



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

Welsh Assembly Government bids for primary legislation

Abstract

This paper provides background briefing on the annual debate on Assembly Government bids for primary legislation at Westminster.

March 2005



Welsh Assembly Government bids for primary legislation

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Welsh Assembly Government bids for primary legislation

1 Introduction

Prior to 2001-02, the Assembly Government bids for primary legislation were made through private correspondence with the UK Government. In a Memorandum submitted to the House of Lords Committee on the Constitution in February 2002, the First Minister stated:

As with the relationship in general, consultation on proposed primary legislation has broadly worked well. This approach has yielded Bills making significantly different provision for Wales, such as this [2001-2002] session's Education Bill, and the first major piece of Wales-only legislation for some years (the Children's Commissioner for Wales Act 2001). Again, there are also examples of where the system has worked less well: where a Bill has treated the Assembly less favourably than UK Ministers, particularly as regards "Henry VIII" clauses. Those are not typical by any means. But if the settlement is to remain in robust health, it is important that that primary legislation continues to reflect the Assembly's interests and respect its role.¹

A change in Standing Orders from 2001-02 required the Assembly Government to formally submit its own proposals for primary legislation. These proposals are first approved by the Assembly in Plenary. Standing Orders 33.11 and 33.12 state:

33.11 No later than 31 March each year, the Assembly will consider a motion under Standing Order 33.9 proposed by a Minister. Such a motion will set out the Assembly Cabinet's proposals for primary legislation in the following session of the UK Parliament or, if the Cabinet has no such proposals, will invite the Assembly to note that fact.

33.12 If the Assembly approves a motion under Standing Order 33.9 or 33.11, the First Minister shall as soon as possible communicate its terms to the Secretary of State for Wales. The First Minister or a Minister shall report to the Assembly from time to time on the response of the UK Government to the Assembly's proposals and on the progress of any Bill or amendments proposed by the Assembly which the UK Government agrees to bring forward.²

Once approved, the bids are submitted to the Secretary of State for Wales who will then decide which bids he will support in negotiations with the UK Cabinet on the forthcoming legislative programme. Annex B of the concordat between the Assembly Cabinet and the Wales Office deals with Primary Legislation affecting Wales. It states:

The Assembly is free to request the UK Government to introduce primary legislation at any time. Such requests will be considered in the context of the parliamentary timetable for the prospective legislative programme.

Under Assembly Standing Order 23.12 [now 33.12], the First Minister will communicate to the Secretary of State the terms of any resolution of the Assembly requesting the UK Government to make or amend primary legislation. The Assembly Cabinet will not address any such requests directly to other Government Ministers. Assembly Ministers will copy to the

¹ First Minister's Memorandum to the House of Lords Constitution Committee Inquiry on Devolution, Cabinet Paper CAB (01-02) 33. February, 2002.

[http://www.wales.gov.uk/organicabinet/content/CabMeetings/papers/CAB\(01-02\)33_hol.pdf](http://www.wales.gov.uk/organicabinet/content/CabMeetings/papers/CAB(01-02)33_hol.pdf)

² National Assembly for Wales, Standing Orders.

<http://www.wales.gov.uk/keypubstandingorders/index.htm>

Secretary of State any representations they make to other UK Ministers on matters relating to primary legislation.³

The annual debates on Primary Legislative Bids from previous years can be seen here:

2001

Record of Proceedings, 13 March 2001, *The Queen's Speech*, pp.28-55.

<http://www.wales.gov.uk/assemblydata/3AAFB06D000A8B87000050040000000.pdf>

2002

Record of Proceedings, 19 March 2002, *Welsh Assembly Government's Proposals for Bills*, pp.77-115.

<http://www.wales.gov.uk/assemblydata/3CA0A6E9000E93B600000B4400000000.pdf>

2003

Record of Proceedings, 12 March 2003, *Future Primary Legislative Bids*, pp.32-57

<http://www.wales.gov.uk/assemblydata/N000000000000000000000000000008223.pdf>

2004

Record of Proceedings, 17 March 2004, *Primary Legislative Bids*, pp.37-70

<http://www.wales.gov.uk/assemblydata/N0000000000000000000000000000018982.pdf>

2 Assembly bids for primary legislation 2001-02 to 2004-05

The table below lists the bids for primary legislation laid before Plenary by the Assembly Government between 2001-02 and 2004-05. Some have been unsuccessful and others have been addressed through provisions in England and Wales legislation. Wales only Acts and Bills are discussed fully in section 3.

For 2001-02 session	
Health and Well-Being (Wales) Bill	Successful; provisions in <i>National Health Service Reform and Health Care Professions Act 2002</i> and <i>Health (Wales) Act 2003</i> .
Education (Wales) Bill	Partly successful; some provisions included in the <i>Education Act 2002</i> .
St David's Day Bill.	Unsuccessful.
Census (Amendment) Wales Bill.	Unsuccessful, but administrative arrangements to enable the Assembly to influence census forms being made in concordat with the Office of National Statistics.
For 2002-03 Session	
Common Land (Wales) Bill.	Bid not pursued because of DEFRA commitment to seek legislative time for England and Wales legislation (<i>Draft Commons Bill</i>) introduced in 2004-05.
Sunday Licensing (Wales) Bill.	Successful; provisions contained in <i>Licensing Act 2003</i> .
St David's Day Bill.	Unsuccessful.
Land Use Planning Bill.	Successful; separate provisions for Wales contained in <i>Planning and Compulsory</i>

³ Concordat between the Cabinet of the National Assembly for Wales and the Wales Office, 2001.
<http://www.wales.gov.uk/keypubconcord/content/concordats/osswe.htm>



	<i>Purchase Bill.</i>
Education Bill.	Partly successful; some provisions contained in the <i>Education Act 2002</i> ; others unsuccessful.
Audit (Wales) Bill.	Successful. <i>Public Audit (Wales) Act</i> passed in 2004.
Housing Ombudsman (Wales) Bill.	Successful; separate provisions for Wales included in <i>Housing Act 2004</i>
Passenger Transport Bill.	Unsuccessful.
For 2003-04 session	
Education (Miscellaneous Provisions) (Wales) Bill.	Unsuccessful
Public Services Ombudsman (Wales) Bill.	Successful; <i>Public Services Ombudsman (Wales) Bill</i> introduced in the 2004-05 session (see below).
Tourism Accommodation (Registration) (Wales) Bill.	So far unsuccessful
Transport (Wales) Bill.	Successful; Transport (Wales) Bill introduced in the 2004-05 session (see below).
Prohibition of Smoking in Public Places Bill.	Private Member's Bill proposed in the House of Lords: fell. Private Member's Bill introduced in the House of Commons in February 2005 by Julie Morgan MP. The Assembly Government endorses this and has stated that should it fail to become law, the Cabinet will take up with the Secretary of State the issue of separate provisions for Wales in any forthcoming England and Wales Bill dealing with the matter.
For 2004-05 session	
Commissioner for Older People (Wales) Bill.	Draft Bill to be introduced early 2005. Wales Office website states: <i>If the pre-legislative scrutiny of the draft bill proceeds as we hope then, subject to Parliamentary time being found in the 2005-6 Parliamentary Session and subject to the parliamentary process, the independent Commissioner could be appointed in 2007.</i> http://www.walesoffice.gov.uk/2004/pn_20041207.html
Education (Miscellaneous Provisions) (Wales) Bill (To place limits on junior class sizes similar to those for infant class sizes. It would legislate for a primary school breakfast scheme, the Assembly Learning Grant, and would enable more integrated working between Higher Education Funding Council for Wales and ELWa. It would provide Estyn with powers of inspection for youth and community work training within the HE system . The Bill would also require FE institutions to publish annual statements on government and management.)	The Welsh Assembly Government has addressed these issues through means other than primary legislation. Although an Education Bill 2004-5(HL) was introduced in 2004-05, it does not address any of the issues in the proposed Assembly Bill. A Members' Research Service paper on the Education Bill (HL) 2004-05 can be seen here: http://www.wales.gov.uk/keypubmrs/content/papers-e.htm http://www.walesoffice.gov.uk/2004/pn_20041201.html
Housing (Suspension of Right to Buy) (Wales) Bill.	So far unsuccessful.
Local Government (Town and Community	So far unsuccessful.



Councils (Wales) Bill.	
Public Services Ombudsman (Wales) Bill.	Successful. <i>Public Services Ombudsman (Wales) Bill</i> (HL) before Parliament (March 2005). A Members' Research Service paper on the Bill can be seen here: http://www.wales.gov.uk/keypubmrs/content/05-001.pdf
Tourism Accommodation (Registration) (Wales) Bill.	So far unsuccessful.
Transport (Wales) Bill.	Successful; <i>Transport (Wales) Bill</i> introduced in the 2004-05 session. http://www.walesoffice.gov.uk/2004/pn_20041215a.html

Further information on Bills currently before Parliament that have been remitted to Committees of the National Assembly for Wales can be seen in Members' Research Service Paper 05/003:

<http://www.wales.gov.uk/keypubmrs/content/05-003.pdf>

3 Wales-only Acts and Bills

3.1 Acts

Three Wales-only Acts have been passed by Parliament since the outset of devolution in 1999. These are:

◆ *Children's Commissioner for Wales Act 2001*

The post of Children's Commissioner for Wales was created by provisions within the *Care Standards Act 2000*. The 2001 Act:

- set out the principal aim of the Commissioner as safeguarding and promoting children's rights and welfare;
- empowered the Commissioner to consider and make representations to the National Assembly for Wales on any matter affecting the rights and welfare of children in Wales;
- introduced a power to review the exercise of functions of the National Assembly and other persons;
- extended the power of the Commissioner to examine particular cases of children and to assist in particular cases by applying those powers to a wider range of bodies; and
- extended the power to review and monitor arrangements for complaints procedures, whistle – blowing and advocacy by applying it to a wider range of bodies in Wales providing services to children.⁴

◆ *Health (Wales) Act 2003*

The Act:

- made provision about Community Health Councils in Wales;

⁴ Wales Office Press Release, *Children's Commissioner Bill becomes Law*, 11/05/2001.
http://www.walesoffice.gov.uk/2001/pn_20010511.html

- established and made provision about the Wales Centre for Health;
- made provision for the establishment of Health Professions Wales.⁵

◆ *Public Audit (Wales) Act 2004*

The Act enables there to be a single public audit body for Wales, headed by the Auditor General to be known as "the Wales Audit Office". It will have responsibility for the financial and performance audit of the Assembly; its sponsored bodies and a number of other publicly funded bodies; health bodies (primarily NHS Trusts and Local Health Boards) and local government bodies in Wales. The Act includes provisions intended to safeguard the constitutional independence and democratic accountability of local government.⁶

3.2 Bills

The 2004-05 Queen's Speech contained proposals for two Wales-only Bills – the *Public Services Ombudsman (Wales) Bill* and the *Transport (Wales) Bill*.

◆ *Transport (Wales) Bill 2004-05*

The Transport (Wales) Bill was introduced into the House of Commons on 15 December 2004. It gives the National Assembly stronger powers to influence the development of an integrated transport system in Wales. The Bill underwent pre-legislative scrutiny as a draft Bill, which allowed advance scrutiny by MPs and Assembly Members. The Bill:

- places a duty on the Assembly to promote safe, integrated, sustainable, efficient and economic transport;
- place a duty on the Assembly to publish a Wales Transport Strategy;
- ensures that the local transport plan system is modified, making it an effective vehicle for the implementation of the Wales Transport Strategy;
- makes provision for joint working arrangements and for joint transport authorities, so that local authority transport functions are carried out on a regional basis;
- empowers the Assembly to secure the provisions of public transport services, where such services would not otherwise be met;
- provides a specific power to give financial assistance in respect of air services and airport facilities, where the services or facilities would not otherwise be provided; and
- gives the Assembly powers to establish a Public Transport Users' Committee for Wales.⁷

◆ *Public Services Ombudsman (Wales) Bill 2004-05*

The Bill creates a single Ombudsman service for Wales, combining the three current offices of the Commissioner for Local Administration in Wales, Health Services Commissioner for Wales and Welsh Administration Ombudsman into one service.

The Welsh Assembly Government has stated that should the *Public Services Ombudsman (Wales) Bill* and the *Transport (Wales) Bill* not receive Royal Assent before

⁵ Health (Wales) Act, 2003.

<http://www.legislation.hmso.gov.uk/acts/acts2003/20030004.htm>

⁶ Public Audit (Wales) Act 2004, Explanatory Notes.

<http://www.legislation.hmso.gov.uk/acts/en2004/2004en23.htm>

⁷ Wales Office Press Release, *Better Transport Links in Prospect for Wales*, 15/12/2004
http://www.walesoffice.gov.uk/2004/pn_20041215a.html

the current Parliament is dissolved, it will wish to press for them to be included in the legislative programme for the first session of the new Parliament.

4 Proposals for primary legislation 2005-06

The Welsh Assembly Government has published its proposals for primary legislation for the 2005-06 session of Parliament which are to be debated in Plenary on 16 March 2005. The statement may be viewed here:

<http://assembly/plenary/Plenary/Laid%20Documents/second/default.asp>

The legislation requested is listed below:

◆ *Commissioner for Older People (Wales) Bill*

To establish the post of a Commissioner for older people.

◆ *Government of Wales Bill*

- To abolish 'corporate body' status of the Assembly;
- implement changes to the Additional Member system used for Assembly elections, and
- provide for enhanced legislative powers for the Assembly.

◆ *Housing (Suspension of Right to Buy) (Wales) Bill*

To enable the Assembly to designate areas of housing pressure where Right to Buy could be suspended.

◆ *Local Government (Town and Community Councils) (Wales) Bill*

To implement recommendations of the Aberystwyth study on town and community councils requiring changes to legislation, such as repealing the provision in the Local Government Act 1972 that allows community councils to be disbanded.

◆ *Tourism Accommodation (Registration) Bill*

To give the Assembly powers to establish a tourist accommodation scheme in Wales.

◆ *Welsh Language Schemes Regulator (Wales) Bill*

To establish a *Dyfarnydd* or regulator to take over certain functions relating to the regulation of Welsh Language schemes under the *Welsh Language Act 1993*.