



Findings from the Economic and Research Council's
Research Programme on *Devolution and Constitutional Change*



Devolution Briefings

The Report of the Richard Commission: An Evaluation

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Key Points

- The Richard Commission reported in March 2004 and proposed legislative devolution for the National Assembly for Wales, a clear distinction between Welsh legislature and Welsh government, a bigger Assembly of 80 members, and the introduction of the single transferable vote for Assembly elections
- The Commission worked to a mix of efficiency criteria and criteria focused on the quality of Welsh democracy in making its recommendations
- It felt that the National Assembly had performed well despite a number of handicaps based in a complex division of responsibilities with Westminster, and a set of institutional relationships with UK institutions that are often neglectful of Welsh concerns
- It argued that a clearer separation of responsibilities would allow fuller scope for the expression of Welsh priorities and insulate the Assembly from over-dependence on UK institutions; the latter could become especially problematic following changes of government at Westminster
- It also presented arguments for a separation of powers based in public dissatisfaction with Westminster government and a desire for the Assembly, not Westminster to have most influence on Welsh policy
- Arguments for changes in electoral arrangements were less persuasive. The current 'additional member' system was strongly criticised in evidence submitted to the Commission, but by a narrow if vocal grouping. It is not clear that the case made for the single transferable vote avoids the problems seen by that grouping
- A number of hurdles have to be overcome before the Richard Commission's Report can be enacted, including most likely a referendum in Wales; in the short term a possibly more difficult hurdle will be getting a pledge to enact (parts of) the Report into the next Labour General Election manifesto past the ranks of unconvinced, even hostile Welsh Labour MPs

The Richard Commission published its report on the Powers and Electoral Arrangements of the National Assembly for Wales on 31 March 2004. It is a comprehensive document informed by an extensive consultation of the general public, experts and other interested parties. The report is strongly evidence-led; its recommendations clearly follow the weight of the evidence put to it. And the report is presented unanimously (though with an ambiguous caveat entered by one of its members, the former MP Ted Rowlands). The end result is a closely argued and in many respects compelling set of recommendations (Box 1). This

briefing gives an evaluation of those recommendations, and makes some comments about the likelihood that they will be enacted.

Box 1: The Key Recommendations of the Richard Commission

- Transformation of the National Assembly into a full-fledged legislative assembly with primary legislative powers on all matters not explicitly reserved to Westminster
- Tax-varying powers, again on the Scottish model (power to vary the standard rate of income tax by $\pm 3\%$), are ‘desirable, not essential’
- The ‘corporate body’ model to be abandoned in favour of a clear separation of government and legislature
- The Assembly to increase in size from 60 to 80 members in order to meet new workload demands of primary legislation, in particular the scrutiny of the Welsh Assembly Government’s legislative programme
- The current ‘additional member system’ of electing the Assembly to be replaced by the single transferable vote

The central recommendation is to replace the current system of executive devolution, based on a complex division of labour between Wales and Westminster, with legislative devolution on the Scottish model. What is proposed is in effect a Welsh Parliament. The report sets out two reasons for this. The first is to bring about a more transparent and systematic division of powers between Westminster and the Assembly which removes the often bewildering complexity of the current arrangements. The second reason is a more positive endorsement of the momentum the Assembly has established in setting a distinctive Welsh policy agenda. The Assembly as it were has made its mark and has earned the right to fuller powers in developing policies for Wales. The timescale the Richard Commission envisaged for achieving all this is set out in Box 2. The Commission – for reasons discussed later in this briefing – has sensibly insisted this timetable is at best tentative.

Box 2: A Possible Timetable

2005 – Manifesto commitments on Richard Commission Report at UK General Election
2006 – New Wales Bill published
2007 – Assembly Election
2007 – Wales Bill introduced at Westminster
2008 – Royal Assent
2008-10 – Boundary Review
2011 – First Election to Legislative Assembly

The Guiding Criteria of the Commission

Two sets of criteria guided the Commission in its work:

- Those concerned with *efficiency*. Efficiency criteria were central to the terms of reference the National Assembly gave the Commission, which focused on the integration and consistency of policy-making and of Wales-UK relationships, and whether the size of the Assembly was adequate for its tasks. The Secretary of State for Wales, Peter Hain, also stressed efficiency criteria, notably in his insistence that the Commission’s recommendations should pass a ‘practical delivery benchmark test’.

- Those concerned with the *quality of democracy* in Wales. These democracy criteria were self-imposed by the Commission, and insisted that gains in democracy and accountability were ‘valuable in themselves’. The Commission echoed the views of Lord Falconer, Secretary of State for Constitutional Affairs, that while constitutional change had to be about the effectiveness of public institutions, it also had to deliver stronger democracy and stronger public engagement and in that way improve relationships of trust and accountability between citizens and institutions.

“We have worked on two assumptions. First, that gains in democracy and accountability are valuable in themselves. Second, that more open, participative and responsive governance is likely to produce better policy outcomes” – Richard Commission Report, p. 1.

To put it another way, the Assembly terms of reference and Peter Hain prioritised the delivery of better *outputs*; the Commission itself balanced this with a concern to ensure improved citizen *input* into devolved government.

The Commission’s View of the Current National Assembly

The Commission was generally positive about the record of the National Assembly so far. It pointed to innovative policy responses to distinctive Welsh agendas, good working relationships with Westminster, Whitehall and the Secretary of State in delivering policy for Wales, and the success of the Assembly in widening the original conception of secondary legislation. Westminster was now leaving such wide discretion to the National Assembly in secondary legislation that Wales ‘already has some of the features of legislative devolution’.

That positive record had, though, been achieved against the odds. Though relations with UK institutions are generally good, there are serious institutional frictions and mismatches inherent in the current settlement. There is a haphazard and complex delineation of responsibilities, at times compounded by an uneven awareness of the intricacies of Welsh devolution in Whitehall. And Wales is at best low on the legislative radar screen at Westminster.

The outcome is a messy process of Westminster legislation for Wales. Legislative proposals are made in the Assembly, but scrutinised in Westminster. And, due to the tightness of the Westminster legislative timetable, Welsh legislative provisions often have to be piggy-backed uncomfortably onto legislation designed for other purposes and piloted by ministers who know little about Wales.

What Kind of Success?

On some measures it might seem a ‘success’ that the Assembly has been able to do what it has despite this messy institutional set-up. Indeed, some of the evidence presented to the Commission saw in this ‘success’ an argument for retaining the status quo. Civil servants and politicians were quite capable of muddling through the intricacies of the settlement, so why change?

“I have dealt with problems of law and statutes that were infinitely more complex than the settlement which we have had to deal with here. That is why I can say with confidence that we have not encountered unusual uncertainties or complexities some witnesses claim to exist” – quoted in Richard Commission Report, p. 115.

The Richard Commission rightly came down hard on this rather complacent, ‘insider’ view of the current settlement. It focused on the one hand on ‘efficiency’ criteria, making the point, with copious support from the evidence presented to it, that Wales was disadvantaged by the system of Wales-UK interactions outlined above, that Welsh priorities did frequently fall off the radar screen entirely, that UK ministries were at times insensitive to Welsh concerns.

It also made the crucial point – which is repeatedly made by commentators on devolution, and repeatedly ignored by government – that even where things do despite everything work out well for Wales, there can be no guarantee that they will continue to do so. Much of the current ‘success’ depends on good working relationships between Labour governments in Westminster and Wales, and between Peter Hain and Rhodri Morgan. It is likely, for example, that a future Conservative government at UK level would be less receptive to the National Assembly. A different UK government could easily enough block the National Assembly’s access to the Westminster legislative process. Perhaps more likely is that there would be fewer opportunities to ‘piggy-back’ Welsh provisions onto Westminster Bills if the Welsh and UK governments came from different political traditions. The clearer separation of Welsh and Westminster responsibilities that the Richard Commission recommended would allow fuller scope for the expression of Welsh priorities and insulate the Assembly from the effects of changes of government at Westminster.

The View from ‘Outside’

But the Commission did not focus just on institutional problems which make the current settlement less than optimal on efficiency grounds. It also sought views from the general public by drawing on academic research on public attitudes and by encouraging submissions from the public. These revealed very different concerns than those which occur to ‘insiders’. In particular, there appears to be a widespread crisis of trust in UK government and a desire for greater ‘proximity’ of decision-making. This anti-centralist feeling helps explain an apparent paradox in public opinion:

- People in Wales think the Assembly has not yet made enough difference to health, education and other key policies ...
- ... but they also think that the National Assembly should have more influence over policy in Wales (with the Scottish Parliament model of devolution now the most popular constitutional option in Wales).

The message appears to be one of less Westminster and more National Assembly. The Richard Commission – having stressed criteria about the quality of democracy – took these concerns seriously. Its recommendations for strengthening the Assembly and disentangling it from its current, complex and problematic relationships with UK institutions are not therefore just about the efficiency criteria set for it, but also have to be seen as a response to public

concerns about the remoteness of Westminster and public optimism about bringing more decision-making powers to Wales. This mix of efficiency and democratic reasons for strengthening the powers of the Assembly make the recommendations in this part of the Report compelling.

Electoral Arrangements: What's Wrong with AMS

The same strength of argument does not underlie the recommendations on electoral arrangements. This does not mean the Commission did not receive evidence to support those recommendations. It clearly did, at least insofar as a great deal of representations were made which were critical of the additional member system (AMS). These were critical in particular of the Assembly Members elected from the regional lists. They were also made disproportionately by members of the Labour Party.

The central concern about AMS appears to be that successful list members are often 'failed' constituency candidates. But broadly speaking that was the point in introducing AMS. Traditional first-past-the-post elections in Wales – including the constituency element of National Assembly elections under AMS – favour the Labour Party, which is strong in the most populous areas where there are the majority of constituencies. Supplementing first-past-the-post with a regional list 'top-up' under AMS was a way of opening up space for other voices in Welsh politics.

Some members elected by regional list do also stand in constituencies but have no chance of success due to Labour's structural advantages, but then much the same happens in AMS systems elsewhere without the apparent level of controversy in Wales. Such members are not seen as 'failures' or in some way 'second class' elsewhere. There is no particular reason – beyond the residual uneasiness of the Labour Party in Wales with the principle of a more proportional system – for them to be seen as 'failures' in Wales.

It may well be that the perceived problem with AMS is not in any way fundamental, but reflects more a difficult process of adaptation to the idea of multi-party politics which should ease over time. If this is right, then the Richard Commission may have been over-hasty, as it were throwing the baby out with the bathwater without giving full enough consideration to adaptations which might make AMS more palatable to Welsh (Welsh Labour?) tastes.

Electoral Arrangements: Is STV the Answer?

Equally, the case for the single transferable vote (STV) looks over-stated in the Report (though it is in effect presented more as a 'least worst system' than a perfect solution). Internationally STV is a rarely used system with a number of problematic features. One in particular appears to resonate with definitions in Wales of electoral 'failure'. STV works by establishing multi-member constituencies in which voters can express in rank order as many preferences as there are candidates.

Some of these candidates may win enough first preferences to get elected at the first count, though this is relatively rare. Others need to rely on the second, third or subsequent preferences of other voters, which are reallocated as the strongest candidates are elected and/or the weakest eliminated. This means that the last-elected candidates in any constituency can have won a share of first preferences of less than 10%. It is by no means clear that having the first preference of 10% of voters is any better – employing the same criteria of electoral

'failure' presented as evidence to the Commission – than being a member elected from the regional list who also fought and lost a constituency battle.

What Happens Now?

All of this could of course be irrelevant. What the Richard Commission has proposed cannot be introduced without primary legislation at Westminster. Getting the Report – or parts of it – onto the Westminster legislative timetable will not be easy. The first challenge will be to have Labour adopt the Report in its manifesto for what most anticipate to be a May 2005 General Elections. There are two problems here, concerning timing and Labour Party politics:

- First, the timing is tight. The National Assembly held an open debate on the Commission's Report on 28 April 2004, but is pausing for a period of reflection over the summer before holding a 'conventional debate with amendments and votes' in 'early autumn' 2004. This will not leave much time to claim a space in a manifesto for May 2005. As Robert Hazell elsewhere has suggested, perhaps the best that can be expected is a pledge in the Welsh edition of Labour's UK manifesto. And any pledge might 'cherry-pick' the report to avoid the more controversial issues which, if the debate on 28 April is an indication, could concern the proposed increase in size of the Assembly, and its electoral arrangements.
- Second, the internal politics of Labour are a problem in two ways. On the one hand Welsh Labour MPs are at best lukewarm and in many cases hostile to any changes going beyond the status quo (in part because of a self-preservation instinct: taking the Scottish example as a precedent, a legislative assembly would imply a reduction in the number of Westminster MPs). Peter Hain has committed himself to listening to the views of Labour MPs before making a final response to the Report; this does not augur well for a place in the manifesto. And on the other hand, Wales is a low priority. Beyond Hain, Lord Falconer and arguably John Prescott the wider Parliamentary Labour Party and Cabinet lack interest in and are largely ignorant of Welsh devolution. Again, this does not augur well for getting a commitment to implementing the Report into the manifesto.

A New Referendum?

If the Report in some form and against these odds does make it into the Labour manifesto, there are two more hurdles. The first is that Labour must win; a Conservative victory in a 2005 General Election would kill the Report off for the foreseeable future. The second is that there would most likely be a commitment to holding a further referendum in Wales before a new Government of Wales Act. Peter Hain has made it clear that this is his position, and would no doubt be supported in this by a marriage of convenience of Welsh Labour MPs at Westminster and the Conservative Party.

The Richard Commission reserved its opinion on whether a referendum is necessary, ruling the issue as beyond its remit. However, by emphasising quality of democracy alongside efficiency criteria in making its recommendations, it may in passing have strengthened the case for a referendum. For if the democratic arguments for change are as strong as the Commission has suggested, then a referendum seems a logical way of testing that argument. If there is a crisis of trust in Westminster and a desire for more proximity of decision-making, then a referendum should reveal it.

This *Devolution Briefing* was written by Charlie Jeffery, Director of the ESRC Devolution and Constitutional Change Programme. It reflects ideas discussed in two seminars held jointly by the Devolution and Constitutional Change Programme and the Richard Commission in October 2002 and January 2003, and in the conference 'Responding to Richard' held jointly by the Programme and the Institute of Welsh Affairs in Cardiff in April 2004.

The Devolution and Constitutional Change Programme was set up by ESRC in 2000 to explore the series of devolution reforms which have established new political institutions in Scotland, Wales, Northern Ireland, London and the other English regions since 1997. It has commissioned 35 projects around the UK to carry out top-class academic research and to contribute to the policy debates surrounding devolution.

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