

National Assembly for Wales
Research paper

Assembly Committee Structures

April 2013

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Assembly Committee Structures

April 2013

Alys Thomas and Owain Roberts

This paper summarises the ways in which committees in the National Assembly for Wales have developed since 2007, particularly in relation to how they have dealt with the scrutiny of legislation.

A version of this paper was presented to the Parliaments and Legislatures Specialist Group of the Political Studies Association Conference in Cardiff on 26 March 2013 by Alys Thomas and Owain Roberts.

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Summary

This paper summarises the ways in which committees in the National Assembly for Wales have developed since 2007, particularly in relation to how they have dealt with the scrutiny of legislation. It covers the following issues:

- Legislative scrutiny and committee structures in the Assembly from its establishment in 1999 to May 2007, when the Assembly was constituted as a corporate body and only had secondary legislative powers.
- Details of committee structures in the third Assembly (2007-2011), following the coming into force of Part 3 of the *Government of Wales Act 2006*, where legislation was first scrutinised by *ad hoc* committees, set up for each individual piece of legislation, and subsequently by five permanent legislation committees.
- An overview of how legislation is scrutinised by committees in the fourth Assembly to date (2011 onwards), following the referendum in March 2011 and the move to Part 4 of the *Government of Wales Act 2006*. In particular, it provides details of the new committee structure which now has dual legislative and scrutiny committees with the capacity to undertake both functions simultaneously, similar to that in the Scottish Parliament.

A version of this paper was presented to the Parliaments and Legislatures Specialist Group of the Political Studies Association Conference in Cardiff on 26 March 2013 by Alys Thomas and Owain Roberts.

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Assembly Committee structures

1. Introduction

In 2007 the National Assembly for Wales gained powers under Part 3 of *Government of Wales Act 2006*¹ ('the 2006 Act') enabling it to make laws (Measures) providing that the Assembly had the legislative competence. This was sought through either Legislative Competence Orders, which had to be approved by the Assembly and both Houses of Parliament or by clauses in Westminster Bills.

Having had no primary legislative powers for its first two terms, the Assembly had to put in place processes and structures for the scrutiny of Assembly Measures. In the first instance *ad hoc* Legislation Committees were established but later five permanent Legislation Committees were established. In the case of Legislative Competence Orders, they were also subject to scrutiny at Westminster.

In 2011, following a referendum in which the Assembly gained full primary powers, the permanent Legislation Committees were replaced by broad ranging dual policy and legislation committees.

This paper provides an overview of the development of scrutiny processes and mechanisms over the third and fourth Assemblies, as well as providing background information about the ways in which committees conducted scrutiny in the first and second Assemblies.

A version of this paper was presented to the Parliaments and Legislatures Specialist Group of the Political Studies Association Conference in Cardiff on 25 March 2013 by Alys Thomas and Owain Roberts.

¹ [Government of Wales Act 2006](#) (Chapter 32)

2. Scrutiny in the first and second Assemblies

For the first eight years of its existence the National Assembly for Wales had no primary legislative powers. Moreover, as it was constituted as a single corporate body, the Assembly was responsible for passing all subordination legislation. In practice, however, it soon came to resemble a more parliamentary model with Ministers and a legislature, and the prospect of all subordinate legislation coming before the whole Assembly for detailed scrutiny was circumvented by powers in the *Government of Wales Act 1998*² ('the 1998 Act') which delegated subordinate legislation-making functions to the First Secretary (as the First Minister was then known) and Cabinet Ministers.³ The first Standing Orders of the Assembly required that the relevant Minister identify whether subordinate legislation was routine and could be 'fast-tracked' or whether it should be subject to fuller scrutiny by committee and in plenary. The Business Committee, chaired by the Deputy Presiding Officer, would then be consulted.⁴

The 1998 Act was prescriptive in regard to committees. It specified that there would be an Executive Committee – this came to be known as the Cabinet. It also provided for a Subordinate Legislation Committee, an Audit Committee and Regional Committees and made provision for 'committees'. These came to be known as subject committees and they were constituted to reflect Ministerial portfolios. It was envisaged that they would:

Deal with any significant secondary legislation, develop new policy, scrutinise old policy and the performance of the executive branch, oversee public appointments and contributing to budgeting priorities.⁵

The 1998 Act also required that Ministers be members of the committee covering their portfolio. Standing Orders defined the responsibilities of subject committees as **policy development** (via committee inquiries and by contributing to Ministerial policy development); and **scrutiny** (of expenditure, administration and discharge of public functions). Another role was to **advise on proposed legislation** (subordinate, primary and European).

Despite the Assembly having no powers to make primary legislation at this time some committees had a role in scrutinising Westminster Bills. For example, in 2003 the *Public Audit (Wales) Bill Committee* was established to scrutinise the provisions of the draft Bill.⁶ It took evidence from witnesses including then Auditor

² *Government of Wales Act 1998 (c.38)* [accessed 16 October 2012]

³ The term "Assembly Secretary" was in use at this stage. However, the term "Minister" was employed from 2000 and is used throughout this paper for clarity.

⁴ Martin Laffin and Alys Thomas "Designing the Welsh Assembly", *Parliamentary Affairs* 53(3) July 2000, 532-541

⁵ *Ibid* p.568

⁶ National Assembly for Wales, *Public Audit (Wales) Bill Committee 2003*, archived webpage [accessed 17 October 2012]

General, Sir John Bourn. The Wales Office Minister did not attend but stated in his letter to the committee chair:

On this, as on earlier occasions, I have found the arrangements for pre-legislative scrutiny and parallel public consultation immensely valuable in developing and taking forward well-crafted and well-considered legislation. My aim in partnership with the National Assembly for Wales Minister, Sue Essex, is to consider the Welsh Affairs Committee and National Assembly Scrutiny Committee reports; the comments of Parliamentary colleagues made at Welsh Grand Committee; and all other comments of the draft Bill during August.⁷

From 2003 the Welsh Government developed the practice of submitting bids for primary legislation which were endorsed in Plenary. In 2005 the then First Minister, Rhodri Morgan, stated:

This annual debate is an essential part of our settlement as we have all been elected on a settlement which has the fundamental principle that it is in Westminster that Acts are made in the full sense, and that we are able to make applications each year to Westminster to pass Bills on our behalf.⁸

Essentially, such Bills emerged from Welsh Government policies which could only be realised through Westminster legislation. One Bill which the UK Government chose to proceed with was the *Commissioner for Older People (Wales) Bill* which was remitted to the Health and Social Services Committee.

The Bill had its First Reading in the House of Lords on 25 May 2005 and completed its passage through the House of Lords on 15 February 2006. It had its First Reading in the House of Commons on 16 February 2006. The Assembly Committee had already scrutinised the draft Bill on 25 May 2005 and submitted a report to the Assembly. It published its report on the Bill itself prior to the Bill receiving its second reading in the Commons.⁹ An Assembly Committee was also established to scrutinise the *Government of Wales Bill 2005*.¹⁰

Further changes came about as a result of the **Richard Commission** on the Powers and Electoral Arrangements of the National Assembly for Wales which was appointed by the First Minister in July 2002 to review:

- the scope of the Assembly's powers: whether they are adequate to meet the needs of Wales; and
- the number of elected Assembly Members and their method of election.

⁷ [Public Audit \(Wales\) Bill Committee, Written Statement by Don Touhig MP, PA\(W\)B\(2\)-02-03\(p.5\), 10 July 2003 \[accessed 17 October 2012\]](#)

⁸ RoP, 16 March 2005

⁹ Health and Social Services Committee, *Report on the Commissioner for Older People (Wales) Bill*, 2005

¹⁰ [Government of Wales Committee 2005, archived webpage](#)

The Report, published in March 2004, looked at the role of subject committees among the range of issues it considered. It received plenty of evidence which questioned the unusual practice of Ministers being members of the subject committees.

In a breakdown of how committees spent their time it showed that five per cent was spent on scrutiny of legislation - two per cent on secondary legislation and three per cent on primary legislation. By far the largest part of the workload was committee inquiries (39 per cent).¹¹ A similar breakdown for Plenary showed 9 per cent of time was spent on scrutiny of legislation.

Two of the Richard Commission's key recommendations **were the transformation of the Assembly into a full-fledged legislative assembly with primary legislative powers on all matters not explicitly reserved to Westminster and that the Assembly should be reconstituted as a separate legislature and executive.** These recommendations were carried forward by the UK Government in the *Government of Wales Act 2006* which was to have important implications for scrutiny in the Assembly.¹²

¹¹ Richard Commission, Report on the Powers and Electoral Arrangements of the National Assembly for Wales, 2004

¹² [Government of Wales Act 2006 \(Chapter 32\)](#)

3. The third Assembly: developing legislative scrutiny

Following the 2007 election to the third Assembly, the Assembly could now make primary legislation in the form of ‘Assembly Measures’ in those areas where the Assembly had the competence to legislate. This was a result of provisions in the Government of Wales Act (Part 3) coming into force. The 2006 Act also provided a way for the Assembly to acquire such competence on a piecemeal basis from Westminster through both Legislative Competence Orders (‘LCOs’), which had to be approved by the Assembly, the House of Commons and the House of Lords, or through clauses in a Westminster Bill.

The results of the 2007 election, however, proved inconclusive. The Labour Party was returned as the largest party, but they were denied an overall majority having won 26 seats. The largest opposition party remained Plaid Cymru on 15 seats while the Conservatives and the Liberal Democrats had 12 and 6 seats respectively. One independent candidate was also elected.¹³

The nature of the result therefore meant that the first few months of the third Assembly were dominated by coalition negotiations between the parties. Due to Standing Order requirements for a First Minister to be nominated by the new Assembly within 28 days of an election,¹⁴ Rhodri Morgan AM was elected unopposed as First Minister on 25 May as the leader of a minority Labour administration. An all-Labour cabinet was subsequently announced on 31 May.¹⁵

This proved short lived however, as a formal coalition between Labour and Plaid Cymru, entitled *One Wales*, was announced on 27 June 2007. The subsequent cabinet appointments followed on 19 July. This provided the Welsh Government with a clear majority of 11 seats.

3.1. *Initial committee structures*

In contrast to the *Government of Wales Act 1998*’s prescriptive requirements in relation to committees, **the 2006 Act provided discretion and flexibility for the Assembly to determine its own committee structures**, with the precise details of committee functions and responsibilities left to the new Standing Orders. The only committee required by the 2006 Act was the Audit Committee (later renamed the Public Accounts Committee).

¹³ See National Assembly for Wales, [*Research Service: 2007 Assembly Election Results*](#), May 2007 [accessed 26 February 2013]

¹⁴ National Assembly for Wales, [*Standing Orders of the National Assembly for Wales*](#), November 2010, Standing Order 4.1 [accessed 26 February 2013]

¹⁵ National Assembly for Wales, [*Key events in the development of the National Assembly for Wales, Third Assembly: 2007-2011*](#), May 2011, page 3 [accessed 26 February 2013]

The new Standing Orders for the third Assembly, however, set out a number of prescribed committees which the Assembly was required to establish soon after the election.¹⁶ These included a Business Committee, which was designated by the Standing Orders as being responsible for the organisation of Assembly business.¹⁷ Standing Orders also provided for the Presiding Officer to chair Business Committee meetings, which were also attended by the Leader of the House and a Business Manager from each of the other parties represented in the Assembly.

The third Assembly's Business Committee first met on 12 June 2007.¹⁸ The protracted negotiations relating to the formation of the Welsh Government however meant that the committee structure for the third Assembly was not formalised by the Business Committee until almost two months after the election, at its meeting on 26 June.¹⁹ The new committees established on that date included the **four principal scrutiny committees** which covered the policy areas of responsibility of the Welsh Government and associated public bodies, with a remit to examine expenditure, administration and policy. These were the:

- Communities and Culture Committee
- Enterprise and Learning Committee
- Health, Wellbeing and Local Government Committee
- Sustainability Committee.

On the same day, the Assembly also established a number of additional committees that were required under the new Standing Orders. These were the:

- Equality of Opportunity Committee
- European and External Affairs Committee
- Public Accounts Committee
- Finance Committee
- Subordinate Legislation Committee
- Standards of Conduct Committee and
- Petitions Committee.

¹⁶ The new Standing Orders for the third Assembly were informed by the Assembly's [Committee on Standing Orders](#) which met between May 2006 and May 2007. The committee produced a set of [recommended Standing Orders](#) on 31 January 2007. As was required by the transitional arrangements set out in Schedule 11 of the *Government of Wales Act 2006*, the Standing Orders were formally made by the Secretary of State for Wales at the end of the second Assembly.

¹⁷ National Assembly for Wales, [Standing Orders of the National Assembly for Wales](#), November 2010, Standing Order 11.7 [accessed 28 February 2013]

¹⁸ National Assembly for Wales, Business Committee, [Minutes BC\(3\)-01-07](#), 12 June 2007 [accessed 28 February 2013]

¹⁹ National Assembly for Wales, Business Committee, [Minutes BC\(3\)-03-07](#), 26 June 2007 [accessed 28 February 2013]

In addition to these initial committees, other committees to scrutinise aspects of Welsh Government policy and other issues were established during the course of the third Assembly:

- Children and Young People Committee,
- Committee for the Scrutiny of the First Minister,
- Rural Development Sub-Committee
- Broadcasting Committee and the Broadcasting Sub-Committee.²⁰

In terms of political balance, the composition of the committees reflected provisions contained in Section 29 of the *Government of Wales Act 2006* which states that membership of each committee of the Assembly must reflect (so far as is reasonably practicable) the balance of the political groups to which Assembly members belong. If a proposal for the composition of a particular committee is not supported by two-thirds of the Assembly in a vote, then the d'Hondt formula will be used to determine the membership of that Committee. In practice however, this was arranged between party groups.

3.2. Consideration of legislation

The Assembly's new Standing Orders set out new legislative procedures for the consideration of proposed Measures, to go along with the Assembly's enhanced legislative powers (as was required under Part 3 of the 2006 Act).

This involved the initial consideration of the general principles of a proposed Measure at Stage 1, which was usually conducted by a committee and followed by a plenary debate and vote. If the proposed Measure was passed at Stage 1, it was then subject to line by line scrutiny by a committee at Stage 2 which involved the disposal and approval of amendments. A similar process then followed at Stage 3 where amendments to the proposed Measure would be considered by all Assembly Members in full plenary, before a vote to pass or reject the proposed Measure would be held at Stage 4.²¹ **More information about the third Assembly's legislative processes is available at Annex 1.**

The Assembly's Standing Orders provided a less prescriptive and extensive process for the consideration of LCOs which usually involved the consideration of the proposed LCO by a committee which was followed by a plenary debate and vote on whether the proposed LCO should be approved or not.

²⁰ For more information on committees in the third Assembly see National Assembly for Wales, [*Third Assembly Committees \(2007-2011\)*](#) [accessed 27 February 2013]

²¹ This model is very similar to that of the Scottish Parliament.

The initial approach favoured by the Assembly's Business Committee was to set up *ad hoc* committees for the consideration of each piece of legislation. These were established for the sole purpose of taking evidence in relation to the legislation in question and on reporting and making recommendations on them to the Assembly. Once each committee had completed its consideration of the legislation in question, they would be dissolved.

The first three *ad hoc* committees²² were established on 4 July 2007,²³ shortly following the introduction of the first proposed LCO on additional learning needs on 11 June. Each committee had five members and its composition reflected the party balance within the Assembly: two Labour members and one member each from the other party groups, making, in practice, three Government members to two opposition.

The committees were tasked with considering the general principle of each proposed LCO and to consider whether the proposed LCOs provided an appropriate legal framework for the delivery of the Welsh Government's policy agenda in each area. Each committee issued a general call for evidence and invited key organisations and stakeholders to submit written evidence. The committees also took oral evidence from a number of witnesses before making recommendations in a report.

This approach set the template for the way in which Assembly Committees would consider legislation during the first year of the 2006 Act's operation. The *ad hoc* model was subsequently adopted in relation to the scrutiny of a further five proposed LCOs (relating to Domiciliary Care, Affordable Housing, Red Meat Industry, Mental Health Services and Domestic Fire Safety) and during the Stage 1 scrutiny of four proposed Measures during Stage 1 (NHS Redress, Learning and Skills, Local Government and Healthy Eating in Schools).

Other committees were however involved in the consideration of Assembly Measures from the early days of the third Assembly. These included the Finance Committee, which produced a report on the financial implications of most proposed Measures from October 2007 onwards.²⁴ According to the *Assembly Commission's 2008-2009 Annual Report* this involved examining 'the financial implications of any proposed Measure to ensure that it is properly costed before it is made law'.²⁵ Specific consideration of the delegated powers contained in each proposed Measure was also considered separately by the Subordinate Legislation

²² These were the Proposed Environmental Protection and Waste Management LCO Committee; Proposed Additional Learning Needs LCO Committee, and the Proposed Vulnerable Children LCO Committee.

²³ National Assembly for Wales, RoP, [Plenary: Establishment and Election of Committees on Legislation](#), 4 July 2007 [accessed 27 February 2013]

²⁴ See National Assembly for Wales, [Finance Committee \(2007-2011\): Reports](#) [accessed 26 February 2013]

²⁵ National Assembly for Wales, [Assembly Commission: The Year in Review, Annual Report and Statement of Accounts 2008-2009](#), December 2008 [accessed 26 February 2013]

Committee who also held evidence sessions and reported on the subordinate legislation-making provisions.²⁶ These reports, along with the relevant legislation committee report, would then inform the Stage 1 debate and vote on the general principles of the proposed Measure in plenary.

Despite not being involved in the detailed consideration of proposed Measures at Stages 1 and 2 of the legislative process, the Assembly's four scrutiny committees were allowed discretion to play a role in scrutinising and developing legislative proposals and in considering Welsh provisions in UK Bills.

For example, the Enterprise and Learning Committee undertook pre-legislative scrutiny of the *proposed Learner Travel (Wales) Measure*. Business Committee minutes stated:

The Business Committee considered the papers on the 'Proposed Learner Travel (Wales) Measure'. The Business Committee noted that the Measure had already been subject to pre-legislative scrutiny by the Enterprise and Learning Committee and agreed that the Measure would proceed directly to a Stage 1 Plenary debate on the general principles.²⁷

However, while proceeding straight to Stage 1 was permitted under Standing Orders, this did not happen often. As the chair of the committee which dealt with stage 2 of the *Proposed Learner Travel Measure* explained:

I also wish to place on record the difficulty that the committee has had because of the absence of a Stage 1 Measure committee, where some of the broad principles of what we have discussed could have been considered. I believe that that would have made the Stage 2 committee far more fluid and forthcoming. Finally, I wish to place on record that the consideration given by a Measure committee is, by its very nature, different to the consideration given by a subject committee up to this point. The nature and the working of subject committees may well change in the light of experience, but I wanted to place those points on record to help the Business Committee in its considerations of making our workings easier.²⁸

The committee also considered a petition submitted by Sustrans to the Assembly's Petitions Committee, which called on the Assembly to seek powers to place a duty on the Welsh Government to develop and maintain a network of traffic-free shared use paths for walkers, cyclists and disabled people across Wales.²⁹ The committee was involved in considering the UK Government's consultation on the draft *Apprenticeships, Skills, Children and Learning Bill*, where it sought clarification in its report from the Welsh Government regarding the mechanism by which Welsh clauses would be incorporated into the Bill.³⁰ Similar

²⁶ National Assembly for Wales, [*Subordinate Legislation Committee \(2007-2011\): Proposed Measure Reports*](#) [accessed 26 February 2013]

²⁷ [*National Assembly for Wales, Business Committee, Minutes, 8 April 2008*](#) [accessed 15 March 2013]

²⁸ [*National Assembly for Wales, RoP, Proposed Learner Travel Measure Stage 2 Committee, 3 July 2008*](#) [accessed 15 March 2013]

²⁹ National Assembly for Wales, [*Assembly Commission: The Year in Review, Annual Report and Statement of Accounts 2008-2009*](#), December 2008 [accessed 26 February 2013]

³⁰ Ibid

consideration of a UK Bill was undertaken by the Sustainability Committee in relation to Welsh provisions in the UK *Planning Bill* and the UK *Climate Change Bill*.³¹

3.3. Permanent legislation committees

On 24 September 2007, little over a year into the operation of Part 3 of the 2006 Act, a paper was discussed at the Business Committee which suggested the establishment of permanent legislation committees to deal with the Assembly's expanding legislative workload. According to a paper considered by the Assembly Commission on the matter: 'The workload of the new legislation committees will reflect the volume of legislative business passing through the Assembly' and that the 'nature of the chairing role will be specialised, requiring the development of advanced expertise in our legislative procedures'.³²

The Business Committee subsequently approved plans to establish up to five permanent legislation committees, each with a non-voting chair, on 4 November 2008.³³ The first of these committees, Legislation Committee No.1, was established in plenary on 26 November 2008, with the Deputy Presiding Officer, Rosemary Butler AM, as chair.³⁴ Its main function would be to consider only Member and Committee proposed legislation,³⁵ which would leave Legislation Committees 2, 3, 4 and 5 to scrutinise government proposed LCOs and Measures. Legislation Committees 2 and 3 were established on 9 December 2008,³⁶ with Legislation Committees 4 and 5 established shortly afterwards on 4 February 2009.³⁷

In terms of Assembly procedures and rules, the usual Standing Orders pertaining to all committees applied to legislation committees,³⁸ though these were moderated in practice by conventions agreed by the Business Committee at its meeting on 4 November, which included each committee having a non-voting chair.³⁹

³¹ Ibid

³² National Assembly for Wales, [Assembly Commission: NAFWC 2008 \(Paper 4 Part 1\)](#), 4 December 2008 [accessed 26 February 2013]

³³ National Assembly for Wales, [Assembly Commission: Minutes of 4 December 2008 meeting](#), December 2008 [accessed 26 February 2013]

³⁴ National Assembly for Wales, RoP, [Plenary: Establishment and Election of the First Legislative Committee](#), 26 November 2008 [accessed 26 February 2013]

³⁵ National Assembly for Wales, [News Release: New Committee established to look at Assembly Legislation](#), December 2008

³⁶ National Assembly for Wales, RoP, [Plenary: Establishment and Election of Legislative Committees](#), 9 December 2008 [accessed 26 February 2013]

³⁷ National Assembly for Wales, RoP, [Plenary: Establishment and Election of Committees](#), 4 February 2009 [accessed 26 February 2013]

³⁸ National Assembly for Wales, [Standing Orders of the National Assembly for Wales](#), November 2010, Standing Order 2010 [accessed 28 February 2013]

³⁹ National Assembly for Wales, Business Committee, [Minutes BC\(3\)-29-08](#), 11 November 2008 [accessed 28 February 2013]

The composition and political balance of the permanent legislation committees were regulated by the same provisions in the 2006 Act as the other scrutiny committees. In practice this meant that each permanent committee reflected the balance of the parties in the Assembly. However the Chairs were split between two Government Chairs, two non-Government Chairs and the Deputy Presiding Officer.

According to the *Assembly Commission's 2008-2009 Annual Report*, the establishment of the permanent legislation committees was 'The Assembly's response to the change in the legislative tempo'⁴⁰ which occurred during the first year of the 2006's operation. The report adds that:

The result has been a better management of the flow of legislation through the Assembly and also a group of Members and Chairs who have an ever-increasing expertise in the specialised task of scrutinising legislation.⁴¹

The rationale was that the *ad hoc* system of legislative committees proved inefficient in the use of Assembly Member and committee time and that the permanent legislation committee structure meant that no time was lost in establishing and timetabling a committee once a piece of legislation was introduced.⁴²

The establishment of the permanent legislation committees was complemented by the Subordinate Legislation Committee's inquiry into the *Scrutiny of Subordinate Legislation and Delegated Powers*, whose report was published in May 2009.⁴³ The report made a series of actions and recommendations designed to plug the gaps that existed in the scrutiny of statutory instruments made by Welsh Ministers, draft European legislation and of Welsh provisions contained in UK Bills. This included expanding its scrutiny role in relation to statutory instruments and delegated powers contained in all proposed Measures. This enhanced role was reflected in the committee's change of name to the Constitutional Affairs Committee, which was agreed in plenary on 3 February 2010.⁴⁴

⁴⁰ National Assembly for Wales, *Assembly Commission: The Year in Review, Annual Report and Statement of Accounts 2008-2009*, December 2008 [accessed 26 February 2013]

⁴¹ Ibid

⁴² Crompton, A. 'Infant Parliament'. *Agenda*. Winter 2009. Institute of Welsh Affairs

⁴³ National Assembly for Wales, *Constitutional Affairs Committee: Inquiry into the Scrutiny of Subordinate Legislation and Delegated Powers*, 20 May 2009 [accessed 27 February 2013]

⁴⁴ National Assembly for Wales, RoP, *Plenary: Motion to approve the Amendments to Standing Orders Nos. 15 and 24 to Change the Name of the Subordinate Legislation Committee to the 'Constitutional Affairs Committee'*, 3 February 2013 [accessed 27 February 2013]

3.4. Volume of legislation considered during the third Assembly

Between 2007 and 2011 the Assembly considered a total of 23 proposed Measures, 22 of which were passed.⁴⁵ During the same time, the Assembly considered a total of 16 proposed LCOs, all of which were passed except for the proposed LCO on presumed consent for organ donation which was withdrawn by the Welsh Government following the March 2011 referendum. This amounts to a total of 39 pieces of legislation over four years.

Of these: four proposed Measures were considered by *ad hoc* committees at Stage 1 and two proposed Measures were not subject to Stage 1 scrutiny in committee at all.⁴⁶ The remaining 17 proposed Measures were considered by the five permanent legislation committees between December 2008 and March 2011. In addition, eight proposed LCOs were considered by *ad hoc* committees, while nine were considered by the permanent legislation committees.⁴⁷

The details of which permanent committee considered which proposed Measure and proposed LCO is included below:

- **Legislation Committee No. 1:** National Assembly for Wales (Remuneration) Measure, Playing Fields (Community Involvement in Disposal Decisions) Measure, Domestic Fire Safety (Wales) Measure, Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure; Presumed Consent LCO.
- **Legislation Committee No.2:** Children and Families (Wales) Measure, Housing (Wales) Measure, Welsh Language (Wales) Measure; Affordable Housing LCO, Local Government LCO.
- **Legislation Committee No.3:** Education (Wales) Measure, Red Meat Industry (Wales) Measure, Mental Health (Wales) Measure, Local Government (Wales) Measure, Transport LCO, Carers LCO.
- **Legislation Committee No.4:** Safety on Learner Transport (Wales) Measure, Waste (Wales) Measure; Environment LCO, Culture LCO, School Governance LCO.

⁴⁵ Nerys Evans AM's proposed *Shipment of Waste for Recovery (Community Involvement Arrangements) (Wales)* Measure fell at the end of the third Assembly.

⁴⁶ These were the Learner Travel (Wales) Measure which had been considered in draft and subject to a consultation by the [Enterprise and Learning Committee](#) between July and October 2007, and the National Assembly for Wales Commissioner for Standards Measure which had already been considered in draft and subject to a public consultation exercise by the [Committee on Standards of Conduct](#) in March 2009.

⁴⁷ The proposed Environment LCO was considered twice by different Assembly Committees at different times. It was referred initially to the Proposed Environmental Protection and Waste Management LCO Committee in June 2007 but, following the re-laying of a revised version of the proposed LCO by the Welsh Government on 19 May 2009, the proposed LCO was referred to Legislation Committee No.4 for scrutiny.

- **Legislation Committee No.5:** Social Care Charges (Wales) Measure, Carers Strategies (Wales) Measure, Rights of Children and Young Persons (Wales) Measure, Education (Wales) Measure; Welsh Language LCO.

By the end of the third Assembly therefore, the Assembly had a total of 19 committees.⁴⁸ Seven of these were identified by the **Assembly's Remuneration Board's *Fit for Purpose* report** as being involved in legislative scrutiny:

By the end of the Third Assembly, of the 19 committees, six were legislation committees, including five devoted to the consideration of Legislative Competence Orders (LCOs) and Measures and a Constitutional Affairs Committee, with responsibility for considering the technical aspects of all statutory instruments or draft statutory instruments made by Welsh Ministers. The Constitutional Affairs Committee could also undertake limited policy scrutiny of Assembly Measures and more wide-ranging inquiries into matters of constitutional significance. In addition, the Finance Committee also considered the financial information presented in support of Measures.⁴⁹

Additional information about the Remuneration Board's role and remit is set out in **Annexe 2**.

The committee structures adopted by the third Assembly also demonstrated the way in which the constitutional and legislative functions conferred by the *Government of Wales Act 2006* placed significant additional demands on Assembly Members and the services provided by Assembly staff. In particular, the third *Assembly Commission's Legacy Report* felt that the work of committees between 2007 and 2011 were characterised by the following features:

-a higher volume of work—Plenary sat for longer and committees were more active than in previous Assemblies; use of the Research Service rose inexorably; the legislative programme grew steadily; and the development of legislative proposals by individual Assembly Members and committees generated a huge amount of demanding work for researchers, lawyers and clerks and longer hours for supporting staff;

-greater complexity and sophistication in the services required by Members throughout the legislative process and in fulfilling their scrutiny role in committee; the procedural advice required from Legislation Office and Chamber staff; the legislative drafting and advice delivered by the Legal Service; specialist legal translation; and the combination of policy and procedural advice demanded by independent scrutiny and other committees.⁵⁰

⁴⁸ National Assembly for Wales Remuneration Board, *Fit for Purpose: Report of the Remuneration Board of the National Assembly for Wales*, March 2011, paragraph 121 [accessed 26 February 2013]

⁴⁹ National Assembly for Wales Remuneration Board, *Fit for Purpose: Report of the Remuneration Board of the National Assembly for Wales*, March 2011, paragraph 121 [accessed 26 February 2013]

⁵⁰ National Assembly for Wales, *Assembly Commission Legacy Report 2007 to 2011*, March 2011 [accessed 25 February 2013]

The Remuneration Board also provided an initial analysis of the third Assembly committee structure in its report stating that:

With the advent of the Third Assembly, and the introduction of primary law-making powers, came the responsibility and freedom to legislate on devolved matters. This step-change in powers required an equivalent change in strategic capacity and a cultural change which our survey suggests has not yet been entirely realised. Our work as a Board should serve to support and encourage such change to gather pace.

The Assembly's three key purposes – to hold the Welsh Government to account, to make legislation and to represent the people of Wales – are manifested in the formal business of the Assembly through its work in Plenary and committee. However, the committee structure of the Third Assembly stretched its logistical capacity and that of its Members, with some serving on up to five different committees.⁵¹

These comments were reiterated by the Chair of the Remuneration Board and the former Presiding Officer of the Scottish Parliament, George Reid, in a conference in September 2011 when he questioned how an Assembly Member could feasibly serve on five committees.⁵²

⁵¹ National Assembly for Wales Remuneration Board, *Fit for Purpose: Report of the Remuneration Board of the National Assembly for Wales*, March 2011, paragraph 121 [accessed 26 February 2013]

⁵² *The National Assembly for Wales as a Legislature: Now, Then and the Future*, Session 2 'The Scrutiny Arrangements of the Assembly and achieving effectiveness as a legislature', Senedd TV, 29 September 2011 [accessed 27 February 2013]

4. Committees from May 2011

Following the ‘yes’ vote in the referendum on further powers in March 2011, the Assembly no longer had to gain primary law-making powers on a piecemeal basis and was able to legislate on any of the subjects listed in Schedule 7 of the 2006 Act.

The Remuneration Board report, based on its observations of the third Assembly, looked ahead to the committee structure of the fourth:

At our colloquium in December 2010, we heard from the Director of Assembly Business that the review of Standing Orders in preparation for the Fourth Assembly had taken into account pressures on Members’ time in the Third Assembly. The Standing Orders relating to the structure of committees has therefore been developed with a view to enabling the Business Committee of the Fourth Assembly to streamline the committee system should it choose to do so. We welcome this step, and hope that the committee structure is rationalised and focused to support the key strategic objectives of the institution.⁵³

At the start of the fourth Assembly it was decided that significant changes would be made to the structure of the Assembly’s committee system. On 14 June 2011, the fourth Assembly’s Business Committee (established on 18 May 2011) considered a paper proposing options for the establishment of a committee structure for the fourth Assembly. Business Managers agreed in principle to establish a structure with dual legislative and scrutiny committees with the capacity to undertake both functions simultaneously, similar to that in the Scottish Parliament.⁵⁴

The changes to the committee system have resulted in a total of 12 committees, including five policy committees looking at legislation and policy areas. These are:

- the Children and Young People Committee
- the Communities, Equality and Local Government Committee
- the Enterprise and Business Committee
- the Environment and Sustainability Committee and
- the Health and Social Care Committee.

⁵³ [Fit for Purpose, Report of the Remuneration Board of the National Assembly for Wales, March 2011 \[accessed 27 February 2013\]](#)

⁵⁴ [National Assembly for Wales, Business Committee Minutes, 14 June 2011 \[accessed 15 March 2013\]](#)

The Assembly also has a number of other committees:

- Finance Committee
- Public Accounts Committee
- Constitutional and Legislative Affairs Committee
- Petitions Committee
- Standards of Conduct Committee
- Committee for the Scrutiny of the First Minister.

4.1. Political Balance

The current make-up of the Assembly is Labour 30, Conservatives 14, Plaid Cymru 11, Liberal Democrats five. Labour is governing alone, so 11 of its group are unavailable for committee work, being Ministers or Deputy Ministers.

Furthermore, the Presiding Officer is also a Labour member. The **five policy committees** currently comprise five Labour members, two members each for the Conservatives and Plaid Cymru and one member for the Liberal Democrats.

Labour provides the Chair for three committees (Communities, Equalities and Local Government, Health and Social Care, Children and Young People) and Plaid Cymru and the Conservatives have one each (Environment and Sustainability and Enterprise and Business, respectively).

Other committees have memberships which vary. The **Constitutional and Legislative Affairs Committee**, which scrutinises subordinate legislation and relevant provisions in all Bills, is made up of one member per group, and is chaired by the Deputy Presiding Officer.

The **Finance Committee** has four Labour members, one Liberal Democrat and one Conservative. It has two Plaid Cymru members, one of whom is Chair. The **Public Accounts Committee** has a similar composition except the Conservatives have two members, including the Chair and Plaid has one member.

The **Petitions Committee** has one member from each party group and is chaired by the Liberal Democrat, as does the **Standards of Conduct Committee**, although the Labour member is the Chair. The **Committee for the Scrutiny of the First Minister** has one member from each party group but is chaired by the Deputy Presiding Officer.

The recent evidence of the Presiding Officer to Part 2 of the Silk Commission noted:

The work of the committees, most of which meet each week, is currently undertaken by 44 Members. Six of those members sit on three committees, a further 24 on two, and the remainder on one. In this regard the pressure on Members of the Assembly is very different to those of its larger counterparts elsewhere in the UK. Necessarily, most Assembly committees have very broad remits, certainly stretching beyond the portfolio of a single Minister, and are responsible for the scrutiny of legislation, policy and finance within those remits.⁵⁵

Research conducted by the Hansard Society into the attitudes of the new intake of AMs in 2011 (the largest turnover since 1999) found very positive views towards committee work, reporting that “committees are the area of Assembly that seem to give the greatest satisfaction, with AMs commonly saying they enjoy this work and some keen to give committees greater prominence”.⁵⁶ The research also showed that “Holding the Government to account” had gone from 4th to 1st in terms of AMs priorities between July 2011 and 2012.⁵⁷ It further noted that:

There are still areas where some improvement could be made. Some AMs complain that committee meetings can be slow and ponderous, have a tendency to seek evidence from the ‘usual suspects’ and that there is too much division along party lines, although this is likely to be a product of the political balance of the Assembly.⁵⁸

And that:

A number of new AMs indicated that they felt overwhelmed by the amount of reading material they need to absorb for each committee session. While none of them wanted to see the volume reduced, there was a desire for papers to be provided to them earlier to allow more time for preparation.⁵⁹

Of course, the Hansard Society research only included newly elected AMs in 2011. The views of long standing Assembly Members on the changing role of committees may have drawn a different picture reflecting experiences of previous Assemblies.

⁵⁵ Evidence of Presiding Officer of the National Assembly for Wales to the Independent Commission on Devolution in Wales, 28 February 2013 [accessed 7 March 2013]

⁵⁶ Hansard Society, *Assembly Line: The Experiences and Development of New Assembly Members*, January 2013

⁵⁷ Ibid.

⁵⁸ Ibid,

⁵⁹ Ibid.

4.2. Objectives of the 2011 Committee structure

The Assembly Commission Annual Report 2011-2012 explained the three main reasons for introducing the changes to the committee structure in the Fourth Assembly. The first of these was to **enhance Members' expertise**:

Members with expertise in specific policy areas could apply that knowledge to legislation, and could understand the practical effects this legislation would have.⁶⁰

And:

The change in the number of the Assembly's Committees gives each Committee the flexibility and time to undertake more in-depth work. Over the past year, Committees used this flexibility in new and innovative ways, including the establishment of task and finish groups, either to look at a subject in detail over a long period of time, or to allow a small number of Committee members to be able to undertake short, tightly-focused inquiries on specific issues.⁶¹

The changes were also designed to make it **easier for people to engage with the Assembly's scrutiny process**. Under the new system, they could contact one committee that looked at both policy and legislation, rather than having to switch between separate committees and groups of Members.

The Annual Report stated that an additional advantage of this approach was that it gave the committees **flexibility to deal with new parts of the legislative process** such as white papers, draft bills, and bills.⁶²

There is no requirement for committees to consider or scrutinise white papers or draft bills. However, a paper produced by the Assembly's Legislation Office stated that committees would need to consider how much time and resource to give to the consideration of white papers and draft bills and they should ensure:

that consideration of white papers does not lead to disproportionate time being spent in a way that detracts from the scrutiny of other, equally important areas of government activity, particularly as the formal legislative proposals flowing from white papers will come before the Committee at some point.⁶³

⁶⁰ National Assembly for Wales. Annual Report 2011-2012 [accessed 20 February 2013]

⁶¹ National Assembly for Wales. Annual Report 2011-2012 [accessed 20 February 2013]

⁶² Evidence of Presiding Officer of the National Assembly for Wales to the Independent Commission on Devolution in Wales, 28 February 2013 [accessed 7 March 2013]

⁶³ National Assembly for Wales, Health and Social Care Committee, HSC(4)-10-11 paper 1, *White Papers and Draft Bills – Implications for Assembly Committees* [accessed 14 March 2013]

The paper also alluded to correspondence between the First Minister and Presiding Officer, in which the First Minister stated:

We would of course welcome the views the Assembly may have in relation to the proposals outlined in these consultations, whether they come from individual Assembly Members or an Assembly Committee.

However, the appropriate time for the Assembly to properly scrutinise Ministers on Welsh Government legislative proposals is during the formal scrutiny stages once the Bill is formally introduced. We would not wish to undermine the Assembly's scrutiny of Government legislation by circumventing these proceedings.

As such we would not expect Ministers to be called to appear before Committees during these consultations to discuss a White Paper or Draft Bill. We would however be happy to arrange for officials to provide technical briefings to Committees on individual White Papers or Draft Bills.⁶⁴

The Presiding Officer replied:

It is not a matter for me to dictate to committees how they should approach their work and there might well be occasions when it is perfectly appropriate for them to hear from Ministers when major policy proposals are being formulated. That said, I agree that it would be undesirable for Ministers routinely to be called before committees during consultation periods only to go over exactly the same ground during the stage 1 scrutiny process.⁶⁵

The Health and Social Care Committee, for example, took the approach mooted by the First Minister in relation to the white paper on organ donation, holding two sessions with senior Welsh Government officials, firstly at a very early stage of the consultation process and again once the consultation had closed. The purpose of these sessions was to keep abreast of developments with the white paper as opposed to expressing a view on its content. Further technical briefings were received once the Draft Bill was published.

⁶⁴ National Assembly for Wales, Health and Social Care Committee, HSC(4)-10-11 paper 1, *White Papers and Draft Bills – Implications for Assembly Committees Annex* [accessed 14 March 2013]

⁶⁵ National Assembly for Wales, Health and Social Care Committee, HSC(4)-10-11 paper 1, *White Papers and Draft Bills – Implications for Assembly Committees Annex* [accessed 14 March 2013]

The Director of Assembly Business, Adrian Crompton, identified the role of **committee chairs** in being crucial in driving the work of committees.⁶⁶

Similarly, the Remuneration Board's *Report on Office Holder Remuneration* stated:

These greater responsibilities will be borne by the chairs of the five policy committees, and, in our view, also by the chairs of the Finance, Public Accounts, and Constitutional and Legislative Affairs Committees. These eight committees between them have the responsibility to scrutinise the whole of the Welsh Government's policy programme, spending and actions, and their chairs will be responsible for providing leadership, driving forward the committees' agendas and ensuring that the strategic legislative and scrutiny purposes of the Assembly are fulfilled.⁶⁷

The Report also set out the responsibilities of committee chairs:

- delivering a balanced, comprehensive and effective programme of legislative, policy and financial scrutiny;
- maintaining the independence of their committee from the Welsh Government;
- acting impartially, fairly and decisively;
- mastering their committee's remit and gaining the confidence of stakeholders and members;
- securing the commitment and engagement of committee members;
- overseeing the support and advice available to the committee; and
- driving innovation, engagement and the impact of their committee's work.⁶⁸

In June 2012 the Business Committee considered a paper reviewing the operation of the committee system in the fourth Assembly. It agreed that "the dual legislative and policy role had yet to be fully tested and concluded that no change to the structure was necessary" at that point. It was agreed to keep the system under review as the volume of legislation increased.⁶⁹

⁶⁶ [The National Assembly for Wales as a Legislature: Now, Then and the Future, Session 2 'The Scrutiny Arrangements of the Assembly and achieving effectiveness as a legislature'](#), Senedd TV, 29 September 2011 [accessed 27 February 2013]

⁶⁷ [Remuneration Board, Report, Office Holder Remuneration, July 2011](#) [accessed 27 February 2013]

⁶⁸ [Remuneration Board, Report, Office Holder Remuneration, July 2011](#) accessed 27 February 2013]

⁶⁹ [National Assembly for Wales, Business Committee, Minutes, 26 June 2012](#) [accessed 14 March 2013]

4.3. Scrutinising Legislation⁷⁰

On 12 July 2011 the First Minister, Carwyn Jones AM, made a statement in plenary outlining the Welsh Government's legislative programme for the next five years.⁷¹ The statement included details of **21 Bills that the Welsh Government intended to introduce over the course of the fourth Assembly up until the next Assembly elections in May 2016**. In a separate statement made on 14 June 2011, the First Minister stated that:

There will continue to be an annual oral statement to the Assembly on the Government's legislative programme, with the initial statement setting out the headline items in the five-year Government programme and the detail of those Government Bills to be brought forward over the next 12 months. Subsequent annual statements will announce which Government Bills will be introduced during the course of that year.⁷²

However, it is not just Welsh Government legislation that is scrutinised. One piece of legislation proposed by the Assembly Commission has passed into law in the fourth Assembly and two Assembly Member Bills, chosen by ballot, are currently before the Assembly.

Once a Bill is introduced, the Business Committee refers it to an Assembly committee for scrutiny at Stages 1 and 2. Since the beginning of the fourth Assembly some committees have undertaken considerably more scrutiny than others because of the timing of Bills coming forward and their subject matter. The Bills considered by each committee to date are outlined below:

- **The Communities, Equalities and Local Government Committee** scrutinised the first bill, the *Local Government (Byelaws) (Wales) Bill*. It also scrutinised the second, the *National Assembly for Wales (Official Languages) Bill*, introduced by the Assembly Commission. Both these Bills have received Royal Assent. The committee is currently considering the *Local Government (Democracy) (Wales) Bill* and the *Regulated Mobile Home Sites (Wales) Bill*.
- **The Health and Social Care Committee** considered the *Food Hygiene Rating (Wales) Bill* between May and November 2012. It is currently considering the *Human Transplantation (Wales) Bill*, the *Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* and the *Social Services and Well-being (Wales) Bill*, all at stage 1.
- **The Children and Young People Committee** considered the *School Standards and Organisation (Wales) Bill* between April and November 2012.
- **The Enterprise and Business Committee** is considering the *Active Travel (Wales) Bill*.

⁷⁰ Information is current as at 1 March 2013

⁷¹ National Assembly for Wales, *RoP: Plenary*, 12 July 2011 [[accessed 27 February 2013](#)]

⁷² National Assembly for Wales, *RoP: Plenary*, 14 June 2011 [[accessed 27 February 2013](#)]

- The *Public Audit (Wales) Bill* was remitted to the **Public Accounts Committee**, due to its specialist nature. It was considered between July 2012 and January 2013.
- Of the five policy committees, **only the Environment and Sustainability Committee has yet to undertake scrutiny of a Bill** (although it has considered the Order, made under the *Public Bodies Act 2011*, setting up the new Natural Resources Wales body). However, three major Bills on Sustainable Development, Planning and the Environment are expected. Legislation pertaining to Further and Higher Education is likely to be remitted to the Children and Young People Committee.

The **Finance Committee** and **Constitutional and Legislative Affairs Committee** also have a role in scrutiny. In the third Assembly the Finance Committee scrutinised all draft Measures. In the fourth Assembly it has refocused its work towards scrutiny of the Budget but strategically considers the overarching financial implications of legislation. However, the Constitutional and Legislative Affairs Committee scrutinises all Bills in respect of provisions relating to subordinate legislation.

A. Annex 1 The Legislative Process in the Assembly

There is, generally, a 4-stage process for the consideration of a Government Bill in the Assembly, as follows:

Stage 1

This stage involves the consideration of the general principles of a Bill by a committee (or committees), followed by the agreement of the general principles by the Assembly.

The committee will focus on the main purpose(s) of the Bill, rather than looking at the fine detail (which is a matter for later stages). The committee may also invite representations from interested parties, and may take written and oral evidence to inform its work.

Once the Committee has reported, the Assembly will be asked to debate and agree the Bill's general principles – the **Stage 1 debate**.

Stage 2

This stage follows the completion of stage 1 and involves the detailed consideration, by a committee, of a Bill and any amendments proposed by Assembly Members;

Any Assembly Member may table amendments to the Bill and there is no limit to the number of amendments that can be tabled. However, only committee members may vote on amendments. This stage ends when all the amendments have been considered.

Stage 3

This stage follows the completion of stage 2 and involves the detailed consideration, by the Assembly, of the Bill and any amendments proposed by Assembly Members.

Any Member may table amendments to the Bill, but the Presiding Officer will decide which amendments will be considered by the Assembly.

Stage 4

This is the last stage of the process and follows the completion of stage 3. At this stage, there is a vote by the Assembly to pass the final text of the Bill.

Passing a Bill

If passed by the Assembly at stage 4, a Bill must receive Royal Assent from the monarch before formally becoming a piece of law.

B. Annex 2 The Remuneration Board

An independent Review Board for Assembly Members' pay and allowances was established by the National Assembly for Wales. The Board is responsible for ensuring that Assembly Members have fair and appropriate resources to carry out their vital job of representing the people of Wales, holding the Welsh Government to account and making laws for Wales.

The Board was established by the [National Assembly for Wales Remuneration Measure 2010](#) and was one of 108 recommendations made by the [Independent Review Panel on Assembly Members' Pay and Allowances](#) in its report of July 2009.

C. Annexe 3 Fourth Assembly Policy Committee portfolios

Children and Young People

The education, health and wellbeing of the children and young people of Wales, including their social care.

Communities, Equality and Local Government

Wales' culture, languages, communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

Enterprise and Business

Economic development; transport and infrastructure; employment; higher education and skills; and research and development, including technology and science.

Environment and Sustainability

The maintenance, development and planning of Wales' natural environment and energy resources.

Health and Social Care

The physical, mental and public health of the people of Wales, including the social care system.