplication (paragraph 17).**

The Government is committed to producing clear and accessible legislation. It is the Government's practice to draft separate Parts of Bills for Wales if the English and Welsh provisions are substantially different. Where this is not the case, such an approach will be inappropriate since it would lead to major duplication, as the Committee acknowledges.

*(c) Terminology in Bills*

**We welcome the undertaking given by First Parliamentary Counsel to introduce a more consistent approach when referring in Bills to the National Assembly and the Secretary of State (paragraph 21).**

First Parliamentary Counsel has put to his colleagues the desirability of seeking greater consistency in referring to the National Assembly for Wales and the Secretary of State.

*(d) Consolidation*

**In our view, a clear and comprehensive register of Welsh legislation is not merely desirable, it should be a requirement of the devolution settlement. While we accept that the time may not yet be ripe for a Consolidation Bill, we recommend that the Government consider introducing such a Bill, at the appropriate time, and by 2008 at the latest (paragraph 24).**

While the Government accepts the need for Welsh legislation to be clearly accessible, it is not convinced that consolidation would be the best way to achieve this; however, this option will be kept under review.

*(e) Wales Legislation On-Line*

**We welcome the crucial work that has been achieved by Wales Legislation on Line. For this valuable service to continue, funding needs to be assured. We are not convinced that this can be achieved through ad hoc grants and we recommend that the Wales Office commit funding to the project after 2004 (paragraph 26).**

The Government notes the Committee's view. No doubt Wales Legislation On-Line will explore all possible sources of future funding.

*(f) Explanatory Notes*

**We welcome the introduction of a Wales statement in the Explanatory Notes to Bills, and will be monitoring them to ensure that they are as helpful as they should be. We further recommend that the notes on the Welsh impact of a Bill prepared for the Cabinet Legislative Programme Committee be made available on the Wales Office website as a full version of published notes (paragraph 29).**

The Government welcomes the Committee's endorsement of the practice of including in the Explanatory Notes a statement of how the legislation affects Wales. Cabinet Committee documents are confidential. However, the Explanatory Notes are part of the documentation before LP Committee and are a major part of the information provided in accordance with the guidance in paragraph 7 of DGN 9.

*(g) Consultation*

**Therefore, we recommend that the scope of the Devolution Guidance Note 9 should be extended to include all legislation in any of the devolved fields listed in Schedule 2 to Government of Wales Act, even if the legislation has no direct impact on the National Assembly's powers (paragraph 35).**

It is already current practice within Government to consult the Assembly Cabinet on all legislation in any of the devolved fields and this is reflected in DGN9.

*(h) Advance Publication*

**We recommend that advance publication of draft Bills should be standard practice for all Bills which have a significant impact on Wales. We further recommend that where possible, Welsh Parts of draft Bills should be published in advance of the full draft Bill so that the National Assembly and House of Commons Committees have sufficient time for pre-legislative scrutiny (paragraph 38).**

The Government has made clear that it hopes to increase the number of bills published in draft for pre-legislative scrutiny. However, there will always need to be scope for Parliament to legislate quickly where there is a clear need and constraints on drafting capacity place a limit on the number of Bills that can be produced in draft in any particular session. The Government agrees that it is desirable that Bills containing significant Wales-only clauses should be published in draft whenever practicable and is already working towards achieving this. The Government is grateful to the Committee for its work in relation to the pre-legislative scrutiny of the draft NHS (Wales) Bill and the draft Public Audit (Wales) Bill.

Bills are normally drafted as a whole, and it is not always practical for one part to be published in advance of the rest. In particular, Wales-only parts normally provide for a variation of only some of the provisions of the Bill to meet particular Welsh circumstances. In such circumstances, it would not be possible to scrutinise the Wales-only clauses without an understanding of the whole picture as shown by the full draft.

*(i) Joint Meetings*

**The opportunity for joint scrutiny of draft Bills by our Committee and those of the National Assembly would offer a joined-up approach to legislation affecting Wales. Therefore, we will be putting to the Procedure Committee for its consideration, proposals for joint formal meetings between House of Commons Committees and those of the National Assembly (paragraph 41).**

The procedural obstacles to formal joint meetings are a matter for the House. However, the Government agrees that joint pre-legislative scrutiny by the Welsh Affairs Committee and the appropriate Committee of the National Assembly for Wales would be helpful and hopes that the House authorities will examine whether these problems can be overcome.

*(j) Presiding Officers*

**The absence of a consensus over the future composition of the Upper House, allied to the lack of detail on its powers, makes it impossible for us to come to a view [on future membership of the House of Lords for the National Assembly's Presiding Officer]. This is, no doubt, an issue that will be considered by the Joint Committee on House of Lords Reform (paragraph 45).**

The Government notes the Committee's comment.

*(k) Amendments*

**We will be putting to the Procedure Committee for its consideration ways in which the National Assembly, and individual AMs, can make their views known formally at Westminster on legislation that will directly affect Wales (paragraph 47).**

This is a matter for the House. As the Committee acknowledges, Assembly Members are already free to engage the interest of Members of both Houses of Parliament in any amendment they might wish to have made to legislation at Westminster.

*(l) Welsh Standing Committees*

**We recommend that the Government, in the spirit of modernisation, experiment with committing a Wales Part of a substantial Bill to a separate Standing Committee (paragraph 48).**

The Government will, of course, consider each case on its merits though it has no current plans to divide Bills between Standing Committees in the way the Committee recommends.

*(m) Special Standing Committee*

**Using the Special Standing Committee procedures for a Wales only Bill would offer the National Assembly the opportunity to present formally its views on a Bill before the House. We recommend that the Government consider using this procedure for the next Wales only Bill, or for the Welsh Part of a substantial Bill (paragraph 52).**

The Government will consider each case on its merits. Since the Children's Commissioner for Wales Act 2000, which was a special case, the Government has published Wales-only Bills in draft and intends to continue this practice unless the circumstances make it undesirable. In the Government's view, it is unlikely that a Bill which has been subject to pre-legislative scrutiny would merit consideration by a Special Standing Committee.

*(n) Joint Debate*

**In paragraph 41, we signal our intent to pursue with the Procedure Committee the possibility of formal joint meetings between House of Commons Committees and those of the National Assembly. Alongside that proposal we will also propose an annual joint debate on the legislative priorities for Wales between the Welsh Grand Committee and the National Assembly (paragraph 54).**

The Government notes the Committee's view. This is a matter for the House and the National Assembly for Wales.

*(o) Rawlings Principles*

**The National Assembly has adopted the Rawlings Principles as the framework for working with Westminster. Regardless of the merits of the Rawlings Principles, we would expect the Government to take a view on them, and we recommend that the Government sets out its position on each of the principles, in its response to this Report (paragraph 61).**

In its report, the Assembly Procedure Committee recommended

that the Assembly formally adopts the principles set out in Annex v to this report and that the First Minister communicates them appropriately to the UK Government.

Each bill must be drafted in the light of the policy decisions made in that particular case and the Government is not prepared to adopt formally any general set of principles of this kind. Nevertheless, annex v of the Assembly Procedure Committee's report does largely describe the Government's normal practice in considering the powers which the Assembly should be given in primary legislation.

Comments on each of the items in that annex are:

**1. The Assembly should acquire any and all new powers in a Bill where these relate to its existing responsibilities.**

The Government agrees with this in general, but recognises that circumstances could arise where this was not the case; for example, the Assembly does not set teachers' pay and conditions.

**2. Bills should only give a UK Minister powers which cover Wales if it is intended that the policy concerned is to be conducted on a single England and Wales / GB / UK basis.**

The Government agrees with this in general, but recognises that circumstances could arise where this was not the case; for example, the Assembly's responsibility for public health in Wales would not compromise the efficient management of an epidemic which affected England and Wales

**3. Bills should not confer functions specifically on the Secretary of State for Wales. Where functions need to be exercised separately in Wales, they should be conferred on the Assembly.**

It is normal practice to confer functions on the Secretary of State at large rather than a named Secretary of State. Should there ever be a need to exercise non-transferred functions differently in Wales, the duty would be on the responsible Secretary of State. The question of a transfer of such functions to the Assembly would have to be considered on its merits.

**4. A Bill should not reduce the Assembly's functions by giving concurrent functions to a UK Minister, imposing a requirement on the Assembly to act jointly or with UK Government / Parliamentary consent, or dealing with matters which were previously the subject of Assembly subordinate legislation.**

The Government would not normally reduce the Assembly's functions, but does not accept that a requirement in a Bill to act concurrently or jointly or to obtain Government or Parliamentary consent would necessarily have that effect. However, the guidance in the annex to DGN 9 makes clear that a Bill should not normally impose a consent requirement.

**5. Where a Bill gives the Assembly new functions, this should be in broad enough terms to allow the Assembly to develop its own policies flexibly. This may mean, where**

**appropriate, giving the Assembly "enabling" subordinate legislative powers, different from those given to a Minister for exercise in England, and/or which proceed by reference to the subject-matter of the Bill.**

Each case is decided on its merits. However, in giving the Assembly such powers, Parliament will expect to be informed how the Assembly Government proposes to exercise them in the same way as it expects such information from the Government.

**6. It should be permissible for a Bill to give the Assembly so-called "Henry VIII" powers (i.e. powers to amend primary legislation by subordinate legislation, or apply it differently) for defined purposes, the test being whether the particular powers are justified for the purpose of the effective implementation of the relevant policy. Where such powers are to be vested in a UK Minister for exercise in England, they should be vested in the Assembly for exercise in Wales.**

Again, this is normal practice where the exercise of the Henry VIII powers does not change the intention of the primary legislation. However, secondary legislation made by the Secretary of State is subject to further Parliamentary scrutiny while secondary legislation made by the Assembly is not. A judgement needs to be made as to how wide a latitude Parliament should give the Assembly to amend primary legislation without further scrutiny. For that reason the Government cannot accept the final sentence of this point without that qualification.

**7. Assembly to have power to bring into force (or "commence") all Bills or parts of Bills which relate to its responsibilities. Where the Minister is to have commencement powers in respect of England the Assembly should have the same powers in respect of Wales.**

This is normal practice, as set out in the annex to DGN 9. Circumstances where it is not appropriate are likely to be exceptional.

Wales Office

June 2003