

THE RICHARD COMMISSION RECOMMENDATIONS AND THE GOVERNMENT OF WALES ACT 2006

In 2002, the National Assembly for Wales established a Commission under the chairmanship of Lord (Ivor) Richard of Ammanford, to examine the powers and electoral arrangements of the Assembly and to produce an independent report on these matters. Having consulted widely and taken extensive evidence, the Commission reported in July 2004 and made a series of proposals on how to take forward Welsh devolution. The proposals received cross-party support, within the Commission and outside it.

The UK Government's response to the Richard proposals was the Government of Wales Act 2006, which introduced the model of devolution we now have in Wales. It included limited legislative powers, the scope of which can be expended piecemeal over time by means of Legislative Competence Orders. The Act includes the provision for devolving primary law-making powers to the Assembly, subject to a referendum.

The provisions of the Government of Wales Act 2006 differs in many important respects from what was recommended by the Richard Commission. These differences are outlined below.

The overall vision	
<i>Richard Commission</i>	'Making the processes of devolved government more accountable and clearer to the wider public, and ... giving the Welsh Assembly Government the tools to implement directly its policies and translate its priorities and timetable into legislative form'. ¹
<i>GOWA 2006</i>	'Providing a practical, common sense route-map to better governance ... designed to meet the needs and aspirations of the people of Wales'. ² In practice: created a highly complex set of arrangements, very hard even for lawyers to comprehend or explain.

Separation of the executive and legislative functions	
<i>Richard Commission</i>	Replacement of National Assembly as a single body corporate with separate legislative and executive institutions.
<i>GOWA 2006</i>	Replaced the single body corporate with separate legislative and executive institutions (the National Assembly and Welsh Assembly Government). Conferred wide range of powers on the Assembly Government.

Legislative powers for the Assembly	
<i>Richard Commission</i>	A legislative Assembly on the model of Scotland Act 1998, allowing the National Assembly to legislate on everything save what is expressly reserved to Westminster.
<i>GOWA 2006</i>	Legislative Assembly on a different model. Even after 'primary legislative powers' are brought in, the Assembly will only have the power to legislate on matters expressly conferred on it, not a general power subject to reservations.

¹ *Richard report*, chap. 14, para. 14

² Ministerial foreword to Wales Office *Better Governance for Wales* Cm 6582

Timescale for bringing in the changes	
<i>Richard Commission</i>	The new legislative powers to be implemented by 2011 or sooner if possible, the main constraint envisaged being the need to review electoral boundaries.
<i>GOWA 2006</i>	The Act is open-ended about timing. The <i>One Wales Agreement</i> however refers to a referendum on 'primary legislative powers' being held at or before end of legislative term in 2011.

Referendum	
<i>Richard Commission</i>	Expressed no view about whether one is needed, but accepted need for proper consultation of the people of Wales about major changes in the way they are governed.
<i>GOWA 2006</i>	Referendum needed before 'primary legislative powers' can be devolved. Consent for a referendum is needed from five bodies: Welsh Assembly Government, the National Assembly acting by two-thirds majority, Secretary of State for Wales, and both Houses of Parliament at Westminster.

Size of National Assembly	
<i>Richard Commission</i>	80 Assembly Members, to ensure the Assembly has the proper capacity to scrutinise legislation and hold Ministers to account.
<i>GOWA 2006</i>	60 AMs, with no mechanism for change.

Electoral system	
<i>Richard Commission</i>	Single transferable vote, to ensure proper proportionality of representation and equality of status among AMs
<i>GOWA 2006</i>	Existing additional member system retained. Ban on 'dual candidacy', not adopted in any other democratic system.

Transitional arrangements	
<i>Richard Commission</i>	'A new legislative partnership' using delegated powers in primary legislation to 'expand experience of policy-making and legislating through secondary powers', with immediate effect.
<i>GOWA 2006</i>	Complicated mechanism to confer legislative powers on the Assembly in two ways - 'framework legislative powers', plus Legislative Competence Orders (LCOs) to confer legislative powers by order in council. Each route now amends Schedule 5 to the 2006 Act, which sets out the Assembly's legislative powers. This means that the Assembly's powers are constantly changing, so there is much scope for confusion about where a particular power lies.

Tax-varying powers	
<i>Richard Commission</i>	'Desirable but not essential'.
<i>GOWA 2006</i>	No tax varying powers or provision for their introduction

Role of Secretary of State	
<i>Richard Commission</i>	Not mentioned.
<i>GOWA 2006</i>	Secretary of State retains existing right to attend and participate (but not vote) in National Assembly and receive papers. Can delegate right to attend and participate to other UK ministers. Also has right to decide whether to submit proposals for LCOs from the Assembly to Parliament, and to decide whether to submit proposal for referendum to Parliament, even if the Assembly has voted 2 to 1 in favour as required by the Act.

CYMRU YFORY VIEWPOINT

Cymru Yfory consider the present arrangements do not live up to the aspirations of the Richard Commission report, and constitute a highly complex set of arrangements that do not make for good governance or clear democratic accountability.

The complexity of the present arrangements is a source of major concern, with the package of legislative powers at the National Assembly's disposal already becoming complex and opaque, just six months after the new arrangements came into force. Schedule 5 to the 2006 Act reveals a range of different ways of conferring powers on the Assembly – sometimes in broad general terms, sometimes very narrowly and specifically and sometimes with many complicated exceptions. Such a situation makes it difficult to know where power lies or how it is exercised. .

We urge simplification and clarification of the Assembly's legislative powers at the earliest possible date. We also urge that other Richard Commission recommendations left outstanding by the Government of Wales Act 2006 are addressed, especially the number of AMs, the role of the Secretary of State, the desirability of tax-raising powers and the electoral system.