

## Welsh devolution

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### Background

1. The Welsh electorate voted for devolution in 1997
2. Initially, the National Assembly for Wales was a single body corporate with executive, legislative and scrutiny responsibilities.
3. From 2002, resolved to create a de facto separation, adopting the title Welsh Assembly Government (WAG) for the executive.
4. The 2006 Act formalised the separation, by replacing the corporate body with a new national assembly and establishing the WAG, consisting of ministers who are members of and accountable to the assembly.
5. Ministers act on behalf of the Crown rather than as delegates of the assembly. Their powers include most of the executive powers that were held by the pre-2006 Act assembly and subsequent powers given to them by assembly Measures or Westminster Acts of parliament.
6. The assembly's legislative powers are founded on a patchwork of more than 400 laws in the Westminster statute book, some of which were made well over a century ago, and many of which set tight conditions on the assembly's ability to act. The risk of challenge on *vires* grounds is significant. Further, the pressure of the parliamentary timetable and the marginality of Wales in Westminster politics can make it difficult for the assembly to persuade the UK government to afford priority to Welsh concerns.
7. Crucially, the UK parliament remains the sole legislator in areas including defence, foreign affairs, fiscal, monetary and economic policy, broadcasting, social security, immigration, employment law, policing and criminal law.
8. On 3 March 2011, a referendum was held asking voters to allow the assembly to make "laws on all matters in the 20 subject areas it has powers for". This was supported by the voters.
9. The Act that allows this confers power to make laws, known as Measures of the National Assembly for Wales. These may be made only in respect of matters that fall within the assembly's legislative competence, as set out in Schedule 5 to the Act.

### Policy implications

10. Section 79 of the Act imposed a specific duty on the WAG to make and publish a sustainable development scheme setting out how it proposes to promote sustainable development. In May 2009, the WAG published *One Wales: One Planet*, declaring that sustainable development is its central organising principle. It also requires all bodies in Wales to commit to sustainable development. The WAG has set a target for all new buildings in Wales to be zero-carbon by 2011 (significantly earlier than the 2016 target in England). In addition, Wales is using its planning policies to set a national minimum standard for the sustainability of new homes and non-residential buildings to achieve this goal.
11. The National Assembly for Wales (Legislative Competence Environment) Order 2010 came into force in February last year. It extended the assembly's legislative competence to cover environmental protection. Jane Davidson, the WAG's environment, sustainability and housing minister, emphasised that it opened the way for the more rapid implementation of EU directives in Wales than in England. As with zero-carbon buildings and other EU-derived legislation, the direction of travel is similar in each jurisdiction, but Wales is seeking to arrive at sustainability before Westminster.

12. With regard to climate change mitigation, the WAG is committed to a 40% reduction in greenhouse gas emissions in Wales by 2020, against a 1990 baseline. To achieve this, it has set sector-specific targets covering transport; residential; business; agriculture and land use; public sector; and waste.
13. The energy policy statement delivered by the WAG in March 2010 explained how it will achieve the transition to a low-carbon energy economy in Wales. It aims that: by 2025, Wales will generate up to twice as much renewable electricity annually as it used in 2010; and by 2050, almost all Welsh local energy needs for heat, electricity and transport will be met from low-carbon sources.
14. Its policy levers are to: maximise energy-efficiency, particularly by improving the energy performance of all housing stock in Wales; shift to resilient and low-carbon electricity production, using secure and locally sourced renewable energy, including marine, wind, water and biomass power; and increase opportunities for green jobs, strengthening research and development, and improving quality of life and community engagement.
15. From 31 December, Welsh ministers will have the power to make building regulations. This will help the WAG to reach its targets through specific improvements in building standards in Wales.

### Legislative procedure

16. The Act provides for further matters to be added to those set out in Schedule 5, either by orders in council or by the inclusion of framework powers in primary legislation.
17. The order in council procedure requires the assembly to formulate a request for enhanced powers. Following discussions between the WAG, relevant Whitehall departments and the Wales Office, a proposed draft order is published for pre-legislative scrutiny in both parliament and the assembly. After the scrutiny process has been completed, the WAG submits the draft order – modified, as appropriate, to take account of recommendations arising from the scrutiny – for assembly approval. Once approved, the first minister formally conveys the request for an order in council to the secretary of state.
18. The secretary of state has 60 days in which to lay the draft order before parliament or to write to the first minister giving notice of his refusal to do so. If the order is laid before parliament, it requires the approval of both houses of parliament before coming into operation. Once an additional matter has been inserted into Schedule 5, a draft assembly Measure relating to that matter can be brought forward in the assembly.

An article by Malcolm Dowden on this issue has appeared in the *Estates Gazette*