

# Devolution and Welsh Law: Presentation of Wales Legislation Online and of Legislative Training in Wales.

*Marie Navarro, Editor and Chief Researcher, WLO, Cardiff Law School, Legal Consultant and Professional Trainer*

## **1- Wales Legislation Online:**

Cardiff Law School has created Wales Legislation Online Service in 1999 in order to assist members of the legal profession, the academic and wider public and private sector communities, and the public at large, to identify the functions transferred to and performed originally (1999-2007) by the National Assembly for Wales and since 2007 the functions transferred and performed both by the Welsh Assembly Government and the National Assembly for Wales. It was supported by the Arts and Humanities Research Board (AHRB) and is now fully funded by the National Assembly for Wales and the Welsh Assembly Government.

Wales Legislation Online is a unique electronic legal service because:

- it is specific to Welsh devolution;
- it is free;
- it does not depend on the continuing commitment of bodies whose priority is inevitably focused on England & Wales or UK legislation;
- it is comprehensive, embracing not only Welsh primary legislation (Assembly Measures) but also Welsh delegated legislation as well as devolved executive functions;
- it presents information in a systematic way, organised by reference to devolved fields;
- its approach (and in particular the systematic organisation according to fields) enhances its attractiveness to non lawyers<sup>1</sup>.

The Government of Wales Act (GOWA) 2006 has dramatically changed the nature of the powers and the law in Wales. This has had a fundamental consequence on the service we provide (Wales Legislation Online) and we are in the process of totally restructuring the service to reflect these changes. The overall aim of the new website will be to show clearly and systematically ALL the powers of the Assembly and the Welsh Government as well as the law made in Wales by the Assembly and the Welsh Assembly Government.

[General Commentary on the Assembly's functions](#)

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### **GOWA 1998 and GOWA 2006**

The Government of Wales Act 1998 gave only a limited number of substantive functions to the Assembly on the face of the Act. While section 40 of the 1998 Act enabled the Assembly to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any of its functions, the actual functions which were set out in the 1998 Act were limited. There were functions relating to the power to reform Welsh health authorities (section 27) and to reform certain other Welsh public bodies (section 28 and Parts I and II of Schedule 4). There were also general powers enabling the Assembly to do anything it considered

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<sup>1</sup> These aspects were formally identified this year between Cardiff Law School and its funders the NAW and WAG.

appropriate to support culture, sport, the Welsh language and buildings of historic or architectural interest (section 32). All the other functions of the old Assembly were very specific and came from Transfer of Function Orders or from post-1999 Acts of Parliament.

**All the 1999-2007 executive powers which were still in force were transferred to the Welsh Ministers by the 2006 Act.** They continue to apply to Wales. There are around 7000 individual executive powers being exercisable by the Welsh Ministers and listed in Wales Legislative Online. Post 2007, the list is still growing and it might even grow faster as more and more Measures will also add to the list.

The GOWA 2006 also gave for the first time primary legislative powers to the National Assembly for Wales. The legislative powers are to be found in one single document: Schedule 5 to the GOWA 2006. This schedule contains a list of 20 Fields (i.e. Education, Local Government etc..) under which Matters can be inserted (i.e. the specific policy areas for which the Assembly can legislate through Measures).

As new legislative powers are given to the Assembly, this list is constantly expanding. It started in May 2007 with 5 Matters and there are currently 31 Matters in force. This means that the Assembly could propose 31 different Measures on 31 different topics. Overall another 20 Matters are currently being sought. The website reflects at any given time both the Matters which are in force as well those which are being sought.

#### [The Aims of the Service until 2007](#)

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Before the GOWA 2006 the functions of the National Assembly for Wales were not exercisable by reference to subject areas, as is the case with devolution in Scotland. Most of the Assembly's functions mirrored Ministerial functions set out in specific Acts of Parliament, Transfer of Function Orders and EU Designation Orders. The extent of the then Assembly's functions, therefore, varied from Act to Act. Wales Legislation Online set out at first these functions by subject headings together with an explanation of those retained by central government in relation to Wales. The Service also summarised the general statutory instruments made by the old Assembly, either on its own, or together with central government or other bodies. It also provided summaries of the general statutory instruments applying to Wales made by central government under their 'retained functions' in the Acts giving powers to the then Assembly.

#### [The Aims of the Service post 2007](#)

The GOWA 2006 operated a division between the Welsh Assembly Government (WAG) and the National Assembly for Wales (NAW). The WAG had been created in an informal manner after 1999. Together with the division of the old 'National Assembly for Wales' in two parts a distribution of powers took place. WAG inherited all of the executive powers that were vested in the old NAW before 2007. The 60 AMs and the NAW received new powers to make primary legislation called 'Measures'.

The new service given by Wales Legislation Online will be divided in two parts: one part for WAG showing the executive powers and the subordinate legislation made by the Welsh Ministers alone or together with central government (everything which the website showed between 1999 and 2007); and the other part for the NAW showing the legislative powers and the Measures made by the Assembly (a new part of the website).

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## Using the Service

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The new service will be divided into two main parts which identifies in the first part those Acts and Orders which transfer or give functions to the National Assembly for Wales and WAG, as well as those functions that are retained by central government in respect of Wales in devolved fields. There are no lists of retained powers in relation to Westminster. The Acts and Orders (including the famous Legislative Competence Orders (LCOs) ) are already organised under the devolved Fields used in Schedule 5 to the Government of Wales Act 2006.

In the second part it will be possible to identify general statutory instruments made by WAG, general statutory instruments made by central government in relation to Wales in retained areas within the devolved Fields, general statutory instruments made together with central government, and commencement orders of UK Acts and Measures in devolved Fields. These SIs are already set out both by numerical order and alphabetical order. Post 2009, the Measures made by the Assembly will follow the same format. Currently they are included in the lists of Acts as they give powers to the Welsh Ministers like UK Acts of Parliament.

The current service shows these two categories of powers and laws: the powers being listed under 'Acts' and the subordinate legislation listed under 'Instruments'. A temporary 'Constitution' section was created in which all legislation of importance post 2007 is to be found (including the GOWA 2006 itself and the Measures). The LCOs are included in Schedule 5 which is accessible in the Constitution section under '[Government of Wales Act \(Legislative Powers\) 2006 \(C.32\)](#)'.

## Expanding the Service

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The Assembly Commission which is giving annual funding to the website, requested five specific developments to WLO that would be essential to realise its potential. These were:

- “1 marketing in order to increase awareness and use;
- 2 fully comprehensive bilingual approach;
- 3 expansion to deal fully with the growth of Welsh primary legislation (Measures);
- 4 re-structuring of the site to reflect the new dual nature of Welsh legislation (primary and secondary);
- 5 full treatment of non-devolved legislation and functions in devolved fields, leading (possibly starting with fields such as education where devolution of functions is most comprehensive) to a “Welsh statute book”.

We are working towards achieving these and a new website should be launched in the spring of 2009. The creation of a “Welsh statute book” is more uncertain for now.

## ***Training on Welsh Legislation and Welsh unique Legislative Processes***

The expertise gained by researching for WLO is transmitted to the staff of the National Assembly for Wales when Marie Navarro carries out with Huw Edwards training on the Parliamentary Processes and Understanding Legislation for the National School of Government. The specialist knowledge is also shared with the people of Wales through many academic and professional conferences and also through the Positif Politics Legislative Training Programme in Wales.

## The Parliamentary Process for the National Assembly for Wales

### Aim

- To gain a better understanding of parliamentary processes across the UK
- To be able to apply this knowledge to enhance the work of the Assembly Parliamentary Service
- To develop the necessary skills to support the Assembly Parliamentary Service and elected Assembly Members

## Understanding Legislation for the National Assembly for Wales

### Aim

- To help delegates understand the types of legislation made by UK parliaments and assemblies and the processes which support them
- To apply this understanding to the new legislative processes introduced to the National Assembly under the Government of Wales Act 2006
- To develop the skills to support Assembly Members in the development and scrutiny of Assembly Measures and Statutory Instruments

### Training sessions and Conferences:

The programme is based on day-long courses focused on specific items of legislation and has included:

6<sup>th</sup> of November: **The Evolution of Devolution: the Government of Wales Act one year on. All day Conference, devolution key speakers include** *Lord Dafydd Elis-Thomas AM, Carwyn Jones AM, Jonathan Morgan AM, Helen Mary Jones AM and Jenny Randerson AM, Hywel Francis MP, Cheryl Gillan MP, Elfyn Llwyd MP, Huw Irranca-Davies MP, Peter Hain MP*

24<sup>th</sup> of October: **Where Does It Go? Made in Wales Legislative Solutions on Waste Management**

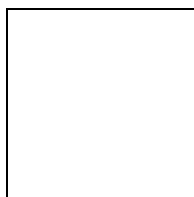
14<sup>th</sup> of November: **Beyond Beecham: Made in Wales Legislative Solutions on Public Service Delivery Reform**

12<sup>th</sup> of December: **Feeding Our Future: Made in Wales Legislative Solutions on Healthy Eating in Schools**

### Meet the Trainers:



**Huw Edwards** is an independent trainer and consultant specialising in understanding parliament, devolution and public policy. He is an Associate Lecturer of the National School of Government, the former civil service college and has also worked as training consultant for ModernGov. He currently provides in-house training for the staff of the National Assembly for Wales. From 1997 to 2005 Huw was Member of Parliament for the Welsh constituency of Monmouth and a member of the House of Commons Welsh Affairs Select Committee.



**Marie Navarro** is a specialist in public law and the new legislative powers of the Welsh Assembly Government and of the National Assembly for Wales. Marie is a Research Associate at Cardiff Law School and the Chief Researcher and Editor to the Law School website Wales Legislation Online which sets out the powers of the National Assembly for Wales and of the Welsh Assembly Government since July 1999: <http://wales-legislation.org.uk>. She has a Master in Public International Law and European Law from the University of Amiens (France). She is working on an MPHIL entitled \*The Evolution of Welsh Devolution\*. She is an Associate Lecturer of the National School of Government, the former civil service college. She is also an independent

trainer and legal consultant specialising in understanding devolution and public policy.



**Daran Hill** is the Managing Director and Principal Consultant at Positif Politics. He founded and manages Wales' fastest growing public affairs firm in 2006. Daran's specialisms include horizon scanning and picking up the political mood, which enables clients to be forewarned of shifts in policy and political emphasis. Prior to setting up Positif Politics he had served seven years as a senior consultant at the Welsh operations of Weber Shandwick and BSMG worldwide and Head of Monitoring at GJW Cymru Wales. In 1997 he was National Organiser of the successful "Yes for Wales" devolution campaign, which won the referendum that led to the establishment of the National Assembly.

#### About the Author:



**Marie Navarro** is a specialist in public law and the new legislative powers of the National Assembly for Wales and of the Welsh Assembly Government. Marie is a Research Associate at Cardiff Law School and the Chief Researcher and Editor to the Law School website Wales Legislation Online which sets out the powers of the National Assembly for Wales and of the Welsh Assembly Government since July 1999. She lectures and tutors in the Law and French Double Degree Scheme of Cardiff Law School. She has a Master in Public International Law and European Law from the University of Amiens (France). She is working on an MPhil entitled 'The Evolution of Welsh Devolution'. She is an Associate Lecturer of the National School of Government, the former civil service

college. She is also an independent trainer and legal consultant specialising in understanding devolution and public policy.

#### Wales Legislation Online

[www.wales-legislation.org.uk](http://www.wales-legislation.org.uk)



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