

**RICHARD COMMISSION
RECOMMENDS
PRIMARY POWERS**

John Osmond reports that the unexpectedly radical recommendations of the Richard Commission –full primary legislative powers for the National Assembly and a chamber of 80 members elected by Single Transferable Vote – threaten to re-open old divisions in Labour’s ranks. The crucial debate will come at the Wales TUC’s annual conference at the end of April, leading to Welsh Labour’s special conference to debate the report, being organised on 11 September.

The National Assembly will gain primary legislative powers along the lines of the Scottish Parliament and increase its Members from 60 to 80 if the recommendations of the Richard Commission, published at the end of March 2004, are adopted.

The report, the result of an 18 month investigation, highlights the extent to which the relationship between the Assembly and Westminster has evolved over the past five years. As Lord Richard put it at the launch, “My feeling is that the Assembly is very rapidly outgrowing the existing structure.”¹ The report’s main recommendations are:

- There should be a legislative Assembly for Wales, with powers to pass primary legislation in the policy areas in which it took on powers in 1999.
- A new Wales Act could be put through Westminster and the new parliamentary style Assembly could be elected by May 2011 – that is, the elections due to be held after those due in 2007.
- In the interim, broad framework powers should be delegated to the Assembly, within the 1998 Government of Wales Act provisions. This should allow the

¹ Speech by Lord Richard, Cardiff, 31 March 2004.

maximum scope for the Assembly Government to exercise its secondary legislative powers to deliver its policies.

- To exercise primary powers, the Assembly’s Members should be increased from 60 to 80.
- The present system for electing Members – 40 first-past-the-post constituency Members and 20 List members elected by the Additional Member System – cannot sustain an increase to 80. Instead, the report says the best alternative is for all 80 members to be elected by the Single Transferable Vote system.
- The corporate body structure in which the Assembly as a whole is a single legal entity, with the members delegating their powers to the First Minister and Cabinet - should be replaced with a separated executive and legislature.
- Tax varying powers would be desirable but are not essential to the exercise of primary powers.
- The examination of primary legislation would require a change in focus in the work of the Assembly, particularly in the Committees, with a stronger culture of detailed scrutiny and challenge.
- The direct increase in costs of an Assembly with primary law making powers is likely to be £10 million a year, of which around half would be due to the increase in AMs from 60 to 80.

The report gives the following illustrative timetable for the implementation of its recommendations:

2005	Possible UK General Election
2005	Drafting approval for new Wales Bill
2006	Bill published for pre-legislative scrutiny
May 2007	Assembly election
November 2007	Wales Bill introduced
July 2008	Royal Assent
2008-2010	Boundary Review
2011	Election of new body with 80 Members and primary powers

Lord Richard said that at the outset of the inquiry he had been sceptical that enough time had elapsed since 1999 to assess whether any fundamental change was needed. However, the pace of change had been striking:

“We felt that this has changed the context for debating the powers. In 1999 the Welsh Assembly Government was getting to grips with its powers. By 2004 it is recognised as the initiator of policy on devolved matters and its capacity to do this has developed considerably ...

“We didn’t think the status quo was a sustainable option. The weight of the evidence presented to us pointed clearly towards giving the Assembly greater powers – so that it could implement the policies on which Members were elected and be directly accountable to them ...

“The surprising thing – and I want to emphasise this – is that we didn’t reach this conclusion because the system isn’t working. Almost the opposite in fact. It is precisely the success of the Assembly and the Welsh Assembly Government in establishing itself as the government of Wales in the key public policy areas that creates the pressure for change.

“We examined in detail the dynamics of the present situation and found that the Assembly is increasingly setting the legislative agenda for Wales in devolved areas and negotiating with Whitehall and Westminster for the legislation it needs. Since this is already happening, and likely to happen increasingly in future, it seemed to us that the most efficient and straightforward process would be for the Assembly itself to pass this legislation in Cardiff.”²

The report immediately won the partial endorsement of First Minister Rhodri Morgan. He said he supported the case for primary powers but was sceptical about increasing the number of Members and changing the electoral system.³ Secretary of State for Wales Peter Hain ruled out any reduction of Welsh MPs at Westminster.⁴ In Westminster opposition to the Richard recommendations was led by the North Wales group of seven Labour MPs, including Chris Ruane, PPS to Peter Hain, and David Hanson, PPS to the Prime Minister. In a joint statement they said:

“We believe we are reflecting the views of our constituents in North Wales when we say that it is far too early to make such major changes to the present arrangements. Increasing membership of the Assembly to 80, altering the electoral arrangements to a complete proportional representation system and giving the Assembly full legislative powers are, in our view, profound changes which would require the consent of the people in a referendum.”⁵

The divisions opening up in Welsh Labour’s ranks have resulted in a delay to the special conference being convened to consider the Richard Commission’s recommendations. To allow more time for a consensus to emerge, it has been pushed back from July to 11 September. A liaison committee comprising three AMs from the Assembly Group and three MPs from the Welsh PLP has been established to improve communication.⁶ Critical will be a vote on the issue at the Wales TUC at the end of April. If a motion supporting primary powers, being sponsored by Unison, is approved, the position of those in the party pushing for a further advance at the September conference will be strengthened. The National Assembly itself debates the

² *Ibid.*

³ Interview with BBC Wales, 31 March 2004.

⁴ *Western Mail*, 1 April 2004.

⁵ *Ibid.*

⁶ Membership comprises Leighton Andrews, AM for Rhondda; Lynne Neagle, AM for Torfaen; Ann Jones, AM for the Vale of Clwyd; Jackie Lawrence, MP for Preseli; Mark Tami, MP for Alyn and Deeside; and Wayne David, MP for Caerphilly.

report on 28 April, with a second debate taking place at the start of the Autumn session.

Peter Hain, who will be pivotal in negotiating any change through Westminster, alluded to the referendum hurdle in a lecture to the Constitution Unit at University College London, in January:

“The question of democratic legitimacy depends to a large extent on how fundamentally any proposed changes deviate from the existing settlement.”⁷

And he suggested that a range of options that did not go as far as the Scottish model were possible:

“First we could maintain the current arrangements whereby functions can be transferred to the Assembly on a case-by case basis. Second we could give the Assembly wider secondary legislative powers. Third, Westminster and Cardiff could operate joint pre-legislative procedures. Fourth Wales could adopt a Northern Ireland model under which the Assembly gained primary legislative powers in those areas already devolved, with the potential for future powers being devolved by agreement.”⁸

Commenting on the Richard Commission recommendations Plaid Cymru said:

“While we welcome the move towards primary law-making powers, we believe that the Commission has missed an opportunity to be even more radical in its approach. The reform of the Barnett formula is essential if we are to improve our economic performance. Since the advent of the Assembly, our GDP relative to the rest of the UK has fallen by 4 per cent. Under the existing Barnett formula, the increase in our share of public spending is falling year on year. Plaid Cymru in its evidence to the Richard Commission demanded full primary law-making powers over all the devolved areas, fiscal powers to vary income, corporation and environmental taxes, and reform of the Barnett formula.”⁹

Conservative Assembly leader Nick Bourne said:

“Giving the Assembly law-making and tax-raising powers would be a significant change to the way Wales is governed and must have a clear mandate [in a referendum]. Without it, the new settlement would be extremely fragile and could be undone in the same way as it was created.”¹⁰

Supporting the Richard recommendations Liberal Democrat leader Mike German said:

⁷ *Changing for Good – Devolution: the Silent Revolution*. State of the Nations Lecture, Constitution Unit, 27 January 2004.

⁸ *Ibid.*

⁹ *Western Mail*, 1 April 2004.

¹⁰ *Ibid.*

“The drive for laws appropriate for Wales already comes from the Assembly but that drive has been blocked because it is not possible for UK ministers to pilot such legislation with conviction. And it is not possible for UK MPs to scrutinise it with vigour. There is never enough Parliamentary time available to Wales, so we have the worst of both worlds: the Assembly has the initiative but not the power and Parliament has the power but not the initiative.”¹¹

Ron Davies, former Labour Secretary of State for Wales and now a spokesman for the Forward Wales party said:

“What I am surprised at is how radical it is and how far reaching it is. I think the progressive forces in Wales can get behind this. The question now is for the Labour Party – will the Labour Party be prepared to get behind it?”¹²

In a statement to the Assembly in plenary session, on the day the Richard Commission report was published, Rhodri Morgan said its production signalled a maturing of the Welsh political system:

“It is a mark of the maturing of a civic society in Wales that we could in the first place set up such a commission and, second, that the commission can come back with a report signed by all its members. Wales could not have done that five, ten or 20 years ago. Today I am proud of my country and we all have good reason to be proud of what this signifies as a sign of growing maturity in the political process. All of us involved in political life in Wales know just how contentious the remit provided to the Commission was capable of becoming.”¹³

It was noteworthy that business leaders in Wales broadly welcomed the recommendation of more powers. Managing Director of Cardiff-based construction firm Stradform, John Worrall, said:

“Now that we have the Assembly it is only right and proper that its powers should be extended to cover primary legislation. From an indigenous business perspective there is a feeling that the Assembly should be doing more to help support what is the engine room of the Welsh economy.”¹⁴

Owain Llewellyn, Chair of the Institute of Chartered Surveyors Wales, said:

“Giving the National Assembly legislative powers would go a long way to addressing its present shortcomings. The majority of our membership feel that the National Assembly has insufficient influence on the decisions taken by Westminster in relation to policy issues affecting Wales and that it has not been effective in influencing UK policy.”¹⁵

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Assembly Record*, 31 March 2004.

¹⁴ *Western Mail*, 1 April 2004.

¹⁵ *Ibid.*

Roger Young, Director of the Institute of Directors Wales, said:

“If, by increasing devolved powers, businesses and inward investment can grow more rapidly the IoD is supportive of the recommendations.”¹⁶

Even the Wales CBI which had opposed the Assembly in the 1997 referendum acknowledged that they were now happy with the present model, though were not at this stage in favour of a further advance. Meanwhile, powers in a range of areas continue to be devolved to the National Assembly. The Higher Education Bill sets out the transfer of student support and tuition fee powers to the Assembly. The Children and Family Court Advisory Service (Cafcass) is to come under the control of the National Assembly through the Children’s Bill. Additionally plans are being made to transfer to the Assembly full statutory authority and policy responsibility for animal health and welfare matters.

John Osmond is Director of the Institute of Welsh Affairs

¹⁶ *Ibid.*