



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

LEGAL SERVICES DEPARTMENT

WELSH ASSEMBLY GOVERNMENT

ADMINISTRATION OF JUSTICE IN WALES

Representations to the Working Party chaired by Lord Justice May

1. Executive Summary

1.1 The Welsh Assembly Government welcomes the opportunity to contribute to the work of the Working Party in its consideration of the deployment of the judiciary outside London and in particular, to support the case for a strengthening of the Administrative Court in Cardiff and to comment more generally on the High Court and Court of Appeal in Wales.

1.2 The Welsh Assembly Government considers that the Working Party should consider the deployment of the judiciary in Wales in the context of the expanding devolution settlement in Wales and as part of wider constitutional initiatives to ensure the provision of institutions operating on the basis of openness, accessibility, scrutiny, accountability, respect and public engagement.

1.3 The Working Party should, in particular, take account of the increasing divergence between the law in Wales and the law in England, the bilingual character of the legislation produced by the National Assembly for Wales, and the need this generates for institutions managed locally and which are responsive to the needs of Wales.

1.4 The Welsh Assembly Government considers that there is a need to expand the role and function of the Administrative Court Office in Cardiff and to confer on that office full responsibility for the management of judicial review cases which are filed at, or transferred to, the Cardiff office.

1.5 The Welsh Assembly Government believes that the principle should be established that (save in very exceptional circumstances) cases which are commenced in the Administrative Court in Cardiff should be heard in Cardiff (or other appropriate court in Wales) and that there should be an expectation that all cases falling within the scope of paragraph 3.1 of CPR Part 54 Practice Direction – Judicial Review should be heard in a court in Wales.

1.6 The Welsh Assembly Government believes there is a compelling argument to be made for establishing an office of the Courts of Appeal in Cardiff and for more

frequent sittings of the Court of Appeal in Wales aimed at achieving a position whereby appeals originating from courts in Wales will be heard in Wales.

2. Devolved Government in Wales

2.1 The National Assembly for Wales was established by the Government of Wales Act 1998. The creation of the Assembly has resulted in a significant expansion in the number of Government decisions taken in Wales, and a significant expansion in the volume of legislation in Wales which is different to that in force in England. Since 1998 there have been a number of Wales only Acts of Parliament, and England and Wales legislation which have discrete provision in respect of Wales. This growing volume of separate primary and subordinate legislation affects an increasing number of public law decisions made in Wales.

2.2 The Assembly exercises its functions on behalf of the Crown and has acquired its functions from a number of sources namely:

- (i) Powers and duties conferred and imposed directly by the Government of Wales Act 1998.
- (ii) Ministerial functions transferred to the Assembly by Order in Council pursuant to section 22 of the 1998 Act (the first Transfer of Functions Order in 1999 listed executive functions derived from over 300 Acts of Parliament in each of the fields listed at Schedule 2 to the Act and further Transfers of Functions Orders have followed).
- (iii) Designation under section 2(2) of the European Communities Act 1972 as a body authorised to make regulations implementing European legislation.
- (iv) Primary legislation made since 1998 has made specific provision conferring functions on the Assembly.

The functions acquired by the Assembly pursuant to these various mechanisms include a large number of powers to make subordinate legislation (including some powers enabling the Assembly to amend primary legislation). The current extent of the devolved competence of the Assembly can be summarised by reference to the descriptions contained at Schedule 7 of the Government of Wales Act 2006 (Annex A) – a Schedule which captures the current executive competence of the Assembly as a basis for defining its future (primary) legislative competence.

2.3 In practice, the executive functions of the Assembly are exercised by Ministers (known as the Welsh Assembly Government) acting under delegated powers. Subordinate legislation is approved by the Assembly itself in plenary. Within the areas of devolved competence decision making by other public bodies in Wales (including local authorities) increasingly takes place within the context of Assembly subordinate legislation and policy guidance and direction originating from the Welsh Assembly Government. The point can be illustrated by reference to planning decisions taken in Wales, (which generate a significant volume of the workload of the Administrative Court in Wales). Local planning authorities in Wales operate within a

development plan framework which is unique to Wales under the Planning and Compensation Act 2004. The Assembly has powers to amend the Use Classes Order and the General Permitted Development Order to determine those circumstances in which planning permission is not required for particular types of development. Individual planning applications are taken by reference to planning policy guidance issued by the Welsh Assembly Government. Appeals against refusals of planning permission are determined by the Assembly (or by an Inspector appointed by the Assembly). The Assembly has the power to call-in planning applications made to a local planning authority for its own determination. At every stage, therefore, decisions are made within a policy (and increasingly legal) framework which is unique to Wales.

2.4 The Government of Wales Act 2006 will come fully into effect following elections to the National Assembly for Wales in May 2007. The 2006 Act marks a significant progression and strengthening of the devolution process in Wales. The 2006 Act will formally separate the executive (Welsh Assembly Government) from the legislature (the Assembly). Under the 2006 Act Ministers will exercise functions in their own right, rather than as delegates of the Assembly and executive statutory functions (including the power to make subordinate legislation) will in future be expressed to be exercisable by "Welsh Ministers" rather than being conferred on the Assembly. Existing executive functions of the Assembly (including powers to make subordinate legislation) will transfer to Welsh Ministers, who may acquire further powers through specific provision in future Acts of Parliament, further Transfer of Functions Orders, further designations under section 2 of the European Communities Act 1972 or by specific provision in future Assembly Measures (see below). This is in addition to the functions conferred on the Welsh Ministers directly by the 2006 Act itself. The Act makes provision for the appointment by Her Majesty, on the recommendation of the First Minister (with the agreement of the Assembly) of a Counsel General, who will be the legal adviser to, and the representative in the courts of, the Welsh Assembly Government.

2.5 The 2006 Act provides a mechanism to confer enhanced legislative competence on the Assembly in relation to specified subject matters relating to devolved fields. Through the mechanism set out in section 95 of the 2006 Act, and through individual Acts of Parliament, specified "matters" will be listed under the various "fields" set out at Part 1 of Schedule 5 in relation to which the Assembly may pass "Measures". Where matters are specified in Schedule 5 to the 2006 Act this will create an enduring competence on the Assembly to make laws in the form of Measures. Subject to the provisions of the 2006 Act Assembly Measures may make any provision which could be made by an Act of Parliament; in other words they may modify the effect of primary legislation made or enacted before or after the 2006 Act, or make entirely new provision. Assembly Measures are to be judicially noticed.

2.6 The 2006 Act contains further provisions for conferring "primary legislative powers" on the Assembly at some point in the future. The Act contains provisions which will enable a referendum to be held in Wales on whether the Assembly should have power to pass Acts ("Assembly Act provisions"). In the event of a majority of voters voting in favour of such a proposition, the Assembly Act provisions would replace the powers available to the Assembly to pass Measures. The Assembly's legislative competence would then be determined by reference to the provisions of

Part 4 of and Schedule 7 to the Act. An Act of the Assembly would have the same effect as an Act of the UK Parliament and would be judicially noted.

2.7 The 2006 Act contains provisions for the scrutiny of proposed Assembly Measures and proposed Assembly Bills by the Supreme Court. Section 99 provides a mechanism through which either the Counsel General or the Attorney General can obtain the decision by the Supreme Court as to whether proposed Assembly Measures or particular provisions of proposed Assembly Measures are within the Assembly's legislative competence. Section 112 of the 2006 Act contains similar provision in relation to Assembly Bills.

[Add s.96 Supreme Court Scrutiny of Orders in Council; expanded definition of devolution issue at paragraph 1, Part 1, Schedule 9; paragraph 32 of Schedule 9 procedure of courts and Tribunals.]

3. Assembly Legislation

3.1 The current Assembly has made extensive use of its existing powers to make subordinate legislation. Two points need to be emphasised in relation to the subordinate legislation made by the Assembly.

(i) *Bilingual Legislation*

3.2 By virtue of section 122 of the Government of Wales Act 1998 the English and Welsh texts of any subordinate legislation made by the Assembly which is in both English and Welsh when made shall be treated for all purposes as being of equal standing. A Court considering the legal effect of Assembly bilingual legislation must, as a result, construe the instrument in both languages, neither of which has priority over the other. Section 66(4) of the 1998 Act provides that the subordinate legislation procedures (established by Standing Orders) must include provision for securing that a draft of the statutory instrument containing any Assembly general subordinate legislation may be approved by the Assembly only if the draft is in both English and Welsh, unless in the particular circumstances it is inappropriate or not reasonably practicable for the draft to be in both languages. The Standing Orders of the Assembly give effect to this requirement. The practical effect of these provisions is that the vast majority of Assembly subordinate legislation is bilingual, with each language having equal status.

3.3 This principle of construing bilingual legislation is repeated in the Government of Wales Act 2006 in relation to both Assembly Measures and (if and when commenced) Assembly Acts. Section 98(5) provides that Assembly Standing Orders must include provision for securing that the Assembly may only pass a proposed Assembly Measure if the text of the proposed Assembly Measure is in both English and Welsh, unless the circumstances are such as are specified by the Standing Orders as any in which the text need not be in both languages. An identical provision in relation to proceedings on Bills is contained at section 111(5) of the Act. Section 156 of the 2006 Act provides that the English and Welsh text of any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or any subordinate legislation which is in both English and Welsh when it is made, are to be treated for all purposes as being of equal standing.

(ii) *Different Legislation to England*

3.4 Section 42 of the 1998 Act (and section 84 of the 2006 Act) make clear that where an enactment confers a power in relation to England and to Wales and the power is exercisable in relation to Wales by the Assembly (or Welsh Ministers under the 2006 Act) but in relation to England by a Minister of the Crown, the fact that the power is exercisable under the same provision does not require it to be exercised in the same way in relation to both countries, or require it to be exercised at all by the Assembly (or Welsh Ministers) in relation to Wales. The Assembly (and in future Welsh Ministers) may thus exercise their discretion as to how to exercise such functions differently from the way in which the relevant Minister of the Crown exercises the same discretion in relation to England. The capacity for the law in Wales to differ from the law in England will inevitably increase as the Assembly exercises its enhanced legislative powers to make Measures and (at some stage in the future) Acts.

Assembly Subordinate Legislation

3.5 These points can be illustrated by an analysis of the subordinate legislation made by the Assembly since 1999.

Volume

3.5.1 Since assuming responsibility in July 1999 for the subordinate legislation powers transferred to and subsequently conferred upon it, the Assembly has made a total of 2000 General and Local Statutory Instruments across its areas of devolved competence. The numerical breakdown between the two categories of SIs is:-

General Statutory Instruments - 1300

Local Statutory Instruments – 700

In annual terms, the Assembly has made an average of 200 General SIs, and 100 Local SIs in each calendar year since inception.

Proportion of Legislation with Distinctly Welsh Content

Local SIs

3.5.2 Due to their very nature, each one of the 700 local SIs made by the Assembly (predominantly roads and traffic orders) involve distinctly Welsh content although there is little if any legislative divergence from similar local legislation applied in England. For the purposes of assessing the extent to which legislative divergence has occurred in Wales since 1999, the total number of local SIs made by the Assembly is discounted.

General SIs – Legislative Divergence

3.5.3 Based on statistical information collected locally for administrative purposes and held centrally within the Legal Services Department, in respect of each of the 1300 General SIs made by the Assembly since 1999, around 30% (390 SIs) have been assessed by Assembly Government lawyers as comprising distinctly Welsh legislative provision, either in whole or in part.

3.5.4 In June 2002, the former Counsel General to the National Assembly for Wales commissioned a more detailed assessment of the extent of legislative divergence, based on the total number of General SIs made by the Assembly in the calendar year 2001. That assessment, which was carried out over a period of 4 months, looked at each of the 241 SIs made in 2001 individually. Assessors (LS lawyers) were asked to consider each SI for the extent to which provisions within them were either entirely unique to Wales or, where applicable, distinctively Welsh in substance and intended effect from similar legislation produced in England. Differences in content that merely reflected the different government/administrative infrastructures in place in Wales compared to England, but where the substance of the intended effect of the SI was essentially matching legislation also made in England, were disregarded.

3.5.5 That study discovered that of the total of 241 General statutory instruments made by the Assembly in the 2001 calendar year, 76 SIs (31.5%) were assessed as distinctly Welsh in content, either in whole or in part.

3.5.6 Lists, by subject area, of the General Assembly SIs included in that study, including a list of those SIs assessed as distinctly Welsh in content in whole or in part, also according to subject area, are available on request from the Legal Services Department of the Welsh Assembly Government.

Bilingual Legislation

3.5.7 Out of the total of 2000 General and Local SIs made by the 1st and 2nd Assemblies since 1999, approximately 95% (1900) have been made in both English and Welsh, thus according equal standing to both the English and Welsh texts.

England and Wales Jurisdiction

3.6 As part of evidence to the Welsh Affairs Committee considering the Government of Wales Bill, the Secretary of State for Wales and the First Minister for Wales prepared a joint memorandum explaining why the scope of the Assembly's "primary" legislative powers (after a referendum) would be defined by listing subjects in relation to which the Assembly would be able to make law, rather than only listing those areas outside its legislative competence (the approach taken in Scotland). After noting the separate legal jurisdiction which exists in Scotland the memorandum states as follows:

"Wales is different. It forms part of a single unified England and Wales jurisdiction with a common court system, judges who can act throughout the two countries and lawyers who are educated and who practice in a way which does not distinguish between England and Wales. There is no intention to change this. The Assembly is to be able to make laws which apply in relation

to activities in Wales but these will be part of the general law of the jurisdiction of England and Wales.

Lawyers who practice in Wales and judges who normally sit in Wales would inevitably be more familiar with laws which applied only to Wales than their colleagues in England, but they would still be working within a single unified jurisdiction and if, in the course of a case being heard in England, it were relevant to consider something done in Wales to which an Assembly Act applied then the court would apply that Act in exactly the same way as it would apply an Act of Parliament."

3.7 In maintaining the principle of a unified England and Wales jurisdiction recognition must nevertheless be given to the divergence of the law having effect in Wales, and the expectation that judges who normally sit in Wales will be familiar with the law which applies only to Wales.

4. The Administrative Court in Wales

4.1 The devolution legislation forms part of a wider constitutional reform agenda manifested by the introduction of the Human Rights Act 1998 and the Freedom of Information Act 2000. These developments underpin a modern democracy built upon increasing levels of public engagement, openness, accessibility, scrutiny, accountability and respect. While the administration of the Court is not a devolved matter, there have been a number of changes in the administration of justice in Wales which can be seen as reflecting and supporting these wider constitutional changes. These include the establishment of the Mercantile Court in Cardiff, sittings of the Court of Appeal Civil Division and Criminal Division in Cardiff, sittings of Employment Appeal Tribunals in Wales, the establishment of a Chancery Court in Wales and, of course, the establishment of the Administrative Court in Wales. In opening the Mercantile Court in Cardiff in 2000, Lord Bingham, then Lord Chief Justice of England and Wales, stated:

"This court represents the long overdue recognition of the need for the Principality of Wales to have its own indigenous institutions operating locally and meeting the needs of its citizens here. This court is another step towards recognising Wales as a very proud, distinctive and successful nation."

4.2 The CPR Part 54 Practice Direction – Judicial Review now contains explicit provisions concerning judicial review claims in Wales. A claim for judicial review may be brought in the Administrative Court in Wales where the claim or remedy sought involves a devolution issue arising out of the 1998 Act, or an issue concerning the Assembly, the Assembly Government or any Welsh public body (including a Welsh local authority) (whether or not it involves a devolution issue). The Practice Direction confirms that such claims may also be brought in the Administrative Court at the Royal Courts of Justice. This Practice Direction was warmly received in Wales, reflecting as it does the objectives recited in paragraph 4.1 above and the provision of an accessible Court responsive to local circumstances. Whilst the Practice Direction is confined to facilitating the commencement of judicial review proceedings in Wales a number of expectations reasonably flow from it:

- (i) that the Administrative Court in Wales will manage and dispose of those cases which are commenced in the Administrative Court in Cardiff; and
- (ii) that judicial review proceedings commenced in Cardiff will be heard in Wales.

These expectations have not, as yet, been realised. It is our strongly held view that further measures are necessary if the underlying objectives are to be achieved.

4.3 Whilst the Practice Direction makes reference to the Administrative Court in Wales it has become clear that the office has only limited resources, function and capability. The office receives judicial review papers lodged in Cardiff in accordance with the Practice Direction but does not have autonomy (or the necessary resources) to process those papers. The papers are sent to London for processing and for further case management decisions to be taken. Once papers have been lodged in the Cardiff office, therefore, the focus of attention moves to the Administrative Court office in London which is then responsible for the management and listing of cases. This can be a frustrating experience for both practitioners and court staff. The Assembly Government believes that it is essential if the expectations created by the Practice Direction are to be realised, that a fully functioning office in Cardiff is established to support the Administrative Court in Wales. Such an office would be able to fully process all Administrative Court work and ensure that it is heard in Wales (whether in Cardiff, or other suitable courts in Wales, preferably near to the place where the particular dispute arises).

4.4 One of the consequences of case management occurring in London has been an inability to ensure that cases which are commenced in Cardiff are actually heard in Wales. It is understood that there have been problems within the court office in tracking what happens to cases once papers have been passed from Cardiff to London. It is a concern that there has been no process in place capable of delivering the aspiration that such cases would be listed for hearing in Wales. Allied to the difficulties of tracking cases has been the availability of judges in Wales authorised to hear cases in the Administrative Court. The availability of judges able to hear Administrative Court cases in Wales is clearly critical to the success of the court. These arrangements also need to ensure that full advantage is taken of the bilingual capacity of the judiciary in Wales.

4.5 At the beginning of 2006 a dialogue commenced between the Administrative Court office in London and the Treasury Solicitors (acting on behalf of the Welsh Assembly Government) concerning difficulties involved in the listing of cases in Cardiff. Initially confined to a specific (compulsory purchase) case, on the warned list for some time but not listed for hearing because of lack of an available judge to hear the case in Cardiff, the dialogue extended generally to steps which might be taken to resolve problems of delay in hearing cases in Wales. Specifically, Mr Justice Collins raised the possible use of video link hearings as a way of overcoming difficulties in making judges available to travel to Cardiff to hear Administrative Court cases.

4.6 The Welsh Assembly Government has expressed its concern and its dismay about the growing pressure to agree to have Administrative Court cases to which the

Assembly Government is a party heard in London, and the difficulties which arise from being placed in a position of having to choose between an early hearing in London or a delayed one in Cardiff (or other appropriate court in Wales). Delay can be highly prejudicial to all parties. There have been instances where the Assembly Government has, with considerable reluctance, agreed to London listing. The use of video link facilities in relation to substantive hearings is not a process which the Assembly Government would wish to support. It is considered that practitioners would be placed at a disadvantage in attempting to conduct the case in Cardiff with a judge (and possibly opposing parties) based in London. Quite apart from the practitioner difficulties of referring to documents and gaining the informal feel for how proceedings are going, it is felt that such an arrangement would seriously undermine the underlying objectives of public engagement, openness and accessibility of the court. To any third party (including local media) having an interest in a case and wishing to view the court proceedings, the prospect of encountering an on-screen judge would be very unfortunate and in symbolic terms alone would convey a very unfortunate message, in terms of decisions from a London based institution. The Assembly Government cannot regard this as an appropriate solution. It would, if implemented, undermine (and potentially reverse) the achievement of establishing an Administrative Court office in Cardiff. Fewer cases being heard in Cardiff would inevitably lead to a reduction in available Administrative Court judges thus compounding problems of delay and increasing the pressure for agreement to a London hearing. The Assembly Government cannot understand why, with appropriate case management from Cardiff and available judicial resources, a position cannot be attained which would incentivise the use of the courts in Cardiff (and Wales) by the prospect of earlier hearing. Without effective arrangements in place for hearings in Cardiff at dates which are not materially later than if the case were heard in London there is a real prospect of the Administrative Court office failing in Cardiff.

4.7 On 18 May 2006 a meeting was convened by the Presiding Judge Mr Justice Davies, attended by representatives of the Bar, the Law Society, the Assembly Government and Treasury Solicitors, to discuss steps which might be taken to improve the performance of the Administrative Court in Cardiff. It is recognised that this is not simply a matter for the Administrative Court. Public bodies in Wales, and practitioners in Wales, all have a role to play in making the operation of the Administrative Court office in Cardiff a success. There was unanimity amongst practitioners involved in that discussion that video-link hearings were not a solution to the problem. A number of practical steps arose from that meeting aimed at improving the prospects for cases being heard in Wales. Judicial resources available to hear Administrative Court hearings in Wales have been increased through an increase in the number of judges certified to hear Administrative Court cases (including judges on Circuit). To improve the prospect of tracking cases commenced in Cardiff, directions are now commonly sought (on application or reply) for a hearing in Wales. Efforts have been made to raise awareness amongst practitioners and public bodies in Wales about the availability and advantages of using the Administrative Court office in Wales. The experience of the Assembly Government (since that meeting) is that the position has improved. In order to make these improvements sustainable, however, it is felt that the solution must involve the establishment of a fully functioning office in Cardiff able to manage cases from commencement through to hearing.

4.8 The Welsh Assembly Government would wish to develop the principle that, save in very exceptional circumstances, cases which are commenced in the Administrative Court in Cardiff should be heard in Cardiff (or other appropriate court in Wales). The Welsh Assembly Government would also wish to see the principle established that, again other than in exceptional circumstances, all cases falling within the scope of paragraph 3.1 of CPR Part 54 Practice Direction (ie cases involving the Assembly or other public bodies in Wales) should be heard in a court in Wales notwithstanding that papers may have been lodged at the Royal Courts of Justice in London. It is recognised that there will be circumstances where this may not be practicable, either because of the urgency of the case or the nature of the parties to it. There are, for example, cases where the Assembly is a co-respondent with a Whitehall Department, or where a case involving a Whitehall Department raises ostensibly the same issues and can usefully be disposed of in the same hearing. The Welsh Assembly Government would, however, wish to overcome the current difficulties which can be encountered in applying for transfers of cases commenced in London to the courts in Wales, in particular where the principal objection appears to be location of practitioners or corporate bodies (having interest in Wales) outside of Wales.

4.9 In addition to the benefits of local accessible courts capable of dealing with Welsh bilingual legislation, there are wider benefits of expanding the Administrative Court office in Cardiff. Such a step would create employment and opportunities for staff working within the court system. More generally, a full Administrative Court office in Cardiff would help support and develop public law specialisms in Wales (amongst the Bar and amongst Solicitors) with the prospect of reduced costs for those using the Administrative Court when compared to London rates. Partly in anticipation of the more intensive (exclusive) use of the Cardiff and Welsh Courts to hear judicial review cases involving the Assembly the Panel of Counsel currently appointed to act on behalf of the Welsh Assembly Government (its equivalent of the Attorney General's Panel Counsel) are predominantly drawn from practitioners based in Wales.

5. The High Court and the Court of Appeal in Wales

It is recognised that the administrative structures of the Court of Appeal, both Civil Division and Criminal Division, are outside of the scope of the Working Group. There are, nevertheless, common issues involved with hearings of the Court of Appeal in Wales and the strengthening of the Administrative Court in Cardiff. As stated at paragraph 4.1 above, great strides were taken following the devolution legislation in 1998 to devolve administration of justice in Wales in parallel with the changes in devolved Government. As the devolution settlement is now itself being strengthened through the passage of the Government of Wales Act 2006 it is necessary to focus again on the role of the courts and the extent to which these changes are reflected in courts administration. The growing profile of the capital city of Wales, Cardiff, as one of Europe's leading cities and the seat of its devolved government and legislature, justifies a court structure and administration that will complement these developments. Given the increased exercise of executive powers in Wales, the expanding legislative competence of the Assembly, the growing volume of bilingual legislation and the growing differences in the law in Wales compared to the law in

England the appropriate response should be not only a strengthening of the Administrative Court office in Cardiff but a strengthening of the High Court generally and the arrangements under which hearings of the Court of Appeal will take place in Wales. The case for the establishment of an office in Cardiff to support the work of the Court of Appeal to reinforce the role of the court as an institution meeting Welsh needs and requirements is a compelling one. It is only by establishing such an office that proper steps can be taken to ensure that sittings of the Court of Appeal in Wales are efficient and appropriately listed and that appeals from courts in Wales are heard in Wales.

6. Conclusions

6.1 Having regard to the continuing development of devolved Government in Wales it is our firm view that there is now a compelling case for the establishment of a full Administrative Court office in Cardiff. Legal challenges to decisions taken in Wales by the Welsh Assembly Government and by the wider public sector, on the basis of policies formulated in Wales, and increasingly on the basis of legislation framed in Wales, and having regard to local circumstances, requires the operation of a fully functioning court office. There is a need now to deliver on the expectations that judicial review cases commenced in Wales will be heard in Wales and it is felt that the only sustainable basis on which this can be achieved is through the establishment of an office in Cardiff having full case management responsibilities. Arrangements are also needed to strengthen and support a presumption that cases falling within paragraph 3.1 of the CPR Part 54 Practice Direction which are commenced in the Administrative Court at the Royal Courts of Justice should be transferred to Wales for hearing. Whilst not part of the working committee's remit, there are similar compelling arguments to be made for establishing an office of the Courts of Appeal in Cardiff and for greater sittings of the Court of Appeal in Wales aimed at achieving a position whereby appeals from Wales will be heard in Wales.

Jeff Godfrey
Director of Legal Services
Welsh Assembly Government

25th October 2006

ANNEX A

Schedule 7 (Part 1) of GOWA 2006

PART

1

SUBJECTS

Agriculture, fisheries, forestry and rural development

- 1 Agriculture, including animal health and welfare. Plant health. Plant varieties and seeds. Horticulture. Fisheries. Fish health. Forestry. Rural development.

Exceptions-

Hunting with dogs.

Regulation of scientific or other experimental procedures on animals.

Import and export control, and regulation of movement, of animals, plants and other things, apart from (but subject to provision made by or by virtue of any Act of Parliament relating to the control of imports or exports)-

(a) the movement into and out of, and within, Wales of animals, animal products, plants, plant products and other things related to them for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and

(b) the movement into and out of, and within, Wales of animal feedstuff, fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal or plant health or the environment.

Authorisations of veterinary medicines and medicinal products.

Ancient monuments and historic buildings

- 2 Archaeological remains. Ancient monuments. Buildings and places of historical or architectural interest. Historic wrecks.

Culture

- 3 Arts and crafts. Museums and galleries. Libraries. Archives and historical records. Cultural activities and projects.

Exceptions-

Public lending right.

Broadcasting.

Classification of films, and video recordings.

Government indemnities for objects on loan.

Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.

Economic development

- 4 Economic regeneration and development, including social development of communities, reclamation of derelict land and improvement of the environment. Promotion of business and competitiveness.

Exceptions-

Fiscal, economic and monetary policy and regulation of international trade.

Regulation of anti-competitive practices and agreements, abuse of dominant position and monopolies and mergers.

Intellectual property, apart from plant varieties.

Creation, operation, regulation and dissolution of types of business association.

Insolvency.

Product standards, safety and liability, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, fish and fish products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).

Consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, fish and fish products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).

Financial services, including investment business, banking and deposit-taking, collective investment schemes and

insurance.

Financial markets, including listing and public offers of securities and investments, transfers of securities, insider dealing and money laundering.

Telecommunications, wireless telegraphy (including electromagnetic disturbance), internet services and electronic encryption.

Postal services, post offices and the Post Office, apart from financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices.

Generation, transmission and supply of electricity, apart from pollution.

Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

Coal, including mining and subsidence, apart from land restoration and other environmental matters.

Oil and gas, apart from pollution.

Units and standards of weights and measurement and the regulation of trade so far as involving weighing, measuring and quantities.

Industrial Development Advisory Board.

Education and training

- 5 Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

Exception-

Research Councils.

Environment

- 6 Environmental protection, including pollution, nuisances and hazardous substances. Collection, management and disposal of waste. Land drainage and land improvement. Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty). Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity. Genetically modified organisms. Smallholdings and allotments. Common land. Town and village greens. Burial and cremation.

Fire and rescue services and promotion of fire safety

- 7 Fire and rescue services. Promotion of fire safety otherwise than by prohibition or regulation.

Food

- 8 Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food.

"Food" includes drink.

Health and health services

- 9 Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

Exceptions-

Abortion.

Human genetics, human fertilisation, human embryology, surrogacy arrangements.

Xenotransplantation.

Regulation of health professionals (including persons dispensing hearing aids).

Poisons.

Misuse of and dealing in drugs.

Human medicines and medicinal products, including authorisations for use and regulation of prices.

Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).

Vaccine damage payments.

Welfare foods.

Health and Safety Commission, Health and Safety Executive and Employment Medical Advisory Service and provision

made by health and safety regulations.

Highways and transport

- 10 Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services.

Exceptions-

Road freight transport services, including goods vehicles operating licensing.

Regulation of use of motor vehicles and trailers on roads, their construction and equipment and conditions under which they may be so used, apart from regulation of use of vehicles carrying animals for purpose of protecting human, animal or plant health, animal welfare or the environment.

Road traffic offences.

Driver licensing.

Driving instruction.

Insurance of motor vehicles.

Drivers' hours.

Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.

International road transport services for passengers.

Public service vehicle operator licensing.

Documents relating to vehicles and drivers for purposes of travel abroad and vehicles brought temporarily into Wales by persons resident outside the United Kingdom.

Vehicle excise duty and vehicle registration.

Provision and regulation of railway services, apart from financial assistance which-

(a) does not relate to the carriage of goods,

(b) is not made in connection with a railway administration order, and

(c) is not made in connection with Council Regulation (EEC) No. 1893/91 on public service obligations in transport.

Rail transport security.

Railway heritage.

Aviation, air transport, airports and aerodromes, apart from-

- (a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,
- (b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
- (c) regulation of use of aircraft carrying animals for purpose of protecting human, animal or plant health, animal welfare or the environment.

Shipping, apart from-

- (a) financial assistance for shipping services to, from or within Wales, and
- (b) regulation of use of vessels carrying animals for purpose of protecting human, animal or plant health, animal welfare or the environment.

Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.

Technical and safety standards of vessels.

Harbours, docks, piers and boatslips, apart from those used or required wholly or mainly for the fishing or agricultural industries, for recreation or for communications between places in Wales.

Carriage of dangerous goods (including transport of radioactive material).

Housing

- 11 Housing and housing finance. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.

Local government

- 12 Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.

"Local authorities" does not include police authorities.

Exceptions-

Local government franchise.

Electoral registration and administration.

Registration of births, marriages, civil partnerships and deaths.

Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

Anti-social behaviour orders.

Local land charges, apart from fees.

Sunday trading.

Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.

National Assembly for Wales

- 13 Complaints about Assembly members (including provision for and about an office or body for investigating such complaints and reporting outcome of investigations). Assembly Commission. Salaries, allowances, pensions and gratuities for and in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Welsh Ministers. Register of interests of Assembly members and the Counsel General. Meaning of Welsh words and phrases in Assembly Measures and Acts of the Assembly, in subordinate legislation made under Assembly Measures and Acts of the Assembly and in other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General. Private legislation in the Assembly. Financial assistance for political groups to which Assembly members belong. The Welsh Seal. Arrangements for the printing of Acts of the Assembly, of subordinate legislation made under Assembly Measures and Acts of the Assembly and of other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General.

Public administration

- 14 Public Services Ombudsman for Wales. Audit, examination, regulation and inspection of auditable public authorities. Inquiries. Equal opportunities in relation to equal opportunity public authorities. Access to information held by open access public authorities.

The following are "auditable public authorities" and "equal opportunity public authorities"-

- (a) the Assembly,

- (b) the Assembly Commission,
- (c) the Welsh Assembly Government,
- (d) persons who exercise functions of a public nature and in respect of whom the Welsh Ministers exercise functions,
- (e) persons who exercise functions of a public nature and at least half of the cost of whose functions in relation to Wales are funded (directly or indirectly) by the Welsh Ministers, and
- (f) persons established by enactment and having power to issue a precept or levy.

The following are "open access public authorities"-

- (a) the Assembly,
- (b) the Assembly Commission,
- (c) the Welsh Assembly Government, and
- (d) authorities which are Welsh public authorities, within the meaning of the Freedom of Information Act 2000 (c. 36).

Exception-

Regulation of the profession of auditor.

Social welfare

- 15 Social welfare including social services. Protection and well-being of children (including adoption and fostering). Care of young adults, vulnerable persons and older persons, including care standards. Badges for display on motor vehicles used by disabled persons.

Exceptions-

Child support.

Child trust funds.

Tax credits.

Child benefit and guardian's allowance.

Social security.

Intercountry adoption, apart from adoption agencies and their functions, and functions of "the Central Authority" under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

The Children's Commissioner (established under the Children Act 2004 (c. 31)).

Family law and proceedings, apart from-

- (a) welfare, advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families,

and

(b) Welsh family proceedings officers.

Sport and recreation

- 16 Sport and recreational activities.

Exception-

Betting, gaming and lotteries.

Tourism

- 17 Tourism.

Town and country planning

- 18 Town and country planning, including listed buildings, conservation areas, hazardous substances. Caravan sites. Spatial planning. Mineral workings. Urban development. New towns. Protection of visual amenity.

Water and flood defence

- 19 Water supply and sewerage, including abstraction and impounding of water, water resources management, water quality, water industry, water charges and representation of consumers of water. Safety of reservoirs and other inland water. Management and protection of watercourses and flood prevention.

Exceptions-

Appointment of water undertakers or sewerage undertakers for any area most of which is in England.

Licensing of water suppliers.

Welsh language

- 20 Welsh language

Exception-

Use of the Welsh language in courts.