

Paper 4 - The Choice Before Us

Currently **Part 3 of the Government of Wales Act** is in force. The purpose of holding a referendum is to decide whether to bring **Part 4** of that Act into force.

Part 3: The Current Arrangements

At present the National Assembly is able to pass primary legislation (called Assembly Measures) in the 20 Policy Fields for which it is responsible. However it must first have the power to do so conferred upon it by the Westminster Parliament. Once the power to legislate in certain matters has been conferred, the Assembly has that power permanently.

There are two main ways of conferring the powers:

- (1) Through Acts of Parliament which give the Assembly 'framework' powers within the scope of those acts. This usually involves behind-the-scenes negotiations between the UK and Welsh Governments about whether such powers should be conferred, and what they should involve.
- (2) Through Legislative Competence Orders (LCOs). The steps in the process are roughly as follows:
 - Internal discussion on the terms of a draft Order with the Wales Office and Whitehall
 - Draft LCO published
 - Pre-legislative scrutiny by committee at the Assembly
 - Pre-legislative scrutiny at Westminster, usually by the Welsh Affairs Committee in the Houses of Commons and the Constitution Committee in the Lords. Each committee prepares a report and can propose amendments to the draft LCO, as can the Secretary of State if s/he wishes
 - The Welsh Government considers the various responses, and prepares a formal LCO
 - The proposed LCO is considered by the National Assembly
 - If approved by the Assembly, it is then considered at Westminster. It may be considered again by the Commons Welsh Affairs Committee, and will also be scrutinised by the Joint Committee on Statutory Instruments
 - Both Houses of Parliament approve the LCO, or not. If approved, it then receives Royal approval

Only after completing this process, which can take two years even in straightforward cases, longer in some, can the Assembly set about considering and passing a law.

Here are some of the system's disadvantages:

- Consumes time and resources
- Slows down the process of implementing policy
- Hard for the public and organisations to understand and participate in the process
- Confuses issues of policy and powers
- Process can fail through lack of time

Examples

- The **Affordable Housing LCO**, first announced in June 2007, would have enabled the National Assembly for Wales the power to pass Assembly Measures in relation to the disposal of dwellings and dwelling houses by social landlords. The scope of the LCO included the suspension of the Right to Buy and the Right to Acquire in areas of housing pressure. After the Joint Committee on Statutory Instruments expressed doubt that the Order was legally sound, it was withdrawn and replaced by a new LCO introduced in July 2009, which is still at the pre-legislative stage (as of early February 2010).
- The **Environmental Protection and Waste Management LCO**, first announced in June 2007, will enable the Welsh Assembly Government to bring forward proposals for Measures with the aim of creating sustainable communities, which will include improving local environmental quality, increasing recycling and improving waste management, and strengthening pollution controls. The Order has had to be redrafted and is yet to receive Royal Assent after being in progress for over two and a half years (as of early February 2010).

Part 4: Primary Law-making Powers

Bringing Part 4 into force would give the Assembly a general power to legislate in the 20 'Fields' of policy like health and education, without having to navigate the above process.

The advantages would include:

- Saving time and resources
- Prompt implementation of policy as needed
- Easier for the public and organisations to understand and participate
- Creating more strategic legislation
- Concentration on policy rather than powers

These are the kinds of arrangements normal in federal or devolved systems throughout the world, including Northern Ireland and Scotland.