



## **Comisiwn y Cynulliad Assembly Commission**

### **NAFWC 2007 (Paper 2)**

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## **Developing Assembly Legal Services – An Update**

### **Purpose and summary of issues**

1. The purpose of this paper is:
  - a) to provide the Commission with an up-date on progress towards ensuring that the Assembly's Legal Service can play an effective role in achieving a bold response to constitutional change, enabling the Assembly to make full and effective use of its new legislative powers whilst maintaining its effectiveness in scrutinising the Welsh Ministers;
  - b) to enable the Commission to consider the steps which the newly-appointed Director of Legal Services (Keith Bush) is taking to implement the plan for the development of Assembly Legal Services approved by the Shadow Commission in January 2007



## **Recommendations (including priority deadline)**

2. The Commission is invited to:

- a) note the progress made towards achieving the targets set by the Shadow Commission in January 2007;
- b) approve the on-going steps being taken by the Director of Legal Services to implement the Shadow Commission's strategy in full by the end of 2008;
- c) endorse the aim that the Assembly's Legal Service should provide the fullest level of support to Assembly Members in discharging their legislative and scrutinising functions, whilst recognising that the rate of growth of legislative activity will determine to what extent the Assembly's Legal Service will be able to achieve that aim in all cases whilst the build-up of legal capability is taking place

## **Discussion**

### Background

3 At its meeting on 16<sup>th</sup> January 2007 the Shadow Commission considered options for developing the Assembly's Legal Service in order to support the Assembly's new legislative function, as set out in a paper by Peter Jones, the then Counsel to the Assembly Parliamentary Service. The paper identified three possible scenarios for the growth of Assembly legislation – low, medium and high initial take-up of opportunities to use the new powers.

4. The Shadow Commission approved proposals based on the medium take-up scenario (8 LCOs and 9 Measures in 2007/8 rising to 10 LCOs and 12 Measures in 2008/9). The immediate recruitment of 3 additional lawyers (bringing the size of the legal team up to 6) was approved, with a further 2 to be recruited by 2009. The Shadow Commission also endorsed the principle that where appropriate the team should include para-legals.

### Progress in enhancing the legal team

5. Although the Shadow Commission had envisaged that there would be a total of 6 lawyers employed by May 2007 actual recruitment has been slower than anticipated and the number of lawyers at the beginning of the Assembly's autumn term stood at 5, including one paralegal. (In addition, there is one Assembly Government trainee lawyer on a short-term placement who is able to make a valuable but limited contribution.) The slower than expected build-up has been due to delays in the Assembly Government Legal



Services Division's recruitment process, on which the Assembly has been relying, on this occasion, to recruit staff.

6. This process has now enabled two further additions to the legal team to be identified and these will be arriving in December 2008. The remaining lawyer needed to bring the complement up to the Commission's target of 8 by the end of 2008 will be recruited during the 2008/9 financial year.

#### Growth in legislative work

7. The Assembly is at present considering 3 LCOs and 1 Measure and has also, through the Enterprise and Learning Committee, been examining a draft Proposed Measure. Members' ballots have given rise to two proposals for LCOs and two for Measures of which the introduction of both LCOs and of one of the Measures has been approved by plenary. If these three proposals go forward the total current volume of legislation is therefore 5 LCOs and 3 Measures. Three more Government LCOs (on Domiciliary Care, on Affordable Housing, and on the Welsh language) are expected soon.

8. Even allowing for the bringing forward of further LCOs and Measures during the current year, the build-up is closer to the "low initial take-up option" than to the assumed "medium initial take-up". This must, however, be seen in the light of the delayed commencement of the Assembly's legislative work caused by initial uncertainty immediately after the May 2007 election as to the composition of the Assembly Government.

9. Fortuitously, therefore, the slower growth than anticipated in the number of Assembly lawyers has been matched by a slower than anticipated growth in the volume of legislation.

#### The increased demand for legal support created by the Assembly's new legislative powers

10. At present, there are in existence four Assembly committees actively considering current legislative proposals. In addition there are (excluding the Business Committee) 13 permanent scrutiny and other committees and one scrutiny sub-committee. A decision has now been taken to establish a North Wales Committee. This compares with 14 active subject and standing committees and 5 regional committees at the end of the Second Assembly. However, although the number of committees has not gone up (and in view of the fact that there are is only one regional committee, has in fact gone down) the intensity of committee work has actually increased markedly – a 60% increase in the number of committee meetings as compared with the Second Assembly.

11. Much of this growth has been generated by the establishment of the four legislative committees plus the involvement of other committees (the



Subordinate Legislation Committee and the Finance Committee) in detailed examination of particular aspects of proposed legislation. Experience has already demonstrated that the level of engagement of lawyers with those committees which are considering legislation is very much greater than that with other committees. Legislative committees require constant intensive monitoring and support. The need of other committees for legal advice is much more limited and intermittent.

12. In addition, Assembly lawyers are actively engaged in providing legal advice to AMs in relation to legislative proposals which they are considering whether to bring forward. They are also providing a growing level of detailed legal advice and drafting services in relation to those AM legislative proposals which have been successful in ballots and which have gone on to receive endorsement by plenary.

13. The Assembly's current (autumn) term has therefore made intense demands on the Assembly's still relatively small team of lawyers. The recruitment of two further lawyers over the coming months will initially have little effect in lessening the burden since they will need to be integrated into the team and to become familiar with the highly specialised work which Assembly lawyers do.

#### Forward look

14 The legislative work of the Assembly is likely to take a further huge step forward in the New Year with the commencement of detailed consideration of the Assembly's first Measure. Detailed discussions have already taken place between Assembly lawyers, the Legislation Office and the Members' Research Service in order to identify the role with lawyers will be expected to play in this process. In order to ensure that the legislative scrutiny which takes place is effective a high degree of support from lawyers will be essential.

15. At the same time, Assembly lawyers will be increasingly involved in providing intensive legal support for AM legislative proposals.

16. A process for identifying sources of external drafting services which can be drawn down when necessary either in substitution for or in addition to the services provided directly by Assembly lawyers has been initiated, as part of the general process of procuring sources of specialist external legal services for the Commission on the expiry of the current WAG/APS contract at the beginning of February.

17. Although every effort will be made to ensure that Assembly lawyers meet in full the increased demands placed on them by the development of the Assembly's new legislative powers (as well as continuing to provide an excellent service in support of the Assembly's established scrutiny function) there is a constraint imposed by the limited rate at which legal expertise can be expanded. This could, if legislative activity increases very rapidly, require



some degree of selectivity or prioritisation in order to ensure that the standard of service being provided is maintained at the very high level which the Assembly is entitled to expect.

### Summary

18. The position detailed above can be summarised as follows:
- i) As the Shadow Commission foresaw, the work of Assembly lawyers is developing rapidly both in quantity and in the level of specialised expertise required, as a result of the increased demands made by the Assembly's new legislative powers;
  - ii) The extended nature of the Assembly Government's process of recruiting lawyers, on which the recruitment of Assembly lawyers has until now depended, has meant that the build-up of the Assembly's legal team has proceeded more slowly than was anticipated – the total team is still only 5 rather than the projected 6;
  - iii) The expansion of the team is however continuing, will reach 7 by the end of 2007 and can meet the Commission's overall target of 8 by 2009;
  - iv) Fortunately, the build-up of demand for legal support in relation to legislation has also been slower than anticipated;
  - v) Nevertheless, the demands on Assembly lawyers arising from the new legislative powers are substantial and will develop further in the New Year;
  - vi) Integrating new recruits into the legal team and ensuring that they are fully equipped to provide the kind of service required will take time;
  - vii) Although every effort will be made to meet in full the demand for legal services the speed with which that demand develops could conceivably require some degree of prioritisation of legal work if standards are to be maintained

### **Governance Matters**

#### **Financial implications**

19. This paper reports on progress in implementing decisions already taken by the Shadow Commission and for which provision has already been made in the Commission's Budget. The paper therefore has no financial implications.

#### **Risk Assessment**

20. Since the paper reviews progress in implementing decisions already taken, and asks for the Commission to note and endorse those steps, there are no risks arising out of this paper itself. The risk of failing to deliver the



legal support needed to enable the Assembly's legislative programme to develop was one which the Shadow Commission considered when deciding the proposed staffing level of the Assembly's Legal Service. Since the rate of growth of legislative work has, so far, been matched by the growth in the numbers of lawyers, the level of risk originally assessed by the Shadow Commission remains unchanged.

### **Compliance**

21. The setting of staffing levels of the Assembly's Legal Service is part of the Commission's function of appointing Assembly staff under paragraph 3 of Schedule 2 to the Government of Wales Act 2006.

22. The Assembly's statutory duties in relation to race equality and sustainable development have no direct effect on the matters discussed in this paper.

### **Publication**

23. This paper is suitable for publication.