

## **A WELSH MYSTERY TOUR**

John Osmond asks where devolution is taking the National Assembly

Don Anderson, the former Labour MP for Swansea East and a late convert to devolution, once described it as a mystery tour. “I recall,” he said, “the fine story of a bus tour from Cwmrhydyceirw in my constituency. There was a sweep about where the tour would end, and it is said the driver won. The people of Wales are driving this mystery tour. They will decide the pace and direction.”

Although the destination of Welsh devolution remains uncertain, six years into the experiment two things are clear. The direction is in favour of more powers and the pace is hotting up.

In contrast with the Scottish Parliament, the National Assembly for Wales was denied powers to make primary legislation. A few years ago an all-party Commission established by the Assembly under Lord Richard took copious evidence and unanimously concluded that, of course, the Assembly should be a law-making body.

Lord Richard also said that to do this properly the Assembly should increase its size from 60 to 80 members who should be elected by the single transferable vote proportional system. Needless to say these latter two parts of the package were highly unpalatable to the Labour Party. The first would mean a reduction in Welsh MPs at Westminster, while Labour retains a visceral dislike of PR in all its forms.

As a result we now have a compromise, some would say botched, solution of leaving the Assembly members as they are, but allowing them to fast track primary legislation through Westminster using a cunning device known as Orders in Council. Initiated by the Assembly and approved in short debates at Westminster these will devolve primary powers piecemeal in specified subjects to Wales.

All this is supposed to come into play following next May’s Assembly election when it is widely expected that Labour will lose its present control of the Assembly – currently ruling as a minority administration – and be forced into a coalition, most

probably with the Liberal Democrats. However, even before then primary powers are flowing Wales's way.

As a consequence of unilateral decisions by a number of Whitehall departments the National Assembly is already having primary legislative powers devolved in key fields such as education, health and local government. So, for example, the new Local Government and Public Health Act gives the Assembly Government the power to reorganise local government in Wales. The Education and Inspections Bill gives the Assembly Government powers over virtually all aspects of school governance, from the curriculum to school dinners. And the NHS Redress Act 2006 leaves it to the Assembly Government to make what provision it wants for out of court settlements claims. In all these areas Wales will go it alone.

What we are witnessing is the beginning of the UK Parliament withdrawing from Wales in the legislation it enacts. Instead, it is making English-only law and in the process creating two jurisdictions, one for England and one for Wales. This is unprecedented, radical, and likely to prove more influential in the devolution process than the complex Orders in Council procedure.

It is significant, too, that it is being undertaken by the Westminster Parliament unilaterally, with no formal procedures for consulting the National Assembly. This underlines a point highlighted by the Richard Commission concerning the relationship between Cardiff and Westminster. As Lord Richard put it, "The fundamental problem is one of split accountability – proposals are initiated in one representative body and scrutinised and adopted in another." It was one of the reasons that led him to recommend a clean break in law making for Wales.

Where will this mystery tour lead us? Inevitably it seems, in the direction of Wales having a Scottish-style legislative Parliament. A problem, however, is that it remains a mystery tour for the Welsh people who, generally speaking, have no idea that there is a tour underway at all.

What this points to is another referendum, following the one in 1997 that allowed the Assembly to be set up in the first place. However, it is unlikely that the new Assembly Members following the May elections will want a referendum just to move to a law-making Parliament. They will want to revisit those other parts of the package set out by the Richard Commission: an increased membership to deal with the increased workload, and a proper system of proportional representation, rather than the present partial system in which only a third of them are elected by PR. It is likely, therefore, that more legislation will be needed before a further referendum will be held, predicted for 2011. But the way things are going the Assembly will be able to pass this itself.

- John Osmond is Director of the Institute of Welsh Affairs. This article appears in the February 2007 issue of the RSA magazine.