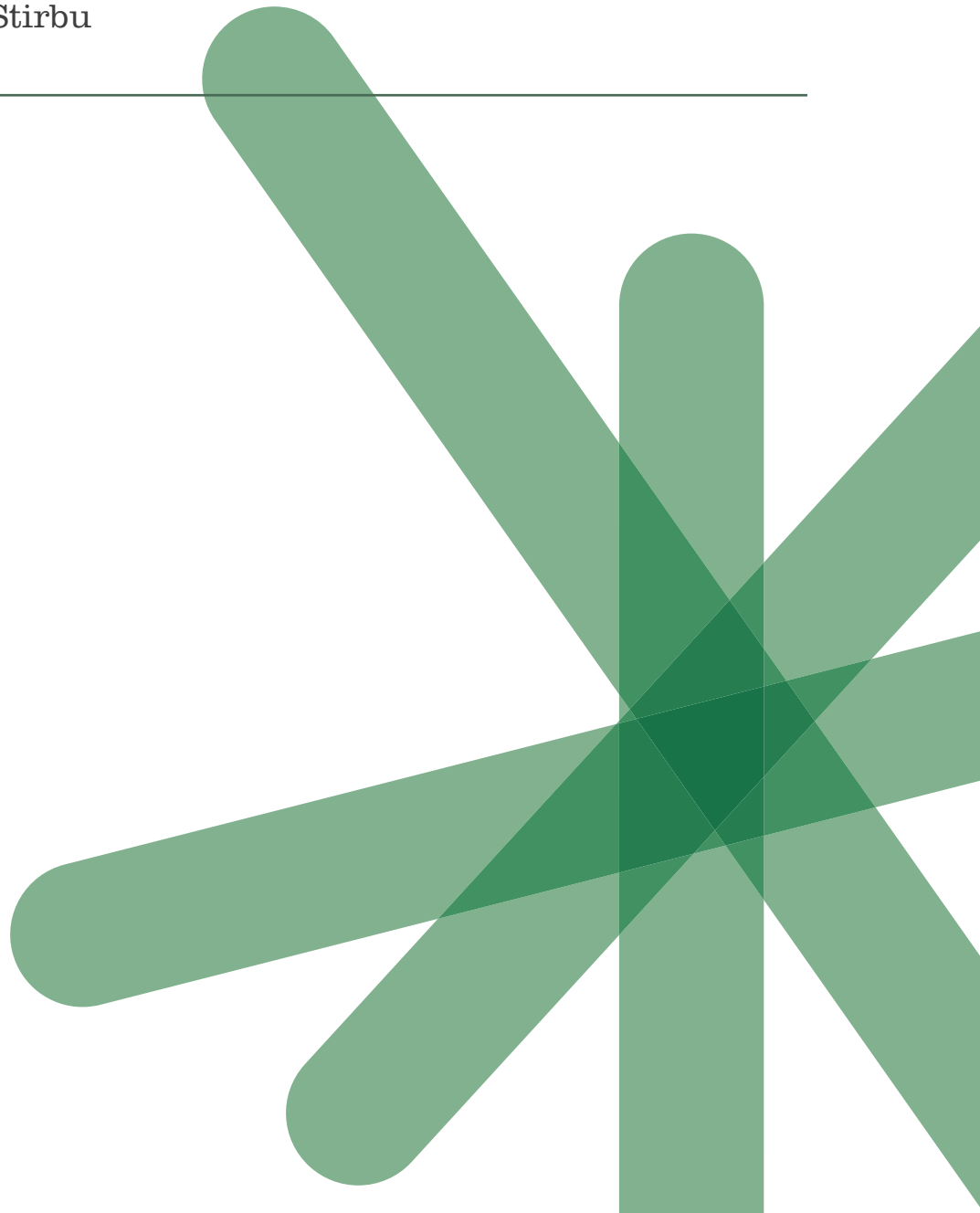
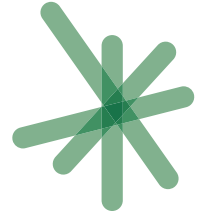

Chapter 1

The Capacity of the National Assembly

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Introduction

This paper collates findings from our on-going research around the capacity of the National Assembly (see, for example, McAllister and Stirbu, 2007; McAllister and Stirbu, 2008). In particular, we deploy findings from a series of interviews with politicians, Assembly officials and representatives from civil society. We contextualise our findings through a range of relevant academic literature and also use lessons from existing good practice in other institutions. The paper focuses on several long-standing issues in relation to the Assembly's operating and strategic capacity. It also considers changes during the fourth Assembly. There are four key strands to our analysis:

- Support for scrutiny
- Institutional scrutiny mechanisms
- Assembly size
- Wider engagement with the electorate

In relation to the first two strands, primary attention is paid to the operation of the Assembly's committees since they are normally where most effective scrutiny in democratic legislatures occurs, although scrutiny undertaken through Assembly plenary sessions is also addressed. In the final section, we make some specific recommendations to improve the capacity of the Assembly. It is also worth noting that some inherent capacity issues are more easily addressed than others. We attempt to create some hierarchy of changes that might be implemented in the short and medium term that do not depend on increasing the number of elected politicians.

Our choice of themes draws on a range of scholarly literature. The emphasis on support for scrutiny reflects the significance of this theme in relation to the effectiveness of the committees (Newton, 2001; McKay and Johnson, 2010). This section also encompasses distinctive issues about ministerial scrutiny through the committees, again a reflection of issues raised through wider scholarship (Rogers and Walters, 2004; Norton, 2005). In addition, this aspect reflects findings about wider support for scrutiny through scholarship on the training of elected politicians (Steinack, 2012).

Similarly, our analysis of institutional scrutiny mechanisms also uses themes identified as relevant to overall effectiveness. In particular, we draw on scholarship about the impact of the scale and comprehensive coverage of committee systems in the UK (Newton, 2001); and also beyond, for example in relation to India (Bal Shekar, 2003), Japan (Kesavan, 2003), and the Netherlands (Hazan, 2001). In addition, our analysis reflects extensive scholarship about appointments to such committees,

for example concerning Italy (Hazan, 2001), and Japan (Fukui, 2003). Our structure also relates to scholarship about workloads of politicians (Searing, 1994) and scrutiny in plenary sessions using, in particular, analysis of parliamentary-assembly questions (Franklin and Norton, 1993).

The matter of size reflects a topic that has been an occasional concern of the wider scholarly literature (Stone, 1998) but which has been a recurrent issue in relation to the operation of devolution in Wales (Richard, 2004). In some contrast, our focus on wider engagement with the electorate draws on a substantive literature that incorporates theoretical discussions (Bloomfield et. al., 2001) and analysis of activities undertaken by specific parliaments and assemblies (Lusoli et. al., 2006; Hansard Society, 2010; Leston-Bandeira, 2011).

Support for scrutiny

Support for scrutiny is considered in relation to internal back-up through Assembly structures, external assistance through hired research support and the use of witnesses as well as input and co-operation from Ministers.

1. Internal support

In relation to committee scrutiny, although the quality of the clerking and research back-up was widely acknowledged to be high by the AMs, the scale of this support was relatively modest. For example, in the fourth Assembly most committees were assigned two dedicated clerks and could draw on expertise from several small teams based in the research office and the resources of the library.

Training for AMs has traditionally been primarily through an induction programme which was rather rudimentary and had a tick-box feel. This weakness reflected resistance from AMs to the idea that they needed to be trained. The seeming lack of enthusiasm for both the initial training of new members and continuing professional development in Wales was not unusual and reflected more general research on attitudes and behaviours of UK politicians (Fox and Korris, 2012), some aspects of which were more accentuated at Westminster than in Cardiff, Belfast or Edinburgh.

There are, however, clear signs that this culture is changing. In particular, the new intake of AMs is more receptive to the notions of training and professional development and there is now a more proactive approach from the Parliamentary Service following the report of the Independent Review Panel (National Assembly, 2009).

2. External support

The politico-administrative culture at the Assembly generated capacity constraints because many AMs were reluctant to utilise external expert advisors to assist committee scrutiny. However, external support was often hired to assist with budgetary scrutiny and some of the more technical inquiries. For example, in the third Assembly, the Sustainability Committee hired external advisors concerning carbon reduction, the marine bill and planning (Sustainability Committee 2011, 7).

Our findings suggest significant limitations on the capacity of civil society organisations to support scrutiny at the Assembly. This has been shown concerning certain high-profile organisations. For example, the extensive committee structure of the third Assembly

placed substantial pressures on the Welsh Local Government Association, which between September 2008 and July 2010 sent employees to Assembly committees as witnesses on 31 occasions. As one of those involved told us: “In many instances the topic of the inquiry was outside what we would do in our day-to-day work”. He added that the burden of supplying evidence for Assembly inquiries “amounted to two or three full-time posts”.

These pressures occasionally led the WLGA to decline to participate in inquiries, for example a WLGA interviewee recalled that requests to assist an inquiry about domestic abuse were rejected because the topic was “outside the standard remit of our work”.

In contrast, representatives from other agencies felt excluded from the committee process. For example, one representative of a major non-governmental organisation in Wales admitted that contact with the Assembly in the last two years had been limited and the only invite to appear in front of committees for evidence came via the Wales Council for Voluntary Action rather than directly from the Assembly.¹ The same representative felt that the organisation’s expertise and views might have been asked for on several other occasions, given the relevance of the inquiries for the organisation. These findings suggest, therefore, weaknesses in committee engagement, a tendency to overload a few prominent organisations, and a failure to engage effectively with some other third sector agencies.

3. Ministerial scrutiny

In relation to ministerial witnesses, requests to attend were typically met with acceptance and clashes with ministers over attendance were rare. One exception related to the Deputy First Minister in the third Assembly, who cited other commitments in an attempt to avoid attending a Finance Committee session on transport.

In general, however, ministerial appearances were a regular feature of committee sessions. In 2009-10 there was a combined total of 123 appearances by cabinet Ministers before the Finance Committee and the five scrutiny committees. This level of appearances reflected, in part, a cultural legacy from the initial corporate status of the Assembly when Ministers were members of the committees (McAllister and Stirbu, 2007). Furthermore, this evidence also implied a continuing culture of ministerial co-operation and thus support for the scrutiny process through acceptance of substantial and recurrent accountability to the AMs. Overall, this data also suggests ministerial acquiescence in Wales to a much greater degree of committee scrutiny than experienced by Ministers in Scotland, Northern Ireland or at Westminster (Cole and McAllister, 2011).

Scrutiny: institutional mechanisms

1. Committee scrutiny – scale in the third Assembly

Overall, the institutional infrastructure of the third Assembly generated a substantial range of committee activity, which would appear to have equated to outputs at the House of Commons. For example, our analysis of the Finance Committee and the five scrutiny committees from May 2008 to April 2009 showed that they published reports in relation to 41 inquiries. Similarly, at the Commons six select committees covering similar responsibilities published 46 comparable reports from November 2008 to November 2009.

However, the overall scale of the committee matrix in Wales, the substantive agendas,

the small number of AMs (see below) and logistical constraints, such as the availability of suitable rooms, caused significant difficulties. For example, with only one meeting per fortnight - which was an inadequate timeframe within which to address its agenda - the Finance Committee initially struggled with its schedule. As a result it had to circumvent a range of difficulties such as timetabling clashes with other committees and the availability of rooms with public access, before securing additional slots.

In addition, time pressures meant that in the third Assembly it was difficult to take committee members out of Cardiff because they would miss too many other meetings, and cause problems in finding substitutes for other committee sessions. This limitation diminished capacity to raise public awareness of the Assembly through holding public sessions across Wales, an approach that has been recognised as successful in Scotland (Davidson and Stark, 2011).

2. **Committee scrutiny - workload**

The small size of the Assembly (see below) and the substantial committee structure during the first three Assemblies meant that committee workload strained both the opposition parties and the government parties.² For example, in the third assembly, 13 opposition and backbench AMs served on four or more committees. These capacity issues were particularly acute in relation to backbench Labour and Liberal Democrat AMs, who sat on an average of 3.1 and four committees respectively.³

Such capacity difficulties, combined with the fact that one committee (Health, Wellbeing and Local Government) had responsibility for scrutinising areas that represented half the government's budget, led to substantial changes to the committee configuration at the start of the fourth Assembly. The most important was a substantial reduction in the number of committees and the abolition of the distinction between legislative and non-legislative scrutiny, specifically through the abolition of the legislation committees. This change had potential benefits in relation to the development of expertise because the same AMs would undertake both legislative and non-legislative scrutiny across specific policy-areas.

3. **Committee scrutiny – scale in the fourth Assembly**

However, reforms to the committee structure at the start of the fourth Assembly risked the ultimate marginalisation of non-legislative scrutiny as legislation increases. This is a trend that might match developments in the Scottish Parliament, where the two types of scrutiny are undertaken by the same committees. As one AM who opposed these reforms commented:

“There is the danger that committees will get bogged down in legislation and will not deal with the scrutiny of Welsh Government Ministers’.

Early evidence for such an outcome can be identified in relation to the Communities, Equality and Local Government Committee, where, from January 2012 to the end of March 2012, debate was dominated by legislative scrutiny, principally deliberations on the Local Government By-Laws (Wales) Bill and the Official Languages Bill. Overall, as another AM noted:

“There is so little legislation at present that the committees have not had to make compromises... as the legislation increases I suspect that the committees will feel the strain”.

Such concerns have been recognised at the Assembly, which will soon review the operation

of the committee system.

4. **Committee scrutiny - appointments**

The appointment of committee members and chairs broadly reflected a traditional political patronage process controlled through the leadership and bargaining amongst the party machines, in which the input of most AMs was restricted substantially to expressions of personal preferences. However, the small number of AMs, and thus prospective appointees, meant that the whips had limited room for manoeuvre with specific appointments and thus a restricted capacity to discipline AMs through threats of non-appointment to, or dismissal from, favoured committee positions. Often the difficulty was to persuade or cajole busy members onto committees, not issue threats about removing patronage. Furthermore, in the fourth Assembly the Labour Group elected committee chairs, three AMs being chosen and then allocated to specific committees.

5. **Scrutiny in plenary**

Overall, scrutiny in plenary sessions was generally regarded by AMs as being less effective than committee scrutiny. In particular, there was widespread criticism of some government ministers' attempts to avoid answering questions and a tendency to read out prepared briefs, often of marginal relevance to the question posed. One issue was that the Assembly had adopted the Westminster practice that the Presiding or Deputy Presiding Officer could not challenge the Minister to answer the question, a situation that was compared unfavourably with committees where some chairs made use of powers to pressurise Ministers to supply genuine answers to questions.

This culture was also contrasted with attitudes towards contributions made by other members, for example the Presiding or Deputy Presiding Officer sometimes had an uncompromising attitude towards the time limits on speeches and had been known to switch the microphone off as soon as time was up, even if the speaker was in mid-sentence. The tight time limits on speeches also meant that AMs were often reluctant to accept interventions through concern that they would not have enough time left to deliver the core elements of their prepared agenda.

The size of the National Assembly

By any international comparison, the Assembly is a very small institution. With 60 elected members, it has fewer elected politicians than small US states such as Utah (73 members), North Dakota (94 members), Vermont (148 members) and Maine (151 members). Similarly membership of the Assembly is lower than 'small' German Lander such as Bremen (with 83 members) and Saxony Anhalt (97 members).

Within the UK context, the Assembly is less than half the size of the Scottish Parliament (129 MSPs) and substantially smaller than the Northern Ireland Assembly (with 108 MLAs), which has a population half the size of Wales. The number of elected national politicians is even smaller than many Welsh local councils. For example, Cardiff has 75 councillors and Swansea has 72. This small scale and the related capacity issues have generated proposals for more AMs almost from the beginning of devolution-the Richard Commission advocated an increase to 80 members.⁴

However, despite such calls for more members to discharge the Assembly's duties, there is no real consensus on change. The critical dynamic is perceived public opposition to increasing the number

of politicians. This has created something of a stalemate with few outside academia prepared to break ranks. Whilst acknowledging continuing capacity constraints arising from scale, the politicians we interviewed were all reluctant to campaign for enlargement.

AMs were also sceptical or hostile to proposals to enhance the capacity of the Assembly through a limited use of non-politicians. First, a suggestion that external individuals (who were not AMs) could be made Ministers was rejected by each of the four AMs interviewed in summer 2012 as undemocratic. Similarly, these AMs were all dismissive of the idea of making non AMs members of Assembly Committees, a reform that would draw on a local authority precedent, and preferred to restrict non-AMs to an advisory role (see also the National Assembly's Independent Review Panel, 2009).

However, the small number of AMs lies at the heart of many of the capacity restrictions of the Assembly. In particular, it was associated with the intensive workload of the third Assembly and the reduction in the scale of committee scrutiny in the fourth Assembly. The small scale also places a substantive burden on the political parties to select candidates of the highest calibre because the presence of more than one to two less effective members can quickly become an obvious weakness. In contrast, larger-scale institutions such as the House of Commons or the Scottish Parliament can easily absorb the diverse skills range and experience of elected members into the overall mix of roles that any legislature furnishes.

Wider engagement with the electorate

In recent times, parliaments and assemblies around the world have intensified their efforts in relation to outreach and engagement activities. Studies have revealed a paradigmatic shift in the way parliamentary organisations design and support their representative role (Stirbu and McAllister, 2008; Hansard Society 2010). From inward looking organisations, focused mainly on serving their members, many parliaments have become more outward looking, taking the initiative of connecting with the public at an institutional level, for example through educational programmes, visits, outreach, provision of information and partnership with civil society. Hence, public engagement features as a strategic goal for many legislatures around the world, for example the Scandinavian legislatures.

1. ICT, new media and the public profile of the National Assembly

The Assembly's robust media and external communication team has been active in ensuring the Assembly's presence on various social networking platforms such as Facebook and Twitter. However, new media alone cannot re-enforce participation patterns (Lusoli et. al. 2006). There is a conflict between the very nature of parliamentary organisations (slow, promoting a collective and neutral image) and the essence of new social media platforms (personal, individual, spontaneous). This paradox cannot easily be resolved by organisations seeking to promote a single corporate image and voice, but which are composed of, and shaped by, actors with often conflicting priorities (Leston-Bandeira, 2011). The task is bound to be even more complex for the Assembly whose profile has often been blurred, first by the corporate body structure and identity, then by the nomenclature of the two main political institutions in Wales: The National Assembly and the Welsh Assembly Government (Stirbu 2010). In 2011 the Welsh Assembly Government re-branded itself to 'Welsh Government', eliminating some of the confusion.

2. Education, outreach and partnerships with the civil society

The Assembly has used a series of innovative, yet not unique, ways to reach out to the public. For example, the Assembly has participated in important national festivals such as

the National Eisteddfod and the Royal Welsh Show. More high profile is the annual Presiding Officer's Tour of Wales and the Outreach Bus that raise awareness of the Assembly's business across Wales. These initiatives also play an important educational role, which remains essential in the context of a severe information deficit about the Assembly in Wales (Parry, 2009). The Education Services in Wales use the former Chamber in Ty Hywel to host various educational events (for instance the Youth in Politics two-day conference for A-Level students in February 2012). Additionally, in 2009, in partnership with local government, the Assembly established Step-up Cymru, a mentoring scheme for individuals from under-represented groups, aiming to develop community ambassadors who would represent the voices of these particular groups (Hansard Society, 2010).

Recommendations

In this section, we outline a series of recommendations in relation to the four overarching themes. We also indicate a hierarchy of change and specifically which changes could be introduced in the immediate and medium term and at minimal cost.

Support for scrutiny

In view of the encouraging trends concerning training and professional development, satisfaction amongst AMs with the quality of internal clerking and research support, together with the costs of proposing an increase in the number of staff, we make no recommendations concerning internal support. Our one recommendation in this area concerns enhancing external research support through statutory consultees.

1. Statutory Consultees

In the early years of devolution, several equality-based organisations enjoyed formal status as statutory consultees. These were the Disability Rights Commission, Stonewall Cymru, the Equal Opportunity Commission Wales, the Commission for Racial Equality and the Welsh Language Board. They all had standing invitations to attend meetings of the Equal Opportunities Committee as advisers and were closely involved with discussions around policy making. We suggest that such arrangements might be worth re-visiting, especially in view of the capacity problems experienced by some of the regular and recurrent consultees. We argue, therefore, that such changes could spread the consultation burden more equitably across civil society and governmental agencies. However, the capacity constraints on civil society identified here also raise the need for the Assembly to consider the potential resource implications for those organisations and to perhaps make some funds available to support them in this role. Given the deficiencies in engaging with some significant third sector agencies, it is also crucial that the statutory consultees are selected to reflect as diverse and wide a range of bodies as practical.

Scrutiny: institutional mechanisms

1. Committee structure

Given the potential substantive increase in legislation, early evidence from the Communities, Equalities and Local Government Committee and evidence from Scotland, where the legislative programme has marginalised wider scrutiny (see, for example Carman and Shepherd, 2009), we are concerned that non-legislative scrutiny might eventually be 'crowded-out' by legislative scrutiny obligations. We suggest, therefore, that if such a 'crowding-out' effect becomes evident

then specific legislation committees should be quickly re-established. We also suggest that reducing the number of AMs on each committee might have been a better approach to capacity problems than diminishing the number of committees.

2. Plenary scrutiny

In view of the relative weakness of ministerial scrutiny in plenary sessions, we suggest that the Assembly could depart from the Westminster tradition that the chair does not challenge the content of ministerial answers (Rogers and Walters, 2004). The Presiding and Deputy Presiding Officers should therefore be allowed to challenge Ministers to answer questions properly. Although this recommendation might appear a radical departure, it merely would bring practice in plenary into line with committee scrutiny procedure.

Given our findings about the impact of restrictions on the length of speeches in creating a quite artificial form of debate, often without exchanges between political opponents, we suggest that the Assembly consider increasing the permissible length of plenary speeches.

Assembly size

1. Assembly Associates

Despite the scepticism expressed by the politicians, we think that, given the constraints on size and a reluctance to increase the number of members, there might be merit in appointing a small number of individuals to serve on Assembly committees to enhance scrutiny. Such a proposal would build on practice in local authorities, where scrutiny committees often appoint independent members to enhance capacity (Wilson and Game, 2011). We suggest that these Assembly Associates might each serve for no more than four years and would have an unpaid and non-voting status. Such a reform would augment in-house expertise and add a greater diversity of backgrounds and sectoral experience to the Assembly's work.

However, we further suggest that it would not be appropriate to appoint more than a few Assembly Associates otherwise the democratic legitimacy of the Assembly might be weakened. Overall, we suggest that up to six could be appointed, a recommendation that would mean elected AMs retaining at least a 10-1 ratio.

2. 'Overhang' seats

A mechanism for providing some additional AMs without formally increasing the size of the Assembly might lie in the concept of 'Overhang seats' (used in the New Zealand Parliament, the German Bundestag and the National Assembly of Venezuela). The need for 'overhang seats' arises when a party in a Mixed Member Electoral System wins more constituency seats than its share of seats determined by the party vote (that is, its overall proportional entitlement). In such cases, the extra seats are not normally removed, rather the number of representatives in parliament increases just for the life of that parliament, so adding to its capacity (Soberg Shugart and Wattenberg, 2003; National Assembly Independent Review Panel, 2009).

3. Number of AMs

Given the substantial capacity constraints arising from the number of AMs and the comparative international data, we are sympathetic to the view that the Assembly requires more AMs. However, it is clear that at present the politicians feel unable to sell such an agenda to the electorate, an understandable concern in view of wider attitudes towards politicians and the

context of an economic recession. In addition, the contraction of the committee structure and the current legislative levels mean that currently the Assembly can operate with 60 members, although the position is far from ideal. Consequently, we believe there isn't an urgent imperative to try to persuade public opinion of the merits of increasing the size of the Assembly, especially in view of our recommendations with regard to AAs and 'overhang seats'.

However, the evolving devolved settlement in Wales means that at some stage these capacity issues will not be amenable to such relatively small-scale changes and the political leadership might be obliged to make a clear case for probably 80 AMs or risk the effectiveness of Welsh devolution. We suggest that the core factor might be the scale of the legislative programme. For example, if there were a shift to Scottish levels of legislation that would be likely to require an institution much closer in size to the Scottish Parliament – a comparison that might be useful in shifting opinion in favour of a larger Assembly.

Wider engagement with the electorate

1. Public participation

We stress the importance of retaining the experimentation and outward looking mentality with regards to public participation initiatives. In particular, there is potential to improve the physical access enjoyed by members of the public by adopting procedures used elsewhere, for example the 40 annual open days held by the Federal Assembly of the Swiss Parliament and public lunches arranged by the New South Wales and Queensland Parliaments. Similarly, the Assembly might consider organising broader public events. The Scottish Parliament, which hosts an annual Festival of Politics during the summer recess in August, has already adopted such an approach.

2. Information

We suggest that the Assembly should continue to regularly review the amount of information about its activities in the public domain and consider how the supply of information can be extended. In particular, attention could be given to the potential use of new ICT and social media as mechanisms for diversifying communication channels.

The Assembly could also draw on activities in other assemblies and legislatures. For example, the Swedish Parliament presents basic information in more than 20 languages, while legislative committees in the United States and Australia create extremely visible public and media profiles using the Internet and newspaper advertisements (Hansard Society, 2010). Furthermore, we suggest that the Assembly creates a stronger presence in the regions through partnership with public institutions such as public libraries or universities with the view to providing more information for the public. This approach has been used by the Swedish Parliament, which has created parliamentary info-spots in conjunction with public libraries around the country.

Hierarchy of change

We suggest that some reforms concerning wider engagement with the electorate might be introduced in the short term. These changes have no legislative implications and could be implemented, in part at least, through the expenditure of small amounts of money. However, the creation of a regional information infrastructure would have more significant resource implications

and might have to wait for a less restrictive public expenditure context.

Changes to institutional mechanisms and the establishment of statutory consultees could also be implemented without the expenditure of large sums of money, although they would entail significant procedural changes to the Assembly and thus might be best regarded as medium-term objectives.

We envisage changes to the size of the Assembly as a much longer-term agenda, given the legislative implications and the requirement to develop a substantive consensus and shift public and elite attitudes. In particular, increasing the number of AMs would have significant cost implications and thus can be viewed as a long-term aspiration that might have to wait until widespread acceptance of urgent capacity problems and or more prosperous economic circumstances.

Notes

- 1 Interview with policy officer, August 2012.
- 2 In the third Assembly 42 of the 60 AMs were members of one of the two governing parties (Labour and Plaid Cymru).
- 3 These figures relate to the end of the third Assembly.
- 4 Richard Commission report, 2004:
<http://www.richardcommission.gov.uk/content/finalreport/report-e.pdf>

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