



report

Health, Risk and Regulatory - November 2009

The All Wales Convention

Published review

The All Wales Convention (“the Convention”) was set up by the Welsh Assembly Government to increase understanding of how the National Assembly for Wales works and to assess public views on the National Assembly for Wales having more primary law-making powers.

Under Part 3 of the Government for Wales Act 2006 (“the Act”) the National Assembly for Wales can already ask for primary law making powers in relation to twenty defined areas of devolved powers set out in the Act. However, those powers can only be obtained with the approval of the UK Parliament.

Part 4 of the Act is not yet in force, if implemented, it would confer primary law making power, all at once, across these twenty areas of devolved powers. However, this can not be achieved without the approval of a majority of the Welsh Electorate in a Referendum.

The Convention identified that the choice for public debate focused on two alternatives, being that the:

- current arrangements by which the National Assembly for Wales acquires powers to make primary law with the permission of the UK Parliament under Part 3 should continue; or
- National Assembly for Wales would get new powers to make laws in all twenty areas all at once after an affirmative vote in the Referendum (Part 4 of the Act).

In its wide ranging review, the Convention came to the view that a move to Part 4 of the Act offered substantial advantage over the present arrangements in Part 3. It has concluded,

“It would offer greater efficiency, permit a strategic approach to the drafting of the legislation, provide greater clarity, be more consistent with the rule of law and democratic tradition and reflect the emerging maturity of the law.”

The Convention considered the advantages and disadvantages of the current arrangements under Part 3 of the Act. There are two routes by which the current legislative competence of the National Assembly for Wales to pass Measures can be expanded incrementally.

Firstly, this can be done through an Act of Parliament (UK). The Convention report comments that this process is an opportunistic approach negotiated between governments. The Act is considered under Westminster’s procedures, and the National Assembly for Wales has no formal role in that process.

Secondly, the Legislative Competence (LCO) route can be pursued on application by the National Assembly for Wales. The basic statutory requirements relating to LCO’s are that they should contain a description of the “matter” where the National Assembly for Wales is to have legislative competence, and that they should be approved by the National Assembly for Wales and by both Houses of Parliament.

The idea for the LCO process was to permit an incremental transfer of legislative power to the National Assembly for Wales and to do so after careful case by case consideration in Westminster, the National Assembly for Wales itself and the Welsh Assembly Government.



Whilst the Convention review found that practice is evolving with experience, it heard a substantial body of criticism of the process, with a majority believing that it was cumbersome and slow. The Convention established that the use of framework powers in UK Parliamentary Bills had become a more convenient, speedy and more productive way to transfer legislative powers to the Welsh Assembly Government. However, the process of agreeing Welsh provisions in UK Bills is, for the most part, inter-governmental, and its use, by definition, is dictated by Westminster's priorities and timetables. The National Assembly for Wales has no scrutiny role, whether the proposals are for Measure-making powers for the National Assembly for Wales or executive powers for Welsh Ministers, or both.

It established that framework powers in UK Parliament Bills have successfully and rapidly brought powers to the National Assembly for Wales and in greater numbers than under the LCO procedure. However, it describes the process as being more opportunistic in nature, requiring a suitable UK Parliament Bill to which the proposed transfer can be added.

A lack of transparency and scrutiny were also raised as issues in relation to the use of UK Parliament Bills to confer further executive functions on Welsh Ministers. There was concern as to the lack of opportunity for the National Assembly for Wales or its Subordinate Legislation Committee to scrutinise such proposals.

If Part 4 of the Act were to come into force following a Referendum, then it would mean that rather than accruing powers incrementally, the right to legislate in all twenty areas would pass to the National Assembly for Wales collectively at once. The National Assembly for Wales would then pass Acts rather than Measures and the National Assembly for Wales' legislative competence would relate to the subjects listed under the twenty headings set out in Schedule 7 to the Act which correlate to the fields currently set out in Schedule 5.

In order for a Referendum to be called, it will need to be initiated by both the National Assembly for Wales and Welsh Assembly Government. To proceed, a two-third majority of Assembly Members would need to vote for a resolution to call a Referendum. The First Minister would then notify the Secretary of State for Wales, in writing, of the resolution and the Secretary of State for Wales would then have 120 days to decide whether to proceed with the request for a Referendum or to refuse to do so.

There is a subsequent procedure for further approval by the National Assembly for Wales prior to submission to both Houses of Parliament and approval of an Order in Council by Her Majesty.

The Convention review found that the people of Wales support and accept devolution. However, it believes that the public has very limited knowledge of the procedures and issues associated with the Act. Much will need to be done to inform the public.

The final judgement of the Convention is that a Yes Vote in a Referendum is achievable but not guaranteed. The Convention recommends that for a Referendum to be held prior to the National Assembly for Wales elections in May 2011, a decision as to whether or not a Referendum will be called should be taken by June 2010.

In order to understand the differences between Part 3 and Part 4 of the Act, a useful chart has been provided by the Convention which is set out in the following table:



Part 3	Part 4
National Assembly for Wales laws are called Measures.	Proposed laws of the National Assembly for Wales would be called Bills, and enacted laws would be called Acts.
National Assembly for Wales can pass Measures which relate to Matters listed under 20 Fields set out in Schedule 5 of Government of Wales Act 2006.	National Assembly for Wales would be able to pass Acts which relate to Subjects listed under 20 headings in Schedule 7 of Government of Wales Act 2006.
The 20 Fields are based around the Welsh Ministers' executive powers, and therefore describe broadly the areas where there is executive devolution to Wales.	No difference, the 20 headings are based around the Welsh Ministers' executive powers, and therefore describe broadly the areas where there is executive devolution to Wales.
Apart from six Matters listed on the face of Government of Wales Act 2006 when it was enacted, Matters are added gradually through framework provisions in UK Parliamentary Bills or through the LCO process. There were 45 Matters included in Schedule 5 at 20 July 2009.	Subjects are already listed under all 20 headings in Schedule 7. Broadly speaking, they are based around the areas where Welsh Ministers have executive powers.
As the National Assembly for Wales can only pass Measures in relation to Matters, and Matters are being added gradually, there are a number of areas where Welsh Ministers can make executive decisions, but the National Assembly for Wales cannot make laws. The picture changes from time to time, as new Matters are added to Schedule 5.	If Part 4 and Schedule 7 were in force, devolution of law-making powers would, generally speaking, catch up with devolution of executive powers – the National Assembly for Wales would be able to make laws in all the areas where Welsh Ministers have powers.

There will be a significant debate over the next few months as to whether or not a Referendum should be called. There are potential benefits to the NHS if Part 4 of the Act is implemented as the National Assembly for Wales and Welsh Assembly Government would be in a position to respond more effectively to the needs of NHS Wales. Legislative change would not be dependent on either the protracted LCO process or finding a slot in a UK Parliament Bill.

Morgan Cole is able to offer training packages on the operation of the Government of Wales Act 2006 and the implications of the review of the All Wales Convention. For further information please contact:



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