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# An introduction to devolution in the UK

This paper outlines the structure and powers of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It also looks at the statutory and non-statutory framework for devolution, and at the powers of the UK Parliament in relation to the devolved institutions. It contains a brief chronology of events and suggestions for further reading, and compares the legislative process in each of the bodies.

Matthew Leeke, Chris Sear and Oonagh Gay

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## Summary of main points

Devolution is the process of devolving power from the centre to sub-national units. It is different from a federal system of government, since under the doctrine of parliamentary sovereignty devolution is in theory reversible and the devolved institutions are constitutionally subordinate to the UK Parliament. The legislative framework for devolution is set out in the *Scotland Act 1998*, the *Government of Wales Act 1998* and the *Northern Ireland Act 1998*. There is also a non-legislative framework of concordats, agreements between Government departments and the devolved institutions, under a *Memorandum of Understanding*.

The UK system of devolution is asymmetric, in that there are different levels of devolved responsibilities and there is no common pattern. Scotland, Wales and Northern Ireland all have different forms of devolution. Scotland has a Parliament and an Executive developed from the Westminster model. Under the *Scotland Act 1998*, the Parliament can pass Acts and the Executive can make secondary legislation in areas other than those which are reserved to Westminster. Committees are central to the working of the Parliament. They combine scrutiny of the Executive and of legislation. In addition, the Parliament has the power to vary the standard rate of income tax by up to 3 percentage points from the UK level, although it has not yet used this power. The Westminster Parliament can legislate in devolved areas, but under the Sewel Convention, will only do so, if asked by the Scottish Parliament.

Under the *Government of Wales Act 1998*, powers in devolved areas which used to be exercised by UK ministers have been delegated to the National Assembly for Wales as a single corporate body. Therefore in law there is no separate executive and legislature, but in practice the Assembly has moved towards a separation of legislative and executive functions within the constraints of the Act. The Assembly can make delegated or secondary legislation, such as orders and regulations, in devolved areas, but primary legislation for Wales in devolved areas is still made by the UK Parliament.

The progress of devolution in Northern Ireland is inextricably bound up with the peace process, and problems with this have led to the Assembly and Executive being suspended four times, most recently since October 2002. When functioning the Northern Ireland Assembly can make primary and delegated legislation in those areas which are transferred. The UK Parliament legislates in “excepted” and “reserved” areas. “Excepted” subjects will remain with the UK unless the *Northern Ireland Act 1998* is amended. “Reserved” subjects could be transferred by Order at a later date if there is cross-community consent. This triple division of areas is unique to Northern Ireland devolution. Funding for the devolved institutions is mainly provided by a block grant calculated under the Barnett formula.



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## I Introduction

Devolution is the process of devolving power from the centre to sub-national units. It can take three forms:

1. Administrative - for example the establishment of Government Offices for the Regions, or, pre-1999, the practice of transferring responsibilities from central government departments to territorial departments of the same Government.
2. Executive - where the prerogative powers of the UK Government are transferred to ministers of devolved governments, usually under statutory authority;<sup>1</sup> or
3. Legislative - where law-making powers are transferred to other legislatures.

The devolution settlement in the United Kingdom is often described as asymmetrical - there are fundamental differences between the arrangements in each country. The settlements in Scotland and Northern Ireland have features in common. Both have a legislature, which can pass primary as well as secondary legislation in areas which are not reserved for Westminster. They also have a separate executive, accountable to that legislature. However, there are important differences - in particular, the Scottish Parliament can legislate on criminal justice, criminal law and policing, whereas the Northern Ireland Assembly cannot.<sup>2</sup> In addition, the Executive in Northern Ireland is a power-sharing one, with all major parties allocated ministerial portfolios. Consequently collective ministerial responsibility in its traditional UK form does not operate there.

Progress with devolution in Northern Ireland is inextricably bound up with the peace process, and problems with this have led to four suspensions of the Northern Ireland Assembly. The most recent of these has lasted since October 2002, and devolution in Northern Ireland has not yet been restored.

The devolution settlement in Wales is very different. The National Assembly for Wales is a single corporate body, including both the 'parliamentary' and 'executive' functions within one legal entity. However, as will be seen from section IID below, in practice the Assembly is consciously moving as far as possible towards a separation of executive and legislative functions within the confines of the legislation. The Assembly can only make delegated legislation - for example, regulations - within the framework of Acts of the UK Parliament.

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<sup>1</sup> See s64 of the *Scotland Act 1998* which allows functions to be conferred on the Scottish Ministers by Order in Council

<sup>2</sup> There are plans to transfer these subjects to the Northern Ireland Assembly in the future - see Library Research Paper 02/07, the *Justice (Northern Ireland) Bill*, available at <http://www.parliament.uk/commons/lib/research/rp2002/rp02-007.pdf>, for details

## **A. Devolution legislation**

Under the *Scotland Act 1998* the Scottish Parliament legislates in respect of 'devolved' matters. It can pass both primary legislation (bills which become Acts of the Scottish Parliament) and secondary legislation. Other matters remain 'reserved' to the Westminster Parliament, which will not normally legislate in devolved areas without the consent of the Scottish Parliament.

Under the *Northern Ireland Act 1998*, the Northern Ireland Assembly can legislate in respect of 'transferred' matters. It can pass both primary and secondary legislation. Other matters are either "reserved" or "excepted". This is explained in more detail in Section IID2 below.

Under the *Government of Wales Act 1998* the National Assembly for Wales can pass secondary legislation in 'devolved' areas. Primary legislation remains the responsibility of Westminster in both devolved and reserved areas. According to the drafting of any particular piece of legislation there is varying scope for the Assembly to adopt secondary legislation that is significantly different in its application to Wales. In some Acts there is wide scope for the details of the policy to be made under secondary legislation, allowing considerable autonomy to the Assembly; in others, the details are prescribed, leaving little scope for specifically Welsh initiatives.

## **B. The non-statutory framework**

Non-statutory concordats have been made between individual UK departments and devolved administrations under an over-arching concordat, the *Memorandum of Understanding*, the latest version of which was published in December 2001.<sup>3</sup> Concordats are intended to set out conventions governing areas such as exchange of information, representation on EU matters and development of common policy.<sup>4</sup> There are concordats between individual UK departments and the devolved administrations, which can be found on departmental websites. An index to these bilateral concordats and links are available from the ODPM website.<sup>5</sup> In addition, a number of guidance notes on aspects of devolution have been published by the Government. These are available at <http://www.devolution.odpm.gov.uk/dgn/index.htm>.

There are a number of formal mechanisms through which the UK Government communicates with the devolved administrations, most notably the Joint Ministerial

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<sup>3</sup> Office of the Deputy Prime Minister, *Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee*, CM 5240, December 2001, available at <http://www.devolution.odpm.gov.uk/memo/pdf/cm5240.pdf>

<sup>4</sup> For further background see Research Paper 99/84, *Devolution and Concordats*, 19 October 1999, available at <http://www.parliament.uk/commons/lib/research/rp99/rp99-084.pdf>

<sup>5</sup> <http://www.devolution.odpm.gov.uk/concordants/index.htm>



Committee (JMC). Various meetings take place under the JMC's auspices, consisting of ministers of the UK Government, Scottish ministers, members of the Cabinet of the National Assembly for Wales and ministers from the Northern Ireland Executive Committee. In addition, much is done through informal contacts and through the mechanisms and institutions of the Belfast Agreement, such as the British Irish Council.<sup>6</sup>

These arrangements were examined as part of a study of the relationship between the UK Government, Parliament and the devolved institutions by the Lords Constitution Committee in January 2003.<sup>7</sup> This is discussed in Section IIG of this Research Paper.

### C. Financial Arrangements

Expenditure by the Scottish Executive, the Welsh Assembly and the Northern Ireland Executive is largely funded by block grant from the UK Government. Scotland is different from Wales and Northern Ireland in that it has the power to vary the standard rate of income tax levied, thus raising additional or less income. Since 1978 increases to the Scottish block grant have been largely determined by the Barnett formula, named after Lord Barnett, former chief Secretary to the Treasury. The formula is designed to apply automatically a proportionate share of any increase (or decrease) in comparable English spending programmes to Scotland based upon population shares.<sup>8</sup>

The future use of the Barnett formula has proved to be a controversial subject and Lord Barnett himself now considers the formula outdated and in need of replacement.<sup>9</sup> An in-depth analysis of the Barnett Formula is provided in Library Research Paper 01/108, *The Barnett Formula*.<sup>10</sup> The Lords Constitution Committee recently reviewed the operation of the formula and commented as follows:

103. It will be apparent from the above that there are serious difficulties presented by the long-term continuation of the Barnett formula. We do not think that it will be a sustainable basis for allocating funds to the devolved administrations in the long term. Many of those in Wales and Northern Ireland, as well as those in parts of England, consider that the formula is unfair in its allocation of funds to them in comparison to its allocation of funds to other areas, and does not provide them with the resources they need. Even if it does provide those resources, it does not do so in a manner that convincingly

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<sup>6</sup> <http://www.britishirishcouncil.org/>

<sup>7</sup> Lords Select Committee on the Constitution, Second Report, *Devolution: Inter-Institutional Relations in the United Kingdom*, HL 28, 2002-03

<sup>8</sup> For further information about the Barnett Formula see the Lords Constitution Committee report, *Devolution: Inter-Institutional Relations in the United Kingdom*, HL 28, 2002-03, available at <http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldconst/28/28.pdf>

<sup>9</sup> HL Deb 27 January 2003 c914

<sup>10</sup> Available at <http://www.parliament.uk/commons/lib/research/rp2001/rp01-108.pdf>

demonstrates that. This is largely because so much control remains in the Treasury's hands.

104. This will inevitably become a major source of tension in the devolution settlement. It may only become a matter of open dispute when the parties in office in the devolved administrations have profound disagreements with the UK Government, but that is likely to happen sooner or later.

105. We do not have a neat ready-made alternative to Barnett to propose. We do not believe that full fiscal autonomy would be the answer, not least because it would threaten the economic and fiscal integrity of the United Kingdom. However, we would envisage that any alternative would incorporate the following elements:

- (a) an assessment of the needs of the devolved administrations, and the different regions of England, taking into account the nature of their responsibilities and the demographic characteristics of the relevant population;
- (b) that needs assessment would not be repeated every year but only at periodic intervals. Adjustments to the funds available, whether annually or in-year, would be made by means of a formula;
- (c) however calculated, funds made available to the devolved administrations would remain in the form of a block grant which the administration could allocate as it wished;
- (d) funds for the devolved administrations should be payable solely to them. The present arrangement by which the offices of the Secretaries of State are 'top-sliced' from the devolved administration's block grant should be ended and payments for those offices made separately and directly by the Treasury; and
- (e) the transition to a new arrangement should be phased over a number of years, to minimise the effects of it for those parts of the UK which lose out relatively in terms of funding.<sup>11</sup>

The Government response stated that it had no plans to change the Barnett formula.<sup>12</sup> Latest figures for total expenditure are available from the *2003 Budget*.<sup>13</sup>

Total Department Expenditure  
Limit  
£ billion

	2002-03	2003-04	2004-05	2005-06
Scotland	19.3	20.4	21.6	22.9
Wales	9.9	10.6	11.3	12.1
Northern Ireland Executive	6.8	6.8	7.2	7.6
Total	36	37.8	40.1	42.6

<sup>11</sup> Lords Constitution Committee, *ibid*, p32

<sup>12</sup> Cm 5780, March 2003, para 17

<sup>13</sup> HC 500, April 2003, Table C12

The following table shows this on a *per capita* basis:

Total Department Expenditure  
Limit  
£ per capita

	2002-03	2003-04	2004-05	2005-06
Scotland	3,817	4,041	4,286	4,551
Wales	3,400	3,636	3,872	4,141
Northern Ireland Executive	4,010	4,000	4,223	4,446
Total	3,725	3,912	4,150	4,409

## D. The West Lothian Question

The West Lothian Question has been regarded by many since the 1970s as a crucial consideration in any proposed devolution in the UK, and has been at the forefront of the current debate between the Government and Opposition parties. In its present form the Question can be constructed as whether 'Scottish' MPs should be entitled to sit and vote at Westminster on 'English' matters, while 'English' MPs are not be able to participate on equivalent matters devolved to a 'Scottish' Parliament. However, the Question, in the wider sense of symbolising the territorial asymmetry of devolution also encompasses related issues, such as the much-discussed level of representation of devolved areas at Westminster, Scottish MPs being ministers in 'English' departments and the practical and legal relationships between one or more devolved legislatures or assemblies and Westminster.

The 'author' of the Question is generally recognised as Tam Dalyell (Member for West Lothian in the 1970s), but the question was first posed in the nineteenth century as part of the controversy over Home Rule for Ireland.<sup>14</sup> The West Lothian Question's importance rests, in part, on the perception that it is actually or virtually 'insoluble'. Opponents of devolution use it as a political trump card against any devolution scheme, and pro-devolutionists often feel obliged to find a satisfactory 'answer' to it, such as a form of English regional devolution. However some commentators, such as Ferdinand Mount, have argued that the Question is neither insoluble nor a real problem, as it simply reflects the asymmetry common to British constitutional arrangements.<sup>15</sup> Others have argued that the only way ahead is to have an English Parliament.

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<sup>14</sup> Full background is given in Library Research Paper 98/3, *The Scotland Bill: Some Constitutional and Representational Aspects*, 7 January 1998, available at <http://www.parliament.uk/commons/lib/research/rp98/rp98-003.pdf>

<sup>15</sup> For more details see Library Research paper 95/95, the *West Lothian Question*, 6 September 1995, and Library standard note SN/PC/2586, the *West Lothian Question*, 22 August 2003

## II The institutions and their powers

### A. Westminster

In framing and introducing its devolution legislation, the Government made it clear that the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly are constitutionally subordinate to the United Kingdom Parliament. For example, the 1997 white paper, *Scotland's Parliament*, set out the new constitutional arrangements as follows:

The UK Parliament is and will remain sovereign in all matters: but as part of the Government's resolve to modernise the British constitution, Westminster will be choosing to exercise that sovereignty by devolving legislative responsibility to the Scottish Parliament without in any way diminishing its own powers.<sup>16</sup>

Devolution in the United Kingdom must therefore be clearly distinguished from federalism. A federal constitution divides supreme power between central government and the governments of the various states, regions or provinces which make up the federation. The scope of power at the two levels is defined by an enacted constitution and enforceable in law. By contrast, devolution is not "entrenched" in any legal sense.<sup>17</sup> Westminster could amend or repeal the Acts devolving power to the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly (as it did with devolution under the 'Stormont' Parliament in the 1970s), just as it may repeal any other Act.

The legislative supremacy of the Westminster Parliament is also spelt out in the Acts which devolve powers. Section 28 of the *Scotland Act 1998* gives the Scottish Parliament powers to make legislation. However, section 28(7) states: "This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland". A similar provision exists in the *Northern Ireland Act 1998*.<sup>18</sup> Moreover, as will be seen in Part D below, the Northern Ireland Assembly has already been suspended a number of times because of problems with the peace process, and direct rule by Westminster re-imposed. The National Assembly for Wales is clearly subordinate, in that the only legislation it may make is delegated legislation under Acts which are passed by the UK Parliament.

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<sup>16</sup> Scottish Office, *Scotland's Parliament*, Cm 3658, July 1997, paragraph 4.2

<sup>17</sup> ie made secure against any or easy amendment or repeal

<sup>18</sup> s5(6)

In a strict legal sense, this is all in accordance with the traditional view of Parliament's legislative sovereignty, most often associated with the Victorian jurist AV Dicey.<sup>19</sup> However, many commentators argue that the legal position does not reflect political reality. The extent to which Westminster could exercise its right to reverse the devolution settlements is likely to depend to a great extent upon the level of support for the devolved institutions in the countries concerned. For example, the constitutional expert Vernon Bogdanor argued in 1999 that, while the new Scottish Parliament would be constitutionally subordinate, politically it would be anything but, because the devolution legislation had created a new "locus of political power":

It will thus not be easy to bring into play the constitutional restraints in the Scotland Act. For it would be difficult to imagine an issue more likely to unite Scottish opinion than a conflict between the Scottish Parliament and Westminster. Even if Westminster were to get its way in the end, this would probably be at the cost of considerable political disaffection and loss of support in Westminster. In practice, therefore, Westminster will find it extremely difficult to exercise its much-vaunted supremacy.<sup>20</sup>

Subjects which are reserved to Westminster include the following:<sup>21</sup>

- Constitutional matters, including the crown
- Foreign policy, defence and relations with the EU
- Macro-economic policy and taxation (apart from the right to vary income tax by 3p in Scotland and local taxation)
- Overseas trade
- Employment legislation
- Social Security
- Broadcasting

The *Memorandum of Understanding* makes clear that, while the UK Parliament enjoys legislative supremacy, the Government observes the convention that Parliament would not normally legislate on devolved matters without the consent of the devolved legislature:

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<sup>19</sup> There are complex arguments surrounding this doctrine, particularly with regard to the UK's membership of the European Community. These are discussed some in detail in Library Research Paper 96/82, *the Constitution: principles and development*, 18 July 1996, especially parts V and VI.

<sup>20</sup> Vernon Bogdanor, "Devolution: Decentralisation or Disintegration?" *Political Quarterly*, vol 70, 1999, p185. For a more extended version of these arguments, see Vernon Bogdanor, *Devolution in the United Kingdom*, Oxford, 2001

<sup>21</sup> Full details can be found in Devolution Guidance Note 11, *Ministerial Accountability after Devolution* available at <http://www.devolution.odpm.gov.uk/dgn/pdf/dgn11.pdf> and Devolution Guidance Note 5, *The role of the Secretary of State for Northern Ireland*, available at <http://www.devolution.odpm.gov.uk/dgn/pdf/dgn05.pdf>

13. The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.<sup>22</sup>

## 1. Sewel motions for Scotland

With regard to Scotland, the convention that the UK Parliament will not legislate on devolved matters unless authorised is known as the Sewel Convention. This is named after the Government Minister, Lord Sewel, who set out the terms of the policy in the House of Lords during the passage of the *Scotland Bill 1997-98* on 21 July 1998:<sup>23</sup>

Clause 27 makes it clear that the devolution of legislative competence to the Scottish parliament does not affect the ability of Westminster to legislate for Scotland even in relation to devolved matters. Indeed, as paragraph 4.4 of the White Paper explained, we envisage that there could be instances where it would be more convenient for legislation on devolved matters to be passed by the United Kingdom Parliament. However, as happened in Northern Ireland earlier in the century, we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament.

As at 10 October 2003 50 Sewel motions had been debated in the Scottish Parliament chamber and 14 in committee.<sup>24</sup> The process has been subject to criticism, in that the use of the motion has been more extensive than anticipated in 1999.<sup>25</sup>

## 2. The legislative process for Wales

Westminster remains responsible for primary legislation in Wales. The nature of the devolution settlement is that the Assembly may only make secondary legislation where it is given specific power to do so in the primary Act. This can cause difficulties; some Acts give much less scope for discretion in policy making through secondary legislation than others. The Lords Constitution Committee considered the problems in some detail in its review of inter-institutional relations:

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<sup>22</sup> Cm 5240, <http://www.devolution.odpm.gov.uk/memo/pdf/cm5240.pdf>

<sup>23</sup> HL Deb 21 Jul 1998 c791

<sup>24</sup> SPICe Sourcesheet No 16, *Sewel Motions*. The subject is discussed in more detail in Library Standard Note SNPC/2084.

<sup>25</sup> See 'Scotland's Other Parliament: Westminster's legislation about devolved matters in Scotland since devolution' in *Public Law 2002* pp 501-23 for further detail.

120. The arrangements for Welsh devolution mean that the National Assembly continues to rely heavily on Westminster. The National Assembly derives its powers either from functions under existing Westminster statutes transferred to it under Transfer of Functions Orders made under section 22 of the *Government of Wales Act 1998*, or by powers conferred on the National Assembly under subsequent Westminster Acts. As a consequence, legislation made at Westminster has a major effect on what the National Assembly can do and how it can do it. These arrangements were described to us as unsatisfactory at the outset, and the evidence we heard suggests that their working has been more cumbersome than was envisaged by the Assembly's designers. We were therefore concerned by the evidence of Professor Patchett, suggesting as it does that there are serious weaknesses in a host of areas including:

- (a) the selection of bills affecting Wales which will be considered at Westminster;
- (b) the policy options dealt with in those bills;
- (c) the structure of the legislative scheme followed in such a bill; and
- (d) amendments made to bills by the Government while they are before Parliament.

121. Further problems appear to arise with the patchwork pattern formed by the National Assembly's powers and the difficulties that arise if one wishes to identify what the Assembly may do. These are themselves aggravated by the wide variations in the powers new Westminster legislation confers on the National Assembly. We note Professor Patchett's comparison of the situation to "a jigsaw of constantly changing pieces, none of which has straight edges", a view with which we agree in the light of other evidence we have heard.

122. This problem is compounded by the very limited access the National Assembly has to Parliamentary time for Wales-only legislation. While this was described to us by the First Minister as constituting a 500% improvement on the situation before devolution, it clearly is still very problematic. While we understand the political circumstances that have led to Wales-only legislation being split, so that parts appear in a bill dealing with a variety of other matters for both England and Wales in one session while others appear in a Wales-only bill the following session, we do not find this to be a commendable or sensible practice. It has led to further confusion in the National Assembly's functions, since the relevant powers are scattered over two pieces of legislation not one. It also makes it much harder for legislators at Westminster to understand what the effect is of bills before Parliament, because they only tell part of the story - and part of that story may have yet to be decided.

123. We are particularly concerned by the unstructured way in which the process of liaison over legislation operates. Liaison is unsystematic, almost random, highly opaque, and hard for lay people, Westminster legislators or Assembly Members to follow. It also affords only limited opportunities for the National Assembly's views to be heard in connection with bills affecting the Assembly. Moreover, such opportunities as exist to influence legislation are exercised behind the scenes and are only available to Ministers and the Welsh Assembly Government, not the Assembly as a whole. It appears to us that Wales figures in such arrangements largely as an afterthought appended to a process driven by the UK Government's concerns and priorities rather than those of Wales in general or the National Assembly. This might be mitigated if

there were effective mechanisms for Welsh views to be considered by the involvement of Welsh MPs, but these do not exist either. Neither the Welsh Affairs Select Committee nor the Welsh Grand Committee in the Commons plays a direct role in considering legislation affecting matters devolved to the National Assembly. Such bodies could not act as surrogates for the Assembly but could serve to provide a channel for Welsh concerns to be heard directly in the legislative process.

**124. It appears to us that a number of steps could be taken to improve Westminster legislation affecting the National Assembly. We therefore recommend:**

**(a) that greater consistency be introduced into the process by which Westminster legislates for Wales. It seems to us that the Principles adopted by the Assembly Review of Procedure, following recommendations made by Professor Richard Rawlings (see Box 5) establish a very useful starting point for bringing a greater measure of consistency to legislation;**

**(b) that the Explanatory Memorandum for any bill affecting the functions of the National Assembly (or not affecting the Assembly's functions directly, but affecting areas of policy in which the Assembly has responsibilities in Wales) include a section explaining briefly how the bill affects the Assembly and its functions. Such a section should also explain how the bill complies with the Principles adopted by the Assembly Review of Procedure;**

**(c) that further steps be taken within Parliament to improve the consideration of legislation specifically applying in Wales, whether as a distinct Wales-bill or Wales-only parts of bills applying in England and Wales. One way to do this would be for the Welsh Affairs Select Committee to carry out inquiries into such bills, for which it might wish to take evidence in Wales from affected interests including the various parties represented in the National Assembly. Another would be to make greater use of the Welsh Grand Committee, possibly for the Committee stage of bills; and**

**(d) that further thought be given to how Members of the National Assembly can be afforded the opportunity to consider Westminster legislation that will affect the Assembly and its functions. Such an opportunity needs to take account not only of the needs of the UK Government and MPs and Peers at Westminster, but also the different ways of working and timescales applying to the National Assembly. The trend toward publishing bills in draft is especially welcome and will, we believe, be especially helpful in this context.<sup>26</sup>**

The Constitution Committee endorsed what have become known as the Rawlings Principles (after Professor Richard Rawlings of the LSE, who submitted evidence):

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<sup>26</sup> HL 28 2002-03



*Principles to be Adopted in Government Bills Affecting the National Assembly for Wales*

1. The Assembly should acquire any and all new powers in a Bill where these relate to its existing responsibilities.
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.
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.
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.
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.
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.
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.<sup>27</sup>

The Committee doubted that the current form of devolution in Wales was sustainable in the long-term. The Government response however placed reliance on draft legislation as a possible answer to considering the legislative needs of Wales and welcomed the growing involvement of the Welsh Affairs Select Committee in legislative scrutiny. It did not comment on the overall viability of the devolution settlement.<sup>28</sup> There is a review of the Assembly's powers chaired by Lord Richard of Ammanford, which is described in Part II, C below.

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<sup>27</sup> Assembly Review of Procedure Final Report, Annex v; submitted in the Annex to the Memorandum by Lord Elis-Thomas AM; evidence volume pp255-56

<sup>28</sup> Cm 5780 March 2003

## B. Scotland

### 1. Establishment

Following unsuccessful attempts to introduce devolution in Scotland and Wales in the 1970s, many Scottish pro-devolution forces joined together to form the Scottish Constitutional Convention.<sup>29</sup> The Convention was attended by two major political parties, the Liberal Democrats and Labour, but boycotted by the Conservatives and SNP after some internal debate. Representatives from a wide range of Scottish civil society also participated in the Convention. It held its first meeting on 30 March 1989 and adopted a declaration to assert the right of the Scottish People to secure an Assembly or Parliament for Scotland.<sup>30</sup> Its final report, *Scotland's Parliament, Scotland's Right*, published on 30 November 1995, contained a blueprint for devolution which was to have a considerable influence on future policy. The Labour Party promised in its 1997 manifesto to create a Scottish Parliament '...firmly based on the agreement reached in the Scottish Constitutional Convention', and the detailed proposals for a Scottish Parliament with law making and tax-varying powers were unveiled in the White Paper *Scotland's Parliament* (Cm 3658) on 24 July 1997.

The Scottish Referendum on devolution took place on 11 September 1997. The turnout was 60.4% of the electorate, 74.3% of voters voted for a Scottish Parliament and 60.2% voted for tax raising powers. This result was satisfactory enough for Tony Blair to declare, on 13 September 1997, 'Well done. This is a good day for Scotland, and a good day for Britain and the United Kingdom...the era of big centralised government is over!'<sup>31</sup>

The *Scotland Bill* was introduced on 17 December 1997, receiving royal assent and becoming the *Scotland Act* on 19 November 1998. The Act created a Parliament of 129 members, comprising 73 constituency members, which are with two exceptions co-terminus with House of Commons seats, and 56 regional members. Regional members are elected using the Additional Member System (AMS) form of proportional representation, which uses closed party lists to elect members in addition to constituency Members, who are elected using the standard First Past the Post System (FPTP).<sup>32</sup>

The first elections to the Scottish Parliament were held on 6 May 1999. The Parliament met for the first time on 12 May and elected Sir David Steel (Lord Steel of

<sup>29</sup> Fuller background is contained in Library Research Paper 97/92, *Scotland and Devolution*

<sup>30</sup> Scottish Constitutional Convention, background information, [http://www.almac.co.uk/business\\_park/scc/backg.htm](http://www.almac.co.uk/business_park/scc/backg.htm)

<sup>31</sup> Evans, Mark, *Devolution to Scotland and Wales: Is 'Power Devolved Power Retained'?* in Steve Lancaster (ed.) *Developments in Politics* Vol. 10, 1999, p68

<sup>32</sup> For full background on the AMS type of proportional representation, see Library Research Paper 98/112 *Voting Systems: The Jenkins Report*

Aikwood) as Presiding Officer. On 14 May 1999 the Lab-Lib Dem Partnership for Scotland was signed and transfers of power took place on 1 July 1999. Elections are held every four years, on a fixed term basis (other than extraordinary general elections in special cases) and the Parliament operates a 4 year sessional sitting cycle, rather than the annual cycle used at Westminster.

The second elections to the Scottish Parliament took place on 1 May 2003. Overall, Labour gained 35% of the constituency votes, compared to 39% in 1999, and 29% on the regional lists, compared with 34% in 1999. This gives them a total of 50 seats, compared with 56 after the 1999 election. The Scottish National Party won 27 seats, the Conservatives 18, and the Liberal Democrats 17. The Greens increased their number of MSPs from 1 to 7; as did the Scottish Socialist Party, and the Scottish Senior Citizens Unity Party gained its first MSP. Three non-party-aligned MSPs were elected - including Denis Canavan, the former Labour MP, who retained his Falkirk West seat. Turnout in the 2003 election was 49%, compared with 58% in 1999.

Results are given in the following table.<sup>33</sup>

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<sup>33</sup> Further information is available in Library Research Paper 03/46, available at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-046.pdf>.<sup>33</sup>

**Scottish Parliament Members by type of constituency and party, 1999 and 2003***number of seats*

	<b>Constituency</b>	<b>Regional</b>	<b>Total</b>
<b>1999 Parliament elections</b>			
Conservative	0	18	18
Labour	53	3	56
Liberal Democrat	12	5	17
Scottish National Party	7	28	35
Scottish Socialist Party	0	1	1
Independent	1	0	1
Others*	0	1	1
Total	73	56	129
<b>2003 Parliament elections</b>			
Conservative	3	15	18
Labour	46	4	50
Liberal Democrat	13	4	17
Scottish National Party	9	18	27
Scottish Socialist Party	0	6	6
Others**	1	8	9
Independent	1	1	2
	73	56	129
<b>Change 1999-2003</b>			
Conservative	3	-3	0
Labour	-7	1	-6
Liberal Democrat	1	-1	0
Scottish National Party	2	-10	-8
Scottish Socialist Party	0	5	5
Others	0	8	8
Independent	1	0	1

\* Scottish Green Party (1)

\*\* Scottish Green Party (7), Scottish Senior Citizens Unity Party (1), Denis Kanavan Member for Falkirk West (1)

**2. Powers**

Under the *Scotland Act 1998*, the Scottish Parliament can make primary and secondary legislation in areas not reserved to Westminster (specified in schedule 5 of the Act) or protected from modification (also specified in schedule 5). The list of reserved matters is lengthy and complex. In some areas legislative competence differs slightly from the executive powers devolved to the new administrations, as the Executive can be granted additional powers under s63 where the Parliament has no legislative competence. Below is a summary of the reserved subjects:

- the constitution
- defence and national security
- fiscal, economic and monetary system
- trade and industry, including competition and customer protection

- transport (not particular to Scotland) including railways, transport safety and regulation
- social security
- medical ethics: abortion; human fertilisation and embryology; genetics; xenotransplantation and vivisection.
- broadcasting
- foreign affairs
- the civil service
- immigration and nationality
- energy: electricity, coal, oil, gas, nuclear energy
- employment
- equal opportunities

Devolved subjects are those which do not fall under the reserved categories, or are otherwise outside the legislative competence of the Scottish Parliament. They include:

- health
- education and training
- local government
- social work
- housing
- planning
- tourism, economic development and financial assistance to industry
- some aspects of transport, including the Scottish road network, bus policy and ports and harbours
- law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts
- the police and fire services
- the environment
- natural and built heritage
- agriculture, forestry and fishing
- sport and the arts
- statistics, public registers and records<sup>34</sup>

Scotland has a Parliament and Executive developed from the traditional ‘Westminster’ model. Ministers are formally appointed by the Parliament, and, with the exception of the Law Officers, must be, and remain, MSPs.<sup>35</sup> They exercise executive powers (ministerial functions) which have been transferred from ministers of the crown in Whitehall.

At present, the Executive in Scotland is made up of 11 ministers (excluding Deputy Ministers) including the First Minister, Jack McConnell, and the Deputy First Minister,

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<sup>34</sup> Further details can be found in Devolution Guidance Note 11, *Ministerial Accountability after Devolution* available at <http://www.devolution.odpm.gov.uk/dgn/pdf/dgn11.pdf>

Jim Wallace. The remainder of the Executive cover the departments for Justice; Education and Young People; Enterprise, Transport and Lifelong Learning; Environment and Rural Development; Finance and Public Services; Health and Community Care; Parliamentary Business; Social Justice; Tourism, Culture and Sport. Members of the Scottish Executive may not simultaneously hold office as a UK government minister.<sup>36</sup>

The Scottish Parliament has a committee system that does not distinguish between standing and select committees, to use Westminster terminology. They undertake scrutiny of both legislation and policy and can initiate their own enquiries in subject areas within their remit. Committees may also prepare and introduce their own bills. Ministers of the Scottish Executives are not members of committees. The Committee system is set out on the Parliament website at:  
<http://www.scottish.parliament.uk/cttee.htm>.

A major audit of the procedures of the Scottish Parliament has been produced by the Constitution Unit.<sup>37</sup> The Procedures Committee of the Parliament also produced a review of the ways in which the founding principles of the Parliament had been put into practice in the first term.<sup>38</sup>

## C. Wales

### 1. Establishment

A major difference between Scotland and Wales was that there was no parallel to the Scottish Constitutional Convention. The Welsh Labour Party refused overtures from the Campaign for a Welsh Assembly and in 1992 the Welsh Labour Executive established its own policy commission to consult on the proposed powers of an Assembly. In May 1996 *Preparing for a New Wales* was approved by the Conference.<sup>39</sup> The White Paper, *A Voice for Wales*, was published on 22 July 1997, setting out the basis of the Welsh devolution settlement.<sup>40</sup>

The referendum on devolution in Wales was held on 18 September 1997, one week after the referendum in Scotland. Turnout was low at 50% and the ‘yes’ campaign won by a very narrow margin: 50.3% of voters voted yes giving a majority of 0.6% of those voting, or 6,721 votes. As there was no threshold vote, a simple majority vote was considered enough to provide a mandate for devolution. The *Government of Wales Bill* was introduced on 26 November 1997, receiving Royal Assent as the

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<sup>35</sup> s47 of the *Scotland Act 1998*

<sup>36</sup> s43(3) of the *Scotland Act 1998*

<sup>37</sup> B.K Winetrobe, *Realising the vision: a Parliament with a purpose: an audit of the first year of the Scottish Parliament*, Constitution Unit, 2001

<sup>38</sup> Procedure Committee Third Report 2003, available from

[http://www.scottish.parliament.uk/S1/official\\_report/cttee/proced-03/prr03-03-01.htm](http://www.scottish.parliament.uk/S1/official_report/cttee/proced-03/prr03-03-01.htm)

<sup>39</sup> Wales Labour Party, 1996

<sup>40</sup> Cm 3718

*Government of Wales Act* on 31 July 1998. The Act provided for an Assembly of 60 members consisting of 40 constituency representatives and 20 members for regional seats. Regional members are elected, as in Scotland, from the AMS closed party list system to ensure a level of proportional representation.

The first elections to the National Assembly for Wales were held on 6 May 1999. The Labour administration under Alun Michael did not have a majority and on 9 February 2000 a vote of no confidence was passed. Alun Michael resigned and was replaced by Rhodri Morgan. On 16 October 2000 Rhodri Morgan announced a new 'partnership' cabinet for Wales which involved a coalition between Labour and the Liberal Democrats.<sup>41</sup> The Cabinet is made up of 9 members including First Minister Rhodri Morgan. The other ministers cover the portfolios for rural development and Wales abroad; education and life-long learning; economic development; environment; finance, local government & communities; health & social services; open government; culture, sport and the Welsh language.

The second elections to the National Assembly for Wales took place on Thursday, 1 May 2003. Labour gained the highest share of the vote (38.3%), both in the constituency (40.0%) and regional (36.6%) ballots, and also secured the highest number of seats (30), up by two seats compared with the 1999 elections. As a result of gaining what is in effect a majority, as the Presiding Officer is a Plaid Cymru AM, Labour declared that they would govern independently of the other parties. Plaid Cymru became the second largest party in the Assembly with 12 seats, polling 20.5% of the vote overall. However, Plaid's performance was significantly poorer than in 1999. Its national share of the vote fell by 9.0% and the party lost five seats.

The Conservatives polled 19.5% of the vote, up by 3.4% compared with 1999, gaining two seats and taking their total representation in the Assembly to eleven. The Liberal Democrats increased their share of the vote by just 0.4% to 13.4% and they continue to hold six seats in the Assembly. The United Kingdom Independence Party fielded forty candidates, none of whom was elected in either the regional or constituency ballots.

The average overall turnout across regions and constituencies was 38.2%, down by 8.0% compared with the 1999 Assembly elections.<sup>42</sup>

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<sup>41</sup> National Assembly for Wales Press Release (W001041-Ass), "Rhodri Morgan Announces New 'Partnership' Cabinet", 16 Oct 2000

<sup>42</sup> Further information is available in Library Research Paper 03/45 available online at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-045.pdf>.<sup>42</sup>

**National Assembly for Wales Members by type of constituency and party, 1999 and 2003***number of seats*

	<u>Constituency</u>	<u>Regional</u>	<u>Total</u>
<b>1999 Assembly elections</b>			
Conservative	1	8	9
Labour	27	1	28
Liberal Democrat	3	3	6
Plaid Cymru	9	8	17
Others	0	0	0
Total	40	20	60
<b>2003 Assembly elections</b>			
Conservative	1	10	11
Labour	30	0	30
Liberal Democrat	3	3	6
Plaid Cymru	5	7	12
UKIP	0	0	0
Others	1	0	1
Total	40	20	60
<b>Change 1999-2003</b>			
Conservative	0	2	2
Labour	3	-1	2
Liberal Democrat	0	0	0
Plaid Cymru	-4	-1	-5
Others	1	0	1

**2. Powers**

Devolution in Wales was granted in the form of executive devolution. The prerogative powers of the Secretary of State were transferred to ministers of the National Assembly for Wales. However, the devolved body was not granted full law making powers and cannot initiate primary legislation. The model of government is derived partly from local government precedents, with ministerial functions and powers over secondary legislation transferred to the Assembly itself. It is a body corporate, and under the *Government of Wales Act* has executive powers, for example, to make appointments to NHS bodies. The Assembly makes a discretionary delegation of executive power to the First Secretary, who appoints Assembly secretaries to form an Executive Committee. These Secretaries sit on the relevant subject committees, which have a policy-making as well as scrutiny role. It is this delegation power which transforms the Assembly into an assembly/government model. There is no bar to the First Secretary or Executive Committee members holding ministerial office in a UK government.



The *Government of Wales Act* specifically listed all the functions that would be transferred to the assembly in schedule 2 of the Act. This is in contrast to Scotland where only the reserved matters were listed in the relevant Act. The National Assembly for Wales has devolved powers in the areas of:

- agriculture and fisheries
- culture
- economic development
- education and Training
- environment
- health
- highways
- housing
- industry
- local government
- social services
- sport
- tourism
- town and country planning
- transport
- water
- the welsh language

The National Assembly for Wales exercises its power by passing subordinate legislation made under an Act of Parliament; these include Orders in Council, orders, rules, regulations, schemes, warrants and byelaws. Statutory Instruments are also a type of subordinate legislation.

The Assembly year divides into three terms or sessions and recess periods. Assembly Business is normally arranged for the three mid-week days allowing Assembly members to spend time at either end of the week attending to constituency business.

A general guide to the Assembly is available on its website.<sup>43</sup> The *Statistical Analysis of the Proceedings of the First Assembly 1999-2003* has also been published on the intranet and internet.<sup>44</sup>

### **3. Reviews of the Assembly's Powers**

While in law the Assembly is a single corporate body, with no distinct executive and legislature, it has done a great deal to separate legislative and executive functions within the constraints of the *Government of Wales Act 1998*. Assembly Secretaries

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<sup>43</sup> <http://www.wales.gov.uk>

<sup>44</sup> Available at <http://www.wales.gov.uk/subiassemblybusiness/content/safa-e.pdf>

have from early on been referred to as ministers<sup>45</sup> and the executive has sought to give itself a clearer identity as the Welsh Assembly Government. The Assembly conducted a Review of Procedure, which was published on 7 February 2002, which recommended further steps to separate the legislative from executive functions, and measures to protect the scrutiny powers of backbenchers.<sup>46</sup> It also proposed improvements to the Assembly's influence over Westminster and EU legislation.

The Assembly has set up an Independent Commission on the Assembly's Powers and Electoral Arrangements under the chairmanship of Lord Richard of Ammanford.<sup>47</sup> The terms of reference with regard to the Assembly's powers are as follows:

The Commission should consider the sufficiency of the Assembly's current powers, and in particular:

- whether the Assembly's powers are sufficiently clear to allow optimum efficiency in policy-making;
- whether both the breadth (ie the range of issues over which it has control) and the depth (ie the capacity to effect change within those issues) of the Assembly's powers are adequate to permit integrated and consistent policy-making on issues where there is a clear and separate Welsh agenda;
- whether the mechanisms for UK Government policy-making as regards Wales, and the arrangements for influence by the Assembly on these, are clear and effective, and in particular whether they correct any apparent shortcoming from the previous item;
- whether the division of responsibility between the Assembly and the UK Government places inappropriate constraints on Whitehall policy-making, both on matters over which the Assembly has control and otherwise.<sup>48</sup>

The Commission issued a consultation paper in November 2002<sup>49</sup> and has recently finished taking evidence. The report is expected in early 2004, and its recommendations could have major implications for the future of the devolution settlement in Wales.

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<sup>45</sup> *Government of Wales Press Release*, 16 October 2000

<sup>46</sup> Available at:

[http://www.wales.gov.uk/servlet/AssemblyReviewOfProcedure?area\\_code=3A66F4FA00092D660003B3D0000000&module=dynamicpages](http://www.wales.gov.uk/servlet/AssemblyReviewOfProcedure?area_code=3A66F4FA00092D660003B3D0000000&module=dynamicpages)

<sup>47</sup> <http://www.wales.gov.uk/subirichard/index-e.htm>

<sup>48</sup> <http://www.wales.gov.uk/subirichard/tor-e.htm>

<sup>49</sup> Available at <http://www.wales.gov.uk/subirichard/content/consultations/richard-commission-e.htm>

## D. Northern Ireland

### 1. Establishment

The creation of a Northern Ireland Assembly and Northern Ireland Executive was one of the terms included in the Good Friday Agreement of 1998. On 22 May 1998 a referendum was held in both Northern Ireland and in the Republic of Ireland to judge support for the agreement. In Northern Ireland 71% of voters were in favour of the agreement with a turnout of 81% of the electorate. By contrast, south of the border a lower turnout of 56% produced a higher level of support, with 94% of voters supporting the agreement.

The first elections to the Northern Ireland Assembly were held on 25 June 1998 under the Single Transferable Vote system a system of proportional representation that allows voters to vote for individual candidates (as opposed to party lists) in order of preference. The Northern Ireland Assembly has 108 members from 16 six-member constituencies. There is an Executive of 12 members. Ministers are nominated to the executive committee by the four parties with the highest share of the vote in the Assembly elections, rather than by the First Minister. The results of the first election are as follows:

#### Northern Ireland Assembly Members by party

Party	% of first preference votes	Seats won
Ulster Unionist	21.3%	28
SDLP	22.0%	24
Democratic Unionist	18.1%	20
Sinn Féin	17.6%	18
Alliance	6.5%	6
United Kingdom Unionists	4.5%	5
Progressive Unionist Party	2.5%	2
NI Women's Coalition	1.6%	2
Ulster Democratic Party	1.1%	0
Others	4.8%	3

The Assembly met for the first time on 1 July 1998, and David Trimble (Ulster Unionist Party) was elected as First Minister with Seamus Mallon (Social Democratic and Labour Party) as the Deputy First Minister. The two posts are linked in terms of appointment, so that if one resigns, the other is also bound to do so. This reflects the power sharing philosophy of the Agreement. The election was by the cross-community voting procedures developed especially for the Northern Ireland Assembly. Full details are given in Part IIB of Research Paper 03/69.<sup>50</sup>

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<sup>50</sup> The *Northern Ireland (Monitoring Commission etc) Bill [HL]*, 16 September 2003, available at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-069.pdf>

Because of problems with the peace process, no ministers were appointed until 29 November 1999. Powers were finally transferred on 2 December 1999. Further problems over decommissioning led to the Assembly being suspended and direct rule being re-imposed between 11 February 2000 and 30 May 2000. There were two further one-day suspensions on 11 August 2001 and 21 September 2001. Following a police raid of Sinn Fein's offices at Stormont in October 2002 and the resignation of two DUP ministers from the Executive, the Assembly was suspended again from midnight on 14 October 2002, and devolution has yet to be restored. Elections to the Assembly, originally due on 1 May 2003, were postponed twice, first to 29 May 2003 and then until the 'autumn' 2003. Elections were eventually announced for 26 November 2003 on October 21. However the major parties have not reached agreement about the restoration of a devolved Executive.<sup>51</sup>

## 2. Powers

Under devolution in Northern Ireland, there are three categories of legislative powers; reserved, excepted and transferred. Excepted matters are subjects reserved to Westminster which will not be transferred apart from by primary legislation. Schedule 2 of the *Northern Ireland Act 1998* specifies excepted matters. These include:-

- the Crown
- parliamentary elections, and Assembly elections including the franchise
- international relations
- defence of the realm
- honours
- nationality
- national taxation
- appointment and removal of judges
- registration of political parties
- coinage etc
- national security
- nuclear energy and installations
- regulation of sea fishing outside Northern Ireland
- provisions dealt with in the Northern Ireland Constitution Act 1973
- the subject matter of the *Northern Ireland Act 1998* with specified exceptions

Schedule 3 set out reserved matters; these are subjects which could be transferred by Order to the Assembly at a later date, if there is cross-community consent. These include:

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<sup>51</sup> Background to the suspension and election postponements is given in Library Research Papers 03/21, 03/43 and 03/69, available at [http://www.parliament.uk/parliamentary\\_publications\\_and\\_archives/research\\_papers.cfm](http://www.parliament.uk/parliamentary_publications_and_archives/research_papers.cfm)

- criminal law
- policing
- prisons
- civil aviation
- navigation
- the Post Office
- disqualification from membership of the Assembly
- emergency powers
- civil defence
- consumer protection
- telecommunications

Some reserved matters, principally policing, security, prisons and criminal justice currently remain within the responsibility of the Secretary of State for Northern Ireland. The Belfast Agreement envisages that in time these will be transferred to the devolved administration in Northern Ireland. Further details are in Research Paper 02/07.

The areas transferred to the Assembly include the following:

- finance and personnel
- health, social services and public safety
- education
- agriculture and rural development
- enterprise, trade and investment
- environment
- culture, arts and leisure
- learning and employment
- regional development
- social development

Further details are available in Devolution Guidance Note No 5.<sup>52</sup>

## **E. England**

### **1. Regional assemblies**

Devolution in Scotland, Wales and Northern Ireland leaves the question of how the remaining 85% of the population is to be governed in a devolved UK. A Fabian Society pamphlet summarised the issues as follows:

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<sup>52</sup> Devolution Guidance Note 5, available at <http://www.devolution.odpm.gov.uk/dgn/pdf/dgn05.pdf>

England is the hole in the devolution settlement. Scotland, Wales and Northern Ireland are to have a stronger political voice, thanks to their new Assemblies. The English regions risk losing out in the distribution of government funds, the bids for European funding programmes and the competition for inward investment.

Do the English care? And what should be the government's response? This is the heart of the English Question, and three responses are making themselves evident. The first is to say the English don't care, that there is no demand from the English for regional government or regional assemblies but to acknowledge that there is a risk of the English losing out economically, and that there are problems of regional unemployment and regional economic development. The second response is to say that the English do need a louder political voice, some regions now want it, and they deserve to be given political institutions equivalent to the Scottish Parliament and the devolved assemblies: this is the rallying cry of the Campaign for an English Parliament. The third is a more bottom-up approach which responds to the growth of regionalism and proliferation of regional bodies by proposing that they should be pulled together and made accountable to regional chambers or regional assemblies.<sup>53</sup>

There has not been a long tradition of regionalism in England. However, there have been campaigns for regional devolution in some regions in the last decade, and these have become increasingly vocal since 1999. Labour made a manifesto commitment in 1997 to establish elected regional assemblies. In office, Labour established Regional Development Agencies (RDAs), which are Non Departmental Public Bodies (quangos) designed to promote economic development in a region. The Government also encouraged the development of non-elected "Regional Chambers", which, confusingly in this context, have all now styled themselves "Regional Assemblies." These are voluntary bodies with no legal powers which scrutinise the work of the RDAs. They are made up mainly of local authority councillors, alongside "social and economic partners".

On 9 May 2002, the Government published a White Paper proposing the establishment of directly elected regional assemblies where support is demonstrated in a referendum.<sup>54</sup> The Government is not proposing to give these elected regional assemblies any legislative powers. They will have three main functions: preparing regional strategies; "executive functions", in areas where the Regional Assembly has complete responsibility for an issue; and "influencing functions" relating to issues which have a regional dimension but which also need local and national input.

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<sup>53</sup> Robert Hazell in Fabian Society, *The English Question*, April 2000, p29-30

<sup>54</sup> Cabinet Office/DTLR, *Your Region, Your Choice, Revitalising the English Regions*, Cm 5511, May 2002, available at [http://www.regions.odpm.gov.uk/governance/white\\_paper/index.htm](http://www.regions.odpm.gov.uk/governance/white_paper/index.htm)

*The Regional Assemblies (Preparations) Bill* received royal assent on 8 May 2003. It provides for preparations for statutory, elected regional assemblies and for referendums, although further legislation is needed to establish the assemblies and to specify their powers, in the event of a region voting in favour. Details are given in Library Research Paper 02/62.<sup>55</sup> While the legislation was going through Parliament, the Government conducted a “soundings” exercise to establish the level of interest and to inform the decision about which regions should hold a referendum. The Government published a summary of the views received during the soundings exercise on 16 June 2003. The main results of the soundings exercise were:

- 8,465 responses from individuals and organisations were included in the numerical analysis.
- 152 responses had name and address details which were too partial to enable checks to be made for duplication. These were not included in the numerical analysis.
- 8,344 indicated whether they personally were in favour or against holding a referendum.
- 6,526 provided a view on the level of interest in holding a referendum in their region.
- 28 separate opinion polls, providing quantitative data on percentages in favour of holding a referendum, were received.
- 9 relevant petitions were received.

The following table summarises the responses to the soundings exercise:

#### **Soundings exercise summary of responses by region**

	In favour (%)	In favour (total respondents)	Against (%)	Against) total respondents)
West Midlands	16%	58	84	297
East of England	33%	120	67%	239
South East	37%	239	63%	409
South West	40%	264	60%	397
East Midlands	41%	154	59%	219
North East	53%	474	47%	414
North West	56%	2,202	44%	1,699
Yorkshire and the Humber	72%	833	28%	326

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<sup>55</sup> *The Regional Assemblies(Preparations) Bill*, 21 November 2002, available at <http://www.parliament.uk/commons/lib/research/rp2002/rp02-062.pdf>

On 16 June 2003 the Deputy Prime Minister, John Prescott, announced that assembly referendums would be held in the North-East, the North-West and Yorkshire and the Humber. At the same time he directed the Boundary Commission to make recommendations about the structure of local government in those regions, as a condition of the creation of a regional assembly is a one-tier system of local government. The reviews will cover the existing two-tier areas of Durham, Northumberland, Cheshire, Cumbria, Lancashire and North Yorkshire county councils.<sup>56</sup>

On 3 November 2003 John Prescott launched the 'Your say' campaign.<sup>57</sup> This was described by the ODPM in a press release:

A campaign to raise awareness and spark debate about an elected regional assembly for the three northern regions was launched today by the Deputy Prime Minister John Prescott. The 'Your Say' campaign explains what regional government would mean to people in the North West, North East and Yorkshire and the Humber so voters can make an informed choice in the referendums expected to be held next autumn. The campaign includes a new leaflet setting out what an elected regional assembly would mean for the three northern regions, a 'Your Say' website, and promotional material. Exhibitions and visits are planned over the next 12 months.<sup>58</sup>

Nick Raynsford, Minister for Local and Regional Government, reportedly said during the launch that ministers will not approve the creation of assemblies in regions where the turnout has been "derisory", although he did not offer a definition of 'derisory'.<sup>59</sup> During oral questions on 22 October 2003, Nick Raynsford indicated that the Government intend to use all-postal ballots for the referendums. On 28 October he gave an indication of the likely costs of the all-postal ballots:

Information in the Electoral Commission's report "The shape of elections to come" suggests that the direct cost of postal referendums on elected assemblies would be around £1.10 per elector. On this basis the cost by region of the elected assembly referendum would be £5.7 million in the north west, £4.1 million in Yorkshire and Humberside and £2.1 million in the north east. These figures assume that everyone eligible to vote returns a ballot paper. In practice costs will depend upon turnout, as this will affect postal and

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<sup>56</sup> HC Deb 17 March 2003 c614W; the bill received Royal Assent on 8 May 2003

<sup>57</sup> Details about the campaign are available at [http://www.odpm.gov.uk/stellent/groups/odpm\\_control/documents/contentservertemplate/odpm\\_ind\\_ex.hcst?n=3606&l=](http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_ind_ex.hcst?n=3606&l=)

<sup>58</sup> ODPM News Release 2003/0226, *'Your say' campaign launch heralds a new era - Prescott kick starts year of debate on the 'Great North Vote'*, 3 November 2003

<sup>59</sup> See eg "Parliaments for the north: Prescott takes plans to the people", *Independent*, 4 November 2003 p8



processing costs. There will be some additional costs in those parts of the region which also have a local referendum.<sup>60</sup>

The government has estimated that the overall costs of the Assemblies will be in the region of £30m for each assembly. Lord Rooker, Minister of State, ODPM said on 8 September 2003:

The costs of establishing elected assemblies will vary from region to region, mainly because of the different sizes of their electorates. But we expect these to be around £30 million for each region. This estimate includes all costs necessary to establish an assembly, including the cost of local government reviews, referendums and the first elections.<sup>61</sup>

In launching its 'Your say' campaign, the Government stated that the campaign is a Government information campaign "...so that people know about the issues and are encouraged to vote. It is not campaigning for a 'yes' vote nor for a 'no' vote."<sup>62</sup> No details are yet available on the funding available for the campaigns. A recent parliamentary answer gave the following information:

**Mr. Gordon Prentice:** To ask the Deputy Prime Minister how much public money he estimates will be spent by both sides of the campaign on the forthcoming regional assembly referendums.

**Phil Hope:** Under the *Political Parties, Elections and Referendums Act 2000*, organisations can apply to the Electoral Commission to become the lead campaign body for one of the referendum outcomes. The Electoral Commission is currently considering the appropriate level of grant to award to these designated organisations.<sup>63</sup>

## F. Devolution and the Centre

### 1. Structures at Westminster

There has been remarkably little change to the pre-devolution structure of territorial committees at Westminster. There are still Grand Committees and Select Committees for Scotland, Wales and Northern Ireland.<sup>64</sup> The Procedure Committee recommended in 1999 that the Speaker, as a non-partisan figure, should certify when a bill related exclusively to one of the constituent parts of the UK, and that a standing committee to scrutinize the bill would be composed of a majority of MPs for the relevant area. It also recommended the suspension of the Grand Committees and that the territorial select

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<sup>60</sup> HC Deb 28 October 2003 Vol 412 c202W

<sup>61</sup> HL Deb 652 c49WA

<sup>62</sup> ODPM News Release 2003/0226, Ibid

<sup>63</sup> HC Deb 5 November 2003 c678W

<sup>64</sup> The role of Grand Committees had been extended in the 1990s to act as an alternative to full scale devolution, and they are composed of all the MPs for a territorial area, with some additional representation from the major parties

committees should deal exclusively with the responsibilities of the Secretary of State for that area. These recommendations were not put into effect, although others were, in relation to reducing the amount and scope of question time for the territorial Secretaries of State.<sup>65</sup> The one area where reform in Westminster procedures is likely is in the treatment of legislation extending to Wales, where the Welsh Grand and Welsh Select Committees have begun to scrutinize draft legislation. Both considered the draft *Public Audit (Wales) Bill*, for example. There is also a Regional Affairs Standing Committee, consisting of 13 Members from English constituencies, which other English Members may take part in. This Committee has considered a number of matters, including the Government Offices in the Regions and Regional Governance in England.<sup>66</sup>

## 2. Changes to the office of Secretaries of State for Wales and Scotland

The Government reshuffle on 12 June 2003 made major changes to the position of the Secretary of State for Scotland and Wales. Instead of being individual cabinet members, their departments were moved to the new Department for Constitutional Affairs (DCAF), which also included the previous Lord Chancellor's department. The role of Secretary of State for Scotland went to the Transport secretary, Alistair Darling, and the position of Secretary of State for Wales remained with Peter Hain, the new Leader of the House of Commons. These positions are now in effect part-time, but the officials in the Wales and Scotland Office still report directly to the relevant Secretary of State, although are based in DCAF.

The parliamentary statement by the Prime Minister on the reforms confirmed that oral and written questions would continue to be answered by both Secretaries of State.<sup>67</sup> Questioned by the Scottish Affairs Committee about its own role, Alistair Darling stated that:

Select Committees are a matter for the House and the convention is that there is a Select Committee more or less mirroring each Government Department. I would be surprised, therefore, if there was not a Scottish Select Committee. However, at the end of the day it is [a matter] for the House . . . not for the Government'.<sup>68</sup>

The changes are discussed in more detail in the latest annual *State of the Nations* issued by the Constitution Unit.<sup>69</sup>

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<sup>65</sup> For more detail see Research Paper 99/85 *the Procedural Consequences of Devolution*

<sup>66</sup> The Committee's reports are available at <http://www.publications.parliament.uk/pa/cm/othstn.htm>

<sup>67</sup> HC Deb 18 June 2003 c362

<sup>68</sup> Evidence to the Scottish Affairs Select Committee, 25 June 2003

<sup>69</sup> Robert Hazell, ed, *The state of the nations 2003: the third year of devolution in the United Kingdom*, Impact, 2003, chapter 7

The non-statutory arrangements described in Section IB above, such as the *Memorandum of Understanding*, concordats, and Joint Ministerial Committees, were examined as part of a study of the relationship between the UK Government, Parliament and the devolved institutions by the Lords Constitution Committee in January 2003.<sup>70</sup> This is discussed in Section IIG of this Research Paper.

The Committee raised concerns at the reliance on informal mechanisms, questioning how well these might work when governments of different political persuasions had to deal with each other.<sup>71</sup> Another factor is that all the United Kingdom parties, together with Plaid Cymru and the SNP, have declared their opposition to multiple mandates - i.e. simultaneous membership of the UK Parliament and the devolved legislatures/assemblies. The Committee ascribed the present goodwill partly to the fact that so many senior politicians know each other well and have shared experience of Westminster. Since the 2001 UK General Election, there have been no dual mandate members in the Scottish Parliament, and the National Assembly for Wales, so the close personal relations are likely to dissipate over time. The Government in its response did not accept that informal communication weakened the formal mechanisms.<sup>72</sup>

## **G. Devolution – an opportunity for innovation**

The devolution process has enabled parliaments and assemblies to be created in the UK that are not purely replicas of the Westminster Parliament and of government in Whitehall. Devolution has meant the creation of a whole new tier of decentralised government and the opportunity for the adoption of new and innovative procedures. For instance the Consultative Steering Group for the Scottish Parliament considered that the new body would be designed to:

- exploit the potential of new and developing information technologies
- adopt and adapt the best practise of parliaments and assemblies in other countries
- be tailored to the unique culture and traditions of Scotland and its people<sup>73</sup>

The elections to the devolved assemblies have all used aspects of proportional representation. Consequentially, in their first terms, neither the Scottish Parliament nor the National Assembly for Wales nor the Northern Ireland Assembly was governed by a single party with an overall majority (although the Labour Party in Wales has formed

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<sup>70</sup> Lords Select Committee on the Constitution, Second Report, *Devolution: Inter-Institutional Relations in the United Kingdom*, HL 28, 2002-03

<sup>71</sup> *ibid*, paragraph 29

<sup>72</sup> Office of the Deputy Prime Minister, *The Government's Response to the Second Report of the Lords Select Committee on the Constitution, Session 2002-03, (HL Paper 28)*, and *Devolution: Inter-Institutional Relations in the United Kingdom*, Cm 5780, March 2003

<sup>73</sup> Scottish Parliament Information Office Research Paper 99/2, *Principle underpinning the Parliament*, 20 May 1999

the Executive since the 2003 elections). This led to the need for coalition building, and contrasts with the position at Westminster where single parties often enjoy large majorities. The layout of the new assemblies also breaks from the Westminster mould as the devolved assemblies do not line up face-to-face across a central divide. The effectiveness of consensus politics in the Scottish Parliament was commented upon in the following extract:

‘The new politics’ was meant to lead to a new era of consensus and a more inclusive politics and relevant policy. The reality has been not surprisingly different: a Parliament filled by party politicians, who sometimes work together and work well, but who often are driven by the need to compete and differentiate themselves from each other and to act and sound like politicians.<sup>74</sup>

Similarly, there has been a higher participation rate amongst women and younger people in standing for election to the devolved bodies, and the National Assembly in Wales became the first elected legislative body in the world to consist of 50% women Members following the 2003 election.

## **H. The Research Agenda**

The advent of devolution has sparked much interest in the academic and public policy communities. The Economic and Social Research Council has funded a large programme of research entitled *Devolution and Constitutional Change*.<sup>75</sup> The Leverhulme Foundation has a programme of devolution research, which concentrates on the constitutional implications. The Constitution Unit, at University College London, is responsible for a series of detailed monitoring reports which look at the progress of the devolution settlement in the constituent parts of the UK.<sup>76</sup> It also publishes an annual survey, entitled *State of the Nations*. Some of the outputs of the research are set out in the Bibliography to this Paper.

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<sup>74</sup> “Social democracy in a cold place: the strange case of Scottish devolution”, *Renewal*, Vol. 10, No 1, 2002

<sup>75</sup> Details can be found from the website at <http://www.devolution.ac.uk/>.

<sup>76</sup> Details are at <http://www.ucl.ac.uk/constitution-unit/leverh/monitoring.htm>

### III Chronology

#### A. Scotland

- 6 May 1999 First Scottish Parliament Elections are held with Labour winning the most seats with 56.
- 13 May 1999 Donald Dewar elected First Minister
- 14 May 1999 Lab-Lib Dem Partnership for Scotland Signed
- 11 Oct 2000 Donald Dewar dies
- 21 Oct 2000 Henry McLeish elected as successor to Donald Dewar as first minister.
- 8 Nov 2001 Henry McLeish resigns as first minister
- 22 Nov 2001 Jack McConnell elected first minister
- 3 April 2003 Parliament dissolved in advance of the 1 May elections
- 1 May 2003 Scottish Parliament elections held. Labour wins the most seats (50) and forms a coalition government with the Liberal Democrats.

#### B. Wales

- 6 May 1999 First Assembly Elections, Labour wins 28 of the 60 seats but no overall control. Labour and the Liberal Democrats assume a coalition government.
- 11 Aug 1999 Resignation of Conservative Leader Rod Richards, replaced by Nick Bourne
- 9 Feb 2000 Vote of no confidence in First Secretary Alun Michael passed by 31 votes to 27 with one Labour abstention. Cabinet votes for Rhodri Morgan as acting First Secretary
- 13 Mar 2000 Cabinet Minutes published on Assembly's website at [www.wales.gov.uk](http://www.wales.gov.uk)
- 3 Aug 2000 Ieuan Wyn Jones wins Plaid Cymru leadership election following resignation of Dafydd Wigley
- 18 Jul 2001 Death of Val Feld causes first National Assembly for Wales By-election. Val Lloyd holds seat for Labour
- 3 Apr 2003 Assembly dissolved in advance of 1 May elections
- 1 May 2003 Assembly elections. Labour wins 30 seats and becomes the Executive. Female members take 50% (30 in total) of the seats

#### C. Northern Ireland

- 22 May 1998 Referendum held on Good Friday Agreement
- 25 Jun 1998 Elections to the assembly held with the UUP gaining the highest number of seats.
- 29 Jun 1998 David Trimble (UUP) is elected First Minister designate of the assembly with the SDLP's Seamus Mallon Deputy First Minister.
- 11 Oct 1999 Peter Mandelson becomes Secretary of State for Northern Ireland
- 11 Feb 2000 Suspension of NI Assembly

- 6 May 2000 Appointment of Martti Ahtisaari and Cyril Ramaphosa as a team to inspect IRA weapon dumps.
- 30 May 2000 Power restored to Stormont
- 24 Jan 2001 Resignation of Peter Mandelson as Secretary of State for Northern Ireland, replaced by John Reid
- 1 Jul 2001 David Trimble resigns as First Minister, Seamus Mallon also has to resign as Deputy First Minister
- 11 Aug 2001 One day suspension of devolution in Northern Ireland
- 21 Sep 2001 One day suspension of devolution in Northern Ireland
- 6 Nov 2001 David Trimble and Mark Durkan (SDLP) elected as First Minister and Deputy First Minister.
- 9 Mar 2002 David Trimble re-elected unopposed as leader of the Ulster Unionists at their AGM
- 14 Oct 2002 Suspension of NI Parliament
- 24 Oct 2002 Paul Murphy becomes Secretary of State for Northern Ireland
- 20 Mar 2003 *Northern Ireland Assembly Elections Act* enacted. Postpones Assembly elections to 29 May 2003
- 15 May 2003 *Northern Ireland Assembly (Elections and Periods of Suspension) Act* 2003 enacted. Further postpones Assembly elections to 'autumn' 2003.
- 18 Sep 2003 *Northern Ireland (Monitoring Commission etc) Act* 2003 enacted. Makes provisions in connection with the establishment of the Independent Monitoring Commission.
- 21 Oct 2003 26 November 2003 is announced as the new date for elections to the Northern Ireland Assembly

#### **D. English regional assemblies: Timetable**

- 2 December 2002: Soundings exercise began
- 8 May 2003: *Regional Assemblies (Preparations) Bill* receives Royal Assent
- 16 May 2003: End of extended soundings exercise
- 16 June 2003: Announcement of assembly referendums in North-East, North-West and Yorkshire and the Humber
- 17 June 2003: Beginning of Boundary Committee for England review of local government structure in these areas
- 3 November 2003 Launch of 'Your say' campaign
- 25 May 2004: Latest date for completion of Boundary Committee for England review
- Autumn 2004: Referendums in North-West, North-East and Yorkshire and the Humber
- 2005/7: First regional assemblies up and running?

## **Appendix 1: A select bibliography of books and pamphlets on Devolution**

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*Modernising Britain: central, devolved, federal?* Edited by Stanley Henig. Federal Trust, 2002.

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The Scottish Executive has produced a similar document to summarise its achievements since the commencement of devolution. *Recording our achievements*<sup>79</sup>

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<sup>77</sup> 2<sup>nd</sup> Annual Report, <http://www.wales.gov.uk/keypubannualreports2002/index.htm>

<sup>78</sup> <http://www.wales.gov.uk/subiassemblybusiness/content/safa-e.pdf>

<sup>79</sup> "Recording our achievements," Scottish executive, 16 December 2002

The Northern Ireland Assembly also produces an annual Programme for Government report. The latest is available online at

<http://www.pfgni.gov.uk/report0205main.pdf>

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