UNIVERSITY OF STIRLING

Politics Department

Policy Divergence and Devolution:
The Impact of Actors and Institutions

Claire Lightowler

Submitted for the degree of Doctor of Philosophy
September 2005

Abstract

The creation of the National Assembly for Wales and the Scottish Parliament in 1999 was accompanied with an aspiration that these new institutions would allow Scotland and Wales to develop their own policies, better suited to local needs than those designed in Westminster or Whitehall. This thesis explores policy-making in the first terms of the devolved institutions in Scotland and Wales, focusing on where the policies developed by these institutions diverged from those pursued at Westminster. Policy divergence is examined by studying the development of the financing long-term care for the elderly policies. The aim of this thesis is to identify why policy divergence occurred in the long-term care case, considering the impact of actors (or agents) and the institutional setting in which they operate, as suggested by Scharpf's model of actor-centred institutionalism.

As actor-centred institutionalism suggested, both actors and institutions played a major role in shaping policy responses. In the Scottish case a range of actors cooperated and lobbied together for the introduction of free personal care, spurred on by the First Minister, who created an opportunity for those in favour of free personal care to pressurise his government to introduce the policy. In contrast, in Wales, actors were divided and never built up the same momentum to ensure the introduction of a more generous long-term care package.

The institutional setting in which these actors operated was a major factor in shaping their policy preferences and the strategies they adopted to achieve them. This thesis considers the impact on policy-making of the devolved institution's electoral system, financial and legislative powers, design of the institutions, and the place of these institutions in a UK setting. The different institutional structures in Scotland and Wales provided different incentives and resources for actors, encouraged different styles of policy-making from Westminster and affected the way in which issues were framed.

Examining the roles of actors and institutions in the formation of distinctive policies highlighted that in the real world these two elements are mutually dependent and cannot be separated. As a result it is impossible, and pointless, to determine whether actors or institutions were most influential on the development of distinctive policies. Instead this thesis explores how the difference between the configurations of actors and institutions in Scotland and Wales contributed to the creation of policies which were distinctive both from each other and the UK Government.

Acknowledgements

Contents

List of Figures

Chapter One

Introduction: Devolution and the new institutions

In 1997 the Labour Government came to power with a commitment to 'meet the demand for decentralisation of power to Scotland and Wales, once established in referendums'.[1] The Government set out proposals for devolved assemblies in Scotland and Wales in the White papers, 'A Voice for Wales' and 'The Scottish Parliament'. On the basis of these white papers, referendums were held in Scotland and Wales in September 1997. The Scottish referendum consisted of two questions, the first of which asked whether there should be a Scottish Parliament and the other focused on whether the Parliament should have tax-raising powers. The Scottish referendum indicated clear support for the introduction of a Scottish Parliament with tax-raising powers. On a turnout of 62.9%, 74.3% of voters agreed that there should be a Scottish Parliament and 63.5% wanted the Parliament to have tax-raising powers.[2] In contrast the Welsh referendum, held a week later than in Scotland, was more closely contested. In Wales there was no proposal to devolve tax-raising powers, and so the Welsh electorate were only asked if they agreed that there should be an Assembly. In Wales just over 50.1% of the population voted, 50.3% of voters supported the creation of the Assembly compared to 49.7% against.[3] Therefore, the Welsh vote was won by

---

[1] Labour Party Manifesto (1997) *New Labour because Britain deserves better*
[2] Bogdanor, V. (1999) *Devolution in the United Kingdom* (Oxford University Press, Oxford), p.199
[3] Wyn Jones, R., Trystan, D. and Taylor, B. (2000) 'Voting Patters in the Referendum' in Jones, B. and Balsom, D. *The Road to the National Assembly for Wales* (University of Wales Press, Cardiff), p.162

only 6721 votes.[4] Despite the narrow majority in favour of devolution in Wales, the referendum results in both Scotland and Wales led to the creation of the Scottish Parliament and the National Assembly for Wales.

1.1 Research questions and thesis structure

This thesis explores policy-making in the first terms of the new devolved institutions in Scotland and Wales. Although policy is primarily made by executives, policies need to be formally sanctioned by the institution in which the executive operates. Therefore, this thesis refers to the policy of the Scottish Parliament or the National Assembly, even though in many cases the impact of the devolved institution was limited to simply sanctioning the policy of the executives.

The focus of this thesis is on policies developed by the devolved institutions which diverged from those pursued at Westminster. Policy divergence is significant because 'one of the main purposes of devolution was to allow Scotland, Wales and Northern Ireland to get away from "one size fits all" policies imposed by Westminster and Whitehall, and to develop their own policies better suited to local needs'.[5] Hazell argued that if devolution did not lead to distinctive policies it will prove a serious disappointment to those who voted for it.[6] Additionally, it would be difficult to justify devolution if the devolved institutions simply adopted the same policies as Westminster. Investigating cases of policy divergence also allows for an exploration of the particular

---

[4] *Ibid.*, p.161
[5] Hazell, R. (2001) 'Conclusion: The State of the Nation after Two Years of Devolution' in Trench, A. (Ed.) *State of the Nations 2001: The Second Year of Devolution in the United Kingdom* (Imprint Academic, Exeter), p.255

features of policy-making in the Scottish Parliament and the National Assembly for Wales, whereas considering examples where uniform policies have been adopted throughout the UK would encourage an examination of UK-wide characteristics.

This thesis examines policy divergence through the study of a case study, the financing of long-term care for the elderly. It considers why policy divergence occurred, focusing on two variables, actors and institutional setting. Actor-centred institutionalism, as developed by Scharpf,[7] is the theoretical framework adopted in the thesis, explored in chapter two. The basic premise of actor-centred institutionalism is that the perceptions, preferences and strategies of actors, the configuration of these actors, and the institutional setting in which they operate, shapes policy decisions. Therefore, this thesis closely examines the role of the actors and the institutional setting in the case of financing long-term care for the elderly. Chapter three compares the long-term care policies adopted in England, Scotland and Wales, because it is important to establish that policy divergence exists before considering why it exists. Chapter four charts the development of the long-term care policy in Scotland, and chapter five explores how the long-term care policy was made in Wales. Chapters six and seven examine the impact of a variety of actors in the development of the long-term care policies. Chapter eight explores the impact of the institutional setting on the long-term care policies. Finally, chapter nine concludes the thesis by considering the sustainability of policy divergence in the long-term. However, before we can assess policy-making in the devolved institutions it is necessary to have a basic overview of the powers and

---

[6] *Ibid.*
[7] Scharpf, F. W. (1997) *Games Real Actors Play: Actor-Centred Institutionalism in Policy Research* (Westview Press, Colorado)

structure of the legislatures, because it is within these structures that actors act. The reminder of this chapter explores the key features of the Scottish Parliament and the National Assembly for Wales; their legislative functions, financial powers, institutional design and development, electoral systems and the resulting coalition governments. However, before examining the new devolved institutions it is worth considering policy-making before their creation, particularly the role of the Scottish and Welsh Offices.

1.2 Policy-Making in the Scottish and Welsh Offices

In order to understand the new devolved institutions in Scotland and Wales it is worth considering the institutions that were in place prior to their creation. This discussion is informed by historical institutionalism, which suggests that the history of a policy or an institution have a strong impact upon subsequent decisions and behaviour. For instance, Krasner argues that policies are path dependent, and once launched will continue along until some sufficiently strong political force deflects them from it.[8] Whilst policies can change it is suggested that this is only possible at certain key times, which Collier and Collier refer to as 'critical junctures'.[9] The idea here is that once an institution starts to follow a particular path, the costs of reversal are high. Whilst there are points at which choices are made, institutional arrangements prevent an easy reversal of the initial response. Levi uses the metaphor of the tree, rather than the path, to explain this process,

> 'From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to

[8] Krasner S. (1984) 'Approaches to the State: Alternative Conceptions and Historical Dynamics' in *Comparative Politics* (Vol.16, pp.223-46)
[9] Collier R., Collier D. (1991) Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America (Princeton University Press, Princeton)

the other—and essential if the chosen branch dies—the branch on which a climber begins is the one she tends to follow[10]

Given the importance of history in the development of policies, it is likely that policy-making in the Scottish and Welsh offices will continue to have a significant impact upon policy-making in the Scottish Parliament and the National Assembly for Wales, and so will be a factor on whether the new devolved institutions diverge from or converge with policies pursued at Westminster.

As Bulpitt notes, the maintenance of the United Kingdom has required territorial management by the centre.[11] The establishment of the Scottish and Welsh Offices can be seen as part of this territorial management strategy, and the territorial offices and their respective powers were established and strengthened often on the basis of the strength of nationalist feeling, often inferred from support for the nationalist parties. The main sub-state institution in Scotland prior to devolution was the Scottish Office, which was established along with a Secretary for Scotland in 1885. The Secretary for Scotland was from 1892 a member of cabinet and in 1926 became a Secretary of State. In addition the Scottish Office gradually extended its responsibilities over time in a piecemeal manner, mirroring the expansion of the welfare state.[12] For instance, a Scottish Board of Agriculture was set up in 1912 and a Scottish Board of Health was

---

[10] Levi, M. (1997) 'A Model, A Method, and a Map: Rational Choice in Comparative and Historical Analysis' in Lichbach, M. and Zuckerman, A (Eds.) *Comparative Politics: Rationality, Culture, and Structure* (Cambridge University Press, New York), p.28

[11] Bulpitt. J. (1983) *Territory and Power in the United Kingdom: An Interpretation* (Manchester University Press, Manchester)

[12] Tomaney, J. (2000) 'End of the Empire State? New Labour and Devolution in the United Kingdom' in the *International Journal of Urban and Regional Research* (Vol.24, No.3, pp.675-688), p.678

established after the First World War.[13] As a result by the 1960s the Scottish Office included a range of competencies covering domestic life in Scotland, a range of powers which in England were the responsibility of nine or ten departments, including health, housing, education and industry.[14] In contrast, the Welsh Office and a Secretary of State for Wales were not established until 1964. Initially the Welsh Office possessed limited powers, restricted to the control of housing, local government, roads and planning.[15] In a similar vein to the Scottish Office, the powers of the Welsh Office also grew incrementally, and on an ad hoc basis. For instance, health was added to its functions in 1968 and primary and secondary education in 1970.[16] The extension of the Welsh Office's powers has led some commentators to suggest that it eventually possessed almost the same level of responsibilities as the Scottish Office,[17] though the Welsh Office never attained the breadth of powers held by the Scottish Office.[18] In addition the Scottish and Welsh Offices possessed different histories and cultures. For instance, the Scottish Office was in place for a greater length of time than the Welsh Office, and Scotland was always able to maintain a separate legal and education system from England. As a result, despite the similarities of some of their powers the possession of different histories, cultures and policy development experience encouraged the Scottish and Welsh Offices to develop different characters, both from each other and from Whitehall. However, the extent to which both the Scottish and Welsh Offices were capable, and wiling, to pursue distinctive policies from Whitehall is an area of some dispute.

---

[13] Mitchell, J. (2006) 'Evolution and Devolution: Citizenship, Institutions, and Public Policy' in *Publius: The Journal of Federalism* (Vol.36, No.1, pp.153-168), p.158
[14] Tomaney, J. *op.cit.*, p.678
[15] Pilkington, C. (2003) *Devolution in Britain Today* (Manchester University Press, Manchester), p.58
[16] *Ibid.*

During the 1980s and early 1990s some commentators claimed that the policies developed by the territorial ministries were less 'Thatcherite' than those pursed by their counterparts in England.[19] The offices were able to develop such policies it has been suggested for two key reasons. Firstly, the territorial ministries had institutional autonomy and control sufficient resources to pursue independent policies. Secondly, the political culture of their territories were considered to be more consensual or corporatist than that prevailing in England.[20]

Kellas, in *The Scottish Political System* argued that the Scottish Office was able to develop considerable autonomy from Whitehall and that this had a significant impact upon the separate Scottish political system.[21] Kellas argues that during the Thatcher years the ability of the Scottish Office to defend Scottish interests was reduced, but he suggests that other elements of the quasi-autonomous Scottish political system still operated to frustrate Thatcherism and resist the imposition of alien policies.[22] In addition Holliday suggests that where Scotland was able to resist Thatcherism this tended to be due to cultural and societal forces rather than as a result of activity by the formal political institutions,

---

[17] Bogdanor, V. (1999) *Devolution in the United Kingdom* (Oxford University Press, Oxford), p.160
[18] Mitchell, J. op.cit, p.159
[19] Griffith, D. (1999) 'The Welsh Office and Welsh Autonomy' in *Public Administration* (Vol.77, No.4, pp.793-807), p.794
[20] Loughlin, J. (1997) 'Wales in Europe: Regional Actors and European Integration' *Paper in Planning Research No.164* (Department of City and Regional Planning, University of Wales, Cardiff)
[21] Kellas, J. G (1989) *The Scottish Political System* (4th edition) (Cambridge University Press, Cambridge)

'As regards extent, Scottish limits to Thatcherism were often substantial. As regards nature, the main limiting factor was cultural rather than institutional. In a period of radical political initiative, the formal institutions which structure the Scottish political domain played only a minor role in constraining Thatcherism. By contrast, informal features of the Scottish political order were often major limiting factors. Formal resistance was minimal. Informal resistance was maximal.'[23]

It has traditionally been suggested that the territorial offices were able to act with different levels of autonomy in different policy areas. For instance, Brown et al. suggest that 'there has generally been more Scottish innovation in education, child law, housing and social work, than in training, industry and health'.[24] This fits with Bulpitt's dual-polity model, which states that between around 1926 to 196, a dual polity operated in the UK with both the centre and periphery achieving a relative autonomy from one another'.[25] During this period Bulpitt claims that the Centre concentrated on 'High Politics', such as defence, foreign policy and macroeconomics, and sought to distance itself from 'Low Politics', including issues such as health and education. As a result it is not surprising that the Scottish and Welsh Offices were able to develop distinctive policies in the low politics arenas. However, Griffith found that in the 1980s Conservative ministers wanted to achieve their ideological goals of extending diversity and choice of provision, and restricting public provision even in relatively mundane areas of 'low politics'.[26] As a result the suggestion was the dual polity model identified by Bulpitt was challenged, and the ability of the Scottish and Welsh Offices to develop

[22] Kellas, J. G. (1990) 'The Constitutional Options for Scotland' in *Parliamentary Affairs* (Vol.43, pp.426-434) p. 429.

[23] Holliday (1992) 'Scottish Limits to Thatcherism' in *The Political Quarterly* (Vol.63, No.4, pp.448-459), p.459

[24] Brown, A., McCrone, D., Paterson, L. (1998) *Politics and Society in Scotland* (Second Edition) (Macmillan Press Ltd, Basingstoke), p.102

[25] Bulpitt, J. (1983) *Territory and Power in the United Kingdom: An Interpretation* (Manchester University Press, Manchester), p.3

[26] Griffith, D. (1999) 'The Welsh Office and Welsh Autonomy' in *Public Administration* (Vol.77, No.4, pp.793-807) , p.804

distinctive policies reduced because the Centre was suddenly interested in their areas of responsibility. For instance, Holliday argues that education policy in Scotland during the 1980s indicates the desire of the centre to impose their wishes on a reluctant Scotland,

> 'The 1987 appointment of Forsyth to the Scottish Office education team, and his elevation to Scottish Education Secretary in 1990, were clear attempts to impose Thatcherite radicalism on this leadership class'.[27]

However, Holliday suggests that no side was victorious in the development of education policy.[28] For instance, in contrast to their English counterparts, in Scotland the powers of school boards were substantially watered down through consultation.[29] In addition no Technology Academy (the Scottish equivalent of English City Technology Colleges) was ever created, and the trust related to this initiative. Finally, there was a major boycott of testing in Scotland.[30] On the other hand, however, Forsyth guaranteed that parental choice was now an accepted feature of the education system in Scotland and the creation of school boards increased the possibility of gradual adoption of local management in schools.[31] As a result, overall Midwinter et al. state that Scotland was not exempt from the key elements of the Thatcherite strategy,

> 'for the simple reason that the conventions of British government would not allow it. The British political programme was applied, with the Scottish Office refraining from independent policy initiatives, and concentrating on a conventional defence of Scottish interests within the framework of that programme'.[32]

---

[27] Holliday (1992) 'Scottish Limits to Thatcherism' in *The Political Quarterly* (Vol.63, No.4, pp.448-459), p.454
[28] *Ibid.*
[29] *Ibid.*
[30] *Ibid.*
[31] *Ibid.* p.455

In Wales the existence of a distinctive political system has been less evident than in Scotland. There was, for instance, no book written on the Welsh political system in the the style of Kellas's work. In fields such as social housing and education Wales closely mirrored developments in England, encouraging Griffith to argue that 'Institutional autonomy and administrative devolution did not bring different policies to Wales'.[33] Instead Griffith suggests that in Wales there was, 'with few significant exceptions, uniformity with, and not divergence from, English practice'.[34] In contrast, however, Gamble argues that having a cabinet minister heading the Welsh Office allowed for the development of coherent interventionist policies distinctive from those pursued at Whitehall,

> 'The most striking example of such strategic thinking came paradoxically in the Thatcher years...Under Walker and Hunt the Welsh Office has practiced not the disengagement favoured by Thatcherite ideology but an interventionist industrial policy'.[35]

Yet, even those that point to the ability of the Welsh Office to develop distinctive Welsh policies on occasions generally accept that 'the Welsh Office was one of the smallest government departments. This meant that it lacked the resources and political clout to sustain its own policy agenda on the whole of its extensive functional remit.'[36] In addition, in Wales, unlike in Scotland civic culture was much less well developed prior to devolution. In the days of the Welsh Office there was a lack of Welsh national bodies in most areas of public life, and where such bodies existed these were

---

[32] Midwinter, A. Keating, M. and Mitchell, J. (1991) *Politics and Public Policy in Scotland* (Macmillan, Basingstoke), p.208
[33] Griffith, D. (1999) 'The Welsh Office and Welsh Autonomy' in *Public Administration* (Vol.77, No.4, pp.793-807) , p.800
[34] *Ibid.*, p.803
[35] Gamble, A. (1993) 'Territorial Politics' in Dunleavy, P. and Gamble, A, Holliday, I. and Peele, G. (eds.) *Developments in British Politics* (4th edition) (Macmillan, London), p. 83

regionalised and dominated by an exclusive policy elite. [37] As Osmond explains, before the creation of the National Assembly 'it could fairly be said that there was a *civil society in Wales* rather than a *Welsh civil society.*'[38]

As a result of the history of the Scottish and Welsh Offices it is possible to draw some conclusions about policy-making in the new devolved institutions. After all, as Mitchell notes, 'Devolution in Scotland, Wales, and Northern Ireland did not so much create a new tier of government as add a democratic element to an existing tier'.[39] To a certain extent, in both Scotland and Wales there was a limited experience of developing distinctive policies by the Scottish and Welsh Offices. Whilst the Scottish and Welsh Offices were occasionally capable of developing distinctive policies in certain policy areas, more often than not their role was limited to implement policies decided elsewhere and introduce modest variations where they could to suit the needs and idiosyncrasies of the two countries.[40] In addition, in both Scotland and Wales there was a lack of policy development capacity outside the Scottish and Welsh Offices. Whilst policy communities in Scotland were more established, primarily due to the existence of a range of national bodies, in Wales they were particularly weak, meaning that after devolution Wales 'lacked both the civil service capacity and the civil society

[36] Deacon, R. (2002) *The Governance of Wales: The Welsh Office and the Policy Process 1964-99* (Welsh Academic Press, Cardiff), p.5
[37] Taylor, G. (2004) 'Policy Dynamics and Community Structures: Welsh Education Policy Under the National Assembly for Wales' presented at *ECPR Workshop* (Uppsala, April 2004), p.9
[38] Osmond, J. (2002) 'Introduction: Emergence of the Assembly Government' in Jones, B. and Osmond, J. (Eds.) *Building a Civic Culture: Institutional Change, Policy Development and Political Dynamics in the National Assembly for Wales* (Institute of Welsh Affairs and the Welsh Governance Centre, Cardiff), p. xxvii
[39] Mitchell, J. *op.cit.*, p.165
[40] Kellas, J.G. and Madgwick, P.J (1982) 'Territorial ministries: the Scottish and Welsh Offices' in Madgwick, P.J and Rose, R. (eds.) *The territorial dimension in United Kingdom politics* (Macmillan, London), p.29

infrastructure to take on the task of policy development on an all-Wales basis'.[41] In addition the functions controlled by the territorial offices 'provided the logic of the public policy competences of the new devolved institutions set up by the New Labour government'.[42] Therefore, as suggested by historical institutionalism, the history of policy-development in the Scottish and Welsh Offices continues to play a major role in shaping policy-making in the new devolved institutions; shaping their legislative functions, cultures, capacity and incentive structures.

1.3 Legislative functions

Following the devolution referendums the Scotland Act (1998) and the Government of Wales Act (1998), which set out the powers of the devolved institutions, were enacted. The Scottish Parliament was given the powers to introduce primary legislation and the National Assembly for Wales received the power to pass secondary legislation. The distinction between these two types of legislation is blurred, but basically primary legislation sets out the objectives of the law and secondary legislation works within this framework to introduce rules and regulations to ensure that these objectives are met.[43] For instance, the Activity Centres (Young Persons' Safety) Act 1995 is an example of primary legislation which makes provisions for the regulation and safety of adventure centres.[44] Secondary legislation then fills in the detail of the legislation, such as establishing who can hold a licence for an adventure centre and what requirements are

---

[41] Taylor, G. (2004) 'Policy Dynamics and Community Structures: Welsh Education Policy Under the National Assembly for Wales' presented at *ECPR Workshop* (Uppsala, April 2004),p.9
[42] Mitchell, J. (2006) 'Evolution and Devolution: Citizenship, Institutions, and Public Policy' in *Publius: The Journal of Federalism* (Vol.36, No.1, pp.153-168), p.158
[43] Zander, M. (1994) *The Law-Making Process-Fourth Edition* (Butterworths, London), p.92
[44] Silk, P. (1998) 'The Assembly as a Legislature' in Osmond, J. (Ed.) *The National Assembly Agenda: A handbook for the first four years* (The Institute of Welsh Affairs, Cardiff), p.72

placed upon licence holders.[45] In this case, although the primary legislation severely limited the secondary legislative options, the secondary legislation was crucial to the operation of the legislation. Whilst both types of legislation can allow policy divergence, the Scottish Parliament's ability to create both primary and secondary legislation gives it an advantage over the National Assembly for Wales when it comes to diverging from Westminster.

The Scotland Act (1998) reserved certain issues to Westminster; including the constitution, foreign affairs, financial and economic matters, drugs, immigration, trade and industry, energy, road traffic and social security.[46] The Scotland Act (1998) stated that the Scottish Parliament could legislate on any matter not specifically reserved for Westminster. In practice this meant that the key responsibilities of the Scottish Parliament included local government, home affairs, the legal system, housing, agriculture, health, social work and education.[47] Dividing powers by reserving functions to Westminster strengthened the Scottish Parliament because any issue not mentioned in the Scotland Act is automatically controlled by the Scottish Parliament. However, the Scotland Act does not always clearly distinguish between reserved and devolved issues. For instance, whilst marine safety, navigation rights, the regulation of the British merchant fleet and all matters relating to the employment of seafarers are reserved matters, legislation relating to ports, harbours and piers is devolved.[48] Devolving and retaining such similar powers means it can be difficult to determine where

---

[45] *Ibid.*
[46] *Scotland Act 1998*, Chapter 46, Schedule 5
[47] Bogdanor, V., *op.cit.*, p.204
[48] McFadden,J and Lazarowicz, M. (1999) *The Scottish Parliament-An Introduction* (T&T Clark, Edinburgh), p.14

competencies lie. Therefore, a thorough analysis of the Scottish Parliament's powers

needs to consider how its powers are used and interpreted in practice.

The Immigration and Asylum Act (1999) is a good example of where there was

confusion about the Scottish Parliament's legislative responsibility. The Scotland Act

clearly reserves all immigration and asylum issues for Westminster.[49] Therefore, the

Scottish Executive's response to the UK Government's plans to introduce the

Immigration and Asylum Act (1999) was that as a reserved matter it would not be

considered in detail by the Scottish Parliament.[50] However, the Immigration and

Asylum Act (1999) which emerged from Westminster amended five pieces of legislation

in devolved areas; the Social work (Scotland) Act 1968, the National Health Service

(Scotland) Act 1978, the Mental Health (Scotland) Act 1984, the Housing (Scotland) Act

1988 and the Children (Scotland) Act 1985).[51] The Immigration and Asylum Act 1999

amended these pieces of legislation by excluding asylum seekers from some of the

provisions guaranteed in these Acts. Consequently, whilst immigration and asylum is a

reserved matter the Immigration and Asylum Act (1999) clearly impinged upon

devolved matters.

To add to the confusion the Immigration and Asylum Act appeared to contravene the

European Convention on Human Rights. Shona Robison, a Scottish Nationalist Party

(SNP) Member of the Scottish Parliament (MSP), argued that as the Immigration and

Asylum Act excluded certain groups from the entitlement to legal aid it contravened the

---

[49] Scotland Act, *op.cit.,* Schedule 5
[50] Scottish Parliament, Plenary Session, 9th June 1999

European Convention, which required that funded legal services were provided for people in detention.[52]   As the Scottish Parliament was responsible for 'observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law',[53] the Scottish Parliament could have been held responsible if the Immigration and Asylum Act was judged to have broken the European Convention on Human Rights.[54]

Due to concerns about the extent of the Scottish Parliament's powers the Scottish Executive agreed to review the Immigration and Asylum Act (1999) and arranged to 'send representatives to Westminster about the dispersal policy, which is a reserved function, and about the voucher system which is also a reserved matter'.[55] Therefore, despite the Scottish Executive's consistent argument that the Immigration and Asylum Act was entirely a reserved matter they sought to ensure that the UK Government were aware of the Parliament's concerns.

The Immigration and Asylum Act case highlights the difficulties in clearly separating the Scottish Parliament's legislative functions from Westminster's, indicating that even in reserved areas policies may impinge on devolved matters.   Therefore, there is a constant need for negotiation and dialogue between the levels of government in a devolved system.   The immigration and asylum case also shows how the decision on

---

[51] Daughlian, S. (Representative from the Scottish Refugee Council) giving evidence to the Scottish Parliament, Equal Opportunities Committee, 29th February 2000
[52] Scottish Parliament, Plenary Session, 9th February 2000
[53] *Scotland Act, op.cit.,* Schedule 5
[54] Scottish Parliament, Plenary Session, 9th February 2000
[55] Scottish Parliament, Plenary Session, 5th September 2001

whether the Scottish Parliament can act is often as much a political decision as a legal one.

Unlike in Scotland, the transfer of powers to the National Assembly for Wales was not achieved through one Act of Parliament. The Government of Wales Act enabled the transfer of powers 'of any function so far as exercisable by a Minister of the Crown in relation to Wales'.[56] As primary legislative functions cannot be enacted solely by a minister (except in the cases of Henry VIII clauses explored later in this chapter) the Assembly's functions were limited in the 1998 Government of Wales Act to those of secondary legislation.[57] However, bearing this limitation in mind, the Government of Wales Act allowed for future transfers of secondary legislative functions in any area.

The Government of Wales Act began the process of transferring powers to the National Assembly for Wales by allowing functions in eighteen areas to be transferred to the Assembly, including agriculture, culture, economic development, education and training, the environment, health, industry, local government, transport, water and flood defence and the Welsh language.[58] Powers were transferred relating to individual Acts rather than specific policy areas. For example, the Assembly's functions include sections of the Asylum and Immigration Act (1996), the Local Government Act (1992) and the Forestry Act (1979).[59] Further transfers have already occurred through primary legislation from Westminster, for example, the Local Government Act 2000 transferred

---

[56] *Government of Wales Act 1998*, Chapter 38, S.22(1a)
[57] Foulkes, D (1999) 'Commentary on the Government of Wales Act 1998' in Cleveley et al. (Eds.) *Current Law Statutes* (Sweet and Maxwell and W.Green, London) p38:27
[58] Government of Wales Act 1998, *op.cit.,* Schedule 2
[59] *Statutory Instrument 1999 No. 672* (Transfer of Functions) Order 1999

new powers.[60] Additionally, other powers have been transferred through statutory instruments since the initial transfer of functions.[61]

The method of transferring powers to the National Assembly, by devolving functions relating to individual Acts rather than entire policy areas, made confusion about the Assembly's powers more likely. This confusion is enhanced by the fact that the National Assembly's powers have sometimes altered when new legislation or new transfer function orders were passed at Westminster. Professor Keith Patchett explained to the House of Lords Select Committee on the Constitution that a jigsaw puzzle analogy can help us to understand the differences between Scottish and Welsh devolution. For Scotland, Patchett argued that there was a picture of a policy area, such as education, where some jigsaw pieces are controlled by Westminster and the rest are controlled by the Scottish Parliament. However, for Wales, Patchett claimed that there was no picture; instead there was 'a jigsaw of constantly changing pieces, none of which has straight edges'.[62]

The lack of primary legislation also made it more difficult for the National Assembly for Wales to act with autonomy from the UK Government in its first term. The Assembly's limited legislative powers put additional pressure on the Welsh Assembly Government to maintain a good relationship with the UK Government, as if it wished to secure primary legislation it would need to negotiate with the Secretary of State for Wales. However, as powers to the National Assembly were devolved in a piecemeal fashion,

---

[60] *Local Government Act 2000*, Chapter 22, S.106(1)
[61] *Statutory Instrument 2000 No. 253* (W.5) (Transfer of Functions) Order 2000

the lack of primary legislative powers would not always affect the National Assembly in the same way.

The discretion offered by Westminster has been crucial to the operation of Welsh devolution because the UK Parliament can frame primary legislation to either limit or widen the scope of the National Assembly's options.[63] For example, Westminster could introduce an Act with the objective of providing all school children with a piece of fruit every day, where the Assembly had secondary legislative functions to determine which fruit would be provided and they would have responsibility for arranging its distribution. Alternatively, Westminster could produce legislation requiring all school children to receive an apple every day, where the Assembly's ability to chose the type of fruit is removed and the Assembly's role is limited to arranging the allocation of apples. Therefore, it is difficult to reach any firm conclusions about the extent of the Assembly's legislative powers without examining each policy area in depth. However, there are suggestions that the Assembly's legislative functions may be more powerful than they first appear.

At Westminster there is a growing concern that secondary legislation has become less about administrative detail and instead 'a means of achieving policy ends without the tedious business of requiring Parliamentary approval'.[64] This concern tends to be expressed when statutory instruments can amend, or even repeal an Act of Parliament.

---

[62] House of Lords Select Committee on the Constitution (December 2002) *Devolution: Inter-Institutional Relations in the United Kingdom*
[63] Morgan, K and Mungham, G. (2000) *Redesigning Democracy: The Making of the Welsh Assembly* (Seren, Bridgend), p.201
[64] Silk, P. (1998) *op.cit.,* p.73

For example, The Courts and Legal Services Act 1990 gives the Lord Chancellor the power by order to make amendments or repeals in relevant enactments as appear to him to be necessary.[65] Statutory instruments, like the powers discussed above, which allow primary legislation to be amended through the use of secondary legislation are called Henry VIII clauses. Henry VII clauses are significant because, by allowing primary legislation to be altered by secondary legislation, they give secondary legislation the same effect and importance as primary legislation.[66] If such a function were devolved, therefore, the Assembly would possess significant powers over primary legislation.[67] The initial Transfer of Functions (Order) 1999 did not devolve any Henry VIII clauses,[68] however, in later transfers Henry VIII clauses were devolved. For instance, the Education Act 2002 included a Henry VIII clause which allowed the Assembly to alter national curriculum subjects through secondary legislation.[69] This example highlights the wide variation in the Assembly's powers during its first term. The Assembly's role varied from filling in the details of primary legislation to making decisions on issues equivalent to primary legislative matters.

So far this chapter has concentrated on what the National Assembly for Wales could do. However, the Assembly's ability to abstain from acting may also be a powerful trait. It has been suggested that the Assembly could decide not to introduce secondary legislation, so 'frustrating the intention of primary legislation'.[70] This occasionally occurred before the establishment of the National Assembly for Wales. For instance, in

---

[65] Zander, M. *op.cit.,* p.92
[66] Allen, C.K (1964) *Law in the Making* (Oxford University Press, Oxford), p.589
[67] Silk, P. *op.cit.,* p.73
[68] *Statutory Instrument 1999 No. 672* (Transfer of Functions) Order 1999, S.2(e)
[69] *Education Act 2002,* Chapter 32, S.106-107

the late 1990s the Welsh Office decided not to introduce the necessary secondary legislation required for the publication of primary school league tables.[71] The extent to which the National Assembly for Wales could decide not to enact secondary legislation is an area of some legal uncertainty; after all if primary legislation dictates that certain actions must be followed then it may be illegal to ignore this.[72] Moreover, regardless of the legality of the situation, the Assembly must be careful when deciding not to introduce the necessary secondary legislation, as major conflict with the UK Government could arise if the Assembly frequently did not act in major policy areas.[73] Despite these problems, rather ironically, the Assembly may have achieved policy divergence through its inaction rather than its action.

It is worth noting that the legislative functions of the Scottish Parliament and the National Assembly for Wales are not guaranteed. Unlike in a federal system, where legislative competencies are set out in a constitution, functions to the Scottish Parliament and the National Assembly for Wales were transferred through an Act of the UK Parliament. Any Act of Parliament can be revoked as the powers of the Scottish Parliament and the National Assembly for Wales were voluntarily transferred by Westminster. Consequently, as stated in the Scotland Act (1998), devolution 'does not affect the power of the Parliament of the United Kingdom to make laws for Scotland'.[74] Therefore, although a politically controversial decision, Westminster could technically choose to ignore the wishes of the devolved institutions and legislate on any devolved

---

[70] Silk, P. *op cit.*, p.75
[71] *Ibid.*
[72] Patchett, K. (2000) 'The New Welsh Constitution: The Government of Wales Act 1998' in Jones, B. and Balsom, D. (Eds.) *The Road to the National Assembly for Wales* (University of Wales Press, Cardiff), p.244
[73] Silk, P. *op.cit.*, p.75

matter. However, as Bogdanor noted 'it is difficult to see how Westminster could continue to legislate for the domestic affairs of Scotland when it will no longer be debating them and no longer holding ministers to account for them'.[75]

1.4 Financial Arrangements

Bogdanor argued that 'finance is the spinal cord of devolution, for it is the financial arrangements which will largely determine the degree of autonomy enjoyed by the devolved administrations'.[76] The Scottish and Welsh institutions were financed from block grants originating from Westminster, commonly referred to as the 'assigned budget'. The bulk of the budget was determined by the Treasury's Departmental Expenditure Limits (DELs) and changes in the Scottish and Welsh DELs were dependent on a calculation known as the Barnett formula, discussed later in this section. DELs are spending plans set for three years and in 2003-2004 it was estimated that the DELs accounted for 90% of the Scottish budget.[77] Figure 1.1 shows the Scottish Parliament's and Welsh Assembly's DELs for each year of their first terms. However, the budgets of the devolved institutions also included Annually Managed Expenditure (AME), which is expenditure organised on a short-term basis and is not affected by the Barnett formula. AME includes various forms of funding which are passed directly to the devolved administrations, 'notably funding from the EU for agriculture under the Common Agriculture Policy'.[78]

---

[74] *Scotland Act, op.cit.,* S.28 (7)
[75] Bogdanor, V. (1999) 'Devolution: Decentralisation or Disintegration' in *Political Quarterly* (Vol.70, No.2, pp.185-194), p.186
[76] Bogdanor, V. (1999) *Devolution in the United Kingdom* (Oxford University Press, Oxford), p.235
[77] McVicar, M. and Wakefield, S (April 2003) Guide to the *Scottish Budget- Subject Profile* (SPICe briefing) accessed at www.scottish.parliament.uk/business/research/briefings-03/sb03-24.pdf on 12/11/04, p.4
[78] House of Lords Select Committee on the Constitution, *op.cit.,* p.28

Figure 1.1 Departmental Expenditure Limits (£ millions) [79]

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004 (estimated)
Scotland	14,147	15,143	16,944	18,041	19,972
Wales	7,248	7,770	8,582	9,551	10,498

The Scottish Parliament and the National Assembly for Wales were able to spend the majority of their budget as they wished. However, there were some legal restrictions on their allocation of funds, for instance, both the Scottish Parliament and the National Assembly for Wales must ensure that they provide a school place for each child requiring it.

The DELs represent the finances over which the Scottish Parliament and the National Assembly for Wales have control and so do not include expenditure by UK departments. Therefore, welfare payments allocated to those living in Scotland and Wales are not included in the DELs. Expenditure on reserved matters in Scotland and Wales can be considerable. For instance, in 2000-01 it was estimated that total Scottish spending on both devolved and reserved matters was at £36.3 billion, of which only around £15.1 billion was allocated for devolved functions through the Scottish DEL. [80]

The Scottish and Welsh DELs alter each year depending on changes in spending by the UK Government. Changes in the Scottish and Welsh DELs are usually calculated by the application of the Barnett Formula. The Treasury states that any changes to the

[79] HM Treasury (April 2004) *Public Expenditure Statistical Analyses 2004,* p.9
[80] Scottish Executive (2003) *Government Expenditure and Revenue in Scotland: 2000-2001* (Scottish Executive, Edinburgh) accessed at www.scotland.gov.uk/library5/government/gers03.pdf on 12/11/04

'budgetary provision of the devolved administrations funded by United Kingdom tax revenues (excluding the Scottish Variable Rate of Income Tax) or by borrowing will generally be linked to changes in planned spending on comparable public services by departments of United Kingdom Government... this linkage will generally be achieved by means of the population-based Barnett Formula. This largely removes the need to negotiate directly the allocation between Treasury Ministers, Secretaries of States and Ministers of the devolved administrations'.[81]

The Barnett formula was devised in the late 1970s, due to the prospect of devolution, primarily to ensure that changes in spending throughout the UK could be calculated in a set manner, thus reducing the potential for conflict as different nations compete for finances.[82] The Treasury's guidance on funding the devolved institutions, quoted above, highlights that removing the need for negotiations on devolved financial allocations is still a major justification for using the Barnett formula.

The Barnett formula takes account of three factors:

1. the change in public expenditure in England
2. the extent to which the relevant English departmental programme is comparable with the services carried out by the devolved administrations
3. the population proportion [83]

The change in public expenditure in England forms the basis of any change in the Scottish and Welsh block grant. The Barnett formula applies to either rises or falls in English public expenditure, it does not apply to the entire block grant, the majority of which is set by spending during the previous year. Therefore, as Lord Callaghan noted during the second reading in the Lords of the Government of Wales Bill, the Barnett

---

[81] HM Treasury (July 2004) *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: A Statement of Funding Policy* (Fourth edition) accessed at www.hm-treasury.gov.uk./media/CB2/3C/Funding_the_Scottish_Parliament_National_Assembly_for_Wales_(296kb).pdf on 14/5/03

[82] Edmonds, T. (2001) *The Barnett Formula: House of Commons Research Paper 01/108* (House of Commons) accessed at www.parliament.uk/commons/lib/research/rp2001/rp01-108.pdf on 27/01/02, p.8

[83] *Ibid.*, p.10

formula simply 'added something which was fairly rational onto something which was completely irrational'.[84]

Whether a change in English spending affected the Scottish and Welsh block grants depended on the extent to which the relevant English departmental programme was considered to be comparable with the services carried out by the devolved administrations. The Treasury divided each devolved area into sub-programmes and set a comparability percentage for each component. Each sub-programme was either given a comparability rating of 100% or 0%; therefore, no sub-programme was partially funded by both the UK Government and the devolved administration. In 2004 the UK Government's spending on a number of comparable sub-programmes increased, therefore, the Scottish and Welsh devolved administrations received a budget increase in 2004. The exact level of the increase was determined by the population figures for Scotland and Wales.

The population ratio calculated the extent to which the Scottish and Welsh block rose or fell compared to England. In the first term of the devolved institutions the population estimates for Scotland were regularly updated and mid-year estimates were used to calculate the Scottish and Welsh block grants. Figure 1.2 below shows how the population proportion altered during the first term of devolution.

---

[84] House of Lords, Plenary Session, 21st April 1998

Figure 1.2 Population Proportions used for Barnett Formula calculations[85]

ONS mid-year population estimates (per cent)	1999	2001	2003
Scotland's population as a proportion of the population of England:	10.34	10.23	10.20
Scotland's population as a proportion of the population of England and Wales:	9.77	9.66	9.63
Wales's population as a proportion of the population of England:	5.93	5.89	5.89

In most cases the UK Government's spending on departmental programmes only funded England, so the Barnett formula considered Scotland's population as a proportion of England's population.[86] However, on issues such as many Home Office and legal matters the UK Government financed spending in England and Wales, which meant that in the Barnett formula calculations the Scottish population as a proportion of the English and Welsh population was considered.

Taking all three components together the Barnett formula, if health spending in England, which is 99.5% comparable for both Scotland and Wales, rose by £10 million the calculation would be:

Change to the UK **X** Comparability **X** Appropriate population = Increase in
Government   proportion   Funding
department's DEL

£10 million   **X**   99.5%   **X**   10.20% (Scotland)   = £1,014,900
                                              5.89% (Wales)   = £586,055

---

[85] HM Treasury (July 2004), *op.cit.*

Therefore, if all other spending remained the same the increase in English health spending would increase the Scottish block by just over £1 million and the Welsh block by just over £500,000.

The Barnett formula was initially devised to close the gap between spending throughout the UK, as it was thought that Scotland in particular benefited from higher public expenditure per head of the population. A strict application of the Barnett formula would have lead to slower public spending increases in Scotland and Wales because the Scottish and Welsh blocks would increase at a lower rate than English spending, known as the 'Barnett squeeze'.[87] Historically the degree of convergence was limited for Scotland because the Scottish population declined rapidly but the population ratios used in the Barnett formula were not reviewed regularly. However, the Treasury's decision to review the population ratios more regularly since devolution makes public spending convergence throughout the UK more likely.

The Barnett formula linked funding to the Scottish Parliament and the National Assembly for Wales to spending in England. Therefore, as Hazell and Cornes argued, 'problems will arise whenever English reforms are introduced with large expenditure numbers attached, because of their knock-on-effects'.[88] If England cut public expenditure in health, for example, and reallocated these funds to a retained matter, such as defence, and spending in other areas did not change, then the total Welsh and

---

[86] *Ibid.*
[87] Edmonds, T., *op.cit.,* p.5
[88] Hazell, R. and Cornes, R (1999) 'Financing Devolution: The Centre Retains Control' in Hazell, R. (Ed.) *Constitutional Futures: A History of the Next Ten Years* (The Constitution Unit and Oxford University Press, Oxford), p.203

Scottish blocks would decrease. In the first terms of the devolved institutions English spending increased, therefore, the Barnett formula did not result in major conflict. However, even despite a budget decrease it was still difficult for the devolved institutions to set their own policy priorities autonomously. For example, in 2001 the Welsh Health Minister expressed her desire to dedicate a substantial portion of health spending to preventative health measures:

> 'We therefore intend to intensify our investment in prevention through a strategy of life-long investment in health. The NHS will develop further into a health service and away from a primary focus on illness.'[89]

However, directing resources away from reducing hospital waiting times meant that Jane Hutt faced considerable political difficulty justifying why in 2003 '85% of patients in Wales were admitted for routine surgical treatment within a year of being placed on a waiting list, while 96% of patients in England were seen within the same period',[90] and eventually was replaced as Health Minister apparently due to her failure to cut waiting times. The political difficulties in justifying different spending could explain why when extra money was allocated to England for the NHS and education in the UK budget of 2000 the National Assembly mirrored exactly the way in which resources were allocated by Westminster.[91] As a result, Kay suggested that it was difficult to see that the pattern of funding allocation was any different under devolution 'than it would

[89] The National Assembly for Wales (2001) *Improving Health in Wales: A Plan for the NHS with its Partners,* p.17
[90] BBC News (19 June 2003) 'Waiting Lists Longer in Wales'
[91] Blewit, N. (2000) 'Finance' in Osmond, J. (Ed.) *Devolution in Transition: Monitoring the National Assembly February to March 2000* (IWA) accessed at www.ucl.ac.uk/constitution-unit/leverh/wales/WAMAY00.pdf on 15/11/01, p.21

have been under the Welsh Office in the sense of reflecting the central government's priorities'.[92]

In the future, English spending may increase just enough to cover inflation. In such a case the Scottish and Welsh increase would be below inflation, and so the devolved institutions would be forced to make budget cuts.[93] In such times the Scottish Parliament may seek to maintain levels of spending by employing its income tax varying power. The Scottish Parliament has the power to vary the standard rate of income tax up or down by up to three pence in the pound.[94] Therefore, the Scottish Parliament has a mechanism for raising revenue independently of the UK Government's action, but the National Assembly for Wales lacks this power. In 1998 it was estimated that if the Scottish Parliament used the full extent of its powers, raising income tax by three pence, this would raise £450 million,[95] and this estimate rose to £780 million in 2004.[96] However, in comparison to the Scottish block grant, the tax varying power has the potential to raise relatively insignificant amounts, as in 1999 the Scottish DELs was £14 billion.

Another method the devolved administrations can employ to generate income, is to cut local government expenditure. Both the Scottish Parliament and the National Assembly

---

[92] Kay, A. (2001) 'Finance: The Future of the Barnett Formula' in Osmond, J. (Ed.) *Farming Crisis Consolidates Assembly's Role: Monitoring the National Assembly for Wales March – May 2001* (IWA) accessed at www.ucl.ac.uk/constitution-unit/leverh/wales/wamay001.pdf on 20/12/01
[93] Taylor, B. (2002) *Scotland's Parliament: Triumph and Disaster* (Edinburgh University Press, Edinburgh), p.245
[94] *Scotland Act, op.cit.,* S.73 (1)
[95] Mair, C. and McCloud, B. (1999) 'Financial Arrangements' in Hassan, G. (Ed.) *A Guide to the Scottish Parliament* (The Stationary Office Limited, London), p.77
[96] Report of the Richard Commission (Spring 2004) *Commission on the Powers and Electoral Arrangements of the National Assembly for Wales* (The Stationary Office), p.208

for Wales are responsible for funding local government. The devolved institutions could, therefore, cut the grants they provide to local government. The local authorities could then make up the difference in spending by increasing council tax. In this way 'the devolved governments could levy taxes by proxy'.[97] As Bogdanor notes, almost 40% of Scotland's annual block is spent financing local authority expenditure so the power to withhold local government money can secure far more revenue for the devolved body than by raising income tax by 3p.[98] However, if the devolved bodies withheld finance from local authorities 'the latter would of course need to raise the level of council tax very considerably to maintain services, given the high proportion of their income which derives from central grants'.[99] Therefore, the finances of the Scottish Parliament and the National Assembly for Wales remain heavily dependent on other levels of government and the relations between them, as the Objective One issue indicated in Wales.

The European Union (EU) awards a variety of structural funds to poor areas of Europe, to provide support for projects that aid economic regeneration. West Wales and the Valleys region was awarded almost £1.2 billion of Objective One money for January 2000-December 2006.[100] However, a condition of Objective One funding is that any EU money allocated must be matched by non-European sources. As European funding was classified as public expenditure the Treasury rules suggested that that the National Assembly for Wales would be responsible for raising the match funding money

---

[97] Hazell, R. and Cornes, R., op. cit, p.209
[98] Bogdanor, V. (1999) *Devolution in the United Kingdom* (Oxford University Press, Oxford), p.239-240
[99] *Ibid.,* p.240

required. However, Objective One money was awarded after the Welsh block had been negotiated. Consequently, only around £40 million had been set as a baseline to cover European structural funds, based on expenditure in previous years, which was insufficient given the new Objective One allocation.[101]

The UK Treasury's lack of commitment to match funding raised 'serious concern that the Assembly will be committing to expenditure in 2000-2001 without knowing whether in fact it will be granted extra provision by the Treasury to cover the expenditure taking place at a later date'.[102] The National Assembly's First Secretary at this time, Alun Michael, did not criticise the lack of commitment from the Treasury but described it as part of the public expenditure process; 'In theory you do not know that there is going to be money at all for the health service, education or the Welsh block after the current planning horizon'.[103]

Alun Michael's position on the Objective One issue was a major catalyst for his downfall as First Secretary, in February 2000. Michael's replacement, Rhodri Morgan, was able to secure more money from the Treasury to provide a greater level of match funding by emphasising the need to defuse the situation. In 2000 the Comprehensive Spending Review allocated an extra £421 million over and above what the strict application of the Barnett formula would have allocated, indicating that the Treasury eventually accepted

---

[100] Storer, A. (2001) 'Confrontation and Consensus: The Economic Development Committee' in Jones, B. J. and Osmond, J. (Eds.) *Inclusive Government and Party Management: The National Assembly for Wales and the Work of its Committees* (Institute of Welsh Affairs and the Welsh Governance Centre, Cardiff), p.79
[101] Bristow, G and Blewitt, N. (2000) 'The Comprehensive Spending Review' in Osmond, J. (Ed.) *Devolution Looks Ahead: Monitoring the National Assembly for Wales May-August 2000* (IWA), p.7
[102] Osmond, J. (1999) *Devolution: 'A Dynamic Settled Process?': Monitoring the National Assembly July-December 1999* (IWA) accessed at www.ucl.ac.uk/constitution-unit/leverh/wales/WA99DEC.pdf on 15/11/01

some responsibility for providing match funding.[104] However, even after Rhodri Morgan had been able to secure greater funds, Plaid Cymru were not content with the situation. Plaid Cymru argued that in 2000 English spending increased by 8% and the Welsh block grant, excluding money earmarked for Objective One, only increased by 7.3%.[105] Therefore, suggesting that if the National Assembly for Wales wanted to maintain its spending with the levels set in England it would be impossible for Wales to meet its European funding commitments. Consequently Plaid Cymru suggested that to fully meet its match funding requirements the Assembly would be forced to spend £100 million less each year on other programmes.[106]

The Objective One case highlighted the reliance of the National Assembly for Wales on decisions taken at both the EU and UK levels. The Treasury only provided the National Assembly for Wales with additional money when Objective One became a major political issue. Therefore, as with the legislative powers of the devolved institutions, the finances available to the National Assembly for Wales and the Scottish Parliament are heavily dependent upon the interpretation and application of the Treasury's rules and conventions in practice. Funding the Scottish Parliament and the National Assembly for Wales is, therefore, often the result of political decisions and negotiations between the different governments at each institution. In such a context, the UK Government retains considerable power because the Treasury controls economic matters and allocates the block grants. However, as the Objective One case illustrates,

---

[103] The National Assembly for Wales, Plenary Session, 19th October 1999
[104] Kay, A. (2001) 'Finance: The Future of the Barnett Formula' in Osmond, J. (Ed.) *Farming Crisis Consolidates Assembly's Role: Monitoring the National Assembly for Wales March – May 2001* (IWA) accessed at www.ucl.ac.uk/constitution-unit/leverh/wales/wamay001.pdf on 20/12/01
[105] *Ibid.*

where financial matters become a public concern and there is a risk of political damage, the UK Government may meet some of the devolved administrations' demands.

1.5 Institutional design and development

The Scottish Parliament and the National Assembly for Wales were designed to be different from Westminster. The Scottish Constitutional Convention aimed to create 'a way of politics that is radically different from the rituals of Westminster'.[107] Additionally the Consultative Steering Group, which designed how the Scottish Parliament would operate, recommended a new form of politics based on four key principles; power sharing, accountability, access and participation, and equal opportunities.[108] The National Assembly for Wales was designed to encourage power sharing, as indicated by its body corporate status.[109] As a body corporate the legislative and executive functions of the National Assembly for Wales were legally combined rather than separated, as is usually the case in parliamentary institutions.[110] This meant that there was a greater need for Assembly Members (AMs) outside the Welsh Assembly Government to possess a role in policy formation.

This section briefly examines the institutional design of the Scottish Parliament and the National Assembly for Wales, focusing primarily on the committee systems as an

---

[106] Gwilym, E. and Williams, P (2000) 'Objective One Funding-to Come at the Expense of Education and Health' in *Agenda- Winter 2000-2001* (IWA), p.14

[107] The Scottish Constitutional Convention (1995) *Scotland's Parliament. Scotland's Right* (The Scottish Constitutional Convention, Edinburgh), p.9

[108] Consultative Steering Group (1999) *Shaping Scotland's Parliament* (The Scottish Office) accessed at www.scotland.gov.uk/library/documents-w5/rcsg-04.htm on 10/11/01

[109] Government of Wales Act 1998, *op.cit.,* S1(2)

example of how the institutions allocate power to different actors. Mezey argued that legislatures with strong policy-making powers have 'highly developed committee systems which enable them to divide the legislative labour in such a way that a degree of legislative expertise is generated in most policy areas',[111] implying that strong committees are necessary if legislatures are to have a strong policy-making role. Therefore, by focusing on the committee system it should be possible to reach some understanding about the level of power sharing in place in the Scottish Parliament and the National Assembly for Wales. Additionally in the long-term care for elderly case study the committees played an influential role, as an arena in which actors expressed their views and as actors in their own right.

In his study of Danish parliamentary committees, Damgaard argued that committees rarely behave as unitary actors, and instead should be understood as arenas for co-operation and conflict among the political parties.[112] Mattson reached similar conclusions when studying Swedish committees, concluding that in Sweden 'committees constitute an arena for specialised party representatives in which they pursue party politics and the arena is at times employed as a site for party negotiation'.[113] However, Arter suggested that:

[110] Osmond, J. (2001) 'The Enigma of the Corporate Body: Relations Between the Committees and the Administration' in Jones, J.B. and Osmond, J. (Eds.) *Inclusive Government and Party Management* (Institute of Welsh Affairs and Welsh Governance Centre, Cardiff), p.11
[111] Mezey, M.L. (1979) *Comparative Legislatures* (Duke University Press, Durham), p.64
[112] Damgaard, E. (2000) 'Parliament and Government', in Esaiasson, P. and Heidar, K. (2000) *Beyond Westminster and Congress* (Ohio State University Press, Columbus), p.278
[113] Mattson, I. (1996) 'Negotiations in Parliamentary Committees', in Stenelo, L. and Jerneck, M. (Eds.) *The Bargaining Democracy* (Lund University: Lund), p.137

'The structural properties and formal powers of the Scottish committees give them a greater capacity for autonomy – that is, unitary action and, by extension, an independent legislative impact – than most of their continental counterparts.'[114]

The Scottish parliamentary committees were given a wide remit; they can scrutinise and amend legislative bills, examine statutory instruments, consider petitions, conduct inquiries and scrutinise the Scottish Executive.[115] The committees of the Scottish Parliament combine the legislative and inquiry functions of Westminster's select and standing committees. The committees are involved in two stages of the deliberation of bills. At stage one they report on the general principles of the bill, comment on the consultation undertaken and assess where further evidence is required for detailed consideration of the bill. Then, following a debate in the plenary if the principles of the bills are accepted, the bill returns to committee for the second stage of deliberation, which involves detailed consideration of the bill. Such wide ranging powers were designed to counterbalance the lack of a second chamber in the Scottish Parliament. As Arter notes, the role of the Scottish committees is unusual, as 'in none of the Nordic parliaments are committees required to report on the general principles (objectives) of the bill'.[116] The fact that bills in the Scottish Parliament go to committee before they are subject to a plenary debate suggests that the committees have an autonomous and more powerful role in policy-making. For instance, in parliaments in Western Europe Mattson and Strøm found that 'the role of committees increases if the major debate on

---

[114] Arter, D. (2002) 'Scandinavian-style Parliament with Scandinavian-style Politics? The Role of Committees in the new Scottish Assembly', *paper prepared for ECPR Workshop - A Renewal of Parliaments in Europe?* (Turin, March 22-27 2002), p.45
[115] Consultative Steering Group, *op.cit.*
[116] Arter, D. (2002) 'On Assessing Strength and Weakness in Parliamentary Committee Systems: Some Preliminary Observations on the New Scottish Parliament', in The Journal of Legislative Studies (Vol.8, No.2, pp.93–117), p.99

a bill has not taken place before it is referred to them'.[117]

The powers of the committees were designed to redress the lack of a second chamber and allow them to counterbalance the Executive. However, there are limits to the strength of the committees. For instance, the Scottish parliamentary committees are given no formal or direct involvement in the preparation of Executive bills. As Arter notes, this is in sharp In contrast to Sweden, where parliamentarians and government conduct pre-legislative commissions of inquiry (*utredningar*).[118] Therefore, in Scotland power-sharing does not extend to the policy formation stage, when the Executive possess exclusive control, albeit with the requirement that Executive bills must complete a consultation process before being presented to the parliament. Additionally, in order to understand the impact of the committees on policy-making, there is a need to examine their operation in practice.

In practice the success of the Scottish committee system has been mixed. Some committees have found that their agenda has been largely determined by the Scottish Executive. For instance, the first year of the Justice and Home Affairs Committee was dominated by consideration of legislative proposals, 'the committee launched a number of small inquiries but found its meetings dominated by its role as a revising chamber'.[119] Committees have also struggled to develop a wealth of expertise, particularly as there was little continuity of membership. For instance, between 1999 and 2003, 25

---

[117] Mattson, I. and Strøm, K. (1995) 'Parliamentary Committees' in Doering, H. (1995) (Ed.) *Parliaments and Majority Rule in Western Europe* (St. Martins Press, New York), p.284
[118] Arter, D. (2002) 'Scandinavian-style Parliament with Scandinavian-style Politics? The Role of Committees in the new Scottish Assembly', *op.cit.,* p.10

Members of the Scottish Parliament (MSPs) served on the 11 member Enterprise and Lifelong Learning Committee, and only 2 sat on the committee throughout the first term.[120]

Committees have also faced problems combining their legislative and scrutiny functions. As Lynch notes, 'MSPs are responsible for considering legislation at all stages but are supposed to forget their party affiliations at the committee stage of the legislative process in order to suggest improvements to government proposals.[121] Lynch is cynical about the ability of MSPs to 'forget' their party affiliations and found that when voting occurred in committee in the Scottish Parliament's first term, MSPs generally voted along party lines.[122] His cynicism is supported by the anecdotal comments of parliamentarians. For instance, when David Gorrie, a Liberal Democrat backbencher (who had formerly been a member of the House of Commons), was interviewed by Arter, he commented that the Labour party's 'grip is much tighter in Holyrood than Westminster' as in Westminster Labour held a comfortable majority.[123] However, different committees had different experiences; for instance, partisan voting appeared infrequent in the Health and Community Care Committee. The convenor of the Health and Community Care committee, Margaret Smith, told the procedures committee that there had only been two or three substantive party political divisions during the first

[119] Lynch, P. (2000) 'The Committee System of the Scottish Parliament' in Hassan, G and Warhurst, C. (Ed.) *The New Scottish Politics* (The Stationery Office, Norwich), p.66
[120] Arter, D. (2004) 'The Scottish Committees and the Goal of a 'New Politics': A Verdict on the First Four Years of the Devolved Scottish Parliament', in *Journal of Contemporary European Studies* (Vol. 12, No. 1, pp.71-91), p.81
[121] Lynch, P. (2001) *Scottish Government and Politics: An Introduction* (Edinburgh University Press, Edinburgh), p.70
[122] *Ibid.*, p.70
[123] Interview with David Gorrie 7 February 2002 quoted in Arter, D. (2002) Scandinavian-style Parliament with Scandinavian-style Politics? The Role of Committees in the new Scottish Assembly', *op.cit.,* p.17

term and that the committee does 'most of our work by consensus'.[124]   Interestingly,

during the Scottish Parliament's first term, the Health and Community Care Committee

was also one of the most well respected committees.

In the first session there were occasions when the committees helped to shape

legislation. For instance, the Equal Opportunity Committee opposed the Executive on

the Census order and was prepared to force an amendment to the bill until the

Executive relented and allowed a question on religion to be included in the census.[125]

Additionally the committees have been able to apply pressure on the Executive to act

on some issues.   For instance, MSP Tommy Sheridan proposed an Abolition of

Poindings and Warrant Sales Bill, which was discussed at three meetings of the Justice

and Home Affairs Committee, two sessions of the Local Government Committee and

three sessions of the Social Inclusion Committee.[126] All three of these committees were

in favour of the bill, despite the Executive's opposition. When the bill finally reached

the plenary stage the Executive's plans to introduce a wrecking amendment to the bill

had to be withdrawn due to the considerable support for the proposed legislation which

had galvanised as the bill progressed through the committees.[127]

In addition the Scottish committees are able to initiate bills. In the first session of the

Scottish Parliament 61 public bills were passed (and 1 private bill); 3 were Committee

---

[124] Scottish Parliament, Procedures Committee, 29th May 2001
[125] Lynch, P. (2000), *op.cit.,* p.71
[126] Lynch, P. (2001), *op.cit.,* p.103
[127] *Ibid.,* p.105

44

Bills, 8 were Member's Bills and 50 were Executive Bills.[128]   Therefore, in the Parliament's first session 82% of legislation originated from Executive Bills (not including private bills). In comparison, 87% of the legislation passed at the House of Commons between 1997 and 2001 originated from the UK Government.[129] In both institutions the Executives clearly dominated the legislative process, but in the Scottish Parliament a higher percentage of non-Executive bills were passed, almost one-fifth of legislation in the Scottish Parliament originated from outside the Executive.   However, despite some successes, Arter suggests that the Scottish Parliament should be seen, in Philip Norton's terms,[130] as a *policy influencing* rather than a *policy making* assembly.[131]

The National Assembly for Wales, like the Scottish Parliament, has 'multi-functional committees'.[132] The National Assembly's committees have three main responsibilities; scrutinising the administration, policy development, consideration of subordinate legislation.[133] In the National Assembly for Wales, backbenchers and ministers sat on the committees together, resulting in no clear distinction between the executive and the legislature. Partly as a result, the precise role of the committees in Wales was an area of controversy in the first term. Some AMs expected the committees to play a major role in policy-making whilst others argued that the Cabinet, later known as the

---

[128] Scottish Parliament *Summaries of Bills Passed by the Scottish Parliament in the First Session* accessed at www.scottish.parliament.uk/business/bills/billsPassed/billsum-s1.htm on 15/11/04
[129] House of Commons *Sessional Information Digests (1997-2001)* accessed at www.publications.parliament.uk/pa/cm/cmsid.htm on 18/06/05
[130] Norton, Philip (1990) 'Parliaments: A Framework for Analysis', in P. Norton (ed.), *Parliaments in Western Europe* (Frank Cass, London), pp.1-10
[131] Arter, D. (2004), *op.cit.,* p.86
[132] Laffin, M and Thomas, A (2000) 'Designing the National Assembly for Wales' in *Parliamentary Affairs* (Vol.53, No.3, pp.557-576), p.557
[133] Osmond, J. *op.cit.,* p.4

Welsh Assembly Government, should make policy and the committees should simply develop these proposals. The first Welsh First Minister, Alun Michael, argued that the committees were designed to be the 'Assembly's engine room',[134] whose role should be to 'advise the Cabinet and the whole Assembly on the way they should progress on important issues'.[135] Therefore, Alun Michael perceived the committees as advisers, with an indirect policy development role. The same opinion was less subtly expressed by Rosemary Butler, previously the Assembly Secretary for pre-16 education. During a debate on performance management of teachers Butler explained that she had considered the views of the Pre-16 Education Committee alongside those of other organisations outside the Assembly, suggesting that she viewed the Committee as one of many advisors.[136]

When the Welsh Cabinet ignored the majority of the Pre-16 Education Committee's members who questioned performance-related pay, it provoked debate in the National Assembly about the structure of the institution. Mike German, the leader of the Welsh Liberal Democrats, argued that as the Welsh Assembly Government at this time was a minority administration 'the committees, when voting as a majority, represent the will of the Assembly's majority'.[137] It was particularly important to establish the role of the committee in the National Assembly for Wales as the institution was created as a corporate body and so it was expected that executive and backbench members would

---

[134] The National Assembly for Wales, Plenary Session, 7th May 1999
[135] *Ibid.*
[136] Egan, D. and James, R. (2001) 'Driving A Policy Agenda: The Post-16 Education and Training Committee' in Jones, B. J. and Osmond, J. (Eds.) *Inclusive Government and Party Management: The National Assembly for Wales and the Work of its Committees* (Institute of Welsh Affairs and the Welsh Governance Centre, Cardiff), p.61
[137] The National Assembly for Wales, Plenary Session, 7th May 1999

collaborate on policy development, debate and decision.[138] The committees were

designed to be a major channel for ensuring backbench input into policy decision.

However, in the National Assembly's first term there was a re-examination of the

separation of the executive and legislature, and an attempt to clarify precisely what

backbench input into policy should involve; this was indicated by the Review of

Procedures in 2001 and the Richard Commission, which reported in 2004.[139]

In strictly legal terms at the end of the first term, in 2003, the National Assembly was a

corporate body.[140] As Rhodri Morgan acknowledged during the National Assembly's

Review of Procedures, 'we could not create a Welsh Executive in the Scottish style

unless the Government of Wales Act was substantially rewritten'.[141] Within the

limitations of the Government of Wales Act, however, the National Assembly had

moved towards a more traditional governmental structure by the end of its first term.

Symbolically the most significant change to the National Assembly's institutional

arrangements occurred on 14th Feb 2002, when the Assembly unanimously accepted

'the principle that there should be the clearest possible separation between the

Government and the Assembly which is achievable under current legislation'.[142] Here

the Assembly accepted the creation of the Welsh Assembly Government as a separate

---

[138] Osmond, J. (2000) 'A Constitutional Convention by Other Means: The First Year of the National
Assembly for Wales' in Hazell,R. (Ed.) *The State and the Nations: The First Year of Devolution in the United
Kingdom* (Imprint Academic, Thorverton), p.45
[139] Report of the Richard Commission (Spring 2004) *Commission on the Powers and Electoral
Arrangements of the National Assembly for Wales* (The Stationary Office)
[140] The UK Government's White Paper, *Better Governance for Wales,* published in June 2005, proposes to
separate the executive and legislature further.
[141] Morgan, R. (2001*) Letter to the Presiding Officer, 5th July 2001* accessed at www.wales.gov.uk on
2/4/03
[142] National Assembly of Wales, Plenary Session, *14th February 2002*

entity from the National Assembly. Although in strictly legal terms the Government of Wales Act contains no reference to a separate Welsh Assembly Government, in practice the roles of executive and legislative have been separated. The legal status of the Assembly as a corporate body, combined with the reality of a formally recognised Welsh Assembly Government, creates a rather confused picture of policy-making responsibilities. The confused legal situation implies that to understand policy-making in the National Assembly for Wales it is worth examining the situation in practice, looking at how policies are made on a case by case basis.

In addition to power-sharing between the Executive and the devolved institutions, indicated by the committee systems, the Scottish Parliament and the National Assembly for Wales also sought to offer a strengthened voice to non-governmental actors. In Scotland non-governmental actors are provided with a formalised role in policy-making through the requirement for pre-legislative consultation. More informally non-governmental actors are offered 'multiple-access points for discussing legislation with MSPs in committees and in plenary, and opportunities for further consultation with committees'.[143] Additionally, the commitment of the devolved institutions to accessible, open and responsive government suggests that there would be greater participation with non-governmental actors than exists in Westminster.[144] During the first term in Scotland a range of civic organisations organised themselves through the Scottish civic forum, which was attached to the Parliament and offered an institutionalised mechanism for dialogue between pressure groups and the new devolved institutions.[145]

---

[143] Lynch, P. (2001), *op.cit.,* p.121
[144] Consultative Steering Group (1999), *op.cit.*
[145] Lynch, P. (2001), *op.cit.,* p.122

The civic forum discussed pre-legislative proposals and sought to negotiate a common position for discussion with the Scottish Parliament.[146] In Wales, non-governmental actors, local government and business have a legal right to be consulted by the National Assembly, giving them a formal role in policy-making.[147] In response to its legal commitment to consult in 2000 the Welsh Assembly Government established a Voluntary Sector Scheme. Whilst the Voluntary Sector Scheme is not legally binding it included a number of commitments, such as a requirement that each Assembly Secretary met

> 'with representatives of the relevant networks of voluntary organisations covering their areas of responsibility at least twice in any one calendar year. These meetings will review the operation of the Scheme and the level of consultation and discussion that has taken place between the network and the appropriate Secretary/Committee'[148]

However, whilst the Voluntary Sector Scheme in Wales and the pre-legislative scrutiny arrangements in Scotland suggest that non-governmental actors have a role in policy-making, whether their formal role translated into real policy-making influence is a different matter, which is considered throughout this thesis.

1.6 Electoral system and coalition government

The Scottish Parliament and the National Assembly for Wales are elected through a proportional representation model, an additional-member system. The decision to adopt a proportional representation system was a political one. In Scotland and Wales

---

[146] McTernan, L. (2000) 'Beyond the Blethering Classes: Consulting and Involving Wider Society' in Hassan, G. and Warhurst, C. (Eds.) *The New Scottish Politics: The First Year of the Scottish Parliament and Beyond* (The Stationary Office, Norwich), p.143
[147] Government of Wales Act 1998, *op.cit.*, S.113-115

the failure of the devolution referendums in 1979 encouraged co-operation between pro devolution parties. In Scotland, during meetings of the Constitutional Convention it became clear to Labour 'that proportional representation was the price which it had to pay for agreement with the Liberal Democrats'.[149] Labour were also motivated by a fear that in a four party system the SNP could win a majority of seats with just 35% of the vote, and then use their electoral victory to claim a mandate for Scottish independence.[150] In Wales, the Labour party was more reluctant to accept proportional representation, and had less reason to do so because the Labour party was stronger in Wales and the nationalist threat less significant. In 1995 the Welsh Labour Conference voted to support the First Past the Post (FPTP) model for Assembly elections, but changed its position after negotiations with the Labour party leader, Tony Blair, and, the Shadow Secretary of State for Wales at the time, Ron Davies.[151]

The additional member system introduced in Scotland and Wales gives each elector two votes. The first vote is for a constituency member. The constituencies in the Scottish and Welsh elections mirror those for Westminster, except Orkney and Shetland are given a seat each in the Scottish Parliamentary election whereas they are combined for Westminster elections. The first votes are calculated as in the FPTP. In Scotland 73 of 129 seats are calculated from the first vote and in Wales 40 of 60 are elected by the FPTP method. The second ballot then corrects the lack of proportionality in the first

---

[148] The National Assembly for Wales (2000) *Voluntary Sector Scheme* accessed at www.wales.gov.uk on 3/9/03
[149] Bogdanor, V. (1999) *Devolution in the United Kingdom* (Oxford University Press, Oxford), p.219
[150] *Ibid.*, p.220
[151] *Ibid.*, p.221

vote.[152]   For the second vote Scotland and Wales are divided into regions, there are

eight regions in Scotland and five in Wales. When casting their second votes, electors

vote for a party list in their region, rather than a particular candidate, and have no say

over the order of the list. The members of the Scottish Parliament and the National

Assembly for Wales are then calculated using the d'Hondt method:

1. The first vote (the constituency ballot) is counted using FPTP and winners declared (73 in Scotland, 40 in Wales)
2. The number of votes cast for each party in the second vote (the list ballot) are counted
3. The second ballot total of votes for each party in a region are divided by the number of constituency members gained by that party in the constituency ballot in that region, plus one
4. The party with the highest total after the above calculation has been done gains the first Additional member
5. The next Additional Member, until all places have been filled, is allocated in the same way, but at each stage the Additional Members already elected for each party are added to the constituency members total used for the calculation at step 3. [153]

The electoral system adopted for the Scottish and Welsh elections makes it more

difficult for political parties to secure a majority of the seats in the devolved institutions.

For instance, in Scotland if the additional member system had been used for

Westminster elections, then no party would have won an outright majority since 1974,

and it is too difficult to predict the outcome of earlier elections if the electoral system

had been changed, as the Liberal Democrats and the Nationalist parties did not put up

Parliamentary candidates for all seats prior to this date.[154] Under a system whereby no

party has a majority of the seats, and 'where parliament operates by majority decision

rules, as is commonly the case, single parties cannot hope to monopolize political

---

[152] Myers, A. (1999) 'The New Electoral System' in Hassan (Ed.) *A Guide to the Scottish Parliament* (The Stationery Office, Edinburgh), p.89
[153] *Ibid.*, p.90
[154] *Ibid.*

control'.[155] In such circumstances Müller and Strøm suggest that coalitions become a necessity, even if these coalitions are formed from day to day on an issue by issue basis.

To date the Scottish Parliament has consistently been led by a coalition government between Labour and the Liberal Democrats, whilst in its first term the Welsh Assembly Government was a minority administration, a coalition government and a majority government (it is currently a minority administration again).

Figure 1.3 shows the results of the first elections to the Scottish Parliament and National Assembly for Wales. The Labour party received the highest share of the vote in both Scotland and Wales, with 56 out of 129 seats in Scotland and 28 out of 60 seats in Wales.

Figure 1.3 Results of the First Elections to the Devolved Institutions [156]

	Party	Constituency Seats	Regional Seats	Total Seats
Scotland	Labour	53	3	56
	SNP	7	28	35
	Conservative	0	18	18
	Liberal Democrats	12	5	17
	Others	1	2	3
				(129)
Wales	Labour	27	1	28
	Plaid Cymru	9	8	17
	Conservative	1	8	9
	Liberal Democrats	3	3	6
				(60)

---

[155] Müller, W.C. and Strøm, K. (2000) 'Coalition Governance in Western Europe' in Müller, W.C. and Strøm, K. (Eds.) Coalition Governments in Western Europe (Oxford University Press, Oxford), p.1

In Scotland, Labour quickly decided to form a coalition with the Liberal Democrats, who had won 17 seats, which gave the Scottish Executive a total of 73 out of 129 seats, and a clear majority. In Wales, Labour was closer to achieving a majority, so initially decided to govern as a minority administration. Therefore, the early days of the National Assembly were characterised by *ad hoc* deals on an issue by issue basis. Rhodri Morgan later explained that as a minority administration the Welsh Assembly Government 'struggled to provide the kind of stable and decisive forum in which policies vital to our nation's future can be debated and decided',[157] and instead policy-making consisted of striking 'a deal over every vote with Plaid Cymru, the Liberal Democrats, or occasionally with the Tories...saying "You support this and we will support you"'.[158] Therefore, in October 2000, after Rhodri Morgan had replaced Alun Michael as First Minister, a coalition government was formed in Wales between Labour and the Liberal Democrats, which gave the Welsh Assembly Government 34 out of 60 seats.

In Scotland and Wales the coalition governments each produced a partnership agreement which set out the aims of the coalition. In Scotland a key tenet of the partnership agreement was a commitment to review student tuition fees, which the Liberal Democrats argued was essential if they were to justify their position in

---

[156] BBC News- Vote 99 *Election results* accessed at www.news.bbc.co.uk/hi/english/static/vote_99/during/index.stm on 4/12/03
[157] National Assembly For Wales, Plenary Session, *17th October* 2000
[158] *Ibid.*

government.[159]   However, the partnership agreement contained little commitment to other Liberal Democrat causes, for instance on the proposal to introduce proportional representation for local government elections the Executive was only required to 'make progress'.[160]   The Welsh coalition government also decided to focus on student finance and the Welsh partnership agreement, 'Putting Wales First', included a commitment to conduct 'an immediate independent investigation into the issue of student hardship and funding in Wales, dealing with those issues covered in the Scottish Cubie Report which fall within the Assembly's remit'.[161]

Tsebelis argued that, all other things being equal, 'the important variable for policy change is...the number of parties and the ideological composition of the government'.[162] Tsebelis developed the veto player's theory, which claimed that the number of individual and collective veto players whose agreement is necessary for a change to the status quo makes a crucial difference to policy outputs.   The veto player's theory predicted that 'policy stability (defined as the impossibility of significant change to the status quo) will be the result of large coalition governments', particularly if the coalition government parties have significant ideological differences between them.[163]   Tsebelis also found that the more veto players involved in policy-making, the less the government was able to control the parliamentary agenda (though he did not seek to explain whether there was a causal relationship between these variables, and if so

[159] Scottish Labour and Scottish Liberal Democrats (May 1999) *A Partnership for Scotland: A Programme for Government* accessed at www.scotlibdems.org.uk/docs/coaltion.htm#4 on 4/12/03
[160] *Ibid.*
[161] Welsh Labour and Welsh Liberal Democrats (2000) *Putting Wales First: A Partnership for the People of Wales* accessed at www.wales.gov.uk/organicabinet/content/putting.html on 23/3/02
[162] Tsebelis, G. (1995) 'Veto Players and Law Production in Parliamentary Democracies' in Doering, H. (Ed.) *Parliaments and Majority Rule in Western Europe* (St. Martins, New York), p.83

which variable lead to the other).[164] Tsebelis's work suggests that it is likely that the existence of coalition governments in Scotland and Wales would impact on the shape of the policies emanating from the devolved institutions, and could possibly be an explanatory factor for cases of policy divergence (where policies adopted in the devolved institutions differ from each other and those pursued by Westminster).

Müller and Strøm argued that coalitions can be understood as a game between political parties, and the actors within these parties.[165] In this way, therefore, coalitions structure the interaction of actors. Martin and Vanberg have claimed that to survive coalitions require parties with different preferences to bargain and compromise.[166] If they are correct it seems plausible to suggest that if different parties and actors within these parties were involved in coalition government then different policy outputs could occur. For instance, if Labour had governed as a minority administration in Scotland, thus requiring the formation of day to day coalitions over different issues, it is likely that different policies would have emerged than those produced by a Labour and Liberal Democrat coalition government. In addition to shaping policy outputs Martin and Vanberg's analysis of coalition governments also hints that coalition governments encourage different policy-making processes to those of majority or minority governments. For instance, in comparison with majority administrations, coalition governments appear to require a greater level of negotiation, discussion and compromise because party whips tend to be less effective at persuading people from

---

[163] Tsebelis, G. (1999) 'Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis' in *American Political Science Review* (Vol.92, No.3,pp.591-608), p.591
[164] *Ibid.*, p.605
[165] Müller, W.C. and Strøm, K. (2000), *op.cit.,* p.4

other political parties to tow the Executive's line. Therefore, the electoral system in Scotland and Wales may affect the style of policy-making and the policy outputs emanating from the devolved legislatures.

1.7 Conclusion

This brief analysis of the new devolved institutions' legislative functions, financial arrangements, institutional design and electoral system highlights that the Scottish Parliament and the National Assembly for Wales are unique institutions but their structure and culture is heavily dependent on the institutions that were in place prior to devolution. Actor-centred institutionalism, discussed in greater detail in the next chapter, implies that these characteristics of the devolved institutions will shape policy-making by shaping the perceptions, preferences and capabilities of individuals and groups of actors. Scharpf argued that institutions are the most important influences on actors.[167] This chapter has focused on the devolved legislatures, as it is within this context that actors operate. The next chapter expands on the concept of actor-centred institutionalism, which is adopted as the theoretical framework throughout the thesis. Then the thesis investigates the impact of actors and institutions on the Scottish and Welsh long-term care for the elderly policies.

---

[166] Martin, L.W. and Vanberg, G. (2004) 'Policing the Bargain: Coalition Government and Parliamentary Scrutiny' in *American Journal of Political Science* (Vol.48, No.1, pp.13-27), p.15
[167] Scharpf, F. W. *op.cit.,* p.39

Chapter Two

Actor-Centred Institutionalism

Chapter one described some of the key characteristics of the devolved institutions in Scotland and Wales. It was especially important to describe the features of the National Assembly and the Scottish Parliament because a central strand in this thesis is that institutions matter. This chapter begins by exploring in what way institutions matter, discussing the impact that institutional structures and habits can have on policy-making. Traditional, or old, institutionalism tended to focus on the formal structures of institutions; such as constitutions, legal systems and government structures.[1] However, new institutionalists adopt a wider definition of the institution, considering characteristics such as norms and conventions. There have been many attempts to integrate theories of the 'institution' (or structure) with the 'actor' (or agent). This chapter briefly examines the role of the actor in policy-making, focusing on rational choice theories, before exploring how governance approaches can help to clarify which actors to study. Finally the chapter integrates these theories, adopting the framework of actor-centred institutionalism, developed by Scharpf.[2]

---

[1] Lowndes, V. (1996), 'Varieties of New Institutionalism: A Critical Appraisal' in *Public* Administration (Vol.74, No.2, pp.181-97), p.181

[2] Scharpf, F. W. (1997) *Games Real Actors Play: Actor-Centred Institutionalism in Policy Research* (Westview Press, Colorado)

2.1 Institutions

Institutionalism dominated political studies without serious challenge until around the 1950s; in a sense 'Institutionalism *was* political science'.[3] Institutionalists at this time focused heavily on formal structures. As Rhodes explains the traditional institutionalist approach concentrated on 'the rules, procedures and formal organizations of government'.[4] The traditional institutionalist approach has been likened to that of an intelligent observer, avoiding theoretical or methodological considerations, and describing what they saw.[5] As a result, Lowndes claimed that old institutionalism took facts for granted and based its arguments on common sense assumptions.[6]

Traditional institutionalism was challenged by the 'behavioural revolution' of the 1950s and 1960s which focused on how key individuals behaved.[7] Behaviourists examined what actors did and how their behaviour could be explained. For instance, behaviourists sought to explain voting behaviour, involvement in other forms of political participation (such as demonstrations and strikes), and the behaviour of leaders and decision makers.[8] Additionally, behaviourists explored group behaviour, such as that of political parties, interest groups and nation states. Goodin and Klingemann explain that the behaviourist revolution focused on 'dismissing the formalisms of politics — institutions, organizational charts,

---

[3] Lowndes, V. (2002) 'Institutionalism' in Marsh, D. and Stoker, G. (Eds.) *Theory and Methods in Political Science: Second Edition* (Palgrave Macmillan, Hampshire), p.90
[4] Rhodes, R.A.W (1997) *Understanding Governance* (Open University Press, Buckingham), p.68
[5] Peters, B.G (1999) *Institutional Theory in Political Science: The 'New Institutionalism'* (Pinter,London), p.2
[6] Lowndes, V. (1996), *op.cit.,* p.181
[7] Ward, H. (2002) 'Rational Choice' in Marsh, D. and Stoker, G. (Eds.) *Theory and Methods in Political Science: Second Edition* (Palgrave Macmillan, Hampshire), p.65
[8] Sanders, D. 'Behaviourism' in Marsh, D. and Stoker, G. (Eds.) *Theory and Methods in Political Science: Second Edition* (Palgrave Macmillan, Hampshire), p.45

constitutional myths and legal fictions'.[9] The behaviouralist revolution, therefore, posed a direct threat to institutionalism. Traditional institutionalism was criticised for simplifying the political world, assuming that by understanding political structures it was possible to understand behaviour.[10] Peters suggested that such an approach left 'little or no room for the impact of individuals, excluding perhaps those exceptional individuals such as the 'Great Men' of history, to influence the course of events within government'.[11] As a result of the challenge posed by behaviourists in the 1980s institutionalism was relegated to the fringes of political study, especially in the United States.[12]

In response to the challenge to traditional institutionalism, Rhodes suggested that critics had misrepresented it, and in fact institutionalism was more sophisticated than they implied. For instance, Rhodes argued that many institutionalists did consider the impact of informal influences, such as procedural norms.[13] Rhodes also argued that traditional institutionalism offered genuine insights into political systems, and described the approach as 'part of the toolkit of every political scientist'.[14] However, Rhodes accepted that 'implicit assumptions must give way to an explicit theory within which to locate the study of institutions'.[15] In the 1980s the term 'new institutionalism' was coined, representing an attempt to develop a deeper

---

[9] Goodin, R. and Klingemann, H. (Eds.) (1996) *A New Handbook of Political Science* (Oxford University Press, Oxford), p.11
[10] Peters, B.G, *op.cit.,* p.7
[11] *Ibid.*
[12] Lowndes, V. (2002) *op.cit.,* p.94
[13] Rhodes, R. (1995) 'The Institutional Approach' in Marsh, D. and Stoker, G. (Eds.) *Theory and Methods in Political Science* (Macmillan, London), p.49
[14] Rhodes, R. (1997) *op.cit.,* p.64
[15] Rhodes, R. (1995) *op.cit.,* p.50

theoretical underpinning to the study of institutions that came to terms with the behaviourist challenge.[16]

Within the category of new institutionalism, a range of different approaches have since emerged. Peters, for instance, identified seven new forms of institutionalism:

1. *Normative institutionalism:* Examines how the norms and values of institutions shape the behaviour of individuals;

2. *Rational Choice institutionalism:* Perceives political institutions as systems of rules and inducements, within which individuals seek to maximise their position;

3. *Historical institutionalism:* Explores how the design of government systems in the past influences decision-making today by individuals;

4. *Empirical institutionalism:* Classifies different institutional types and analyses their impact upon government performance;

5. *International institutionalism:* Examines how the behaviour of states is steered by the formal and informal structural constraints within the international political system;

6. *Sociological institutionalism:* Studies how institutions create meaning for individuals;

7. *Network institutionalism:* Suggests that regular, but often informal, interaction between individuals or groups, who share particular values or objectives shapes political behaviour.[17]

New institutionalism, then, is a broad church within which both rational choice theorists and old institutionalists can be found. As a result Gamble claimed that new institutionalism is best understood as an 'organising perspective'.[18] New

---

[16] March, J. and Olsen, J. (1984) 'The New Institutionalism: Organizational Factors in Political Life' in *American Science Review* (Vol.78, No.3, pp.734-749)
[17] Peters, B.G *op.cit.,* pp.19-20
[18] Gamble, A. (1990) 'Theories of British Politics' in *Political Studies* (Vol.38, No.3, pp.404-420), p.405

institutionalism is not so much a theory about causality as a framework which raises questions and provides insights. New institutionalists claim that employing only theoretical approaches to policy research tends not to be productive because the range of actors involved in policy-making are too variable and research interests too specific.[19] Scharpf suggested that empirical data, which must be collected for each case, should form the basis of research on the interactions of policy actors. Such empirical data can then be organised and examined through an organising framework which draws from a range of theoretical approaches. The aim of new institutionalism, therefore, is to reach a deeper understanding, rather than to establish a new theory which claims to hold all the answers. Indeed Rhodes claimed that the multi-theory character of new institutionalism was one of its greatest strengths,

> 'No theory is ever true, it is only more or less instructive. You can learn from the critical assessment of one theory; you can learn much more from a comparative critical assessment of several theories brought to bear on a single topic. The study of political institutions will benefit greatly from such multi-theoretic research.'[20]

Despite the variety of frameworks within the new institutionalism approach there are a number of common themes and ideas. Lowndes suggests that it is not helpful to draw a sharp distinction between old and new institutionalism, as new institutionalism has built 'upon the insights of the best of the traditional institutionalists, within the context of more explicit and sophisticated frameworks'.[21] Lowndes identifies six ways in which new institutionalism has developed the study of institutions from old institutionalism:

1) from a focus on organisations to a focus on rules
2) from a formal to an informal conception of institutions

---

[19] Scharpf, F. W. (1997) *op.cit.,* p.37
[20] Rhodes, R. (1995) *op.cit.,* p.56
[21] Lowndes, V. (2002) *op.cit.,* p.97

3) from a static to a dynamic conception of institutions
4) from submerged values to a value-critical stance
5) from a holistic to a disaggregated conception of institutions, and
6) from independence to embeddedness[22]

New institutionalism explores the sets of rules associated with an organisation rather than focusing on the organisation itself. Fox and Miller, for instance, define institutions as the rules which exist, between, under, over and around organisations.[23] New institutionalism suggests that these rules can be informal and formal. New institutionalists also suggest that these rules can be flexible because institutions are dynamic structures. As a result they perceive institutions as *processes* rather than permanent structures.[24] Old institutionalism had an implicit commitment to particular values and models of government, whilst new institutionalism adopts a more critical stance, considering the range of ways that institutions can embody and shape societal values.[25] New institutionalism is also less holistic, focusing on the constituent parts rather than entire political systems. New institutionalists also place the institutions in their wider context, highlighting how they are 'embedded' in a wider world.[26]

The new institutionalists focus on informal and dynamic structures, however, has made it more difficult to define what an institution actually is. Peters argued that an institution must be 'a structured feature of the society and/or polity', that it needs to have some stability over time, and that it must affect individual behaviour. Finally 'there should be some sense of shared values and meaning among the members of

---

[22] *Ibid.*
[23] Fox, C. and Miller, H. (1995) *Postmodern Public Administration* (Sage, California), p.92
[24] Lowndes, V. (2002) *op.cit.,* p.99
[25] *Ibid.*
[26] Granovetter, M. (1985) 'Economic Action and Social Structure: The problem of Embeddedness' in *American Journal of Sociology* (Vol.91, No.3, pp.481-510)

the institution'.[27]   The basic understanding of an institution offered by Peters is widely accepted by new institutionalists, but disagreement emerges when it comes to defining institutions in greater depth.

The definitions of institutions in new institutionalism fall broadly into two categories. Firstly, there is a 'thin' conception of institutions where institutions are perceived as 'analytically distinct from other factors that shape behaviour, such as interests, preferences and information'.[28]   The thin understanding of institutions tends to be associated with rational-choice theories, as in such theories actors are seen to make deliberate decisions shaped by the rules of the system in which they operate.   In contrast the 'thick' conception of institutions defines institutions as more than a set of rules or norms.   Here institutions are considered to also include behaviour patterns, interests and belief systems.[29]   March and Olsen promote a thick conception of institutions, arguing that institutions comprise of, 'routines, procedures, conventions, roles, strategies, organizational forms, technologies, beliefs, paradigms, codes, cultures and knowledge'.[30]   Lane and Ersson explain that the different conceptions of institutions can be likened to seeing the game of chess either as 'a game governed by institutions in the form of rules', as in the 'thin' notion, or as an 'institution in itself', whereby the strategies and interests of the players form part of the institution, as in the 'thick' conception.[31]

---

[27] Peters, B.G *op.cit.,* pp.18-19
[28] Lane, J. and Ersson, S. (2000) *The New Institutional Politics: Performance and Outcomes* (Routledge, London), p.4
[29] *Ibid.*
[30] March, J. and Olsen, J. (1989) *Rediscovering Institutions: the Organizational Basis of Politics* (Free Press, New York), p.22
[31] Lane, J. and Ersson, S. *op.cit.,* p.6

Despite the range of institutionalist models, there is common agreement amongst institutionalists, old and new, that institutions shape policy outcomes, that institutions matter, even if they are not agreed on what constitutes an institution. Steinmo and Tolbert have claimed that, 'it has become nearly passé to argue that institutions matter. Virtually all political scientists readily agree to this rather innocuous statement'.[32] By saying that institutions matter, the argument is that a distinction can be drawn between policies that an actor might choose as a member of a system's institutions, and 'the policies they might select, in equilibrium, in the absence of that particular system's institutions'.[33] To reach a deeper understanding of institutions, therefore, it is worth considering how and under what conditions they shape behaviour. In order to attempt this, we shall briefly examines two institutional designs that nearly all new institutionalists would agree can affect political outcomes; federalism versus unitarism, and their usual concomitant, presidential or parliamentary executives.

Comparing federalist and unitary states has encouraged some commentators to suggest that one model is superior to the other. A key claim made of federal systems is that it can limit the despotic possibilities of democracy.[34] Congleton argued that federalism can diminish some of the undesirable affects associated with ethnic nationalism because in a federal system it is more difficult for one group to use governmental powers to design and implement policies without the support of other groups. As a result Congleton argued that federalism makes it harder

---

[32] Steinmo S. and Tolbert C. (1998) 'Do Institutions Really Matter? Taxation in Industrialised Democracies' in *Comparative Political Studies* (Vol.31, No.2, pp.165-87), p.183
[33] Hammond, T.H and Butler, C.K (2003) 'Some Complex Answers To The Simple Question 'Do Institutions Matter?' in *Journal of Theoretical Politics* (Vol.15,No.2,pp.145-200), p.147
[34] Madison, J., Hamilton, A, and Jay, J. (1987) The Federalist Papers Kramnick, I. (ed.) (Penguin, Hammondsworth)

implement discriminatory policies.[35]   Watts agrees, suggesting that federal arrangements can protect the human rights of minorities because in such systems state sovereignty is constrained and the central tier have the authority to intervene where rights are threatened, obviously here the assumption is that the central tier would be less likely to abuse these rights.[36]

In addition several commentators suggest that federalism can reduce tensions over territory. Elazar, for instance, proposes that some form of federal solution is the only way for the to share land between the Jewish and Palestinian communities in the middle east. [37] According to Elazar, federalism can help to resolve the Israeli-Palestinian conflict because it offers a solution which is a combination of self-rule and shared rule. Thus, it allows the different communities a degree of autonomy and yet ensures they make joint decisions when required, based on mutual consent amongst equals, rather than force or conquest.[38] Here federalism offers a solution, by encouraging two divided communities to share power. In addition, federalism can offer a solution for a unified community which wishes to divide power between sub-national groups (such as ethnic, religious, linguistic and cultural groups).[39]

---

[35] Congleton, R. (2000) 'A Political Efficiency Case for Federalism in Multinational States: Controlling Ethnic Rent-Seeking' in Galeotti, G. Slamon, P. and Wintrobe, R. (Eds.) *Competition and Structure: The Political Economy of Collective Decisions: Essays in Honor of Albert Breton* (Cambridge University Press, Cambridge)

[36] Watts, R.L. (1998) 'Federalism, Federal Political Systems, and Federations' in *Annual Review of Political Science* (Vol.1, pp.117-37)

[37] Elazar, D.J (1991) *Two Peoples...One Land: Federal Solutions for Israel, the Palestinians, and Jordan* (University Press of America, Jerusalem)

[38] *Ibid.*

[39] Weinstock, D. (2001) 'Towards a Normative Theory of Federalism' in *International Social Science Journal* (Vol.53, No.167, pp.9-12), p.75

The suggestion is that federalism can offer a way to peacefully reconcile the needs for unity and diversity within a political system,[40] establishing 'larger political units capable of fostering economic development and improved security, and smaller political units more sensitive to their electorates'.[41] Watts suggests this need for both larger and smaller political units is the consequence of an increasingly global economy, which has weakened the traditional nation-state and strengthened both international and local pressures. Consequently, Watts argues that 'national governments are faced increasingly with the desires of their populaces to be both *global* consumers and *local* self-governing citizens at the same time. Thus, the nation state is at the same time proving both too small and too large to serve the desires of its citizens'.[42]

In Britain, Burgess suggests that, the most significant pressures on the nation state have arisen from 'recent changes in the structure of the British economy, the governmental hegemony of the British Conservative party, the intensification of widespread political discontent in Scotland and increasing economic and political integration in Europe'.[43] Burgess suggests that each of these issues has important constitutional implications, and whilst in the past the British constitutional system has been able to disguise constitutional questions as mere political questions, defusing such issues to be rendered relatively harmless,[44] he suggests that 'this

---

[40] Watts, R. (2002) 'The Relevance Today of the Federal Idea' paper given at the *International Conference on Federalism 2002* (St Gallen, Switzerland)
[41] Watts, R. (2001) 'Introduction: Federalism in an era of globalisation' in *International Social Science Journal* (Vol.53, No.167, pp.9-12), p.9
[42] Watts, R. (2002) *op.cit*
[43] Burgess, M. (1995) The British Tradition of Federalism (Fairleigh Dickinson University Press, Madison, NJ.), p.3
[44] *Ibid.*

proven formula for political stability has now outlived its usefulness'.[45] As a result

he implies that constitutional change in Britain is almost inevitable because 'Existing

constitutional assumptions and the structures and practices which reflect them are

no longer able to contain the new forces which have emerged in the 1880s and

1990s to challenge what seems like a complacent inertia. Their capacity successfully

to canalise, contain and ultimately defuse serious threats to the Union has been

severely attenuated'.[46] However, Elazar identifies that the threat to the British

nation state is part of a wider phenomenon, and he suggests that we have are in

the midst of a paradigm shift which is taking us from a world of sovereign nation

states to a world of diminished state sovereignty and increased interstate linkages

of a constitutionally federal character.[47] Elazar sees the move towards a more

federal model as a positive phenomenon because he suggests that federalism

encourages good outcomes.[48] However, other commentators take a different view.

Bagehot argued that federalism produced inferior results to unitarism because it

was inflexible.[49] Writing about the American system Bagehot suggested,

> 'You have got a Congress elected for one fixed period, going out perhaps
> by fixed installments, which cannot be accelerated or retarded — you
> have a President chosen for a fixed period, and immovable during that
> period: all the arrangements are for stated times. There is no elastic
> element, every thing is rigid, specified, dated. Come what may, you can
> quicken nothing and retard nothing.'[50]

The implication is that because federal systems require written constitutions they

are more likely to be inflexible than unitary states which do not. Additionally it has

---

[45] *Ibid.,* p.4

[46] *Ibid.*

[47] Elazar, D.J (1996) 'From Statism to Federalism: A Paradigm Shift' in *International Political Science Review* (Vol.17, No.4, pp.417-429)

[48] Elazar, D. J. (1995) 'Federalism' in Lipset, S. M (Ed.) *The Encyclopaedia of democracy* (Vol. II, pp. 474-82) (Routledge, London), p.475

[49] Bagehot, W. (1873) *The English Constitution- Second Edition* (Fontana, London)

been suggested that the proliferation of levels of government in a federal system is a source of inefficiencies and can impede measures which would contribute to the common good.[51] For instance, due to the particular requirements for cooperation in a federal system, and the number of actors involved in policy-making, Scharpf suggested that a joint-decision 'trap' is likely in federal systems, as the inability to reach consensus can lead to no policy change at all, or sub-optimal policies.[52] Banting argued that this causes particular problems for welfare policy,

> 'A large number of studies have concluded that federalism and decentralization create several types of barriers that constrain an expansive and redistributive welfare state by increasing the number of sites of political representation, federalism multiplies the number of veto points at which action can be delayed, diluted or defeated'[53]

Thus, implying that compared to unitary models federal systems can be inflexible and inefficient.

A further criticism regularly levelled against federal systems, particularly the American model, is that they encourage destructive competition between the states. Some commentators suggest that such competition can lead to a 'race to the bottom',[54] where 'each state tries to underbid the others by lowering its taxes, spending, regulation, etc., in a quest to make itself appear attractive to outside financial interests or unattractive to low-income families'.[55] An alternative view of federalism is suggested by the 'laboratories of democracy' metaphor, which argues

---

[50] *Ibid.,* p.59

[51] Weinstock, D. *op.cit.,* p.78

[52] Scharpf, F. (1988) 'The Joint Decision Trap: Lessons from German Federalism and European Integration' in *Public Administration* (Vol.99, No.3, pp.239-278)

[53] Banting, K.G. and Corbett, S. (2002) 'Health Policy and Federalism: An Introduction' in Banting, K.G. and Corbett, S (ed.) *Health Policy and Federalism: A Comparative Perspective on Multi-Level Governance* (McGill-Queens University Press, London), p.5

[54] The phrase originated from a comment by Associate Justice Louis Brandis, 'The race was one not of diligence but of laxity', in a 1933 court case, Liggett. Co. v. Lee, 288 U.S. 517,558-29

[55] Schram, S.F (1999) 'Introduction: Welfare Reform: A Race to the Bottom?' in Schram, S.F and Beer, S. (Eds.) *Welfare Reform: A Race to the Bottom* (Woodrow Wilson Center Press, Washington D.C), p.1

that federalism allows states to develop innovative and creative solutions to problems, which do not risk the whole country,[56] and then successful policies can be adopted by other states.[57] These concepts of 'race to the bottom' and 'laboratories of democracy' are not mutually exclusive, as states could find innovative ways of cutting expenditure. This argument that the institutional structure could impact upon policy outputs either by encouraging a 'race to the bottom' or by providing 'laboratories of democracy' has particular relevance for our discussion of devolved policy-making, as it could be that devolution could also impact upon policy outcomes in either, or both, of these ways. Charles Jeffery, for instance, suggests that 'devolution might be expected to provide testing grounds for innovative policies better matched than policy designed in London to local needs, circumstances and preferences'.[58] As Keating suggests, where one government diverges by developing a popular or successful initiative it is possible that there will be a 'reconvergence around the new practice' by the different governments throughout the UK.[59]

Despite these debates about the benefits and disadvantages of federal systems, Lane and Ersson argue that there is no evidence to suggest that federal or unitary states perform better than each other.[60] Lane and Ersson compared levels of fiscal decentralisation, affluence and economic growth, social equality, democracy and

---

[56] This phrase also originated from a comment by Associate Justice Louis Brandis. In 1932 he claimed, 'It is one of the happy accidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country', New State Ice Company v. Liebmann, 285 U.S. 262, 311

[57] Donahue, J.D. (1997) *Disunited States: What's at stake as Washington Fades and the States Take the Lead* (Basic Books, New York), p.13

[58] Jeffery, C. (June 2002) *Fiscal and Economic Decentralisation: Towards an Agenda for Policy Learning Between Britain and Germany* (Anglo-German Foundation for the Study of Industrial Society), p.13 accessed at www.agf.org.uk/pubs/pdfs/1366Fiscalweb.pdf

[59] Keating, M. (2001) 'Devolution and Public Policy in the United Kingdom: Divergence or Convergence?' *Seminar on Devolution in Practice* (Institute of Public Policy Research, October 2001), p.3

[60] Lane, J. and Ersson, S. *op.cit.*, p.100

political stability in federal and unitary states. They found that that federalism has only one institutional effect, fiscal decentralisation; meaning that in federal systems the lower levels of government contribute more to public sector spending than in unitary states.[61]

Another feature regularly examined by institutionalists is the impact of presidential versus parliamentary executives. Linz argued that presidential systems have two key features, dual-democratic legitimacy and rigidity.[62] According to Linz presidential systems possess dual-democratic legitimacy because people directly elect both the president and the legislature, and the system is rigid because the legislature cannot remove the president, unless s/he has acted illegally. Additionally Weaver and Rockman pointed out that as an executive's tenure is not dependent on strong party support in presidential systems; control mechanisms in political parties are not as strong in presidential systems.[63]

As a result of these features of presidential systems Linz argued there is a strong possibility of deadlock in the system, 'Since both (the president and the legislature) derive their power from the vote of the people in a free competition among well-defined alternatives, a conflict is always latent and...there is no democratic principle to resolve it'.[64] In addition, due to the legitimacy of executive and legislative actors, Strøm suggested that in presidential systems there is usually a greater number of

---

[61] *Ibid.,* p.101

[62] Linz, J. (1994) 'Presidential or parliamentary democracy: does it make a difference' in Linz, J. and Valenzuela, A. (Eds.) *The Failure of Presidential Democracy* (John Hopkins University Press, Baltimore), p.6

[63] Weaver, R. and Rockman, B. (1993) 'Assessing the Effects of Institutions' in Weaver, R. and Rockman, B (Eds.) *Do Institutions Matter? Government Capabilities in the United States and Abroad* (The Brookings Institution, Washington D.C), p.10

[64] Linz, J. *op.cit.,* p.7

influential actors involved in policy-making, compared to parliamentary systems.[65] Tsebelis suggested that the number of institutional veto-players, those whose agreement is required to introduce policy change, is crucial to the outputs of a system.[66] According to Tsebelis the larger the number of veto players in a system the harder it is to change the status quo, and conversely, the smaller the number of veto players the easier it is to change it.[67] As a result Tsebelis suggested that 'the logic of decision making in presidential systems is quite similar to the logic of decision making in multi party systems'.[68] Here Tsebelis suggests that whether a system is parliamentary or presidential is unimportant, as it is the number of veto-players that is significant, all other things being equal. On the other hand Tsebelis suggests that the shape of legislatures and the electoral system can have significant impacts on policy outcomes. For instance, Tsebelis and Money argue that bicameral systems tend to preserve the status quo, compared to legislatures with only one chamber.[69]

The range of institutional features which can impact upon outcomes led Weaver and Rockman to conclude that, 'institutional effects on government capabilities are not uniform, direct, or unidirectional; neither are they nonexistent. Institutional effects are real and significant, but often indirect and contingent'.[70] As a result whilst

[65] Strøm, K. (2000) 'Delegation and Accountability in parliamentary democracies' in *European Journal of Political Research* (Vol.37, No.3, pp.261-289), p.281

[66] Tsebelis, G. (2002) *Veto Players: How Political Institutions Work* (Princeton University Press, Princeton), p.19

[67] *Ibid.*

[68] Tsebelis, G. (1995) 'Decisionmaking in political systems: Veto players in presidentialism, parliamentarism, multicameralism, and multipartyism' in *British Journal of Political Science* (Vol.25, No.2, pp.289-325), p.292

[69] Tsebelis, G. and Money, J. (1997) *Bicameralism* (Cambridge University Press, Cambridge)

[70] Weaver, R. and Rockman, B. *op.cit.,* p.39

Weaver and Rockman argue that institutions matter they suggest the impact of institutions varies and can be difficult to gauge.

2.2 Actors

In contrast to institutionalists who perceive the institution as the most important determinant for policy outcomes, methodological individualists see individual actors as the most important units of analysis,[71] and so suggest that by studying the intentions and behaviour of actors we can explain political outcomes. Rational choice theory is one of the most well-established of these theories.

The essence of rational choice theory is that 'when faced with several courses of action, people usually do what they believe is likely to have the best overall outcome'.[72] Although there is fact no single rational choice theory, there are a number of assumptions which are generally shared by rational choice theorists: utility maximisation, the structure of preferences, decision-making under conditions of uncertainty and the centrality of individuals in the explanation of collective outcomes.[73]

Utility maximisation theories suggest that when a person is confronted with a range of alternatives they choose one which they expect will best serve their objectives. Downs applied this approach to electoral behaviour, suggesting that people vote for

---

[71] Weber, M. ([1922]1978) *Economy and Society: An Outline of Interpretative Sociology* (University of California Press, Berkeley)

[72] Elster, (1989) *Nuts and Bolts for the Social Sciences* (Cambridge University Press, Cambridge), p.22

[73] Green, D. and Shapiro, I. (1994) *Pathologies of Rational Choice Theory* (Yale University Press, New Haven), p.13

the party they expect to serve their interests best.[74]   According to Olson people act rationally when their objectives are pursued by means that are, as far as they are aware, 'efficient and effective for achieving these objectives'.[75]   Olson also argued that even if a group possessed a shared objective, if there were costs to the individual of pursuing this objective, and if they believed their actions would have little impact anyway, then individuals would be unlikely to join in a collective action.[76]   For example, even if people share a desire to reduce pollution, the costs associated with changing behaviour, combined with the small impact an individual can have, could result in the failure of a number of individuals to engage in collective action.

Whilst rational choice theorists agree that some level of utility maximisation is involved in rational behaviour, they disagree about the level of utility maximisation involved.   For instance, Simon argued that people do not seek out the best alternative, but instead look for an alternative which is 'good enough'.[77]   Simon argued that people possess limited analytical capacity and they search

> 'very selectively through large realms of possibilities in order to discover what alternatives of action are available, and what the consequences of each of these alternatives are.   The search is incomplete, often inadequate, based on uncertain information and partial ignorance, and usually terminated with the discovery of satisfactory, not optimal courses of action'.[78]

Ferejohn differentiates between 'thin' rational and 'thick' rational approaches, suggesting that in thin rational accounts actors are rational as long as they

---

[74] Downs, A. (1957) *An Economic Theory of Democracy* (Harper and Row, New York)
[75] Olson, M. (1965) *The Logic of Collective Action* (Harvard University Press, Cambridge), p.65
[76] *Ibid.*
[77] Simon, H.A (1957) *Models of Man: Social and Rational* (John Wiley, London), p.xxv
[78] Simon, H.A (1985) 'Human nature in politics: the dialogue of psychology with political science' in *American Political Science* Review (Vol.79, pp.293-304), p.295

'efficiently employ the means available to pursue their ends', whilst in thick rational accounts 'the analyst posits not only rationality but some additional description of agent preference and belief'.[79] An example of a thick rational approach is the form of Utilitarianism proposed by Jeremy Bentham, which assumed that individuals seek to maximise pleasure.[80] In contrast Riker promoted thin rationality, arguing that as long as a decision meets consistency requirements then any choice can be interpreted as rational.[81]

There is general agreement amongst rational choice theorists that to be rational an actor's available choices should be able to be rank-ordered. This means that an actor should 'regard any two available outcomes as either unequal (that is, she prefers one to the other) or equal (she is indifferent)'.[82] In addition, rational choice theorists argue that if A is preferred to B, and B is preferred to C then A should be preferred to C. For instance, when voting in the referendum for a Scottish Parliament, if someone preferred not to have a Scottish Parliament *(A)* to a Scottish Parliament with tax raising powers *(B)*, and preferred a Scottish Parliament with tax raising powers *(B)* to a Scottish Parliament without tax raising powers *(C)*, they should also prefer no Scottish Parliament *(A)* to a Scottish Parliament without tax raising powers *(C)*. Riker argued that it is this structuring of preferences, rather than their content, which make choices rational.[83]

---

[79] Ferejohn, (1991) 'Rationality and Interpretation: Parliamentary Elections in Early Stuart England' in Renwick, K. (Ed.) *The Economic Approach to Politics: A Critical Reassessment of the Theory of Rational Action* (Harper Collins, New York), p.282

[80] Bentham, J. (1996) *An Introduction to the Principles of Morals and Legislation*, Burns, J.H. and Hart, H.L.A. (Eds.) (Claredon Press, Oxford) (first published 1789)

[81] Riker, W. (1990) 'Political Science and Rational Choice' in Alt, J. and Shepsle, K. (Eds.) *Perspectives on Positive Political Economy* (Cambridge University Press, Cambridge), p.173

[82] Green, D. and Shapiro, I. *op.cit.*, p.14

As decision-making usually involves uncertainty, rational choice theorists focus on the expected, rather than the actual, utility. Often a decision will involve an element of risk. For instance, a politician may desire to be leader of their party but be uncertain of the outcome if they stand as a candidate. Rational choice theorists assume such an individual will weigh the value of becoming leader against the probability of achieving this aim, perhaps deciding instead it would be in their best interest to support their opponent and strengthen their position in the party.

A final area of general agreement amongst rational choice theorists is that the relevant unit of study should be the individual. Riker and Ordeshook, for instance, declared that 'society, not being human, cannot have preferences in any proper sense of the word "have", nor indeed can it order the preferences that it does not have'.[84] Even where rational choice theorists have studied larger units, such as political parties, they have tended to treat these entities as individuals with unitary preferences and strategies. When it comes to policy-making, however, it is rarely the case that an individual makes policy alone. As a result, when studying institutions, rational choice theorists still focus on utility-maximising individuals, but explore how these individuals interact and how the institution shapes their perceptions of the options available to them. Unfortunately, whilst rational choice theories highlight that an examination of individual actors is necessary for an understanding of policy-making it does not always clarify which actors to examine.

---

[83] Riker, W., *op.cit.*, p.173
[84] Riker, W. and Ordeshock, P. (1973) *Introduction to Positive Political Theory* (Prentice Hall, Englewood Cliffs), p.78-79

2.3 Governance

In order to understand the interaction between actors in policy-making and which actors to examine when studying policy-making it is worth considering governance approaches. Traditionally the tem 'governance' meant 'the ways and means in which the divergent preferences of citizens are translated into effective policy choices, about how the plurality of societal interests are transformed into unitary action and the compliance of social actors is achieved'.[85] Therefore, governance involved transforming a plurality of societal interests into unitary action with the compliance of social actors. In the past it was assumed that state officials or governments held exclusive authority over the governance of citizens within its borders and so the terms government and governance have been used interchangeably. However, the term 'governance' is also used to imply a new way of governing, where governments no longer dominate.

A number of theorists identify that political systems are gradually less and less characterised by a hierarchical, unitary system of government, governing through law, rule and order. Instead they speak of a more horizontally organised and fragmented system of governance where relationships are non-hierarchical and mutually dependent.[86] Rhodes identifies six key pressures which have encouraged this move away from government to a new mode of governance:

---

[85] Kohler-Koch, B. (1999) 'The Evolution and Transformation of European Governance' in Kohler-Koch, B. and Eising, R. (Ed.) *The Transformaiton of Governance in the European Union* (Routledge, London), p.14

[86] Rhodes, R.A.W. (1997) Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability (Open University Press, Buckingham); Pierre,J. (2000) Debating Governance: Authority, Steering and Democracy (Oxford University Press, Oxford); Hix, S. (1998) ,The Study of the European Union II: The "New Governance" agenda and its Rival' in Journal of European Public Policy (Vol.5, No.1, pp.38-65); Kooiman, J. (Ed.) (1993) *Modern Governance: New Government – Society Interactions* (Sage, London)

1) Economic depression and fiscal pressures leading to budget deficits

2) The New Right's ideological distrust of big government

3) Europeanization, which increased regulation and introduced new administrative pressures, such as regionalization

4) Public disenchantment with government performance

5) International management fashions, in particular the new public management (NPM)

6) Information Technology, which made it easier to introduce NPM[87]

Many commentators refer to this new mode of governance as 'network governance' because policy-making involves complex interactions and exchanges between a network of actors.[88] In such a system an increasing number of actors, and types of actors, are involved in policy-making and so services, such as care in the community 'are delivered by a network of organizations including the central department, local authorities, health authorities, agencies, private businesses and voluntary groups'.[89] In addition, multi-level governance (MLG) theorists also point to the dispersal of power between different levels of governance. MLG theorists point to the processes of European integration, which has relocated functions above the state level, and regionalisation where powers have been transferred to the sub-state level. As Keating explains, 'Europe is increasingly regionalized, regions are europeanized, and the state is both regionalized and europeanized'.[90] MLG theorists suggest that together these processes have reduced the control of the state level and led to a division of policy-making authority between actors at the suprastate, state and sub-state levels.

---

[87] Rhodes, R.A.W, *op.cit.*, p.88
[88] Eising, R. and Kohler-Koch, B. (1999) 'Introduction: Network Governance in the European Union' in Kohler-Koch, B. and Eising, R. (Ed.) *The Transformaiton of Governance in the European Union* (Routledge, London), p.5
[89] Rhodes, R.A.W *op.cit.*, p.9
[90] Keating, M. (1998) *The New Regionalism in Western Europe: Territorial Restructuring and Political Change* (Edward Edgar, Cheltenham), p.183

It is argued that the range of actors involved in network governance are interdependent, as to achieve their goals actors need to interact to exchange resources and negotiate shared powers. Rhodes argues that the interaction between members of the network are game-like, as participants in the network manoeuvre for advantage, deploying the resources they control to maximise their influence on outcomes and trying to avoid becoming dependent on the other 'players".[91] The key resources central to bargaining involving public sector organisations are authority, money, political legitimacy, information and organisational resources.[92] However, whilst the possession of resources by an actor offers the potential for the exercise of power, 'Whether that potential is realized depends upon the effective deployment of resources: on the rules and the choice of strategies'.[93] An actor or organisation has a range of strategies to choose from, for instance bargaining, incorporation, confrontation, persuasion and the use of incentives. However, the strategy that an actor adopts will depend upon the rules of the game, acceptable behaviour formed by the cultural and political framework, such as 'the need for trust and secrecy in negotiations, the 'government's right to govern' and territorially or non-intervention in other people's policy area'.[94] This notion of power-dependence is important because it helps to explain why different actors interact and how power is distributed and redistributed within networks.

---

[91] Rhodes, R.A.W (1988) *Beyond Westminster and Whitehall: The Sub-Central Governments if Britain* (Routledge, London), p.42
[92] Rhodes, R.A.W (1985) 'Intergovernmental Relations in the UK' in Mény, Y. and Wright, V. *Centre-Periphery Relations in Western Europe: The New Local Government Series No.25* (George Allen and Unwin, London) p42
[93] Rhodes, R.A.W (1988) *op.cit,* pp.42-43
[94] *Ibid* p.43

As a result of networks dominating policy-making 'the boundaries between public, private and voluntary sectors are shifting and opaque'.[95] As Sørensen notes the fragmentation of the political system into different layers and self-governing units raises questions about political representation, encouraging a 'battle between elected or otherwise appointed political elites about the right to represent 'a people".[96] Whilst state level actors are involved in this process within these networks Eising and Kohler-Koch note that there is 'no sovereign actor able to steer or regulate'.[97] Governance theorists tend not to question that state executives or the state arena remain the most important loci of power, but claim that actors from the state level are unable to exercise complete control over the policy-making process due to a dispersal of power to the other levels. As a result the role of government becomes less about command and increasingly one of 'coordination and steering'.[98] Here the state's role shifts away from being the main provider of policy and is instead based upon facilitating interaction among various interests.[99] However, the state still controls significant power, for instance, Rhodes acknowledges that the centre controls greater resources than other actors, therefore, there is an asymmetric interdependence of actors within networks. For instance, Rhodes argues that so far the British government has compensated for its loss of hands-on controls by reinforcing its control over resources'.[100] In addition

---

[95] *Ibid.*

[96] Sørensen, E. (2002) 'Democratic Theory and Network Governance' paper presented at workshop no.12 'Demokrati og administrativ reform i norden' at the *NOPSA- conference 2002* in Ålborg accessed at www.socsci.auc.dk/institut2/nopsa/arbejdsgruppe12/eva.pdf, p.7

[97] Rhodes, R.A.W (1997) *op.cit.*, p.57

[98] Bache, I. (2003) 'Governing through Governance: Education Policy Control under New Labour' in *Political Studies* (Vol.51, No.2 pp300-314), p.301

[99] Sloat, A (2001) 'MLG: An Actor-Centred Approach' at *Multi Level Governance Conference* (June 2001, University of Sheffield) accessed at www.shef.ac.uk/~perc/mlgc/papers/sloat.pdf, p.12

[100] Rhodes, R.A.W (1997) *op.cit.*, p.54

Scharpf notes that networks operate 'in the shadow of the state.[101] As a result Scharpf claims that 'the state is able to influence the drift of negotiated settlements by shifting the balance of bargaining power from one side to the other through relatively minor changes in the institutional setting'.[102] As a result of the government's ability to sanction membership of networks and maintain a number of mechanisms for reasserting control Marsh et al. claims that the network governance literature often fails to take the role of governments and departments seriously enough.[103] Yet as Bache notes 'The circumstances under which the centre can and cannot steer networks in the context of asymmetric interdependence remains an important empirical question, with the answer likely to vary across issues and sectors and, indeed, over time'.[104] If the governance approach is correct, therefore, we should find that a range of governmental and non-governmental actors from different levels of government influence policy-making at the sub-state level, and that no one actor, or type of actor, is able to always control the policy-making process.

Governance approaches help to clarify which actors should be examined and can help us to understand how and why actors interact. The approach suggests that policy-outcomes are the consequence of both institutional characteristics (the resources and the rules of the game) and actor characteristics (actors' preferences and strategies). However, governance approaches can be descriptive rather than explanatory in nature, and as a result 'Governance studies at the national level have

---

[101] Scharpf, F. W. (1997) *op.cit.,* p.204
[102] Ibid.. p.201
[103] Marsh, D., Richards, D and Smith, M. (2003) 'Unequal Plurality: Towards an Asymmetric Power Model of British Politics' in *Government and Opposition* (Vol.38, No.3, pp306-332), p.319
[104] Bache, I., Ibid., p.302

typically used an approach that has come to be called actor-centred institutionalism'.[105] This thesis will also adopt actor-centred institutionalism as its main theoretical framework because the approach is particularly useful at explaining how actors interact within institutional frameworks and a key aim of this thesis is to explore the role of the devolved institutions in shaping actor behaviour and policy outcomes.

2.4 Actor-Centred Institutionalism

As Peters notes, 'even the harshest critic must admit that the blending of rational choice perspectives and a general institutional outlook on political life can supply a number of important insights into politics'.[106] Rational choice institutionalism combines rational choice and institutionalist approaches, to suggest that whilst actors are key to political outcomes, their action is shaped within institutions. There is a range of approaches which can be classified as rational choice institutionalism; fortunately there are many characteristics which are common to them all. This section outlines some of the key features of rational choice institutionalism, focusing primarily on the model of actor-centred institutionalism, developed by Scharpf. [107]

Rational Choice institutionalists argue that actors have a set of preferences which they purposefully seek to achieve.[108] According to Scharpf, 'Policy, by definition, is

---

[105] Mayntz, R. (1998) 'New Challenges to Governance Theory' *Jean Monnet Chair Paper, RSC No.98/50* accessed at www.uned.es/113016/docencia/spd%20-%20doctorado%202001-02/Introducci%F3n/Mayntz%20governance%20EUI%201998.htm, p.7
[106] Peters, B.G *op.cit.,* p.61
[107] Scharpf, F. W. (1997) *op.cit.*
[108] Hall, P. and Taylor, R. (1996) 'Political Science and the Three New Institutionalisms' *paper presented at the MPIFG Scientific Advisory Board Meeting 9/5/1996* accessed at www.mpi-fg-koeln.mpg.de/pu/mpifg_dp/dp96-6.pdf, p.12

intentional action by actors who are interested in achieving specific outcomes'.[109] In

rational choice institutionalism the actor is expected to consider a range of

strategies to achieve their goals. These strategies and preferences may be shaped

by the institution in which they are a member, [110] however, the actor is capable of

choosing to adopt a strategy which may conflict with cultural or institutional rules.[111]

As a result, for rational choice institutionalists, institutions are an intervening

variable, influencing the actors' choice of strategy by constraining behaviour and

providing incentives and resources. Here rational choice institutionalists conceive

institutions as 'a structure that actors run into, go "ouch", and then recalculate how,

in the presence of the structure, to achieve their interests'.[112] Hall and Taylor

suggested that one of the greatest contributions of rational choice institutionalism is

this emphasis on the role of 'strategic interaction in the determination of political

outcomes'. [113]

In addition to preferences, rational choice institutionalists also take into

consideration that the behaviour of actors is likely to be shaped by their

expectations of how others will act and the resources available to them. Scharpf

claimed that one reason why the courses of action pursued by different actors vary

is because their capabilities, intrinsic perceptions and preferences differ. [114] By

capabilities, Scharpf refers to factors such as personal properties (for instance,

physical strength, intelligence, human and social capital) and physical resources

---

[109] Scharpf, F. W. *op.cit.*, p.36
[110] Peters, B.G. *op.cit.,* p.44
[111] Scharpf, F. W. (1997) *op.cit.*, p.36
[112] Checkel, J. (1999) 'Social Construction and Integration' in *Journal of European Public Policy* (Vol.6, No.4, pp.545-560), p.546
[113] Hall, P. and Taylor, R. *op.cit.,* p.12
[114] Scharpf, F. W. (1997) *op.cit.*, p.43

(money, land, military power, access to information).[115]   Perceptions are also

important to Scharpf because he argued that,

> 'People act not on the basis of objective reality but on the basis of
> perceived reality and of assumed cause-and-effect relationships
> operating in the world they perceive... [additionally] people act not only
> on the basis of objective needs but also on the basis of preferences
> reflecting their subjectively defined interests and valuations and their
> normative convictions of how it is right or good or appropriate to act
> under the circumstances'[116]

Here rational choice institutionalists appear to accept the notion of bounded

rationality, discussed in the previous section, rather than supporting a stricter

conception of rationality.

In order to understand the preferences of actors, Scharpf divides the concept into

four components: interests, norms, identities and interaction orientations.[117]

Scharpf identifies a basic self interest, similar to the notion found in classical

economics of the rational-actor approach.   Basic interest refers to 'the basic

preference of actors for self-preservation, autonomy and growth' and can be applied

to the individual or corporate actors.[118]   For the individual, Scharpf sees basic self-

interest as the desire to secure physical well-being and social recognition within

social institutions which can ensure this self-interest is realised. In a similar vein,

organisational self-interest is conceived as the preference for organisational

preservation, autonomy and growth.   The second component, normative role

orientations, relates to the normative expectations of the occupants of certain

positions, which can involve legal rules or less concrete issues such as social

---

[115] *Ibid.*
[116] *Ibid.*, p.19
[117] *Ibid.*, p.63
[118] *Ibid.*, p.64

disapproval.[119]   Identity refers to a method actors can adopt to organise their preferences and communicate these preferences to others, so an identity 'will simplify their own choices and...when communicated and believed, reduces uncertainty for other actors'. [120]   Whilst these first three categories refer to the preferences of the individual, interaction orientations consider the relational dimension of actor preferences.

A key concern of rational choice institutionalism is that individuals acting rationally may collectively act irrationally. For instance, an actor may be able to secure a higher level of utility by 'free-riding' but the collective is better off if everyone cooperates. [121]   Rational choice institutionalists often suggest that institutions can be designed with utility maximisation in mind, so that more socially desirable outcomes can be produced.[122]   For instance, in Ostrom's work on common-pool resources her key concern was, 'how a group of principals who are in an interdependent situation can organize and govern themselves to obtain continuing joint benefits when all face temptations to free-ride, shirk or otherwise act opportunistically'.[123]   Here, unlike many other institutionalist models, rational choice institutionalism has a clear understanding of the actor. Rational choice institutionalists also often explore the interaction of such actors. For example, Scharpf argued that there is a relational aspect to preferences, as in policy-making 'envy may play a role, friends may cherish each other's gains, and enemies may gloat over each other's losses'. [124]

---

[119] *Ibid.*
[120] *Ibid.*
[121] Olsen, M. *op.cit.,* p.65
[122] Peters, B.G. *op.cit.,* p.45
[123] Ostrom, E. (1990) Governing the Commons (Cambridge University Press, Cambridge), p.29
[124] Scharpf, F. W. (1997) *op.cit.,* p.84

As a result of the relational aspect of political behaviour, several rational choice institutionalists have characterised policy-making as a game, or sets of games played between a range of actors. In these games actors choose from a range of strategies, which are governed by factors such as their preferences, interests and expectations of the behaviour of others. The most famous of these games is the prisoner's dilemma, where two players can decide to either cooperate or defect. Here each player gains if both cooperate, but if only one player cooperates, the other one will gain more. If both defect both lose, but the extent of this loss is not as great as for the player who cooperated when the other player defected. However, actors who interact regularly are likely to develop expectations of the strategies other players will choose, and thus, they change their strategy as a result. For example, Axelrod found that when the prisoner's dilemma game is played a number of times players are most successful if they adopt the 'tit-for tat' strategy, rewarding their opponent for cooperation and punishing them for defecting.[125] Scharpf also points out that the interaction of actors can be shaped by subjective elements, which he believe helps to explain why,

> 'the peace process in the former Yugoslavia, the Middle East, or Northern Ireland remain so difficult long after it have become clear that all sides can only lose from the continuation of conflict'[126]

Here Scharpf suggests that a relationship between actors may develop a character which affects the value placed on the 'real' gains or losses that distinguishes the

---

[125] Axelrod,R. (1984) *The Evolution of Cooperation* (Basic Books, New York)
[126] Scharpf, F. W. (1997) *op.cit.*, pp.84-5

relationship from objectively similar relations with other parties, or the same party at another time.[127]

Rational choice institutionalism differs from other forms of institutionalism because it incorporates a model of actor behaviour. It combines its view of the actor, and the interactions of actors, with a focus on the institutional setting in which actors operate. As a result there is a need to clearly define the actor and the institution, and be able to separate these concepts.

As Scharpf points out, 'in the final analysis only individuals can act'.[128] The implication, therefore, is that studying actors should only involve examining individuals. However, it is often the case the individuals act as part of a larger group or organisation. For instance, MSPs act as part of a committee or a political party. Scharpf argues that it can be helpful at times to define such groups of individual actors as collective actors. By identifying a collective actor the suggestion is that a capacity for intentional action exists above the individual level.[129] The key factor in the identification of a collective actor is therefore, that there is a joint effect of coordinated action, the individuals involved intend to achieve a common purpose. In this thesis, therefore, both individuals and collective actors are studied and understood as actors. Whilst at times, collective actors will behave as a unit capable of joint intentional action, at others such units will separate into intentional individuals with separate preferences.

---

[127] *Ibid.*, p.85
[128] *Ibid.* p.52
[129] *Ibid.*

As with other new institutionalist models, defining the institution is a major concern of rational choice institutionalism. In Scharpf's model of actor-centred institutionalism, institutions are defined as 'systems of rules that structure the courses of action that a set of actors may choose'.[130] Such a definition includes formal rules, such as the legal system, and also social norms, which if violated can result in loss of reputation, social disapproval and withdrawal of co-operation or rewards.[131] This differs from Ostrom et al. who saw institutions as sanctioned rules which change the costs and benefits for particular actions,[132] and March and Olsen who argued that institutions can be social entities capable of purposive action.[133] Scharpf rejects both approaches arguing that Ostrom et al. are too narrow in their approach because social norms need to be incorporated into a definition of the institution and that March and Olsen are too broad because institutions are not capable of purposeful action. To Scharpf, social entities which are capable of purposeful action should be seen as organisations or corporate actors, and in contrast institutions simply structure the courses of actions actors may choose. [134] Here Scharpf's definition has similarities to North's conception of institutions as 'humanly devised constraints that shape human interaction',[135] and it has similarities with other new institutionalist models which broadly argue that 'individuals will make conscious choices, but those choices will remain within the parameters established by the dominant institutional values'.[136] Whilst rational choice theorists tend to ignore the possibility that institutions can shape the preferences and values

---

[130] *Ibid.*, p,38
[131] *Ibid.*
[132] Ostrom, E., Gardner, R., Walker, J. (1994) *Rules, Games and Common-Pool Resources* (University of Michigan Press, Michigan)
[133] March, J.G. and Olsen, J.P. (1989), *op.cit.*
[134] Scharpf, F. W. (1997) *op.cit.*, p.38
[135] North, D. (1990) *Institutions, Institutional Change and Economic Performance* (Cambridge University Press, Cambridge), p.3

of actors, some rational-choice institutionalists take a wider view of institutions.

Scharpf argued that institutions:

> 'define not only the membership of composite actors and the material
> and legal action resources they can draw upon, and thus the scope of
> their legitimate activities and the powers of the individuals who act for
> them, but also the purposes that they are to serve or the values that
> they are to consider in arriving at their choices'[137]

According to Scharpf institutions define how outcomes will be evaluated by the actors involved, and so influence what an actor considers as a feasible option.[138] For instance, part of the criteria for successful policy-making set by an institution may include undergoing a certain level of consultation during the policy-making process. Therefore, if a policy was successfully implemented but had not undergone the set consultation procedures, it could be evaluated as a failure. In this way the institution helps to shape the feasible options available to the actor, in this case perhaps encouraging them to consult on their policy proposals.

Scharpf also claims that the institutionalised responsibilities of an actor influence their perceptions. For instance, membership of a particular department can influence preferences, 'not only by focusing attention on different phenomena but by influencing views of the relative causal effectiveness of phenomena that are jointly perceived'. [139] For example, in Allison's study of the Cuban missile crisis, different participants, depending on which department they were in, had different interpretations of what was happening and of what was in the best interests of the United States.[140] Here Allison's study implies that institutions shape the perceptions

---

[136] Peters, B.G. *op.cit.,* p.29
[137] Scharpf, F. W. (1997) *op.cit.,* p.39
[138] *Ibid.*
[139] *Ibid.,* pp.39-40
[140] Allison, G. (1971) *Essence of Decision: Explaining the Cuban Missile Crisis* (Little Brown, Boston)

of actors. Scharpf's model adopts a similar view of institutions, claiming that 'institutions not only constrain feasible strategies, but they also constitute the important players of the game and shape their perceptions and valuations of outcomes in the payoff matrix. In short, the games that are in fact being played in policy processes are to a large extent defined by institutions'.[141]

The definitions of actors and institutions outlined here mean at times an entity can be both an actor and an institution. To Scharpf, social entities which are capable of purposeful action should be seen as organisations or corporate actors, and in contrast institutions simply structure the courses of actions actors may choose.[142] However, it is possible to have an entity which is both capable of purposeful action and structures courses of action. For instance, the Health and Community Care Committee in Scotland was an actor, in the sense that it possessed shared interests and a common purpose. However, the Committee was also an institution, structuring the interactions of actors by providing norms and rules for behaviour. Here it appears that at times an entity cannot be clearly defined as either an actor or an institution. As a result it could be argued that whilst separating the concepts of actors and institutions can be methodologically useful, there is no ontological distinction between institutions and behaviour.[143] Yet, an entity's role as an actor can be separated from its role as an institution, and each component can be examined separately. For instance, the Health and Community Care Committee's role as a purposeful actor can be separated from its role as an institution, structuring the behaviour of actors.

---

[141] Scharpf, F. W. (1997) *op.cit.*, p.40
[142] *Ibid.*, p.38

This thesis uses Scharpf's model of actor-centred institutionalism as a framework for understanding devolved policy-making, exploring policy-making through an examination of actor preferences, expectations and strategies, and the institutional context in which these actors operate. Actor-centred institutionalism offers a good starting point for exploring policy-making and providing possible explanations for why certain policies were adopted. However, this is not to suggest that actor-centred institutionalism has all the answers.

A major problem with rational choice institutionalism is its adoption of a thin notion of rationality; as long as preferences are ordered, fairly consistent and directed at a particular goal, they are thought to be rational. As a result the concept loses analytical value. After all, as Peters notes, it is difficult to imagine a scenario where actors 'could be said not to be acting rationally in the context of some possible set of incentives or another'.[144] Bevir and Rhodes agree with Peters, arguing that the thin conception of rationality which focuses on logical consistency is problematic because 'it is either false or valid but of limited value. If we use an expanded notion of preference merely as a cloak under which to smuggle back in a naïve view of self interest, it is false. But if we extend our concept of a preference to cover any motive for any action, we leave the concept pretty much devoid of all content'.[145] As a result of such criticism most rational choice institutionalists seek to 'fill out' the notion of preferences, appealing to the 'natural', 'obvious' or 'presumed' preferences

[143] Diermeier, D. and Krehbiel, K. (2003) 'Institutionalism as a Methodology' in *Journal of Theoretical Politics* (Vol.15, No.2,pp123-144), p.126
[144] Peters, B.G. *op.cit.,* p.61
[145] Bevir, M. and Rhodes, R.A.W. (2001) 'A Decentered Theory of Governance: Rational Choice, Institutionalism, and Interpretation' *Working Paper 2001-10* accessed at www.igs.berkeley.edu/publications/workingpapers/WP2001-10.pdf, p.14

of people in certain positions.[146] For instance, we may presume that politicians seek to maximize their support at the next election.

Despite the obvious problems with adopting a rational choice institutionalists approach, rational choice institutionalism highlights 'key aspects of politics that are often underappreciated by other perspectives'[147] and provides tools for analyzing them. Its focus on the strategic interaction between actors in shaping political outcomes is a key addition to institutionalists approaches, and as Hall and Taylor suggest, this a major advance on traditional institutionalists approaches despite the drawback that 'this advance comes at the cost of conceptualizing intentionality in terms of a relatively thin theory of human rationality'.[148]

The multi-level governance approach is an example of an actor-centred institutionalist approach as it focuses on the actor's role in policy-making but also recognises the importance of institutions, as a set of formal and informal rules which can constrain political actors.[149] Marks justified his actor-centred approach by maintaining that 'institutions do not think'.[150] Therefore, an actor's membership of 'a particular institution does not allow one to infer that the individual wishes to defend that institution's autonomy'.[151] For example, although MPs are located in

---

[146] *Ibid.*, p.14-15
[147] Hall, P. and Taylor, R. *op.cit.*, p.18
[148] *Ibid.*
[149] Sloat, A. (2001) 'Multi-Level Governance: An Actor-Centered Approach' Paper given at the *Multi-Level Governance Conference of July 2001 at University of Sheffield,* accessed at www.shef.ac.uk/~perc/mlgc/papers/sloat.pdf on 29/3/02, p.3
[150] Marks, G. (1997) 'An Actor-Centred Approach to Multi-Level Governance' in Jeffery, C. (Ed.) *The Regional Dimension of the European Union: Towards a Third Level in Europe?* (Frank Cass, London), p.22
[151] *Ibid.,* p.34

Westminster, their criticism of the institution can vary and their primary loyalty may lie with their party or constituents rather than the institution itself.

MLG theory tends to focus on policy-making at one level, the European level, and assesses the impact of a range of actors from different levels on the European Union's policies. The main example cited by MLG theorists is the case of EU structural funds. Structural funds, such as Objective One described in section 1.4, are awarded to regions rather than states and are allocated according to the partnership principle. The partnership principle is basically meant to ensure that there is close consultation and co-operation between the EU Commission, national governments and regional authorities when determining how the funds should be spent.[152] Through their analysis of this case Marks et al. identify a 'system of multi-level government involving competition and interdependence among the Commission, Council and European Parliament'.[153] However, if MLG signifies a broader phenomenon of shared policy-making control it should also be possible to apply the theory to the state or sub-state level.

Whilst the EU level is not considered here, it may be helpful to draw on the MLG approach throughout the thesis to explore the impact of governmental actors at both the state and devolved tiers, including members of government, backbenchers and opposition party members, and the role of civil society actors operating at the devolved tier will be investigated. Civil society is defined by the London School of Economics as,

---

[152] Dinan, D. (1994) *Ever Closer Union? An Introduction to the European Community* (Macmillan Press Limited, London), p.407
[153] Marks, G. Hooghe, L. and Blank, K. *op.cit.,* p.361

'the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated'.[154]

As a result pressure groups and policy experts operating at the devolved levels, as examples of civil society actors, will be explored. This thesis shall draw on the MLG approach to explore how policy-making control is divided between this range of actors and how the institutional setting shapes the interaction of these actors.

2.5 Conclusion

In the UK's devolved institutions both new configurations of actors and new institutions have been introduced to the policy-making system. It is likely that both these factors have influenced the policy-making emanating from the Scottish Parliament and the National Assembly for Wales. For instance, Keating identifies the expansion of ministers, specialist advisors, innovative groupings of functions and the structure of the Scottish Parliament as potential forces for distinctive policy-making in Scotland.[155]

In this study the theory of actor-centred institutionalism will be used as a framework for understanding how the decisions affecting financing of long-term care for the elderly in Scotland and Wales were made. We will explore the role of both the individual actor and the institutional setting in shaping the long-term care policies, and will use Scharpf's work on preferences and actor interactions to inform

---

[154] London School of Economics- Centre for Civil Society *What is Civil Society?* accessed at www.lse.ac.uk on 8/9/05

this exploration. Moreover, we shall make use of the definitions of actors and institutions discussed in Scharpf's theoretical framework. As a result, the actor (individual, collective or corporate) is seen as purposeful and their behaviour as intentional, whilst the institutional setting should be understood as 'systems of rules that structure the courses of action that a set of actors may choose'.[156] Such a definition of institutions includes formal rules, such as the legal system, and also social norms, which if violated can result in loss of reputation, social disapproval and withdrawal of co-operation or rewards.[157]

The justification for applying actor-centred institutionalism is that it offers a starting point from which to explore policy-making. Actor-centred institutionalism should be understood as a framework rather than a theory, meaning it should provide a guide for understanding policy-making. As Scharpf himself explains, employing theoretical approaches to policy research tends not to be helpful because 'constellations are too variable and research interests too specific'.[158] It is not my intention to test actor-centred institutionalism in depth, but simply to borrow from the theory in order to better understand devolved policy-making. Actor-centred institutionalism is useful because it suggests clear reasons why different policies are adopted, due to the different configuration of actors and the different institutions. However, other approaches discussed in this chapter can offer further insights into devolved policy-making, and this study will draw on these where they are useful; particularly the

---

[155] Keating, M. (2001) 'Devolution and Public Policy in the United Kingdom: Divergence or Convergence?' *Seminar on Devolution in Practice* (Institute of Public Policy Research, October 2001), p.3
[156] Scharpf, F. W. (1997) *op.cit.*, p.38
[157] *Ibid.*
[158] Scharpf, F. W. (1997) *op.cit.*, p.37

MLG theory and the concepts of 'race to the bottom' and 'laboratories of democracy'.

The institutional settings explored in this thesis are the Scottish Parliament and the National Assembly for Wales. Often as shorthand throughout this study it will be suggested that 'the Scottish Parliament' or 'the National Assembly for Wales' took a certain decision or agreed a certain policy. By this I mean that a decision or policy was sanctioned by the actors within these institutions; Scharpf is or course, correct to note that institutions cannot themselves make decisions. The actors explored in the study are those from the devolved governments and opposition parties, UK governmental actors, pressure groups and policy experts who were involved in shaping the long-term care of the elderly policies at the devolved levels.

In this study the concepts of institutions and actors are separated in order to distinguish between the factors which influenced how policies were made, allowing for easier analysis. When discussing the actor, the focus is on the actor's preferences and perceptions even though the institutional setting plays a role in shaping these orientations and the discussion of the institutional setting focuses more on the formal and informal rules which structure actor interactions and allocate capabilities to actors. However, in reality the actor and the institution are not so clearly separated. As Diermeier notes, separating these concepts is a useful methodological distinction which 'becomes troubling only if one insists on an ontological distinction between institutions and behaviour'.[159]

---

[159] Diermeier, D. and Krehbiel, K. (2003) 'Institutionalism as a Methodology' in *Journal of Theoretical Politics* (Vol.15, No.2, pp.123-144), p.126

Chapter Three

Policy Divergence and Long-Term Care

The aim of this thesis is to explore why the Scottish Parliament and the National Assembly for Wales pursued distinctive policies from the UK Government. In order to examine the reasons for distinctive policy-making this thesis focuses on one case study, the financial arrangements for long-term care for the elderly. The adoption of free personal care was one of the earliest and clearest cases of policy divergence in Scotland.[1] Whilst in Wales, the Welsh Assembly Government framed the entire long-term care debate differently from Scotland and England, perhaps indicating a higher level of policy divergence. Therefore, there are three distinct long-term care policies in operation in Scotland, Wales and England. Rather than intending to compare the successes or failures of these policies, this chapter simply seeks to demonstrate that policy divergence exists, so that subsequent chapters can explore why it exists. However, before examining the three long-term care policies adopted in England, Scotland and Wales there is a need to clarify the term policy divergence.

3.1 Policy divergence

In order to explore policy divergence we must first explain what we mean when we speak of public policy. Hogwood and Gunn identified ten different ways of defining the term 'policy',

---

[1] The term 'free personal care' was used in Scotland to signify a long-term care for the elderly policy which included a capped level of funds for personal care. Therefore, whilst those with low personal care costs might have received personal care completely free of charge, those with high personal care costs were expected to pay for some of their personal care costs. Therefore, the 'free personal care' policy did not mean that universally all personal care would be provided for free.

1) A label for a field of activity
2) An expression of general purpose or desired state of affairs
3) Specific proposals
4) Decisions of government
5) Formal authorization
6) A programme
7) An output
8) An outcome
9) A theory or model
10) A process[2]

As a result, Hogwood and Gunn suggest that 'Policy' can be used to refer to the intentions of the policy-maker, actions or decisions, effects or the process of making policy itself. Throughout the thesis policy is understood 'as the stated aims of policy-makers and the legislative and administrative measures taken to realise them'.[3] Therefore, the thesis considers both policy decisions announced by policy-makers and the initiatives designed to implement these decisions. As Keating explained, such an approach may encourage a skewed picture of devolved policy-making. For instance, policy-makers may state policy aims to mask a hidden agenda.[4] Additionally, focusing on policy as action ignores the importance of inaction. As Hogwood and Gunn pointed out, if, for instance, government chooses not to change the laws on abortion then their inaction gives tacit consent for the current policy.[5] In additional Wildavsky suggested that defining policy only as a final product was problematic, as 'policy is a process as well as a product.[6] However, despite the weaknesses of focusing on the decisions and actions of policy-makers, such an approach allows us to clearly identify policy, to trace why these

[2] Hogwood, B. and Gunn, L. (1984) *Policy Analysis for the Real World* (Oxford University Press, Oxford), pp.13-18
[3] Keating, M. (2003) *Policy Convergence and Divergence in Scotland under Devolution* (Regional Studies Association Annual Conference) accessed at www.devolution.ac.uk/Keating_rsa_03.pdf on 9/9/04, p.95
[4] *Ibid.*
[5] Hogwood, B. and Gunn, L (1984), *op.cit.*, p.21
[6] Wildavsky, A. (1979) *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little Brown), p.387

policies have emerged, and therefore, offers a good starting point from which to understand distinctive policy-making by the UK's devolved institutions.

The use of the term 'policy divergence' in this thesis primarily refers to the differences between policies made in Scotland and Wales from those in England, called vertical divergence. This study will also comment on horizontal divergence, which is when policies in the devolved administrations differ from each other. Policies can diverge in a number of different ways, some of which are more significant than others. Keating argued that the most radical form of divergence would entail the identification of different issues, leading to the production of a distinct policy agenda in the devolved institutions.[7] In the first terms of the devolved institutions their agendas tended to mirror Westminster's, the major exceptions to this were in non-comparable areas where the same needs did not occur in Scotland, Wales and England. For example, the National Assembly's agenda deviated from Westminster when it considered Welsh language policies, which were not necessary for England. The second most radical form of divergence occurs if the same issues are identified but defined and framed differently.[8] For instance, the governments in Scotland, England and Wales may agree that drug addiction is a problem, but one government may define the problem as one of criminality, and so focus on the punishment of addicts, whilst the others may see addiction as a health issue and work towards providing care and assistance to addicts. A third and even less radical form of divergence occurs when issues are defined in the same way by each government but different policies are adopted, and the least radical form of divergence is when the same policies are

---

[7] Keating, M. *op.cit.*, p.1

adopted but delivered differently.[9] Figure 3.1 illustrates that these different types of

divergence can be categorised on a scale from a high to a low level of policy

divergence. At times simply identifying the type of divergence occurring can assist

our understanding of the importance of the policy divergence, so these categories

can aid our discussion of the long-term care policies in the UK.

Figure 3.1: Types of Policy Divergence

High level of divergence   **Low level of divergence**

Distinct policy agenda	Issues defined and framed differently	Different policies adopted	Policies delivered differently
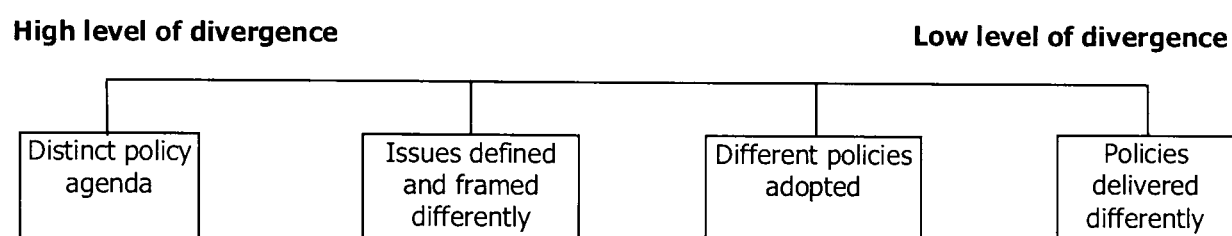
3.2 The UK Policy

It is worth noting that funding care for the elderly is an issue for many other

countries. In their analysis of OECD (Organisation for Economic Cooperation and

Development) countries, Banting and Corbett note that in relation to health policy

'common goals, common pressures and common constraints have generated a

shared agenda' and the funding of long-term care for the elderly is one of the issues

they identify on the agendas of all the OECD countries.[10] In the UK the Royal

Commission for Long-Term Care, chaired by Stewart Sutherland, was established in

1997 by the newly elected Labour Government to examine 'options for a sustainable

system of funding of long-term care for older people'.[11] The Royal Commission

reported in March 1999, recommending that long-term care provision should be

---

[8] *Ibid.*

[9] *Ibid.*

[10] Banting, K.G. and Corbett, S. (2002) 'Health Policy and Federalism: An Introduction' in Banting, K.G. and Corbett, S (Eds.) *Health Policy and Federalism: A Comparative Perspective on Multi-Level Governance* (McGill-Queens University Press, London), pp.3-4

divided into living, housing and personal care, and that different payment systems should apply to these different categories of care. The Commission's key recommendation was that all those assessed as needing personal and nursing care should have the costs of their care met by the taxpayer, regardless of their assets. The Royal Commission defined personal care as all direct care related to:

- personal toilet (washing, bathing, skin care, personal presentation, dressing and undressing and skin care);

- eating and drinking (as opposed to obtaining and preparing food and drink);

- managing urinary and bowel functions (including maintaining continence and managing incontinence);

- managing problems associated with immobility;

- management of prescribed treatment (e.g. administration and monitoring medication),

- behaviour management and ensuring personal safety (for example, for those with cognitive impairment - minimising stress and risk).[12]

In contrast, the Commission suggested that people should be responsible for paying their living and housing costs, if they have the means to do so.[13] The Royal Commission also explored alternative methods of assisting the costs of long-term care, in case their key recommendation was rejected. These included recommendations to at least exempt nursing care from means testing and to disregard the value of a person's house when calculating how much they should contribute to their care costs for three months when they first enter long-term care.[14] The Commission's findings were weakened by the fact that two commissioners, David Lipsey and Joel Joffe disagreed with the free personal care recommendation. Instead Lipsey and Joffe issued a note of dissent which argued

---

[11] Royal Commission on Long-term care (1999) *With Respect to Old Age* (The Stationary Office, London), Terms of Reference
[12] *Ibid.,* Chapter 6
[13] *Ibid.,* Executive Summary

that the proposal for free personal care was counterproductive as it would harm the long-term care of elderly people 'by diverting resources from the care they need'.[15]

The Royal Commission's recommendations about long-term care for the elderly can be seen, in Kingdon's terms, as ideas floating around in a 'policy primeval soup'.[16] Kingdon suggested that a variety of policy proposals float about in such a soup, surviving for serious consideration only if they meet criteria such as technical feasibility, consistency with dominant values and the current national mood, and possession of political support.[17] The long-term care policies adopted in England, Scotland and Wales, and most of the policy options explored in each nation, were largely based on the work of the Royal Commission. The consideration of funding long-term care for the elderly was also shaped by wider debates about welfare in the UK. The Labour party in particular was divided about welfare provision, with major disagreement about whether to focus on means-testing and targeting benefits or universal provision. In contrast, the Liberal Democrats appeared relatively united about the long-term care issue, with many Liberal Democrats championing the notion of universal provision. Therefore, whilst the Royal Commission set out the detailed proposals on long-term care funding which were considered throughout the UK, the wider terms of the debate were set by internal and external party disputes.

Figure 3.2 below compares the different long-term care policies in the UK, before this chapter explores the English, Scottish and Welsh policies in more detail.

---

[14] *Ibid.,* S.6.7
[15] *Ibid.,* Note of Dissent

Figure 3.2 Comparison of long-term care policies throughout the UK

	England	Wales	Scotland
Personal care	Opposed free personal care due to cost	In favour of free personal care in principle, but only if funded by UK Government	Introduced free personal care
	6 weeks free home care on discharge from hospital	6 weeks free home care on discharge from hospital	
	Attendance Allowance higher rate- £58.80 per wk lower rate- £39.35 per wk	**Attendance Allowance** higher rate- £58.80 per wk lower rate- £39.35 per wk	**Flat-rate payment** £145 per wk (includes the AA entitlement)
Nursing Care	Banded model	Flat-rate model	Flat-rate model
Initial rate	£25, £70, £110 per wk	£100 per wk	£65 per wk
2004 rate	£40, £77.50, £125 per wk	£105 per wk	£65 per wk
Capital Limits			
2001	Lower- £11,500 Upper- £18,500	Lower- £11,500 Upper- £18,500	Lower- £11,500 Upper- £18,500
2004	Lower- £12,500 Upper- £20,000	Lower- £13,500 Upper- £20,000	Lower- £11,750 Upper- £19,000
Personal Expenses Allowance 2001	£16.05	£16.05	£16.05
2004	£18.10	£18.40	£18.10

Someone living in a residential home requiring a medium level of nursing care and personal care with assets of £100,000 in 2004 would receive £136 per week in England (Attendance allowance: £58.80, Nursing care: £77.50), £163.80 in Wales (Attendance allowance: £58.80, Nursing care: £105) and £210 in Scotland (Personal care: £145, Nursing care: £65). Those in care will not always be better off in Scotland than elsewhere. For instance, if a person with assets of £12,000 lives in a residential home in England and requires care they will not have to contribute

---

[16] Kingdon, J.W (1984) *Agendas, Alternatives and Public Policies* (Scott, Foresman and Company, London), p.21

anything to their care costs. However, the same resident in Scotland would have to contribute a small amount to their care. The complexities of the system means the amount someone receives to pay for their care costs will vary dramatically depending on their individual circumstances.

3.3 The English Policy

3.3.1 Free Personal Care

On 27th July 2000, as part of the debate on the NHS plan, Tony Blair announced his belief that it would be better to spend £900 million on intermediate care rather than making all personal care free.[18] The Government consistently justified their decision not to introduce free personal care on the basis that 'the Government, does not believe that making personal care universally free would be the best use of the resources needed to make older people's services better and more responsive'.[19] Ideologically, therefore, the UK Government were not opposed to the principle of free personal care, they just agreed with Lipsey and Joffe's argument that the resources needed to fund free personal care would be better spent elsewhere. However, the UK Government remained committed to giving some assistance to those in receipt of personal care through their Attendance Allowance payments. Attendance Allowance, which later became important to the development of the Scottish long-term care policy, was defined by the Department for Work and Pensions (DWP) as,

---

[17] *Ibid.*
[18] House of Commons, Hansard, 27th July 2000
[19] Department of Health (July 2000) *The NHS plan: The Government's response to the Royal Commission on Long-term care* accessed at www.dh.gov.uk/assetRoot/04/08/21/54/04082154.pdf on 3/12/03, p.8

'a benefit which is paid to people over 65 years of age who need help with personal care or who need supervision to avoid substantial danger to themselves or others. The entitlement is based on how much help is needed with bodily functions and/or supervision, and the benefit is intended to help meet the extra costs of people with severe disability'.[20]

The payment varies depending on individual circumstances, but is roughly £58.80 per week at the higher rate and £39.35 at the lower rate.[21]

The UK Government's decision not to introduce free personal care was a disappointment to many service providers, specialists and pressure groups with experience and knowledge of providing care for older people. However, the UK Government did accept many of the Royal Commission's other recommendations, which were widely welcomed, several of which are discussed below.

3.3.2 Nursing Care

During the debate on the NHS plan, Tony Blair announced that 'From October 2001, subject to parliamentary approval, nursing care in nursing homes will be treated as nursing care elsewhere in the NHS – free at the point of use'.[22] However, it is worth noting that unlike other forms of care in the NHS, the policy of free nursing care did not actually mean that nursing care in nursing homes would be available entirely for free. As figure 3.2 illustrated, in 2004 the English policy of 'free nursing care' provided up to £125 per week for nursing care, therefore, if a person's nursing care cost more than this amount they would be required to contribute to their care.

---

[20] Department for Work and Pensions *Disability Living Allowance Overview* accessed at www.dwp.gov.uk/medical/dla.pdf on 18/11/03
[21] Department for Work and Pensions (2004) *Attendance Allowance* www.dwp.gov.uk/lifeevent/benefits/attendance_allowance.asp#caniget
[22] House of Commons, Hansard, 27th July 2000

The introduction of free nursing care required primary legislation, and the Health and Social Care Act (2001) allowed for its implementation. The Health and Social Care Act (2001) defined nursing care as,

> 'any services provided by a registered nurse and involving-
> a) the provision of care, or
> b) the planning, supervision or delegation of the provision of care,
> other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse'.[23]

The UK Government's free nursing care policy was introduced on 1st October 2001. Payments for nursing care were arranged using a tiered system, where nursing needs were assessed and the patient awarded £35, £70 or £110 per week depending on their nursing needs.[24] The UK Government also committed to reviewing these payments, and increased them in April 2003 when they rose to £40, £75 or £120[25], and again in April 2004 when the lowest band stayed at £40 but the other tiers increased to £77.50 and £125.[26]

3.3.3 Capital limits

Prior to the Royal Commission personal and nursing care were already provided for free for many of those in long-term care. Capital limits set the amount of money a person was allowed to possess (which included the value of their house) before they were required to contribute to their care costs. Those who owned less than the lower capital limit received all their care free whilst those with assets above the upper capital limit had to pay all of their care costs, with a tariff rate applied to

---

[23] *Health and Social Care Act* (2001) ch.15 (S.49 (2))
[24] Department of Health (1 October 2001) *Press Release: Free nursing care for all introduced from today* accessed at www.dh.gov.uk on 14/8/04
[25] Health Newswire Professional (27 December 2002) *More money for free nursing care*

those falling between these categories. In the UK Government's reforms to long-term care in 2001, they altered the capital limits. In 2001 the lower limit was raised from £10,000 to £11,500, and the upper limit from £16,000 to £18,500. [27] As with the nursing care bands, capital limits were also kept under review and were raised in April 2002 to £11,750 and £19,000[28], in April 2003 to £12,000 and £19,500 and in April 2004 to £12,500 and £20,000.[29] For capital of between the upper and lower limits, a tariff rate of £1 a week was charged for each complete £250, or part of £250 held, over the lower limit.[30] The tariff rate meant, for example, in June 2001 a care resident with £12,630 capital would have the first £11,500 of their capital disregarded, and for the £1,130 remainding is charged for each £250, or part of £250 left, meaning they pay £5 per week towards their care. In addition care residents are required to contribute any weekly income to their care home fees, minus a set amount for personal allowances, regardless of whether they possess savings or not. In 2001 the amount allowed for personal allowances was £16.05 a week, this was increased in 2002 to £16.80, to £17.50 in April 2003 and to £18.10 in April 2004.[31]

---

[26] Department of Health (2004) *NHS funded nursing care: overview and information for the public* accessed at www.dh.gov.uk on 18/8/04

[27] Department of Health (1 October 2001),*op.cit.*

[28] Department of Health (March 2002) *Local Authority Circular LAC (2000) 11*

[29] Wright, M. (13 March 2004) 'Inquiry into care homes side-steps the big issue' in *The Daily Telegraph*, p.11

[30] Department of Health (5 January 2001) *Press Release: Thousands to benefit from changes to residential care* assessment accessed at www.dh.gov.uk on 18/8/04

[31] Department of Health (2004) 'Proposed Changes to Residential Care Charges' accessed at www.dh.gov.uk on 9/8/04; Department of Health (March 2002) *op.cit.*; Department of Health (2001) *Local Authority Circular LAC (2001)10;* Department of Health (2003) *Local Authority Circular LAC (2003)8*

3.3.4 Three Month House Disregard and Deferred Payment Scheme

The UK Government also accepted in full the Royal Commission's recommendation that the value of the home should be disregarded for up to three months after admission to care in a residential setting, meaning that when calculating the amount someone should contribute to their care costs the person's home is not included in the calculation for the first three months of admission into care.[32] Disregarding the value of the house for up to three months from the means test was introduced in England from April 2001.[33] The three months disregard was taken to alleviate pressure on those entering care, to give them space to decide about the care they required. Disregarding the value of their house would allow a resident to move back home if their health improved, as their home would still be there. After the twelve week period the deferred payment scheme allows residents the option of not selling their home to pay for their care.[34]

The deferred payment scheme means that local councils will pay for the cost of residential care, on the understanding that they will get this money back when the resident dies and the house is sold.[35] Local authorities simply lend money to care residents, which is secured against the value of the property. The deferred payment model was introduced in England on the 1st October 2001. Although prior to this date councils did have powers to place 'legal charges on homes and to recoup their costs at a later stage once the house is sold', in their response to the Royal Commission, the UK Government dedicated a ring-fenced grant to councils to

---

[32] Department of Health (July 2000) *op.cit.*, p.8
[33] *Ibid.*
[34] *Ibid.*, p.13
[35] *Ibid.*

pay for greater use of these powers.[36]   The UK Government justified the introduction of these measures as a means to 'ease the pressure on people to sell their own homes against their wishes and [to]... lessen the burden of care costs'.[37]

3.4 The Scottish Policy

The key difference between the English and Scottish long-term care policies was on the issue of free personal care. However, there were also clear differences on some of the related long-term care policies too.

3.4.1 Free Personal Care

The Scottish Government decided to introduce free personal care from the 1st July 2002.The definition for personal care adopted by the Scottish Executive was similar to the definition proposed by the Royal Commission (see section 3.2), and included;

> 'Personal Hygiene: Bathing, showering, hair washing, shaving, oral hygiene, nail care
> Continence Management: Toileting, catheter/stoma care, skin care, incontinence laundry, bed changing
> Food and Diet: Assistance with eating and assistance with special diets. Assistance to manage different types of meal services. Assistance with preparation of food.
> Problems of immobility: Dealing with the consequences of not being able to move
> Counselling and support: Behaviour management, psychological support, reminding devices and safety devices
> Simple treatments: Assistance with medication (including eye drops), application of creams and lotions, simple dressings, oxygen therapy
> Personal Assistance: Assistance with dressing, surgical appliances, prostheses, mechanical and manual aids. Assistance to get up and to go to bed. Transfers including use of a hoist'.[38]

---

[36] *Ibid.*
[37] *Ibid.*, p.11
[38] Care Development Group (14 September 2001) *Fair Care for Older People* accessed at www.scotland.gov.uk/library3/health/cdgr-00.asp, Chapter 4

As already has been noted, the term free personal care does not mean that all personal care was provided for free, but that the Scottish Executive would contribute a set amount towards personal care costs. Personal care was distinguished from nursing care and hotel costs.

The Scottish Executive decided that those assessed as requiring free personal care would receive a flat-rate payment of £90 a week.[39] In addition to the £90 paid by the Scottish Government, it was assumed that those in nursing or residential care would still be eligible for the UK Government's attendance allowance, then a maximum £55 per week (see section 3.3.1). Therefore, the full free personal care entitlement would be £145 per week.[40] In the end the Department of Work and Pensions (DWP) refused to continue to pay Attendance Allowance, and the Scottish Executive decided to contribute the full amount of £145 per week themselves. Initially the Scottish Government aimed to introduce free personal care on 1st April 2002, but due to implementation problems free personal care was introduced in Scotland three months later, on 1st July. To implement free personal care and nursing care in Scotland primary legislation was required, and these measures were included in the Community Care and Health Act (Scotland) (2002).

3.4.2 Free Nursing Care

Free nursing care was also introduced in Scotland on 1st July 2002. Unlike the English banded model for free nursing care payments, in Scotland a flat-rate

---

[39] Scottish Parliament, Plenary Session, 26th September 2001
[40] *Ibid.*

payment of £65 was introduced, which was paid directly to care homes.[41] Those

requiring nursing care in Scotland automatically received £65 and those requiring

nursing and personal care in Scotland were provided with £210 a week towards

their care costs. In contrast to the English model, in Scotland there have been no

increases to the amount paid for free nursing care; it is still set at £65 a week.

3.4.3 Capital limits

In April 2001 the Scottish Government matched England, raising capital limits for

care from £10,000 to £11,500 and from £16,000 to £18,500.[42] However, whilst

English capital limits were raised in 2002 and 2003, in Scotland capital limits

remained at the levels set in 2001 until April 2004 when Scottish capital limits were

raised to £11,750 and £19,000,[43] which is slightly lower than the English limits of

£12,500 and £20,000.[44] In Scotland the personal expenses allowance rose at the

same rate as England, at £16.05 a week in 2001, £16.80 in 2002, £17.50 in 2003

and £18.10 in 2004.[45]

3.4.4 Three Month House Disregard and Deferred Payment Scheme

As in England the Scottish Executive also introduced the 12 weeks property

disregard, introduced on 9th April 2001. The 12 weeks property disregard only

---

[41] *Ibid.*

[42] Scottish Statutory Instrument (2001) No. 105 *The National Assistance (Assessment of Resources) Amendment (No. 2) (Scotland) Regulations 2001*

[43] Scottish Executive Health Department (1 March 2004) *Circular No.CCD3/2004 : Uprating of residential care charging rules; National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2004; National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2004*

[44] Wright, M., *op.cit.*, p.11

required secondary legislation. In contrast the deferred payment scheme required primary legislation, and The Community Care and Health Act (2002) allowed for the introduction of the deferred payment scheme.   The scheme was introduced on 1st July 2002, the same day as free personal and nursing care, but nine months after the policy was introduced in England. The aim of the policy was the same as in England, to allow residents the option of deferring payment of their contribution to care home fees to avoid selling their homes.[46] The Scottish Executive provided local authorities with additional money, £3.5 million for 2002/3 and a further £3.5 million for 2003/4 to enable them to make the additional deferred payments.[47]

3.5 The Welsh Policy

3.5.1 Free Personal Care

To have introduced free personal care in Wales the Welsh Assembly Government would have needed to request primary legislation to be passed at Westminster. The Welsh Assembly Government did not make such a request. However, all Assembly Members unanimously supported the principle of free personal care, and voted to 'challenge the UK Government to fund and implement free personal care in the context of UK taxation, benefits and inheritance policy as the Royal Commission had intended'.[48] Therefore, whilst Assembly members were not willing to pursue free personal care on a Wales only basis, they did believe that the UK Government

---

[45] Scottish Statutory Instrument (2001), *op.cit.,*; Scottish Executive (3 April 2002) *Charging for residential accommodation guide; National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2002; Scottish Statutory* Instrument (2003) No. 86 *The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2003*; Scottish Executive Health Department *op.cit.*
[46] Scottish Executive (21 June 2002) *Community Care Circular CCD 7/2002 – Deferred Payment of Care Home Fees* accessed at www.show.scot.nhs.uk/sehd/publications/CCD2002_07.pdf on 23/8/04
[47] *Ibid.*

should introduce and fund free personal care for England and Wales. The National Assembly for Wales, and the UK Government, also introduced six weeks of free personal care at home following hospital discharge. The intention of this policy was to allow older people without medical needs to leave hospital, thus freeing up hospital beds.

3.5.2 Free Nursing Care

Free nursing care in Wales was introduced for those who paid for their own care in December 2001, meaning that no individual who paid for nursing care from their own resources paid for their care from this date, and in April 2003 the policy was implemented in full (meaning that for residents of care homes funded by local authorities, local authorities stopped paying the NHS for their nursing care).[49] The introduction of free nursing care in Wales came just two months after free nursing care was introduced in England. The Welsh Assembly Government decided not to introduce a banding system similar to the English model. Instead they opted for a flat-rate payment, as adopted by Scotland. The National Assembly for Wales decided to make payments of £100 a week for all those in need of nursing care, £35 more that the Scottish Parliament's nursing payment.[50] In England those with nursing needs received £35, £70 or £110 per week.[51] Therefore, most people requiring nursing care in Wales would receive a greater level of support than their counterparts in England. As in England, the Welsh Assembly Government has also increased the nursing payment since its introduction. However, the payment has

---

[48] National Assembly for Wales (May 2002) *Advisory Group on a Strategy for Older People in Wales: When I'm 64... and more,* p.53
[49] Welsh Assembly Government (5 November 2001) *Press Release: Jane Hutt announces Free Nursing Care for all Nursing Homes residents* accessed at www.wales.gov.uk on 25/8/04

only been increased once, in April 2004 to £105[52], compared to 2004 rates of £40, £77.50 and £125 in England.[53]

3.5.3 Capital limits

In Wales, initially capital limits were set at the same rate as in England, at £11,500 and £18,500 in 2001[54], rising to £11,750 and £19,000 in 2002.[55] However, in 2003 the Welsh capital limits rose to £12,250 and £20,000[56], which were slightly greater than the English limits of £12,000 and £19,500. In the Assembly's second term, in 2004, the difference between the Welsh and English capital limits increased further with the Welsh levels set at £13,500 and £20,500,[57] compared to English limits of £12,500 and £20,000.[58] In a similar vein the amounts allowed for personal allowances in Wales also began at the same rate as England, in 2001 personal allowances in England, Scotland and Wales were set at £16.05[59] and all rose in 2002 to £16.80.[60] In 2003 whilst the Scottish and English amounts for personal allowances rose to £17.50 in Wales the amounts for personal allowances were set slightly higher, at £17.80.[61] The difference between the personal allowances

---

[50] *Ibid.*
[51] Department of Health (1 October 2001), *op.cit.*
[52] Welsh Assembly Government (4 March 2004) *Decision Report: NHS Funded Care- Review of Current Weekly Rate* accessed at www.information.wales.gov.uk on 25/8/04
[53] Department of Health (2004) *NHS funded nursing care, op.cit.*
[54] Welsh Statutory Instrument (2001) No. 1409 (W. 95) *The National Assistance (Assessment of Resources) (Amendment No. 2) (Wales) Regulations 2001*
[55] Welsh Statutory Instrument (2002) No. 814 (W.94) The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2002
[56] Welsh Statutory Instrument (2003) No. 897 (W.117) *The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2003*
[57] Welsh Statutory Instrument (2004) No. 1023 (W.120) *The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2004*
[58] Wright, M., *op.cit.*, p.11
[59] Welsh Statutory Instrument (2001), *op.cit.*
[60] *Ibid.*
[61] Welsh Statutory Instrument (2003), *op.cit.,*

remained the same in 2004, with the English and Scottish levels rising to £18.10[62],

and the Welsh amount rising to £18.40.[63]

3.5.4 Three Month House Disregard and Deferred Payment Scheme

In Wales the twelve week property disregard was introduced in April 2001, the

same time as in England and Scotland.[64] However, the deferred payment scheme

was not introduced in Wales until April 2003, which was much later than its

introduction in England in October 2001.   Therefore, although the policy did not

diverge from the English model, the timing did.

3.5.5 An Older Person's Strategy

At first glance the details of the Welsh Assembly Government's long-term care policy

does not appear highly distinctive from that of England.   However, whilst the detail

of the Welsh proposals on funding personal and nursing care are similar to those

found in England their broader approach to the care of older people represents a

significant divergence from both Scotland and England.   Unlike the UK and Scottish

governments, the Welsh Assembly Government designed a strategy for older people

in Wales focusing on improving the quality of older people's lives in Wales.[65]   The

report took a broad, holistic look at older people, particularly aiming to 'promote

---

[62] Department of Health (2004) 'Proposed Changes to Residential Care Charges' *op.cit.*.; Department of Health (March 2002) *Local Authority Circular LAC (2002)11*; Department of Health (2001) *Local Authority Circular LAC (2001)10;* Department of Health (2003) *Local Authority Circular LAC (2003) 8*
[63] Welsh Statutory Instrument 2004 No. 1024 (W.121) *The National Assistance (Sums for Personal Requirements) (Wales)*
[64] The National Assembly for Wales (January 2002) *Implementing Changes to Residential Care Charging Rules in Wales: A Consultation Paper* accessed at www.wales.gov.uk/subisocialpolicy/content/consultations/deferredpayments-e.doc on 25/8/04
[65] Welsh Assembly Government (January 2003) *The Strategy for Older People in Wales*

and improve the health and well being of older people'.[66] In relation to long-term care, rather than focusing on the provision of care services in a residential setting, the Welsh Assembly Government attempted to prevent people entering into long-term care, by promoting healthy living and providing greater support for older people in their own homes. The Scottish and English governments adopted similar measures to each other in an attempt to encourage older people to remain in their own homes, for instance they introduced rapid response teams to deal with housing repairs for older people. However, the Welsh Assembly Government focused more heavily on the promotion of healthy lifestyles for older people and sought to adopt a joined-up approach to their health needs, considering the impact of factors such as housing, transport, social inclusion and education.[67]

The Welsh strategy for older people, therefore, illustrates their commitment to New Public Health, a model of health care which represents 'a wider understanding of health that fundamentally is about attacking root causes of ill health in great social problems such as unemployment, environmental, ill-health, and lifestyle problems through collaboration between agendas'.[68] Greer argued that 'Wales is in many ways one of the only places in the Western World to take the global agenda of new public health and primary care dominance seriously'.[69] By taking a broader approach to the health of older people and focusing on preventing the need for long-term care, rather than focusing on providing universal free care, the Welsh Assembly Government appeared to frame the entire long-term care debate

---

[66] *Ibid.*, p.21

[67] *Ibid.*, p.33

[68] Greer, S. (2002) 'When Does Devolution Cause Divergence?: Health agendas and policy debates before and after devolution' *Paper presented at the 2002 PSA Conference* (University of Aberdeen, April 5th-7th), p.18

differently from England and Scotland, which is the second highest form of divergence identified in figure 3.1. Sullivan suggests that the distinctive focus of health care in Wales means that despite possessing the weakest constitutional settlement 'indications are that policy differences are greatest in Wales'.[70] This finding supports our actor-centred institutionalism framework, suggesting that the design of the devolved institutions cannot entirely explain policy divergence, possibly indicating a need to consider the different constellations of actors operating in the institutions.

3.6: Conclusion: The Extent of Policy Divergence

As discussed at the beginning of this chapter there are different types of policy divergence, ranging from the most radical option of developing distinctive policy agendas to the least radically of adopting the same policies but delivering them differently.[71] In relation to free personal care all three nations follow the same agenda, set by the Royal Commission on Long-Term Care. The Scottish Executive focused on the same long-term care issues as in England but adopted a different policy. By developing different payment models for nursing care, arranging a flat-rate scheme rather than a tiered model, the Scottish and Welsh institutions diverged from Westminster by adopting the same policy but administering it differently. As this study purposely chose to consider the development of the same type of policy, long-term care for the elderly, it is not possible to identify the most radical type of policy divergence in this case study, which would 'entail the identification of

---

[69] Greer, S. (2003) 'Policy Divergence Will it Change Something in Greenock?' in *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, Exeter), p.212

different issues, leading to the production of a distinct policy agenda in the devolved institutions'.[72]   However, the Welsh Assembly's approach to long-term care and health issues for older people appears to be an example of the second most radical form of policy divergence.   The Assembly identified the same issues for consideration as England and Scotland but framed this long-term care issue differently, by concentrating on attacking the root causes of ill health and preventing older people from requiring long-term care. In England and Scotland a number of measures were adopted to tackle the root causes of ill health for older people.   For instance, the UK Government's National Service Framework sets out programmes to promote health and active lifestyles.[73]   However, such measures tended to be adopted on an *ad hoc* basis, and the majority of measures in the National Service Framework, for instance, were focused on the NHS providing support for healthy and active lifestyles. In contrast, the National Assembly took the public health agenda more seriously, developing a holistic Strategy for Older People. The difference in approaches can be seen through attitudes towards the health service. In the case of the National Assembly for Wales, as Greer notes, 'rather than seeking to use a health service to promote health, it sets health outcomes and views the health services as a tool that will help achieve them (along with local government, education, transport, and other services)'.[74]

This chapter has established that the long-term care policies adopted in Scotland and Wales diverge from England and each other. The rest of the thesis seeks to

---

[70] Sullivan, M. (2002) 'Health policy: differentiation and devolution' in Adams, J. and Robinson, P. (Eds.) *Devolution in practice: Public policy differences within the UK* (Institute for Public Policy Research, London), p.65
[71] Keating, M. (2003) *op.cit.*, p.1
[72] *Ibid.*, p.1
[73] Department of Health (March 2001) *National Service Framework for Older People*

117

establish why the devolved institutions decided to pursue different policies from the UK Government, focusing on the impact of actors and institutional setting, as suggested by actor-centred institutionalism.

---

[74] Greer, S. (2002) *op.cit.*, p.21

Chapter Four

Making the Scottish Long-Term Care Policy

Hazell argued that devolution will primarily be judged on the ability of the new administrations to create distinctive policies from Westminster, when different needs or desires exist.[1] As described in the previous chapter, the adoption of free personal care in Scotland was a clear example of the Scottish Parliament pursuing a distinctive policy from Westminster. This chapter describes how the Scottish Parliament developed its free personal care policy, charting events chronologically. These events are depicted in a timeline at the end of the chapter. The chapter provides a detailed account of how the free personal care policy developed in Scotland, and subsequent chapters will explore why the policy developed in this way. This, and subsequent chapters, draw on information from interviews with over 40 policy actors in Scotland and Wales. A description of the methodological approach and a list of all interviewees can be found in the appendix to this study.[2]

4.1 Responding to the Royal Commission

As discussed in the previous chapter, the Royal Commission on Long-Term Care formed the basis of the English, Scottish and Welsh long-term care policies. The Commission reported in March 1999, as the political parties in Scotland were gearing up for the first elections to the Scottish Parliament. In April 1999 the

---

[1] Hazell, R. (2001) 'Conclusion: The State of the Nation after Two Years of Devolution' in Trench, A. (Ed.) *State of the Nations 2001: The Second Year of Devolution in the United Kingdom* (Imprint Academic, Exeter), p.255

[2] When citing from interviews, the name and position held by interviewees during the period studied here are stated, unless interviewees have asked to remain anonymous.

parties launched their manifestos for the Scottish election. The Scottish Liberal Democrat manifesto included a commitment to 'Promote an early dialogue with all interested parties throughout the UK to establish a common way forward in achieving the recommendations contained in the Royal Commission on Long Term Care'.[3] Note that the Scottish Liberal Democrats did not commit to implementing free personal care on a Scottish only basis; instead they implied that the issue should be resolved by the UK Government. In contrast the Labour party's manifesto offered no commitments on long-term care, and only noted that 'one of the early challenges for the Scottish Parliament will be to respond to the Royal Commission on Long-term care and its recommendations on personal care'.[4]

The Scottish Parliamentary election on the 6th May 1999 gave no overall majority for any political party. The Labour party emerged as the biggest party, with 56 out of a total of 129 seats, 9 seats short of the 65 required to take overall control.[5] However, to govern it was clear that Labour needed to compromise with other political parties and so Labour entered into coalition negotiations with the Liberal Democrats. The coalition negotiations included a discussion of free personal care, but it was not adopted in the final partnership agreement.[6] All interviewees agreed that long-term care for the elderly was not discussed in any depth. Additionally, newspaper coverage of the coalition negotiations failed to mention long-term care and the final partnership agreement lacked any commitment on free personal care

---

[3] Scottish Liberal Democrats(1999) *Scottish Parliamentary Manifesto 1999: Raising the Standard* accessed at www.scotlibdems.org.uk/manifestos/se1999/#3 on 3/12/03
[4] Scottish New Labour (1999) *Building Scotland's Future*
[5] BBC News- Vote 99 *Election results* accessed at www.news.bbc.co.uk/hi/english/static/vote_99/during/index.stm on 4/12/03
[6] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)

or long-term care provision in general.[7] Instead the main focus of the partnership agreement, and media coverage of the agreement, was on student finance. Free personal care at this time was low on the Scottish political agenda, but this changed when the UK Government finally announced its formal response to the Royal Commission on Long-Term Care.

On 27th July 2000, as part of the debate on the NHS plan, Tony Blair announced that nursing care in nursing homes would be provided free at the point of use. Additionally Blair announced his government's decision not to introduce free personal care. The UK Government's decision to reject free personal care ruled out the possibility of providing free personal care on a UK wide basis. Whilst pressure groups and politicians in favour of free personal care tended to favour a UK wide solution, once this option was closed pressure grew for the Scottish Parliament to act.

The day after the UK government revealed its position on long-term care, on 28th July 2000, the leader of the Conservatives in the Scottish Parliament, David McLetchie, lodged a motion calling 'upon the Scottish Executive to implement in full the recommendation of the Royal Commission that personal care, as defined by the Commission, should be available after assessment, according to need and paid for from general taxation'.[8] Additionally, pressure groups in Scotland began to focus more specifically on the Scottish Executive. For example, Help the Aged Scotland directly asked the Scottish Executive 'to grasp the nettle and offer a better deal on

---

[7] Labour and Liberal Democrats(May 1999) *A Partnership for Scotland: A Programme for Government* accessed at www.scotlibdems.org.uk/docs/coaltion.htm#4 on 4/12/03

121

care'.[9]   Therefore, the rejection of free personal care by the UK Government immediately resulted in demands from opposition parties and pressure groups for the Scottish Parliament to 'go further' and act distinctively from Westminster.

The Conservatives in particular continued to pursue free personal care within the Scottish Parliament. On the 26th September 2000 MSP Mary Scanlon lodged a motion which stated,

> 'That the Parliament calls upon the Scottish Executive to implement the key recommendations of the report With Respect to Old Age: Long-term care – Rights and Responsibilities of the Royal Commission chaired by Sir Stewart Sutherland, including the funding of personal care on the basis of assessed need in order to alleviate the problems facing those who require long term care'.[10]

The Executive responded by proposing an amendment which was weaker than Scanlon's motion, simply stating that the Scottish Executive should 'continue, over time, to work towards fulfilling the Royal Commission's objectives of fairness and equity in the care of the elderly'.[11]   Newspaper reports suggested that the Executive's amendment was the consequence of much negotiation between the two coalition partners, with 'considerable activity behind the scenes yesterday [27 September 2000] as Labour business managers negotiated with their Liberal Democrat counterparts to try to agree an amendment which would bring the 16

---

[8] McLetchie, D. (lodged on 28 July 2000) 'S1M-1114: Long-Term Care' in *Business Bulletin 122/2000: Section F Motions and Amendments* accessed at www.scottish.parliament.uk/S1/agenda_and_decisions/bb-00/bb-08-04f.htm on 5/12/03

[9] Duncan, R. (28 July 2000) 'Executive challenged over care of elderly; Health Minister urged to come up with a Scottish solution to the long term needs of old people' in *The Herald,* p.1

[10] Scanlon, M (lodged 26 September 2000) 'S1M-1215 Long Term Care' *Business Bulletin 145/2000: Section F Motions and Amendments* accessed at www.scottish.parliament.uk/S1/agenda_and_decisions/bb-00/bb-09-27f.htm on 5/12/03

[11] Gray, I (lodged 27 September 2000) 'S1M-1215.1 Long Term Care' *Business Bulletin 145/2000: Section F Motions and Amendments* accessed at www.scottish.parliament.uk/S1/agenda_and_decisions/bb-00/bb-09-27f.htm on 5/12/03

Liberals on board'.[12] Whilst there remained some speculation that a number of Liberal Democrats would vote against the Executive, most were persuaded to back the Executive's amendment. Two Liberal Democrat MSPs decided not to support the Executive amendment: Margaret Smith (the convenor of the Health and Community Care Committee) voted against the Executive and instead supported the Conservative's motion, and Mike Rumbles abstained from both votes.[13]

On 5th October 2000 the Scottish Executive formally responded to the Royal Commission on Long-Term Care and set out its plans for the care of older people.[14] The Executive accepted many of the Royal Commission's recommendations, including the major recommendation to provide free nursing care in nursing homes.[15] The Executive also agreed to 'implement the Royal Commission's recommendation that for the first three months following admission to residential care, the value of a person's home will be disregarded from the means test'.[16] Despite this, the Health Minister, Susan Deacon, decided not to introduce free personal care. The Executive explained that it did not 'believe that making all personal care free would be the best use of resources, benefiting mainly 7200 people'.[17] Ideologically the Executive expressed sympathies with the 'principle of equity which underpins the Commission's recommendation on personal care'.[18] However, in a similar vein to the UK Government, the Scottish Executive based their opposition to free personal care on the costs of the policy, arguing that 'to make

[12] McCann, A. and Horsburgh, F. (28 September 2000) 'Revolt on care for elderly set to fizzle out; Amendment wins over most Liberal Democrat MSPs on Sutherland report issue' in *The* Herald, p.6
[13] Scottish Parliament, Plenary Session, 28th September 2000
[14] Scottish Parliament, Plenary Session, 5th October 2000
[15] Scottish Executive (October 2000) *Response to the Royal Commission on Long-term care* accessed at www.scotland.gov.uk/library3/health/ltcare.pdf on 22/10/03, p.9
[16] *Ibid.*, p.5
[17] *Ibid.*, p.9

this change, at this time, when so many wider needs exist for tens of thousands of older people, would not be right.[19] However, on the 11th October 2000 the First Minister, Donald Dewar died, promoting an unexpected leadership contest within the Scottish Labour party and a re-examination of the Executive's long-term care policy.

4.2 New First Minister, New Policy

Following Dewar's death the Labour party was under pressure to quickly elect a leader, particularly as the Scotland Act stated that a First Minister needed to be elected within 28 days.[20] Therefore, the Labour Party decided to hold an election for an interim leader amongst a mini-electoral college, consisting of Labour's MSPs and the Scottish Party's executive members. The victor would then face the full electoral college at a later debate. The vote took place on the 21st October 2000, and as widely predicted the only contenders were Jack McConnell and Henry McLeish. The election occurred only three days after Dewar's funeral, leaving little time for campaigning and so the policy positions of both candidates were unclear. In the end McLeish was victorious, though with a much smaller majority than predicted, and he went on to face the full electoral college on the 9th December 2000 and win 99.2% of the vote.[21]

Immediately after the leadership election McLeish began a policy review, with speculation that 'there could be a change of heart' on the refusal to implement the

---

[18] *Ibid.*, p.5
[19] *Ibid.*
[20] Scotland Act (1998) S46

full recommendations of the Sutherland report.[22] Apparently McLeish used his first

cabinet meeting as first minister to call for his ministers to ditch unpopular policies,

underlining his desire for a 'change of emphasis and direction'.[23] Hardie reported

that ministers were given 'until 10 November to look at their departments and

assess the relevance of policies'.[24] Much of the speculation surrounding the policy

review focused upon free personal care, with newspaper reports claiming that

McLeish was 'expected to reconsider implementation of the Sutherland Royal

Commission on care of the elderly.'[25]

During McLeish's first performance at First Minister's question time, the SNP

spokesperson on health, Nicola Sturgeon, asked whether the Scottish Executive had

changed its position on the Sutherland report.[26] McLeish hinted at the possibility of

a policy change, stating that his health minister, 'Susan Deacon will be reviewing

that policy. We will have a further look at that and we will take it from there'.[27] The

perception was that the First Minister was moving towards free personal care and

the coalition government was 'expected to announce a U-turn by the end of the

month on its controversial refusal to give free care to old folk'.[28] The review of long-

term care policy, therefore, put Deacon in the awkward position of reviewing her

own response to the Royal Commission on Long-Term Care, which had only been

announced during the previous month.

---

[21] Birrell, S. (2002) '28 days to select your leader: leadership selection in the Scottish Labour Party' conference paper delivered to the *Political Studies Association Conference*, 5th-7th April 2002, University of Aberdeen accessed at www.psa.ac.uk/cps/2002/birrell.pdf, p.12

[22] Swanson, I. (30 October 2000) 'Sacked Minister hits out at 'Farmers Gag'' in *Edinburgh Evening News*, p.2

[23] Hardie, A. (1 November 2000) 'Tough McLeish orders review of every policy' in *The Scotsman*, p.8

[24] *Ibid.*

[25] Allardyce, J. and Macleod, M. (29 October 2000) 'McLeish will ditch Dewar's Failed Legacy' *Scotland on Sunday*, p.1

[26] Scottish Parliament, Plenary Session, 2nd November 2000

[27] *Ibid.*

During November 2000 Henry McLeish continually expressed his desire to review the free personal care policy. However, McLeish went further than expressing his commitment to a policy review in an interview on Newsnight Scotland. During the interview McLeish clearly stated that he 'would like to implement the Sutherland Report in full, funding personal care for the elderly in long-stay homes'.[29] The Newsnight interview, therefore, put McLeish's desire to move towards free personal care clearly on the record for the first time.

By the end of November pressure from both supporters and opponents of free personal care had intensified. Actors from the UK Government became more vocal, for instance, officials were reportedly 'urging against change and Gordon Brown... [was] warning against making "rash promises"'.[30] The Scottish Executive also faced countervailing pressure from those within the Scottish Parliament. For instance, in November 2000 the Health and Community Care Committee completed its inquiry into the delivery of community care, recommending that,

> 'there should be no charge for services assessed as being required to meet the personal care needs of an individual. It therefore recommends to the Executive that free personal care should be provided on the basis of assessed need'[31]

The cross-party committee had taken ten months to conduct its inquiry, taken evidence from a range of organisations and experts involved in community care and

---

[28] *Edinburgh Evening News* (4 November 2000) 'OAP Care U-turn Expected', p.2
[29] *BBC News Scotland* (14 November 2000) 'Scorn over Quango Crackdown' accessed at www.news.bbc.co.uk/1/hi/scotland/1022252.stm on 19/11/03
[30] *The Scotsman* (November 20 2000) 'McLeish faces more pressure over care cash', p.2
[31] Health and Community Care Committee (2000) *16th Report 2000: Inquiry into the Delivery of Community Care in Scotland* accessed at www.scotttish.parliament.uk on 18/11/03, S.43

had reached a unanimous decision.[32] As a result the committee's report was well respected and contributed to the growing pressure for free personal care.

4.3 Backtracking

In January 2001 newspaper reports suggested that McLeish had watered down his commitment to free personal care, apparently due to fears about the unpredictable costs of the proposals and pressure from ministers in London.[33] There was speculation that in place of free personal care the Scottish Executive would introduce an 'alternative care scheme which will be means-tested', thus limiting personal care to fewer, poorer pensioners.[34] During First Minister's Question time on 18th January 2001 McLeish assured the SNP leader, John Swinney, that he would not backtrack from his commitment to older people, commenting that he wanted 'to see personal care as part of long-term care to be the subject of a review'.[35] However, here McLeish defined his commitment to a policy review rather than to free personal care, a lesser commitment than he gave during the Newsnight interview. Whether McLeish weakened his commitment to free personal care is debatable, but the press speculation surrounding McLeish's position indicates that a number of actors were engaged in briefing the press. According to several interviewees closely involved in the free personal care debate, journalists regularly receiving briefings from cabinet members, particularly from Henry McLeish and the Health Minister Susan Deacon who sought to pressurise each other towards a

---

[32] Scottish Parliament Health and Community Care Committee (28 November 2000) *Press Release: Health Committee Publishes Inquiry Report on Community Care* accessed at www.scotttish.parliament.uk on 26/11/03

[33] Nelson, F. (19 January 2001) 'McLeish 'to ditch' elderly care plan' in *The Times*

[34] *Ibid.*

[35] Scottish Parliament, Plenary Session, 18th January 2001

particular course of action.[36]   However, McLeish's unpopularity as First Minister amongst his Labour cabinet colleagues meant McLeish was not in a strong enough position simply to sack his Health Minister and force the adoption of his preferred policy position.

On 24th January 2001 Susan Deacon formally responded to the Health and Community Care Committee's inquiry into the delivery of community care and announced the results of her policy review on long-term care. The Health Minister announced a range of long-term care services and benefits which she argued would 'extend the provision of free care to a wider range of people and will remove the inequities between different conditions and different care settings'.[37] Additionally the Executive announced the establishment of the Care Development Group, which would consider the provision of long-term care services.[38] However, the proposals fell short of a commitment to implement free personal care across the board. Deacon faced strong criticism from the opposition parties for her failure to commit to free personal care. SNP MSP Nicola Sturgeon explained that her criticism of Deacon was so strong because the First Minister had in several interviews implied that 'the Government would implement Sutherland in full... [but] Today we are being told that that is not what he said after all'.[39] In addition the Executive faced hostility from Liberal Democrat and Labour backbenchers. As Keith Raffan, then the Liberal Democrats Health spokesperson, pointed out, the opposition to Deacon's

---

[36] Interviews with Henry McLeish (First Minister), Peter MacMahon (Press Secretary to McLeish) and John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (December 2003 and January 2004)
[37] Scottish Executive (January 2001) *Response by the Scottish Executive to the Health and Community Care Committee's Inquiry into the Delivery of Community Care in Scotland* accessed at www.scotland.gov.uk/library3/social/idccr.pdf on 5/1/04, p.4
[38] *Ibid., p.5*
[39] Scottish Parliament, Plenary Session, 24th January 2001

statement meant that the 'majority in this Parliament is for free personal care for all older people'.[40]

4.4 The Parliament takes control

Following the Health Minister's statement there was considerable anger against the Executive's position on free personal care. To express the dissatisfaction of Liberal Democrats backbenchers, Keith Raffan proposed a motion which called for a commitment to free personal care along with a definite timetable for implementation.[41] His motion received the support of ten other Liberal Democrat MSPs, which if combined with the votes of the SNP, Conservatives, Scottish Socialist Party (SSP), Green and Independent MSPs would have guaranteed a majority in favour of free personal care.[42] However, as coalition partners they would have required their Labour colleagues support to propose motions, so instead the SNP adopted their motion and placed it for debate for the next day. The SNP's motion stated;

> 'That the Parliament, while welcoming the further package of proposals to improve care for the elderly announced by the Minister for Health and Community Care on 24 January 2001, notes that it is the policy of the Liberal Democrats, SNP, Conservatives and others to introduce free personal care for the elderly as proposed in the Sutherland Commission Report and calls upon the Scottish Executive to make a similar clear, firm and unequivocal commitment together with a definite timetable for its implementation'[43]

From the evening of 24th January until the vote on the SNP's motion on 25th January discussions took place within the cabinet, within each party, and between the

---

[40] *Ibid.*
[41] *Scottish Parliament Business Bulletin 15/2001* (25 January 2001) 'Section F- Motions and Amendments' accessed at www.scottish.parliament.uk on 6/1/04
[42] Margaret Smith, Mr Mike Rumbles, George Lyon, Iain Smith, Mr Jamie Stone, Nora Radcliffe, Robert Brown, Ian Jenkins, Euan Robson, Donald Gorrie

Liberal Democrats and the SNP, who discussed how they could ensure a majority in favour of free personal care.[44] No definite decisions were made, and the Liberal Democrats walked out of cabinet negotiations late on 24th January claiming that no further discussion was possible. However, the following day cabinet discussions began again with 'frantic to-ing and fro-ing between the First Minister's office and the Deputy First Minister's at the parliament headquarters on George IV Bridge'.[45]

The debate on free personal care on the morning of 25th January indicated the strength of feeling amongst Liberal Democrat backbenchers, with all five Liberal Democrats who spoke during the debate defending free personal care. At lunchtime on 25th January the Liberal Democrats group met to discuss the possibility of supporting a compromise amendment by the Executive. The Liberal Democrats believed that the wording drafted by the Executive was not clear enough, and the backbenchers decided that they would only accept an unambiguous commitment to free personal care. Additionally the Liberal Democrat backbenchers expressed concern about when the Executive would announce their compromise position. Raffan claimed that Labour had initially wanted to make a statement after the vote.[46] At the Liberal Democrat's emergency lunchtime meeting the backbenchers argued that they could not vote with the Executive before such a statement was made.[47] Therefore, following the lunchtime meeting, the two Liberal Democrat Ministers, Jim Wallace and Ross Finnie, entered further discussions with their Labour

---

[43] Scottish Parliament Business Bulletin 15/2001, *op.cit.*
[44] Interview with Shona Robison (SNP MSP) (December 2003)
[45] MacMahon, P. (26 January 2002) 'How McLeish made up his policies on the hoof' in *The Scotsman* accessed at www.news.scotsman.com/topics.cfm?tid=190&id=95992002 on 15/11/03
[46] Interview with Keith Raffan (Liberal Democrat MSP) (February 2004)
[47] *Ibid.*

cabinet colleagues, explaining that they could not fight off dissent in their group and they could no longer constrain their group on free personal care.[48]

The exact wording of the statement was controversial and 'A form of words was drafted, re-drafted and re-re-drafted'.[49] At one point Jackie Baillie, the Social Justice minister, was chosen by Labour Ministers to convince Wallace to support a form of words 'which was equivocal to say the least'[50], but it became clear that the Liberal Democrats would not support an amendment which lacked real movement. At the same time the UK Government was becoming anxious, 'Alasdair McGowan, the No.10 special adviser with responsibility for Scotland, was on the phone constantly to McLeish's private secretary Jonathan Pryce demanding to know what was happening'.[51] However, as the vote approached and the Cabinet's attempts to dilute the motion were met with a resounding no by the Liberal Democrat backbenchers they became convinced that they had no choice other than to offer a clear commitment to free personal care. Apparently, at 4pm Jim Wallace went to see Raffan, as health spokesperson, to discuss the free personal care issue and at this time, only one hour before the vote, Wallace had still not seen the wording of the emergency statement, arguing that the Liberal Democrats would have to trust Labour.[52]

In an unprecedented move, Tom McCabe made the emergency statement just after 5pm, prior to the vote on the SNP's free personal care motion. Tom McCabe was forced to make the statement as Deacon, the Health Minister, had refused. The

---

[48] MacMahon, P. *op.cit.*
[49] *Ibid.*
[50] *Ibid.*

statement assured 'the Parliament that the Executive will bring forward, as soon as practicable after consideration of the development group's report in August 2001, proposals for the implementation of free personal care for all'.[53] Making the announcement prior to the vote led to confusion over whether MSPs were voting on motions already laid or the Executive's statement. It also led to anger on the opposition benches who felt that the Parliament had been excluded from a deal done in private, motivated by political factors rather than effective policy-making. As SNP's Nicola Sturgeon put it;

> 'The Government is driven less by care for the elderly and more by consideration of its own political survival... it is nothing short of tragic that the Government has had to be dragged kicking and screaming to give justice for Scotland's elderly people'[54]

The emergency statement meant that the Liberal Democrats could vote with the Executive with the confidence that the Executive would implement free personal care, therefore, the amended motion received the support of all the Labour and Liberal Democrat MSPs (except Keith Raffan), with the Conservatives abstaining and the SNP voting against. The final motion stated that,

> 'the Parliament recognises that there are benefits in providing free personal care for the elderly; welcomes as a major step in this direction the further package of proposals announced by the Executive on 24 January 2001 which set out a process that will lead to a substantial extension of free personal care; notes that there are significant issues of cost and practicality in moving further and calls upon the Executive to broaden the terms of reference of the Development Group to require it to consider the practicalities, costs and implications of providing free personal care for all and to report by August 2001 with proposals that will inform the Executive's expenditure decisions for 2002-03 and beyond.'[55]

---

[51] *Ibid.*
[52] Interview with Keith Raffan (Liberal Democrat MSP) (February 2004)
[53] Scottish Parliament, Plenary Session, 25th January 2001
[54] *Ibid.*
[55] *Ibid.*

However, the significant developments included in the Executive's emergency statement had not been subjected to a vote and the important debates and decisions had taken place outside the Parliament behind closed doors.

4.5 Questioning the commitment

After the vote on free personal care there was speculation about exactly what the Executive had agreed to. The Scottish Conservative leader, David McLetchie, highlighted that the emergency statement did not include a definite timetable for the implementation of free personal care and suggested that the Liberal Democrats had been bought off cheaply.[56] However, whilst some were concerned that the Executive may backtrack on its commitment to free personal care, others sought to exploit the confused situation to encourage the Executive to retreat. Immediately after the debate MacMahon explained that the special adviser to No.10, Alasdair McGowan, contacted him again demanding that he issue a statement clarifying McCabe's statement, saying "You have to say it's not free personal care".[57] In general the media and the opposition parties were of the opinion that the Executive would backtrack from its commitment to free personal care. John Swinney, then the SNP leader, predicted that 'Labour will draw up proposals, certainly. But it could make them too expensive, unworkable - you name it, they'll find a way out of it'.[58] In addition Keith Raffan tendered his resignation as Liberal Democrat health spokesman because he claimed he doubted the Executive's commitment, 'There are no deadlines in this deal, I could not vote for it so I have to tender my

---

[56] *Ibid.*
[57] MacMahon, P. *op.cit.*
[58] Nelson, F. (26 January 2001) 'McLeish care deal stifles Liberal Democrat revolt' in *The Times,* p.13

133

resignation'.[59] On the other hand, groups representing older people put a more positive slant on the Executive's statement. Liz Duncan, spokeswoman for Help the Aged in Scotland, was quoted as saying 'finally the consensus in Scotland has been shown to hold sway. It raises standards clearly and irrefutably and the rest of the UK should endeavour to follow suit'.[60] Linda Dunion, spokeswoman for Age Concern Scotland explained that the lack of deadlines was an indication that free personal care 'was a complex issue',[61] rather than an indication of the Executive's lack of commitment. However, the positive public response by pressure groups lobbying for elderly peopleons should not necessarily be seen as evidence of their genuine belief that the Executive would introduce free personal care. For instance, Alison Petch argued that by publicly defining the Executive's statement as a firm commitment such pressure groups helped to ensure that the Executive could not backtrack from it.[62]

4.6 Designing the Free Personal Care Policy

On 29th January 2001 McLeish held a news conference in Glasgow which was meant to be an opportunity for him to launch the Executive's revised programme for government. However, free personal care remained a major issue of concern and the press wanted clarification on the Executive's position. McLeish argued that,

> 'There will be no backsliding. Those who have this view are simply wrong... The commitment is there for all to see. We are embarking on a process which will have as its destination the implementation of free personal care for all. I cannot be more explicit'.[63]

---

[59] *Ibid.*
[60] Hardie, A. and Scott, D. (26 January 2001) 'Care U-turn Saves Face for McLeish' in *The Scotsman*, p.1
[61] *Ibid.*
[62] Interview with Alison Petch (Member of the Care Development Group) (February 2004)

On the same day a ministerial working group on best value and budget review, chaired by Angus Mackay, met to re-examine the budget and determine how free personal care could be afforded, indicating that the commitment to free personal care was made before the details of the policy had been worked out.[64] In addition to this new group, throughout 2001 the Care Development Group, established by Susan Deacon in January, before the commitment to free personal care had been made, also met to consider long-term care, including proposals for free personal care.[65]

On 28th June 2001 Mackay announced the conclusions of his budget review. He explained that free personal care could mainly be funded through a budget increase. Mackay argued that out of the £286 million increase which the Scottish Executive had directed to health, between £100 and £200 million was to fund the various recommendations of the care development group in its work on implementing free personal care for older people.[66] Mackay also announced budget increases in education, implying that the money to fund free personal care had not come at the expense of education policies. Whilst the costs of free personal could partially be met through the '£200 million extra cash allocated to Scotland in Chancellor Gordon Brown's budget' in March 2000,[67] there was also speculation that funds would have to be transferred from other areas. It was reported that the Scottish Executive had to move an additional £289 million, of their £20 billion

[63] Scott, D. (30 January 2001) 'I Stake My Career on Free Care' in *The Scotsman,* p.1
[64] Ritchie, M. (31st January 2001) 'Ministers plan spending review to finance £110m cost of elderly care' in *The Herald,* p6
[65] Care Development Group (14 September 2001) *Fair Care for Older People* accessed at www.scotland.gov.uk/library3/health/cdgr-00.asp
[66]Scottish Parliament, Plenary Session, 29th June 2001
[67] Swanson, I. (28 June 2001) 'Scots Budget Cash Boost for Health Care' in *Edinburgh Evening News,* p.2

budget, from other services.[68] A large portion of the money allocated to fund free personal care from within the Scottish Executive's budget appeared to come from the social justice department, with sizeable chunks also taken from enterprise, transport and rural development.[69] Ex-Health and Education Minister, Sam Galbraith, suggested that money was transferred from cancer services; 'free personal care for the elderly is an unaffordable right-wing policy which has been achieved only by raiding £80m a year from cancer treatment budgets'.[70] However, due to changes in the way cancer services are financed, it is difficult to establish whether Galbraith's interpretation is accurate.

Interestingly Mackay's statement on funding free personal care was announced before the Care Development Group had established the cost of free personal care. As David Davidson, the Conservative finance spokesperson says, by setting aside money for free personal care for the elderly Mr Mackay 'has placed the care development group in a tight financial straitjacket'.[71]

On 7th September 2001 the Care Development Group published their report 'Fair Care for Older People'. The Care Development Group argued that by introducing free personal care the Scottish Executive would save the Department for Work and Pensions (DWP) money. The DWP pays a benefit called Attendance Allowance to assist the costs of free personal care. The DWP's rules state that Attendance Allowance will be withdrawn 'if any individual receives any other form of assistance from the public purse for personal care. However, this rule only applies to care

[68] *Ibid.*
[69] Nelson, F. (29 June 2001) 'A lesson in how to conjure up £489 million' in *The Times*
[70] Gordon, T. (9 February 2004) 'Galbraith: free care for elderly should end' in *The Herald,* p.1

homes'.[72] A strict interpretation of the DWP's rules, therefore, suggested that the Scottish Executive's policy of free personal care would mean that those receiving personal care in long-term care homes would no longer receive Attendance Allowance. The Care Development Group estimated that the free personal care policy of the Scottish Executive, would therefore save the UK Government around £20 million a year.[73] As a result the Care Development Group argued that this money should be transferred to the Scottish Parliament,

> 'We think it would be odd and contrary to equity if entitlement to Attendance Allowance for those in care homes stopped because of a policy of free personal care in Scotland. That would mean that DWP was not paying Attendance Allowance to anyone in a care home in Scotland, while paying it to many people in care homes elsewhere in the United Kingdom, including those in receipt of free nursing care after April 2002'[74]

However, the DWP had a different attitude, and claimed 'that social security is a reserved issue and hence there is no obligation for DWP to modify its rules to accommodate Scottish Executive policy'.[75] Therefore, as McLeish explained, 'discussions were brief'.[76] McLeish explained that when he discussed the issue with the Work and Pensions Secretary, Alistair Darling, his demands were 'met with an absolute firm refusal' and Darling expressed his concerns that the introduction of free personal care in Scotland would put pressure on the UK Government to follow suit.[77]

---

[71] Scott, D. (29 June 2001) 'Services Face Axe to Fund £200M Free Care Package' in *The Scotsman*, p.1

[72] Bell, D. (November 2001) 'Finance' in *Nations and Regions: The Dynamics of Devolution- Quarterly Monitoring Report* Scotland (The Constitution Unit) accessed at www.ucl.ac.uk/constitution-unit/monrep/scotland/scotnov01.pdf on 18/11/03, p.49

[73] Scott, K. (8 September 2001) 'Scotland seeks help to fund elderly care' in *The Guardian*, p.9

[74] Care Development Group, *op.cit.*

[75] Bell, D. *op.cit.*, p.49

[76] Interview with Henry McLeish (First Minister) (December 2003)

[77] McLeish, H. (2004) *Scotland First* (Mainstream Publishing, Edinburgh), p.142 and Interview with Henry McLeish (First Minister) (December 2003)

The estimates on the costs of free personal care provided by the Care Development Group were based on the assumption that Attendance Allowance would continue to be paid to those in care homes in Scotland. Consequently, the refusal of the UK Government to transfer the Attendance Allowance costs meant the Executive's bill for free personal care increased by roughly a further £20 million. Despite the concerns over the cost of free personal care, on 5th September free personal care was included in the Scottish Government's legislative programme and McLeish announced that the policy would be implemented by April 2002.[78]

Deacon accepted the Care Development Group's recommendations in full on 26th September 2001.[79] The Care Development Group recommended a flat-rate payment for free personal care, 'payment will then be made at a rate which reflects their level of assessed need for personal care up to a maximum of £90 per week and at a flat rate of £65 per week for nursing care'.[80] The Care Development Group also offered a definition of personal care and recommended that an implementation group should be established. By agreeing to these recommendations Deacon underlined that the Executive would meet its commitment to free personal care, arguing that 'whatever the outcome of those discussions (with the DWP), the provision of free personal care for Scotland's older people is a pledge that will be fulfilled'.[81]

---

[78] Scottish Parliament, Plenary Session, 5th September 2001
[79] Scottish Parliament, Plenary Session, 26th September 2001
[80] Care Development Group, *op.cit.*
[81] Scottish Parliament, Plenary Session, 26th September 2001

4.7 Implementing Free Personal Care

The proposals for free personal care were included in the Community Care and Health (Scotland) Bill, introduced in Parliament on 24th September 2001. Unexpectedly, as plans for free personal care began to be considered by the Scottish Parliament, McLeish's position as First Minister was under threat. Seemingly minor allegations over constituency office expenses caused a political farce and ultimately McLeish's resignation as First Minister on 8th November 2001, barely a year after taking office. Jack McConnell, who was the only contender for the Scottish Labour Party Leader, officially became First Minister on 22nd November 2001. The change of First Minister led some commentators to question whether the commitment to free personal care would be delivered after all, 'health reforms could include revisiting the thorny issue of free personal care for the elderly. Insiders worried about the massive costs of helping around 7,000 pensioners, suggested the policy might be "tweaked"'.[82] The new Finance minister, Andy Kerr, reported grave concerns about the underestimated costs of free personal care and there was talk of the new First Minister re-examining the policy.[83] However, the principles of the Community Care and Health Bill were passed unanimously,[84] and at this stage it was probably too late politically to reverse the free personal commitment even if the will had been there to do so.

In January 2002 the implementation steering group, established on the recommendation of the Care Development Group, informed the Executive of

---

[82] Allardyce, J. and Macleod, M (18 November 2001) 'The Traditionalist in a Moderniser's Clothing' in *Scotland on Sunday,* p.13
[83] Farquharson K. (2 December 2001) 'McConnell may have to backtrack on free care for elderly' in *The Sunday Times*
[84] Scottish Parliament, Plenary Session, 28th November 2001

difficulties in implementing the free personal care policy. The Executive accepted the implementation steering group's recommendation to push the implementation of free personal care back by three months 'to allow local authorities and other providers to ensure that the right assessment and delivery mechanisms are in place to meet the anticipated need'.[85] There were concerns by opposition MSPS and pressure groups that the delayed implementation of free personal care was a last ditch attempt by the Executive to escape their free personal care commitment. However, the Health and Community Care Act, which received Royal Assent on 12th March 2002, ensured that nursing and personal care would be provided free of charge to the user.[86] As a result the Community Care and Health Act enabled the implementation of free personal care, which was introduced in Scotland from 1st July 2002.

There were some concerns expressed by local authorities about the implementation of free personal care. For example, in November 2002 the Highland Council considered restricting those eligible for free personal care due to a shortfall in funding.[87] According to the Highland Council the '£4.1 million it was allocated to implement free personal care is £300,000 less than it needs'.[88] Consequently, it planned to introduce a prioritised waiting list to target the most needy, set an upper limit on the level of subsidy people could claim and also raised the possibility of means testing.[89] In the end the Council did not ration free personal care and 'the

---

[85] Scottish Executive (15 January 2002) *Press Release: Free Personal Care Timetable Extended* accessed at www.scotland.gov.uk/pages/news/2002/01/SE5162.aspx on 8/1/04
[86] Community Care and Health (Scotland) Act 2002 accessed at www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20005--b.htm#1
[87] Ross, J. (13 November 2002) 'Council Runs Short of Funds For Elderly' in *The Scotsman,* p.9
[88] *Ibid.*
[89] *Ibid.*

money was found from somewhere'.[90] Despite these initial concerns, by the end of

the first term implementation horror stories had failed to materialise and though no

studies were done in the Parliament's first term on the implementation of free

personal care, most believed that it had been implemented relatively successfully.[91]

For instance, in December 2002 Help the Aged director, Liz Dunion explained that

'given the magnitude of the undertaking and the fact that the policy has only been

in place for five months, it can best be described as a

qualified success'.[92]

4.8 Conclusion

The development of the free personal policy in Scotland was, as McLeish put it, 'not

a textbook example of government at work'.[93] Instead a public commitment was

made to free personal care by Henry McLeish, before a policy had been formulated

or costed. McLeish's public support for free personal care spurred on supporters of

the policy and raised the significance of the debate. Prior to McLeish's tenure as

First Minister, whilst actors from civil society made demands for free personal care,

there was general satisfaction with the Executive's response to the Royal

Commission. Once the Executive committed to free personal care a policy needed

to be devised. The finance minister, Angus Mackay, worked out how much free

personal care would cost and explained from where the resources would derive, and

then the Care Development Group worked through the details of the policy. One

---

[90] Farquharson, K. (17 November 2002) 'The Care Takes' in *The Sunday Times*, p.18

[91] Interviews with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy), Alison Petch (Member of the Care Development Group), Liz Dunion (Policy Director for Help the Aged Scotland) and Jess Barrow (Director of Communications for Age Concern Scotland) (January-March 2004)

[92] Dunion, L. (5 December 2002) 'Letters' in *Community Care*

[93] McLeish, H. (2004) *op.cit.*, p.141

civil servant explained that after the commitment to free personal care had been made, 'we needed to buy time to think the policy through (because) we had committed to free personal care without working out the financial arrangements and technical details such as the definition of personal care'.[94] In many senses the policy process was chaotic, with the civil servant who would later implement the policy finding out McLeish's desire to introduce free personal care after reading a newspaper article and then questioning McLeish on the matter.[95] Another interesting feature of the development of the free personal care policy was that the crucial discussions and deals on free personal care were conducted in private by Labour and Liberal Democrats actors, perhaps an inevitable consequence of coalition government. However, whilst the key negotiations occurred within the cabinet, the Parliament and civil society played a major role in pushing the Executive to act.

---

[94] Interview with Scottish Executive Senior Civil Servant (February 2004)
[95] *Ibid.*

Figure 4.1: Timeline of events

December 1997	Royal Commission on long-term care established
March 1999	Royal Commission submitted its final report 'With Respect to Old Age: Long Term Care – Rights and Responsibilities'
May 1999	First elections to the Scottish Parliament and coalition negotiations
13 May 1999	Partnership agreement between Labour and Liberal Democrats signed
27 July 2000	UK government formally responded to the Royal Commission
28 July 2000	Conservative leader, David McLetchie, lodges a motion calling for the Scottish Executive to implement free personal care
26 September 2000	Conservatives propose a motion calling for free personal care
28 September 2000	Debate on long-term care in the Scottish Parliament. Liberal Democrats revolt fails to materialise
5 October 2000	Scottish Executive formally responds to the Royal Commission
11 October 2000	Death of First Minister, Donald Dewar
26 October 2000	McLeish elected as First Minister and launches a policy review
28 November 2000	Health and Community Care Committee publishes Community Care report
24 January 2001	Susan Deacon announces the result of the policy review, announces her decision not to introduce free personal care and establishes the Care Development Group
25 January 2001	Debate on free personal care which results in emergency statement to save the Executive from defeat in the Chamber
29 January 2001	A Ministerial working group is established to find resources for free personal care
28 June 2001	Mackay announces how the free personal care policy will be funded
5 September 2001	Scottish Government's legislative programme includes free personal care
7 September 2001	Care Development Group reports, assuming that Attendance Allowance savings by the UK Government will be passed on to the Scottish Parliament
26 September 2001	Susan Deacon accepts the Care Development Group's recommendations in full
24 September 2001	Community Care and Health (Scotland) Bill introduced to Parliament
8 November 2001	McLeish resigns
22 November 2001	Health and Community Care Committee reports on stage one of the Community Care and Health (Scotland) Bill
27 November 2001	Jack McConnell is sworn into office as First Minister
28 November 2001	Community Care and Health (Scotland) Bill debated in plenary-stage one
January 2002	Implementation steering group on free personal care recommended an extension to the implementation of free personal care
6 February 2002	Community Care and Health (Scotland) Bill passed in plenary unanimously
12 March 2002	Community Care and Health (Scotland) Act receives Royal Assent
1 July 2002	Free personal care implemented across Scotland
November 2002	Teething problems by local authorities revealed
March 2003	Scottish Parliament is dissolved

Chapter Five

Making the Welsh Long-term care Policy

In Wales the long-term care issue was only seriously discussed after Scotland had decided to introduce free personal care. Supporters of free personal care in Wales appeared to use the Scottish decision to introduce free personal care to pressurise the Welsh Assembly Government to act. However, the Assembly's lack of primary legislative powers provided an excuse for them not to introduce free personal care. As a result the ability of actors to pressurise the Welsh Assembly Government to act was considerably less than in Scotland. In Wales the window of opportunity was always shut with the argument that free personal care was the UK Government's responsibility. As a result the development of the Welsh long-term care policy involved interesting negotiations between the Welsh Assembly Government and the UK Government.

In a similar vein to the previous chapter, this chapter describes how the National Assembly for Wales developed its long-term care for the elderly policies chronologically, and again these events are illustrated in a timeline at the end of the chapter. After establishing how the National Assembly for Wales made its long-term care policies the thesis considers the impact of actors and institutions on the development of the policies in Scotland and Wales.

5.1 Response to the Royal Commission

As discussed in the previous chapter, the Royal Commission on Long-term care reported its findings in March 1999, as the political parties in Scotland and Wales

were preparing for the first elections to the devolved institutions. As in Scotland, the issue of free personal care was barely mentioned in the campaign for the first Welsh Assembly elections. The care of the elderly was briefly discussed for instance, the Welsh Labour and Conservative parties both offered commitments on bed-blocking, but both parties failed to discuss the related issue of long-term care or its funding.[1] The Welsh Liberal Democrats devoted a section of their manifesto to 'older people's lives' but long-term care was not discussed specifically.[2] Plaid Cymru was the only Welsh political party to discuss long-term care and the issue was mentioned to highlight wider political points,

> 'At the time of writing, the UK government has refused to commit itself to free provision of residential care for the elderly. We see an important opportunity for the National Assembly to challenge the right-wing views that currently dominate London politics'.[3]

The lack of long-term care discussion in the 1999 Assembly election campaign is unsurprising. As this was the first Welsh Assembly election the manifestos of the main political parties were generally weak and offered few policy commitments. With the exception of Plaid Cymru, the main political parties were simply not used to designing a policy programme specifically for Wales. Additionally, as in Scotland, the election was held before the UK Government had responded to the Royal Commission, so the issue of long-term care was not considered as a specifically Welsh issue requiring consideration by the Welsh political parties.

The consideration of long-term care issues in the National Assembly began in the Health and Social Services Committee. In January 2000 the UK Government had not yet formally responded to the Royal Commission on Long-term Care. Therefore,

---

[1] Labour Party Manifesto (1999) *Working Hard for Wales*; Welsh Conservative Party Manifesto (1999) *Fair Play to All: Your Voice in the Assembly*
[2] Liberal Democrats Manifesto (1999) *Guarantee Delivery*
[3] Plaid Cymru Manifesto (1999) *Working for the New Wales*, S.2.4

145

the Welsh Assembly's Health and Social Services Committee on 19th January 2000 examined long-term care on the understanding that this was primarily a UK issue. For instance, the Welsh Health Minister, Jane Hutt, argued that,

> 'The main financial implications of the Royal Commission's recommendations are associated with the funding of personal care from general taxation and, as indicated earlier, are to be considered at the UK level in the Comprehensive Spending Review'.[4]

The discussion of long-term care in the committee focused on producing definitions of nursing and personal care. The minister stated that she would take account of the Committee's concerns 'about the need to break down barriers between nursing and personal care, in her efforts to influence the drafting of the White paper [on the future of long term care]'.[5] Related to the discussion on the definitions between nursing and personal care, the Committee sought legal advice 'on whether the National Assembly had devolved powers to develop different definitions from England for nursing care and personal care'.[6] If the formulation of a definition of nursing care was within the Assembly's powers the Assembly could choose to implement a broader definition of nursing care in comparison to England, enabling a wider range of care to be provided free of charge. Professor Dame June Clark, a member of the Royal Commission on Long-Term Care, believed these discussions indicated a genuine commitment by AMs to providing free personal care, but she argued that this commitment lessened as time passed.[7]

At this early stage in the development of the Welsh long-term care policy close attention was paid to the actions of the UK Government. The Welsh Health Minister focused her attention on lobbying the UK Government and the Committee adopted

---

[4] National Assembly for Wales Health and Social Services Committee (19th January 2001) *Paper on the Royal Commission for Long-Term Care* accessed at www.wales.gov.uk on 5/5/04
[5] National Assembly for Wales, Health and Social Services Committee (19th January 2001) *Minutes HSS-01-00* accessed at www.wales.gov.uk on 5/5/04

a wait and see strategy which involved clarifying their legal position in anticipation of the UK Government rejecting free personal care.

When the UK government formally responded to the Royal Commission in July 2000, the event went unmentioned in the National Assembly. Unlike in the Scottish Parliament, when the UK government's announcement was followed the next day by the Conservative motion calling on the Scottish Executive to implement free personal care, in the National Assembly for Wales the opposition parties did not submit any motions or ask the Welsh Assembly Government any questions on long-term care following the UK Government's response. It appears that long-term care was either not a major concern for the Welsh opposition parties or they were unable to effectively respond. Instead it was left to pressure groups and policy experts to make the case for free personal care for the elderly. For instance, in August 2000 Professor Dame June Clark, previously a member of the Royal Commission, argued that 'to our great disappointment, Whitehall has decided to make a distinction between clinical care and personal care. The former will be free in the Government's plans but the latter will not'.[8]

5.2 Avoiding the free personal care debate

The National Assembly's Health and Social Services Committee returned to the issue of long-term care for the elderly on 14th September 2000. The Health Minister produced a paper on long-term care for the Committee which failed to discuss in depth the possibility of introducing free personal care, implying that introducing free

---

[6] *Ibid.*
[7] Interview with June Clark (Member of the Royal Commission on Long-Term Care) (June 2004)
[8] Davies, G. (2 August 2000) 'Give us more medics, say GPs' in *South Wales Evening Post*, p.12

personal care was not seriously considered by the Welsh Assembly Government.[9]

Instead the minister focused on two proposals in relation to financing long-term care. Firstly, she suggested that the three-month disregard policy introduced in England should be also adopted in Wales. Secondly, the minister suggested re-evaluating capital limits, suggesting that both the upper and lower capital limits should be increased.[10] The paper argued that these proposals were superior to providing free personal care, as 'Even if the Royal Commission's recommendations for personal care had been accepted in full, it would not have avoided the need for some people with relatively modest capital assets to sell their home to pay for their care'.[11] The Health and Social Service Committee discussed this paper on their meeting on 14th September 2000. Some members were critical of the Welsh Assembly Government's proposals, arguing that anything short of free personal care wasn't enough.[12] However, Jane Hutt was keen to point out that the Welsh Assembly Government had to consider 'the response to the Royal Commission in the context of its budget'.[13] The Committee decided that further discussion of long-term care was required, and so the chair of the Health and Social Services Committee was asked to write to the Business Secretary requesting a debate in plenary on long-term care of the elderly.[14]

5.3 Coalition Government

On 6th October 2000 a coalition government was established between Labour and the Liberal Democrats, which replaced the Labour minority government. Deputy

---

[9] National Assembly for Wales Health and Social Services Committee (14th September 2001) *Long-term care of the Elderly in Wales paper HSS-16-00*, p.3 accessed at www.wales.gov.uk on 5/5/00
[10] *Ibid.*
[11] *Ibid.*
[12] National Assembly for Wales Health and Social Services Committee (14th September 2001) *Minutes HSS-16-00* accessed at www.wales.gov.uk on 5/05/04

First Minister and leader of the Liberal Democrats, Mike German, claimed that for about three months prior to the formation of the coalition party, officials had started to discuss in private the policy issues which would be part of any possible agreement.[15] He recalled that long-term care for the elderly was discussed but the partnership agreement, 'Putting Wales First: A Partnership for the People of Wales',[16] contained no mention of older people or long-term care specifically.[17] Instead the partnership agreement centred on a number of education and health commitments. Key policies pursued by the Liberal Democrats included a commitment to an independent review of voting systems for local government elections in Wales, which the Liberal Democrats believed could pave the way for proportional representation.[18] A commitment to review student finance was also included, as the partnership agreement promised to 'institute an immediate independent investigation into the issue of student hardship and funding in Wales, dealing with those issues covered in the Scottish 'Cubie Report' which fall within the Assembly's remit'.[19] The student finance proposals were heavily influenced by the Scottish Parliament's position, and as in Scotland media coverage of the coalition deal focused on the proposal to review student finance. Mike German saw the commitment to review student finance as the key achievement of the Liberal Democrats in the coalition negotiations, and he was particularly pleased that the review led to the introduction of learning grants for students.[20] He also claimed the Liberal Democrats were successful at securing free prescription charges for those

---

[13] *Ibid.*
[14] *Ibid.*
[15] Interview with Mike German (Leader of the Welsh Liberal Democrats) (February 2003)
[16] Welsh Labour and Welsh Liberal Democrats (2000) *Putting Wales First: A Partnership for the People of Wales* accessed at www.wales.gov.uk/organicabinet/content/putting.html on 23/3/02
[17] Interview with Mike German (Leader of the Welsh Liberal Democrats) (February 2003)
[18] Lyons, J. (17 October 2000) 'Labour and Liberal Democrats sign Welsh Coalition deal' in *Press Association News* accessed at www.lexis-nexis.com/executive on 22/9/04
[19] Welsh Labour and Welsh Liberal Democrats, *op.cit.*
[20] Interview with Mike German (Leader of the Welsh Liberal Democrats) (February 2003)

under 25 and was proud of the Liberal Democrats' part in the decision to freeze

prescription charges for all.[21]   In contrast Mike German argued that Labour were

particularly keen to introduce free bus passes for the elderly.[22]   However, neither

party paid much attention to long term care, and no firm agreements were reached

or commitments announced.

5.4 Pushing for Free Personal Care

In the plenary session on 2nd November 2000, Assembly Member Cynog Dafis, from

Plaid Cymru, tackled the Health Minister on long-term care, arguing that the issue

should be referred to the Health and Social Services Committee for detailed

consideration,

> 'Has Jane considered that this important matter – which is crucial to the
> people of Wales – should be referred to the Health and Social Services
> Committee for a substantial and detailed investigation into the best way
> forward in Wales?'[23]

Additionally, the chair of the Health and Social Services Committee, Kirsty Williams,

and her Liberal Democrat colleague, Peter Black, made attempts at pushing the free

personal care issue.   For instance, on 11 December 2000 they submitted a

statement of opinion, which argued that 'this Assembly urges the Westminster

Government to implement the recommendations of the Royal Commission on Long

Term Care. Both nursing care and personal care should be paid for by the state out

of general taxation'.[24]   However, their statement raised little interest, indicated by

the fact that there were no subscribers to their statement. It is interesting to note

that the statement focused on the UK government, attempting to pressurise them to

---

[21] *Ibid.*
[22] *Ibid.*
[23] National Assembly for Wales, Plenary Session, 2nd November 2000
[24] National Assembly for Wales, Statement of Opinion (11th December 2000) *Long-term care of the Elderly-OPIN-2000-0110* accessed at www.wales.gov.uk on 5/05/04

introduce free personal care and did not seek to pursue the matter on a Welsh only basis. The Assembly's sparse consideration of free personal care indicates that free personal care was not a high priority, in comparison with the Scottish situation. AMs saw free personal care as a UK issue, so supporters of free personal care focused their efforts on pressurising the UK government to introduce free personal care, rather than developing a Welsh only policy.

If we compare the development of the free personal care policy in Scotland and Wales, the Assembly's ability to pursue a distinctive long-term care policy by the end of 2000 appears much weaker. Free personal care in Wales was not an issue on which the opposition parties focused their attention, the Health and Social Services Committee had conducted very little work on the issue and pressure groups campaigning for free personal care were barely mentioned in the press. In contrast, in Scotland the opposition parties were regularly submitting motions and raising the profile of free personal care, the Health and Community Care Committee had completed an inquiry on community care, pressure groups and community care experts were raising the free personal care issue in the press and the First Minister had hinted at support for the policy. In Scotland, by 26th January 2001 the Parliament had decided to implement free personal care, whilst in Wales the Assembly was focused on providing free nursing care.

5.5 The NHS Strategy

On 2nd February 2001 the Welsh Assembly Government launched its NHS strategy, 'Improving Health in Wales'.[25] The plan included a commitment to reform long term care,

> 'Subject to primary legislation where required, the National Assembly proposes to take forward reforms to the funding of long term care, including the provision of free nursing care where not currently available to those in care'[26]

The NHS strategy also included a commitment by the Welsh Assembly Government to 'seek an enabling, rather than a restrictive, definition of nursing care (and)... to provide six weeks' free home care for older people when they are discharged from hospital'.[27] Therefore, the National Assembly would provide free personal care, but only in someone's home for a period of six weeks after discharge from hospital.

The NHS strategy was discussed in plenary on 13th February and 1st March 2001. The Welsh Assembly Government proposed that the National Assembly should endorse the NHS plan.[28] However, as an amendment to the Welsh Assembly Government's motion, Plaid Cymru AM Jocelyn Davies called for 'the partnership administration to examine, in both Plenary and Committee debate, the consequences of extending free personal care.[29] The Health Minister, Jane Hutt, supported the amendment for further discussion of free personal care but argued that consideration of free personal care options should primarily be developed within the Advisory Group for older people, which was developing a strategy for older people and only once their report was completed should free personal care be

---

[25] The National Assembly for Wales (2001) *Improving Health in Wales: A Plan for the NHS with its Partners*
[26] *Ibid.*, p.42
[27] National Assembly for Wales, Plenary Session, 13th February 2001
[28] *Ibid.*

debated in Committee and Plenary.[30] The need for more detailed consideration of other long-term care proposals was also proposed by Labour AM Gwenda Thomas. Gwenda Thomas raised concerns about how nursing needs would be assessed and whether attendance allowance payments would cease during the period of six week free home care on discharge from hospital.[31]

During questions to the Health Minister on 25th February 2001 there were requests for further clarification on her long-term care policy. For instance, Plaid Cymru AM Elin Jones wondered whether the Minister remained committed to hold a debate on long-term care of the elderly.[32] Liberal Democrat AM Mike Bates also raised concerns about the long-term policy, questioning whether Jane Hutt regretted that 'Wales will not receive the power to provide free, universal, personal care under the Health and Social Care Bill that is currently going through Parliament'.[33] The Minister's response made it clear that free personal care was not the Welsh Assembly Government's key priority. Rather than focusing on pushing through new legislation on long-term care Jane Hutt argued that she would seek to 'broaden our definition of free nursing care and implement our promise of up to six weeks' free home and personal care'.[34]

In the Health and Social Services committee on 28th February 2001, Jane Hutt explained how the steering group which developed a strategy for older people would operate. Again Hutt highlighted the importance of examining free personal care within the context of the strategy for older people. The steering group was

---

[29] *Ibid.*
[30] *Ibid.*
[31] *Ibid.*
[32] National Assembly for Wales, Plenary Session, 15th February 2001
[33] *Ibid.*

meant to be inclusive, gathering evidence from sessions at each Regional Committee, an all Wales conference, focus groups of older people across Wales (through Age Concern Cymru) and written consultation.[35] Jane Hutt also announced the draft terms of reference for the steering group,

> 'To formulate a strategy for the health and well being of older people in Wales that will be responsive to their needs, provide services in a timely and appropriate way and promote their independence whenever possible'.[36]

During the committee meeting Hutt informed the committee of two possible ways to organise payment of nursing care.[37] The first model was the graduated system adopted in England, where an individual's nursing needs would be assessed and the amount the NHS would pay for their nursing care varied according to the category they were assigned.[38] The second option was to implement a flat-rate model, where the NHS would pay the same amount per individual irrespective of the input of registered nursing time.[39] The minister decided to consult on the flat-rate model, as it would avoid,

> 'problematic distinctions about who actually provides the care [whether they were a nurse or a care assistant]... the perverse financial incentives in a graduated approach to play up an individual's dependency [which might be counterproductive to rehabilitation]... the need for frequent re-assessments purely for funding reasons, and also disputes and appeals arrangements would be simplified. It also involves fewer transactional costs... It will be easier for everyone to understand and cheaper for nursing home owners and the NHS to administer'[40]

During the plenary session on 1st March 2001 the National Assembly voted on the NHS strategy. Amendment 4, called on the Welsh Assembly Government to

---

[34] *Ibid.*
[35] National Assembly for Wales, Health and Social Services Committee, 28th February 2001, *Monthly Report of the Minister for Health and Social Services* accessed at www.wales.gov.uk on 12/5/04
[36] *Ibid.*
[37] National Assembly for Wales, Health and Social Services Committee, 28th February 2001, *Minutes HSS-04-01 (min)* accessed at www.wales.gov.uk on 12/5/04
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*

154

'examine, in both Plenary and Committee debate, the consequences of extending free personal care as part of the care funding reforms planned as part of the partnership administration's strategy for older people discussed in the NHS plan', and was accepted unanimously.[41]   This was the only amendment to the NHS strategy to be accepted by the Assembly.

5.6 Campaigning for Free Personal Care

In the middle of May 2001 the parties launched their general election manifestos. The Welsh Liberal Democrat manifesto, 'Freedom, Justice, Honesty' included a commitment to provide free personal care for the elderly.[42]   During the general election campaign it was the Liberal Democrats who often raised the issue of free personal care, using it to highlight the Liberal Democrats' achievements in Scotland and the benefits of coalition government. For instance, on 6th June, the day before the election, the UK Liberal Democrat leader, Charles Kennedy, argued that 'Liberal Democrats in Scotland have already delivered free personal care. Liberal Democrats at Westminster will give the Assembly the power and funding to enable them to pay for all long-term personal care costs in Wales also'.[43] Plaid Cymru's general election manifesto also supported free personal care, condemning the UK Government's position for creating 'an artificial boundary between personal care in hospital and in residential homes and between health care and personal care'.[44]   The Welsh Conservative's manifesto failed to mention the issue of personal care for the elderly, though it did discuss the need to safeguard the savings of older people from being

---

[41] National Assembly for Wales, Plenary Session, 1st March 2001
[42] Welsh Liberal Democrat Party Manifesto (2001) *Freedom, Justice, Honesty*
[43] *South Wales Evening Post* (6 June 2001) 'Lets Build on Progress', p.14
[44] Plaid Cymru (2001) *Manifesto 2001*, p.26

taken by the state to pay for long-term care.[45] The Welsh Labour manifesto also contained no mention of free personal care,[46] this is unsurprising as in a general election it would have been highly controversial for the Welsh Labour party to take a different line from the UK wide party on a reserved matter.

5.7 Free Nursing Care

In October 2001 discontent was raised about the amount of time it had taken the Welsh Health Minister to implement free nursing care. Again comparisons were made with the other long-term care policies in the UK. For instance, Age Concern Cymru argued that whilst the banded model of nursing care introduced in England was more confusing than the Welsh flat rate proposal, at least the English policy was implemented in full on 1st October 2001. In contrast in Wales the consultation on nursing care did not even end until 19th October, and it was clear that when payments for nursing care were introduced these would not be backdated to 1st October.[47] In the end free nursing care in Wales for self-funders, those previously paying for their care, was introduced just two months later, on the 1st December 2001.

On 5th November 2001 the Health Minister, Jane Hutt, announced that the National Assembly for Wales would provide free nursing care to all nursing home residents, meaning that in Wales, as in England and Scotland, nursing care would be available free in all settings.[48] As expected, the Health Minister decided to opt for the flat payment model, as opposed to the banding system introduced in England. It was

---

[45] Welsh Conservative Party Manifesto (2001) *Time for Common Sense in Wales, p.24*
[46] Welsh Labour Party Manifesto (2001) *Ambitions for Wales*
[47] *South Wales Evening Post* (6 October 2001) 'Nursing Care Costs for Elderly Still Not Ended', p.7

decided that funding would be set at £100 a week for each individual assessed as requiring nursing care.[49] The Health Minister was keen to point out that the financial package for long-term care in Wales would mean that those funding their own care 'will receive more than his or her counterpart in England'.[50]

The consultation on nursing care ran from 26th July until the 19th October, during which time the Welsh Assembly Government received over 70 responses from organisations and individuals. In addition to the consultation, the nursing care policy was informed by an expert group established by the Minister for Health and Social Services under the chairmanship of the National Assembly's Chief Nursing Officer.[51] The flat payment scheme was clearly the preferred option amongst elderly organisations and experts in community care. For instance, Dame Judith Clark claimed that the flat-rate model would simplify the process and escape the problem of needing to re-assess the category of care someone was entitled to as their health deteriorated.[52] The decision to opt for a flat rate payment model was taken partly to avoid conflict between the Welsh Assembly Government and the care sector. A banded model would have increased the likelihood of appeals as older people sought to secure greater funding, resulting in disputes between the Welsh Assembly Government and the care sector over relatively small amounts of money.[53] Additionally the policy decision was influenced by the problems associated with the banded model. The banded model would have been particularly difficult to administer because nursing needs are likely to change, primarily as a person's

---

[48] *National Assembly for Wales* (5 November 2001) *Press Release: Jane Hutt announces Free Nursing Care for all Nursing Homes residents* accessed at www.wales.gov.uk on 26/05/04
[49] *Ibid.*
[50] *Ibid.*
[51] *Ibid.*
[52] Interview with June Clark (Member of the Royal Commission on Long-Term Care) (June 2004)
[53] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)

health deteriorates, therefore, regular reassessments would have been required.[54] Therefore, there was a possibility that the banded model could have cost more to administer than the amount the Welsh Assembly Government would have paid out to those in long-term care.[55] So, the decision to implement a flat-rate model was taken to reduce conflict, to indicate support for the troubled care home sector and to avoid a complex system requiring high administrative costs.

5.8 The Strategy for Older People

In May 2002 the Advisory Group on a Strategy for Older People published their report, 'When I'm 64... and more'. The Advisory Group, although chaired by an AM, was primarily made up of voluntary organisations, local government bodies and business representatives, and was considered one of the Assembly's most inclusive policy-making forums by voluntary organisations and politicians alike.[56] The Advisory Group considered open-ended questionnaires asking about the issues affecting older people, conducted focus groups throughout Wales, took detailed evidence from a range of organisations.[57] The Advisory Group operated through consensus, meaning that compromise between the different interests within the group was essential. Initially the Welsh Assembly Government was reluctant to include free personal care as part of the group's remit, for fear of the political conflict this could cause with Westminster.[58] However, due to pressure from the Liberal Democrats, opposition parties and non-governmental organisations, the

---

[54] *Ibid.*
[55] *Ibid.*
[56] Interview with representatives from Welsh pressure groups and AMs (February 2003 and June 2004)
[57] Interview with Angharad Davies and Greg Walker (Representatives from RCN Cymru) (February 2003)
[58] Interview with Ana Palazon (Director of Help the Aged Wales) (February 2003)

Advisory Group's remit was extended to non-devolved issues.[59]   Including free personal care on the group's remit increased the importance and profile of the free personal care issue and presented the opportunity for a serious discussion of long-term care policy options.

On the issue of free personal care there were a number of disagreements within the Advisory Group. For instance, local authority and health service representatives said that they could not endorse a recommendation for free personal care on a Wales only basis, whilst many of the representatives from voluntary organisations wanted a clear commitment to free personal care.[60]   In the end the Advisory Group recommended that,

> 'The Welsh Assembly Government should formally accept the Royal Commission's recommendations. The Welsh Assembly Government should challenge the UK Government to fund and implement free personal care in the context of UK taxation, benefits and inheritance policy as the Royal Commission had intended'.[61]

The group accepted that a policy of free personal care should only be pursued if there was a policy change in England, as 'More generous treatment, relative to England, would have to be supported from the Assembly's budget and compete with other demands for resources', and the policy would only benefit a relatively small number of people.[62]

The Advisory Group's report went to the Health and Social Services Committee on 1st May 2002 and was discussed in plenary later in the month. During the plenary debate on the Strategy for Older People the proposal to accept 'the Advisory Group's conclusions in relation to free provision of personal care by the National

---

[59] *Ibid.*
[60] Interview with Brian Gibbons (Deputy Health Minister) (February 2003)

Assembly' was accepted unanimously by AMs.[63] The Welsh Assembly Government committed to 'challenge the UK Government to fund and implement free personal care in the context of UK taxation, benefits and inheritance policy as the Royal Commission had intended'.[64] Interestingly, the decision to challenge the UK Government, and the acceptance of the Advisory Group's report, occurred before the consultation process on the Advisory Group's report had concluded. Whilst there was agreement with the principle of free personal care, the National Assembly decided the policy should be funded by Westminster. The debate on free personal care, therefore, centred on two key issues, what action the Assembly should take to pressurise the UK Government and whether the Assembly should act unilaterally if the UK Government refused to alter their personal care policy.

The Conservative Health spokesperson, David Melding, was fierce in his criticism of the Welsh Assembly Government's position. Melding suggested that the idea of the Welsh Assembly Government pressurising the UK Government to alter their free personal care policy was a joke; 'We must accept the realities of our political situation. This motion is an empty gesture... We should not play to the grandstand, running to the Welsh public blaming the UK Government for everything'.[65] However, he did also vote to accept the Advisory Group's report in full, including the commitment to challenge the UK Government to introduce free personal care.

It was generally accepted that it would be unlikely for the UK Government to alter their free personal care policy. For instance, David Melding suggested that 'No-one

[61] Welsh Assembly Government Advisory Group on a Strategy for Older People in Wales (May 2002) *When I'm 64... and more*, p.53
[62] *Ibid.*
[63] National Assembly for Wales, Plenary Session, 16th May 2002
[64] Welsh Assembly Government Advisory Group on a Strategy for Older People in Wales, *op.cit.,* p.53

is naive enough to think that were the First Minister to abandon his usual tirades against the Welsh Rugby Union, and take on the Treasury he would win'.[66] Given the likelihood of the UK Government refusing to alter their free personal care policy, Liberal Democrat AM and Chair of the Health and Social Services Committee, Kirsty Williams, asked the Health Minister to 'seek, on behalf of the Welsh Assembly Government, the powers and the resources to pursue this policy in Wales'.[67] The Health Minister agreed that if the UK Government failed to change their policy then the Welsh Assembly Government would 'press the UK Government for the powers and resources to consider the matter in Wales'.[68] However, Jane Hutt only committed to consider free personal care in Wales, as she felt 'it would be impractical for the Assembly to pursue a policy of free personal care in Wales'.[69] The Welsh Assembly Government's refusal to commit to implement free personal care on a Wales only basis suggested to David Melding that the Welsh Assembly Government was 'playing a double game'.[70] He believed that the Welsh Assembly Government were not serious about committing to free personal care because they had concerns about the costs of the policy. Instead Melding felt that the Welsh Assembly Government were playing 'thorny politics',[71] avoiding discussing, and perhaps rejecting, free personal care in Wales and pretending that the UK Government was to blame for their inaction.[72] Therefore, instead of focusing on pressurising the UK Government on free personal care, David Melding suggested that the Health and Social Services Committee should be asked to 'hold an inquiry to examine this issue, then reach some coherent judgments and make

---

[65] National Assembly for Wales, Plenary Session, 16th May 2002
[66] Ibid.
[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] Interview with David Melding (Conservative AM) (February 2003)
[72] National Assembly for Wales, Plenary Session, 16th May 2002

recommendations'.[73] Melding did not agree that free personal care should be introduced, because he felt it was not the best use of resources. However, Melding wanted debate on free personal care and felt there was a need to 'have a national policy or a fairer, more standard policy. That could limit the charging policies that are applied to people who are deemed to have to pay for personal care'.[74]

5.9 Relations with the UK Government

The National Assembly's decision to 'challenge the UK Government to fund and implement free personal care' was met by a swift rebuttal by the Wales Office.[75] Adrian McMenamin, political adviser to Paul Murphy, the Secretary of State for Wales, dismissed the National Assembly's behaviour as 'pathetic... symptomatic of their irresponsible approach to politics'.[76] McMenamin believed that if free personal care was a priority for the Assembly then they should commit to paying for it and suggested that AMs should 'sort out things they're responsible for' rather than encroach on Westminster's territory.[77] The Wales Office was quick to point out that 'this decision in the Assembly will have no impact on government policy'.[78]

The Wales Office's response highlighted the Welsh Assembly Government's lack of influence in Whitehall, as Plaid Cymru's Dai Lloyd explained 'It is quite clear Rhodri Morgan has no influence over Paul Murphy, so what hope has he of having any influence over Tony Blair'.[79] It also highlighted the lack of negotiation and

---

[73] *Ibid.*
[74] *Ibid.*
[75] Welsh Assembly Government Advisory Group on a Strategy for Older People in Wales, *op.cit.,* p.53
[76] Speed, N. and Betts, C. (17 May 2002) 'London Dashes Hope of Free Care for the Elderly in Wales' in *The Western Mail,* p.1
[77] *Ibid.*
[78] *Ibid.*
[79] *Ibid.*

consultation occurring between the two levels of government, as it was quite clear that the Welsh Assembly Government's policy position had come as a complete surprise to officials in the Wales Office. Given the response of the Wales Office it is easy to understand why the Welsh Assembly Government were so reluctant to include free personal care within the remit of the Advisory Group on the Strategy for Older People. Whilst Paul Murphy did later apologise for his advisor's comments and the advisor soon left his post it was widely suspected that 'his remarks reflected the sentiments, if not the diplomacy of his boss'.[80] A couple of weeks after the Assembly had decided to challenge the UK Government to introduce free personal care Jane Hutt 'was reported by a Labour AM as [saying] that the policy [of challenging the UK Government on free personal care] was "dead"'.[81]

The response of the Wales Office was in contrast to Welsh non-governmental organisations. The Western Mail reported that 'The Royal College of Nursing in Wales together with Age Concern Cymru and Help the Aged have welcomed the news that the Assembly Government has agreed to support the principle of free personal care in Wales'.[82] Although there was delight that the principle of free personal care had been accepted, this was tempered by a concern that verbal support for free personal care needed to be put into practice.[83]

---

[80] Osmond, J. (2003) 'From Corporate Body to Virtual Parliament: The Metamorphosis of the National Assembly for Wales' in Hazell, R. (Ed.) *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, Thorverton), p.17

[81] Betts, C. (24 May 2002) 'Heeding his master's voice' in *The Western Mail*, p.12

[82] South Wales Echo (17 May 2002) 'Calls to Cover Care Costs', p.26

[83] Interviews with June Clark (Member of the Royal Commission on Long-Term Care), Ana Palazon (Director of Help the Aged Wales) and Sarah Stone (Political Officer for Age Concern Cymru) (February 2003 and June 2004)

5.10 A Last Minute Push

The consultation period for the Strategy for Older People ended on 30 August 2002, and over 100 responses were received. [84] These comments were examined by the Welsh Assembly Government to inform their Strategy for Older People. The Welsh Assembly Government's Strategy and their response to the Advisory Group's recommendations were discussed in the Health and Social Services Committee on 4th December 2002. The Welsh Assembly Government provided the committee with their detailed response to the Advisory Group's recommendations and revealed a draft of their strategy for older people. The summary of the consultation responses revealed that several respondents were disappointed with the lack of free personal care and one response described the Assembly's position on free personal care as 'a half-way house recommendation that allows Assembly Government as a devolved administration to 'pass the buck'.[85] The strategy repeated the Welsh Assembly Government's position on the issue of free personal care,

> 'The National Assembly has accepted the principle of free personal care on the basis of the Royal Commission's recommendation that this should be a matter for UK taxation, benefits and inheritance policy... In the absence of any change at the UK level... The Welsh Assembly Government will continue to press the UK Government for the powers and resources to consider the matter in Wales, but will however continue to explore opportunities for alleviating the burden of paying for personal care'.[86]

During the plenary debate on the Strategy for Older People, on December 11th 2002, Liberal Democrat AM Kirsty Williams called for further action on free personal care, suggesting that the Assembly should 'press the case for additional powers and

[84] National Assembly for Wales Health and Social Services Committee (October 2002) *Minister's Monthly Report* accessed at www.wales.gov.uk on 31/05/04
[85] National Assembly for Wales (4 December 2002) *Strategy for Older People: Summary of Consultation Responses to Advisory Group Report 'When I'm 64... and More'* accessed at www.wales.gov.uk on 31/05/04
[86] Welsh Assembly Government (January 2003) *The Strategy for Older People in Wales*, p.6

resources for Wales so that we can move forward as Scotland has'.[87] Additionally

Liberal Democrat AM, Peter Black, highlighted that his party wanted the Assembly to

push for primary legislation at Westminster which would allow for the Assembly to

introduce free personal care for Wales alone.[88] Although he was careful to criticise

the UK Government rather than the Welsh Assembly Government, Peter Black's

comments highlighted a difference of opinion between the coalition partners, whilst

the Liberal Democrats wanted if necessary for Wales to implement free personal

care alone, Labour AMs continued to argue that free personal care should only be

pursued on a UK basis.

The first term of the National Assembly ended with the Welsh Assembly committing

to raise their capital limits to £12,250 and £20,000,[89] which were just greater than

the English limits of £12,000 and £19,500. However, there were no plans on free

personal care other than to attempt to persuade the UK Government to alter their

policy. The care of older people was given considerable attention during the

elections to the second term of the Assembly, with Plaid committing to implement

the full recommendations of the Royal Commission on long-term care, the Liberal

Democrats agreeing to fund free personal care in Wales and Labour arguing for a

Commissioner for Older People.[90] However, in sharp contrast to Scotland it

appeared unlikely that free personal care would be introduced in Wales.

---

[87] National Assembly for Wales, Plenary Session, *11th December 2002*
[88] *Ibid.*
[89] Welsh Statutory Instrument (2003) No. 897 (W.117) *The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2003* accessed at www.wales-legislation.hmso.gov.uk on 24/08/04
[90] Mugaseth, J. (June 2003) 'Policy Development' in Osmond, J. (Ed.) *Nations and Regions: The Dynamic of Devolution- Quarterly Monitoring Programme* (The Constitution Unit and IWA), p.28 accessed at www.ucl.ac.uk/constitution-unit/monrep/wales/wales_june_2003.pdf on 31/05/04

5.11 Conclusion

The way in which the National Assembly for Wales formulated its long-term care policy is in sharp contrast to Scotland. The Welsh Assembly Government took a more measured approach, agreeing to investigate the issue of free personal care within the remit of the Advisory Group on a Strategy for Older People, then using the basis of their report as their long-term care policy. Unlike in Scotland the Welsh Assembly Government maintained its position on free personal care throughout the Assembly's first term. The Health Minister always argued that free personal care was not the best use of resources and she would prefer to focus on other measures, such as raising capital limits and introducing six weeks free home care following hospital discharge. The consistent policy can perhaps partially be explained by the fact that the Welsh long-term policy, in contrast to the Scottish policy, was shaped almost entirely by the Welsh Assembly Government, with little input by the Health and Social Services Committee, other Assembly Members, pressure groups or policy experts.

Interestingly, in Wales debate on free personal care was almost non-existent prior to the Scottish Parliament's decision to fund it. It appears that actors in Wales were strongly influenced by other levels of government, and events in Scotland put pressure particularly on the Liberal Democrats, opposition parties and pressure groups to make the case for free personal care. Relations with the UK level of government were also significant, as the National Assembly for Wales did not have the legislative powers to introduce free personal care without primary legislation from Westminster. The response of the Wales Office to the Welsh Assembly's decision to challenge the UK Government to introduce free personal care indicated that there had been a lack of negotiation between actors in the Wales Office and

the Welsh Assembly Government. The extent to which the Wales Office publicly criticised the National Assembly's position on free personal care was also surprising and indicated that the National Assembly faced serious difficulties fighting its corner with the Wales Office, never mind other Whitehall departments.

In Wales it appears that pressure groups and opposition parties could not build up the same level of momentum on free personal care as was clear in the Scottish case. There are a number of reasons for this, such as the organisation of the opposition parties and the division of powers in Wales, which separated responsibility for free personal care between different levels of government, meaning actors who supported free personal care never clearly focused on the Welsh only level. Therefore, both the actors and the institutional setting of the Welsh Assembly, in, and around, which actors operated, affected how the Assembly's long-term care policy was designed. The next two chapters explore how the actors involved in making the free personal care policies in Scotland and Wales shaped the policies, chapter six examines actors from the coalition parties and chapter seven investigates actors outside the coalition parties.

Figure 5.1: Timeline of events

December 1997	Royal Commission on Long-term care established
March 1999	Royal Commission submitted its final report 'With Respect to Old Age: Long Term Care- Rights and Responsibilities'
May 1999	First elections to the National Assembly for Wales
27 July 2000	UK Government formally responds to the Royal Commission
14 September 2000	Welsh Health Minister, Jane Hutt, proposes re-evaluating capital limits and disregarding the value of the home for the first three months of entering care
6 October 2000	Coalition Government formed
11 December 2000	Liberal Democrats submit a statement of opinion calling for free personal care
25 January 2001	Scottish Executive agrees to implement free personal care in Scotland
2 February 2001	Welsh Assembly Government launches NHS Strategy: Improving Health in Wales – which included long-term care reforms
13 February 2001	NHS Strategy discussed in plenary and Plaid Cymru calls for greater exploration of free personal care, the Health Minister agrees but announces that free personal care will be examined within the pre-existing Advisory Group on a Strategy for Older People
28 February 2001	Health Minister announces her preference for funding free nursing care through a flat-rate payment rather than banded payments
1 October 2001	England implemented free nursing care
19 October 2001	Consultation on models of funding free nursing care ended
1 December 2001	Free nursing care in Wales implemented for self-funders
21 March 2002	Welsh Assembly Government agreed to raise capital limits from £18,500 to £19,000
1 May 2002	Advisory Group on a Strategy for Older People published their report, recommending that the Welsh Assembly Government should accept the Royal Commissions recommendations and seek to challenge the UK government to implement free personal care
16th May 2002	National Assembly for Wales unanimously accepted the Advisory Group's recommendations
17th May 2002	Assembly's policy on free personal care called 'pathetic' and 'irresponsible' by Wales Office official
30 August 2002	Consultation on the Strategy for Older People ended
January 2003	Welsh Assembly Government publishes their Strategy for Older People
March 2003	National Assembly for Wales dissolved
April 2003	Free nursing care implemented for residents of care homes funded by local authorities and Capital limits raised above the English limits

Chapter Six

Actors: The Coalition Partners

As discussed in chapter two, actor-centred institutionalism suggests that actors play a crucial role in shaping policy. For instance, Scharpf argued that 'Policy, by definition, is intentional action by actors who are interested in achieving specific outcomes'.[1] For Scharpf, understanding an individual actor's preferences (interests, norms, identities and interaction orientations), perceptions and capabilities is crucial if we are to understand policy-making. Additionally Scharpf suggests that because actors rarely have the ability to shape policy alone, it is important to consider the configuration of actors involved in policy-making. Therefore, there is a need to assess to what extent the capabilities (translated into potential strategies), preferences and perceptions of the configuration of actors involved in policy-making are compatible with each other.[2]

This chapter and the next explore the influence of the actor on the long-term care policies of the Scottish Parliament and the National Assembly for Wales. This chapter focuses on those actors from the coalition parties who were the key actors in relation to free personal care case; the First Ministers and the Scottish and Welsh Labour and Liberal Democrat parliamentary parties. These actors were chosen for investigation following analysis of parliamentary documents, newspaper reports, secondary literature reviews and following insight gained during interviews. The role of these actors and how the interaction of their preferences, perceptions and

---

[1] Scharpf, F. W. (1997) *Games Real Actors Play: Actor-Centred Institutionalism in Policy Research* (Westview Press, Colorado), p.36
[2] *Ibid.*, p.72

capabilities influenced the development of the Scottish and Welsh long-term care policies will be examined.

6.1 The First Ministers

All of the interviewees who were questioned about free personal care in Scotland believed that the First Minister, Henry McLeish, played a key part in securing free personal care. For instance, interviewees said, 'the change in First Minister was the crucial factor',[3] free personal care was off the agenda until 'Henry McLeish made a public statement which meant the game was back on',[4] and free personal care was a 'First Minister led commitment'.[5] McLeish clearly played a strong role in pushing the free personal care issue, however, why he decided to pursue this matter against fierce opposition from his Labour colleagues within his cabinet and in the UK Government requires some explanation.

There is general agreement that McLeish's desire to introduce free personal care was in part motivated by a perception that 'free personal care was the right thing to do'.[6] McLeish explained that he felt the distinctions between personal and nursing care were unfair,[7] as it meant that those suffering from certain illnesses, such as dementia, who required assistance with tasks such as washing or eating would be charged for this care, whilst those with illnesses requiring more formal nursing care would receive their care free of charge. John McTernan (McLeish's special advisor with responsibility for Policy and Strategy) argued that McLeish's desire to implement free personal care was consistent with the strong sense of social justice

---

[3] Interview with Mary Scanlon (Conservative MSP) (December 2003)
[4] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)
[5] Interview with Tom McCabe (Labour MSP) (January 2004)
[6] Interview with Peter MacMahon (Press Secretary to McLeish) (December 2003)

which characterised McLeish's political career.[8] For instance, McTernan explained that when McLeish was the leader of Fife Council he embarked on a progressive programme of care for older people.[9] Whilst McLeish may have been partially motivated by a genuine belief that free personal care was ideologically the right policy to pursue, which was consistent with his political identity, this wasn't his only motivation. McLeish argued that focusing on free personal care also enabled him to engage in broader political debates about the development of Scotland. McLeish perceived that free personal care was strongly related to the wider problems of ageing and Scotland's declining population figures, and he believed that these wider issues tended to be ignored.[10] McLeish suggested that introducing free personal care made a statement about the treatment of the elderly and highlighted that Scotland's declining population was 'an issue we can't continue to ignore'.[11]

McLeish also acknowledged that free personal care provided him with an opportunity to mark himself out as a distinctive leader. He argued that as a First Minister there is a 'need to bring something distinctive to your leadership' and claimed that free personal care provided him with an opportunity to do so.[12] Here McLeish seems to have internalised what Scharpf terms a normative role orientation.[13] Normative role orientations refer to the expectations of occupants of given positions. Whether McLeish was correct or not in his interpretation of the normative role orientations associated with his position as First Minister, his policy choices appear to have been influenced by his understanding that a First Minister

---

[7] Interview with Henry McLeish (First Minister) (December 2003)
[8] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[9] *Ibid.*
[10] Interview with Henry McLeish (First Minister) (December 2003)
[11] *Ibid.*
[12] *Ibid.*
[13] Scharpf, F. W. *op.cit.,* p.64

should act distinctively and his desire to be successful and popular in this role.

A major impact on McLeish was that his leadership followed that of Donald Dewar. Dewar was a well-respected and popular politician. Therefore, McLeish felt considerable pressure to adopt distinctive policies to indicate how his administration differed and improved on the last. As Dewar had not supported free personal care, by embracing the policy McLeish was presented with an opportunity to distinguish himself from Dewar and build public support. In addition to distancing himself from the previous First Minister, McLeish also had an interest in distancing himself from the UK Government. Whilst Dewar as the first First Minister had been expected just to get devolution up and running McLeish felt a real need to start producing distinctive policies for Scotland, arguing that 'if devolution is to make sense we have to diverge from English policies where there are different needs'.[14] Free personal care provided McLeish with an opportunity to distance himself from both Dewar's leadership and the UK Government.

McLeish has been characterised as an insecure leader, who was unconvinced of his own abilities. Brian Taylor explained that McLeish 'doubted, intrinsically, that he was up to the task'.[15] McLeish's insecurity meant that those around him were often able to influence his policy choices. For instance, he was particularly concerned to pursue policies which were popular with Labour party members. McLeish claims that Labour members support any policies which are redistributive and so free personal care had their backing.[16] Concern with winning support within his own party was particularly enhanced by McLeish's narrow leadership victory against

---

[14] Interview with Henry McLeish (First Minister) (December 2003)
[15] Taylor, B. (2002) *Scotland's Parliament: Triumph and Disaster* (Edinburgh University Press, Edinburgh), p.32

McConnell, which had questioned his popularity within the Scottish Parliamentary Labour Party (SPLP). McLeish's insecurity and desire to build a popular policy programme explains his particular concern that,

> '[if] every organisation you talk to, every medical group, every local authority, the Sutherland people themselves, the PLP, the Liberal group, the opposition [are all agreed] - then sometimes you just have to say to yourselves: 'Well, look. There is a firm body of opinion. Is what we have as a policy the right thing to do?[17]

Pressures also emerged from McLeish's personal relationships. As a social worker McLeish's wife had an interest in the free personal care issue and the press regularly referred to her ability to shape her husband's policy decisions. One interviewee referred to an occasion where Henry McLeish's wife had explained that 'Henry was fairly committed to free personal care, over 50% convinced, but that she was totally committed' and so she'd make sure that free personal care became reality.[18] Although, politicians and journalists often overstated the role of McLeish's wife in the free personal care debate, implying that her husband was weak and easily manipulated, it is clear that McLeish faced pressure, both personally and politically, to introduce free personal care and his insecurities as First Minister encouraged him to pursue such a popular policy.

In summary, there were several factors which motivated McLeish's support for Free personal care. Free personal care appeared to McLeish to be the right thing to do. The policy also provided him with an opportunity to serve his personal self-interest, enabling him to fulfil what he considered to be the normative role associations of being Scotland's First Minister, pursuing a policy distinctive from the previous administration and highlighting the Scottish Executive's autonomy from the UK

---

[16] Interview with Henry McLeish (First Minister) (December 2003)
[17] *Sunday Times* (5th November 2000) 'McLeish in U-turn on elderly care'

Government. Free personal care was also consistent with McLeish's political identity and gave him an opportunity to build public support for himself as First Minister, for his Government and for the Scottish Parliament in general.

McLeish not only influenced the shape of the free personal care policy, but his leadership style also influenced the way the policy was made. Political commentators argued that McLeish's leadership was characterised by a desire to avoid confrontation. Brian Taylor, noted that 'Henry would avoid conversations that involved conflict... He would simply walk away'.[19] Some respondents believed that McLeish's style of leadership caused serious problems, for instance Nora Radcliffe compared McLeish to the present First Minister, Jack McConnell. She argued that with McConnell 'you know what you are getting, you might not like it but at least you know' whilst under McLeish's leadership policy positions were changing all the time.[20] In contrast, others argue that a more flexible, consensual style of leadership is useful in coalition government. For instance, McTernan compares McLeish's style of leadership to the reed in the Aesop fable 'The Oak and the Reed'. In this tale the oak boasts of his strength but unlike the reed is unable to survive fierce winds due to his inability to sway in the wind. According to McTernan, flexibility is crucial for success in coalition government.[21]

Whether flexibility is a positive attribute or not, McLeish's style of leadership had an influence on policy-making in the free personal care case. There were times when McLeish made announcements that had apparently not been discussed with anyone

---

[18] Interview with an MSP (December 2003)
[19] Taylor, B. (2002) *op.cit.,* p.36
[20] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)
[21] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)

else. For instance, McLeish announced his desire to introduce free personal care on Newsnight Scotland without discussion with Peter MacMahon (McLeish's press secretary) or the Health Minister, Susan Deacon.[22] By making public commitments to free personal care, McLeish made it increasingly difficult for those opposing his position to argue against personal care without threatening his leadership and MacMahon claims McLeish's strategy was deliberate.[23] If McLeish was determined to introduce free personal care despite the opposition of his Health Minister, he could have adopted a number of strategies to achieve his aims. MacMahon thought McLeish's behaviour as a calculated way of operating, 'If you fear you may encounter internal opposition it can be useful to have been on the record and to have opposition politicians and journalists quoting your words, and public opinion behind you. That was McLeish's tactic'.[24] In contrast, Liberal Democrat MSP, Keith Raffan, argued that McLeish's attitude towards Deacon was incredibly weak. He suggests that McLeish should have demanded Deacon's resignation after she failed to commit to free personal care in the plenary session on 25th January 2001.[25] Raffan explains McLeish was incapable of doing so because he 'was a weak person in a weak position'.[26] Therefore, it is possible that McLeish did not have the capabilities (such as support in the cabinet, negotiating skills or authority) to force his Health Minister to adopt his preferred free personal care policy by any other strategy. Therefore, McLeish needed to publicly state his commitment to free personal care, which raised the stakes involved, forcing Deacon to support the policy or contradict the First Minister, thus challenging his leadership.

---

[22] MacMahon, P. (26 January 2002) 'How McLeish made up his policies on the hoof' in *The Scotsman* accessed at www.news.scotsman.com/topics.cfm?tid=190&id=95992002 on 15/11/03
[23] *Ibid.*
[24] *Ibid.*
[25] Interview with Keith Raffan (Liberal Democrat MSP) (February 2004)
[26] *Ibid.*

McLeish argued that Deacon's failure to commit to free personal care 'didn't worry me a bit because I knew it was going to happen'.[27] McLeish believed that he did not always need to argue openly for free personal care during the development of the policy, because pressure was coming from other sources. Here McLeish masks the fact that even if he had wanted to he would not have been in a strong enough position to directly challenge his Health Minister. Deacon was more of an ally than most of his backbenchers, who had supported McConnell in the leadership contest. As a result McLeish would have simply been unable to sack her.

McLeish's lack of clear commitment on the free personal care issue, whether due to a dislike of confrontation or as an effective political strategy, meant that his colleagues perceived that he was not always being entirely open with them.[28] For instance, Taylor noted that on one occasion in Cabinet 'Wendy Alexander effectively accused the First Minister of lying as she confronted him over the care question'.[29] Alexander's allegation can perhaps be explained by McLeish's mode of operating,

> 'several senior sources say that McLeish was unwilling to address controversy, to close issues down. He would give the impression that he agreed or sympathised with the person to whom he was talking at the time. The result was confusion, with the Cabinet and civil servants uncertain what had been decided'.[30]

Such an operating style meant that issues remained open for discussion, and it provided the opportunity for issues like free personal care to remain on the Executive's agenda.

---

[27] Interview with Henry McLeish (First Minister) (December 2003)
[28] Taylor, B. *op.cit.*, p.39
[29] *Ibid.*, p.40
[30] *Ibid.*, p.35

In contrast to the Scottish case, the First Minister in Wales, Rhodri Morgan, was less active on the free personal care issue. In public Morgan offered no statements of support for free personal care and instead expressed some concern about introducing free personal care. For instance, in a plenary session on the 2nd July 2002 Morgan explained to AMs that 'The problem with the Scottish system is that people lose attendance allowances. If a patient has free personal care, they cannot receive certain benefits from the Benefits Agency'.[31] Whilst in Scotland, Henry McLeish acted as a policy entrepreneur,[32] pushing the case for free personal care often against the wishes of Labour Cabinet Members, free personal care was not the preferred policy for Rhodri Morgan.

Morgan's opposition to free personal care seems to be based on practicalities rather than ideology. The Welsh First Minister had previously explained his commitment to extending free service provision. In Morgan's famous 'Clear Red Water' speech at Swansea University in December 2002 he explained his opposition to the introduction of Foundation Hospitals as in England,

> 'our commitment to equality leads directly to a model of the relationship between the government and the individual which regards that individual as a citizen rather than as a consumer. Approaches which prioritise choice over equality of outcome rest, in the end, upon a market approach to public services, in which individual economic actors pursue their own best interests with little regard for wider considerations'.[33]

In his speech Morgan highlighted his support for universal provision and illustrated what this meant when shaping policy,

---

[31] National Assembly for Wales, Plenary Session, 2nd July 2002
[32] Kingdon, J.W. (1984) *Agendas, Alternatives and Public Policies* (Scott, Foresman and Company, London), p.185
[33] Morgan, R. (December 2002) *Speech to the National Centre for Public Policy*, University of Wales, Swansea

'This is why, my administration has been determined to ensure a continuing stake in social welfare services for the widest possible range of our citizens. Universal services mean that we all have a reason for making such services as good as possible. Free access to social welfare services means that they become genuinely available to the full range of people in Wales, not simply those able to afford them. In a second Assembly term, we will look to maintain this principle and carry it forward.'[34]

The First Minister's preference for universal policies is illustrated by his support for the Welsh Assembly Government's initiatives to introduce free school milk, free entry to museums, provide free bus travel to pensioners and disabled people, to extend those entitled to free eye tests and his commitment to eradicate prescriptions charges across the board (Morgan planned to eradicate prescription charges in the Assembly's second term). Free personal care clearly sits easily with Morgan's ideological position on universal provision but unlike McLeish, the Welsh First Minister did not push the issue of free personal care. Additionally, the Welsh First Minister played only a minor role in shaping the Welsh Assembly Government's long-term care policy, leaving others in his cabinet to develop the policy. The fact that the Welsh First Minister did not become heavily involved in the free personal care debate perhaps indicates, or might be the reason why, free personal care was treated much less seriously in Wales compared to Scotland.

The Conservative AM, Glyn Davies, argued that Rhodri Morgan's lack of support for free personal care was an important factor in failing to change the UK Government's position. Davies claimed that if the Welsh First Minister clearly made the case for the Assembly's right to take a decision on any issue, offered a strong commitment and pursued the matter with Whitehall, then in many cases the UK Government

---

[34] *Ibid.*

would allow the National Assembly to take the decision.[35] However, even with the First Minister's support it appears unlikely that the UK Government would have been happy to give the National Assembly for Wales the legislative powers to diverge from the UK Government's policy on such a high profile issue. If we examine the issues where Welsh primary legislation has been introduced at Westminster these have tended to be uncontroversial issues. For instance, the first piece of Welsh-only legislation was the Welsh Children Commissioner Act which allowed for the introduction of a Welsh Children's Commissioner, a policy which the UK Government later adopted by establishing an English Children's Commissioner. It is difficult to imagine a case where the National Assembly Government could achieve policy divergence in a reserved area without the support of the First Minister. However, it is also highly unlikely that the National Assembly for Wales could ever persuade the UK Government to pass primary legislation for Wales if the UK Government were strongly opposed to the proposal. Therefore, whilst the First Ministers' support for a primary legislation proposal can increase the strength of the proposal, in the free personal care case it is unlikely that the support of the Welsh First Minister would have made a difference to the UK Government's position.

The First Ministers in Scotland and Wales played very different roles in the development of the free personal care policies. Henry McLeish was crucial to the achievement of free personal care in Scotland, regularly advocating the issue and ensuring free personal care remained on the political agenda. By hinting at his support for free personal care and refusing to close the issue down, McLeish raised the profile of the free personal care debate. McLeish's role mirrors Kingdon's findings about political appointees and policy-making. In Kingdon's study of agenda

---

[35] Interview with Glyn Davies (Conservative AM) (February 2003)

setting and public policy he found that the role of political appointees was primarily to elevate issues rather than to create them.[36] Kingdon suggested that,

> 'ideas float around within executive branch agencies for some time, without being taken very seriously. But should a high-level political appointee take an interest in the project, the issue suddenly attains much greater prominence'.[37]

Kingdon claims that a policy entrepreneur can encourage the adoption of a particular policy by ensuring that problems, policies and politics join.[38] In the free personal care case McLeish acted as a policy entrepreneur. McLeish highlighted that the pre-existing system of funding long-term care was a problem because it was unfair, he promoted free personal care as a policy solution to this problem and ensured that politically it would have been difficult for his Government not to introduce free personal care.

Kingdon identified that the success of the policy entrepreneur depends in part on the context in which they operate. Kingdon argued that during the consideration of a policy a window of opportunity can open and it is during this time that the policy can be adopted.[39] According to Kingdon 'the window opens because of some factor beyond the realm of the individual entrepreneur, but the individual takes advantage of the opportunity'.[40] In the Scottish free personal care case the window of opportunity was opened by the change in First Minister. However, McLeish prised the window open further by publicly stating his support for free personal care and talking about a policy review. In this way McLeish raised hopes that free personal care could be adopted, which offered those in favor of free personal care the

---

[36] Kingdon, J.W. *op.cit.,* p.29
[37] *Ibid.,* p.31
[38] *Ibid.,* p.185
[39] *Ibid.,* p.177
[40] *Ibid.,* p.192

opportunity to build up support for the issue and put pressure on the Executive to act.

In contrast, the Welsh First Minister rarely mentioned free personal care and certainly never made any commitments to the policy. Additionally the lack of direction from the First Minister in Wales may have also encouraged minimal consideration of the free personal care issue. Whilst in Scotland the First Minister led the free personal care debate, in Wales other Labour party actors had more prominent roles, particularly the Health Minister, Jane Hutt, and her deputy, Brian Gibbons.

6.2 Parliamentary Labour Parties

McLeish claimed that free personal care was popular amongst the Scottish Labour party and debates in the Scottish Parliament do indicate that many members of the SPLP were supportive of free personal care.[41] For instance, Labour backbencher Richard Simpson was a particularly strong advocate for free personal care,[42] the Deputy Health Minister, Malcolm Chisholm, appeared to be 'sympathetic' towards free personal care,[43] and Jack McConnell had no strong views either way (perhaps, as McLeish suggested, his opposition to free personal care was tempered because he represented a constituency with a large elderly population).[44] However, McLeish's policy did not receive the overwhelming support of his Labour cabinet colleagues. Sam Galbraith, the ex-Education and Health Minister claimed that 'every

---

[41] See Scottish Parliamentary debates in plenary on 28th September 2000, 24th January 2001 and 25th January 2001
[42] Interview with Henry McLeish (First Minister) (December 2003)
[43] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[44] Interview with Henry McLeish (First Minister) (December 2003)

Labour member of the Scottish cabinet opposed the policy when it was decided upon in 2001, except Henry McLeish'.[45] Whilst Galbraith's estimate may be an exaggeration, MacMahon suggested that only about half the cabinet were in favour of free personal care, and that even those in favour of the policy had reservations.[46] Most notably the Health Minister, Susan Deacon, was strongly opposed to free personal care, refusing to reverse her position despite considerable pressure from the First Minister and civil society. The lack of support in McLeish's cabinet is not surprising considering that the cabinet 'consisted of virtually the same people who had backed Dewar's policy on free personal care'.[47] The divisions amongst the SPLP, discussed below, are shown to be primarily due to different perceptions of long-term care costs, different ideological stances and the range of normative role associations of the actors involved.

Designing the free personal care policy required predictions to be made about the future demands for the care, and therefore, the cost of the policy. Labour policy actors disagreed about the future costs of the policy. Lord Sutherland in his report estimated that free personal care in the UK as a whole would cost between £800 million and £1.2 billion a year.[48] In Scotland the implementation of free personal care was estimated to be around £110 million.[49] However, as the population ages, the cost of funding free personal care would be expected to rise. The Royal Commission's report talked of the 'funnel of doubt', which refered to the range of uncertainty surrounding predictions of projected need.[50] Critics of free personal

---

[45] Gordon, T. (9 February 2004) 'Galbraith: free care for elderly should end' in *The Herald* p.1
[46] Interview with Peter MacMahon (Press Secretary to McLeish) (December 2003)
[47] Taylor, B., *op.cit.,* p.39
[48] Royal Commission on Long-term care (1999) *With Respect to Old Age* (The Stationary Office, London) Terms of Reference
[49] Scott, D. (22 December 2000) 'Stage is set for free personal care for the elderly' in *The Scotsman* p.6
[50] Royal Commission on Long-term care *op.cit.,* Ch.2

care, for instance, pointed to the Netherlands experience, where free personal care for the elderly was introduced in 1968 but 'The costs were three times what they expected and the policy had to be abandoned 12 years later'.[51] Labour cabinet members in particular appeared to fear the potential underestimation of free personal care costs.[52] Sam Galbraith, for instance, described free personal care as a 'ticking time bomb'.[53]

There were also fears that predictions about the cost of free personal care were underestimated because they failed to take into account older people from England moving to Scotland to take advantage of the free personal care package. Labour peer, Lord Lipsey, regularly vocalised these fears in the press, arguing on BBC Radio Scotland that 'There will be a tremendous problem because you will find English middle-class people realising that they can get free personal care and coming here to be waited on at the expense of the Scottish taxpayer... If Scotland wants to be colonised by the English middle class that's fine – I thought devolution was supposed to end that'.[54] The different perceptions about the future costs of free personal care encouraged different policy preferences. For instance, Susan Deacon argued that she was against free personal care because she didn't want to promise something she couldn't be sure of delivering in the future.[55] However, the main area of disagreement for SPLP actors was due to different ideological stances.

Bill Butler pointed out that the free personal care case represented a wider debate

---

[51] Fraser, D. (28 January 2001) 'Why old Scars will not heal' in *The Sunday Herald*, p12
[52] Shaw, E. (April 2003) 'Devolution and Scottish Labour: The Case of Free Personal Care for the Elderly' presented to the *Annual Conference of the Political Studies Association at the University of Leicester*, p.8
[53] Gordon, T. *op.cit.*, p.1
[54] Hardie, A. (27 January 2001) 'If Scotland wants to be colonised by the English middle class that's fine - I thought devolution was supposed to end that' in *The Scotsman*, p.10
[55] Taylor, B. *op.cit.*, p.43

within the Labour party about the merits of universalism compared with targeting resources through means testing.[56] One MSP interviewed by Eric Shaw noted that the debate on free personal care was 'one of the most turbulent in the party's recent history'.[57] The debate within the Scottish Labour party, and the Labour party in general, is based on different conceptions of equality. The case of free personal care brings these differences to the fore. Deeming and Keen identify two types of equality in this case, horizontal and vertical equality.[58] Horizontal equality is usually invoked in relation to the provision of care, and means that equals (in terms of health care needs) are treated equally.[59] Vertical equality, on the other hand, is more usually applied to the financing of health care, and centres on the idea that unequals (in terms of income) are treated unequally.[60] Free personal care invokes horizontal equality, meaning that those with the same health care needs are treated equally regardless of their financial position. The free personal care policy questioned the New Labour welfare 'modernisation' ideology, that all new benefits have to be targeted on those most in need.[61] Whilst the cost of universal free access is generally thought worth bearing in most aspects of NHS provision,[62] the Labour Government at Westminster felt that horizontal equality was not the fairest basis on which to determine the financing of personal care. For instance, Alan Milburn (then the Health Secretary) sided with the notions of vertical equality, claiming that 'our policy will be that people should provide for themselves whenever they are able to do so'.[63] There was a general attitude in the UK Government that free personal care was unfair because 'part of the cost of such universal access

---

[56] Interview with Bill Butler (Labour MSP) (January 2004)
[57] Shaw, E. *op.cit.,* p.8
[58] Deeming, C. and Keen, J. (2001) 'The Politics of Long-Term Care' in *Health Care UK* (pp.78-87) accessed at www.kingsfund.org.uk/pdf/ltc.pdf, p.80
[59] *Ibid.*
[60] *Ibid.*
[61] Shaw, E. *op.cit.,* p.8
[62] Deeming, C. and Keen, J. *op.cit.,* p.80

would be that the rich benefited at the expense of the poor'.[64] The Scottish Labour party has a reputation for being more traditionally left-wing than the UK party as a whole.[65] Therefore, the expectation was that Scottish Labour would have sympathy for free personal care.

There was a fundamental agreement amongst the SPLP that if resources were unlimited, then free personal care should be implemented. Whilst Deacon acknowledged that 'in ideal circumstances, such care should be freely available'[66] she argued that the Executive's 'priority is, unashamedly, to target our resources first and foremost on those in greatest need, to ensure that more people in the care system receive care according to need, not means'.[67] Thus, Deacon questioned the value of universal provision of free personal care due to the level of need of those who would receive free personal care. The argument is that free personal care mainly benefits 'the middle classes, who might otherwise lose their savings, rather than the poor, who were always entitled to it'.[68] Such arguments clearly question the benefit of universalism, preferring to treat those who are economically unequal unequally.

Many of those interviewed had sympathy for Susan Deacon's position and felt that she genuinely believed that better use could be made of limited resources. Even Henry McLeish did not question the basis of Deacon's argument that the individual needs to bear some responsibility for cost. McLeish acknowledged that Labour's policies should not always focus on 'transferring costs from the individual to the

---

[63] *House of Commons, Hansard, 2ⁿᵈ December 1999*
[64] Deeming, C. and Keen, J. *op.cit.,* pp.80-81
[65] Shaw, E. *op.cit.,* p.11
[66] Taylor, B. *op.cit.,* p.39
[67] Scottish Parliament, Plenary Session, 24th January 2001

state'.[69] Labour MSP, Bill Butler, also argued for a mixed approach, claiming that neither universalism nor means testing can be the sole approach and each case needs to be examined individually.[70] However, when asked about the criteria which should be used to establish whether means testing or universal provision should be adopted, all Labour politicians seemed rather vague about how the decision should be made.

The tax system treats economic unequals unequally, thus providing the funding for universal provision in other policy areas. The Scottish Executive could have decided to use the Scottish Parliament's limited powers over income tax, to fund free personal care universally. However, there was a reluctance from all political parties in the Parliament to raise taxes, and in particular many Labour politicians 'disbelieve the electorate (whatever they might profess in opinion polls) are really prepared to pay through taxation'.[71] Within this context, paying for free personal care would inevitably mean that funds would have to be allocated from other sections of the Scottish budget. Therefore, self-interested preferences came into play, as individual Labour ministers were reluctant to see their own budgets cut in order to fund free personal care and portfolios were defended by arguments that more effective use could be made of limited resources.[72]

SPLP members were also concerned about the impact the free personal care debate would have on their relationship with party actors south of the border. The UK Government had argued that the problem with free personal care was that 'part of

---

[68] Gordon, T. *op.cit.*, p.1
[69] Interview with Henry McLeish (First Minister) (December 2003)
[70] Interview with Bill Butler (Labour MSP) (January 2004)
[71] Shaw, E. *op.cit.*, p.10
[72] Taylor, B. *op.cit.*, p.39

the cost of such universal access would be that the rich benefited at the expense of the poor'.[73] The reluctance of many in the SPLP to support free personal care has partially been explained as a fear of the UK Government, 'Scottish Labour leaders keep looking over their shoulders at how London will react. Instead they should be exploring the elastic bounds of the new constitutional settlement'.[74]

In contrast to Scotland, the Labour members of the Welsh cabinet were united on free personal care. The Health Minister, Jane Hutt, was clear that free personal care was not a priority, and instead she wanted to 'broaden our definition of free nursing care and implement our promise of up to six weeks' free home and personal care'.[75] The Deputy Health Minister, Brian Gibbons explained that Hutt had some sympathy for the case for free personal care. However, she placed the provision of quality services and providing care at home above free personal care.[76] Research conducted by the Welsh Assembly Government revealed that 80% of older people questioned wanted to be looked after at home rather than entering residential care.[77] Additionally, Wales was suffering from increasing pressure from bed blocking, where older people are forced to stay in hospital beds even though they no longer require hospital treatment, due to the unavailability of care elsewhere. Therefore, the Welsh Assembly Government decided that their focus should be on supporting care at home rather than funding free personal care.[78]

---

[73] Deeming, C. and Keen, J. *op.cit.,* pp.80-81
[74] *The Guardian* (27 January 2001) 'Made in Scotland: The merit of doing things differently' accessed at http://society.guardian.co.uk/socialcare/story/0,7890,430474,00.html on 27/11/03
[75] National Assembly for Wales, Plenary Session, *15th February 2001*
[76] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[77] *Ibid.*
[78] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)

Whilst Hutt was reluctant to support free personal care she did encourage an inclusive approach to developing long-term care policy. She clearly decided that free personal care was not going to be her priority, but she was open to other ideas for alleviating the cost of care. One policy adviser explained that Hutt had a particularly inclusive style and argued that 'we don't issue tablets of stone here'.[79] The Health and Social Services Committee clerk agreed with the assessment of the Health Minister, and claimed that 'Jane Hutt in general is open and prepared to listen. She adopts a pragmatic style and reconsiders her position when someone proposes a better case'.[80] Hutt's inclusive policy-making style was also praised by pressure groups. For instance, representatives from Carers Wales argued that Hutt was particularly willing to meet with them and appeared to feel a duty to justify her decisions where there was disagreement.[81] Additionally, Age Concern Cymru pointed out a number of examples where following discussions with the Health Minister she had altered her position to take account of their concerns.[82] AMs from opposition parties claimed that Hutt also adopted an inclusive approach in relation to them. For instance, the Conservative health spokesperson, David Melding, compared Jane Hutt with the Education Minister, Jane Davidson. He argued that whilst Davidson denied plenary debates on issues of primary legislation, Hutt allowed such debates both in plenary and in committee.[83] Whilst Hutt never seriously entertained the idea of introducing free personal care, her policy-making style allowed pressure groups and opposition AMs to engage in discussions with her about the policy, and long-term care in general. Hutt's decided to include consideration of free personal care within the remit of the Advisory Group on a

---

[79] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[80] Interview with National Assembly for Wales Health and Social Services Committee Clerk (June 2004)
[81] Interview with Roz Williamson and Sandra Burton (Carers Wales) (February 2003)
[82] Interview with Sarah Stone (Political Officer for Age Concern Cymru) (February 2003)
[83] Interview with David Melding (Conservative AM) (February 2003)

Strategy for Older People after negotiation with opposition parties, her Liberal Democrat coalition partners and pressure groups. Other ministers may have been more reluctant to allow a discussion of free personal care, instead perhaps preferring not to include free personal care on the Advisory Group's remit. Therefore, it is possible that Hutt's inclusive approach to policy-making encouraged a more thorough examination of different long-term care policy options. By allowing free personal care to be included in the remit of the Advisory Group, Hutt legitimised the inclusion of free personal care onto the political agenda and ensured it also arose on what Kingdon terms the decision agenda. The decision agenda is basically those issues arising on the government's agenda which require an active decision.[84] Without Hutt's action it is possible that the issue of free personal care would just have sat on the political agenda indefinitely with no definite decision being taken.[85]

In Wales, neither the Health Minister nor the Welsh First Minister led the debate on free personal care. Hutt may have allowed for an examination of free personal care within the Advisory Group on a Strategy for Older People. However, her involvement in this group was limited, and the Deputy Health Minister took on the role as chair of this group. In itself it is not surprising that the Deputy chaired these meetings rather than the Minister herself, in Scotland too the Deputy Health Minister chaired the meetings relating to free personal care and long-term care policies. However, in Scotland the First Minister, Henry McLeish, and the Health Minister, Susan Deacon, both took a keen interest in the free personal care issue, with both actors briefing against each other. Consequently, in Scotland the debate

---

84 Kingdon, J.W. *op.cit.,* p.4
85 *Ibid.,* p.3

on free personal care was largely driven by the arguments of the First Minister and the Health Minister. In Wales the First Minister and the Health Minister said very little on the issue of free personal care. Dame June Clark explained that there were attempts to lobby Rhodri Morgan and Jane Hutt but when concerns were raised these were referred to the Deputy Health Minister, Brian Gibbons.[86] The fact that it was the Deputy Health Minister who was the key spokesperson on free personal care and the main contact for pressure groups further indicates that the free personal care issue was treated much less seriously in Wales than in Scotland. In Scotland free personal care was higher up the political agenda, meaning that those considering and developing the policy were from the higher echelons of Government. Additionally in Scotland the issue had support from members of the cabinet, in particular the First Minister and the Deputy Health Minister, Malcolm Chisholm. Therefore, these actors wanted to be involved in the formulation of the policy, to ensure they could shape it. However, in Wales there was general agreement that free personal care was desirable in an ideal world but not practicable, therefore, it could be left to the Deputy Health Minister to examine and a policy could be developed without the input of more senior members of the Welsh Assembly Government.

The Deputy Health Minister's position on free personal care in Wales was in tune with the First Minister and the Health Minister. He argued that it was right not to make free personal care a priority because 'free personal care wouldn't have made a difference to the quality of care or the amount of care delivered. The only difference it would have made was to people's bank accounts'.[87] Gibbons claims

---

[86] Interview with June Clark (Member of the Royal Commission on Long-Term Care) (June 2004)
[87] Interview with Brian Gibbons (Deputy Health Minister) (February 2003)

that the Welsh Assembly Government's original position was that 'we didn't have the money or powers to introduce free personal care, so our hands were tied'.[88] However, he argued that there were areas for negotiation. For instance, Gibbons claims that the Welsh Assembly Government 'were willing to be persuaded to lobby the UK Government to introduce free personal care'.[89] Gibbons never appeared to feel pressured into doing anything more than lobbying the UK Government to introduce free personal care. He argued that whilst pressure groups and opposition parties placed pressure on him to push the issue of free personal care and 'to do something', those in favour of free personal care tended to accept that 'it wasn't our [the Welsh Assembly Government's] gift to give'.[90] Therefore, in contrast to the Scottish Government, the Welsh Assembly Government was able to defuse the pressure from those in favour of free personal care by redirecting their attention to the UK Government. It was much easier for the Welsh Assembly Government to escape pressure compared to the Scottish Executive, because the Welsh Assembly lacked the powers to legislate for free personal care.

As in Scotland, symbolic policy-making also played a part in the Welsh Assembly Government's policy decisions.[91] Symbolic policy-making here involved an attempt by actors to shape perceptions and responses to problems rather than to actually respond to these problems. This is not to say that symbolic policy-making can not lead to real effects. For instance, in her study of the égalité professionelle policy in France, Mazur argued that the policy was largely symbolic but that 'symbolic policy, at least in France, has an important role of drawing political attention to an issue

---

[88] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[89] *Ibid.*
[90] *Ibid.*
[91] Edelman, M. (1985) *The Symbolic Uses of Politics- Second Edition* (University of Illinois Press, Illinois)

that would normally not gain decision agenda status'.[92] However, Mazur suggested

that this use of symbolic policy-making would take time to have real impacts. In a

similar way McLeish suggested that an important part of the free personal care

debate for him was as an opportunity to indicate his support for older people and

raise the profile of older people in society. The Welsh Assembly Government also

expressed similar desires in relation to the Strategy for Older People. The Deputy

Health Minister, Brian Gibbons, argued that the pension increase of only 75p in

2000 motivated the Welsh Assembly Government to state their commitment to older

people, which they felt could be expressed by the development of a strategy for

older people.[93] Although there were other reasons for developing a strategy for

older people, such as a desire to develop a holistic approach to older people 'in

contrast to single initiatives taken all over the place',[94] a key motivation for

developing a strategy was to highlight the Welsh Assembly Government's

commitment to older people.

The raising of capital limits was another policy pursued by the Welsh Assembly

Government to indicate their commitment to older people in Wales. Wales

possessed a higher proportion of older people and a higher proportion of home

owners compared to the UK as a whole. Therefore, in Wales a particularly high

proportion of older people owned their own homes and more of these people were

forced to sell their home to pay for care. Brian Gibbons argued that the

commitment to raise capital limits was a 'semi-symbolic acknowledgement of a

particular Welsh problem'.[95] The desire to communicate a commitment to older

---

[92] Mazur, A. (1991) 'Agendas and égalité professionelle: symbolic policy at work in France' in Meehen,
E. and Svenhuijsen, S. (Eds.) *Equality Politics and Gender* (Sage, London), p.137
[93] Interview with Brian Gibbons (Deputy Health Minister) (February 2003)
[94] *Ibid.*
[95] Interview with Brian Gibbons (Deputy Health Minister) (July 2004)

people also influenced the Welsh Assembly Government's free nursing care policy. For those requiring nursing care within a residential setting, the Welsh Assembly Government decided to commit to pay £100 per person each week. Mark Drakeford, a health policy advisor to the Welsh Assembly Government, explained that a range of figures were examined and the £100 figure was at the higher end of what seemed reasonable.[96] Mark Drakeford explained that the decision to opt for £100 was taken partly because three figures sounded better than two.[97] Therefore, symbolic policy-making, to indicate support and sympathy for older people in care, played a major role in the Welsh Assembly Government's long-term care policy-making.

Symbolic policy-making is seen as a particular problem in systems with multiple levels of government, and Adams and Robinson express concern about 'boutique politics' in the devolved UK, where England, Scotland and Wales compete to produce superficially better policies than each other.[98] Interestingly in both Scotland and Wales this competition has been led by a desire to be perceived as the level of government offering the most extensive welfare provision. In contrast, states in federal systems often adopt boutique policies in an attempt to deter economic migrants, or encourage investment, commonly associated with the 'race to the bottom' discussed in chapter two.[99] A possible reason for this difference is that actors involved in the new devolved structures are particularly concerned to win public support. Pierson argued that in the past states have engaged in attempts to

---

[96] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[97] *Ibid.*
[98] Adams, J. and Robinson, P. (2002) 'Divergence and the Centre' in Adams, J. and Robinson, P. (Eds.) *Devolution in Practice: Public policy differences within the UK* (Institute for Public Policy Research, London), p.206
[99] Peterson, P.E. and Rom, M.C (1990) *Welfare Magnets: A New Case for a National Standard* (The Brookings Institution, Washington D.C)

expand social benefits as a method of securing political legitimacy and 'to overcome diffuse concern about tax rates... and the frequently important pressures of entrenched interests'.[100] As a result perhaps the devolved administrations desire to win political legitimacy can help to explain why they engaged in symbolic policy-making which emphasised their extensive welfare provision. If so, it is likely that a concern with extending welfare provision would be a particular concern of actors in the Welsh Assembly, due to the closeness of the referendum result which made the need to establish political legitimacy more important. Another explanation discussed later in this thesis is that the financial powers of the devolved institutions encourage them to focus on extending rather than reducing welfare provision, or at least appear to do so.

Outside the Welsh Assembly Government, Welsh Labour AMs also appeared relatively united on the issue of free personal care. There were minor disagreements about the importance of free personal care. For instance, Labour AM, Ann Jones, argued that 'free personal care would not mean a single extra person receiving care. It would benefit a small minority of elderly people who have assets of over £19,000. It would not even benefit them; the only real beneficiaries would be their heirs'.[101] Therefore, Ann Jones suggested that rather than free personal care a policy which raises thresholds 'would be a better solution, by which more people in our society would be genuinely helped'.[102] However, another Labour AM, Gwenda Thomas, was more supportive of free personal care arguing that 'free personal care must be the aim'.[103] Yet these disagreements were minor, and no

---

[100] Pierson (2000) 'The New Politics of the Welfare State' in Pierson and Castles (Eds.) *The Welfare State Reader* (Polity Press, Cambridge), p.309
[101] National Assembly for Wales, Plenary Session, 16th May 2002
[102] *Ibid.*
[103] *Ibid.*

Labour AM supported introducing free personal care on a Wales only basis. The arguments proposed by Ann Jones in particular encouraged some representatives of pressure groups to question the commitment of the Welsh Labour party to the principle of free personal care. One representative from an elderly pressure group claimed that there was no desire by many within the Labour party to consider free personal care because of the belief that it would benefit the rich.[104] As in Scotland, therefore, the Welsh Labour party were stuck between two principles, the New Labour philosophy that resources should be targeted to the poorest in society and the traditional socialist philosophy of universal provision. Ann Jones justified her position by pointing to the powers of the National Assembly,

> 'As a socialist, I of course support universal rather than means-tested benefits. In an ideal world all public services would be paid for through progressive taxation. But the assembly can't raise its own money and Gordon Brown will need to go much further down the road of raising taxes before we can seriously go about phasing out charging for our social services'.[105]

Therefore, it appears that Labour AMs were all agreed that whilst desirable in principle, the Welsh Assembly Government should not introduce free personal care within the current taxation system. As one journalist explained 'radicals on this issue [free personal care] are likely to be found within Plaid, the Liberal Democrats, even the Tories. But not Labour'.[106] Whether it is radical or not to champion universal provision, in relation to free personal care there was no Welsh Labour AM making this case. As a result in both Scotland and Wales the Liberal Democrats were often left to defend universal provision and free personal care.

---

[104] Interview with a pressure group representative (February 2003)
[105] 'When We're 64' (24 May 2002) in *The Morning Star, p.10*
[106] Betts, C. (24 May 2002) 'Heeding his Master's Voice' in *The Western Mail*

6.3 Liberal Democrat Coalition Partners

In Scotland, the lack of support in the Parliamentary Labour Party for free personal care made the position of the Liberal Democrats crucial to the success of the free personal care policy. As one journalist explained, 'the Scottish Cabinet has been torn apart. Henry McLeish had to rely on the Liberal Democrats because his own Labour Ministers refused to follow his lead and had to be dragooned into supporting him'.[107] The Liberal Democrats were accused of blackmailing the Scottish Executive to commit to free personal care, threatening to vote against the rest of the Scottish Executive and perhaps even leave the coalition.[108] The Liberal Democrats were also blamed for the free personal care 'fiasco' by many Labour back benchers who complained of indiscipline in Liberal ranks.[109] The Liberal Democrats certainly liked to take the credit for free personal care. For instance, in their 2003 Scottish Parliament election manifesto Charles Kennedy argued that 'From free personal care to the abolition of tuition fees, Liberal Democrats have made the difference in the last four years'.[110] However, whilst the Liberal democrats were generally sympathetic towards the free personal care policy there was not the deep, unified support often portrayed by the press and the Liberal Democrats themselves. Jim Wallace, the leader of the party at the time, was reported as opposing free personal care, due to concerns about the extent to which spending would have to be cut in other areas to fund the policy.[111] Wallace's argument was based on his opinion that the early years of the Parliament had been relatively easy financially, due to public spending increases in England. However, Wallace was aware that the Parliament's financial position was not always going to be so easy, and at times of

---

[107] *Daily Record* (26 January 2001) 'Con Trick of Empty Promises', p.8
[108] Interview with Sam Galbraith (Previously Minister for Health and Education) (February 2004)
[109] Macwhirter, I. (21 February 2001) 'Could this really be the beginning of the end' in *The Herald*, p.16
[110] Scottish Liberal Democrat Manifesto (2003) *Make the Difference: Fresh Thinking for Four More Years* accessed at www.scotlibdems.org.uk/manifestos/se2003/index.htm on 5/3/04

spending cuts in England Scotland would have difficulties maintaining spending levels on current policies, even without the additional pressure of services like free personal care.[112] Wallace believed that free personal care should be pursued on a UK-wide basis, and should not be implemented on a Scotland only basis. Therefore, those pushing for free personal care within the Liberal Democrat group were the backbenchers of the party and not the leadership.

The debate on long-term care in the Scottish Parliament placed considerable pressure on the Liberal Democrats. The Liberal Democrats, as coalition partners, had a duty to support the Executive, whilst their manifesto clearly stated a commitment to free personal care. During debates on free personal care there were direct appeals by opposition parties to the Liberal Democrats to vote against the Executive. For instance, the then SNP MSP, Dorothy-Grace Elder, hoped 'that the Liberal Democrats will stand firm against pressure from Labour to obey. We are not here to obey anyone except the wishes of the people of Scotland'.[113]

One Liberal Democrat stands out above all for pushing the free personal care issue, Margaret Smith, the convenor of the Health and Community Care Committee. Another Liberal Democrat interviewee explained that 'Margaret Smith was a strong protagonist in the discussions, she wore the party down... we would have agreed to almost anything in order to shut her up'.[114] It appears that Margaret Smith and a small number of Liberal Democrat back-benchers persuaded the party to support free personal care during meetings of the parliamentary party. Free personal care was an issue in Liberal Democrat meetings before McLeish became leader, but then

[111] Interview with Keith Raffan (Liberal Democrat MSP) (February 2004)
[112] *Ibid.*
[113] Scottish Parliament, Plenary Session, 28 September 2000

the issue was considered to be off the political agenda, and so lacked the importance it was to receive later.[115]   Keith Raffan, who was then the Liberal Democrat spokesperson on Health and Community Care, explained that he came to support free personal care after listening to the arguments and considering the costs of targeting personal care as opposed to providing personal care universally.[116] The Health Spokesperson clearly was not one of the key actors pushing the policy from within the party, but was eventually persuaded of the benefits of free personal care and following a Liberal Democrat meeting where the majority voted in favour of free personal care, Raffan felt he had to reflect the position of the party.[117]

Margaret Smith was thought to have a strong ideological commitment to free personal care, and like McLeish her uncompromising support for the policy was seen to be primarily due to her belief that it was morally the correct policy to pursue.[118] In addition, Margaret Smith was the convenor of the Health and Community Care Committee, which conducted an inquiry supportive of free personal care (discussed in the next chapter).   Therefore, there was pressure on Margaret Smith to speak for the Committee and to push the unanimous findings of their report.   Following numerous evidence taking sessions in the Committee it is also possible that the welfare lobby, who were strongly pro-free personal care, put pressure on Margaret Smith to represent their interests too.   Personal and political motivation no doubt also shaped Margaret Smith's position.   One interviewee suggested that Margaret Smith was keen to make a name for herself in the Parliament, and forcing through free personal care within her own party and through the Parliament was one way in

---

[114] Interview with a Liberal Democrat MSP
[115] Interview with Keith Raffan (Liberal Democrat MSP) (February 2004)
[116] *Ibid.*
[117] *Ibid.*
[118] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)

which she could achieve respect.[119] However, whilst her desire for recognition may have been a motivating factor, it was generally agreed by interviewees across the political parties that Margaret Smith genuinely believed in the policy, and this was her key consideration.

On 24th January 2001, when Susan Deacon announced the care package which did not include free personal care, there was anger and discontent within the Liberal Democrat group. So much so that Keith Raffan lodged a motion calling for the implementation of free personal care. His motion received the support of ten other Liberal Democrats, placing considerable pressure on the Executive to offer a compromise. It is worth referring back to a similar situation in 2000, when the Conservatives proposed a motion stating support for free personal care. At this time there was much speculation about the Liberal Democrats voting against the Executive, but a 'hastily-reworded amendment is thought to have stopped most Liberal Democrat MSPs joining Health Committee Convenor Margaret Smith in backing a Tory motion calling for full implementation of the Sutherland report'.[120] In January 2001, there were those within the Liberal Democrats who felt that a similar amendment could have been worded and so the implementation of free personal care could have been avoided. For instance, one Liberal Democrat MSP claims that the Liberal Democrats had already decided as a group that they would not vote against the Executive on free personal care if it came to it (except Margaret Smith), as their duty was first to honour the coalition agreement no matter how difficult this would be.[121] However, between the first case of potential revolt on free personal care in September 2000 and the situation in January 2001, the Health and

---

[119] Interview with a Liberal Democrat MSP
[120] McCann, A. and Horsburgh, F. (28 September 2000) 'Revolt on care for elderly set to fizzle out; Amendment wins over most Liberal Democrat MSPs on Sutherland report issue' in *The Herald*, p.6

Community Care Committee and McLeish had hinted at a commitment to introduce free personal care. It is impossible to predict what would have happened if the Executive had decided not to make a statement committing to free personal care and the issue had gone to a vote. However, what is clear is that all Labour MSPs and advisers interviewed perceived that there was a real threat that Liberal Democrat back benchers would vote against the Executive, and ensure a majority in the Parliament for free personal care.

How those Liberal Democrat backbenchers in favour of the policy were able to ensure a commitment to free personal care within their party and with their coalition partners is widely debated. Sam Galbraith argued that a deal was done between Henry McLeish and the Liberal Democrats the week after McLeish became First Minister.[122] Galbraith argued that McLeish needed the support from the Liberal Democrats in order to secure his leadership, and committing to free personal care guaranteed that he would gain their support.[123] Interestingly, when McConnell became First Minister he appeared to make a similar deal with the Liberal Democrats on proportional representation for council elections, as he reportedly agreed to 'make it a priority to deliver a timetable for PR'.[124] Whilst it is possible that McLeish promised the Liberal Democrats he would review the policy, as the leadership of the Liberal Democrats had mixed feelings on free personal care it seems unlikely that a deal was done to introduce the policy. Even Galbraith acknowledges that Wallace worked hard to maintain the coalition, and on the free personal care issue the consensus among interviewees was that Wallace sought to persuade his backbenchers to support the Executive. Additionally, prior to McLeish's

---

[121] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)
[122] Interview with Sam Galbraith (Previously Minister for Health and Education) (February 2004)
[123] *Ibid.*

commitment to review free personal care, the Liberal Democrats suggested, 'we'd completely accepted that free personal care was not part of the agreement'.[125] Therefore it is quite surprising that a policy which lacked Cabinet support and was not a partnership agreement commitment, even arrived onto the Scottish Parliament's decision-making agenda, let alone was passed and implemented.

Interestingly the pressure from the Liberal Democrats to change the free personal care policy came from their backbenchers. The leadership were reluctant to implement free personal care on a Scottish only basis, so 'Wallace tried to persuade his backbenchers to back the Executive's line'.[126] His failure to constrain his backbenchers was seen by some in the party as evidence of his weakness as a leader.[127] However, as Shaw noted, it is much more difficult for the leader of the Liberal Democrats to restrain his backbenchers than in other political parties. Shaw suggested that as a result of the 'individualistic ethos of parliamentary liberalism and its relaxed disciplinary regime', the Liberal Democrat backbenchers are regularly able to challenge their leadership on key issues.[128] A majority in the Parliamentary Party were in favour of free personal care and of pursuing the issue in the Scottish Parliament, which meant the leadership would struggle to impose its view. One MSP also argued that the Parliamentary Party's way of operating was heavily dependent upon the characteristics of the leader, Jim Wallace.[129] The interviewee claimed that 'Wallace is not approachable, so the party's policy-making is not inclusive' which lead to more battles in the parliamentary party than were

---

[124] Macleod, A. (21 November 2001) 'Liberal Democrats to vote for McConnell' in *The Times*
[125] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)
[126] Shaw, E. *op.cit.,* p.12
[127] Interview with a Liberal democrat MSP
[128] Shaw, E. *op.cit.,* p.12
[129] Interview with a Liberal democrat MSP

necessary.[130]   According to this interviewee if the Parliamentary Liberal Party was closer and Wallace had been willing to discuss issues at an early stage with MSPS then Wallace may have been able to talk the backbenchers round and resist the pressure from Margaret Smith.[131]   Therefore, it appears that the party culture and norms of the Liberal Democrats had a significant impact upon policy-making in the coalition.

Whilst the leadership of the Liberal Democrats had reservations about introducing free personal care in Scotland, they had other reasons to support the policy. Free personal care appeals to a core group of Liberal Democrat voters, the elderly middle class,[132] and so it was electorally beneficial for the party to support the policy. As Scharpf notes, party leaders have a particular pressure to maximize electoral prospects, so Wallace's reservations about funding free personal care may have been balanced by electoral concerns.[133]   Free personal care also provided the leadership with a chance to prove the worth of the coalition, and the role the Liberal democrats play in it.   In the first term of the Scottish Parliament the Liberal democrats faced regular criticism from outside the party for entering into the coalition. For instance, the Conservatives accusing them of 'being little more than lapdogs in the eyes of a disillusioned electorate'.[134]   In addition the UK Liberal Democrat leader, Charles Kennedy, reportedly was 'alarmed by hostile voter feedback since the coalition was formed in May'[135] and so he warned 'the Scottish Liberal Democrat leader Jim Wallace that the party will lose seats at Westminster

---

[130] *Ibid.*
[131] *Ibid.*
[132] Interview with Sam Galbraith (Previously Minister for Health and Education) (February 2004)
[133] Scharpf, F. W. *op.cit.,* p.61-62
[134] Scott, D. and Carrell,S. (16 October 1999) 'Wallace to Face Party Fears over Tuition Fees' in *The Scotsman,* p.8
[135] Allardyce, J. (25 August 1999) 'Step out of Dewar's shadow, Wallace will be told' in The Times

unless he stands up to Labour in the Scottish Parliament coalition'.[136] In this context free personal care could be held up as a flagship policy, indicating the point of voting for the Liberal Democrats even if they entered into a coalition with Labour. After the commitment to free personal care was made, Jim Wallace in particular emphasised the Liberal Democrats' role in the development of the free personal policy. One interviewee commented that

> 'After the vote Wallace went to Deacon Brodies to boast to journalists of the victory... he was talking like it was a flagship policy when he had been against it from the beginning and the whole episode was an illustration of how not to do things... it was too much to bear'.[137]

Using free personal care as a flagship policy to highlight the importance of the coalition to the electorate can be viewed as an attempt to secure further votes. Additionally, emphasising the benefits of the coalition was important within the Liberal Democrat party. McLeish argued that many Liberal Democrats were not happy being in the coalition government. Instead a substantial element of the Liberal Democrat Parliamentary Party, and the wider party, would have preferred to be an opposition party where their principles would not have to be compromised.[138] For example, within the Parliamentary Party, Donald Gorrie has often suggested that the coalition should be reviewed.[139] As many Liberal Democrats were not supportive of the coalition, there was a constant need by those within the Executive to 'highlight the point of the coalition'.[140] So whilst the leadership of the Liberal Democrat Parliamentary party had reservations about the detail of the free personal care policy, such vigorous support from Liberal Democrat backbenchers combined with the opportunity to make political capital out of the issue meant there was not total opposition to the policy.

---

[136] *Ibid.*
[137] Interview with a Liberal Democrat MSP
[138] Interview with Henry McLeish (First Minister) (December 2003)
[139] Scott, D. and Carrell,S. *op.cit.,* p.8

203

After the Executive made their emergency statement committing to free personal care there remained some members of the Liberal Democrats that failed to be convinced by the policy reversal. Keith Raffan was particularly vocal in his criticism of the final commitment to free personal care, arguing that the statement didn't include a timetable or an announcement about funding.[141]   Therefore, he resigned as Liberal Democrat Health Spokesperson. His actions suggested a lack of trust between Labour and the Liberal Democrats, as there was a clear reluctance to believe that the commitment to free personal care would be honoured. Raffan was also critical of the way in which the free personal care policy had been agreed, 'arguing that the issue should have been openly settled within the Executive'.[142] However, it has been suggested that Raffan's resignation was partially motivated by his dissatisfaction with his own role in the negotiations, for instance Taylor quotes one source as suggesting that Raffan 'was also frustrated at being cut out of the serious, off-stage talks'.[143]

As in Scotland, the Welsh Assembly Government's long-term care policy was created during a time of coalition government, also between the Labour and Liberal Democrat parties. In Wales free personal care was not a major issue when the coalition government was established. Unlike Scotland, the coalition in Wales was created in October 2000, after the Royal Commission on Long-Term Care had reported its findings and the UK Government had rejected the argument for free personal care. As in Scotland free personal care was not mentioned in the Partnership agreement which set out the programme for the coalition government.

---

140 Interview with Henry McLeish (First Minister) (December 2003)
141 Interview with Keith Raffan (Liberal Democrat MSP) (February 2004)
142 Taylor, B. *op.cit.,* p.44

Whilst there was little discussion of free personal care between the two parties during the creation of the partnership agreement, the Liberal Democrats raised the issue of free personal care once they were in government. One interviewee explained that a compromise position on free personal care was agreed after the partnership agreement because 'the issue (of free personal care) in Wales really only kicked off after the decision to introduce it in Scotland'.[144] Here interestingly we see the effects of 'spill-over', where decisions taken at one level of government affect the others. However, whilst 'spill-over' has usually been used to refer to pressures on the Labour Party, as the major governing party, here we see the pressure to converge with party positions at other levels can also affect the minor coalition partner.

According to Mark Drakeford, policy advisor to the Health Minister, the Liberal Democrats played a major role in shaping the Welsh Assembly Government's long-term care policy. He claimed that 'Left to itself a Labour only administration would have followed the UK line' as there was not enough money to fund the free personal care policy.[145] Drakeford explained that the Liberal Democrats tried to persuade their Labour colleagues that free personal care should be provided by the National Assembly for Wales, even without additional resources from the UK Government.[146] Labour interviewees were critical of the Liberal Democrat position, pointing out that the Sutherland report had not recommended that free personal care was introduced by a legislature which lacked the ability to raise revenue.[147] However, as a coalition government there was a need for everyone to 'save face', therefore, a compromise

[143] *Ibid.*
[144] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[145] *Ibid.*
[146] *Ibid.*
[147] Interview with Brian Gibbons (Deputy Health Minister) (February 2003)

position was agreed where Labour agreed to lobby the UK Government to introduce free personal care, 'even though we knew what the response would be'.[148] Therefore, by agreeing to a compromise position on free personal care Labour and Liberal Democrat AMs could save face, and as in Scotland the Liberal Democrats could justify their decision to enter into coalition government. As Drakeford explained, the compromise position on free personal care 'meant everyone could claim they had achieved something'.[149]

The Liberal Democrats were able to influence the Welsh Assembly Government not only by influencing the shape of the long-term care policy, but also by pushing the issue up the political agenda. The Deputy Health Minister, Brian Gibbons, argued that it was the Liberal Democrats who brought the 'the issue of free personal care to the table'.[150] Gibbons gave the Liberal Democrats the credit for the inclusion of free personal care within the remit of the Advisory Group on a strategy for older people. He claimed that whilst free personal care would no doubt always have been raised by the Advisory Group, having the Liberal Democrats in government meant that the group's remit was extended to include free personal care.[151] Therefore, the Liberal Democrats raised the profile of the free personal care issue, ensuring the issue was formalised within the Advisory Group, and thus considered in greater detail.

As in Scotland, there were attempts by some Liberal Democrat AMs to pressurise the Welsh Assembly Government for a stronger line on free personal care. In many ways Kirsty Williams, the chair of the Health and Social Services Committee, played

[148] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[149] *Ibid.*
[150] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)

a similar role in Wales to Margaret Smith in Scotland, both were Liberal Democrat chairs of Health committees in favour of free personal care.   Williams sought to galvanise support for free personal care by regularly making the case for the policy in the press and within the National Assembly. For instance, in one newspaper article Williams argued that it was 'morally unacceptable that people suffering from long-term chronic conditions such as dementia and Parkinson's disease should have to pay for the help they needed with washing and dressing'.[152] Williams appeared to have some success at pushing the issue of free personal care. Dame June Clark argued that in the Assembly's second term the Welsh Assembly Government had done a degree of back-sliding on the free personal care issue.[153] Clark thought that the back sliding on free personal care was due to the diminished Liberal Democrat role in health policy-making, caused by the lack of coalition government and by Kirsty Williams being replaced as the chair of the Health and Social Services Committee. However, Kirsty Williams had a lesser impact than her counterpart in Scotland.   Williams lacked the strong committee support evident in Scotland, meaning that her arguments were weakened. For instance, when Williams and her Liberal Democrat colleague, Peter Black, submitted a statement of opinion urging the UK Government 'to implement the recommendations of the Royal Commission on Long Term Care', no other AMs supported their statement.[154]   As in her statement of opinion, Williams often focused on persuading the UK Government to act, rather than pushing the Welsh Assembly Government to take action independently. However, at times Williams also sought to pressurise the Welsh Assembly Government to implement free personal care independently of the UK

[151] *Ibid.*
[152] Walter, B. (13 February 2001) 'Rift opens on caring for elderly: Strain in Lib-Lab coalition' in *South Wales Evening Post*, p.8
[153] Interview with June Clark (Member of the Royal Commission on Long-Term Care) (June 2004)

Government. For instance, she asked the Welsh Assembly Government to request the powers and the resources to pursue free personal care alone in Wales.[155] However, once the UK Government made it clear that they were not going to reverse their position Williams accepted that there was little point devoting serious attention to free personal care specifically and she decided to focus on other ways of improving long-term care, such as increasing personal allowances for those in residential care.[156]

As in Scotland, whilst backbench Liberal Democrats indicated their support for free personal care, those with ministerial positions appeared more reluctant to vocalise their support. For instance, the Deputy Liberal Democrat leader, Jenny Randerson (then the Minister for Culture, Sports and the Welsh Language), argued that the Assembly needed tax-raising powers if they were to ensure they could pay for free personal care.[157] Additionally, Mark Drakeford claimed that the Liberal Democrat leader in the Assembly, Mike German, was particularly reluctant to support free personal care in Wales without additional resources. Mike German was the minister for economic development, and Drakeford argued that German was concerned that his budget would suffer if free personal care was introduced.[158] However, according to Drakeford the Liberal Democrats in Wales felt pressurised by the impact of the Liberal Democrats on the free personal care policy in Scotland.[159] If the Liberal Democrats in Scotland could achieve such a policy victory then the Welsh Liberal Democrats wanted one too. Therefore, the Liberal Democrat ministers were in two

---

[154] National Assembly for Wales Statement of Opinion (11 December 2000), *Long-term care of the Elderly-OPIN-2000-0110* accessed at www.wales.gov.uk on 5/5/04

[155] National Assembly for Wales, Plenary Session, *16th May 2002*

[156] Interview with Kirsty Williams (Liberal Democrat AM) (February 2003)

[157] *The Daily Post* (27 September 2001) 'Call for New Tax Powers', p.18

[158] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)

[159] *Ibid.*

minds about free personal care, caught between a desire to maintain spending levels in their areas of responsibility and a desire to achieve a policy success on the same scale as their colleagues in Scotland. Consequently, it seemed to the Health Advisor that 'there was a ritual feel to the Liberal Democrats lobbying on free personal care'.[160] The Liberal Democrats had no choice but to argue for free personal care, but their hearts weren't really in it; apparently if Labour had actually agreed to introduce free personal care, the Liberal Democrats in the cabinet would have been seriously concerned about it.[161]

Interestingly, the Liberal Democrats position in Wales mirrored that in Scotland. In both Scotland and Wales Liberal Democrat cabinet members had reservations about free personal care but their back-benchers were consistently supportive of the policy. In Wales the Liberal Democrats only forcibly pursued the free personal care issue once the policy had been agreed in Scotland. It seems that competition between the devolved institutions, to provide better welfare provision than each other, also translates to competition between the same political parties operating in different institutions. The Welsh Liberal Democrats clearly felt they needed to match the achievements of the Liberal Democrats in Scotland. Therefore, the free personal care case shows that even parties which are not the major party in government, at the UK or devolved level, can face pressure to converge on policy positions.

The Liberal Democrats were clearly crucial to the development of the free personal care policy in both Scotland and Wales. The Liberal Democrat backbenchers in

---

[160] *Ibid.*
[161] *Ibid.*

Scotland lobbied hard for free personal care and the Liberal Democrat chairs of the Health Committees in both Scotland and Wales consistently pursued the issue. However, their greatest success occurred in Scotland, when McLeish used the threat of Liberal Democrat disobedience to bully the rest of his government to act. Therefore, it is not just Liberal Democrat actions, such as submitting motions, which can impact upon policy development, but the perceptions of Labour MSPs of the possibility of a Liberal Democrat revolt. The Liberal Democrats were particularly successful in Scotland because it was widely perceived that the Liberal Democrat back-benchers would vote against the coalition, a possibility which was exploited by McLeish and other supporters of free personal care.

6.4 Conclusion

The two First Ministers had very different impacts on the development of the free personal care policies. Henry McLeish was crucial to securing free personal care in Scotland acting as a policy entrepreneur and opening a window of opportunity through which supporters of free personal care could push the issue. Without McLeish's input in opening the window of opportunity it is difficult to imagine that free personal care would have been implemented in Scotland. The Welsh First Minister, Rhodri Morgan, took a different approach, rarely commenting on free personal care, and when he did express his opinion on the issue he indicated his reservations. However, as the UK Government was strongly opposed to free personal care it is highly unlikely that it could ever have been introduced in Wales, with or without Morgan's support. Morgan also appeared to have little impact on the details of the Welsh long-term care policy, and such decisions tended to be lead by the Health Minister and her Deputy.

In Wales the health minister, Jane Hutt, was firmly opposed to free personal care, preferring instead to focus on providing quality of services and care at home. The Welsh Health Minister seemed to set the overall tone of the Welsh Assembly Government's position on free personal care. Her Deputy, Brian Gibbons and the rest of the Labour AMs were united on their position on free personal care, viewing it as unrealistic and a low priority policy. In Wales the Labour members of the Assembly had little sympathy for free personal care and the lack of dissent within the group meant that they prevented their coalition partners from ever sensing that free personal care was achievable. In contrast the Labour group in the Scottish party were divided on free personal care, most notably McLeish's opinion differed from many in the cabinet, particularly his Health Minister. The Scottish Health Minister, Susan Deacon, took the same position as the Welsh Health Minister, regularly stating that free personal care would not be the best use of resources and her preference would be to target resources at those most in need. However, the division within the Labour group in Scotland provided the Liberal Democrats with an opportunity to threaten to rebel against the coalition government.

Interestingly in both Scotland and Wales the Liberal Democrats were in coalition with Labour, and the backbenchers in the Scottish and Welsh parties sought to pressurise their governments into introducing free personal care. The Liberal Democrat backbenchers were clearly more strongly in favour of free personal care than the Liberal Democrat ministers, and in Scotland in particular there were clear tensions between the leadership and the backbenchers over free personal care policy. In Scotland the Liberal Democrats threatened to rebel against their Labour colleagues and vote in favour of free personal care, thus ensuring a majority for free personal care in the Parliament. It is unclear how serious the threat of a

211

Liberal Democrats revolt actually was, as the situation was often misreported and manipulated by supporters and opponents of free personal care. It is of particular interest how the Scottish First Minister, Henry McLeish, encouraged the Liberal Democrats to fight for free personal care and add to the pressure on his government to introduce the policy. Using the minor coalition partner to build-up pressure allowed McLeish to push for free personal care indirectly, meaning he could escape direct confrontation with his Health Minister.

Also of interest is the fact that the Welsh Liberal Democrats' policy on free personal care was clearly shaped by their Scottish counterparts. Only when free personal care had been accepted by the Scottish Parliament did the Welsh Liberal Democrats consider the matter in any depth. Therefore, events in Scotland made free personal care a devolved issue. The Welsh Liberal Democrats appeared to feel that if their Scottish colleagues could claim victory on the free personal care issue they needed to ensure similar achievements to prove they could be a success in the coalition. It is interesting that the pressure on the Liberal Democrats encouraged them to pursue the same policy throughout the UK, despite the fact that historically they are the most federal of the UK-wide parties. In contrast, as we shall see in the next chapter, the Conservatives were happy to promote different free personal care policies.

Chapter Seven

Actors: Outside the Coalition

Chapter six examined the impact of actors within the coalition parties on the free personal care policy. This chapter focuses on the actors outside the coalition parties, examining the roles of the opposition parties, the health committees, policy experts and pressure groups, and the UK Government. As in the previous chapter these actors were chosen for investigation following analysis of documents and interview data. The role of the resources, preferences and perceptions of these actors on the development of the long-term care policies will be examined in this chapter.

7.1 Opposition Parties

In the Scottish Parliament those outside the coalition parties were able to have an impact upon the free personal care policy by questioning and challenging the Scottish Executive's position, developing a detailed policy proposal, and encouraging and directing support for free personal care inside and outside the Parliament. As a relatively left of centre party in Scotland, it was not surprising that the SNP were supporters of free personal care and played a key role in pushing the issue. For example, SNP MSP Christine Grahame lodged a Private Member's Bill entitled 'Alzheimer's and Dementia Care Bill' in an attempt to encourage debate over personal care. Christine Grahame claimed that it was never her intention for the bill

to become law, just to increase the pressure on the Executive to act.[1] Free personal care was popular with the SNP partly due to their opposition to inequality, for instance, Christine Grahame and Shona Robison (who were members of the Health and Community Care committee) claimed they were disgusted by the inequalities of financing care before the introduction of free personal care.[2] However, the SNP also used the issue of long-term care for the elderly issue to make broader political points. For instance, the SNP's manifesto for the 1999 Scottish Parliamentary election suggested that only through independence could 'the indignity of means testing for residential care' be removed.[3] Therefore, by arguing for free personal care the SNP could draw attention to their wider constitutional aims, and emphasise that popular policies, like free personal care, would be easier to achieve in an independent Scotland. The SNP were also aware of the possibility that the free personal care issue could cause tensions between the governments in Edinburgh and Westminster.[4] When tensions between England and Scotland are high this can encourage greater public support for Scottish independence, which also is likely to increase the electoral support for the SNP. By campaigning for free personal care the SNP could claim some credit if the policy was implemented. In addition the SNP could have gained political capital if the Executive failed to introduce free personal care, and they successfully linked the lack of free personal care to the case for Scottish independence. Therefore, the SNP had an incentive to push the free personal care issue up the political agenda, and had much to gain whether the policy was implemented or not.

---

[1] Interview with Christine Grahame (SNP MSP) (January 2004)
[2] Interviews with Shona Robison (SNP MSP) (December 2003) and Christine Grahame (SNP MSP) (January 2004)
[3] Scottish National Party Manifesto (1999) *Manifesto for the 1999 Scottish Parliamentary election* accessed at www.psr.keele.ac.uk/area/uk/ass/snp/man99.pdf on 4/12/03
[4] Interviews with Shona Robison (SNP MSP) (December 2003) and Christine Grahame (SNP MSP) (January 2004)

214

Opposition parties are also motivated by the desire to cause the government embarrassment. In Scotland, as the Labour Party were initially opposed to free personal care by supporting the policy the SNP could highlight Labour's inability to represent Scotland. Additionally, the existence of coalition government shaped the opposition parties' response to the free personal care issue. The SNP knew it was an issue on which there was disagreement between the coalition partners, so pursuing free personal care had the potential to cause conflict and tension within the Executive. Therefore, after McLeish became First Minister, the SNP took a decision to focus on free personal care, primarily because 'there was a strong belief within the SNP group that they could get movement on the issue'.[5] The SNP group held discussions with a number of Liberal Democrats about how to ensure a majority in favour of free personal care.[6] Interestingly, despite their commitment to free personal care, the Conservatives were not involved in the meetings between the Liberal Democrats and the SNP, and according to MSP Mary Scanlon were not even aware that these meetings took place.[7] This highlights that one of the SNP's strategies was to pursue policies by targeting the Liberal Democrats. One SNP MSP pointed out that on free personal care there were enough Liberal Democrats to force the Scottish Executive's hand, so the SNP's role was to ensure they did.[8] However, perhaps inviting the Conservatives to discussions on the free personal care issue would have allowed the opposition parties to develop a more coherent strategy for securing a commitment to free personal care within the Scottish Parliament. The Conservative's absence here hints at a lack of trust or willingness

---

[5] Interview with Shona Robison (SNP MSP) (December 2003)
[6] *Ibid.*
[7] Interview with Mary Scanlon (Conservative MSP) (December 2003)
[8] Interview with Christine Grahame (SNP MSP) (January 2004)

to cooperate between them and the other parties, even when a common interest exists.

The manipulation of the smaller coalition party to encourage policy change within the Executive is an interesting feature of Scottish devolution. A Conservative MSP interviewed by Simeon also 'admitted that the opposition strategy in the Parliament is to compare the Liberal Democrat election manifesto with the coalition agreement and then raise for debate all those items which the Liberal Democrats had been forced to abandon in order to reach agreement with Labour'.[9] The opposition parties knew the Liberal Democrats were in favour of free personal care on a UK wide basis, so suspected that by applying pressure on them in Scotland the coalition would face tensions. Whilst the SNP interviewees suspected such pressure could result in policy change, the Conservatives tended to be more cautious, claiming that on free personal care 'Liberal Democrats like to claim the credit for it, but I don't think they were influential... they wouldn't have voted against the Executive, they never have'.[10] Perhaps this difference in attitude helps to explain why the Conservatives were not involved in the negotiations between the SNP and the Liberal Democrats to secure free personal care.

The strategy of targeting the minor coalition party placed the Liberal Democrats in a difficult but also a powerful position. The dynamic in the Parliament meant that the Liberal Democrats' manifesto commitments offered key opportunities for policy divergence. Therefore, the Liberal Democrat manifesto helped to set the agenda of the opposition parties. By focusing on Liberal Democrat manifesto commitments,

---

[9] Simeon, R. (2003) 'Free Personal Care: Policy Divergence and Social Citizenship' in Hazell, R. *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, Exeter), p.230

the opposition parties put the Scottish Executive under pressure to adopt policies on issues such as social spending, normally associated with the left.[11] Such a dynamic also put the Scottish Conservatives in an unusual position. If they are to challenge the Scottish Executive by pressurising the Liberal Democrats, the Conservatives in Scotland will often find they are arguing for traditionally left-of-centre policies. As a result the Conservatives will be forced to embrace an ideological shift for political gain. Here we see how coalition government can shape and define ideological and policy change within other political parties, and thus influence the policies considered in the Parliament.

The UK Conservative Party were opposed to the implementation of free personal care in England and Wales, arguing that free personal care would 'not be a sensible use of the money. It is a question of priorities'.[12]   However, the Scottish Conservatives differed from the UK party line, instead taking a pro-free personal care stance. Mary Scanlon, the Conservative Health Spokesperson in the Scottish Parliament explained that the decision to support free personal care was taken with no consultation with UK party representatives, instead it was a unanimous decision taken due to the strong arguments in favour of the policy.[13] Her criticisms of charging for personal care centred on the fact that the existing policy was a discriminatory policy and went against ideas of equality.[14] Ideologically this places the Conservatives in the Scottish Parliament in a different position from the Conservatives at Westminster, who argued for a long-term care policy which largely maintained personal responsibility. It is worth noting that if the Conservatives had

---

[10] Interview with Mary Scanlon (Conservative MSP) (December 2003)
[11] Simeon, R. *op.cit.,* p.230
[12] White, M. (31 May 2001) 'Liberal Democrats and Tories battle for the grey vote' in *The Guardian*
[13] Interview with Mary Scanlon (Conservative MSP) (December 2003)
[14] *Ibid.*

not supported free personal care, the combined votes of the Liberal Democrats and the SNP would have not been enough to force free personal care on the Executive. In such a scenario, the Liberal Democrats would have known they could not win a vote on free personal care, and so would have probably not voted against the Executive on the issue. Therefore, the role of the Scottish Conservatives, diverging from the UK-wide party position, in favour of a more left-wing proposal, played an important role in securing policy divergence in the free personal care case.

The degree to which the Scottish Conservatives pushed the issue of free personal care is also of interest. Whilst the SNP played a significant role on free personal care by submitting private members bills and asking parliamentary questions, it was the Conservatives who took the lead in raising the free personal care issue within the Parliament. For example, the day after the UK government revealed its response to the Royal Commission on Long-Term Care, in July 2000, it was the leader of the Conservatives in the Scottish Parliament, David McLetchie, who lodged a motion calling 'upon the Scottish Executive to implement in full the recommendation of the Royal Commission'.[15] It appears that the Scottish Conservatives were proactive on the free personal care issue primarily due to the design of the institutional setting in which they operated, discussed in the next chapter. However, in addition David McLetchie and Mary Scanlon played important roles, with the strength to act autonomously from their party in England and Wales, and the ability to campaign vigorously for free personal care.

---

[15] McLetchie, D. (lodged on 28 July 2000) 'S1M-1114: Long-Term Care' in *Business Bulletin 122/2000: Section F Motions and Amendments* accessed at www.scottish.parliament.uk on 5/12/03

As in Scotland the main opposition party in the National Assembly for Wales, in terms of the number of seats held, were the nationalists. Plaid Cymru supported free personal care, but their support was complicated by the model of devolution in Wales. Plaid's policy director explained that the 'limited nature of devolution meant we had to take a two-pronged approach on long-term care. Benefits are a reserved matter so on many issues we have no choice but to target the UK Government'.[16] This two-pronged approach is illustrated by Plaid's position on free personal care in their 2003 Assembly election manifesto,

> 'The National Assembly, unlike the Scottish Parliament currently lacks the powers to implement the Royal Commission's recommendations, while the injustice of the Barnett Formula would make it extremely difficult to meet the cost. A Party of Wales Government will press for both these deficiencies to be corrected'.[17]

Plaid Cymru did attempt to pressurise the Welsh Assembly Government to act on free personal care. For instance, during a debate on the Welsh Assembly Government's NHS plan, Plaid Cymru proposed an amendment challenging 'the partnership administration to examine, in both Plenary and Committee debate, the consequences of extending free personal care'.[18] However, Plaid Cymru's position on free personal care issue at times appeared confused. Plaid's approach to free personal care was criticised by Peter Black, a Liberal Democrats AM, who argued that Plaid focused on the UK government and failed to develop long-term care proposals for the National Assembly.[19] Plaid Cymru's desire to push the issue of free personal care also seemed at times half-hearted. For instance, unlike the opposition parties in Scotland, Plaid Cymru did not organise a minority party debate on free personal care. Additionally, when representatives from the major political parties in

---

[16] Interview with Lila Haines (Plaid Cymru's Policy Director) (June 2004)
[17] Plaid Cymru Manifesto (2003) *Manifesto 2003* accessed at www.plaid.cynru.org on 8/8/04, S.II,B(c)
[18] National Assembly for Wales, Plenary Session, 1st March 2001
[19] National Assembly for Wales, Plenary Session, 21st March 2002

Wales were asked which five pieces of primary legislation they would like to see introduced whilst the Liberal Democrat leader, Mike German, mentioned his first choice would be free personal care, Plaid Cymru's policy director, Cynog Dafis, failed to mention free personal care at all.[20] As a result, Plaid Cymru's approach to free personal care appears haphazard. When long-term care was on the Assembly's agenda Plaid AMs made the case for free personal care. For example, Plaid Cymru's Health Spokesperson, Dai Lloyd, advocated free personal care when long-term care was on agenda of the Health and Social Service Committee.[21] However, Plaid AMs rarely proactively forced free personal care onto the agenda, indicated by their failure to raise questions or hold minority party debates on free personal care. Additionally Plaid Cymru seemed to lack a coherent strategy for pursuing free personal care, and it seems that they simply supported measures to ease long-term care costs for the elderly when the issue arose in the Assembly, and when they remembered to do so. For instance, when the Assembly were discussing the sums allowed for personal requirements for those in long-term care (an equivalent to pocket money for older people in care) Plaid Cymru proposed an amendment to raise capital limits. Liberal Democrats AM Peter Black argued that it was strange that the Plaid Cymru proposal seemed to come from nowhere, as the party had not raised the issue 'in the Health and Social Services Committee when it considered its budget priorities... [and] It was not raised either as a priority issue during the budget debate'. [22]

The weakness of Plaid Cymru's advocacy of free personal care is especially obvious when we compare the party's actions with opposition parties in Scotland. The

---

[20] Shipton, M. (18 November 2001) 'Make our Day!' in *Wales on Sunday*, p.17
[21] National Assembly for Wales Health and Social Services Committee (20 June 2001) *Minutes HSS-10-01 (min)* accessed at www.wales.gov.uk on 25/05/04

Scottish Conservatives in particular were proactive on the free personal care issue; they raised free personal care as the issue for their minority party debate and frequently asked the Scottish Government about their response to the Royal Commission. It is possible that Plaid's behaviour can be explained by a weaker commitment to free personal care. However, all Plaid Cymru interviewees argued that their commitment to free personal care ran deep; additionally Plaid's Policy Director argued that the party made such a fuss about free personal care that they had to actively take steps to follow their commitment through.[23] Therefore, it is worth exploring why, despite Plaid's commitment to free personal care, they were less vocal on the issue than the Conservatives in Scotland.

It is possible that Plaid Cymru were less well organised than the Conservatives in Scotland, meaning that the party had to respond on a case by case basis rather than developing a strategic plan. However, Plaid Cymru has vigorously pursued other issues, such as extending free eye tests, with great success. Plaid Cymru interviewees suggested that their weaker position on free personal care was due to the Welsh devolution settlement, which made free personal care less likely in Wales because primary legislation from Westminster would first be necessary.[24] The improbability of primary legislation being passed by the UK government encouraged some AMs to argue that the party should focus on other issues. For example, Dai Lloyd accepted that free personal care was less of a campaigning issue for Plaid Cymru than for opposition parties in Scotland because the party believed they had little chance of success.[25] However, Lila Haines, Plaid Cymru's policy director suggested that whilst the improbability of success was a consideration, she claimed

[22] National Assembly for Wales, Plenary Session, 21st March 2002
[23] Interview with Lila Haines (Plaid Cymru's Policy Director) (June 2004)
[24] Interview with Dai Lloyd (Plaid Cymru AM) (June 2004)

it was not a key consideration. [26] In addition Lila Haines suggested that Plaid decided to campaign for free personal care across different levels of government because they genuinely believed in the policy and wanted to get the issue onto the political agenda, even if they were unsuccessful at shaping the policy itself.[27]

As for the SNP, free personal care also offered Plaid Cymru a perfect opportunity to highlight their wider constitutional aims. For instance, the Plaid Cymru leader at the time, Ieuan Wyn Jones, argued that the Scottish Parliament's decision to provide free personal and nursing care, was an indicator of 'what real devolution can do to bring about real improvements in people's lives'.[28] As a result Ieuan Wyn Jones suggested that the National Assembly should have the same powers as the Scottish Parliament as only with such powers could the Assembly 'take real action'.[29] Plaid only began to argue for free personal care once the Scottish Parliament had decided to implement the policy, implying that the free personal care issue became particularly important to Plaid when they saw that Wales was unable to adopt the same policy as Scotland. For example, Plaid submitted their first motion calling for free personal care to be considered by the National Assembly in February 2001, just a few weeks after the decision was taken in Scotland. Plaid's health spokesperson, Dai Lloyd, admitted that issues such as free personal care and the student finance package in Scotland helped Plaid to communicate their constitutional aims. He argued that the concept of greater independence for Wales frightened some people but by focusing on popular policies which would only be achievable through greater

[25] Interview with Dai Lloyd (Plaid Cymru AM) (February 2003)
[26] Interview with Lila Haines (Plaid Cymru's Policy Director) (June 2004)
[27] *Ibid.*
[28] Jones, I.W. (11 February 2001) 'Its Time to Fight back for Wales' in *The News of the World*
[29] *Ibid.*

independence Plaid could more easily highlight the benefits of devolving more powers to the Assembly. [30]

In addition to Plaid's argument that the Assembly was incapable of securing free personal care due to the devolved settlement, other members of the party suggested that the Welsh Assembly Government was capable, and should do more. For instance, Helen Mary Jones argued that a 'strong Assembly position might persuade the Westminster Government to re-examine its ill thought-out and parsimonious response to the Royal Commission's recommendations overall'.[31] Therefore, on the one hand Plaid appeared to suggest that the National Assembly was unable to act on free personal care and so further devolution was necessary, and on the other hand, Plaid suggested that the Welsh Assembly Government was capable of persuading the UK Government to introduce free personal care if they acted decisively and adopted a strong position. However, usually Plaid Cymru AMs focused less on pressurising the Welsh Assembly Government to act on free personal care and more on using the issue to highlight the weaknesses in the Welsh Devolution settlement. As a result it appears that Plaid Cymru had an incentive to push free personal care onto the political agenda but perhaps had most to gain if their calls for free personal care were ignored.

The position of the Welsh Conservatives mirrored the position of the party at Westminster, and was in sharp contrast to the Scottish Conservatives. The Conservatives in Wales were sceptical of the case for free personal care, arguing that they 'remain to be convinced about dedicating the amount necessary to fund

---

[30] Interview with Dai Lloyd (Plaid Cymru AM) (June 2004)
[31] National Assembly for Wales, Plenary Session, 13th February 2001

223

free personal care'.[32]   In addition, David Melding, then the Conservative Health Spokesperson in Wales, argued that all of the other parties shared the Conservatives' reservations about the cost of the policy but were afraid to admit so in public.[33]   As a result Melding claimed that the Welsh Assembly Government were guilty of 'thorny politics' because they could blame the UK Government for the failure to implement free personal care even though there was a possibility that they might reach a similar conclusion.[34]   Whilst Melding's critique of the Welsh Assembly Government may hold some truth the Conservative party in Wales were also guilty of similar 'thorny politics'.

The Welsh Conservatives were generally opposed to free personal care due to cost. However, for political reasons the Conservatives did not want to emphasise their opposition to free personal care.[35]   The desire to hide their opposition to free personal care may explain why there was some confusion about the Conservative's position on the issue.   In May 2002 a newspaper reported that there was a difference of opinion within the Conservative group, it stated that whilst David Melding had sympathies with free personal care he could not commit his group to supporting free care due to the cost implications.[36]   Melding argued that he was never convinced of the case for free personal care and the Conservatives unanimously agreed that implementing free personal care was not a serious option.[37]   Therefore, it is possible that Melding played down the Conservatives opposition to free personal care when discussing the issue with journalists.

---

[32] Interview with David Melding (Conservative AM) (February 2003)
[33] *Ibid.*
[34] *Ibid.*
[35] Interview with David Melding (Conservative AM) (June 2004)
[36] Bodden, T. (2 May 2002) 'We Want a Minister for OAPs; Call for Free Care for the Elderly' in *The Daily Post*, p.5
[37] Interview with David Melding (Conservative AM) (June 2004)

Interestingly, therefore, the Conservatives had no interest in placing free personal care on the political agenda because their opposition to the policy would have become obvious.

Melding suggested that the Assembly's final position of challenging the UK Government to introduce free personal care whilst not committing to pay for it 'made the Assembly a laughing stock'.[38] However, the Conservatives did vote with the rest of the Assembly in support of the Advisory Group's report on a strategy for older people, which meant accepting the proposal to 'challenge the UK Government to fund and implement free personal care in the context of UK taxation, benefits and inheritance policy as the Royal Commission had intended'.[39] As the Conservatives were opposed to free personal care, it appears that they may have agreed to challenge the UK Government simply as a way of avoiding drawing attention to the issue and their position in relation to it.

The opposition parties in Scotland and Wales all faced unique challenges and opportunities due to the devolved structures in which they operated. The political make-up of the Scottish Parliament and the National Assembly for Wales encouraged the opposition parties to behave in ways, which would have been less likely in Westminster. In Scotland there was a considerable degree of consensus between the opposition parties, with the SNP, Conservatives, Scottish Socialists, Greens and Independents all in favour of free personal care. It is particularly interesting that the Scottish Conservatives not only decided to support free personal care, but took a particularly strong lead in pushing the issue, as the party at

[38] Interview with David Melding (Conservative AM) (June 2004)
[39] Welsh Assembly Government Advisory Group on a Strategy for Older People in Wales (May 2002) *When I'm 64... and more,* p.53

Westminster and the Welsh Conservatives were against free personal care. In Wales the Conservatives were against free personal care and had an interest in preventing discussion of free personal care arising on the political agenda, so they could avoid stating their opposition to the publicly popular free personal care policy. The Welsh Conservatives lack of support for free personal care meant that in the National Assembly for Wales the opposition parties were divided, with Plaid Cymru and the Liberal Democrats the only parties in favour of free personal care.

Free personal care presented the nationalist parties in Scotland and Wales with the opportunity to raise the profile of constitutional issues. Plaid Cymru and the SNP both suggested that free personal care would only be achievable if the devolved institutions had greater powers. However, in Wales the nationalists never rigorously campaigned for the free personal care issue, partly due to poor organisation and a belief that focusing on the issue was pointless, but also because the Welsh model of devolution made it more difficult for the opposition parties to hold the Welsh Assembly government to account. Devolution also created an interesting paradox for the nationalist parties, as despite their support for free personal care it was possible that greater electoral success could be gained if free personal care was not implemented successfully in Scotland and Wales, thus allowing the nationalist parties to highlight the weaknesses in the devolution settlements.

7.2 Health Committees

As discussed in chapter two it can be difficult to determine whether to treat entities such as the Scottish and Welsh health committees as actors or as institutions. It was decided that it would be helpful to at times define them as an actor, and at others they could better by understood as institutions. In this discussion of the

committee the focus will be on its role as a purposeful actor, with its institutional role explored in greater depth in the next chapter.

In Scotland the cross-party Health and Community Care Committee spent ten months conducting its inquiry into community care and concluded with members unanimously supporting the principle of free personal care, which it estimated would cost £110 million per year.[40] The unanimity of the Committee members was also mirrored by those giving evidence to the Committee, as the clear majority of them supported free personal care. During the Committee's inquiry into community care, evidence was taken from a range of elderly organisations and policy experts. Interviewees regularly commented on the similarity of the views expressed to the committee from a range of sources, 'perhaps there were 1 or 2 dissenting voices but they were the exception, and they weren't particularly memorable'.[41] Stewart Sutherland, the chair of the Royal Commission on Long-Term Care, was one of the first to give evidence to the Committee, and made a strong case for free personal care. In addition, expert after expert supported Sutherland's evidence. With no strong counter arguments against free personal care it would have been difficult for members of the Committee to dismiss it. Therefore, the Committee added its support to those calling for free personal care, and galvanised support for this consensus position, especially inside the Scottish Parliament. The Health and Community Care's inquiry was meant to be a broad inquiry into options for long-term care, but developed a specific focus on free personal care due to the concerns expressed when it took evidence.[42] Therefore, the Committee's inquiry provided the

---

[40] Health and Community Care Committee (2000) *16th Report 2000: Inquiry into the Delivery of Community Care in Scotland* accessed at www.scotttish.parliament.uk on 18/11/03
[41] Interview with Alison Petch (Member of the Care Development Group) (February 2004)
[42] *Ibid.*

opportunity for pro-free personal care actors to voice their views, thus publicly developing the case for the policy.

The unanimity of the Committee's conclusions with the pro-free personal care lobby who gave evidence, implies that these actors can be viewed as an advocacy coalition on free personal care, a group of 'actors from a variety of public and private institutions at all levels of government who share a basic set of beliefs (policy goals plus causal and other perceptions) and who seek to manipulate the rules, budgets and personnel of governmental institutions in order to achieve these goals over time'.[43] Such a definition implies that the Committee lost its ability to objectively examine the arguments for free personal care, perhaps being captured by the pro-free personal care lobby, and joining the free personal care advocacy coalition. Such an analysis is supported by Alison Petch's recollection that the question of whether free personal care was affordable was never considered by the Committee.[44] Perhaps this lack of detailed scrutiny also helps to explain why in the Scottish Parliament's second term, the Audit Committee returned to the issue of free personal care to examine concerns about the cost of the policy, and the Health Committee launched an inquiry to investigate its implementation.[45] However, the detail and quality of the Health and Community Care Committee's report was mentioned by several interviewees. For example, Alison Petch, a member of the Care Development Group, argued that despite being a young committee its performance was impressive.[46] McLeish suggested that the key contribution of the

---

[43] Sabatier, P.A and Jenkins-Smith, H.C. (1993) 'The Study of Public Policy Processes' in Sabatier, P.A and Jenkins-Smith, H.C. (Eds.) *Policy Change and Learning: An Advocacy Coalition Approach* (Westview Press, Colarado), p.5
[44] Interview with Henry McLeish (First Minister) (December 2003)
[45] The Scottish Parliament (21 March 2005) *Press Release: Audit Committee doubts true cost of free personal care* and The Scottish Parliament (31st August 2005) *Press Release: Health Committee to examine free personal care* accessed at www.scottish.parliament.uk on 2/9/05
[46] Interview with Alison Petch (Member of the Care Development Group) (February 2004)

Committee to the free personal care debate was its 'informed support'.[47] McLeish suggested that the Committee played a major role in pressurising the Scottish Executive to reverse their decision, by offering strong and informed support for free personal care.[48] If the Health and Community Care Committee's report had concluded against introducing free personal care in Scotland it would certainly have been much more difficult for those in favour of free personal care to justify their position. Additionally, if the Health Minister's opposition to free personal care was mirrored in the Committee's report her position within the cabinet would have been strengthened, making it more difficult for McLeish to secure support for free personal care. Therefore, the Health and Community Care Committee helped to build a consensus on free personal care and made those with opposing views look increasingly isolated.

In addition to offering informed advice on free personal care, the Health and Community Care Committee's report also helped to push free personal care up the political agenda. The report received considerable coverage in the press at the time of its publication, helped by the fact the report was leaked a few days before it was officially due to be released. One interviewee found this amusing and helpful, as leaked reports make issues look important, a view not commonly associated with the care of the elderly.[49] Therefore, by holding an inquiry into the issue, the Committee galvanised support within the Scottish Parliament and outside, isolated critics of the proposal, strengthened the evidence base and raised the profile of free personal care.

---

[47] Interview with Henry McLeish (First Minister) (December 2003)
[48] Ibid.
[49] Interview with Alison Petch (Member of the Care Development Group) (February 2004)

In sharp contrast, the Health and Social Services Committee in the National Assembly for Wales contributed little to the free personal care debate. The clerk to the Committee argued that the lack of attention to free personal care was primarily because the Assembly lacked the money to introduce the policy, so committee members felt the issue was not a high priority.[50] In addition, committees in Wales conduct far fewer inquiries compared to those in Scotland. For instance, in the Assembly's first term the Health and Social Services Committee undertook three inquiries, into a Children's Commissioner, an extension of free eye tests and BSE. Therefore, it was more difficult for free personal care to arise on to the Committee's agenda in Wales. Also, the topics on which the Health and Social Services Committee has undertaken inquiries have all been areas on which there is common agreement for action. For instance, the proposal to introduce a Children's Commissioner for Wales was supported by all the political parties, with Labour, the Liberal Democrats and Plaid committing to introducing the Commissioner in their manifestos for the 1999 Assembly election. As discussed above, free personal care was a more contentious issue, with the Conservatives and Labour opposed to introducing free personal care on a Wales only basis. Dai Lloyd argued that the Labour majority on the Committee combined with the Health Minister's membership of the Committee meant that it had been impossible to force the committee to examine anything contentious.[51] A wide range of interviewees also felt that the minister's membership of committees made it difficult for the committee to establish an independent identity.

---

[50] Interview with National Assembly for Wales Health and Social Services Committee Clerk (June 2004)
[51] Interview with Dai Lloyd (Plaid Cymru AM) (June 2004)

In contrast to the Scottish Committee where members occasionally escaped their partisan positions to challenge the Scottish Government, this was much more difficult in Wales, a problem intensified 'If the Committee Chair is from the same party as the minister... especially if they are also buddies'.[52] In the case of the Welsh Health and Social Services Committee, the chair was the Liberal Democrat Kirsty Williams. Williams was a strong supporter of free personal care and was not afraid to challenge the Health Minister to offer a greater commitment to free personal care. However, Williams was criticised for being an ineffective counterweight to the Health Minister Jane Hutt and for failing to provide strategic direction to the Committee.[53] Tensions within the Committee meant that Plaid Cymru challenged her position, arguing that she should move towards a more investigative role, examining long-term concerns rather than considering issues on a day-to-day basis.[54] The complaint against the Committee's lack of strategic direction may also help to explain why contentious issues, such as free personal care, did not appear on the Committee's agenda, and perhaps Kirsty Williams's leadership was lacking in this area. However, above all, Plaid's challenge highlights a lack of unity in the Committee, with the in-fighting preventing Plaid and the Liberal Democrats from forming a united front on free personal care.

The contrast between the Health Committees in Scotland and Wales highlights once again that free personal care was taken more seriously in Scotland than in Wales. The Committee in Scotland took ten months to consider detailed evidence and submit a comprehensive report on free personal care, whilst in Wales free personal

---

[52] Interview with National Assembly for Wales Health and Social Services Committee Clerk (June 2004)
[53] Richardson, N. (November 2000) *Health Policy and the National Assembly for Wales: Monitoring Devolution and Health August to November 2000* (Constitution Unit, IWA and Nuffield Foundation) accessed at www.ucl.ac.uk/constitution-unit/files/devolution_and_health/walnov00.pdf on 27/05/04
[54] *Ibid.*

care was barely discussed. In addition, in Scotland the Health and Community Care Committee developed a consensus on free personal care, with all members of the Committee supporting the findings of the Committee's report, that free personal care should be implemented in Scotland. In Wales the Health and Social Services Committee was divided, and tensions between Committee members and the Committee Chair prevented a unified front developing on free personal care, even between Plaid Cymru and the Liberal Democrats.

In Scotland the Health and Community Care Committee's report provided detailed evidence on free personal care, which strengthened the case for the policy and made those who opposed it look increasingly isolated. In addition, by developing such a detailed report the Health and Community Care Committee provided pressure groups and policy experts with the opportunity to express their views. As most pressure groups and policy experts giving evidence to the Committee were in favour of free personal care, it meant that the Committee presented the Parliament with the picture that there was a consensus on free personal care and in their inquiry gave support to the advocacy coalition on free personal care.

7.3 Policy Experts and Pressure Groups

In Scotland actors outside the Parliament played an important role during the free personal care debate. There were three key ways in which pressure groups and policy experts participated in the policy-making process; by conducting public campaigns and lobbying MSPs, by giving evidence to the Health and Community Care Committee, and through participation in the Scottish Executive's policy groups. Most individuals and organisations which sought to shape policies on the long-term care of the elderly were involved in all three of these activities.

The fact that the Royal Commission produced a minority report meant that arguments about free personal care continued after the Commission had reported, keeping the debate visible and alive.[55] Interestingly, the Chair of the Commission, Lord Sutherland, was a particularly high-profile campaigner for free personal care. Sutherland became a fierce policy advocate, lobbying politicians, giving evidence to the Health and Community Care Committee and campaigning in the press. As Alison Petch notes, it is rare to find the chairs of Royal Commissions pushing policies, 'normally they just complete the report and wait for the response'.[56] Sutherland focused on encouraging MSPs to diverge from the UK Government, 'MSPs would have to have been both courageous and bold, which is why I wonder if the arm of Westminster is the real reason Scotland stopped short of its recommendations'.[57] However, prior to McLeish's election as First Minister, Sutherland was fairy satisfied with the care for the elderly policies produced in Scotland, 'even Sutherland regarded it as a good outcome, which was much better than the English package'.[58] So, whilst Sutherland upped the pressure once McLeish hinted at a move towards free personal care, he only applied this pressure because McLeish re-opened the debate.

In opposition to Sutherland and his arguments was Lord David Lipsey, one of the authors of the Royal Commission's minority report. Lipsey, like Sutherland, regularly appeared in the press, for instance, suggesting that 'Free long-term care

---

[55] Interview with Scottish Executive Senior Civil Servant (February 2004)
[56] Interview with Alison Petch (Member of the Care Development Group) (February 2004)
[57] McCann, A. (13 October 2000) 'Sutherland attacks London pressure over reforms to care of the elderly' *The Herald,* p.1
[58] Interview with Scottish Executive Senior Civil Servant (February 2004)

would attract elderly migrants and turn Scotland into a residential home'.[59] As a result Lipsey asked 'McLeish and his colleagues, in the name of fairness and equality, to think again'.[60] However, Lipsey's arguments were ridiculed by sections of the press who questioned the 'queues of cars at the border as the English middle class rush north with granny in the back to be left on the doorstep of Dundee social services'.[61] Lipsey's arguments helped to keep the debate on free personal care alive, providing pro-free personal care actors with arguments to respond to. Therefore, far from diminishing the case for free personal care, it is possible that Lipsey added to the pressure on the Scottish Executive to act.

SNP MSP, Christine Grahame, felt that Stewart Sutherland had a direct impact upon the Executive's acceptance of free personal care. She argued that his high profile, personable and engaging character made him a persuasive force.[62] Alison Petch explained that Sutherland put forward a very powerful case for free personal care and suggested that politicians would 'have to be strong and sure of their ground to contradict him'.[63] Sutherland was clearly a well-respected and well liked expert, who was able to persuade many of his case. The combination of inexperienced politicians, in a young Parliament, dealing with a complicated issue, meant Sutherland's role as a policy advocate was enhanced. Interestingly, all those in the Health and Community Care Committee interviewed for this thesis mentioned Sutherland as an important and influential actor. For example, Keith Raffan said that Sutherland's arguments were one factor which convinced him of the virtues of

---

[59] Lipsey, D. (21 January 2001) 'Why free care for elderly is a road to ruin' in *Sunday Times*
[60] *Ibid.*
[61] 'Made in Scotland: The Merit of Doing Things Differently' (27 January 2001) in *Society Guardian* accessed at www. society.guardian.co.uk/socialcare/story/0,7890,430474,00.html on 1/03/04
[62] Interview with Christine Grahame (SNP MSP) (January 2004)
[63] Interview with Alison Petch (Member of the Care Development Group) (February 2004)

free personal care,[64] and Christine Grahame saw Sutherland and opposition party pressure as the key factors which encouraged the Scottish Executive to commit to free personal care.

Campaigning for free personal care was another channel commonly adopted by civil society actors in favour of the policy. For example, a year after the Royal Commission on long-term care had reported, Help the Aged organised a press stunt with older people protesting next to a giant clock, indicating that time was ticking.[65] At this stage, the Scottish Parliament was in session and a number of MSPs were interested in the attempt to raise the profile of the debate.[66] Pressure groups also attempted to use the Scottish parliamentary system to voice their concerns. For instance Age Concern submitted a petition calling for 'the Scottish Parliament to implement all of those recommendations contained in the report of the Royal Commission on Long-term care for the elderly, which its devolved powers permit'.[67] The petition was passed to the Health and Community Care Committee for consideration as part of their inquiry into Community Care. The strength of organisations lobbying for the elderly and free personal care was aided by their united position. Liz Duncan, from Help the Aged, explained that the only area of disagreement was on the legality of the UK Government's actions over Attendance Allowance.[68] In addition to their press campaigns, civil society actors sought to increase support for free personal care through their involvement with the Health and Community Care Committee, where they had considerable success at persuading MSPs of their case.

---

[64] Interview with Keith Raffan (Liberal Democrat MSP) (February 2004)
[65] Interview with Liz Duncan (Director of Help the Aged Scotland) (February 2004)
[66] *Ibid.*
[67] Petition- PE77 accessed at www.scottish.parliament.uk/S1/parl_bus/petitions1.htm on (01/03/04)
[68] Interview with Liz Duncan (Director of Help the Aged Scotland) (February 2004)

The final method employed by pressure groups and policy experts to influence the free personal care policy was through their direct involvement in groups established by the Scottish Executive. The Scottish Executive launched two groups of significance to the free personal care policy; the Care Development Group (CDG), which developed 'proposals to ensure that older people in Scotland have access to high quality and responsive long-term care in the appropriate setting and on a fair and equitable basis, including proposals for the implementation of free personal care',[69] and the Implementation Steering Group which focused on how to implement free personal care throughout Scotland. Much of the work of these groups was highly technical and was done after a commitment to free personal care had been made. Members of the CDG and the Implementation Group, such as Mary Marshall (Director of the Dementia Services Development Centre), Jim Jackson (Chief Executive of Alzheimer's Scotland) and Alison Petch (Professor of Community Care Studies at Glasgow University) were advocates of free personal care. The CDG was chaired by Malcolm Chisholm, then the Deputy Health Minister, who was sympathetic to free personal care. Alison Petch claimed that members of the CDG were 'astounded by Chisholm's involvement... not only was he there week after week chairing the meetings but was intimately involved in debates and discussions'.[70] Petch argued that Chisholm's direct, hands-on involvement didn't seem usual,[71] and was taken to indicate his personal support for the policy.[72] Therefore, those developing the details of the policy all seemed to operate with a great deal of consensus. The extensive use of civil society in developing policy

---

[69] Care Development Group (14 September 2001) *Fair Care for Older People* accessed at www.scotland.gov.uk/library3/health/cdgr-00.asp

[70] Interview with Alison Petch (Member of the Care Development Group) (February 2004)

[71] *Ibid.*

[72] *Ibid.*

236

proposals in Scotland, one ex-civil servant argued, can be explained by the lack of policy development expertise within the Scottish Executive.[73] As it is impossible for the Scottish Executive to replicate policy research in Whitehall, this ex-civil servant suggested that professionals and experts from civil society needed to be involved in policy-making.[74] Once involved in the policy-making process civil society actors may be able to have a real impact on policy design, however, those involved at this level are invited by the Scottish Executive due to their similar interests and opinions, as one interviewee pointed out 'we wouldn't invite those who disagreed with our overall objectives'.[75] For example, a member of the CDG expressed how all members of the group were particularly concerned with shifting the delivery of care from residential setting to the home, but this focus was directed and pushed forward by Malcolm Chisholm.[76]

Devolution appeared to offer policy experts and pressure groups an enhanced role in policy-making, providing them with a variety of routes into the policy-making process. Lord Sutherland clearly played a role in galvanising support for free personal care, and having the opportunity to give evidence to the Health and Social Services Committee gave him a platform from which to publicly make his case. As Scotland lacked experience in policy development, compared to Westminster, actors from civil society have often found they have been heavily involved in policy-making in Scotland. In the free personal care case experts were used to finalise the technical details of the policy once a commitment had been made. Interestingly although pressure groups and policy experts were disappointed by the Scottish Executive's initial decision not to implement free personal care they tended to

---

[73] Interview with Scottish Executive Senior Civil Servant (February 2004)
[74] *Ibid.*
[75] *Ibid.*

237

accept that the Scottish policy on long-term care was better than the English model. Attempts were made to push free personal care, but the major efforts were directed at the UK Government, as most pressure groups and policy experts thought that free personal care should be implemented at the UK level. Therefore, the importance of pressure groups and policy experts really came into play in the later stages of the free personal care policy formation, once McLeish had placed the issue on the agenda, and hinted at movement on the issue.

In Wales free personal care was not given the same level of press coverage as in Scotland, in fact there was almost no mention of the policy prior to the decision to implement free personal care in Scotland in January 2001. Welsh elderly pressure groups consistently argued that there were gaps in the Welsh Assembly Government's policies for older people and promoted the need to develop a holistic strategy for older people.[77] Elderly pressure groups in Wales united to form a loose alliance of organisations called Age Alliance. The alliance included 19 organisations, such as Unison, Age Concern Cymru, Help the Aged Cymru and the RNIB.[78] Following the free personal care decision in Scotland, Welsh pressure groups, in particular Age Concern Cymru, called on the Assembly to 'take up the recommendations of the Royal Commission on Long-term Care for the Elderly'.[79] The director of Age Concern Cymru, Robert Taylor, warned that 'If the rest of the UK didn't follow Scotland, a two-tier system would exist'.[80] Here Age Concern Cymru focused on both the UK Government and the Assembly, calling on both levels

---

[76] Interview with Alison Petch (Member of the Care Development Group) (February 2004)
[77] Interview with a representative from an elderly pressure group (February 2003)
[78] Fletcher, P. (7 November 2001) 'Free Personal Care for Elderly Sought; Hutt Scraps NHS Nursing Charges for OAPs' *The The Western Mail*, p.9
[79] Bailey, S. (16 February 2001) 'Follow Scottish care lead call: Charity wants equality for the elderly' in *South Wales Evening Press, p.16*
[80] *Ibid.*

of government to support free personal care. In a similar vein to Plaid Cymru, pressure groups in Wales were aware that in order to achieve free personal care they needed to target Westminster as well as the Welsh tier of government. Consequently, the Welsh Assembly Government got the impression that whilst 'most pressure groups were in favour of free personal care they generally accepted that it wasn't our gift to give'.[81]

When the Welsh Assembly Government took the decision to introduce free nursing care elderly groups used the opportunity to indicate their desire for free personal care. For instance, on 5th November 2001 the National Old Aged Pensioners Association of Wales handed over a petition calling for free personal care and their general secretary, Alun Davies, explained that 'We [Wales] should be like Scotland the brave where personal care is free'.[82] Therefore, Scotland was held up as a model for the Assembly, which highlighted the possibilities of devolution. Following the announcement of free nursing care in Wales, Age Alliance arranged a meeting to be held on 14th November 2001 to discuss a battle plan for pressuring the Welsh Assembly Government to adopt a more generous care package for older people. However, it is worth pointing out that this attempt to pressurise the Welsh Assembly Government to act on free personal care came at a late stage of the policy-making cycle, after the Welsh Assembly Government had announced their NHS strategy, which included plans for long-term care reform. Additionally, some organisations never fought for free personal care on a Wales only basis. Welsh pressure groups generally accepted that it would be difficult for the Welsh Assembly Government to fund free personal care out of its current resources so many organisations preferred

---

[81] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[82] *The Western Mail* (1 November 2001) 'Pensioners protest to Assembly over provision of personal care services', p.11

to focus on challenging the UK Government to act. For instance, interviewees from Royal College of Nursing (RCN) Wales explained their belief that a UK wide approach was needed on free personal care, so the UK organisation, RCN UK, took the lead role on the issue.[83] As a result, compared to Scotland, there was a greater level of division amongst pressure groups in Wales. Whilst many Welsh pressure groups were convinced of the need for free personal care, they tended to believe that the policy needed to be funded by the UK Government, therefore, they focused their attention at this level of government instead.

In addition to their lobbying role, pressure groups in Wales also had input into developing the details of the long-term care policy. The Advisory Group on a Strategy for Older People, although chaired by an AM, was primarily made up of pressure groups, local government and business representatives. In addition to the members of the Advisory Group, a wide range of organisations and individuals were consulted through its work. The Advisory Group considered open-ended questionnaires, conducted focus groups throughout Wales, took detailed evidence from a range of organisations and considered a range of papers and literature reviews.[84] In a sense here the Advisory Group played a similar role to the Health and Community Care Committee in Scotland, hearing evidence and providing a forum for examining the pros and cons of free personal care.

There were a number of disagreements about free personal care within the Advisory Group. Local authorities and health service representatives said that they could not endorse a recommendation for free personal care on a Wales only basis, whilst

---

[83] Interview with Angharad Davies and Greg Walker (Representatives from RCN Cymru) (February 2003)
[84] Ibid.

many representatives from voluntary organisations wanted a clear commitment to actually implement free personal care.[85] In the end the Advisory Group accepted that a policy of free personal care should only be pursued if there is a policy change in England, as 'More generous treatment, relative to England, would have to be supported from the Assembly's budget and compete with other demands for resources'.[86] The Advisory Group's report claimed it would be difficult to justify reallocating money from other areas in order to pay for free personal care because of the small number of people who would benefit from the policy.[87] It appears that whilst supportive of free personal care Welsh pressure groups were reluctant to apply considerable pressure on the Welsh Assembly Government to introduce free the policy due to the Assembly not having the ability to raise taxes in order to pay for the policy. The Welsh Assembly Government also benefited from a degree of good-will from elderly pressure groups. Community care experts and elderly pressure groups were impressed with the Welsh Assembly Government's strategy for older people. Their only complaint was that the strategy did not go far enough, particularly in its rejection of free personal care in Wales. As a result whilst the Welsh Assembly Government was under some pressure 'to do something' in relation to long-term care, as pressure groups and policy experts in Wales accepted that action was unlikely on free personal care, they tended to focus on related long-term care issues instead.[88]

Welsh pressure groups have at times been able to influence the Welsh Assembly Government's policies. For instance, representatives from Carers Wales explained

---

[85] Interview with Brian Gibbons (Deputy Health Minister) (February 2003)
[86] Welsh Assembly Government Advisory Group on a Strategy for Older People in Wales (May 2002) *When I'm 64... and more*, p.57
[87] *Ibid.*
[88] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)

that because a key civil servant responsible for drafting the Carers Strategy in Wales was ill, the strategy was drafted by two representatives from carers organisations with civil servants.[89] On the specifics of the long-term care policy, Age Concern argued that they were able to influence the focus of the document by suggesting that the older person's strategy should not just deal with health and social services issues but should take a broader approach.[90] All interviewees argued that elderly pressure groups, particularly those involved in Age Alliance, pushed for some action on free personal care. However, the focus of many of these groups was to achieve some level of ideological commitment to free personal care from the Welsh Assembly Government, rather than actual implementation of the policy.[91] Dame June Clark claimed that her plan was to overtly aim to secure primary legislation to allow for free personal care in Wales, but covertly aim to increase the pressure on the Welsh Assembly Government to raise nursing care payments above inflation each year.[92] Interestingly pressure group actors sought to take credit for placing free personal care on the remit of the Advisory Group on a Strategy for Older People. According to one director of an elderly organisation there was reluctance by the Welsh Assembly Government to include the issue of free personal care on the group's remit, as they sought to limit the investigation into devolved issues only, but they changed their position due to lobbying from pressure groups.[93] The reluctance of the Welsh Assembly Government to allow discussions of free personal care has been mentioned by many other interviewees. However, interviewees from the Welsh Assembly Government argued that it was the Liberal Democrats, rather than

---

[89] Interview with Roz Williamson and Sandra Burton (Carers Wales) (February 2003)
[90] Interview with Sarah Stone (Political Officer for Age Concern Cymru) (February 2003)
[91] Interview with a representative from an elderly pressure group (February 2003)
[92] Interview with June Clark (Member of the Royal Commission on Long-Term Care) (June 2004)
[93] Interview with a representative from an elderly pressure group (February 2003)

pressure groups, who persuaded them to place free personal care on the Advisory Group's remit.[94]

Pressure groups were fairly positive about their relationship with the Welsh Assembly Government, with most organisations under the impression that they were listened to. For instance, Phil Davies from the Alzheimer's Society believed that 'if you have a strong case and compile a good briefing document' then you will have a good chance of influencing policy.[95] People spoke highly of the Welsh Assembly Government's attitude, arguing that 'there is a real attempt by the Assembly Government to discuss their plans with interested parties before putting pen to paper'.[96] In particular the strategy for older people was considered as a 'model' of how the consultation process should operate.[97] Angharad Davies and Greg Walker from RCN Wales identified five different stages of consultation undertaken in relation to the Strategy for Older People. Firstly, civil servants devised an open ended questionnaire about older people in Wales, which was sent to key organisations. Secondly, the questionnaire responses went to the Advisory Group on the Strategy for Older People. Then the Advisory Group compiled a report, 'When I'm 64... and more'. The proposals from the Advisory Group went to the Assembly for discussion in plenary and in the Health and Social Services Committee, and was subsequently send out for consultation. Finally, the Welsh Assembly Government examined the consultation responses and responded to the Advisory Group's report by developing its Strategy for Older People.

---

[94] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[95] Interview with Phil Davies (Representative from Altzheimers Wales) (February 2003)
[96] Interview with Sarah Stone (Political Officer for Age Concern Cymru) (February 2003)
[97] Interview with Angharad Davies and Greg Walker (Representatives from RCN Cymru) (February 2003)

Jane Hutt, the Health Minister was highly regarded by most pressure group interviewees. She had worked in the voluntary sector, so there was a feeling amongst voluntary sector organisations that she understood their concerns and supported their work.[98] However, most interviewees from pressure groups experienced difficulties placing issues onto the Assembly's agenda. Representatives from RCN Wales explained that they did not believe they were able to influence the agenda because they were too busy responding to the huge number of consultation documents emanating from the Assembly.[99] The interviewee from Help the Aged agreed, arguing that their organisation was under-resourced so they could not respond to all the consultations they would have liked to, so had difficulty adopting a proactive approach.[100] Pressure groups in Wales during the first term were also forced to play catch-up, developing new systems to deal with the realities of devolution. For example, Help the Aged in Wales did not have a distinct identity in Wales pre-devolution. Until 1999 Help the Aged administered Wales and the Midlands as one unit.[101] Therefore, after devolution the Welsh section of the organisation had to start from scratch to develop a semi-independent policy-making role to account for the new devolved system. So it is not surprising that on the issue of free personal care many pressure groups struggled to devote much time and energy to publicly campaigning for the issue on a distinctly Welsh basis. Whilst organisations such as Help the Aged in Wales and Age Concern Cymru, did compile press releases and leaflets on the issue of free personal care, these tended to be arranged on a UK-wide basis. These organisations were involved in the Welsh Assembly Government's policy-making, for instance, Age Concern Cymru was

---

[98] Interview with Phil Davies (Representative from Altzheimers Wales) (February 2003)
[99] Interview with Angharad Davies and Greg Walker (Representatives from RCN Cymru) (February 2003)
[100] Interview with Ana Palazon (Director of Help the Aged Wales) (February 2003)
[101] *Ibid.*

involved in formulating the Welsh Assembly Government's consultation document and the director of Help the Aged in Wales was on the Advisory Group on a Strategy for Older People. However, this meant there was little time to conduct a high profile public campaign for free personal care in Wales. Consequently, compared to the Scottish Government, the Welsh Assembly Government was under less pressure from elderly organisations, as groups in Wales were too busy involved in actually formulating the details of the Strategy for Older People to scrutinise the Welsh Assembly Government's approach or raise public awareness about the opportunities for introducing free personal care in Wales. Additionally, there was poor press coverage of the Welsh Assembly, in comparison to Scotland, so that pressure groups struggled to communicate the case for free personal care to the public.

Many pressure groups felt that the Welsh Assembly Government lacked policy formation expertise. For instance, RCN Cymru interviewees argued that the concept of 'policy development' in Wales was a new phenomenon, meaning that politicians and civil servants had little personal experience of making policy, let alone creating policy within this new multi-level governance system.[102] Therefore, several pressure groups felt that the voluntary sector was being used to plug the policy development gap. Mark Drakeford, Policy Advisor to Jane Hutt, agreed that pressure groups were used to assist policy development but he highlighted how their input into policy development was very much on the Welsh Assembly Government's terms.[103] Drakeford discussed Jane Hutt's decision to abolish the health authorities in Wales. He argued that Jane Hutt decided to restructure the organisation of the NHS in Wales with no consultation on the decision itself, she wanted to do it and so took

---

[102] Interview with Angharad Davies and Greg Walker (Representatives from RCN Cymru) (February 2003)
[103] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)

the decision and announced it.[104]   However, once Hutt had taken the decision to

abolish the health authorities she consulted widely on how to do it. [105]   The

structural reform of the NHS was opposed by many organisations in Wales.[106]

Therefore, pressure groups in Wales could only influence the policy when the Welsh

Assembly Government asked for their input.

Whilst it is not surprising that governments seek to develop policy according to their

beliefs and ideology, there was some resentment amongst pressure groups about

the one sided nature of their relationship with the Welsh Assembly Government. As

one interviewee explained, the Welsh Assembly Government 'gets a lot out of the

voluntary sector for very little'.[107]   Labour AM Ron Davies argued a similar point,

claiming that whilst the Welsh Assembly Government pays lip service to the notion

of partnership with the voluntary sector they are primarily wheeled out 'to justify

decisions that have already been taken'.[108]   For instance, one interviewee felt that

the decision on how to organise payments for nursing care was taken without

reference to the consultation responses.[109]   She explained that during a discussion

with a civil servant about the nursing payment model he let it slip that the decision

to adopt the flat rate model had already been made, well before the consultation

process had ended.[110]   However, the Deputy Health Minister, Brian Gibbons, and the

Health Policy Advisor, Mark Drakeford, argued that everyone consulted on the

nursing payment method were in agreement about how to organise nursing

---

[104] *Ibid.*
[105] *Ibid.*
[106] Interview with Angharad Davies and Greg Walker (Representatives from RCN Cymru) (February 2003)
[107] Interview with Ana Palazon (Director of Help the Aged Wales) (February 2003)
[108] Interview with Ron Davies (Labour AM) (February 2003)
[109] Interview with a representative from an elderly pressure group (February 2003)
[110] *Ibid.*

payments and so they imagined it was obvious which policy they would adopt before the consultation process formally ended.[111]

In addition to representatives from pressure groups, the key policy expert outside the Welsh Assembly Government involved in campaigning on long-term care, issues was Dame June Clark, who previously was a member of the Royal Commission for Long-Term Care. Here we see parallels with Scotland, as ex-Royal Commissioner Sir Stewart Sutherland was a key figure in the Scottish campaign for free personal care. Dame June Clark regularly appeared in the press arguing for free personal care. For example, she expressed her disappointment that 'Whitehall has decided to make a distinction between clinical care and personal care. The former will be free in the Government's plans but the latter will not'.[112] However, Dame June Clark, like many others, tended to argue that it was the UK, rather than the Welsh Assembly Government, who needed to take action on the free personal care issue. Following the Assembly's unanimous decision to challenge the UK Government to fund free personal care, Clark did alter her stance slightly, focusing on what the Assembly could do to secure policy movement at Westminster, 'We now need to see everyone in the Assembly – government and opposition – putting pressure on Westminster to grant us the power and the resources to implement this for older people in Wales'.[113] Clark argued that she started to focus more heavily on introducing free personal care in Wales after the decision was taken by the Scottish

---

[111] Interviews with Brian Gibbons (Deputy Health Minister) and Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[112] Davies, G. (2 August 2000) 'Give us more medics, say GPs' in *South Wales Evening Post,* p.12
[113] Fletcher, P. (16 May 2002) 'Assembly urged to back move to free personal care for the elderly with cash' in *The Western Mail,* p.8

Executive to introduce the policy, suggesting that the Scottish decision 'allowed us to argue that if they could do it why couldn't we'.[114]

Clark's ability to apply pressure on Assembly Members was limited by the lack of opportunities within the Assembly to discuss the issue. Although Clark was invited to give a short presentation on long-term care to the Health and Social Service Committee on one occasion, this opportunity can be contrasted to the situation in Scotland where Sutherland was able to submit detailed evidence to the Health and Community Care Committee's inquiry into free personal care, discussed in greater depth in the following chapter.

In addition to lobbying the Welsh Assembly Government to adopt free personal care, Dame June Clark was also involved in formulating the detail of the Assembly's long-term care policies, as a member of the task force responsible for examining methods of arranging free nursing care. June Clark suggested that this task group had little input into policy-making. According to Clark, the task group started work and met a few times but then it 'just died'.[115] She explained that eventually meetings simply stopped being arranged and 'we then heard nothing more about it'.[116] Therefore, Clark was unable to build the same level of momentum on free personal care as Sutherland achieved in Scotland. In Wales it seemed to be much easier for the Welsh Assembly Government to close down the free personal care issue, simply ignoring advice or recommendations and allowing task groups looking at long-term care issues to simply disappear.

---

[114] Interview with June Clark (Member of the Royal Commission on Long-Term Care) (June 2004)
[115] *Ibid.*
[116] *Ibid.*

In Scotland pressure groups and policy experts have been operating with greater autonomy from England for a longer time than similar actors in Wales. Therefore, those pressure groups and policy experts in Wales campaigning for free personal care often faced greater organisational difficulties than similar actors in Scotland. In Wales pressure groups appeared to struggle with combining the dual roles of campaigning for free personal care and shaping detailed policy proposals with the Welsh Assembly Government, primarily due to capacity and resource difficulties. The Welsh devolution settlement also presented problems for pressure groups and policy experts in Wales, as they struggled to determine whether they should develop a distinctive position on free personal care or leave it to their better funded and organised UK group. Due to these problems pressure groups in Wales only focused on free personal care once the Scottish Parliament had developed plans to introduce the policy, as then it became perceived as a devolved issue. In contrast in Scotland pressure groups worked hard to develop a Scottish free personal care proposal as soon as the UK Government decided not to introduce the policy. In Scotland pressure groups and policy experts were involved in developing the free personal care policy at each stage of the policy-making process, from raising the issue in public petitions to designing the implementation of free personal care in the Care Development Group.

It is worth noting that ex-members of the Royal Commission on Long-Term Care, were key contributors to the free personal care debate in both Scotland and Wales. However, June Clark had fewer opportunities to argue for free personal care than Sutherland had in Scotland. For pressure groups and experts in Scotland the Health and Community Care Committee provided an important arena from where they could make the case for free personal care. Having fewer opportunities to discuss

free personal care, combined with the complex devolution settlement and inexperience meant it was more difficult for policy experts and pressure groups in Wales to campaign for free personal care than in Scotland, where greater pressure was sustained throughout the development of the free personal care policy.

7.4 The UK Government

UK governmental actors were involved in the free personal care debate in Scotland through their direct attempts to influence the Scottish Executive's policy and by the nature of devolution, which meant closely related issues were the responsibility of different levels of government. The UK Health Secretary, Alan Milburn, was mentioned by several interviewees as seeking to change the Scottish free personal care policy. For instance, McLeish claimed that Milburn was angry that free personal care had not been a commitment in Labour's manifesto and so before the Scottish Executive committed to expensive policies they should meet their manifesto commitments.[117] However, Milburn's main concern centred on the implications for England, he was worried that if Scotland moved on free personal care pressure would build on him to do the same, at a cost of around £1.2 billion for England and Wales.[118]

Simeon interviewed one civil servant, who admitted to conversations with UK Governmental actors after McLeish hinted at a policy review, where pressure was applied to the Scottish Executive not to introduce free personal care.[119] Additionally, even after the clear commitment to free personal care had been made in the

---

[117] Interview with Henry McLeish (First Minister) (December 2003)
[118] *Ibid.*.
[119] Simeon, R. (2003) *op.cit.,* p.225

250

Scottish Parliament in January 2001, there were attempts by UK Governmental actors to question what commitment had actually been made. For instance, John Hutton (then the UK Health Minister) argued that the Scottish Executive had committed to examine 'proposals for free personal care', rather than to introduce free personal care.[120] The Treasury appeared particularly concerned about the free personal care proposal, with Gordon Brown apparently warning against making 'rash promises'.[121] Brown was perceived as being particularly concerned about developments in Scotland because it is widely believed that problems on his 'home patch' can impact on his UK standing.[122] As Chancellor, Brown was able to have a direct impact on the Scottish Executive due to their reliance on the UK Government for funding. The political commentator Brian Taylor explained that when McLeish persisted with free personal care, 'the Treasury threatened to re-examine the extent of the funding available to Scotland. If the Scottish Executive could even contemplate free personal care, it plainly had too much disposable cash'.[123] The complaint that the Scottish Executive received too much money was also raised by backbench Labour MPs, who were apparently infuriated with Scotland's ability to commit to a superior care package.[124] As one civil servant noted, the over-funding of Scotland is a real issue for Labour Northeast MPs, and the issue will not go away, particularly as the Scottish Parliament commits to expensive public spending policies.[125] The financial settlement for Scotland has often been justified by the levels of poverty in Scotland, as the extra money would provide some equalisation with England. However, in the free personal care case Scotland committed to a

_____

[120] Hutton,J. quoted in McWhirter, I. (28 January 2001) 'Pensioners left dazed by the power of semantics' in *The Sunday Herald*, p.12
[121] *The Scotsman* (November 20th 2000) 'McLeish faces more pressure over care cash', p.2
[122] Taylor, B. (2002) *Scotland's Parliament: Triumph and Disaster* (Edinburgh University Press, Edinburgh), p.29
[123] *Ibid.*
[124] Interview with Sam Galbraith (Previously Minister for Health and Education) (February 2004)
[125] Interview with Scottish Executive Senior Civil Servant (February 2004)

policy that England decided it could not afford. Sam Galbraith argued that English Labour MPs did not expect Scotland's generous financial settlement to be 'used for policies which the English couldn't afford'.[126] A possible consequence of pursuing policies such as free personal care, which commit Scotland to spending resources on policies which cannot be afforded in England, is that the financial settlement will be re-examined. Galbraith argued that free personal care represents 'another nail in the coffin' for Scotland's financial settlement.[127] There are real concerns that the Barnett formula will be re-examined soon anyway, and it is possible that issues such as free personal care may not help Scotland's case in the long-term, as it indicates that the extra money Scotland receives per head of the population may not be funding Scotland's distinctive needs. It appears, therefore, that the UK Government can influence the Scottish Executive's actions without actually applying any pressure, due to the expectation of repercussions by Scottish actors.

Scottish politicians interviewed for this thesis were aware of the implications of committing to additional spending, and there was an acceptance by several interviewees that concerns about the financial settlement would affect how distinctive the Scottish Executive would be. Additionally one civil servant argued that such concerns should impact upon the Scottish Executive's priorities. He claimed that due to the threat to the Scottish block, there is a need to reduce services to England's per capita levels immediately, because if this is done when public spending is rising, then expenditure would not have to be cut in any area.[128]

---

[126] Interview with Sam Galbraith (Previously Minister for Health and Education) (February 2004)
[127] *Ibid.*
[128] Interview with Scottish Executive Senior Civil Servant (February 2004)

The case of Attendance Allowance indicated that whilst issues, such as free personal care, may be devolved, devolution does not allow for complete autonomy. As discussed in earlier chapters, Attendance Allowance is a benefit paid by the DWP, which was affected by the Scottish Parliament's decision to introduce free personal care. The assumption by the Care Development Group and the Scottish Executive's Health Department was that Attendance Allowance would be transferred to the Scottish Parliament. According to one political adviser there were rules established in a memorandum between the Scottish Executive and the UK Government which stated that if the Scottish Parliament passed legislation which created a cost burden on the UK then money would be transferred from Edinburgh to London.[129] However, the free personal care policy cut UK spending, which is apparently a grey area in the memorandum.[130] Despite the lack of clarity over funding arrangements, the clear expectation by those involved in formulating the free personal care policy in Scotland was that Attendance Allowance would be transferred no matter what the legal situation was because it was the right thing to do. A member of the CDG argued that 'we presumed due to natural justice we would get the money'.[131] This seems to highlight the danger of involving experts so closely in policy-making, as their beliefs about what should happen appeared to affect their judgement of what would happen. The moral case was simply that the free personal care policy would save the UK Government around £1.2 million a year, which most Scottish actors agreed should have been transferred.[132] The assumption that Attendance

---

129 Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
130 *Ibid.*
131 Interview with Alison Petch (Member of the Care Development Group) (February 2004)
132 Interview with Henry McLeish (First Minister) (December 2003)

Allowance would be transferred was so great that the CDG didn't even bother to look at alternative funding arrangements, there was no back-up plan.[133]

The confusion about Attendance Allowance also indicates a lack of communication between the governments, there had obviously been little detailed negotiation between them.[134] Such claims are supported by the experience of the CDG which requested a member of the DWP to attend their meetings on a number of occasions, but no one from the DWP ever attended.[135] The legal position is unclear, these things come down to interpretation, and as one interviewee noted, because the UK Government controls the money, it was the UK Government's view that mattered.[136] If the UK Government had wanted to assist the Scottish Parliament it could easily have transferred the money. One of Simeon's interviewees argued that the refusal to transfer DWP Attendance Allowance 'was about not co-operating with a policy they thought was stupid and inconvenient',[137] and 'if the UK Government 'were sympathetic, they would have found a way of helping'.[138] After McConnell became First Minister, in November 2001, he made a political decision not to pursue the matter through a legal challenge. There is an appeals mechanism, in the Joint Ministerial Council, which McConnell could have employed, but he accepted the DWP's position.[139] Whilst most interviewees felt that the Scottish Executive had a good case most argued that politically McConnell's stance was sensible. As McTernan pointed out, because the legal position wasn't completely clear it was not worth fighting about Attendance Allowance, he argued that there will be other

[133] Interview with Alison Petch (Member of the Care Development Group) (February 2004)
[134] Interview with Christine Grahame (SNP MSP) (January 2004)
[135] Interview with Alison Petch (Member of the Care Development Group) (February 2004)
[136] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[137] Simeon, R. (2003) op.cit., p.225
[138] Ibid.

battles in the future where there is a greater chance of winning and it's best to focus on them instead.[140]

In contrast to the Scottish case, where UK Governmental actors attempted to influence policy-making at every stage of the policy-making process, in Wales there was a lack of UK Governmental involvement until the Assembly took the decision to challenge the UK Government to fund and implement free personal care. The Assembly's stance on free personal care was met by a swift rebuttal by the Wales Office. The National Assembly had taken some time to reach their position on free personal care, for instance, the consultation on the Strategy for Older People had begun over a year previously. Therefore, the disrespect with which the Wales Office treated the Assembly in public was surprising. After all the Wales Office was 'ostensibly the National Assembly's lead ally in Whitehall'. [141]

Following his comment that the National Assembly's position on free personal care was 'pathetic... symptomatic of their irresponsible approach to politics',[142] Adrian McMenamin left the Wales Office.   However, it was widely suspected that McMenamin's comments reflected 'the sentiments, if not the diplomacy, of his boss [Paul Murphy]'.[143] This was a view shared by most interviewees, for instance, one Labour AM argued that Murphy's replacement as Secretary of State for Wales in October 2002, Paul Hain, came as 'a breath of fresh air'.[144] As Murphy was a former

[139] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[140] Interview with Henry McLeish (First Minister) (December 2003)
[141] Osmond, J. (2003) 'From Corporate Body to Virtual Parliament: The Metamorphosis of the National Assembly for Wales' in Hazell, R. (Ed.) *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, Thorverton), p.17
[142] Speed, N. and Betts, C. (17 May 2002) 'London Dashes Hope of Free Care for the Elderly in Wales' in *The Western Mail*, p.1
[143] Osmond, J. (2003) *op.cit.*, p.17
[144] Interview with a Labour AM (February 2003)

treasurer of the 1979 anti-devolution campaign in Wales his commitment to Welsh devolution was also widely questioned.[145] Ron Davies suggested that because Murphy's 'lacked a commitment to devolution',[146] he viewed his role as Secretary of State for Wales in limited terms. According to Davies, Paul Murphy saw himself as a 'messenger', acting as a communication channel for the different levels of government.[147] In contrast Davies claimed that the subsequent Secretary of State for Wales, Paul Hain, behaved as an 'advocate', fighting in the Assembly's corner.[148] Davies felt that the different approaches of the Secretaries of State can purely be explained by their attitude to devolution, however, Murphy's supposed negativity towards the Assembly was also mirrored by others in the Wales Office. One member of the Wales Office explained that the Assembly had 'a tendency to play the popularist card' and felt that the Assembly's ability to spend money without the responsibility for raising it meant that institution could easily lose credibility.[149] Additionally, the same interviewee criticised the Assembly for concerning itself with issues outside its remit and being obsessed with promoting itself. Rather ironically though, this interviewee felt that the Assembly's biggest failure had been its inability to 'sell itself' to the public.[150] Therefore, it appeared a commonly held view in the Wales Office that the Assembly's approach to politics was irresponsible and Assembly Members of all parties perceived that the Wales Office held this negative view of the Assembly. For instance, Brian Gibbons expressed regret that the Wales Office's response to the Assembly on free personal care did not come as a surprise.[151]

---

[145] Speed, N. (25 October 2002) 'Hello Peter... Goodbye Paul' in *The Western Mail*, p.5
[146] Interview with Ron Davies (Labour AM) (February 2003)
[147] *Ibid.*
[148] *Ibid.*
[149] Interview with Senior Wales Office representative (February 2003)
[150] *Ibid.*
[151] Interview with Brian Gibbons (Deputy Health Minister) (February 2003)

All interviewees from the Assembly mentioned the problems the Welsh Assembly Government faces in persuading Westminster to introduce Welsh-only legislation. Some saw the lack of Welsh-only legislation as an indication that Whitehall is uninterested in Welsh affairs. For instance, in her evidence to the Richard Commission, Edwina Hart, the minister for Finance, Local government and Communities, argued that 'There is a reluctance sometimes for UK government departments... to recognise the Assembly exists'.[152] Many interviewees also criticised the Welsh Assembly Government, suggesting that the Welsh Assembly Government needed to take some of the responsibility for the lack of Welsh-only legislation. For instance, Ron Davies argued that in relation to the Health (Wales) Act, the Welsh Assembly Government did not fight for Welsh legislation on reform of the Health Boards but quickly accepted that UK Government's decision to deal with matters in a joint English and Wales Act.[153] Mike German suggested that many of the limits on the Assembly were self-imposed because the 'desire by the Labour ministers not to upset the London apple cart' pervades all aspects of Assembly policy-making.[154] Ron Davies agreed, suggesting that the 'administration is too sensitive about its party political links with Westminster'.[155]

The policy advisor to Jane Hutt, Mark Drakeford, explained that because the Welsh Assembly Government was unconvinced of the case for free personal care their attempts to 'challenge' the UK Government's position represented 'a ritual

---

[152] Richard Commission (5 December 2002) *Evidence of Edwina Hart- Welsh Assembly Government Minister for Finance, Local Government and Communities* (National Museum and Gallery, Cardiff) accessed at www.richardcommission.gov.uk on 13/8/04
[153] Interview with Ron Davies (Labour AM) (February 2003)
[154] Interview with Mike German (Leader of the Welsh Liberal Democrats) (February 2003)
[155] Interview with Ron Davies (Labour AM) (February 2003)

process'.[156] The Welsh Assembly Government went through the motions because they had to, not because they actually believed in the policy. Drakeford explained that the Welsh Assembly Government wrote to the Secretary of State for Wales stating the Assembly's agreed position.[157] Meetings were also held between the Health Minister and Paul Murphy, and the Health Minister raised the issue of free personal care 'but couched it in terms like "I have written to you about free personal care and I look forward to your reply"'.[158] This 'ritual dance' meant that when the Minister was asked about free personal care in the Assembly she could say that she had raised the issue with the Welsh Secretary.[159] The Secretary of State, Paul Murphy, then sat on the letter for a long time until the issue died down, then replied saying whilst he appreciated the letter, the UK Government did not believe in free personal care so nothing could be done.[160] Drakeford compared lobbying the UK Government on free personal care with policies which the Welsh Assembly Government actively supported. In these instances Drakeford claimed 'we go through the same process but we phrase letters strongly, expressing that this is something we really want and we actually seek to persuade'.[161] The implication here is that the formalities of lobbying the UK Government always look the same but the signals of the interaction are very different.

The Wales Office's response on free personal care also highlighted another aspect of intergovernmental relations. McMenamin's comment that 'It is not clear to anyone what the thinking behind this is. There hasn't been a vote on this issue in

---

[156] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[157] *Ibid.*
[158] *Ibid.*
[159] *Ibid.*
[160] *Ibid.*
[161] *Ibid.*

258

the Assembly Labour group or at the Welsh Labour Party conference',[162] implied that the Welsh Assembly Government's position had come as a complete surprise to officials in the Wales Office. The lack of consultation between the levels of government might indicate that the Assembly has independence from the UK Government when developing its own policy positions. However, as the free personal care case indicated, the Welsh model of devolution means that if the Assembly is to implement its preferred policies then it needs to consult closely with Whitehall. A member of the Wales Office described that a number of problems have occurred due to a lack of consultation. For instance, the Assembly's decision to introduce a learning grant for higher education students led to problems with the DWP, problems arose because students receiving benefits who were entitled to a learning grant had their benefits clawed back by the DWP.[163] Perhaps unsurprisingly, the Wales Office official blamed the Welsh Assembly Government for failing to discuss their policy plans with the DWP. According to the Wales Office representative, the benefit claw back problem was resolved relatively simply, but could have been completely prevented if there had been better communication between the levels of government.[164]

The UK Government's involvement in the free personal care issue differed dramatically in the Scottish and Welsh cases. In Scotland UK Governmental actors were involved throughout the policy-making process, with regular attempts to persuade the Scottish Executive to oppose free personal care. In Wales UK Governmental actors were not involved in the free personal care debate until later in the policy-making process, when the National Assembly unanimously voted to

---

[162] Speed, N. and Betts, C. (17 May 2002) 'London Dashes Hope of Free Care for the Elderly in Wales' in *The Western Mail*, p.1
[163] Interview with Senior Wales Office representative (February 2003)

challenge the UK Government to introduce free personal care. UK Governmental actors were particularly concerned about spill-over, fearing that supporters of free personal care in England would put considerable pressure on the UK Government to follow Scotland's decision to introduce free personal care. In contrast the Wales Office took the Assembly's free personal care policy less seriously. The Wales Office did not argue the Assembly's case in Whitehall, but instead raised the failings of the Assembly's policy-making process.

In both Scotland and Wales the free personal care issue highlighted the lack of formal agreement between the devolved governments and Whitehall. In Scotland there was confusion about Attendance Allowance and in Wales there was a lack of negotiation over their proposals to challenge the UK Government to take action on free personal care. In many respects it appears that the National Assembly for Wales had greater autonomy than the Scottish Parliament to develop its own position on free personal care, if only because the UK Government was less interested or concerned about developments in the Assembly. However, the nature of devolution means that the devolved governments need to negotiate with Whitehall and the ability of the devolved administrations to implement distinctive policies without the UK Government's support is questionable. In Wales the need for UK Governmental input into policy-making is enhanced by the need to secure primary legislation at Westminster. However, the case of Attendance Allowance highlighted that the Scottish Parliament can face serious financial difficulties without the backing of the UK Government.

---

[164] *Ibid.*

7.5 Conclusion

Actors outside the coalition parties played a crucial role in developing the free personal care policies in Scotland and Wales. In Scotland a strong advocacy coalition in favour of free personal care developed, including opposition parties, the Health and Community Care Committee, policy experts and pressure groups. In contrast actors in favour of free personal care in Wales were much weaker. In Wales the opposition parties were divided, the Health and Social Services Committee added little to the free personal care debate and policy experts and pressure groups were unsure whether to focus their attention on the UK Government or the Welsh Assembly Government. The advocacy coalition in Scotland successfully applied pressure on the Scottish Executive to act, as their united position ensured those opposing free personal care looked isolated from mainstream opinion. Therefore, in Scotland a range of governmental and non-governmental actors pressurised the Scottish Executive to introduce free personal care, which offers some support for the MLG notion of shared policy-making authority amongst a range of actors. However, it must be noted that in many respects the free personal care debate centred on a disagreement between the First Minister and his Health Minister, with other actors used by them and their supporters to strengthen their position. Consequently, the existence of shared policy-making authority is weak, and Executives at any level of governance appear to dominate policy-making.

In Wales the advocacy coalition never successfully challenged the Welsh Assembly Government to take action on free personal care, as many accepted that free personal care was primarily the UK Government's responsibility. Instead in Wales it was the actors within the devolved government which were able to have greatest

impact on the Assembly's free personal care policy. As discussed in the previous chapter, in Wales the Liberal Democrat coalition partners were able to ensure the inclusion of free personal care onto the remit of the Advisory Group on a Strategy for Older People, ensuring that the Welsh Assembly Government committed to challenging the UK Government to implement free personal care. In Scotland, however, those in favour of free personal care outside the devolved governments played a crucial role in shaping the Scottish Executive's free personal care policy. The combined efforts of the Scottish opposition parties, Health and Community Care Committee, policy experts and pressure groups allowed the Liberal Democrats and the Scottish First Minister, Henry McLeish, to identify a consensus of opinion when attempting to persuade their cabinet colleagues of the need to support free personal care. We can see how these groups outside the devolved governments were used to strengthen the case for free personal care by examining Henry McLeish's comments in the Sunday Times,

> '(if) every organisation you talk to, every medical group, every local authority, the Sutherland people themselves, the PLP, the Liberal group, the opposition [are all agreed] - then sometimes you just have to say to yourselves: 'Well, look. There is a firm body of opinion. Is what we have as a policy the right thing to do?'.[165]

Of all the actors outside the devolved governments, the UK Government was the key opponent of free personal care. In Scotland the UK Government sought to persuade the Scottish Executive not to introduce free personal care, and by withdrawing Attendance Allowance, ensured that there were serious financial implications for the Scottish Parliament developing distinctive policies. In Wales the National Assembly had little, if any, contact with the DWP or UK Health department on free personal care. Instead the Welsh Assembly Government primarily dealt with the Wales Office. Interestingly, the UK Government had little success in shaping the

Scottish Executive's free personal care policy, other than by making it a more expensive policy for the Scottish Parliament to implement. However, the resolution of the Attendance Allowance issue in Scotland might make it much more difficult for the Scottish Parliament to diverge from the UK Government in the future, due to the Scottish Parliament fearing the UK Government's response and simply having less money to spend on other divergent policies. As a result it appears that the UK Government possess considerable control over policy-making, even in devolved areas. UK Governmental actors were able punish and block policy-making when the devolved institutions pursued policies of which they disapproved. However, UK Governmental actors were not able to dominate policy-making in the devolved system, indicated by their inability to prevent the introduction of free personal care in Scotland. Therefore, as identified in the MLG model, state executives may remain the most important loci of power but actors from the state level are unable to exercise complete control over the policy-making process.

---

[165] *Sunday Times* (5th November 2000) 'McLeish in U-turn on elderly care'

Chapter Eight

Institutional Setting

The previous two chapters considered the impact of various actors on the development of the Scottish and Welsh long-term care policies. As discussed in the second chapter, actor-centred institutionalism contends that the resources, preferences and perceptions of these actors, and the way they interact are shaped by the institutional context in which they operate. This chapter focuses on five features of the institutional setting which seemed to shape the long-term care policies in Scotland and Wales, the party and electoral systems, the legislative functions, financial powers and the design of the devolved institutions and the place of these devolved institutions, within the UK political system. These features are described in chapter one, so this chapter provides only a brief description of them, focusing more on their impact on policy-making in the case of long-term care for the elderly.

8.1 Party Systems and the New Electoral System

It has been suggested that whilst the party systems in England, Scotland and Wales have similarities, from the 1970s differentiated party systems have emerged. Kellas claims that between 1974 and 1997 Scotland displayed distinctive voting patterns.[1] For instance, after 1970 the electoral performance of the Scottish Conservatives declined sharply and the same period saw the rise of the Liberal and SNP vote,

---

[1] Kellas, J. G (1989) *The Scottish Political System* (4th edition) (Cambridge University Press, Cambridge), p.113

often in previous Conservative strongholds.[2] In 1974, for example, the SNP took

eight seats from the Conservatives.[3] A similar pattern emerged in Wales, and so

even 'prior to devolution Scotland and Wales had begun to evolve their own

distinctive party systems in which Labour's main competitors were the nationalist

parties rather than the Conservatives, with the Liberal democrats as a significant

third force'.[4] As a result, by the time of the first elections to the Scottish Parliament

and National Assembly for Wales,

> 'Both nations had witnessed the electoral wipeout of the Conservative
> Party in the May 1997 UK general election, as the Tories were left with
> parliamentary representation from English constituencies alone. Both
> were by now bastions of the Labour Party—a dominance extended
> further in the 1997 poll. And both Scotland and Wales had indigenous
> nationalist parties ... attaining modest but significant levels of electoral
> support and parliamentary representation'.[5]

In both Scotland and Wales there is a high degree of ideological polarisation

between the centre left parties (the nationalists, Labour, Liberal Democrats, the

Scottish Socialist Party and the Greens), in contrast to the Conservatives on the

centre-right.[6] Whilst in general party competition after devolution has generally

remained centrist, the nationalist parties, the Scottish Socialist Party (SSP) and the

Greens have tended to pull the dynamics of party competition to the left.[7] For

instance, the SNP have been forced by the SSP to 'shore up their 'pacifist' image'

and the Conservatives have moved to a more centrist position in an attempt to build

---

[2] Smith, G. (1989) 'Core Persistence: Change and the People's Party', *West European Politics* (Vol.12, pp.157-168)

[3] Kellas, J. G op.cit., p.111

[4] Laffin, M., Shaw, E. and Taylor, G. (2004) 'Devolution and Party Organisation in Britain: How Devolution has changed the Scottish and Welsh Labour Parties' *Devolution and Constitutional Change Programme Discussion Paper No.18,* p.3-4 accessed at www.devolution.ac.uk/pdfdata/Devolution%20 and party organisation Laffin.pdf

[5] Jones, R.W and Scully, R (2006). 'Devolution and Electoral Politics in Scotland and Wales' in *Publius* (Vol.36, No.1, pp.115-134), p.116

[6] Bennie, L. and Clark, A. (2003) 'Towards Moderate Pluralism: Scotland's Post-Devolution Party System, 1999-2002' in Rallings, C., Scully, R. Tonge, J. and Webb, P. (Eds.) *British Elections and Parties Review (Vol.13)* (Frank Cass, London), pp.149-150

[7] *Ibid.,* p.150

electoral support.[8] This situation particularly affects the Scottish and Welsh Labour parties, as in contrast to the position in England, disenchanted Labour voters in Scotland and Wales have several protest, and exit options.[9] Labour's main political competition, the nationalist parties, are competing across the similar social democratic territory, significantly to the left of that of the Westminster 'English' parties, and even despite a poor electoral performance in May 2003, in both Scotland and Wales, the nationalist parties have consolidated their position as the official opposition parties.[10] Basically this means that there is a gravitational pull on Labour to the left, and the structure of the party system in both Scotland and Wales means that the centre of political gravity is much further to the left than in England'.[11] The new electoral system introduced for the elections to the new devolved institutions appears to exacerbate the differences in the party systems between Scotland and Wales, and England.

The electoral system adopted for electing the Scottish Parliament and the National Assembly for Wales was the additional member system, which provided a greater degree of proportional representation than first past the post models.[12] The electorate were given two votes, the first to elect a constituency MSP or AM by the traditional first-past-the-post system and the second was a regional vote which corrects the lack of proportionality in the first vote. The consequence of the electoral system in Scotland is that it is unlikely that any party will win an outright majority. In Wales the higher levels of support for Labour make a majority

---

[8] *Ibid.*

[9] Shaw, E. (2003) 'Labour in Scotland and Westminster and the Dynamics of Policy Divergence' paper prepared for the annual meeting of *the American Political Science Association* (Pennsylvania Convention Centre 28-31 August 2003), p.25 accessed at www.devolution.ac.uk/pdfdata/Shaw_Labour_%20in%20_Scotland_and_Westminster.pdf

[10] Laffin, M., Shaw, E. and Taylor, G. *op.cit*

[11] Shaw, E. (2003) *op.cit* p.25

government possible even under this electoral system, which was the result of the National Assembly election in 2003. However, in the Assembly's first term Labour was unable to form a majority government, and decided to run as a minority administration. However, due to serious problems operating as a minority administration a coalition government was established in 2000, between Labour and the Liberal Democrats. The coalition government brought a new stability to the Welsh Assembly Government, meaning that 'at a stroke the Administration was provided with an assured majority and a programme of government, two attributes that had eluded it during the first year of devolution'.[13] However, during the second term of the Assembly, Labour were able to secure a majority, receiving 30 out of the 60 seats which meant that their majority was only assured because the Presiding Officer was from the opposition benches.[14] Therefore, within the first term the National Assembly has experience of being led by coalition, minority and majority administrations. However, for both Scotland and Wales the electoral system makes either coalition government or minority administrations more likely and at the time when the free personal care policies were being developed the Welsh Assembly and the Scottish governments were coalitions between Labour and the Liberal Democrats. Compared to majority governments, coalition governments require different decision-making processes, encouraging different policy outputs compared to those produced by majority governments. Additionally the electoral system gave greater representation to smaller political parties, thus affecting the composition of opposition policy actors.

---

[12] Myles, A. (1999) 'The New Electoral System' in Hassan, G. (Ed.) *A Guide to the Scottish Parliament* (The Stationery Office Limited, Edinburgh), p.89

[13] Osmond, J. (2001) 'In Search of Stability: Coalition Politics in the Second Year of the National Assembly for Wales' in Trench, A. (Ed.) *The State of the Nations 2001* (Imprint Academic, Thorverton), p.13

[14] Trench, A. (2004) 'Introduction: Has Devolution Made a Difference?' in Trench, A. (Ed.) *Has Devolution Made a Difference?: The State of the Nations 2004* (Imprint Academic, Exeter), p.3

Coalition governments need to negotiate policy between different parties, meaning that policies tend to be adopted only after some discussion. As one interviewee pointed out, in coalition government you can't just use the whip to force policies through.[15] The importance of compromise and negotiation means that politicians have to be cautious about drawing a firm line in the sand on any issue, as everything in coalition government has to be negotiable. Consequently, issues like free personal care are always open for negotiation. As Warwick explained 'bargains made can always be unmade'.[16]

In Scotland prior to the free personal care commitment, the Executive had produced a compromise amendment in 2000 which stated they would, 'continue, over time, to work towards fulfilling the Royal Commission's objectives of fairness and equity in the care of the elderly'.[17] The amendment was ambiguous enough that both parties could support it. However, the amendment left free personal care on the agenda, no definite decision was stated and so there was always the possibility that the issue could be renegotiated at a later date. McTernan claimed that when McLeish became leader the Liberal Democrats exploited the new situation by using it as an opportunity to bring new issues to the table and re-open old debates, thus strengthening their position in the coalition.[18] Therefore, the culture of coalition government in the free personal care case meant that there was always a possibility

---

[15] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[16] Warwick, P. (2001) 'Coalition Policy in Parliamentary Democracies: Who Gets How Much and Why' in *Comparative Political Studies* (Vol.34, No.10, pp1212-1236), p.1212
[17] Scottish Parliament *Motion S1M-1215.1 Long-term care* in *Business Bulletin 145/2000* accessed at www.scottish.parliament.uk on 5/12/03
[18] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)

that the issue could be re-opened and any changes to the leadership of the parties in the coalition could result in new policy positions.

In chapter six McLeish's leadership style was discussed. Whilst McLeish's personal preferences may have encouraged his avoidance of confrontation, coalition government also encouraged a more compromising stance. As McTernan noted it is 'much easier to be confrontational if you have a majority'.[19] Flexibility is essential for coalition government, and leaders in particular need to be able to sway as situations change. Although such flexibility leads to confusion, indicated in the free personal care case when McLeish's position was unclear, it is perhaps inevitable and a valuable way of operating in coalition government.

In Wales many interviewees argued that the existence of coalition government had a major impact on the development of the free personal care policy. Mark Drakeford, policy advisor to the Welsh Assembly Government, claimed that that 'left to itself a Labour-only administration would have followed the UK line'.[20] However, as Drakeford pointed out, coalition government changed the political context of decision making,[21] meaning that Labour could not simply push their preferred policy onto their coalition colleagues.

Drakeford suggested that initially the Liberal Democrats did not push for free personal care, instead suggesting that the issue only became one of serious discussions after the decision was taken in Scotland to introduce free personal care. As a result of the decision in Scotland Gibbons suggested that Labour needed to

---

[19] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[20] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)

offer the Liberal Democrats something on free personal care, so that they could 'save face'.[22] Therefore, the issue was added to the remit of the Advisory Group on a Strategy for Older People; a measure which Gibbons believed would not have happened if the Liberal Democrats had not been in government.[23] Therefore, it appears that by being in government the Liberal Democrats were able to raise the issue onto the political agenda. Additionally, the Liberal Democrats had some success at altering the position of the Welsh Assembly Government on free personal care.

Drakeford argued that whilst Labour were reluctant to support calls for free personal care, coalition government meant they needed to compromise.[24] He argued that Labour 'were willing to be persuaded to lobby the UK Government' on free personal care, because they knew that the UK Government would refuse.[25] However, such a stance allowed the Liberal Democrats to claim a degree of policy success.[26] Gibbons felt that challenging the UK Government was an effective way to end debate on the free personal care issue, but would not have been necessary if Labour had governed with a majority. Therefore, coalition government appeared to play a big role in shaping the decision to challenge the UK Government to fund free personal care.

In a coalition government the government's line can differ from either party's policy. This puts considerable pressure on the coalition parties, as they have to defend the coalition's programme, when neither party may completely agree with the

[21] Ibid.
[22] Interview with Brian Gibbons (Deputy Health Minister) (February 2004)
[23] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[24] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[25] Interview with Brian Gibbons (Deputy Health Minister) (February 2004)

compromise policy. Prior to the commitment to free personal care in Scotland the Liberal Democrats were in a difficult position, facing direct criticism for supporting a policy which went against their party's position. Liberal Democrat MSPs claimed they found it difficult to justify their position. There was an acceptance amongst some Liberal Democrats that this situation was just part of coalition politics,[27] but others found it difficult to vote against policies which they supported. Interestingly, in the case of free personal care in Scotland the pressures on the minor coalition partner were transferred to the major coalition partner.[28] The threat that backbench Liberal Democrats would vote against the Executive forced Labour to reach a compromise. It has been suggested that when the pressure on the Liberal Democrats to pursue their party's position intensified, the Liberal Democrats could have simply voted with the opposition parties and forced their preferred policy to be adopted, thus giving the Liberal Democrats a decisive role in policy formation. Yet, consistently voting against the major coalition party would have threatened the coalition. Galbraith argued that this was not significant for the Liberal Democrats because whilst there was a desire by the Parliamentary Labour party to keep the coalition going 'the Liberal Democrats never really wanted to be in a coalition and can threaten to walk out on any issue'.[29] Additionally Labour would have found difficult to form a coalition with any other party, mainly because the Conservatives and the SNP were close electoral rivals of the Labour party in Westminster and Scottish elections respectively. Additionally, whilst in the Parliament's second term, Labour, the SSP, Greens and Independents could have formed a slim majority government, it would have been difficult for such a diverse grouping to reach an agreement, and as the majority would be so slim it would have undoubtedly lead to

[26] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[27] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)
[28] Interview with Scottish Executive Senior Civil Servant (February 2004)

numerous government defeats. Whilst Galbraith over-estimates the ease with which the Liberal Democrats might have left the coalition, there is no doubt that the Liberal Democrats were in a powerful position in the Scottish Parliament and there was some resentment of their power in the Labour party.

Coalition government also alters the potential influence of actors outside the government. Greer argued that having two parties formally in power means there are 'mathematically if not always practically, twice as many chances for policy advocates to make their case'.[30] In contrast, Ron Davies believed that coalition government in Wales closed decisions to those outside the Welsh Assembly Government, for AMs and pressure groups.[31] Davies claimed that coalition government in Wales had meant that the Assembly reverted to the Westminster model of policy-making, which Davies suggested lacks compromise and negotiation.[32] Whilst in some circumstances Davies is correct to note that compared to minority administrations, coalition governments result in less negotiation and discussion, coalition governments can also be beneficial for those outside government. The leader of the Welsh Liberal Democrats, Mike German, explained that coalition governments can encourage transparency because coalition governments negotiate their policy programme in relation to each party's manifesto commitments.[33] Given German's position in coalition government at the time, it is not surprising that German would emphasise the potential benefits to coalition government. However, his perception of coalition government was also mirrored by others. Interviewees from Carers Wales claimed that in their experience minority

[29] Interview with Sam Galbraith (Previously Minister for Health and Education) (February 2004)
[30] Greer, S. (2002) 'When does devolution cause divergence? Health Agendas and policy debates before and after devolution' *presented at the 2002 PSA conference* (Aberdeen), p.12
[31] Interview with Ron Davies (Labour AM) (February 2003)
[32] Ibid.

governments made policy in secret, surviving by agreeing deals with other parties on a day by day basis behind closed doors.[34] As a result they argued that coalition government opened the policy process up.

In Scotland the arithmetic of free personal care meant that in simple terms there were more MSPs in the parliament in favour of implementing free personal care than against it. McTernan argued that McLeish's commitment to free personal care was partially a reaction to the threat of losing a crucial vote in the chamber, implying that McLeish's stance was partly a pragmatic decision.[35] By talking up the threat of the Liberal Democrats voting against the Executive, McLeish could win over opponents of free personal care who were motivated by a desire to prevent losing an embarrassing vote in the chamber. However, it often appeared that McLeish encouraged the Liberal Democrats to put pressure on the Executive to adopt free personal care, for instance, by engaging in press briefings hinting at support for free personal care.[36] Therefore, McLeish used the pressures of governing in a coalition to his own advantage, creating a situation where the SPLP could be blackmailed by their coalition partners. In addition, coalition government could be used as an excuse for pursuing free personal care with his UK Labour colleagues. As Nora Radcliffe pointed out, when Labour politicians want to diverge from the Westminster programme coalition government is probably a useful excuse.[37] McLeish accepted that he did use the threat of a Liberal Democrat revolt to explain why he needed to introduce free personal care. McLeish claimed that when discussing free personal care policy with UK governmental actors he

---

[33] Interview with Mike German (February 2003)
[34] Interview with Roz Williamson and Sandra Burton (Carers Wales) (February 2003)
[35] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[36] Interview with Peter MacMahon (Press Secretary to McLeish) (December 2003)

273

frequently explained to them that coalition government meant the Executive had to consider the views of the Liberal Democrats views.[38] Additionally McLeish informed the UK Health Minister, Alan Milburn, that there were simply more MSPs in favour of free personal care than against, and so in a sense the Scottish Executive had little option but to support the policy and gain the credit for a popular policy which would probably be implemented with or without their support.[39]

The extent to which McLeish played the Liberal Democrat coalition partners off against the SPLP is difficult to gauge. Some backbench Liberal Democrats indicated that the threat they posed to the Scottish Executive on free personal care was exaggerated. Nora Radcliffe believed that if it the Scottish Executive had decided not to commit to free personal care then the Liberal Democrats would not have voted *en masse* against them, though she points out that Margaret Smith, as convenor of the Health and Community Care Committee, might have done so.[40] Radcliffe's argument is supported by Mary Scanlon, then the Conservative Health Spokesperson, who argued that the Liberal Democrats 'wouldn't have voted against the executive, they never have. They make the right noises but always cave in at the last minute'.[41] Scanlon's argument has some strength because if we refer back to the vote on free personal care in 2000 there was speculation that a number of Liberal Democrats would vote against the Executive, but only two actually did.[42] Therefore, perhaps the threat of a Liberal Democrat revolt was never as severe as it appeared. All Labour MSPs and advisors interviewed mentioned that they perceived

---

[37] Interview with Nora Radcliffe (Liberal Democrat MSP) (December 2003)
[38] Interview with Henry McLeish (First Minister) (December 2003)
[39] Ibid.
[40] Ibid.
[41] Interview with Mary Scanlon (Conservative MSP) (December 2003)
[42] McCann, A. and Horsburgh, F. (28 September 2000) 'Revolt on care for elderly set to fizzle out; Amendment wins over most Liberal Democrat MSPs on Sutherland report issue' in *The Herald,* p.6

that the threat was real at the time, though a couple mentioned that on reflection their perception may have been manipulated by free personal care supporters.

It is possible that the lack of clarity of coalition government allowed interested parties to emphasise the threat of revolt in order to gather support for their favoured policy positions. McLeish suggested that he did not directly have to speak of the threat posed by the Liberal Democrats because as the debate over free personal care continued the SPLP felt the pressure from a number of different sources. According to McLeish 'interests build up which places pressure on people without direct pressure having to be placed'.[43] Therefore, simply by being sympathetic to free personal care and indicating room for policy movement McLeish was able to emphasise and encourage the possibility that the Executive would lose the vote without directly raising the issue as a threat. Therefore, coalition government provided McLeish with an opportunity to pursue his chosen policy because it allowed him to play on the instability of policy positions to push for movement on free personal care.

Jess Barrow from Age Concern Scotland pointed out that the impact of coalition government can also be less direct and more subtle. She claimed that the media and public interest in free personal care only developed because the,

> 'free personal care issue threatened the coalition, and revealed tension between the UK Government and the Scottish Executive. If it weren't for these factors there would have been no media interest and the policy wouldn't have gone through'.[44]

Therefore, the existence of coalition government and the tension between the coalition parties meant that issues usually considered uninteresting could become

---

[43] Interview with Henry McLeish (First Minister) (December 2003)

major political dramas, increasing their news value and raising their profile. By threatening the coalition, free personal care became a major story requiring the Scottish Executive to act. Several interviewees involved in campaigning for improvements in care for the elderly found the free personal care case unusual because in their experience the care of the elderly tends to be ignored in politics.

In Scotland coalition government had a major influence on the decision to introduce free personal care because those in favour of free personal care in the Scottish Parliament numerically outweighed those against. In Wales the numbers did not stack up in the same way, which weakened the ability of the minor coalition partners to influence the free personal care policy. In the Assembly Labour and the Conservatives were opposed to free personal care, meaning that the parties against free personal care had 37 AMs, compared to 22 in favour.[45] If a vote had been held on introducing free personal care on a Wales only basis it is difficult to imagine any Labour AMs breaking ranks to vote with the opposition, and for the pro-free personal care group to win it would require at least 7 AMs to do so. Therefore, in comparison with Scotland the Liberal Democrats in Wales had less bargaining power.

In the National Assembly for Wales the electoral system also impacted upon the shape of long-term care policies. As Brian Gibbons explained, the Liberal Democrats brought the demand for free personal care to the table'.[46] Without Liberal Democrat involvement in government it seems likely that free personal care would have been a low priority and been barely considered. The Welsh Liberal Democrats

---

[44] Interview with Jess Barrow (Director of Communications for Age Concern Scotland) (March 2004)
[45] As the Presiding Officer was from the opposition benches, it reduces the number able to vote for free personal care by one.

helped to ensure that free personal care was included on the remit of the Advisory Group on a Strategy for Older People. By doing so, the Liberal Democrats gave civil society actors a chance to voice their opinions and push the free personal care issue. Coalition government, therefore, ensured that the Assembly discussed free personal care in depth and the Welsh Assembly Government was forced to develop a policy on free personal care, and justify this decision. As Drakeford, pointed out 'left to itself a Labour only administration would have followed the UK line'.[47] Therefore, in Wales the free personal care issue would have not been considered in such depth without coalition government. In Scotland, the picture may have been different, as in opposition the Liberal Democrats would have been able to pursue free personal care with greater vigour, and combined with the votes of the other opposition parties, could still have secured free personal care.

The electoral system alters the party system in Scotland and Wales because it introduces a new dynamic to the relations between the parties, making it unlikely that parties will be able to govern alone and allowing more parties to enter the Parliamentary arena. As a result, the party systems in Scotland and Wales seem to be moving 'from an asymmetrical party system to a more pluralist, multi-party politics'.[48] Dahl argued that the competitiveness of opposition parties in both electoral and parliamentary arenas is key to classifying party systems.[49] Dahl developed a sliding scale to classify the strategies pursued by parties, with competitive strategies at one end and coalescent strategies at the other. Dahl identified four types of party system: strictly competitive, co-operative-competitive,

---

[46] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[47] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[48] Hassan, G. (2002) 'The paradoxes of Scottish Labour: devolution, change and conservatism', in Hassan, G. and Warhurst, C. (Eds) *Tomorrow's Scotland* (Lawrence and Wishart, London), p.43
[49] Dahl, R. A. (1966) *Political Oppositions in Western Democracies* (Yale University Press, London)

coalescent-competitive; and strictly coalescent. He claims that 'parties are strictly competitive ... if they pursue strategies such that both cannot simultaneously belong to a winning coalition', such as in the UK Parliament where the electoral system means that parties expect to govern alone and so opposition parties adopt competitive strategies.[50] In contrast, in a co-operative-competitive system, opposition parties aim to maximise their electoral strength but also are interested in strengthening their influence through coalition negotiations. Bennie and Clark suggest that in Scotland and Wales 'the new electoral system forces parties to consider co-operating'.[51] The suggestion is that Scotland and Wales now have a 'co-operative-competitive party system where parties cannot solely consider competitive strategies'.[52] Whilst parties need to be competitive to maximise their vote, they must adopt co-operative strategies to enable them to form an executive which can command a parliamentary majority.[53] In this way, therefore, it appears that the competitiveness of the party systems in Scotland and Wales will be limited.

Bennie and Clark identify that the Scottish political parties are already showing signs of developing more co-operative strategies in the parliamentary arena, though in the electoral context they identify that the parties remain competitive. For instance they suggest that Labour and the Liberal Democrats share a number of philosophical and policy overlaps; such as land reform, the abolition of feudal tenure, and more liberal social policy. Whilst there have been tensions between the coalition parties, Bennie and Clark suggest that the shared objectives 'of

---

[50] Dahl, R. A. *op.cit.,* p.336
[51] Bennie, L. and Clark, A. (2003) 'Towards Moderate Pluralism: Scotland's Post-Devolution Party System, 1999-2002' in Rallings, C., Scully, R. Tonge, J. and Webb, P. (Eds.) *British Elections and Parties Review (Vol.13)* (Frank Cass, London), p.151
[52] *Ibid.*
[53] *Ibid.*

constitutional reform and a desire to make home rule 'work' that laid the ground for collaboration in the parliamentary context'. [54] In a strictly competitive party system Bennie and Clark claim, the parties' policy difference would have been dominant, for instance, tuition fees, PR for local government and the use of Scotland's tax varying powers. [55] In contrast, however, other political parties have shown less collaborative tendencies. For instance, the SNP and the Conservatives have been reluctant to work together. In relation to the free personal care case study this was seen by the exclusion of the Conservatives from the pro-free personal care talks involving the Liberal Democrats and the SNP. Such a lack of communication may be explained by the incompatibility of their ideological positions, encouraging Webb to describe the parties as 'virtually ideological antipodes'. [56] Similar relationships are evident between Plaid Cymru and the Welsh Conservatives, characterised by, at best a lack of communication and often aversion and distrust. The inability of the nationalists and Conservatives to form a coherent and united opposition to the executive, therefore, means that in Scotland and Wales the party systems are tri-polar, with an executive, a left of centre and a right of centre opposition. These differences between the party systems in Scotland, Wales and England encourage area of pressure and conflict within the parties operating in the different nations, and appear to be encouraging slightly different policy and ideological positions. As a result it may be a mistake to classify parties operating across the UK, particularly the Labour party, as 'unitary actors'.

The distinctiveness of the Scottish and Welsh party systems means that the political parties in England, Scotland and Wales are faced with very different electoral pressures, these pressures particularly affect the Labour party, as a governing party

---

[54] *Ibid.*
[55] *Ibid.*
[56] Webb, P. (2000) *The Modern British Party System* (Sage, London), p.18

in each nation and a heavily centralised party organisationally. For instance, 'Blair's New Labour themes are generally perceived as less popular in Scotland, leading to pressure on the Scottish party to demonstrate its independence from Labour at Westminster.[57] As a result, 'Scottish and Welsh Labour can no longer simply replicate the national party manifestos, as happened in the 1999 elections, but need to adapt their election platforms to meet the exigencies of party competition in their nations'.[58] There are some signs that the Labour party in Scotland and Wales are beginning to do develop a distinctive profile from the English party. For example, in the general election of May 2001 the Westminster manifesto pledged increased involvement of the private sector as a means of improving public services. Scottish Labour, however, avoided such commitments, and unlike the British manifesto the Scottish document did not promise to use spare capacity in private sector hospitals to treat NHS patients.[59] As Curtice notes, it is unlikely that such an omission would have occurred if the Prime Minister had maintained responsibility for such matters in Scotland.[60] In addition, the electoral system in Scotland and Wales attaches roughly the same weight to each persons vote. As a result, for instance the vote of a working class Labour supporter in the Party's heartland is given the same weight as a floating voter in a marginal constituency.[61] In this context, 'the New Labour electoral strategy of chasing the Tory-inclined voter in the marginals (whatever its merits in England) is not relevant'.[62] As a result it is clear that Scottish and Welsh Labour operate in a different climate to the British party. Bennie and Clark predict that it will be a difficult balancing act for the Labour parties in Scotland and Wales

---

[57] Bennie, L. and Clark, A. *op.cit.*, p.143
[58] Laffin, M., Shaw, E. and Taylor, G. *op.cit.*, p.4
[59] Bennie, L. and Clark, A. *op.cit.*, p.143
[60] Curtice, J. (2002) 'Did Devolution Make a Difference? The First Post-Devolution UK Election in Scotland', in L. Bennie *et al. British Elections and Parties Review 12: The 2001 General Election* (Frank Cass, London), p.69
[61] Shaw, E. (2003) *op.cit, p.25*

to remain consistent with New Labour and at the same time contend with different electoral competitors.[63]

As a result of the pressure on the different components of the Labour party to remain consistent throughout the UK and to contend with their respective electoral competitors there is some evidence of tensions between the Labour party in England, Scotland and Wales. This was clearly shown in relation to free personal care when the UK Health Secretary, Alan Milburn, who expressed anger that free personal care should not be pursued by the Scottish Executive before policies which had been manifesto commitments.[64] In Wales the pressures were even more blatant, when the Welsh Assembly Government's challenge to the UK Government to fund free personal care was judged by Wales Office officials as 'pathetic'.[65] The pressure from the leadership of the party on the Scottish and Welsh parties to tow the line tended to be based on threats to the finances of the devolved institutions, which, as the case of Attendance Allowance indicated, are still heavily controlled by the centre. As Hopkins notes, 'National-level party leaderships are much more willing to talk about decentralisation when they are out of power, for the obvious reason that they do not have much power to lose. Once in power, they are likely to be much more reluctant to embark upon organisational reforms which distribute power from the national to subnational levels'.[66]

---

[62] *Ibid.*
[63] Bennie, L. and Clark, A. *op.cit.,* p.143
[64] Interview with Henry McLeish (First Minister) (December 2003)
[65] Speed, N. and Betts, C. (17 May 2002) 'London Dashes Hope of Free Care for the Elderly in Wales' in *The Western Mail*, p.1
[66] Hopkins, J. (2002) 'Political Decentralisation and Party Organisational Adaptation: A Framework for Analysis' *Paper presented at Fourth European Urban and Regional Studies Conference* (Barcelona, 4-7 July 2002), p.3. accessed at www.devolution.ac.uk/pdfdata/hopkin_paper_pdf.pdf

Laffin et al. do not believe that the differences in the party systems in England, Scotland and Wales have to date resulted in sharp ideological difference between the 'the Labour leaderships at the centre and the periphery'.[67] However, Bennie and Clark believe that there are 'some signs that Scottish and British Labour are becoming more distinct'.[68] Whilst it is probably too early to tell whether the Labour parties throughout Britain will split ideologically, the evidence suggests that it is not always helpful to treat the Labour party as a unitary actor. The fact that the English, Scottish and Welsh parties face different electoral competitors and work in different party systems means that their behaviours are shaped by different incentive structures and they are forced to consider different strategies. These structural characteristics affect other political parties too, though to date the Liberal Democrats appear to have tended to maintain a consistent profile across the UK, despite being the most federally organised, of the UK wide parties. In contrast, the Conservatives in Scotland have developed a profile which is further to the left than the English party. However, the conflict between the different Conservative parties across the UK has been less pronounced than those in the Labour party, for instance, in relation to free personal care there was a lack of pressure from, or even discussion with, the party leadership in London when the Scottish party decided to support free personal care. In part this difference can be explained by the fact that Labour are in government in Westminster, Scotland and Wales. However, this is also an organisational issue. As the most centrally controlled party in Britain, it is likely that pressures will continue to emerge between the Labour parties in Scotland, England and Wales, particularly if the different component parties drift ideologically and the organisation of the party is not devolved.[69]

---

[67] Laffin, M., Shaw, E. and Taylor, G. *op.cit.,* p.13
[68] Bennie, L. and Clark, A. *op.cit.,* p.143
[69] Laffin, M., Shaw, E. and Taylor, G. *op.cit.,* p.4

8.2 Legislative Powers

As explained in chapter one a devolved system of government where related functions are divided between central and devolved responsibility will occasionally lead to a lack of clarity about where each institution should act. The close division of powers also makes it likely that on any policy decision the Scottish Executive or the Welsh Assembly Government will need to consult with the UK Government. In Scotland the Parliament clearly had the powers to legislate on free personal care. Henry McLeish explained that 'legally and constitutionally free personal care is a devolved matter and so we could do what we wished... but in reality there is ministerial pressure, Labour party pressure, pressure from friends'.[70] According to McLeish the unclear division of legislative function did not have a major impact upon the autonomy of the Scottish Parliament. Shona Robison, an SNP member of the Health and Community Care Committee, agreed with McLeish's assessment, arguing that legislative relations between Whitehall and the Scottish Executive have been less significant than the financial relations, and so 'the major sticking points between Westminster and the Scottish Executive have tended to be on issues of finance'.[71]

It was widely accepted that the debate over Attendance Allowance was crucial to the development of the free personal care policy, and many interviewees suggested that this case had major implications for devolved policy-making in the future. The Attendance Allowance debate raised questions about whether the introduction of free personal care in Scotland should lead to a transfer of funds to the Scottish

---

[70] Interview with Henry McLeish (First Minister) (December 2003)

283

Parliament from Westminster, which is discussed in greater detail in the next section on the Parliament's financial powers. However, it is important to note that whilst the Scottish Parliament could legally introduce free personal care the implications of the free personal care policy for Attendance Allowance payments, which is primarily a Social Security issue (and therefore, a reserved matter), opened up an interface with the UK Government. McLeish therefore suggested that UK ministers could justify their desire to influence the free personal care decision in Scotland because it impacted on this reserved issue.[72] The legislative powers of the Scottish Parliament meant that it was clear that the Scottish Parliament had the power to legislate on free personal care and so there was a lack of negotiation and consultation with actors from the UK Government. In contrast, the possession of unclear and weaker legislative functions, compared to those held by the Scottish Parliament, had a major impact upon making the policy in Wales.

As the National Assembly for Wales lacks primary legislative powers, free personal care could not be introduced in Wales without the assistance of the UK Government. The need for assistance from another level of government immediately made it more difficult for the National Assembly for Wales to pursue free personal care. Dividing legislative functions between levels of government increases the number of actors involved in policy-making. In relation to Germany Scharpf suggested that joint decision making encouraged the need for agreement between policy actors, which Scharpf believed paralysed the policy-making process causing a joint-decision trap.[73] Scharpf suggested that this inability to reach agreement often lead to no

---

[71]Interview with Shona Robison (SNP MSP) (December 2003)
[72] Interview with Henry McLeish (First Minister) (December 2003)
[73] Scharpf, F.W. (1988) 'The Joint-Decision Trap: Lessons from German federalism and European Integration' in *Public Administration* (Vol.66, pp.239-278)

policy change, or sub-optimal policies being produced.[74] As the National Assembly for Wales is constitutionally weaker than Westminster it seems that the effect of the joint-decision trap can be reduced. On several occasions the National Assembly has reached a joint-decision making trap, making a policy decision which it then has been unable to implement, due to lack of powers. For instance, on a free vote in January 2003, the National Assembly supported a motion by Alun Pugh AM (Labour) to request that the National Assembly be granted the powers to prohibit smoking in public places.[75] The UK Government did not grant the Assembly these powers, and due to lack of parliamentary time Welsh MP, Julie Morgan, was unsuccessful at passing a private members bill on the matter in March 2005. As a result, the policy-making process on banning smoking in Wales met a dead end. As Scharpf predicted no policy change occurred, or is likely to occur in Wales until the UK Government enact similar legislation to ban smoking in public places for England.[76] Many AMs felt that the lack of primary legislative powers made policy-making in the National Assembly difficult. For instance, Labour AM, and subsequently member of the Welsh Assembly Government, Alun Pugh argued that 'It's a nonsense for policy ideas to start in Cardiff then go to London to be held up in a logjam before returning to Cardiff again'.[77] There are additional problems faced by the National Assembly for Wales due to the particular division of powers between Cardiff and Westminster, and the wider constitutional questions that producing Welsh only legislation poses.

---

[74] *Ibid.*
[75] National Assembly for Wales, Plenary Session, 22nd January 2003
[76] In the White Paper, *Choosing Health: making health choices easier* (November 2004) the Health Secretary, John Reid, hoped that many of the measures on banning smoking in public places for England could also be applied for Wales.
[77] Interview with Alun Pugh (Labour AM) (February 2003)

Prior to devolution, the White Paper 'A Voice for Wales' stated that, 'In the making of legislation and in the debates on UK policy, Wales' voice and influence must be felt in the Cabinet and Parliament'.[78] However, there is some disappointment in the Assembly about the extent to which their requests for primary legislation at Westminster are either ignored or treated as a low priority. For instance, David Melding argued that 'our ability to influence primary legislation is the weakest link in the Welsh model of devolution'.[79] A study conducted by the Glamorgan Policy Centre supported Melding's argument, as they found that the Assembly Government often faced considerable difficulties in getting Wales-only provisions included in Westminster Acts.[80]

Figure 8.1 on the next page indicates that the ability of the Welsh Assembly Government to secure primary legislation at Westminster is mixed. Where the Welsh Assembly Government has been most successful at securing their provisions it has usually been on the back of Whitehall Bills.[81] For instance, a number of measures requested by the National Assembly for Wales were included in the National Health Service Reform and Health Care Professions Act 2002, the Education Act 2002 and the Licensing Act 2003. In contrast, in the first term of the National Assembly for Wales only two pieces of Welsh-only legislation were passed, the Children's Commissioner for Wales Act 2001 and the Health (Wales) Act 2003. Several interviewees explained that the difficulties in securing Welsh-only legislation were partly due to the wider constitutional implications of doing so, particularly as

---

[78] Welsh Office (1997) *A Voice for Wales: The Government's Proposals for a Welsh Assembly* (HMSO, London), section 8
[79] Interview with David Melding (Conservative AM) (February 2003)
[80] Laffin, M. et al. (March 2003) *Future Options: An Assessment of the Powers of the National Assembly for Wales* (University of Glamorgan), p.8
[81] *Ibid.*

this could lead to a need for English only legislation.[82] Conservative AM, David Melding explained that the UK government is not yet willing to address the 'difficult issue of having Welsh and Scottish MPs voting on entirely English bills'.[83] According to Davies and Melding the UK Government are wary of introducing Welsh-only legislation partly due to the constitutional questions this would raise about the role of Welsh and Scottish MPs at Westminster.

Figure 8.1: Assembly bids for Primary legislation[84]

Bids submitted	Outcome
2001-02 session	
Health and Well-Being (Wales) Bill	Successful. Provisions included in National Health Service Reform and Health Care Professions Act 2002 and Health (Wales) Act 2003
Education (Wales) Bill	Partly successful. Some provisions included in the Education Act 2002
St David's Day Bill	Unsuccessful
Census (Amendment) Wales Bill	Unsuccessful. But administrative arrangements introduced to enable the Assembly to influence census forms being made in concordat with the Office of National Statistics
2002-03 session	
Common Land (Wales) Bill	Bid not pursued because DEFRA commitment to seek legislative time for England and Wales legislation in 2004-05
Sunday Licensing (Wales) Bill	Successful. Provisions contained in Licensing Act 2003
St David's Day Bill	Unsuccessful
Land Use Planning Bill	Successful. Separate provisions for Wales contained in the Planning and Compulsory Purchase Bill
Education Bill	Partly successful. Some provisions contained in the Education Act 2002, others unsuccessful

Even where the UK Government has been in agreement with the general aims of the National Assembly's legislative proposals it has been difficult for the Assembly to secure the necessary legislative time at Westminster. For instance, the Welsh

---

[82] Interview with Ron Davies (Labour AM) (February 2003)
[83] Interview with David Melding (Conservative AM) (February 2003)
[84] Report of the Richard Commission (Spring 2004) *Commission on the Powers and Electoral Arrangements of the National Assembly for Wales* (The Stationary Office), p.157

Assembly Government wanted to introduce a Children's Commissioner for Wales, which Westminster legislated for in 2001. However, the National Assembly would have preferred legislation enabling a Children's Commissioner for Wales to be included in the Care Standards Act 2000. The UK Government broadly supported the National Assembly's proposal, indicated by their current plans to introduce a similar Children's Commissioner for England. Therefore, it appeared that even on issues which lacked controversy 'it is difficult to get legislative time at Westminster'.[85]

Civil servants working for the Welsh Assembly Government argued that on free personal care it would have been particularly difficult for the UK Government to assist the National Assembly for Wales to introduce the policy whilst not committing to it themselves.[86] The swift rebuttal by the Wales Office to the Assembly's challenge to the UK Government to fund and implement free personal care can also be seen as a sign that requesting primary legislation on the free personal care issue would have been a waste of time.[87] The degree to which the interpretation of the Assembly's powers is a political decision is indicated by policy-making during the foot and mouth crisis. During the foot and mouth crisis there was a need for quick action and the UK Government and the Welsh Assembly Government were agreed on what needed to be done. As a result the Assembly was allowed to take decisions over areas which it did not technically have the legal right to.[88] However, on the free personal care issue the model of devolution in Wales and the views of UK governmental actors, made it unlikely that the National Assembly would be able to secure the necessary legislation at Westminster. The belief that Westminster would

---

[85] Interview with Kirsty Williams (Liberal Democrat AM) (February 2003)
[86] Interview with Welsh Assembly Government Civil Servants (June 2004)
[87] Interview with an AM (February 2003)

be unlikely to introduce primary legislation had a significant impact upon the behaviour and strategies of those involved in making policy in the National Assembly. It is possible that the strategies and behaviours that this model of devolution encouraged were almost as significant as the lack of legislative powers itself.

It is worth noting that the Welsh Assembly Government did not ask for primary legislation on free personal care. In part this may have been due to a lack of commitment to the policy, as suggested by many opposition AMs and representatives from Welsh pressure groups. For example, the Deputy Health Minister at the time, Brian Gibbons, explained that he perceived the worst possible scenario for the Welsh Assembly Government on the free personal care issue would have been if the UK Government had given the Assembly the legislative powers to act but not additional resources to fund the policy.[89] In addition Welsh Assembly Government actors did not see the rationale of focusing on securing primary legislation on free personal care when the UK Government would be unlikely to introduce the legislation. For instance, Brian Gibbons argued that he would have been very surprised if Westminster had allowed the Assembly to legislate on free personal care because 'it would make the situation in England untenable'.[90] Labour AM, Ron Davies argued that the belief that the UK Government would not enact much of the primary legislation requested by the Welsh Assembly Government had made the Welsh Assembly Government timid in their primary legislative requests.[91] According to Ron Davies the Welsh Assembly Government usually only asked for

---

[88] Interview with Mike German (February 2003)
[89] Interview with Brian Gibbons (Deputy Health Minister) (February 2003)
[90] *Ibid.*
[91] Interview with Ron Davies (Labour AM) (February 2003)

primary legislative proposals which it knew would be granted.[92] Davies claimed that when the Welsh Assembly Government took a risk and sought primary legislation it was unlikely to get, this tended to be on symbolic or insignificant areas, such as the Welsh Assembly Government's request for legislation allowing St David's Day to be declared a public holiday in Wales.[93]

The Welsh model of devolution means that the Welsh Assembly Government each year can only ask for a few pieces of legislation to be pursued at Westminster, usually the Welsh Assembly Government asks for between 4-5 bills. Therefore, if free personal care was to be included as one of the requests then the Welsh Assembly Government would need to consider the issue as one of its key priorities for the coming year. If the same criteria had been applied in Scotland, it would have been unlikely that the Scottish Executive would have chosen to pursue free personal care with the UK Government, indicated by the lack of support for the policy amongst cabinet members. Therefore, the lack of primary legislative powers in Wales made it more difficult to pass primary legislation on free personal care compared to Scotland. Primary legislation tends only to be requested when an issue is considered to be a high priority and there is considerable support for the policy within the Welsh Assembly Government.

Plaid Cymru AM, Dai Lloyd, argued that the lack of primary legislative powers allowed the Welsh Assembly Government to escape serious debate and consideration of long-term care policies.[94] As David Melding explained the Welsh Assembly Government did not actually want primary legislation to allow the Welsh

---

[92] *Ibid.*
[93] *Ibid.*
[94] Interview with Dai Lloyd (Plaid Cymru AM) (June 2004)

Assembly to introduce free personal care on a Wales only basis. However, they did not necessarily want to draw attention to their lack of support for free personal care, at least without additional funds. As a result Melding argued that the Welsh Assembly Government was guilty of irresponsible politics, committing to free personal care in principle whilst being unwilling to pay for it.[95] Melding believed that the Welsh Assembly Government placed the responsibility of free personal care on another level of government without assessing whether free personal care would actually be the right policy in Wales.[96] The suggestion here is that the model of Welsh devolution allowed the Welsh Assembly Government to escape making an unpopular decision. Therefore, the National Assembly's lack of primary legislative powers enabled the Welsh Assembly Government to publicly state their commitment to a popular policy, and blame the UK Government for not introducing it. If the National Assembly for Wales had possessed primary legislative powers the Welsh Assembly Government would not have been able to 'pass the buck' so easily.

The National Assembly's lack of primary legislative powers also enabled the Welsh Assembly Government to escape some of the pressures from supporters of free personal care who were so active in Scotland. The lack of primary legislative powers meant, therefore, that whilst most pressure groups were in favour of free personal care, 'there was generally an acceptance that it wasn't our gift to give'.[97] As a result the Welsh Assembly Government could direct supporters of free personal care to the UK Government. The division of powers between Westminster and Cardiff created difficulties for Welsh civil society actors who supported free personal care. In part due to the model of Welsh devolution pressure groups and opposition

---

[95] Interview with David Melding (Conservative AM) (February 2003)
[96] Ibid.
[97] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)

parties faced difficulties in maintaining a coherent message, directed at the Welsh

Assembly Government, which lessened the impact of their lobbying. Additionally

some pressure groups and opposition parties felt it was so unlikely that free

personal care would be introduced that they should focus on other issues.

Therefore, in comparison with Scotland some pressure groups and opposition

parties put less energy into campaigning for free personal care. Plaid Cymru faced

similar problems, not being certain which level of government to target. As a result

Plaid Cymru actors switched between blaming the Welsh Assembly Government and

the UK Government for the lack of action on the development of long-term care

policies.

The weakness of the Assembly's legislative powers also altered the strategies that

policy actors employed to influence policy. Liberal Democrat AM, Kirsty Williams,

argued that the lack of primary legislative powers encouraged Assembly Members to

develop their policy proposals to fit in with the Assembly's powers.[98] Williams

claimed that 'The devolution settlement has made us all creative'.[99] For instance, as

the National Assembly for Wales did not have the powers to prevent the

introduction of student tuition fees, the Welsh Assembly Government decided to

introduce a learning grant, for about the same amount as the fees, to lessen the

impact of tuition fees.[100] On the free personal care issue it appeared that the option

of pursuing the policy on a Wales-only basis would be closed to Assembly members,

due to the UK Government's opposition to the policy. Therefore, many of those in

favour of free personal care decided instead to focus on other methods of improving

long-term care for the elderly, such as introducing more generous personal

---

[98] Interview with Kirsty Williams (Liberal Democrat AM) (February 2003)
[99] *Ibid.*
[100] *Ibid.*

allowances for those in residential care. [101] As a result it is possible that the powers of the National Assembly for Wales actually encourage it to become a 'laboratory of democracy', adopting different policies from England and Scotland due to its different legislative powers.

8.3 Financial Powers

As discussed in chapter one the funding arrangements for the National Assembly for Wales and the Scottish Parliament mean that the devolved administrations are responsible for spending but not raising the bulk of their revenue. As a result, Morgan and Mungham argued that financing devolution goes against the 'first principle of sound government, namely that the power to spend money must not be divorced from the power to raise it'.[102] Consequently, Morgan and Mungham suggested that the devolved institutions have more incentive to spend money than if they needed to raise the money themselves.[103] Several interviewees agreed that the way in which the devolved institutions were funded encouraged irresponsible policy-making. For instance, SNP MSP Christine Grahame argued that 'If you're guaranteed an allowance whatever you do, you will not spend with the same attitude and care as if you'd raised the money yourself',[104] and a representative from the Wales Office accused the National Assembly for Wales of regularly playing the popularist card and spending money without taking responsibility.[105] The opinion of these interviewees is supported by the fact that to date policy departures from the

---

[101] *Ibid.*
[102] Morgan, K. and Mungham, G. (2000) *Redesigning Democracy: The Making of the Welsh Assembly* (Seren, Bridgend), p.201
[103] *Ibid.*
[104] Interview with Christine Grahame (SNP MSP) (January 2004)
[105] Interview with Senior Wales Office representative (February 2003)

293

UK Government have tended to involve additional public expenditure.[106] For instance, the Scottish Parliament's distinctive policies on free personal care, abolition of up-front student tuition fees and the three year settlement for teachers pay and conditions, all involved additional spending compared to the relevant English policies.

A lack of consideration of financial issues was noted in relation to the free personal care policy in Scotland by one interviewee who worked as an advisor to the Health and Community Care Committee. Alison Petch was amazed at the lack of discussion surrounding the implementation of free personal care. She claimed that in the Committee's discussion no detailed questions were asked about financing the policy, instead the Committee established an ideological commitment to free personal care and questions of cost seemed almost irrelevant to them.[107] One interviewee was not surprised by the Committee's lack of consideration of cost. He argued that there was a 'fundamental irresponsibility in the system' of government in Scotland,[108] because the Scottish Parliament has greater powers than in the Westminster model. As a result he suggested that the Parliament often pushes for commitment to wide ranging spending policies without having to face the responsibility of implementing or funding them.[109]

As Simeon pointed out 'free personal care was defended as the fulfilment of the NHS principle of universal access from the cradle to the grave, free at the point of

[106] Hazell, R. (2001) 'Conclusion: The State of the Nation after Two Years of Devolution' in Trench, A. (Ed.) *State of the Nations 2001: The Second Year of Devolution in the United Kingdom* (Imprint Academic, Exeter), p.259
[107] Interview with Alison Petch (Member of the Care Development Group) (February 2004)
[108] Interview with Scottish Executive Senior Civil Servant (February 2004)
[109] *Ibid.*

delivery. It was not defended in the name of a uniquely Scottish need'.[110] In Scotland the First Minister, Henry McLeish, argued that one of his key motivations for pursuing free personal care was to raise a debate about where state responsibility lies.[111] In Wales too the Welsh Assembly Government has extended the state's role, for instance by introducing free prescriptions for all. As Simeon notes, whilst Westminster is unlikely to recklessly champion social issues that could create expensive new demands on its own budget, the devolved institutions do not face the same restraints.[112] In fact the UK Government is not only reluctant to champion expensive policies in new areas, but is also restricting state involvement in areas traditionally considered as the state's responsibility. For instance, the move towards PFI schools and hospitals transferred the state's responsibility to the private sector, and the removal of grants and introduction of fees for students has transferred responsibilities from the state to the individual. Interestingly, devolution in the UK has created a dynamic where there are incentives for the devolved administration to broaden state involvement while the central level of government has incentives to restrict it. In contrast, Banting and Corbett noted that in federal systems these incentives are reversed. In federal systems 'a race to the bottom' is often identified, where federal units compete for capital and investment, thus encouraging the sub-national governments to restrict public expenditure. In this context, Banting and Corbett argued that central governments are more likely to safeguard a minimum level of welfare provision, whilst sub-national governments attempt to restrict public expenditure.[113] There is an assumption in Banting and

---

[110] Simeon, R. (2003) 'Free Personal Care: Policy Divergence and Social Citizenship' in Hazell, R. *The State of the Nations* 2003: The Third Year of Devolution in the United Kingdom (Imprint Academic, Exeter), p.232
[111] Interview with Henry McLeish (First Minister) (December 2003)
[112] Simeon, R. *op.cit.,* p.232
[113] Banting, K.G. and Corbett, S. (2002) 'Health Policy and Federalism: An Introduction' in Banting, K.G. and Corbett, S (Eds.) *Health Policy and Federalism: A Comparative Perspective on Multi-Level Governance* (McGill-Queens University Press, London), p.22

Corbertt's work that there is a desire by the sub-national units to restrict the welfare state, and the existence of multi-level governance 'multiplies the number of veto points at which action can be delayed, diluted or defeated'.[114] Devolution in the UK differs from federalism by providing the sub-state tier with little responsibility for capital and investment. Perhaps Banting and Corbett's model indicates that the level of government responsible for attracting capital and investment is more likely to seek to restrict public expenditure, whilst the level of government without this responsibility will seek to increase public expenditure. Consequently, whilst Banting and Corbett's model of health policy and federalism does not precisely fit devolution, it is possible that the factor they identify, responsibility for capital and investment, is a significant variable for encouraging a restrictive public expenditure approach, in both federal and devolved systems. Therefore, the particular division of financial powers in the UK devolved model increased the likelihood of distributive policies being pursued by the devolved institutions, by reducing the political capital available for opposing greater public expenditure.

The disincentive to support financial restraint is most obviously illustrated by the policy positions adopted by the Conservatives throughout the UK. Whilst the UK and Welsh Conservative parties advocated individual responsibility for financing personal care, the Scottish Conservative party supported universal free personal care. Simeon argued that whilst this can partially be explained by,

> 'the need to overcome the legacy of the Thatcher government and define the party as 'Scottish' almost certainly played a role. An additional, structural explanation is that the Conservatives' traditional platform of fiscal restraint is undermined by the lack of fiscal autonomy for the Scottish Parliament'.[115]

---

[114] *Ibid.*, p.5
[115] Simeon, R. *op.cit.,* p.231

When asked why the Scottish Conservatives decided to support free personal care, Mary Scanlon, who was then the Conservative Health Spokesperson, argued that the decision was based on the inequalities of care funding.[116] Clearly, the Scottish Conservatives were moving in a different policy direction to their UK counterparts. Without any responsibility for raising revenue or lowering taxes there was simply no political capital to be made out of arguing for less state involvement.[117] As one Conservative MSP interviewed by Simeon claimed, 'if you have a spending commitment that would impact on your borrowing as a treasury, I suppose that would impact on everything else. We just simply have to say we know that for the next 20 years we're going to get a block so we'll just devote that much to it'.[118]

Some policy actors appeared to enjoy the freedom from raising revenue created by the devolution settlement. For instance, one Labour AM did not want the Assembly to be given tax raising powers because he anticipated that using these powers would be unpopular.[119] The Conservative AM, David Melding, felt that the National Assembly's inability to raise taxes, like its inability to introduce primary legislation, allowed the Welsh Assembly Government to avoid debate.[120] He argued that whilst the tax-varying powers of the Scottish Parliament have not actually been used, the possession of this power has led to more thorough discussion of policies than has occurred in the National Assembly for Wales.[121] Melding suggested that the Welsh Assembly Government were able to avoid making a decision about whether free personal care was actually the best use of resources, which would have been

---

[116] Interview with Mary Scanlon (Conservative MSP) (December 2003)
[117] Simeon, R. *op.cit.,* p.231
[118] *Ibid.*
[119] Interview with a Labour AM (February 2003)
[120] Interview with David Melding (Conservative AM) (February 2003)
[121] *Ibid.*

unavoidable if they had the ability to raise taxes to pay for the policy.[122]   Melding

clearly has a point, as if the National Assembly possessed tax-varying powers those

in favour of free personal care would have been able to suggest taxes should be

raised to pay for the policy, thus prompting greater debate about whether free

personal care was the best use of resources. However, in Scotland there was also a

lack of discussion about how to implement free personal care, particularly the

financial implications of the policy.

Civil servants working for the Welsh Assembly Government argued that the lack of

money available to the National Assembly affected which policies could be

pursued.[123] Most interviewees involved with the National Assembly for Wales

believed that free personal care was not an affordable option available to the

Assembly, without additional funds from the UK Government. For instance, policy

advisor to the Welsh Assembly Government, Mark Drakeford, believed that whilst

the Barnett formula provided Scotland with enough money to fund free personal

care, it left Wales disadvantaged and unable to fund such policies.[124]   However,

Plaid's policy director, Lila Haines, argued that as the National Assembly's financial

reserves are under spent each year there would have been enough to pay for free

personal care.[125]   Whilst Haines is correct to note that the Assembly consistently

under spends, as a senior Scottish civil servant pointed out, whilst the under-spend

meant that it would not have been difficult to fund free personal care for one year,

the problem arises because the policy is then budgeted for in the next year which

could potentially store up problems for the future, as the cost of long-term care is

[122] *Ibid.*
[123] Interview with Welsh Assembly Government Civil Servants (June 2004)
[124] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[125] Interview with Lila Haines (Plaid Cymru's Policy Director) (June 2004)

likely to increase.[126] Therefore, whilst free personal care may be affordable in the short term there are questions over its long-term viability.

The funds allocated to the devolved institutions not only affected which policies could be adopted, but also the way the policies were implemented. Welsh Assembly Government civil servants pointed out that the lack of money available to the National Assembly for Wales meant that 'we can't deliver policies which are expensive to administer'.[127] This inability to fund policies which are costly to administer was a factor in the Welsh Assembly Government's decision to fund free nursing care through a flat-rate payment rather than the banded model chosen by the UK Government. The banded model required a person's care needs to be assessed regularly, as people in long-term care are likely to have deteriorating health conditions, and thus, changeable needs. In contrast, the flat-rate payment simply requires a simple assessment of whether someone required nursing care or not.

In comparison to the National Assembly for Wales the Scottish Parliament was less restricted by their reliance on the block grant, primarily because the Scottish Parliament receives more money per person than elsewhere in the UK. For instance, in the 2001/02 financial year spending per head in Scotland was estimated at 20 per cent above the UK average.[128] In relation to health spending in 2001/02, the Scottish Parliament spent 14.5% per capita above UK average.[129] Scotland's possession of greater resources than England made it easier for the Scottish

---

[126] Interview with Scottish Executive Senior Civil Servant (February 2004)
[127] Interview with Welsh Assembly Government Civil Servants (June 2004)
[128] Bell, D. (November 2003) 'Finance' in *Nations and Regions: The Dynamics of Devolution- Quarterly Monitoring Report Scotland* accessed at www.ucl.ac.uk/constitution-unit on 22/3/04, p.41
[129] *Ibid.*, p.43

Parliament to commit to policies requiring additional public expenditure. Committing to free personal care is simply more affordable in Scotland than in Wales or England. However, it is debatable whether the Scottish Parliament will always have the freedom to fund expensive policies.

The gap between spending in Scotland and the rest of the UK has historically been justified 'by higher spending needs, for example based upon scarcity of population or relative deprivation'.[130] However, there have been attempts to reduce the spending gap between Scotland and the rest of the UK. For instance, changes have been made to the Barnett formula to ensure that the population estimates on which the formula is based are updated annually to take account of population change. The consequence of a stricter application of the Barnett formula is that Scotland is suffering from a Barnett squeeze, meaning that in relation to England the level by which Scottish spending is increasing has decreased. The Barnett squeeze does not mean that the Scottish spending is decreasing, only that the rate of spending increase is slowing down in comparison to England. At the present time the Barnett squeeze is not a major problem, as the comprehensive spending review raised the Scottish block by £4 billion from 2002/3 to 2005/6.[131] However, in the future if English spending decreased, the Scottish Parliament could face difficulties. For instance, Taylor imagines a scenario whereby English spending increases just enough to cover inflation, in such a case Scotland's increase would be below inflation.[132] If spending decreases in England the Scottish Parliament may be able to limit the impact by using its limited tax power, however, it is also likely that the Parliament would be forced to make budget cuts. In a climate of spending cuts the

---

[130] Taylor, B. (2002) *Scotland's Parliament: Triumph and Disaster* (Edinburgh University Press, Edinburgh), p.243-244
[131] *Ibid.*, p.239

pressure to cut policies, such as free personal care, which are judged to be unaffordable in England, rather than to reduce spending on policies which both institutions are both committed, may be irresistible. At the moment we can only speculate on the future pressures, but the future of distinctive policies which require additional expenditure is questionable.

The political consequences of pursuing distinctive policies can be costly partly because the Treasury has such extensive powers over the funding of the devolved institutions. Wales's Secretary for the Transport and General Union argued that the so far the central government has used treasury regulations to prevent the National Assembly for Wales from acting.[133] Hancock argued that the UK Government's control over finances played a significant role during the development of the Welsh Assembly Government's learning grant policy. The Welsh Assembly Government faced problems during the implementation of the learning grant policy because students on benefits found that their benefits were being clawed back by the Department of Work and Pensions, due to their increased income generated by the learning grant.[134] Whilst a representative from the Wales Office felt that that these difficulties were caused by the Welsh Assembly Government not communicating their policy proposal effectively,[135] Hancock saw this as an example of the UK Government using their control over the benefit system to indicate their disapproval for the Assembly's policy.[136] Hancock's version of events is supported by the fact that the interviewee from the Wales Office opposed the Learning Grant policy,

[132] *Ibid.*, p.245
[133] Interview with Jim Hancock (Regional Secretary for Wales Transport and General Union) (February 2003)
[134] Interview with Senior Wales Office representative (February 2003)
[135] *Ibid.*
[136] Interview with Jim Hancock (Regional Secretary for Wales Transport and General Union) (February 2003)

arguing that the idea behind the policy was a good one but the policy itself lacked substance.[137]

A similar criticism was made of the UK Government during the debates over Attendance Allowance in Scotland. As discussed in the previous chapter, the DWP argued that those in receipt of Attendance Allowance in Scotland should have their benefit withdrawn if free personal care was introduced in Scotland. Most interviewees from the Scottish Executive, the Scottish Parliament and Scottish civil society agreed that the DWP's position on Attendance Allowance was an example of the UK Government showing its lack of support for free personal care. For the Welsh Assembly Government the position of the DWP was another factor ensuring that Welsh Assembly Government would not introduce free personal care. As the ex-Deputy Health Minister, Brian Gibbons pointed out,

> 'Wales is under financed by the Barnett formula. The AA (Attendance Allowance) resolution meant that if the Welsh Assembly introduced free personal care we would end up paying for UK benefit commitments. This simply isn't fair. We don't have the kind of money Scotland has to play with, we are so under-resourced it wouldn't be fair for us to pay for AA'[138]

Therefore, for the Welsh Assembly Government the Attendance Allowance ruling not only meant that Wales could not afford to introduce free personal care, but it also questioned whether it would be fair for the Assembly to fund a UK benefit.

In Scotland almost all interviewees agreed that the most serious threat to the Scottish Parliament's capacity for distinctive action was the financial arrangements of devolution. In Wales about half of the interviewees considered the Assembly's

---

[137] Interview with Senior Wales Office representative (February 2003)

financial arrangements as the more constricting factor on their policy options (with almost all the remainder considering the Assembly's legislative functions as the crucial factor). Therefore, it is clear that those involved in developing policy in each of the devolved institutions consider the way in which the devolved institutions are funded to have a major impact upon their capacity for distinctive action. However, simply because those involved in the policy-making process feel that a factor influences their capacity for distinctive action, does not necessarily mean that it does. For instance, very few interviewees mentioned the impact of the design of the devolved institutions as a major factor in shaping policy, but it is likely that features such as a strong committee system and a focus on being open and accessible have promoted a different model of policy-making to that found in institutions designed differently.

8.4 Design of the Devolved Institutions

The Scottish Parliament and the National Assembly for Wales were designed to be different from Westminster. For example, the Consultative Steering Group, established four principles that should guide the Scottish Parliament's work:

1. the Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive

2. the Scottish Executive should be accountable to the Scottish Parliament and the Parliament and Executive should be accountable to the people of Scotland

3. the Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation

4. the Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all[139]

---

[138] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[139] Consultative Steering Group on the Scottish Parliament (1998) *Scotland's Parliament* (The Scottish Office), section 2

303

Additionally the White Paper which set out the Government's plans for Welsh devolution stated that, 'The Government is committed to establishing a new, more inclusive and participative democracy in Britain'.[140]   In Wales a degree of power-sharing between the executive and the institution was meant to be encouraged by its structure as a corporate body, whilst in both Scotland and Wales the committee system was designed to encourage wider involvement in policy-making within the devolved institutions.   The Scottish Parliament and National Assembly for Wales were also designed to encourage greater engagement with civil society, indicated by measures such as the Public Petitions Committee in Scotland and the legal right to consultation for local government, voluntary organisations and the business community in Wales.[141]   The National Assembly developed a Voluntary Sector Scheme to ensure it meets its legal requirements to consult, which includes measures such as,

> '[Assembly Secretaries shall] meet with representatives of the relevant networks of voluntary organisations covering their areas of responsibility at least twice in any one calendar year. These meetings will review the operation of the Scheme and the level of consultation and discussion that has taken place between the network and the appropriate Secretary/Committee'.[142]

According to several interviewees the devolved institutions possessed a specific policy-making culture, which allowed for a more open policy-making process. McLeish, who has been a parliamentarian at Westminster and the Scottish Parliament, pointed out that at Westminster there is a constant awareness of the history of the institution which meant that its ways of operating rarely changed. In contrast McLeish argued that in the Scottish Parliament 'good ideas travel'.[143] Additionally Ron Davies suggested the size of the devolved institutions made a

---

[140] Welsh Office (1997) *A Voice for Wales: The Government's Proposals for a Welsh Assembly* (HMSO, London), p.15
[141] Government of Wales Act 1998, Chapter 38, S.113-115

304

difference, and as a smaller institution than Westminster, Davies found it easier to influence policy-making in Cardiff than in London.[144] However, there is some evidence to suggest that the institutional culture of the devolved institutions changes as time passes. For instance, SNP MSP Christine Grahame believed that in the early days of the Scottish Parliament policy divergence from the UK Government was more likely because there was a lack of procedures and conventions established with Whitehall.[145] Grahame suggested that policy-making has since tightened up, preventing considerable policy input from those outside the Executive. Interestingly Grahame believed that the tightening up of policy-making in the Scottish Parliament was partly as a consequence of the free personal care case, as the UK Government woke up to the impact that Scottish decisions could have on them. Ron Davies suggested that a similar process has occurred in Wales, 'The Assembly has slipped back into the old Westminster model [where]... government decides and expects to get its policy through'.[146] However, the strength of the devolved institutions in relation to their Executives encouraged by the design of the Scottish Parliament and the National Assembly for Wales, appeared to play a significant role in the free personal care issue, particularly in Scotland.

Henry McLeish argued that he used the strength of the Scottish Parliament to drive the free personal care policy.[147] McLeish claimed that he pushed free personal care onto the agenda, hinted at a policy reversal and then let the Parliament build-up the pressure on a reluctant Executive.[148] A senior official with the Scottish Executive

[142] National Assembly for Wales (2000) *Voluntary Sector Scheme*
[143] Interview with Henry McLeish (First Minister) (December 2003)
[144] Interview with Ron Davies (Labour AM) (February 2003)
[145] Interview with Christine Grahame (SNP MSP) (January 2004)
[146] Interview with Ron Davies (Labour AM) (February 2003)
[147] Interview with Henry McLeish (First Minister) (December 2003)
[148] *Ibid.*

agreed with McLeish's assessment of the situation, suggestiing that the Parliament was important in securing the free personal care decision. However, unlike McLeish, the Scottish Executive official believed that the Parliament's influence was a bad thing. He argued that the 'Parliament doesn't have the responsibility for implementing policies or financing them... Therefore, there is a fundamental irresponsibility in the system.[149] Basically the civil servant felt that the Parliament had an incentive to support expensive distributive policies, which are popular with their constituents, and that they regularly make such commitments without having to face the consequences of their decisions.[150]

The key channel through which the Scottish Parliament and the National Assembly for Wales challenge the Executive's control of the policy-making process is through the committees. As discussed in chapter one, the committees in the Scottish Parliament and the National Assembly for Wales have a wider remit and greater powers than their counterparts in Westminster. As a corporate body, it was expected that the committees in Wales in particular would be a major player in policy development. However, in Wales the committee system has been heavily criticised by Assembly members. For example, Ron Davies argued that the corporate structure should have made it easier for AMs to influence policies but in reality the 'committees work hard and then are ignored'.[151] In Wales the committees write fewer reports than in Scotland. For example, in the first term the Health and Social Services Committee in Wales produced eight reports, four of which were annual reports. The other reports were entitled 'A Children's Commissioner for Wales', 'Extension of Categories of People Entitled to Free Eye

---

[149] Interview with Scottish Executive Senior Civil Servant (February 2004)
[150] Ibid.
[151] Interview with Ron Davies (Labour AM) (February 2003)

Tests', 'Implications for Wales of the Phillips (BSE) Inquiry Report' and 'Review of Services for Children with Special Health Needs'. In contrast, in Scotland the Health and Community Care Committee produced 75 reports. Although 47 of these were reports on subordinate legislation, many were substantial reports, such as an inquiry into GM crops, a report on the Mental Health (Scotland) Bill, a report to the Education, Culture and Sport Committee on the Schools Meals (Scotland) Bill, a Report on Hepatitis C, a report on petition PE145 calling for an enquiry into issues surrounding the alleged relationship between the combined Measles, Mumps and Rubella Vaccine and Autism, and a report on the Influenza Vaccination. The Health and Community Care Committee in the Scottish Parliament devoted a considerable amount of time exploring free personal care, indicated by the fact that it conducted an in-depth inquiry into the delivery of Community Care in 2000. Their inquiry into community care was well respected, for instance Alison Petch, who worked as an advisor to the Committee, was impressed by the MSPs, who she believed tended to explore the issues in depth and follow their own line of inquiry.[152] The evidence provided to the committee was almost unanimous, all parties endorsed the Royal Commission's report, thus strengthening the case for free personal care. The Committee's inquiry also helped to convince MSPs of the benefits of free personal care, enhanced the publicity about the issue and silenced those against the policy. Henry McLeish argued that the Health and Community Care Committee strengthened the 'constituency of interests' within the Parliament who were supportive of free personal care.[153] Therefore, in Scotland the strong committee system enabled the Health and Community Care Committee to conduct a detailed and independent inquiry, which then added to the pressure on the Executive to act.

---

[152] Interview with Alison Petch (Member of the Care Development Group) (February 2004)
[153] Interview with Henry McLeish (First Minister) (December 2003)

In contrast, the Welsh Health and Social Services Committee did not conduct an inquiry into long-term care, and rarely discussed free personal care. The clerk of the Health and Social Service Committee explained that the lack of discussion of free personal care was partly due to the weakness of the Committees in Wales.[154] She argued that the Health and Social Services Committee only examines issues in depth which have the broad support of everyone in the Committee.[155] Plaid Cymru AM, Dai Lloyd, also explained that it was difficult to discuss anything contentious in committee,[156] and Conservative AM, David Ian Jones felt the entire committee system was 'too cosy' and greater scrutiny of the Executive was required.[157] Although a few AMs felt that it was easier to raise issues for discussion in the National Assembly's committees compared to Westminster they tended to feel that such discussion had little impact upon the Welsh Assembly Government.[158] AMs also felt that the committees were not able to develop the same independent and respected profile, so crucial to the Health and Community Care Committee's ability to apply pressure on the Scottish Executive. The lack of an independent voice can partly be explained by the fact that the relevant minister sits on the committees in Wales. The clerk of the Health and Social Services Committee explained that the Minister's membership of the Committee was a particular problem when the committee chair comes from the same party as the Minister, and if they are good friends she argued that it was incredibly difficult for the committee to conduct proper scrutiny.[159] Therefore, whilst in Scotland the Parliament has been designed

---

[154] Interview with National Assembly for Wales Health and Social Services Committee Clerk (June 2004)
[155] Ibid.
[156] Interview with Dai Lloyd (Plaid Cymru AM) (June 2004)
[157] Interview with David Ian Jones (Conservative AM) (February 2003)
[158] Interview with Glyn Davies (Conservative AM) (February 2003)
[159] Interview with National Assembly for Wales Health and Social Services Committee Clerk (June 2004)

308

to allow the committees to develop independently from the Executive in Wales the committees and the Executive were meant to share power and policy development responsibility. However, as the corporate body structure in Wales has developed into a more Parliamentary model it has become apparent that power over policy development has not been shared and in addition the committees have been unable to provide detailed scrutiny of the Welsh Assembly Government. In relation to free personal care the design of the Scottish Parliament enabled the development of a strong Health and Community Care Committee, which challenged the Executive through galvanising support and conducting a well-respected inquiry into community care. In Wales the structures discouraged the creation of such an independent inquiry and so gave AMs fewer opportunities to influence the Welsh Assembly Government's long-term care policies.

The Welsh Assembly Government's policy on free personal care was developed in the Advisory Group on a Strategy for Older People. The Advisory Group included members from voluntary organisations, local government, the care sector and private business. According to one member from Help the Aged, the way in which the strategy for older people was developed showed a real commitment to a new way of working which went beyond the rhetoric of 'openness, transparency, inclusivity and all that'.[160] All the interviewees from voluntary organisations believed that their legal right to consultation made a crucial difference to their ability to influence policy-making. However, an interviewee from Carers Wales felt that 'formal structure makes consultations with those who are reluctant to listen easier, but informal discussions are more likely to make the difference'.[161] Therefore, whilst

---

[160] Interview with Ana Palazon (Director of Help the Aged Wales) (February 2003)
[161] Interview with Roz Williamson and Sandra Burton (Carers Wales) (February 2003)

the institutional setting can encourage discussion between the Welsh Assembly Government and the voluntary sector, it is unlikely that this will lead to action unless the Welsh Assembly Government is in agreement. June Clark also believed that in the Assembly's second term it was gradually closing itself off from voluntary organisations.[162] June Clark explained that this distancing process was occurring because the Welsh Assembly Government was now a majority government and so did not need to adopt a consensual policy-making style.[163] However, other interviewees felt that it was always inevitable that the Welsh Assembly Government would stop listening to voluntary organisations once they gained experience and no longer needed help and support.[164] As a result it appears that whilst the legal right to consult and the institutional features of the National Assembly for Wales encourage dialogue, the Welsh Assembly Government will only engage with the voluntary sector if they get something in return. However, the institutional features of the devolved institutions tend to ensure that the voluntary sector do have more to offer to the devolved governments. As a senior official in the Scottish Executive pointed out '[We] can't replicate the policy research in Whitehall so in designing the Scottish Parliament it was clear that we needed to use the skills of professionals, especially the voluntary sector.[165] Therefore, it has been common for the devolved governments to rely heavily on the voluntary sector to sit on working groups and develop policy proposals. It was also suggested that by engaging civil society actors in the policy-making process the Scottish Executive can 'buy their support', which was particularly important to new institutions, especially the National Assembly for Wales which was introduced only by the briefest of margins.[166]

---

[162] Interview with June Clark (Member of the Royal Commission on Long-Term Care) (June 2004)
[163] Ibid.
[164] Interview with Roz Williamson and Sandra Burton (Carers Wales) (February 2003)
[165] Interview with Scottish Executive Senior Civil Servant (February 2004)
[166] Ibid.

310

In Scotland, as in Wales, the Scottish Executive appeared more likely to involve civil society in policy-making than the Scottish Office was in the pre-devolution days. Several interviewees claimed there had been a tremendous change in the culture of the civil service in Scotland. One interviewee argued that when developing policies in the past the Scottish Office used to first phone Whitehall, but since devolution they begin their consideration of policy by talking to relevant policy experts and interested organisations in Scotland.[167] Of course, civil servants would want to argue that they are involving civil society in policy-making, however, there was also a perception amongst interviewees from pressure groups that since devolution they had been more actively involved in the political process. Liz Duncan, from Help the Aged in Scotland, believed that throughout the Scottish Parliament's first term there was a growing acceptance by the Scottish Executive of the need to consult with relevant organisations.[168] For example, she pointed to when the timetable for the implementation of free personal care was extended. Duncan argued that there was a lack of consultation with elderly organisations about the timetable extension and as a result she had been sceptical of the Executive's motives and went to the press claiming that the Executive were attempting to backtrack from their commitment to free personal care.[169] However, after doing so she was contacted by Malcolm Chisholm, then the health minister, who explained there were good reasons for the delay.[170] Liz Duncan saw this event as a turning point in communication, and afterwards felt she was at least aware of relevant policy decisions.

---

[167] *Ibid.*
[168] Interview with Liz Duncan (Director of Help the Aged Scotland) (February 2004)
[169] *Ibid.*
[170] *Ibid.*

A key difference in the development of the free personal care policies in Scotland and Wales was the involvement of policy experts and elderly pressure groups in the policy process. A wide variety of civil society actors were also involved in policy-making during the Health and Community Care Committee's inquiry into long-term care. The committee system in the Scottish Parliament encouraged a high level of involvement from actors from outside the institution to give evidence, and in the free personal care case the variety of organisations giving evidence to the committee was impressive. Alison Petch, who was an advisor to the Committee, pointed out that the Sutherland report took much less evidence than the Health and Community Care Committee.[171] In Wales whilst civil society actors were able to give evidence to the Advisory Group on a Strategy for Older People, the Advisory Group reported to the Welsh Assembly Government, and not directly to the Assembly. As a result pressure groups were not as able to work closely with AMs to build up pressure on the Welsh Assembly Government on free personal care. Additionally the Minister's membership of the Health and Social Services Committee made it more difficult for the Committee to develop an independent profile, as detailed inquiries such as the one in Scotland on long-term care gave way to the Welsh Assembly Government's agenda.

In Scotland, in addition to working with the Health and Community Care committee to galvanise support for free personal care elderly pressure groups also used the Scottish Parliament's Petition Committee to push the free personal care issue onto the agenda. The Public Petition Committee was designed to ensure there was a direct avenue for communication between the public and the Scottish Parliament, thus ensuring that the Scottish Parliament fulfilled its commitment to openness and

---

[171] Interview with Alison Petch (Member of the Care Development Group) (February 2004)

accessibility outlined by the Consultative Steering Group. Age Concern used the petition process to call for the 'Scottish Parliament to implement all of those recommendations contained in the report of the Royal Commission on Long-term care for the Elderly'.[172] The petition was submitted in January 2000 and received 11,000 signatures, which meant it was at that time the largest petition submitted to the Scottish Parliament.[173] The Petitions Committee provided the elderly lobby with an effective tool for publicising their campaign. An interviewee from Age Concern claimed that the petition process increased media interest and played a key role in ensuring issues arose on the political agenda.[174] The petition process raised the profile of the free personal care debate by providing the media with another excuse to consider the issue, so adding to the pressure on the Scottish Executive to act. The existence of the Public Petitions Committee provided pressure groups in Scotland with an alternative method for raising issues and pressurising the Executive, and together with other institutional factors, such as the strong Health and Community Care Committee, provided actors with greater opportunities for galvanising support for free personal care than existed either at Westminster or in the National Assembly for Wales. The absence of a petitions committee in Wales is another difference between the devolved institutions which weakened the voice of civil society actors on the free personal care issue in relation to those operating in Scotland.

---

[172] Petition- PE077 (January 2000) by Age Concern Scotland
[173] Interview with Jess Barrow (Director of Communications for Age Concern Scotland) (March 2004)
[174] *Ibid.*

8.5 Devolved institutions within the UK

So far this chapter has focused on the internal institutional features of the Scottish Parliament and the National Assembly for Wales. However, a key characteristic of the Scottish Parliament and the National Assembly for Wales is that they are devolved institutions operating alongside each other within the UK framework. As institutions operating within a UK setting the devolved institutions can be affected by activity at the UK level. Additionally the devolved institutions can influence each other. For instance, in the free personal care case actors in Wales were influenced and sought to emulate developments in Scotland. As a result it is clear that the devolved institutions do not operate in isolation.

The UK Government has a much stronger research capacity than the devolved institutions. As a result many interviewees were concerned that the UK Government's policy proposals also set the agenda for the devolved institutions. For instance, Peter MacMahon believed that the Scottish Executive was in the habit of following Westminster's lead, even though their final policy design may differ.[175] Here MacMahon noted that whilst slightly different policies may be adopted in Scotland, the Scottish Executive has been incapable of introducing the most radical form of policy divergence, developing a distinctive agenda from the UK Government.[176] In Wales one interviewee from a voluntary organisation was even more scathing of the potential for policy divergence in the devolved insitutions, arguing that the Welsh Assembly Government has a tendency of watching what England does and then sticking a daffodil on top.[177] Here Palazon implied that that

---

[175] Interview with Peter MacMahon (Press Secretary to McLeish) (December 2003)
[176] Keating, M. (2003) 'Policy Convergence and Divergence in Scotland under Devolution' paper from *Devolution in Comparative Perspective Conference* (University of Strathclyde, 7th January-9th January 2004), p.1
[177] Interview with Ana Palazon (Director of Help the Aged Wales) (February 2003)

not only did the UK Government determine which issues the Welsh Assembly Government examined, but also shaped their policy response to a large extent. As a result Palazon hinted that the Welsh Assembly Government's policies differed in detail rather than scope.[178] This analysis of the extent of policy divergence in Wales appears to accurately explain the development of the free nursing care policy. On free nursing care one interviewee argued that the Welsh Assembly Government was 'aware of policy development in England' and it was 'immediately obvious that a similar policy would be implemented in Wales'.[179] However, the Welsh Assembly Government decided to provide free nursing care by paying a flat-rate payment to recipients rather than assessing their care needs and using the banded model implemented in England. Therefore, the broad aims of the Welsh Assembly Government's policy matched those of England, but the way in which the policy was implemented differed in Wales.

The free personal care case indicated how an issue which arose on Westminster's agenda then transferred to the Scottish Parliament and National Assembly for Wales. As Simeon explains 'The story begins with the creation of the UK Royal Commission on long-term care in 1997, chaired by Lord Sutherland'.[180] The ex-Deputy Health Minister in Wales, Brian Gibbons, explained that in Wales it is common for the Assembly's agenda to mirror Westminster's due to the form of devolution in Wales.[181] Several interviewees noted the difficulties that the devolved institutions face in developing their own agenda independently of Westminster. Many interviewees explained that Westminster continued to set the policy agenda

---

[178] *Ibid.*
[179] Interview with Mark Drakeford (Health advisor to the Welsh Assembly Government) (June 2004)
[180] Simeon, R. (2003) 'Free Personal Care: Policy Divergence and Social Citizenship' in Hazell, R. *The State of the Nations* 2003: The Third Year of Devolution in the United Kingdom (Imprint Academic, Exeter), p.218

primarily due to their greater resources, particularly their research capacity. For example, the Sutherland report was used by actors in the Scottish Parliament and National Assembly for Wales as the basis for their exploration of free personal care. The Sutherland report was used so much primarily because it was a thorough report which was well respected and also because it would have taken 'too much time and money for the research to be done [separately in Wales and Scotland]'.[182] Additionally, as John McTernan noted, civil servants working for the devolved institutions were not separate from those in England. McTernan argued that the existence of a UK wide civil service means that ideas and connections flow between Scotland, England and Wales.[183] However, as civil servants working at the UK tier have greater resources and experience they tend to dominate the generation of ideas, so the flow of ideas is primarily driven by the UK tier. Therefore, as one Scottish Executive official pointed out, the Scottish Executive works closely with UK departments on all issues in order to benefit from their greater resources and expertise.[184]

The fact that the devolved institutions operate within the UK framework also means that the UK Government's potential opposition to the development of distinctive policies is important. In relation to free personal care, actors from both the Scottish Executive and the Welsh Assembly Government noted that initially there was an expectation that there would be a UK wide policy.[185] An interviewee from the Scottish Executive argued that the desire to introduce a uniform policy throughout the UK was primarily driven by recognition that if different policies were pursued

---

[181] Interview with Brian Gibbons (Deputy Health Minister) (June 2004)
[182] Interview with Sarah Stone (Political Officer for Age Concern Cymru) (February 2003)
[183] Interview with John McTernan (Special Advisor to McLeish- Head of Policy and Strategy) (January 2004)
[184] Interview with Scottish Executive Senior Civil Servant (February 2004)

then pressures on both the Scottish Executive and Whitehall from pressure groups in particular would be intense. [186] The Scottish First Minister was also aware of such pressures, and commented that during negotiations with UK Ministers there was deep concern that the decision in Scotland to introduce free personal care would put pressure on the UK Government to follow suit.[187] Therefore, the fact that the devolved institutions operate within a UK framework encouraged a fear of policy divergence, particularly by the UK Government. What is interesting about the free personal care case is that the pressure expected by the UK Government to follow Scotland's lead has not been as intense as predicted, and the UK Government have faced little difficulties justifying their policy choice.[188] Several interviewees felt that policy divergence was now a more acceptable part of devolution and one interviewee predicted that the pressure from the UK Government for conformity will continue to decrease 'as it becomes more common for the Scottish Parliament to diverge'.[189] In fact, as the Health Committee returned to the issue of free personal care in the second term of the Scottish Parliament, conducting an inquiry on the implementation of the policy, the Scottish Parliament's long-term policy may yet reconverge with the UK Government's policy.

It also appears that actors within the devolved institutions have become more effective at managing the UK Government's concerns. For example, in Wales one interviewee explained that when the Welsh Assembly Government wanted to act distinctively it now attempted to do so by arguing that Wales has different needs

---

[185] Interview with Welsh Assembly Government Civil Servants (June 2004)
[186] Interview with Scottish Executive Senior Civil Servant (February 2004)
[187] Interview with Henry McLeish (First Minister) (December 2003)
[188] Interview with Peter MacMahon (Press Secretary to McLeish) (December 2003)
[189] Interview with Scottish Executive Senior Civil Servant (February 2004)

and so different policies were required.[190] Apparently such claims are usually 'a load of rubbish and we just want to introduce different policies because we disagree with the UK Government's proposals'.[191] However, as the free personal care case indicates, whilst the devolved institutions may be able to develop distinctive policies, generally they continue to follow the agenda set by the UK Government.

As suggested by the notion of 'laboratories of democracy',[192] discussed in chapter two, it is also possible that devolution may encourage the different governments and institutions in the UK to learn from each other. In the free personal care case the actors in the National Assembly for Wales appeared to learn about what was possible in a devolved system from policy developments in Scotland. After the Scottish Parliament adopted the free personal care policy the Western Mail commented on the differences between the devolution settlements in Scotland and Wales,

> 'as Scotland begins to flex its muscles, pursuing policies which are obviously distinctive from England, questions will be asked about why Wales is handcuffed and, more importantly, when the manacles will be unlocked. Free care for the elderly is the latest tartan policy which is showing up the gap between the different settlements'.[193]

The article suggested that free personal care symbolises wider problems with the devolution settlement, that whilst Scotland has the powers to pursue distinctive policies from England, Wales does not. Welsh pressure groups were quick to draw comparisons between the institutions, using Scotland's decision to put pressure on the National Assembly for Wales. For instance, Age Concern Cymru called 'for the National Assembly to give free personal care for the elderly - following the Scottish

---

[190] Interview with Labour AM (February 2003)
[191] *Ibid.*
[192] Donahue, J.D. (1997) *Disunited States: What's at stake as Washington Fades and the States Take the Lead* (Basic Books, New York), p.13

318

Executive's lead'.[194] It appeared that the Scottish policy highlighted that devolution could produce distinctive policies, which awoke supporters of free personal care in Wales. As Sarah Stone from Age Concern Wales noted, the voluntary sector was closely watching Scotland.[195]

Additionally policy-making in Scotland had a strong impact upon the strategies employed by Plaid Cymru. As one Plaid Cymru AM, Dai Lloyd, pointed out 'Scotland is the beacon for Plaid Cymru'.[196] As Plaid Cymru want the National Assembly for Wales to possess the same powers as the Scottish Parliament they regularly make comparisons between the situation in Scotland and Wales to emphasise what the National Assembly could do with greater powers. For example, Plaid's manifesto for the Assembly election in 2003 states:

> 'The National Assembly, unlike the Scottish Parliament currently lacks the powers to implement the Royal Commission's recommendations, while the injustice of the Barnett Formula would make it extremely difficult to meet the cost. A Party of Wales Government will press for both these deficiencies to be corrected'[197]

Therefore, according to Plaid Cymru's policy director Lila Haines, Plaid are constantly keeping one eye on developments in Scotland.[198]

Plaid only began to push for free personal care once the Scottish Parliament decided to implement free personal care, implying that the issue became particularly important to Plaid when they saw that Wales was unable to adopt the same policy as Scotland. Actors seeking to influence policy-making in the National Assembly for

---

[193] Hornung, R. (27 January 2001) 'Scotland Leaves Wales Standing' in *The Western Mail*, p.8
[194] *South Wales Echo* (29 January 2001) 'Age Group in Care Call', p.5
[195] Interview with Sarah Stone (Political Officer for Age Concern Cymru) (February 2003)
[196] Interview with Dai Lloyd (Plaid Cymru AM) (June 2004)
[197] Plaid Cymru Manifesto (2003) *Manifesto 2003* accessed at
www.plaidcymru.org/Plaid%20Cymru%20Manifesto%202003.pdf on 8/8/04, S.II,B(c)
[198] Interview with Lila Haines (Plaid Cymru's Policy Director) (June 2004)

Wales struggle to develop their own distinctive voice and so mirror developments elsewhere. It appears that as the Scottish Parliament pursues distinctive policies it highlights what devolution can achieve and so the National Assembly attempts to do something too. Interestingly then it appears that the National Assembly for Wales may be learning about what to aspire to from the Scottish Parliament, rather than learning about the details of making policy.

The agenda of the National Assembly for Wales is strongly affected by developments in Scotland, particularly as Plaid Cymru and many civil society actors seek to establish a similar model of devolution in Wales as exists in Scotland. As a result the Welsh Assembly Government also tends to be aware of what is happening in Scotland, and in the free personal care case used what was happening in Scotland to justify their decision not to introduce free personal care. For instance, during a debate on the NHS strategy Brian Gibbons defended the Welsh Assembly Government's reluctance to support free personal care by pointing out that,

> 'In Scotland, for example, they only gave about 5.5 per cent or 5.7 per cent increases in allocations to their health service. It left them able to make more ambitious offers in terms of health and social care, particularly free personal care. In Wales, we have given an allocation of about 7.5 per cent to 7.7 per cent to health authorities. That was our choice and we have offered a more innovative package in terms of support care within the community'.[199]

Additionally, the Welsh Health Minister pointed out that the Welsh free nursing care package was more generous than the model adopted in Scotland, as well as the one in England. She argued that in relation to nursing care Scots would only receive £65 a week in contrast to the £100 payment available to those receiving nursing care in Wales.[200] This again indicates that the devolved institutions are motivated by

---

[199] National Assembly for Wales, Plenary Session, *13th February 2001*
[200] National Assembly for Wales, Plenary Session, *6th November 2001*

320

a desire to provide the most generous welfare provisions. Interestingly, the existence of either a race to the bottom or a race to the top will encourage policy convergence amongst the devolved institution's policies. In the free personal care case the National Assembly for Wales clearly faced pressure to emulate policy developments in Scotland, however, it is possible that such pressures could work in the other direction. Interestingly, however, whilst the devolved tiers appeared to face the pressure to provide more generous welfare provisions, the UK Government has appeared able to escape such pressures, particularly in relation to free personal care.

8.6 Conclusion

The institutional setting in which devolved policy-making occurred influenced the way in which the policy was made and the particular policy responses adopted. The electoral system, which encouraged coalition government, provided the Liberal Democrats in particular with a much greater role in policy-making than the Westminster system could. Therefore, here the institutional setting was significant because it gave different actors greater power and the ability to influence policy. Additionally the existence of coalition government encouraged a different style of policy-making to the Westminster model, with a greater emphasis on consensus and negotiation. In the Scottish Parliament and the National Assembly for Wales it was not enough for the governments to order its backbenchers to support a policy. Instead they often needed to persuade backbenchers from other political parties to support them. As a result, the need to develop a strong argument became more important for policy-making. In relation to free personal care, coalition government was a key factor in determining the policies adopted in both Scotland and Wales, with the Liberal Democrats able to secure greater discussion of free personal care in

Scotland and Wales. In Scotland, as the institution possessed the legislative powers required to implement free personal care, it was difficult for the Scottish Executive to ignore the pressure that built up on them to act, particularly as those in favour of free personal care were in the majority in the Scottish Parliament. However, in Wales the Welsh Assembly Government were able to escape detailed discussion of free personal care primarily due to their lack of legislative powers. The lack of legislative powers in Wales weakened the case of those arguing for free personal care, as pro-free personal care actors were confused about whether to target the UK or Welsh Assembly governments. In addition, in Scotland the greater financial resources available to the Parliament meant it was less difficult than in Wales to introduce such an expensive policy. However, the strength of the UK Government on financial matters, indicated by the debate over Attendance Allowance, showed that it was difficult for the Scottish Parliament to pursue a distinctive policy from Westminster. There are also real fears about the long term effects of such high spending on distinctive policies, due to the well reported over-funding of Scotland compared to the rest of the UK. Therefore, the institutional setting makes it difficult for the devolved institutions to pursue distinctive policies; in Scotland these difficulties were particularly due to the financial arrangements whilst in Wales they were due to a lack of both legislative and financial powers.

The design of the devolved institutions, however, also can encourage policy divergence, particularly by allowing actors from outside the institution to have a stronger voice in policy development, than they would have in Westminster. Additionally the Scottish Parliament and the National Assembly for Wales give greater powers to the institutions in relation to the Executives, compared to Westminster. Several interviewees noted that this may lead to 'irresponsible policy-

making' as AMs and MSPs outside the governments have an incentive to introduce expensive and popular policies without having the responsibility to implement or fund them. Therefore, it is likely that whilst other features of the devolved institutions encourage policy convergence, the enhanced role of backbenchers and pressure groups secured by the design of the devolved institutions can advance policy divergence.

As the Scottish Parliament and the National Assembly for Wales operate within the context of the UK institutional setting they struggle to develop distinctive policies, and perhaps more significantly, to develop their own agendas. Although the Scottish Parliament was able to implement free personal care against the wishes of the UK Government, this was clearly a difficult task and many interviewees questioned 'whether so early on in devolution it was worth straining relations with Westminster'.[201] Interestingly, it appears that after the free personal care issue the Scottish Executive has sought to smooth relations, and there has been a lack of such contentious policy divergence since. It is fascinating that in relation to free personal care the issue was virtually ignored in Wales until the Scottish Parliament decided to adopt the policy, and this highlights that there is a high level of copy-cat policy-making occurring in the devolved system, as the governments in Scotland and Wales compete to be the most generous in terms of welfare provision.

The institutional setting in which devolved policy-making occurs can encourage both policy divergence and convergence. Features such as the devolved institutions' place in a UK political system, can make it difficult for the Scottish Parliament and the National Assembly for Wales to develop distinctive policies. In contrast, the

different party systems, the new electoral system and the design of the devolved institutions often give different actors access to the policy-making process compared to Westminster, suggesting that out of this different mix will come distinctive policies. Therefore, it is clear that whilst the institutional setting is important to the development of policies in the devolved institutions, as a rule it is not clear whether they will lead to greater convergence or divergence.

---

[201] Interview with Scottish Executive Senior Civil Servant (February 2004)

Chapter Nine

Conclusion

Examining the roles of actors and institutions in the formation of the long-term care of the elderly policies highlighted that in the real world these two elements are mutually dependent and cannot be separated. The policies of the devolved governments at the end of their first terms were different, both to each other and to the UK government, as a result of differences in both institutions and actors. This is consistent with the ideas of actor-centred institutionalism.

Individual actors had a major impact upon the development of the long-term care policies in Scotland and Wales. In Scotland Henry McLeish's impact upon the decision to introduce free personal care was considerable. In Kingdon's terms McLeish was a policy entrepreneur, ensuring that the problems, policies and politics streams joined.[1] McLeish did this by highlighting that the pre-existing system of funding long-term care was a problem because it was unfair. He promoted free personal care as a policy solution and ensured that politically it would have been difficult for his Government not to introduce free personal care. In addition McLeish helped to open the window of opportunity for a policy change. It was the change in First Minister which provided the opportunity for free personal care to be re-examined, and McLeish opened the window further by repeatedly stating his commitment to review the long-term care policy. Without McLeish, therefore, it is highly probable that free personal care would never have been introduced in Scotland.

The method McLeish adopted to secure free personal care involved encouraging the press, coalition partners and MSPs to pressurise his Health Minister to adopt the policy rather than directly ordering her to do so. Without the existence of coalition government, and the threat of a Liberal Democrat revolt, McLeish would have struggled to apply the necessary pressure on his Health Minister to commit to free personal care. Additionally, as the existence of coalition government encouraged a more consensual, negotiation based form of policy-making, compared to that found in Westminster, coalition government helped to ensure that the issue of free personal care was open for renegotiation on McLeish's promotion to First Minister.

The existence of the Liberal Democrats in government in Scotland also provided the party's backbenchers with a strong opportunity to pursue their preferred policies, in the case of free personal care this was achieved without the support of the Liberal Democrat Ministers. Similarly, within the coalition government in Wales the Liberal Democrats secured a number of concessions to appease their desire for free personal care, such as the inclusion of free personal care on the remit of the Advisory Group on a Strategy for Older People. It is also interesting that the Welsh Liberal Democrats' policy on free personal care was clearly shaped by their Scottish counterparts, demonstrating horizontal competition between the Scottish and Welsh parties. Only when free personal care had been accepted by the Scottish Parliament did the Welsh Liberal Democrats consider the matter in any depth. Therefore, events in Scotland made free personal care a devolved issue (even though the Welsh Assembly lacked the primary legislative powers required to

---

[1] Kingdon, J.W (1984) *Agendas, Alternatives and Public Policies* (Scott, Foresman and Company, London), p.185

implement it) and the Welsh Liberal Democrats appeared to feel that if their Scottish colleagues could claim to have been victorious on the free personal care issue, they needed to ensure similar achievements, particularly to highlight their success in government.

Of the actors outside the Scottish Executive and the Welsh Assembly Government, there was a strong unity amongst pressure groups lobbying for free personal care. In Scotland the policy advocacy coalition in favour of free personal care were well organised and active in the press. These actors used the structures of the Scottish Parliament well, for instance by providing consistent support for free personal care when giving evidence to the Health and Community Care Committee. As a result the policy advocacy coalition successfully encouraged MSPs to support free personal care and, crucially, made opponents of the policy look isolated. Therefore, in Scotland a range of civil society actors, opposition MSPs, Liberal Democrat backbenchers and the First Minister pressurised Scottish Executive actors to introduce free personal care, which offers some support for the multi-level governance notion of shared policy-making.

In contrast, actors in favour of free personal care in Wales were much weaker. In Wales the opposition parties were divided, the Health and Social Services Committee added little to the free personal care debate and policy experts and pressure groups were unsure whether to focus their attention on the UK Government or the Welsh Assembly Government. As a result, the Welsh Assembly Government was able to escape serious criticism of its long-term care policy. This highlighted the problems of holding a single level of government to account in a multi-level governance system. As has been demonstrated in the Welsh long-term

care case, devolution can allow a government at one level to commit to popular policies but blame other levels of government for failing to implement such policies.

In both Scotland and Wales the UK Government was the key opponent of free personal care. In Wales the National Assembly had little, if any, dealings with the DWP or UK Health Department on free personal care. Instead the Welsh Assembly Government's policy-making on long-term care was ignored by the UK Government until they decided to challenge the UK position on free personal care, when the Wales Office quickly rebutted the Welsh Assembly's petition. The Welsh Assembly's experience suggests that they are free to develop their policies without the involvement of UK Governmental actors, perhaps due to their lack of interest. However, when UK Government actors become aware, and disapprove of a policy decision, they have the power to halt the policy process. In contrast, in Scotland UK Governmental actors sought to persuade the Scottish Executive not to introduce free personal care as soon as McLeish hinted at a policy change. However, the UK Government had little success at halting the introduction of free personal care in Scotland, though by withdrawing Attendance Allowance they ensured that there were serious financial implications for the Scottish Parliament implementing this distinctive policy.

As identified in the multi-level governance model, the state level government was able to exercise considerable control over policy-making but was unable to completely dominate policy-making in the devolved system. In the long-term care case UK Governmental actors possessed considerable power to punish and block policy-making when the devolved institutions pursued policies they disliked.

However, the control of UK Governmental actors was restricted, indicated by their inability to prevent the introduction of free personal care in Scotland.

Policy divergence in the long-term care case was particularly interesting because where the devolved institutions diverged from the UK Government they chose to extend welfare provision and commit greater resources to long-term care for the elderly. As Jeffrey notes, this challenges the notion of a 'race to the bottom' commonly associated with multi-level governance systems;

> 'It may be the case that the UK's experience can act as an antidote to the notion, in Germany and elsewhere, that a regional competition of ideas has the negative outcome of some form of 'race to the bottom': the evidence so far on issues such as student fees, prescription charges and equal opportunities suggests that the UK's regional 'laboratories of democracy' are ratcheting *upwards* the level of policy provision'.[2]

Despite the absence of a race to the bottom, there was a strong element of regional competition in the long-term care case. Actors at the National Assembly for Wales came to focus on free personal care as an option only after the Scottish Parliament had decided to introduce the policy. Welsh pressure groups and opposition parties in particular used developments in Scotland to pressurise the Welsh Assembly Government to act. In response the Welsh Assembly Government justified their policy response by drawing out the weaknesses in the Scottish approach. For instance, Deputy Health Minister, Brian Gibbons argued that,

> 'In Scotland, for example, they only gave about 5.5 per cent or 5.7 per cent increases in allocations to their health service. It left them able to make more ambitious offers in terms of health and social care, particularly free personal care. In Wales, we have given an allocation of about 7.5 per cent to 7.7 per cent to health authorities. That was our choice and we have offered a more innovative package in terms of support care within the community'.[3]

---

2 Jeffery, C. (June 2002) *Fiscal and Economic Decentralisation: Towards an Agenda for Policy Learning Between Britain and Germany* (Anglo-German Foundation for the Study of Industrial Society), p.13 accessed at www.agf.org.uk/pubs/pdfs/1366Fiscalweb.pdf
3 National Assembly (13 February 2001) *Plenary Session* accessed at www.wales.gov.uk/assemblydata/3A8ACA4800019E8300000A7C00000000.pdf on 06/05/04

Why the devolved institutions in the UK should, if anything, race to the top, rather than the bottom, is linked to their institutional design and youth. A key feature of the Scottish Parliament and the National Assembly for Wales is their heavy reliance on the block grant from the UK Government for funds. Interestingly, the reliance on a block grant and the lack of serious tax raising powers alters the strategies and preferences of actors within the devolved institutions. In relation to long-term care policies, this could most clearly be seen through the Conservatives, who in Scotland vigorously pursued free personal care, in contrast to their colleagues at Westminster and Cardiff, who either opposed or were indifferent to the policy. Here the Scottish Parliament's lack of responsibility for lowering taxes or raising revenue meant there was no political capital to be made out of arguing for less spending, and so the Scottish Conservatives chose to alter their usual policy position of defending individual responsibility over extending state provision.[4]

Free personal care, to some extent, has come to symbolise more than it offers. As discussed in chapter three, free personal care does not actually mean all personal care is provided for free, because a person's entitlement to the benefit is capped. In addition, the number of people that are thought to benefit from the policy is relatively small. This is not new, as Edelman noted, 'many of the public programs universally taught and believed to benefit a mass public in fact benefit relatively small groups'.[5] However, many actors still believed that free personal care was the correct policy to pursue because it symbolised respect for older people and a concern about the way their care was financed. A similar motivation was expressed

---

[4] Simeon, R. (2003) 'Free Personal Care: Policy Divergence and Social Citizenship' in Hazell, R. *The State of the Nations* 2003: The Third Year of Devolution in the United Kingdom (Imprint Academic, Exeter) p.231

by actors involved in the Welsh Assembly Government's decision to provide a flat-rate payment for nursing care of £100, as Drakeford explained they were in part motivated by the fact that three figures sounded better than two.[6] Such comments suggest that what their long-term care policy symbolised to their communities was almost as important to the devolved governments as what they were able to offer.

A key concern of many MSPs and AMs was to prove the value of devolution, and their place in it, and a symbolic policy such as free personal care provided such an opportunity. This motivation was most evident in McLeish who suggested that 'if devolution is to make sense we have to diverge from English policies where there are different needs'.[7] Interestingly, however, in the case of long-term care there were no distinctive Scottish or Welsh needs which required a different policy response. For McLeish, and many others, it appeared that the desire to win public support was a key factor in his pursuit of the policy. Pierson argued that this desire to win legitimacy is commonly associated with modern states, which tend to expand social benefits to win support.[8] If Pierson was correct, the desire of actors in the devolved institutions to extend their welfare provision in an attempt to win legitimacy for their institution will diminish over time, though the desire of policy actors to win personal legitimacy will no doubt remain.

In many respects the extent of policy divergence on long-term care appeared less significant in Wales than in Scotland, after all the Welsh Assembly failed to introduce free personal care. However, as discussed in chapter three, the Welsh

---

[5] Edelman, M. (1964) *The Symbolic Uses of Politics* (University of Illinois Press, Illinois), p.4
[6] Interview with Mark Drakeford (July 2004)
[7] Interview with Henry McLeish (Former First Minister)(December 2003)
[8] Pierson (2000) 'The New Politics of the Welfare State' in Pierson and Castles (Eds.) *The Welfare State Reader* (Polity Press, Cambridge), p.309

Assembly Government's consideration of long-term care issues within a wider Strategy for Older People may imply that the level of policy divergence, as defined by Keating, was greater in Wales than in Scotland. The National Assembly's focus during the long-term care debate was primarily on how to prevent the need for care, rather than responding to care needs already in existence. Greer suggested that the long-term care case in this respect was not unique, and the Welsh Assembly Government has offered a strong commitment to the New Public Health agenda in a number of ways, focusing on the 'root causes of ill health in great social problems such as unemployment, environmental, ill-health, and lifestyle problems through collaboration between agendas'.[9] Here the Welsh Assembly might be diverging from the UK Government in a more radical manner than the Scottish Executive, and actually framing issues differently. Such divergence is more difficult to spot, and by framing issues differently from England or Scotland the Welsh Assembly Government make it more difficult to make simple comparisons with policies adopted elsewhere. Therefore, the Welsh Assembly Government was been able to escape political conflict with Whitehall over their long-term care policy. If the Welsh Assembly Government continue to frame their long-term care issues in this way it seems likely that they can prevent conflict with Westminster in the future. Consequently, it seems that the distinctive Welsh approach to long-term care for the elderly may be more sustainable than the Scottish policy in the long term. However, there are pressures for the Welsh Assembly Government to move away from its new public health agenda. For instance, because the Health Minister Jane Hutt decided to focus on preventative health measures rather than reducing waiting lists, waiting times in Wales have not decreased as rapidly as those in

---

[9] Greer, S. (2002) 'When Does Devolution Cause Divergence?: Health agendas and policy debates before and after devolution' *Paper presented at the 2002 PSA Conference* (University of Aberdeen, April 5th-7th), p.18

England and Scotland. As a result of concerns about the Welsh waiting lists compared to other nations, Hutt was removed as Health Minister in January 2005. Therefore, it appears that pressure to converge with English policies remains a powerful feature of Welsh political life, but interestingly this pressure came from opposition AMs, the press and public opinion rather than from London.

In an institution which lacks primary legislative powers it appears that this ability to frame issues differently may be its key opportunity for policy divergence. After all, examining the long-term care issue in a more holistic manner is achievable without extensive legislative powers, and is probably cheaper too. Therefore, the form of policy divergence pursued by the Welsh Assembly appears moulded by the shape of the institution. As Kirsty Williams noted, 'The devolution settlement has made us all creative'.[10]

The creativity of the National Assembly's policy ideas encourages support for Greer's prediction that 'the four countries [in the UK] will continue to become more distinct'.[11] In contrast, however, there are concerns about the long-term sustainability of the Scottish Executive's commitment to its divergent policies, particularly free personal care. Questions have already been asked about whether the Scottish Executive can afford free personal care in a tighter economic environment, particularly as concerns have been raised about the future costs of the policy, and the accuracy of the Care Development Group's projections of future cost. In addition, at the time of writing the Scottish Health Committee was conducting an inquiry into the implementation of free personal care. Therefore, it is possible that

---

[10] *Ibid.*
[11] Greer, S. (2003) 'Policy Divergence Will it Change Something in Greenock?' in *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, Exeter), p.212

in the future the Scottish Executive will face financial pressures which require a reconvergence with the English long-term care policies.

Alternatively, it is possible that such popular cases of policy divergence by the devolved institutions will put pressure on the UK Government to follow suit. This was certainly a key concern of UK Governmental actors prior to the introduction of free personal care in Scotland. This process fits with the laboratories of democracy idea, whereby one institution tries a new idea, and if successful the others follow suit. An example of this is the Children's Commissioner policy, which was pioneered in Wales and then adopted in both England and Scotland.[12] However, in the free personal care case, despite the predictions, it appears that the UK Government have avoided serious pressure to alter their policy following the Scottish decision to introduce free personal care. Therefore, it is possible that in the future UK Governmental actors may possess a more relaxed attitude to policy divergence by the devolved institutions.

As a result, whilst examining policy divergence during the devolved institutions' first terms is of interest, it will be fascinating to see how such policies develop in the longer term, particularly whether a reconvergence occurs or whether the Scottish Parliament and the Welsh Assembly can maintain policy divergence. It is also of interest whether the outcome of one public case of policy divergence affects the ability of the devolved institutions to diverge in other policy areas. For instance, after introducing free personal care the Scottish Executive appeared to be motivated by a desire to smooth relations with the UK Government, and McConnell appeared

---

[12] Keating, M. (2003) *Policy Convergence and Divergence in Scotland under Devolution* (Regional Studies Association Annual Conference), p.100 accessed at www.devolution.ac.uk/ Keating_rsa_03.pdf on 9/9/04

to seek to calm things down, indicated by his concern for 'doing less, better'. Additionally, since the introduction of free personal care there have been few cases of policy divergence where Scotland has followed a completely different path from the UK Government, except perhaps McConnell's move to ban smoking in pubs and restaurants from April 2006.

To conclude, the devolved institutions in the UK are faced with a range of conflicting pressures to on the one hand converge with, and on the other diverge from, the UK Government's policies. As actor-centred institutionalism suggested, both actors and institutions play a major role in shaping policy responses. The differences between Westminster, the Scottish Parliament and the National Assembly for Wales, particularly the actors involved in policy-making, the design and powers of the institutions, and the way these institutions allocated resources and incentives to actors, encouraged policy divergence. However, the devolved institutions still operate within a UK political system, and are faced with public and political pressures if they engage in too much policy divergence. Although an example of policy divergence, the long-term care case also highlighted the limits to this divergence, as the issue was primarily dealt with on a UK wide basis, through the Royal Commission on Long-Term Care. The policy options considered in England, Scotland and Wales were all based on the same recommendations of the Royal Commission, and much of the policy debates in Scotland and Wales were based upon research conducted for the Royal Commission.

In the long-term care case the devolved institutions were motivated by a desire to extend welfare provision, compared to Westminster. It appears that their desire to do so was influenced by the ideological positions of Scottish and Welsh actors,

which are historically more left-wing than English actors. Actors were also keen to prove the purpose of devolution, by acting distinctively, and wanted to pursue popular policies in an attempt to win support for the devolved institutions. Additionally, the lack of financial powers in the devolution system provided little incentive for the devolved institutions to cut expenditure.   However, devolved policy-making is in its early days. What will happen to expensive cases of policy divergence, such as free personal care, at a time when the UK Government cuts expenditure remains to be seen.   It will be of interest, therefore, to observe whether the divergent long-term care policies are sustainable, or whether devolution will mean a process of short-term policy divergence followed by a reconvergence of policies throughout the UK. It is quite likely that obvious and expensive cases of policy divergence, like the Scottish free personal care for the elderly, will not last. In contrast it is possible that the National Assembly for Wales's moves to frame health issues differently may well encourage greater and more sustainable policy divergence in the longer-term.

Appendix

Methodology

Examining policy-making often requires the study of informal, private discussions and negotiations. Consequently, often the only way to gain an understanding of the policy-making process is by gaining access to those directly involved in the development of policy. The need to access policy-makers directly is enhanced when exploring devolved policy-making due to the youth of devolution, meaning that only limited research in this area has been conducted. Therefore, it became clear to me that to gain an insight into devolved policy-making my methodological approach should be based upon elite interviews. Semi-structured interviews were conducted for this study because whilst interviews needed to focus on certain issues interviewees needed to be free to draw attention to the factors and events which they considered important.

A range of actors were interviewed from the main political parties, and from the front and back benches. As it was often difficult to interviewee ministers, policy advisors and civil servants often were also asked about the experience and opinions of the ministers they worked with. Additionally interviews were conducted with actors from outside the institutions, mainly pressure group representatives working in Scotland and Wales.

To gain insight into devolved policy-making the case of long-term care for the elderly was chosen and the development of the policy was followed. Long-term

care for the elderly was chosen because it was a case where both the devolved institutions followed a different line to the UK Government. Additionally the policy-making process highlighted some interesting features of the devolved system, such as tensions between the different levels of government and the impact of coalition government.

Interviewees were selected due to their involvement in shaping policy in the long-term care case. Newspapers, plenary debates, committee reports and committee minutes, research from pressure groups, journal articles and books on devolution were consulted to identify potential interviewees. Interviewees were asked slightly different questions depending on their involvement and experiences of devolution and their role in devolved policy-making. For instance, when interviewing representatives from pressure groups questions were asked about their experience of gaining access to government which were not relevant when talking to government advisors and civil servants. Each interview shaped subsequent interviews, as different questions arose during the interview process. Each interviewee was also asked which actors they felt were important in the long-term care case, and interviews were arranged with those actors mentioned who had not already been interviewed.

Relying heavily on interviews for information did pose some challenges. Interviewees might seek to evade certain issues or provide inaccurate information, intentionally or not. A range of actors from different political parties and organisations, and in different roles in these organisations, were interviewed in an attempt to gain a fuller picture of policy-making. Responses from interviews were compared, and where there was common agreement between actors their

comments were more likely to be taken at face value. Additionally secondary sources were consulted to check information provided in interviewees. However, even if there was disagreement between the information provided by different interviewees this information was still useful, particularly at gaining a deeper understanding of actors' perceptions and the relationships between these actors. It was also helpful to use information provided by one interviewee to challenge the comments of another, often this lead to a deeper explanation by the interviewee of events. As a result of this process occasionally interviewees were re-interviewed in light of new information.

In total 43 actors were interviewed, 16 of whom were involved in shaping policy in Scotland and 27 in Wales. The difference between the number of interviewees with actors from Scotland and Wales was primarily because when the Scottish interviews were conducted a clearer focus on the case study had developed. On the next page is a list of all interviewees and their posts during the period of time under study. Some interviewees asked to remain anonymous, so their names are not included.

Figure 1: Scottish Interviewees

Bill Butler   Labour MSP
(January 2004)

Jess Barrow   Director of Communications for Age Concern Scotland
(March 2004)

Liz Duncan   Director of Help the Aged Scotland
(February 2004)

Sam Galbraith   Previously Minister for Health and Education
(February 2004)

Christine Grahame   Scottish Nationalist Party MSP
(January 2004)

Tom McCabe   Labour MSP
(January 2004)

Henry McLeish   First Minister
(December 2003)

Peter MacMahon   Press Secretary to McLeish
(December 2003)

John McTernan   Special Advisor to McLeish -Head of Policy and Strategy
(January 2004)

Alison Petch   Member of the Scottish Executive's Care Development Group
(February 2004)

Nora Radcliffe   Liberal Democrat MSP
(December 2003)

Keith Raffan   Liberal Democrat MSP and party's health spokesperson
(February 2004)

Shona Robison   Scottish Nationalist Party MSP
(December 2003)

Mary Scanlon   Conservative MSP and the party's health spokesperson
(December 2003)

Scottish Executive Civil Servant   Involved with older people policy
(February 2004)

Scottish Executive Senior Civil Servant   Previously the head of a Scottish Executive department
(February 2004)

Figure 2: Welsh Interviewees

Sandra Burton	Representative from Carers Wales *(February 2003)*
June Clark	Member of the Royal Commission on Long-Term Care *(June 2004)*
Angharad Davies	Representative from RCN Cymru *(February 2003)*
Glyn Davies	Conservative AM *(February 2003)*
Phil Davies	Representative from Alzheimers Wales *(February 2003)*
Ron Davies	Labour AM *(February 2003)*
Mark Drakeford	Health policy advisor to the Welsh Assembly Government *(June 2004)*
Mike German	Leader of the Welsh Liberal Democrats *(February 2003)*
Brian Gibbons	Deputy Health Minister *(February 2003 and June 2004)*
Lila Haines	Plaid Cymru's Policy Director *(June 2004)*
Brian Hancock	Plaid Cymru AM *(February 2003)*
Jim Hancock	Regional Secretary for Wales Transport and General Union *(February 2003)*
David Ian Jones	Conservative AM *(February 2003)*
Dai Lloyd	Plaid Cymru AM *(February 2003 and June 2004)*
Ana Palazon	Director of Help the Aged in Wales *(February 2003)*

341

Alun Pugh
Labour AM
(February 2003)

David Melding
Conservative AM
(February 2003 and June 2004)

Collete Morgan
Policy Officer for Care and Repair Cymru
(February 2003)

Sarah Stone
Political Officer for Age Concern Cymru
(February 2003)

Greg Walker
Policy Officer for RCN Cymru
(February 2003)

Kirsty Williams
Liberal Democrat AM and chair of the Health and Social Services Committee
(February 2003)

Roz Williamson
Manager of Carers Wales
(February 2003)

Welsh Assembly Government Civil Servant
Helped to develop the Assembly Government's strategy for older people
(June 2004)

Welsh Assembly Government Civil Servant
Worked in the health department
(June 2004)

Wales Office Senior representative
(February 2003)

National Assembly Committee Clerk
Health and Social Services Committee
(June 2004)

Bibliography

Primary Sources

Newspaper Articles

Allardyce, J. (25 August 1999) 'Step out of Dewar's shadow, Wallace will be told' in *The Times*

Allardyce, J. and Macleod, M (18 November 2001) 'The Traditionalist in a Moderniser's Clothing' in *Scotland on Sunday*

Allardyce, J. and Macleod, M. (29 October 2000) 'McLeish will ditch Dewar's Failed Legacy' *Scotland on Sunday*

Bailey, S. (16 February 2001) 'Follow Scottish care lead call: Charity wants equality for the elderly' in *South Wales Evening Press*

BBC News (19 June 2003) 'Waiting Lists Longer in Wales'
BBC News Scotland (14 November 2000) 'Scorn over Quango Crackdown' accessed at www.news.bbc.co.uk/1/hi/scotland/1022252.stm on 19/11/03

BBC News- Vote 99 *Election results* accessed at www.news.bbc.co.uk/hi/english/static/vote_99/during/index.stm on 4/12/03

Betts, C. (24 May 2002) 'Heeding his master's voice' in *The Western Mail*

Bodden, T. (2 May 2002) 'We Want a Minister for OAPs; Call for Free Care for the Elderly' in *The Daily Post*

Daily Record (26 January 2001) 'Con Trick of Empty Promises'

Davies, G. (2 August 2000) 'Give us more medics, say GPs' in *South Wales Evening Post*

Duncan, R. (28 July 2000) 'Executive challenged over care of elderly; Health Minister urged to come up with a Scottish solution to the long term needs of old people' in *The Herald*

Dunion, L. (5 December 2002) Letter in *Community Care*

Edinburgh Evening News (4 November 2000) 'OAP Care U-turn Expected'

Farquharson K. (2 December 2001) 'McConnell may have to backtrack on free care for elderly' in *The Sunday Times*

Farquharson, K. (17 November 2002) 'The Care Takes' in *The Sunday Times*

Fletcher, P. (16 May 2002) 'Assembly urged to back move to free personal care for the elderly with cash' in *The Western Mail*

Fletcher, P. (7 November 2001) 'Free Personal Care for Elderly Sought; Hutt Scraps NHS Nursing Charges for OAPs' *The Western Mail*

Fraser, D. (28 January 2001) 'Why old Scars will not heal' in *The Sunday Herald*

Gordon, T. (9 February 2004) 'Galbraith: free care for elderly should end' in *The Herald*

Hardie, A. (1 November 2000) 'Tough McLeish orders review of every policy' in *The Scotsman*

Hardie, A. (27 January 2001) 'If Scotland wants to be colonised by the English middle class that's fine - I thought devolution was supposed to end that' in *The Scotsman*

Hardie, A. and Scott, D. (26 January 2001) 'Care U-turn Saves Face for McLeish' in *The Scotsman*

Health Newswire Professional (27 December 2002) *More money for free nursing care*

Hornung, R. (27 January 2001) 'Scotland Leaves Wales Standing' in *The Western Mail*

Jones, I.W. (11 February 2001) 'Its Time to Fight back for Wales' in *The News of the World*

Lipsey, D. (21 January 2001) 'Why free care for elderly is a road to ruin' in *Sunday Times*

Lyons, J. (17 October 2000) 'Labour and Liberal Democrats sign Welsh Coalition deal' in *Press Association News* accessed at www.lexis-nexis.com/executive on 22/9/04

Macleod, A. (21 November 2001) 'Liberal Democrats to vote for McConnell' in *The Times*

MacMahon, P. (26 January 2002) 'How McLeish made up his policies on the hoof' in *The Scotsman* accessed at www.news.scotsman.com/topics.cfm?tid=190&id=95992002 on 15/11/03

Macwhirter, I. (21 February 2001) 'Could this really be the beginning of the end' in *The Herald*

McCann, A. (13 October 2000) 'Sutherland attacks London pressure over reforms to care of the elderly' *The Herald*

McCann, A. and Horsburgh, F. (28 September 2000) 'Revolt on care for elderly set to fizzle out; Amendment wins over most Liberal Democrat MSPs on Sutherland report issue' in *The* Herald

McWhirter, I. (28 January 2001) 'Pensioners left dazed by the power of semantics' in *The Sunday Herald*

Nelson, F. (19 January 2001) 'McLeish 'to ditch' elderly care plan' in *The Times*

Nelson, F. (26 January 2001) 'McLeish care deal stifles Liberal Democrat revolt' in *The Times*

Nelson, F. (29 June 2001) 'A lesson in how to conjure up £489 million' in *The Times*

Ritchie, M. (31st January 2001) 'Ministers plan spending review to finance £110m cost of elderly care' in *The Herald*

Ross, J. (13 November 2002) 'Council Runs Short of Funds For Elderly' in *The Scotsman*

Scott, D. (22 December 2000) 'Stage is set for free personal care for the elderly' in *The Scotsman*

Scott, D. (29 June 2001) 'Services Face Axe to Fund £200M Free Care Package' in *The Scotsman*

Scott, D. (30 January 2001) 'I Stake My Career on Free Care' in *The Scotsman*

Scott, D. and Carrell,S. (16 October 1999) 'Wallace to Face Party Fears over Tuition Fees' in *The Scotsman*

Scott, K. (8 September 2001) 'Scotland seeks help to fund elderly care' in *The Guardian*

Shipton, M. (18 November 2001) 'Make our Day!' in *Wales on Sunday*

Society Guardian (27 January 2001) 'Made in Scotland: The Merit of Doing Things Differently' accessed at www.society.guardian.co.uk/socialcare/story/0,7890,430474,00.html on 1/03/04

South Wales Echo (17 May 2002) 'Calls to Cover Care Costs'

South Wales Echo (29 January 2001) 'Age Group in Care Call'

South Wales Evening Post (6 June 2001) 'Lets Build on Progress'

South Wales Evening Post (6 October 2001) 'Nursing Care Costs for Elderly Still Not Ended'

Speed, N. (25 October 2002) 'Hello Peter... Goodbye Paul' in *The Western Mail*
Speed, N. and Betts, C. (17 May 2002) 'London Dashes Hope of Free Care for the Elderly in Wales' in *The Western Mail*

Sunday Times (5th November 2000) 'McLeish in U-turn on elderly care'

Swanson, I. (28 June 2001) 'Scots Budget Cash Boost for Health Care' in *Edinburgh Evening News*

Swanson, I. (30 October 2000) 'Sacked Minister hits out at 'Farmers Gag"' in *Edinburgh Evening News*

The Daily Post (27 September 2001) 'Call for New Tax Powers'

The Guardian (27 January 2001) 'Made in Scotland: The merit of doing things differently' accessed at http://society.guardian.co.uk/socialcare/story/0,7890,430474,00.html on 27/11/03

The Morning Star (24 May 2002) 'When We're 64'

The Scotsman (November 20 2000) 'McLeish faces more pressure over care cash'

The Western Mail (1 November 2001) 'Pensioners protest to Assembly over provision of personal care services'

Walter, B. (13 February 2001) 'Rift opens on caring for elderly: Strain in Lib-Lab coalition' in *South Wales Evening Post*

White, M. (31 May 2001) 'Liberal Democrats and Tories battle for the grey vote' in *The Guardian*

Wright, M. (13 March 2004) 'Inquiry into care homes side-steps the big issue' in *The Daily Telegraph*

Official and Party Documents

Care Development Group (14 September 2001) *Fair Care for Older People* accessed at www.scotland.gov.uk/library3/health/cdgr-00.asp

Community Care and Health (Scotland) Act 2002

Consultative Steering Group (1999) *Shaping Scotland's Parliament* (The Scottish Office) accessed at www.scotland.gov.uk

Consultative Steering Group on the Scottish Parliament (1998) *Scotland's Parliament* (The Scottish Office)

Department for Work and Pensions (2004) *Attendance Allowance* www.dwp.gov.uk/lifeevent/benefits/attendance_allowance.asp#caniget

Department for Work and Pensions *Disability Living Allowance Overview* accessed at www.dwp.gov.uk/medical/dla.pdf on 18/11/03

Department of Health (1 October 2001) *Press Release: Free nursing care for all introduced from today* accessed at www.dh.gov.uk on 14/8/04

Department of Health (2001) *Local Authority Circular LAC (2001)10*

Department of Health (2003) *Local Authority Circular LAC (2003) 8*

Department of Health (2004) *Proposed Changes to Residential Care Charges* accessed at www.dh.gov.uk on 9/8/04

Department of Health (2004) *NHS funded nursing care: overview and information for the public* accessed at www.dh.gov.uk on 18/8/04

Department of Health (5 January 2001) *Press Release: Thousands to benefit from changes to residential care* assessment accessed at www.dh.gov.uk on 18/8/04

Department of Health (July 2000) *The NHS plan: The Government's response to the Royal Commission on Long-term care* accessed at www.dh.gov.uk/assetRoot/04/08/21/54/04082154.pdf on 3/12/03

Department of Health (March 2001) *National Service Framework for Older People*

Department of Health (March 2002) *Local Authority Circular LAC (2000) 11*

Department of Health (November 2004) *Choosing Health: making health choices easier* (White Paper, Cm 6374)

Education Act 2002, Chapter 32

Government of Wales Act 1998 , Chapter 38

Health and Community Care Committee (2000) *16th Report 2000: Inquiry into the Delivery of Community Care in Scotland* accessed at www.scotttish.parliament.uk on 18/11/03

Health and Social Care Act (2001), Chapter 15

HM Treasury (April 2004) *Public Expenditure Statistical Analyses 2004*

HM Treasury (July 2004) *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: A Statement of Funding Policy* (Fourth edition) accessed at www.hm-treasury.gov.uk. on 14/5/03

House of Lords Select Committee on the Constitution (December 2002) *Devolution: Inter-Institutional Relations in the United Kingdom*

Labour Party Manifesto (1997) *New Labour because Britain deserves better*

Labour Party Manifesto (1999) *Working Hard for Wales*

Liberal Democrats Manifesto (1999) *Guarantee Delivery*

Local Government Act 2000, Chapter 22

Morgan, R. (2001) *Letter to the Presiding Officer, 5th July 2001* accessed at www.wales.gov.uk on 2/4/03

Morgan, R. (December 2002) *Speech to the National Centre for Public Policy,* University of Wales, Swansea

National Assembly for Wales (4 December 2002) *Strategy for Older People: Summary of Consultation Responses to Advisory Group Report 'When I'm 64... and More'* accessed at www.wales.gov.uk on 31/05/04

National Assembly for Wales (5 November 2001) *Press Release: Jane Hutt announces Free Nursing Care for all Nursing Homes residents* accessed at www.wales.gov.uk on 26/05/04

National Assembly for Wales (May 2002) *Advisory Group on a Strategy for Older People in Wales: When I'm 64... and more*

National Assembly for Wales Health and Social Services Committee (19 January 2001) *Paper on the Royal Commission for Long-Term Care* accessed at www.wales.gov.uk on 5/5/04

National Assembly for Wales Health and Social Services Committee (14 September 2001) *Long-term care of the Elderly in Wales paper HSS-16-00,* p.3 accessed at www.wales.gov.uk on 5/5/00

National Assembly for Wales Statement of Opinion (11 December 2000), *Long-term care of the Elderly-OPIN-2000-0110* accessed at www.wales.gov.uk on 5/05/04

Plaid Cymru Manifesto (1999) *Working for the New Wales*

Plaid Cymru Manifesto (2001) *Manifesto 2001*

Plaid Cymru Manifesto (2003) *Manifesto 2003* accessed at www.plaid.cymru.org on 8/8/04

Report of the Richard Commission (Spring 2004) *Commission on the Powers and Electoral Arrangements of the National Assembly for Wales* (The Stationary Office)

Royal Commission on Long-term care (1999) *With Respect to Old Age* (The Stationary Office, London)

Scotland Act 1998, Chapter 46

Scottish Executive (15 January 2002) *Press Release: Free Personal Care Timetable Extended* accessed at www.scotland.gov.uk/pages/news/2002/01/SE5162.aspx on 8/1/04

Scottish Executive (2003) *Government Expenditure and Revenue in Scotland: 2000-2001* (Scottish Executive, Edinburgh) accessed at www.scotland.gov.uk/library5/government/gers03.pdf on 12/11/04

Scottish Executive (21 June 2002) *Community Care Circular CCD 7/2002 – Deferred Payment of Care Home Fees* accessed at www.show.scot.nhs.uk/sehd/publications/CCD2002_07.pdf

Scottish Executive (3 April 2002) *Charging for residential accommodation guide; National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2002*

Scottish Executive (January 2001) *Response by the Scottish Executive to the Health and Community Care Committee's Inquiry into the Delivery of Community Care in Scotland* accessed at www.scotland.gov.uk/library3/social/idccr.pdf on 5/1/04

Scottish Executive (October 2000) *Response to the Royal Commission on Long-term care* accessed at www.scotland.gov.uk/library3/health/ltcare.pdf on 22/10/03

Scottish Labour and Scottish Liberal Democrats (May 1999) *A Partnership for Scotland: A Programme for Government* accessed at www.scotlibdems.org.uk/docs/coaltion.htm#4 on 4/12/03

Scottish Labour Party Manifesto (1999) *Building Scotland's Future*

Scottish Liberal Democrat Manifesto (2003) *Make the Difference: Fresh Thinking for Four More Years* accessed at www.scotlibdems.org.uk/manifestos/se2003/index.htm on 5/3/04

Scottish Liberal Democrats (1999) *Scottish Parliamentary Manifesto 1999: Raising the Standard* accessed at www.scotlibdems.org.uk/manifestos/se1999/#3 on 3/12/03

Scottish National Party Manifesto (1999) *Manifesto for the 1999 Scottish Parliamentary election* accessed at www.psr.keele.ac.uk/area/uk/ass/snp/man99.pdf on 4/12/03

Scottish Parliament Health and Community Care Committee (28 November 2000) *Press Release: Health Committee Publishes Inquiry Report on Community Care* accessed at www.scotttish.parliament.uk on 26/11/03

Scottish Statutory Instrument (2001) No. 105 *The National Assistance (Assessment of Resources) Amendment (No. 2) (Scotland) Regulations 2001*

Scottish Statutory Instrument (2003) No. 86 *The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2003*

Statutory Instrument 1999 No. 672 (Transfer of Functions) Order 1999

Statutory Instrument 2000 No. 253 (W.5) (Transfer of Functions) Order 2000

The National Assembly for Wales (2000) *Voluntary Sector Scheme* accessed at www.wales.gov.uk on 3/9/03

The National Assembly for Wales (2001) *Improving Health in Wales: A Plan for the NHS with its Partners*

The National Assembly for Wales (January 2002) *Implementing Changes to Residential Care Charging Rules in Wales: A Consultation Paper* accessed at www.wales.gov.uk/subisocialpolicy/content/consultations/deferredpayments-e.doc

The Scottish Constitutional Convention (1995) *Scotland's Parliament. Scotland's Right* (The Scottish Constitutional Convention, Edinburgh)

The Scottish Parliament (21 March 2005) *Press Release: Audit Committee doubts true cost of free personal care* accessed at www.scottish.parliament.uk on 2/9/05

The Scottish Parliament (31 August 2005) *Press Release: Health Committee to examine free personal care* accessed at www.scottish.parliament.uk on 2/9/05

Wales Office (June 2005) *Better Governance for Wales* (White Paper, Cm 6582)

Welsh Assembly Government (4 March 2004) *Decision Report: NHS Funded Care-Review of Current Weekly Rate* accessed at www.information.wales.gov.uk on 25/8/04

Welsh Assembly Government (5 November 2001) *Press Release: Jane Hutt announces Free Nursing Care for all Nursing Homes residents* accessed at www.wales.gov.uk on 25/8/04

Welsh Assembly Government (January 2003) *The Strategy for Older People in Wales*

Welsh Assembly Government Advisory Group on a Strategy for Older People in Wales (May 2002) *When I'm 64... and more*

Welsh Conservative Party Manifesto (1999) *Fair Play to All: Your Voice in the Assembly*

Welsh Conservative Party Manifesto (2001) *Time for Common Sense in Wales*

Welsh Labour and Welsh Liberal Democrats (2000) *Putting Wales First: A Partnership for the People of Wales* accessed at www.wales.gov.uk/organicabinet/content/putting.html on 23/3/02

Welsh Labour Party Manifesto (2001) *Ambitions for Wales*

Welsh Liberal Democrat Party Manifesto (2001) *Freedom, Justice, Honesty*

Welsh Office (1997) *A Voice for Wales: The Government's Proposals for a Welsh Assembly* (HMSO, London)

Welsh Statutory Instrument (2001) No. 1409 (W. 95) *The National Assistance (Assessment of Resources) (Amendment No. 2) (Wales) Regulations 2001*

Welsh Statutory Instrument (2002) No. 814 (W.94) The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2002

Welsh Statutory Instrument (2003) No. 897 (W.117) *The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2003*

Welsh Statutory Instrument (2004) No. 1023 (W.120) *The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2004*

Welsh Statutory Instrument (2004) No. 1024 (W.121) *The National Assistance (Sums for Personal Requirements) (Wales)*

Secondary Sources

Adams, J. and Robinson, P. (2002) 'Divergence and the Centre' in Adams, J. and Robinson, P. (Eds.) *Devolution in Practice: Public policy differences within the UK* (Institute for Public Policy Research, London)

Allen, C.K (1964) *Law in the Making* (Oxford University Press, Oxford)

Allison, G. (1971) *Essence of Decision: Explaining the Cuban Missile Crisis* (Little Brown, Boston)

Arter, D. (2002) 'On Assessing Strength and Weakness in Parliamentary Committee Systems: Some Preliminary Observations on the New Scottish Parliament', in *The Journal of Legislative Studies* (Vol.8, No.2, pp.93–117)

Arter, D. (2002) 'Scandinavian-style Parliament with Scandinavian-style Politics? The Role of Committees in the new Scottish Assembly', *paper prepared for ECPR Workshop - A Renewal of Parliaments in Europe?* (Turin, March 22-27 2002)

Arter, D. (2004) 'The Scottish Committees and the Goal of a 'New Politics': A Verdict on the First Four Years of the Devolved Scottish Parliament', in *Journal of Contemporary European Studies* (Vol. 12, No. 1, pp.71-91)

Axelrod, R. (1984) *The Evolution of Cooperation* (Basic Books, New York)

Bache, I. (2003) 'Governing through Governance: Education Policy Control under New Labour' in *Political Studies* (Vol.51, No.2 pp.300-314)

Bagehot, W. (1873) *The English Constitution- Second Edition* (Fontana, London)

Banting, K.G. and Corbett, S. (2002) 'Health Policy and Federalism: An Introduction' in Banting, K.G. and Corbett, S (Ed.) *Health Policy and Federalism: A Comparative Perspective on Multi-Level Governance* (McGill-Queens University Press, London)

Bell, D. (November 2001) 'Finance' in *Nations and Regions: The Dynamics of Devolution- Quarterly Monitoring Report* Scotland (The Constitution Unit) accessed at www.ucl.ac.uk/constitution-unit/monrep/scotland/scotnov01.pdf

Bennie, L. and Clark, A. (2003) 'Towards Moderate Pluralism: Scotland's Post-Devolution Party System, 1999-2002' in Rallings, C., Scully, R. Tonge, J. and Webb, P. (Eds.) *British Elections and Parties Review (Vol.13)* (Frank Cass, London)

Bentham, J. (1996) *An Introduction to the Principles of Morals and Legislation*, Burns, J.H. and Hart, H.L.A. (Eds.) (Claredon Press, Oxford) (first published 1789)

Bevir, M. and Rhodes, R.A.W. (2001) 'A Decentered Theory of Governance: Rational Choice, Institutionalism, and Interpretation' *Working Paper 2001-10* accessed at www.igs.berkeley.edu/publications/workingpapers/WP2001-10.pdf

Birrell, S. (2002) '28 days to select your leader: leadership selection in the Scottish Labour Party' conference paper delivered to the *Political Studies Association Conference*, 5th-7th April 2002, University of Aberdeen accessed at www.psa.ac.uk/cps/2002/birrell.pdf

Blewit, N. (2000) 'Finance' in Osmond, J. (Ed.) *Devolution in Transition: Monitoring the National Assembly February to March 2000* (IWA) accessed at www.ucl.ac.uk/constitution-unit/leverh/wales/WAMAY00.pdf

Bogdanor, V. (1999) 'Devolution: Decentralisation or Disintegration' in *Political Quarterly* (Vol.70, No.2, pp.185-194)

Bogdanor, V. (1999) *Devolution in the United Kingdom* (Oxford University Press, Oxford)

Borzel, T. and Risse, T. (2001) 'Who is Afraid of a European Federation? How to Constitutionalize a Multi-Level Governance System' *Jean Monnet Working paper No.7* accessed at www.jeanmonnetprogram.org

Bristow, G and Blewitt, N. (2000) 'The Comprehensive Spending Review' in Osmond, J. (Ed.) *Devolution Looks Ahead: Monitoring the National Assembly for Wales May-August 2000* (IWA)

Brown, A., McCrone, D., Paterson, L. (1998) *Politics and Society in Scotland* (Second Edition) (Macmillan Press Ltd, Basingstoke)

Bulpitt, J. (1983) *Territory and Power in the United Kingdom: An Interpretation* (Manchester University Press, Manchester)

Burgess, M. (1995) The British Tradition of Federalism (Fairleigh Dickinson University Press, Madison, NJ.)

Checkel, J. (1999) 'Social Construction and Integration' in *Journal of European Public Policy* (Vol.6, No.4, pp.545-560)

Collier R., Collier D. (1991) Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America (Princeton University Press, Princeton)

Congleton, R. (2000) 'A Political Efficiency Case for Federalism in Multinational States: Controlling Ethnic Rent-Seeking' in Galeotti, G. Slamon, P. and Wintrobe, R. (Eds.) *Competition and Structure: The Political Economy of Collective Decisions: Essays in Honor of Albert Breton* (Cambridge University Press, Cambridge)

Consultative Steering Group (1999) *Shaping Scotland's Parliament* (The Scottish Office) accessed at www.scotland.gov.uk/library/documents-w5/rcsg-04.htm

Curtice, J. (2002) 'Did Devolution Make a Difference? The First Post-Devolution UK Election in Scotland', in L. Bennie *et al. British Elections and Parties Review 12: The 2001 General Election* (Frank Cass, London)

Dahl, R. A. (1966) *Political Oppositions in Western Democracies* (Yale University Press, London)

Damgaard, E. (2000) 'Parliament and Government', in Esaiasson, P. and Heidar, K. (2000) *Beyond Westminster and Congress* (Ohio State University Press, Columbus)

Deacon, R. (2002) *The Governance of Wales: The Welsh Office and the Policy Process 1964-99* (Welsh Academic Press, Cardiff)

Deeming, C. and Keen, J. (2001) 'The Politics of Long-Term Care' in *Health Care UK* (pp.78-87) accessed at www.kingsfund.org.uk/pdf/ltc.pdf

Diermeier, D. and Krehbiel, K. (2003) 'Institutionalism as a Methodology' in *Journal of Theoretical Politics* (Vol.15, No.2,pp.123-144)

Dinan, D. (1994) *Ever Closer Union? An Introduction to the European Community* (Macmillan Press Ltd, London)

Donahue, J.D. (1997) *Disunited States: What's at stake as Washington Fades and the States Take the Lead* (Basic Books, New York)

Downs, A. (1957) *An Economic Theory of Democracy* (Harper and Row, New York)

Edelman, M. (1964) *The Symbolic Uses of Politics* (University of Illinois Press, Illinois)

Edmonds, T. (2001) *The Barnett Formula: House of Commons Research Paper 01/108* (House of Commons) accessed at www.parliament.uk/commons/lib/research/rp2001/rp01-108.pdf

Egan, D. and James, R. (2001) 'Driving A Policy Agenda: The Post-16 Education and Training Committee' in Jones, B. J. and Osmond, J. (Ed.) *Inclusive Government and Party Management: The National Assembly for Wales and the Work of its Committees* (Institute of Welsh Affairs and the Welsh Governance Centre, Cardiff)

Eising, R. and Kohler-Koch, B. (1999) 'Introduction: Network Governance in the European Union' in Kohler-Koch, B. and Eising, R. (Ed.) *The Transformaiton of Governance in the European Union* (Routledge, London)

Elazar, D. J. (1995) 'Federalism' in Lipset, S. M (Ed.) *The Encyclopaedia of democracy* (Vol. II, pp. 474-82) (Routledge, London)

Elazar, D.J (1991) *Two Peoples...One Land: Federal Solutions for Israel, the Palestinians, and Jordan* (University Press of America, Jerusalem)

Elazar, D.J (1996) 'From Statism to Federalism: A Paradigm Shift' in *International Political Science Review* (Vol.17, No.4, pp.417-429)

Elster, (1989) *Nuts and Bolts for the Social Sciences* (Cambridge University Press, Cambridge)

Ferejohn, (1991) 'Rationality and Interpretation: Parliamentary Elections in Early Stuart England' in Renwick, K. (Ed.) *The Economic Approach to Politics: A Critical Reassessment of the Theory of Rational Action* (Harper Collins, New York)

Foulkes, D (1999) 'Commentary on the Government of Wales Act 1998' in Cleveley et al. (Eds.) *Current Law Statutes* (Sweet and Maxwell and W.Green, London)

Fox, C. and Miller, H. (1995) *Postmodern Public Administration* (Sage, California)

Gamble, A. (1990) 'Theories of British Politics' in *Political Studies* (Vol.38, No.3, pp.404-420)

Gamble, A. (1993) 'Territorial Politics' in Dunleavy, P. and Gamble, A, Holliday, I. and Peele, G. (eds.) *Developments in British Politics* (4th edition) (Macmillan, London)

Goodin, R. and Klingemann, H. (Eds.) (1996) *A New Handbook of Political Science* (Oxford University Press, Oxford)

Granovetter, M. (1985) 'Economic Action and Social Structure: The problem of Embeddedness' in *American Journal of Sociology* (Vol.91, No.3, pp.481-510)

Green, D. and Shapiro, I. (1994) *Pathologies of Rational Choice Theory* (Yale University Press, New Haven)

Greer, S. (2002) 'When Does Devolution Cause Divergence?: Health agendas and policy debates before and after devolution' *Paper presented at the 2002 PSA Conference* (University of Aberdeen, April 5th-7th)

Greer, S. (2003) 'Policy Divergence Will it Change Something in Greenock?' in *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, Exeter)

Griffith, D. (1999) 'The Welsh Office and Welsh Autonomy' in *Public Administration* (Vol.77, No.4, pp.793-807)

Gwilym, E. and Williams, P (2000) 'Objective One Funding- to Come at the Expense of Education and Health' in *Agenda* Winter 2000-2001 (IWA)

Hall, P. and Taylor, R. (1996) 'Political Science and the Three New Institutionalisms' *paper presented at the MPIFG Scientific Advisory Board Meeting 9/5/1996* accessed at www.mpi-fg-koeln.mpg.de/pu/mpifg_dp/dp96-6.pdf

Hammond, T.H and Butler, C.K (2003) 'Some Complex Answers To The Simple Question 'Do Institutions Matter?' in *Journal of Theoretical Politics* (Vol.15,No.2,pp145-200)

Hassan, G. (2002) 'The paradoxes of Scottish Labour: devolution, change and conservatism', in Hassan, G. and Warhurst, C. (Eds) *Tomorrow's Scotland* (Lawrence and Wishart, London)

Hassan, G. and Warhurst, C. (Eds.) *The New Scottish Politics: The First Year of the Scottish Parliament and Beyond* (The Stationary Office, Norwich)

Hazell, R. (2001) 'Conclusion: The State of the Nation after Two Years of Devolution' in Trench, A. (Ed.) *State of the Nations 2001: The Second Year of Devolution in the United Kingdom* (Imprint Academic, Exeter)

Hazell, R. and Cornes, R (1999) 'Financing Devolution: The Centre Retains Control' in Hazell, R. (Ed.) *Constitutional Futures: A History of the Next Ten Years* (The Constitution Unit and Oxford University Press, Oxford)

Hix, S. (1998) ,The Study of the European Union II: The "New Governance" agenda and its Rival' in Journal of European Public Policy (Vol.5, No.1, pp.38-65)

Hogwood, B. and Gunn, L. (1984) *Policy Analysis for the Real World* (Oxford University Press, Oxford)

Holliday (1992) 'Scottish Limits to Thatcherism' in *The Political Quarterly* (Vol.63, No.4, pp.448-459)

Hopkins, J. (2002) 'Political Decentralisation and Party Organisational Adaptation: A Framework for Analysis' *Paper presented at Fourth European Urban and Regional Studies Conference* (Barcelona, 4-7 July 2002), p.3. accessed at www.devolution.ac.uk/pdfdata/hopkin_paper_pdf.pdf

Jeffery, C. (June 2002) *Fiscal and Economic Decentralisation: Towards an Agenda for Policy Learning Between Britain and Germany* (Anglo-German Foundation for the Study of Industrial Society) accessed at www.agf.org.uk

Jones, R.W and Scully, R (2006). 'Devolution and Electoral Politics in Scotland and Wales' in *Publius* (Vol.36, No.1, pp.115-134)

Kay, A. (2001) 'Finance: The Future of the Barnett Formula' in Osmond, J. (Ed.) *Farming Crisis Consolidates Assembly's Role: Monitoring the National Assembly for Wales March – May 2001* (IWA) accessed at www.ucl.ac.uk/constitution-unit/leverh/wales/wamay00*1*.pdf on 20/*12*/0*1*

Keating, M. (1998) *The New Regionalism in Western Europe: Territorial Restructuring and Political Change* (Edward Edgar, Cheltenham)

Keating, M. (2001) 'Devolution and Public Policy in the United Kingdom: Divergence or Convergence?' *Seminar on Devolution in Practice* (Institute of Public Policy Research, October 2001)

Keating, M. (2003) 'Policy Convergence and Divergence in Scotland under Devolution' paper from *Devolution in Comparative Perspective Conference* (University of Strathclyde, 7th January-9th January 2004)

Keating, M. (2003) *Policy Convergence and Divergence in Scotland under Devolution* (Regional Studies Association Annual Conference), accessed at www.devolution.ac.uk/Keating_rsa_03.pdf on 9/9/04

Kellas, J. G (1989) *The Scottish Political System* (4th edition) (Cambridge University Press, Cambridge)

Kellas, J. G. (1990) 'The Constitutional Options for Scotland' in *Parliamentary Affairs* (Vol.43, pp.426-434)

Kellas, J.G. and Madgwick, P.J (1982) 'Territorial ministries: the Scottish and Welsh Offices' in Madgwick, P.J and Rose, R. (eds.) *The territorial dimension in United Kingdom politics* (Macmillan, London)

Kingdon, J.W (1984) *Agendas, Alternatives and Public Policies* (Scott, Foresman and Company, London)

Kohler-Koch, B. (1999) 'The Evolution and Transformation of European Governance' in Kohler-Koch, B. and Eising, R. (Eds.) *The Transformation of Governance in the European Union* (Routledge, London)

Kooiman, J. (Ed.) (1993) *Modern Governance: New Government – Society Interactions* (Sage, London)

Krasner S. (1984) 'Approaches to the State: Alternative Conceptions and Historical Dynamics' in *Comparative Politics* (Vol.16, pp.223-46)

Laffin, M and Thomas, A (2000) 'Designing the National Assembly for Wales' in *Parliamentary Affairs* (Vol.53, No.3, pp557-576)

Laffin, M. et al. (March 2003) *Future Options: An Assessment of the Powers of the National Assembly for Wales* (University of Glamorgan)

Laffin, M., Shaw, E. and Taylor, G. (2004) 'Devolution and Party Organisation in Britain: How Devolution has changed the Scottish and Welsh Labour Parties' *Devolution and Constitutional Change Programme Discussion Paper No.18* accessed at
www.devolution.ac.uk/pdfdata/Devolution%20_and_party_organisation_Laffin.pdf

Lane, J. and Ersson, S. (2000) *The New Institutional Politics: Performance and Outcomes* (Routledge, London)

Levi, M. (1997) 'A Model, A Method, and a Map: Rational Choice in Comparative and Historical Analysis' in Lichbach, M. and Zuckerman, A (Eds.) *Comparative Politics: Rationality, Culture, and Structure* (Cambridge University Press, New York)

Linz, J. (1994) 'Presidential or parliamentary democracy: does it make a difference' in Linz, J. and Valenzuela, A. (Eds.) *The Failure of Presidential Democracy* (John Hopkins University Press, Baltimore)

Loughlin, J. (1997) 'Wales in Europe: Regional Actors and European Integration' *Paper in Planning Research No.164* (Department of City and Regional Planning, University of Wales, Cardiff)

Lowndes, V. (1996), 'Varieties of New Institutionalism: A Critical Appraisal' in *Public Administration* (Vol.74, No.2, pp.181-97)

Lowndes, V. (2002) 'Institutionalism' in Marsh, D. and Stoker, G. (eds.) *Theory and Methods in Political Science: Second Edition* (Palgrave Macmillan, Hampshire)

Lynch, P. (2000) 'The Committee System of the Scottish Parliament' in Hassan, G and Warhurst, C. (Ed.) *The New Scottish Politics* (The Stationery Office, Norwich)

Lynch, P. (2001) *Scottish Government and Politics: An Introduction* (Edinburgh University Press, Edinburgh)

Madison, J., Hamilton, A, and Jay, J. (1987) *The Federalist Papers,* Kramnick, I. (Ed.) (Penguin, Hammondsworth)

Mair, C. and McCloud, B. (*1*999) 'Financial Arrangements' in Hassan, G. (Ed.) *A Guide to the Scottish Parliament* (The Stationary Office Limited, London)

March, J. and Olsen, J. (1984) 'The New Institutionalism: Organizational Factors in Political Life' in *American Science Review* (Vol.78, No.3, pp.734-749)

March, J. and Olsen, J. (1989) *Rediscovering Institutions: the Organizational Basis of Politics* (Free Press, New York)

Marks, G. (1997) 'An Actor-Centred Approach to Multi-Level Governance' in Jeffery, C. (Ed.) *The Regional Dimension of the European Union: Towards a Third Level in Europe?* (Frank Cass, London)

Marks, G. Hooghe, L. and Blank, K. (1996) 'European Integration from the 1980s: State-Centric v. Multi-Level Governance', *Journal of Common Market Studies* (Vol.34, No.3, pp341-377)

Marsh, D., Richards, D and Smith, M. (2003) 'Unequal Plurality: Towards an Asymmetric Power Model of British Politics' in *Government and Opposition* (Vol.38, No.3, pp306-332)

Martin, L.W. and Vanberg, G. (2004) 'Policing the Bargain: Coalition Government and Parliamentary Scrutiny' in *American Journal of Political Science* (Vol.48, No.1, pp.13-27)

Mattson, I. (*1*996) 'Negotiations in Parliamentary Committees', in Stenelo, L. and Jerneck, M. (Eds.) *The Bargaining Democracy* (Lund University: Lund)

Mattson, I. and Strøm, K. (*1*995) 'Parliamentary Committees' in Doering, H. (1995) (Ed.) *Parliaments and Majority Rule in Western Europe* (St. Martins Press, New York)

Mayntz, R. (1998) 'New Challenges to Governance Theory' *Jean Monnet Chair Paper, RSC No.98/50* accessed at www.uned.es/113016/docencia/spd%20-%20doctorado%202001-02/Introducci%F3n/Mayntz%20governance%20EUI%201998.htm

Mazur, A. (1991) 'Agendas and égalité professionelle: symbolic policy at work in France' in Meehen, E. and Svenhuijsen, S. (Eds.) *Equality Politics and Gender* (Sage, London)

McFadden,J and Lazarowicz, M. (*1999*) *The Scottish Parliament-An Introduction* (T&T Clark, Edinburgh)

McLeish, H. (2004) *Scotland First* (Mainstream Publishing, Edinburgh)

Mcternan, L. (2000) 'Beyond the Blethering Classes: Consulting and Involving Wider Society' in Hassan, G. and Warhurst, C. (Eds.) *The New Scottish Politics: The First Year of the Scottish Parliament and Beyond* (The Stationary Office, Norwich)

McVicar, M. and Wakefield, S (April 2003) *Guide to the Scottish Budget- Subject Profile* (SPICe briefing) accessed at www.scottish.parliament.uk/business/research/briefings-03/sb03-24.pdf on 12/11/04

Mezey, M.L. (1979) *Comparative Legislatures* (Duke University Press, Durham)

Midwinter, A. Keating, M. and Mitchell, J. (1991) *Politics and Public Policy in Scotland* (Macmillan, Basingstoke)

Mitchell, J. (2006) 'Evolution and Devolution: Citizenship, Institutions, and Public Policy' in *Publius: The Journal of Federalism* (Vol.36, No.1, pp.153-168)

Morgan, K and Mungham, G. (2000) *Redesigning Democracy: The Making of the Welsh Assembly* (Seren, Bridgend)

Mugaseth, J. (June 2003) 'Policy Development' in Osmond, J. (Ed.) *Nations and Regions: The Dynamic of Devolution- Quarterly Monitoring Programme* (The Constitution Unit and IWA), accessed at www.ucl.ac.uk/constitution-unit/monrep/wales/wales_june_2003.pdf on 31/05/04

Müller, W.C. and Strøm, K. (2000) 'Coalition Governance in Western Europe' in Müller, W.C. and Strøm, K. (Eds.) *Coalition Governments in Western Europe* (Oxford University Press, Oxford)

Myers, A. (1999) 'The New Electoral System' in Hassan, G. (Ed.) *A Guide to the Scottish Parliament* (The Stationery Office, Edinburgh)

North, D. (1990) *Institutions, Institutional Change and Economic Performance* (Cambridge University Press, Cambridge)

Norton, Philip (1990) 'Parliaments: A Framework for Analysis', in P. Norton (Ed.) *Parliaments in Western Europe* (Frank Cass, London)

Olson, M. (1965) *The Logic of Collective Action* (Harvard University Press, Cambridge)

Osmond, J. (1999) *Devolution: 'A Dynamic Settled Process?': Monitoring the National Assembly July-December 1999* (IWA) accessed at www.ucl.ac.uk/constitution-unit/leverh/wales/WA99DEC.pdf

Osmond, J. (2000) 'A Constitutional Convention by Other Means: The First Year of the National Assembly for Wales' in Hazell,R. (Ed.) *The State and the Nations: The First Year of Devolution in the United Kingdom* (Imprint Academic, Thorverton)

Osmond, J. (2001) 'In Search of Stability: Coalition Politics in the Second Year of the National Assembly for Wales' in Trench, A. (Ed.) *The State of the Nations 2001* (Imprint Academic, Thorverton)

Osmond, J. (2001) 'The Enigma of the Corporate Body: Relations Between the Committees and the Administration' in Jones, J.B. and Osmond, J. *Inclusive Government and Party Management* (Institute of Welsh Affairs and Welsh Governance Centre, Cardiff)

Osmond, J. (2002) 'Introduction: Emergence of the Assembly Government' in Jones, B. and Osmond, J. (Eds.) *Building a Civic Culture: Institutional Change, Policy Development and Political Dynamics in the National Assembly for Wales* (Institute of Welsh Affairs and the Welsh Governance Centre, Cardiff)

Osmond, J. (2003) 'From Corporate Body to Virtual Parliament: The Metamorphosis of the National Assembly for Wales' in Hazell, R. (Ed.) *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, Thorverton)

Ostrom, E. (1990) *Governing the Commons* (Cambridge University Press, Cambridge)

Ostrom, E., Gardner, R., Walker, J. (1994) *Rules, Games and Common-Pool Resources* (University of Michigan Press, Michigan)

Patchett, K. (2000) 'The New Welsh Constitution: The Government of Wales Act 1998' in Jones, B. and Balsom, D. *The Road to the National Assembly for Wales* (University of Wales Press, Cardiff)

Peters, B.G (1999) *Institutional Theory in Political Science: The 'New Institutionalism'* (Pinter, London)

Peterson, P.E. and Rom, M.C (1990) *Welfare Magnets: A New Case for a National Standard* (The Brookings Institution, Washington D.C)

Pierre,J. (2000) Debating Governance: Authority, Steering and Democracy (Oxford University Press, Oxford)

Pierson (2000) 'The New Politics of the Welfare State' in Pierson and Castles (Eds.) *The Welfare State Reader* (Polity Press, Cambridge)

Pilkington, C. (2003) *Devolution in Britain Today* (Manchester University Press, Manchester)

Rhodes, R.A.W (1985) 'Intergovernmental Relations in the UK' in Mény, Y. and Wright, V. *Centre-Periphery Relations in Western Europe: The New Local Government Series No.25* (George Allen and Unwin, London)

Rhodes, R.A.W (1988) *Beyond Westminster and Whitehall: The Sub-Central Governments if Britain* (Routledge, London)

Rhodes, R.A.W (1995) 'The Institutional Approach' in Marsh, D. and Stoker, G. (eds.) *Theory and Methods in Political Science* (Macmillan, London)

Rhodes, R.A.W. (1997) *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Open University Press, Buckingham)

Richardson, N. (November 2000) *Health Policy and the National Assembly for Wales: Monitoring Devolution and Health August to November 2000* (Constitution Unit, IWA and Nuffield Foundation) accessed at www.ucl.ac.uk/constitution-unit/files/devolution_and_health/walnov00.pdf on 27/05/04

Riker, W. (1990) 'Political Science and Rational Choice' in Alt, J. and Shepsle, K. (Eds.) *Perspectives on Positive Political Economy* (Cambridge University Press, Cambridge)

Riker, W. and Ordeshock, P. (1973) *Introduction to Positive Political Theory* (Prentice Hall, Englewood Cliffs)

Sabatier, P.A and Jenkins-Smith, H.C. (1993) 'The Study of Public Policy Processes' in Sabatier, P.A and Jenkins-Smith, H.C. (Eds.) *Policy Change and Learning: An Advocacy Coalition Approach* (Westview Press, Colarado)

Sanders, D. 'Behaviourism' in Marsh, D. and Stoker, G. (eds.) *Theory and Methods in Political Science: Second Edition* (Palgrave Macmillan, Hampshire)

Scharpf, F. (1988) 'The Joint Decision Trap: Lessons from German Federalism and European Integration' in *Public Administration* (Vol.99, No.3, pp.239-278)

Scharpf, F. W. (1997) *Games Real Actors Play: Actor-Centred Institutionalism in Policy Research* (Westview Press, Colorado)

Schram, S.F (1999) 'Introduction: Welfare Reform: A Race to the Bottom?' in Schram, S.F and Beer, S. (Eds.) *Welfare Reform: A Race to the Bottom* (Woodrow Wilson Center Press, Washington D.C)

Shaw, E. (2003) 'Labour in Scotland and Westminster and the Dynamics of Policy Divergence' paper prepared for the annual meeting of *the American Political Science Association* (Pennsylvania Convention Centre 28-31 August 2003), p.25 accessed at www.devolution.ac.uk/pdfdata/Shaw_Labour_%20in%20_Scotland_and_Westminster.pdf

Shaw, E. (April 2003) 'Devolution and Scottish Labour: The Case of Free Personal Care for the Elderly' presented to the Annual Conference of the Political Studies Association at the University of Leicester

Silk, P. (1998) 'The Assembly as a Legislature' in Osmond, J. (Ed.) *The National Assembly Agenda: A handbook for the first four years* (The Institute of Welsh Affairs, Cardiff

Simeon, R. (2003) 'Free Personal Care: Policy Divergence and Social Citizenship' in Hazell, R. *The State of the Nations* 2003: The Third Year of Devolution in the United Kingdom (Imprint Academic, Exeter)

Simon, H.A (1957) *Models of Man: Social and Rational* (John Wiley, London)

Simon, H.A (1985) 'Human nature in politics: the dialogue of psychology with political science' in *American Political Science* Review (Vol.79, pp.293-304)

Sloat, A. (2001) 'Multi-Level Governance: An Actor-Centered Approach' Paper given at the *Multi-Level Governance Conference of July 2001 at University of Sheffield,* accessed at www.shef.ac.uk/~perc/mlgc/papers/sloat.pdf

Smith, G. (1989) 'Core Persistence: Change and the People's Party', *West European Politics* (Vol.12, pp.157-168)

Sørensen, E. (2002) 'Democratic Theory and Network Governance' paper presented at workshop no.12 'Demokrati og administrativ reform i norden' at the *NOPSA-conference 2002* in Ålborg accessed at www.socsci.auc.dk/institut2/nopsa/arbejdsgruppe12/eva.pdf

Steinmo S. and Tolbert C. (1998) 'Do Institutions Really Matter? Taxation in Industrialised Democracies' in *Comparative Political Studies* (Vol.31, No.2, pp.165-87)

Storer, A. (2001) 'Confrontation and Consensus: The Economic Development Committee' in Jones, B. J. and Osmond, J. *Inclusive Government and Party Management: The National Assembly for Wales and the Work of its Committees* (Institute of Welsh Affairs and the Welsh Governance Centre, Cardiff)

Strøm, K. (2000) 'Delegation and Accountability in parliamentary democracies' in *European Journal of Political Research* (Vol.37, No.3, pp.261-289)

Strum, R. (2000) 'The Federal System: Breaking through the Barieers of Interlocking Federalism' in Helms, L. (Ed.) *Institutions and Institutional Change in the Federal Republic of Germany* (Macmillan Press, London)

Sullivan, M. (2002) 'Health policy: differentiation and devolution' in Adams, J. and Robinson, P. (Eds.) *Devolution in practice: Public policy differences within the UK* (Institute for Public Policy Research, London)

Taylor, B. (2002) *Scotland's Parliament: Triumph and Disaster* (Edinburgh University Press, Edinburgh)

Taylor, G. (2004) 'Policy Dynamics and Community Structures: Welsh Education Policy Under the National Assembly for Wales' presented at *ECPR Workshop* (Uppsala, April 2004)

Tomaney, J. (2000) 'End of the Empire State? New Labour and Devolution in the United Kingdom' in the *International Journal of Urban and Regional Research* (Vol.24, No.3, pp.675-688)

Trench, A. (2004) 'Introduction: Has Devolution Made a Difference?' in Trench, A. (Ed.) *Has Devolution Made a Difference?* (Imprint Academic, Exeter)

Tsebelis, G. (1995) 'Decisionmaking in political systems: Veto players in presidentialism, parliamentarism, multicameralism, and multipartyism' in *British Journal of Political Science* (Vol.25, No.2, p.289-325)

Tsebelis, G. (1995) 'Veto Players and Law Production in Parliamentary Democracies' in Doering, H. (Ed.) *Parliaments and Majority Rule in Western Europe* (St. Martins, New York)

Tsebelis, G. (2002) *Veto Players: How Political Institutions Work* (Princeton University Press, Princeton)

Tsebelis, G. and Money, J. (1997) *Bicameralism* (Cambridge University Press, Cambridge)

Ward, H. (2002) 'Rational Choice' in Marsh, D. and Stoker, G. (eds.) *Theory and Methods in Political Science: Second Edition* (Palgrave Macmillan, Hampshire)

Warwick, P. (2001) 'Coalition Policy in Parliamentary Democracies: Who Gets How Much and Why' in *Comparative Political Studies* (Vol.34, No.10, pp.1212-1236)

Watts, R. (2001) 'Introduction: Federalism in an era of globalisation' in *International Social Science Journal* (Vol.53, No.167, pp.9-12)

Watts, R. (2002) 'The Relevance Today of the Federal Idea' paper given at the International Conference on Federalism 2002 (St Gallen, Switzerland)

Watts, R.L. (1998) 'Federalism, Federal Political Systems, and Federations' in *Annual Review of Political Science* (Vol.1, pp.117-37)

Weaver, R. and Rockman, B. (1993) 'Assessing the Effects of Institutions' in Weaver, R. and Rockman, B (Eds.) Do Institutions Matter? Government Capabilities in the United States and Abroad (The Brookings Institution, Washinton D.C)

Webb, P. (2000) *The Modern British Party System* (Sage, London), p.18

Weber, M. ([1922]1978) *Economy and Society: An Outline of Interpretative Sociology* (University of California Press, Berkeley)

Weinstock, D. (2001) 'Towards a Normative Theory of Federalism' in *International Social Science Journal* (Vol.53, No.167, pp.9-12)

Wildavsky, A. (1979) *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little Brown)

Wyn Jones, R., Trystan, D. and Taylor, B. (2000) 'Voting Patters in the Referendum' in Jones, B. and Balsom, D. *The Road to the National Assembly for Wales* (University of Wales Press, Cardiff)

Zander, M. (1994) *The Law-Making Process-Fourth Edition* (Butterworths, London)