Cynulliad Cenedlaethol Cymru
Y Pwyllgor ar y Papur Gwyn—Trefn Lywodraethu Well i Gymru

The National Assembly for Wales
The Committee on the Better Governance for Wales White Paper

Dydd Mawrth, 5 Gorffennaf 2005
Tuesday, 5 July 2005

Cynnwys
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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee. In addition, an English translation of Welsh speeches is included.

Aelodau o'r Cynulliad yn bresennol: Dafydd Elis-Thomas, y Llywydd (Cadeirydd), Lorraine Barrett, Jocelyn Davies, Jane Hutt, David Melding, Carl Sargeant , Kirsty Williams.

Tystion: Nick Bourne, Arweinydd Ceidwadwyr Cymru; Syr Christopher Jenkins, Cyn Brif Gwnsler Seneddol.

Swyddogion yn bresennol: Paul Silk, Clerc y Cynulliad.

Gwasanaeth Pwyllgor: Siân Wilkins, Clerc.

Assembly Members in attendance: Dafydd Elis-Thomas, the Presiding Officer (Chair), Lorraine Barrett, Jocelyn Davies, Jane Hutt, David Melding, Carl Sargeant, Kirsty Williams.

Witnesses: Nick Bourne, Leader of the Welsh Conservatives; Sir Christopher Jenkins, Former Parliamentary Counsel.

Officials in attendance: Paul Silk, Clerk to the Assembly.

Committee Service: Siân Wilkins, Clerk.

Dechreuodd y cyfarfod am 6.04 p.m.
The meeting began at 6.04 p.m.

Cyflwyniad ac Ymddiheuriadau
Introduction and Apologies

Y Llywydd: Croeso i ail gyfarfod y pwyllgor ar drefn lywodraethu well i Gymru.

The Presiding Officer: Welcome to the second meeting of the committee on better governance for Wales.

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[53] **Y Llywydd:** Mae'n bleser gennyf groesawu arweinydd Ceidwadwyr Cymru i gyflwyno'i dystiolaeth. Croeso.

[53] **The Presiding Officer:** It is my pleasure to welcome the leader of the Welsh Conservatives to present his evidence. Welcome.

Would you like to make an opening statement?

The Leader of the Welsh Conservatives (Nick Bourne): I did not realise that I was expected to, but I am happy to do so.

[54] **The Presiding Officer:** You are invited to do so.

Nick Bourne: I am happy to say a few words. I understand that it is on the operational side of things in relation to the legislative side, not the electoral side. As you know, when I gave my party's response in the Chamber, we broadly welcomed the first stage of the settlement as outlined in the White Paper, in terms of the Henry VIII clauses and leaving the power to the Welsh Assembly to have room for manoeuvre within those broad clauses. I clearly welcome that, although it will have implications for the way we work, which I am sure you will want to bring out in questions.

We have grave reservations—perhaps rather more than that—about the intermediate stage of the process, if I can call it that, as outlined in the White Paper. It was not something that was presaged at all in the Richard commission, and we see it as an unnecessary stage, as it were—I certainly do—between stage one and, ultimately, a referendum and legislative powers, if that is what a referendum gives rise to. I believe that it leaves us far too open to the individual whim or caprice of a Secretary of State for Wales because it is his or her say so, in addition to the will of the House of Commons and the House of Lords. I have grave concerns about that, particularly whereas at the moment we have one-party domination here. It seems to me that it does not leave sufficient power for the National Assembly and it raises questions about what happens with private Members' legislation here under Standing Order No. 31 and so on. So, maybe that can be something that we look at in questions as well, but, as a party, we would have moved to a referendum on legislative powers or on the future status of the Assembly much more quickly. My own view is accurately reported, that I believe that we should move to legislative powers; that is not the view of everybody in my party, but it is certainly the view of the majority of my Assembly Members that, within a proper timescale, and subject to reasonable safeguards that could be reflected in legislation, that is the most desirable outcome for Wales and for the National Assembly.

[55] **David Melding:** I am now in the happy position of cross-examining my leader.

The Presiding Officer: I thought you might enjoy it.

[56] **David Melding:** I must do it with some skill, otherwise—

Nick Bourne: I have a long memory.

[57] **David Melding:** Nick, I have a couple of points. On greater room for manoeuvre and developing secondary legislation, that is quite a useful development, even if things do not go much further than that. I know that our party has called for this in the past, but I would like to look at this whole issue of Orders in Council allowing the Assembly perhaps quite major decision-making on areas such as housing, education and health. We do not know exactly how this would operate because it would be a rather dramatic departure in British constitutional practice, but, if it means anything, it gives powers that most outsiders and most of the electorate would take to be primary powers, does it not? Is there not a danger for democratic accountability if this institution acquires primary powers in a rather backhanded way?

Nick Bourne: Yes. I will deal with the points in the order in which you raised them. Certainly on the Henry VIII powers, I hope that I did welcome that, because I think that it is a useful development. It will have consequences for the way we work, but it was certainly something that we flagged up in our last manifesto for the Assembly elections. I am not in the business of rubbishing that—I think it is a sensible development and we should have moved straight from that to the third stage. In terms of Orders in Council, you are right, certainly as I understand it. It is far from clear how it will operate. In fairness, I do not believe that the First Minister is entirely clear either because questions were asked, such as could we ask for devolution of a discrete area such as housing, or would that be too broad an area. I do not think that we could ask for health, as I understand it—it has to be something much more specific like power in relation to banning smoking in public places and so on.

It is not clear, but, step by step, if it is more bite size chunks, we could reach a stage—you are right—where we have effectively devolved a lot of power and attained a lot of primary power without ever having that referendum. It might then be—I think that Mike German used the analogy of the jigsaw—that there would not be many bits of the jigsaw still to put in place when we got to what should be the third stage, the referendum, if we found it had happened by stealth. That would encourage cynicism, and I do not think that that is desirable. I question

why we need that intermediate stage; it does not seem totally apparent to me. I do not wish to be partisan, but I cannot see any really good reason for that in legal terms, or in terms of our operation here; it seems to be much more about the politics of it, rather than about what would work best for Wales, if I can put it that way.

6.10 p.m.

[58] **David Melding:** To ask my second question, assuming that this system, where a procedure of Orders in Council is developed, comes in sometime after 2007, do you think that that system would be durable if there were a change in Government in Westminster?

Nick Bourne: Unlike the First Minister—and this point was brought up by Ieuan in questions—I think that having a change of Government at Westminster will give rise to difficulties. A Government of different complexion at Westminster from the one here will lead to problems. The First Minister pointed out that, in some ways, it would make life easier if the Government at Westminster could hold its nose and say that it would devolve a power and it would then be for the Assembly or Parliament, or whatever we will be by then, to get on with it. It would not have to take it through the different stages at Westminster. I can see that, but I am not sure that it will get to that first stage of holding its nose. The procedure will probably be blocked, or, at least, there is the danger that it will be. I think that that leaves us vulnerable to that particular concern.

I return to the point that I do not think that the system is durable. It seems to be there for political rather than sensible reasons that are to do with the good governance of Wales, because I do not think that it assists the good governance of Wales. You have pointed out one real difficulty. However, I think that the difficulty would be there even when there were parties of the same complexion in power at Westminster and in the Assembly. We have seen Labour here, in fairness to it, taking a different stance on some issues. The bank holiday is one of those; it is not a perfect example in this context, because that is not something that could come to us. However, there are instances where there have been different views here to those of the Labour Government in Westminster. You are right; this highlights the problem where there would be a different complexion, but it could still happen where we have Governments that are allegedly of the same complexion.

[59] **David Melding:** My final question does not necessarily only apply in the case of Governments of different parties. The White Paper is very confusing as to what the parliamentary role is in the confirmation stage, whether it is for the Secretary of State or whether there is a parliamentary procedure. If the parliamentary/Secretary of State procedure is anything other than perfunctory, that is, receiving the decisions of the Assembly and ratifying them formally and becoming part of the dignified constitution like the monarch, would it not introduce a system of double scrutiny to legislative development? That would surely be chaotic constitutionally.

Nick Bourne: It is more than the role of the monarch, even if the Secretary of State has a vice-regal aspect in some ways, especially now that he has a castle. Again, in fairness to the Secretary of State, when he was here, I think that he indicated that he may not accede to a particular request. It certainly says in the White Paper that he would have to give reasons for not acceding to a request, but that is a bit like Churchill's statement about the requirement to consult, is it not? You can consult with somebody in the morning, and chop their head off in the afternoon. It does not really give us very sound security.

As I understand it, it is the case that the Secretary of State could simply say 'no' and send a letter to us to say why he said 'no', which is what happens now. I have a copy of the letter saying why we could not have a St David's Day bank holiday. There is an obligation to reply to letters, and he could scarcely do less than that, but I do not think that it gives us much

security. It seems to me that there are three hurdles. It has to be agreed in the first instance—and I do not want to personalise it to Peter Hain, because, obviously, there will be successive Secretaries of State—by the Secretary of State. He or she will then say 'yea' or 'nay'. It then has to go through the House of Commons and the House of Lords. Those are the three hurdles to be got over, quite apart from the request from here, which seems to be quite a long-winded process with no assurance that we will get much out of it at the end.

[60] **Kirsty Williams:** If we take an optimistic view, and the requests for Orders in Councils are looked upon positively, they will, potentially, have huge consequences for the workloads and the nature of committees and the internal structuring needed to get through that work. Have you given any thought to how we could best use the 60 Members that we have here, given the experience in Scotland, where, with many more Members, they have found it difficult in some instances, to cope with the workload?

Nick Bourne: That was a very well made point, Kirsty. It is certainly true that they struggle in Scotland with 129 Members, or whatever the number is. We only have 60 Members. We are a very small legislature, and if we are to get additional powers, our size becomes even more miniscule compared with the workload. I think that it will mean a difference in the way that committees work. I suspect that the policy-formulation role will go and much more committee time will be spent on passing legislation, if we take the optimistic view and some of these Orders in Council are acceded to.

It would take a very courageous politician to say that we should have more Members. That is the problem with the approach. I do not want to get on to talk about the electoral arrangements, but if we were able to say that we were reducing the number of MPs because some of the workload was moving from Parliament to the Assembly, I think that the idea of having more Members would become a lot easier to sell. My party's stance, and I suspect that it is probably the stance of most parties, is to say that we should not be adding to the sum total of politicians. However, if we are able to say that this shift of power also means a shift of personnel—there would be fewer MPs at Westminster and more MPs or MWPs, or whatever, in Cardiff—I think that that becomes easier to sell. We have to recognise, at some stage, unpopular though it is, that we will have to look at having more Members. I do not see how the system could operate otherwise. The quid pro quo as far as I am concerned, and my party is concerned, has to be to say, 'That has to have consequences for the way that we do things at Westminster and the number of MPs there, just as it did with Scotland'.

[61] **Kirsty Williams:** In his evidence, Sir Michael Wheeler-Booth said that small legislatures in other parts of the world cope with the situation by having a small amount of Members, but a large number of staff to support them in their role. Do you foresee that there will be consequences for the Assembly Parliamentary Service, if opposition Members are to be competent and robust in their work of scrutinising the legislation that might come through?

Nick Bourne: That was a very unkind question. You are absolutely right. I think that both would have to grow. We would need additional Assembly Members to cope with the extra workload, if this is to happen, with a reduction in the number of MPs at Westminster. However, the size of the secretariat, the parliamentary side of the service, would have to grow, even if we kept the same number of Assembly Members. I think that that would have to follow. In fact, if we kept the same number of Assembly Members, I suspect that the parliamentary service would probably have to grow more than if we had a larger number of Members. Where the cost of that lies depends on looking at the relative balance and trying to balance one out against the other. However, it must follow, and I do not think that one could really argue against that.

[62] **Kirsty Williams:** Finally, do you have a view on the approach taken in the White Paper to the development of Standing Orders? If you do not agree with what the White Paper says

about us developing our Standing Orders, how would you wish to see them approached?

Nick Bourne: I think that the expertise and experience here mean that the work should be rooted here. I am not sure whether there is resistance to this on the part of the Secretary of State, and I am not sure that there was. To be fair, he seemed reasonably open-minded about an approach, but it is hard because, if we are a mature institution, which I believe that we now are, this should be something that should be rooted here. We may want to call on expertise from Westminster, which I am sure exists there, but the driving force should come from here, not Westminster, otherwise it would just look as if we were picking up the crumbs from the table and jumping through hoops at the behest of Westminster. Everything in me believes that it should be done here.

[63] **Jane Hutt:** I am going to follow on the constructive and optimistic route. I know that you gave broad general support to the White Paper in your response to Rhodri Morgan's statement. Building on this issue of the opportunities that are offered through the Orders in Council route, this is surely about matching our policy needs to how we then enhance the legislative opportunities. Do you have any comments or thoughts on how we could take that forward, not just from the Executive's perspective, but also from the backbench perspective? I am thinking of our Standing Order No. 31 route and how we would have to build up robust processes in order to ensure that we could use the Orders in Council route for that. We have amended and reviewed our Standing Order No. 31 route to enable us to do this and have scrutiny and Government response.

6.20 p.m.

For example, most recently, most of the parties supported a motion under Standing Order No. 31 on child trust funds and the role of local authorities. We could not actually deal with this because of the primary legislative powers that would be required for local government, but it is, possibly, something that we could put through an Order in Council, I suppose.

Nick Bourne: To take you back, Jane, I would certainly be optimistic like you, but I must correct you on one thing—I gave broad and general support to some aspects of the White Paper, but I certainly did not give broad and general support to the Orders in Council part. I have grave misgivings about that part at the very least as I just do not see it working properly. I am all for trying to take an optimistic view of the general direction, by all means, but with the important caveat that I do not agree with that stage, as I think I have made clear. Anything that I say about that is certainly not to be taken as a laying-on of hands by me or my party to suggest that we go along with it, because we do not. It would be far better to have moved from the Henry VIII-type provisions to the final stage of having a referendum without this intermediate stage, which I see, even looking at it optimistically, as haphazard and capricious.

It is hard to see how this will operate, because it seems that its key difficulty is that, whichever Government is in power—Labour, Conservative, or even an alliance; it could take many different complexions—it has the ability to say 'yea' or 'nay' to specific pieces of legislation that we have requested and that we think would be in the interests of Wales. This seems like putting the cart before the horse—it is the wrong way round. If we feel, as an Assembly, that something is worth doing, I cannot see why we are therefore saying that Westminster should have the ability, either by the Secretary of State device, the House of Commons or the House of Lords, to block it. It just does not seem to make sense. Repeated trips to Westminster with different requests are a little bit like our current arrangement; we make the requests now and there is no guarantee that we will have them granted. I am not sure that it is massively different.

On Standing Order No. 31, I agree with the sentiment behind what you say. It is important that, given that this will happen, we have some sort of device to ensure that it is not just

Government-generated ideas that get into the pipeline, or indeed, ones that are resolutions of the full Assembly other than under Standing Order No. 31. That is a valuable device that has, as you say, on occasion, attracted cross-party support on important issues that may otherwise have been neglected. How we guarantee that that gets through, unless we eliminate some of those stages, I do not know, because it may not, unless we say that a certain stage gets left out and the demand goes straight through, or that the Secretary of State stage gets left out, because, presumably, there is not the same political imperative for something proposed by a backbencher of any party, particularly of a non-Government party, as it were, to be placed in the queue. I just cannot see how we can do it, other than to say, 'Right, it goes straight to the House of Commons and the House of Lords for a vote', and even then it is dependent on what they say. It seems to me that this is the difficulty with this proposal, in that, every time we want something specific to be looked at, it has to go through the House of Commons and the House of Lords, where it might be blocked. I am all for saying, 'Right, let us take an optimistic view', but we have to look at the worst-case scenario as well. The optimistic view is that the request will go through, and the pessimistic view is that it will not. If the latter keeps happening, what do we do then? Sorry, I should not be asking you the question.

[64] **Jane Hutt:** It goes back to the point that this is not powers for the sake of powers, does it not? These are powers for us to deliver on our policy developments and interests, be they those of the Government or the wider Assembly. We have to talk about quality and not quantity in this matter, have we not, and be very discriminating in how we take this forward.

Nick Bourne: Granted, but we have made requests and demands for six or seven pieces of legislation—I say 'we', that is, the Assembly Government has—and we have had two or three sometimes. The quantity has not been massive. If we are talking about six or seven a year, that does not seem unreasonable, but it would not be necessary if we had the third stage in place.

[65] **Jane Hutt:** But we are going to move forward. I will finish there, thank you.

[66] **Jocelyn Davies:** On that point, Nick, we will have the split of the corporate body, so, when we make these bids for Orders in Council, I am assuming that there will not be such a logjam at Westminster then. Who should make the bid, then? Is it our Executive to the Secretary of State or directly to Parliament, or should the Assembly as a whole make the bid to the Secretary of State or to Parliament?

The other point that I wanted you to think about was the second stage, which you say is unnecessary. We will still have transfer of functions Orders, and the powers that we currently have. We will have Orders in Council, if we take the optimistic view that we will get some, and we will have powers under new Acts. It sounds to me as if it will be very complicated, on top of an already complex system. Does the lawyer in you see a minefield of the powers that we will have? As you quite rightly said, it relies on goodwill.

The other point is: what is wrong in asking for powers for the sake of it? Otherwise, the option that is open to us is to say, 'We need your approval for this policy idea that we have, therefore give us this power'. What is wrong with saying, 'We want this power and we will then exercise it as we see fit.'?

Nick Bourne: I will take the questions in the order in which you asked them. The question about who makes the bid is an appropriate one to ask at the moment, given that we have an Executive in a minority. Presumably, the Executive has to be in a position to make bids, whether it is in a minority or a majority, but that should not exclude the full Assembly from putting in bids, particularly where we are able to do so by a vote of the majority, which may include members of the governing party. So, if we are going down that route, it should not be confined to the Government—there would be inherent difficulties if that were the case. The

Standing Order No. 31 issue also has to be dealt with, so there must be at least three routes for legislation—through the Executive, the full Assembly, and the Standing Order No. 31 procedure for private Member's legislation.

Then there were your comments on what I call the pig's breakfast syndrome, that is, that we have existing transfer of functions Orders going through. By the way, in relation to the energy one, it has been three years and an Order is still not there yet on the large energy projects of 50 MW and above. There are new ones, as you say. There is a new one tomorrow, for example. That, plus Orders in Council and this kind of procedure, seems to me to be an unholy mishmash. It would be far simpler and far better to move to the third stage. It was not a staging post that was considered, as far I can see, by the Richard commission, and it would not help the process.

On your last point, I have just written 'approval', and I cannot remember what it was regarding.

[67] **Jocelyn Davies:** It was on whether we should be in a position to say, 'Can we have the powers for X please, and then we will do as we wish with it?', or should we have to justify that by saying, 'We're going to do this, do you mind?'?

Nick Bourne: That is the inherent difficulty, you are quite right. The reductio ad absurdum is that you could have a position where 60 Members—and we have had it in a sense, although it is slightly off-beam, because it is the bank holiday issue; we had 60 Members in the Assembly wanting something, and Westminster blocked it. It is not a perfect example, because it is not a devolved matter, but it could still happen. It could be on a devolved matter—we could say that we wanted a power, and the Secretary of State says 'no' or 'Yes, okay, let's pass it to the House of Commons or the House of Lords', and the House of Commons or the House of Lords says 'no'. So, we still end up at the behest of Westminster, which is not desirable either in terms of the national self-confidence or the efficient working of the Assembly. It is not desirable full stop, and I have not heard anything that has convinced me that it is necessary.

[68] **Jocelyn Davies:** There was one last thing. In terms of the scrutiny of statutory instruments, how will that happen in the future?

Nick Bourne: Goodness knows.

[69] **Jocelyn Davies:** The powers to make the statutory instruments will probably pass to Ministers, rather than rest with the Assembly as a whole. So, how will we scrutinise them?

Nick Bourne: We come back to structures, costs, the number of Assembly Members and the important back-up staff. It is bound to have financial consequences and an effect on the structures, some of which could be foreseen, and some of which perhaps cannot. We will have to significantly alter how we do things if we go down the Orders in Council route.

6.30 p.m.

[70] **Jocelyn Davies:** You mentioned St David's Day, but perhaps hunting with dogs would be a better example, because we have had resolutions here in the past that the powers in the legislation should pass to the Assembly. There might be very well be a different decision in the Assembly than there is in Westminster. So, is there a danger that you might want to leave some things, if you are the Secretary of State, at Westminster, because you know that the decision will be made there, and then not pass things? It is one of the examples that I gave of power being transferred according to a judgment on what the Assembly will do with the power, rather than according to the logic that the National Assembly, as the Government of

the country, should have the power.

Nick Bourne: You are right, it is a much better example, for which I thank you. I suppose that the fact that the request is made, in some ways, will indicate very clearly what the decision is likely to be, so the Secretary of State will be able to second guess how the Assembly jumps on a particular issue. The Secretary of State is human—it is bound to affect the priority that it is given, because it may not fit in with the ideology at Westminster, whether that be Labour, Conservative, or whatever.

[71] **Kirsty Williams:** Returning to structures, and the concerns about how we organise ourselves, I take it from that that you are content with the proposal in the White Paper that there should be no prescriptiveness about the committees that we have here. We are currently required to have certain committees under the Government of Wales Act 1998. I take it that you are happy that it should be a matter for us to decide.

Nick Bourne: Yes, you assume rightly, Kirsty. Under the Act, we are obliged to have a committee shadowing each Minister other than the Finance Minister, subject to a maximum, and the standing committees. I think that it is something that should be left to the Assembly.

[72] **Kirsty Williams:** Under the Government of Wales Act 1998, there is a strict requirement that each committee should be party balanced. It seems that it is somewhat diluted by proposals in the White Paper that look at the overall balance, which could lead to a situation where perhaps, given the pressure on numbers, you might be looking at quite small committees, which would perhaps mean in some cases that a political party had no representation on a committee. Do you have any views on that?

Nick Bourne: It would be difficult. You and I well remember that the issue came up early in the first Assembly—there was an issue about party balance, and whether every committee had to have the same party balance, or whether you could look at the position overall. In the end, common sense prevailed. It would be undesirable for a political party that has a certain minimum representation not to be represented—I think it is four Members at the moment, Llywydd, but you may correct me, in order to claim leaders' allowances and so on. All parties should be represented on every committee. It would be difficult and undesirable otherwise.

[73] **Jocelyn Davies:** The Scottish Parliament has more parties. You are judging that on the position that the Assembly has four parties and one or two independent Members. However, there are a number of small parties in the Scottish Parliament, so they cannot possibly expect to have Members on every committee.

Nick Bourne: No, which is why I used the four Member cut-off point—I think it is four Members to claim the leader's allowance. Admittedly, you must have a cut-off, and you are right that there are more parties in Scotland, because of the more proportionate element—there are the Greens, the Scottish socialists and so on, but I do not think that they have the minimum number of Members to qualify for leaders' allowances. However, given the nature of the four parties in the Assembly, it would be undesirable for any subject committee to be without representation from each of the four parties. It would not be in the interests of the working of democracy or of the Assembly.

[74] **The Presiding Officer:** I believe that three Members constitute a group in the Assembly. However, there is a distinct difference between what constitutes a group in the Standing Orders and what constitutes a party in the Act, which is another of the delicacies of operating within the framework of the Government of Wales Act 1998.

I have a few final questions to ask, unless colleagues have any other points. The thrust of the White Paper's argument bears up the argument that you have put very strongly over the years,

and also as part of our work together on the Assembly review of procedure, namely that the terms ‘Assembly’ and ‘Government’ do not sit easily together, and that there is still a confusion in the perception of the electorate. Although the models that are referred to are those of Westminster and Edinburgh, the White Paper still proposes to call the Government in Cathays park the Welsh Assembly Government. Do you not think—this is now a leading question; I have spent too much time in Plenary listening to Members asking, ‘Do you agree with me, Minister?’. I will not ask such a question. Sorry, I apologise for that, I will phrase it in another way. What is your view of paragraph 2.6 of the White Paper, which proposes that we continue to call the Executive the Welsh Assembly Government? Is that not contrary to the argument in the White Paper itself about the confusion that has been caused by combining the Assembly and the Government? Is that a better question, colleagues?

Nick Bourne: In answer to your non-leading question, I do not have paragraph 2.6 in front of me, but thanks for précising what it says. I think that we should follow the Scottish model; it is the Scottish Executive, and I think that it should be the Welsh Executive here. I think that the title ‘Welsh Assembly Government’ is confusing, and it would certainly be confusing by the time we get to the third stage, if we ever do, because we would no longer then be an Assembly—we will presumably be something else. So, I think that it would be better to call that arm of Government the Welsh Executive.

[75] **The Presiding Officer:** Presumably, we could still be the National Assembly for Wales, as the title ‘national assembly’ is a fine international title for many parliamentary bodies worldwide, is it not? Would it not be more confusing if we were to abandon this grand title for something less clear?

Nick Bourne: I hesitate to disagree, but I do. Within the United Kingdom context, I think that a parliament is a body that makes primary legislation. If we have primary legislative powers, I think that we should be a parliament, just as Scotland is. I know that in France—this is perhaps an invidious example at the moment—there is a national assembly that is very different. However, that has not been the British tradition.

[76] **The Presiding Officer:** I am not so sure. One needs to look to the Commonwealth, I would have thought. I received an interesting letter earlier this week from the speaker of the National Assembly of Kenya. You mentioned France, but there is also Québec. If you search on the worldwide web, I can certainly say that the term ‘national assembly’ occurs as a synonym for parliament very widely, both in the Commonwealth tradition and in the European tradition.

Nick Bourne: I would not disagree with that, but perhaps referring to British in the truly British context rather than British as passed on to the members of the Commonwealth. Québec would be a little bit different because it has a Napoleonic code and it would be more likely to follow the French system. I agree that in Kenya and elsewhere they have their assemblies, but then in countries such as India, Malaysia and Singapore they have their parliaments.

[77] **The Presiding Officer:** Indeed. I have just been reminded again—not to perpetuate this too long—that the president of the National Assembly of the Socialist Republic of Vietnam visited me recently. So, it is everywhere.

Nick Bourne: Indeed. It will be an interesting debate, but I would favour ‘parliament’.

[78] **The Presiding Officer:** As colleagues do not have any other questions, I wish to say that we are very grateful to you for your presentation and for the discussion. There may be issues that you pick up as we continue our work, which we hope to conclude as soon as may be—to use an old parliamentary system. We are grateful.

Nick Bourne: Thank you.

[79] **Y Llywydd:** Mae'n bleser gennyf groesawu Syr Christopher Jenkins i gyflwyno tystiolaeth. Mae wedi paratoi papur ar ein cyfer, ac felly symudwn yn syth at y cwestiynau.

[79] **The Presiding Officer:** I am pleased to welcome Sir Christopher Jenkins to present evidence to us. He has prepared a paper for us, and therefore we will move immediately to questions.

[80] **Jocelyn Davies:** You are probably aware that the UK Government has not since 1999 drafted Bills in a way that has given the Assembly wide and permissive powers. Although there have been several resolutions within the Assembly to that effect, and we adopted the Rawlings principles some years ago, that has not happened. Can you give us any idea why that might not be the case?

Sir Christopher Jenkins: Not really. I have been out of the loop since soon after the Act was passed, so I have not been watching the developments closely since then. However, I was under the impression that there had been cases whereby certain Acts had been passed giving to the Assembly powers that Ministers did not have in London. In other words, they have been given, in some limited cases, wider powers than those within which British Ministers could make delegated legislation, but certainly not on a grand scale.

6.40 p.m.

[81] **Jocelyn Davies:** The White Paper makes the point that the Assembly is a democratically elected body and we have robust legislative procedures. There is an argument that we should not be treated in the same way as Westminster Ministers and that powers could have been wider and more permissive because we have these procedures. The White Paper mentions that and states that that should now be the basis for Parliament conferring powers on the Assembly. Do you think that Parliament will embrace that idea?

Sir Christopher Jenkins: I would hope so. It seemed to me that, in 1998-99, the powers then passed to the Assembly would be difficult for the Assembly to use as a basis for changing things in Wales because they were not devised with that in mind; they were devised for Ministers to use, often for particular purposes that had previously been identified and for Ministers to use in combination with other Cabinet Ministers who had other powers. Neither of those points applied to the Assembly. When the powers were created, they were not created with the Assembly in mind. The Assembly could not co-operate with other Ministers who exercised powers outside the areas for which the Assembly had powers.

So, all in all, as has been recognised, the powers that the Assembly had were an odd mixture—some trivial, some quite significant, but not having any rationale at all that was relevant to the Assembly. So, it seemed to me desirable and, in fact, inevitable that there would have to be change from the beginning in that gaps would have to be filled in, at least, in the Assembly's powers, as time went on. By degrees, it seemed to me also inevitable that the Assembly should be given powers of a wider scope so that it could develop policies of a wider scope and implement them. I have not followed exactly how far that has gone, but I recognise that it has not gone nearly as far as the Assembly would like. That is one thing to be welcomed in this White Paper—that the power now proposed is not limited to the passing of existing ministerial powers, but to the passing of whole areas to the Assembly, where it will be free to develop its own policies. That can be done without an Act of Parliament, but by Order in Council instead.

[82] **Jocelyn Davies:** Evidence to the Richard commission would lead us to conclude that that has varied a great deal from department to department, and in terms of drafting style between

individual drafting lawyers. When you say that there was no logic to the bundle that we started with, there has not been much logic since 1999.

You probably heard my question to Nick Bourne earlier about stage two, which he feels is unnecessary. I fear that that will be even more complicated than the situation that we now find ourselves in because we will have Orders in Council, but we already have the transfer of functions and we will have powers and new Acts. Could this end up as a legal minefield?

Sir Christopher Jenkins: When I read the White Paper, I had not seen it like that. It seemed to me that that would be a very useful addition to the ability of Whitehall and Westminster to pass powers to the Assembly. The main advantage of it, apart from the fact that the transfers could now be chunks of policy areas, was that it could be done without going through the long stages of a Bill in Parliament where competition for Bills, as you know, is very severe. Often, Bills that are wanted by a majority of Ministers do not find a place. The same is not true of Orders in Council, although there is still a blockage in Parliament of parliamentary time for anything that is bound to take time in both Houses and that is true of these Orders because I think that they are all subject to the affirmative procedure. Therefore, there will have to be a debate in each House, but that is nothing like as big an obstacle as the stages of a Bill.

[83] **Jocelyn Davies:** I have just one last question about Orders in Council. Most of us will never have heard of Orders in Council. In your experience, for what does Parliament normally use Orders in Council?

Sir Christopher Jenkins: To begin the answer gradually, Parliament would not use it for anything on which Ministers or members were certain that they wanted to debate amendments in each House. It would not use it for anything of that kind. On the other hand, it would not be used for all other cases. Some Orders are subject to an affirmative procedure. Generally speaking, they are instruments of some constitutional or other great importance.

[84] **Jocelyn Davies:** Can you give us some examples?

Sir Christopher Jenkins: I should be able to do so, but I cannot at present. It will come to me, but not at present.

[85] **The Presiding Officer:** You are very welcome to supply us with an edited choice of Orders in Council over your parliamentary career.

Sir Christopher Jenkins: One relevant example is an Order transferring functions between Ministers.

[86] **Carl Sargeant:** Thank you for attending this wonderful evening session. May I assume that the Orders in Council route can actually work and that, perhaps, the distinctions in your paper between primary and secondary legislation are more nebulous than sometimes argued? Could there be a liberal use of Orders in Council, and that there would be no need for rushing into primary powers or a referendum? Do you believe that too much is made of the supposed distinction between primary and secondary legislation?

Sir Christopher Jenkins: I think that that is often the case, partly because I do not always understand what people mean when they use the expression ‘primary’ or ‘secondary’. The only meaning that I know to be clear is the one between a Parliament which can do virtually anything, as Westminster is traditionally thought to be capable of doing, and a body which derives its power through a delegation of those powers exercised by the primary body. Therefore, if one takes that line, everything is secondary except what an unrestricted Parliament does; all legislation made under an Act of Parliament is secondary. It cannot be

otherwise because that is what it means, ‘secondary’ or ‘delegated’ being interchangeable terms.

Most people would be reluctant to be that strict about the use of words, because for so long, people have used the word ‘primary’ to describe, for instance, Acts of Parliament in Northern Ireland, and now in Scotland. In my mind, those are strictly secondary. I do not make too much of that because it is not a popular notion but it is the only way that I can keep my head clear about the differences. If people here say, ‘when we move from secondary to primary powers, something will follow’, I do not understand it, because the Assembly already has the power to legislate. Its powers are likely to increase but I think that it will be impossible to identify exactly the point at which they might be called ‘primary’ powers unless there is a big, sudden change. At present, I foresee that what is proposed is a series of changes, some of which will be big, but all of which will use the existing machinery. This is the first new change in the White Paper, where there is a new power of Orders in Council which will be capable of giving chunks of spheres to the Assembly. By degrees, this could lead to the Assembly having very close to full power in all of the areas where it has any competence at all, in theory. The difference between that and absolutely full power is difficult to see but, presumably, we will continue to call it ‘secondary’.

6.50 p.m.

[87] **Carl Sargeant:** So, it is a language-base scenario really—it is just the way that people term it ‘secondary’ or ‘primary’, because perhaps not many people out there really understand its significance. However, the Orders in Council within Standing Orders that would be developed could be the key to a new coherent policy for the Assembly—or whatever the name of this institution would be.

Sir Christopher Jenkins: Yes. To my mind, whatever the Assembly eventually has by way of powers, will be secondary powers, strictly speaking. However, when they are big enough, one will not grumble if people call them primary powers—indeed, already one might not grumble, simply because one does not know what they want to mean by primary powers.

[88] **The Presiding Officer:** I am tempted to ask you whether you regard European Union legislation as even more primary, but I will not.

[89] **David Melding:** Sir Christopher, we are in very tricky territory now. I remember Vernon Bogdanor talking about the fact that there is not really anything that can be strictly defined as secondary legislation. I suppose that we are in a dependent relationship with Parliament, if I can put it that way, and our legislative powers are quite properly—given the referendum, or what was put before the people of Wales—constrained, and quite tightly constrained really. The Orders in Council route would allow that constraint to be very considerably loosened, and, in shorthand, I think that that is when people start to talk about primary powers; it perhaps aids discussion. As we move that way, we are more likely to be able to have the full policy competence over the devolved areas that they have in Scotland. Presumably, you would agree that Scotland has primary powers, because, so far as the Scotland Act 1998 is not amended, there are designated areas where the Scottish Parliament legislates, and that is done upfront, and that is the case. There is surely a danger that, if the Orders in Council take off, we end up with, in effect, legislative powers, with a parliamentary system that has to be perfunctory, or invokes a constitutional crisis. That is open to serious friction as soon as you get a non-Labour Government, or different Governments in Cardiff and Westminster. Am I being horribly pessimistic, or are these real challenges that we may have to face?

Sir Christopher Jenkins: First, I do not think that I would say that the powers of the Scottish Parliament are strictly primary—if one uses that term in its strictest sense.

[90] **David Melding:** I would agree with that, but if you mess about with the Scotland Act 1998, you would create a constitutional crisis, and so the cost to any Government to do that is enough to put it off attempting it. However, legally, you are quite right that Westminster can legislate on any Scottish issue and change the Parliament's procedures, but I do not think that we are in the realm of practical politics there. That is the point that I was making.

Sir Christopher Jenkins: On your substantive point about whether the Assembly could end up with pretty general powers within the devolved fields by way of these new Orders in Council, I think that the answer, on paper, is 'yes'. The ability to pass such powers to the Assembly is there in the White Paper. There are only two restrictions, I think, on that ability. One is that, according to the White Paper, there should not be a transfer of the whole of any field.

[91] **David Melding:** You do not have to retain much, do you?

Sir Christopher Jenkins: No, nothing much. The second is that there should not be a transfer of a new field. Otherwise, there are not any restrictions. So, within the existing devolved fields, there are no serious restrictions, on paper, to Westminster's power to pass the whole shooting match to Cardiff.

[92] **David Melding:** And on the durability of the system in terms of when there is a different Government in Cardiff and Westminster?

Sir Christopher Jenkins: I am much less competent to answer that. In principle, it seems to me that that is going to happen one day, and, therefore, whatever system exists will be made to work.

[93] **The Presiding Officer:** You mentioned the question of new fields and not transferring new fields. Does this not more or less freeze the devolved project in the aspic—to confuse my metaphors? I am not doing too well tonight. Does it not freeze the status quo in terms of devolved fields, and is it not the situation then that, unless it were made clearer, any agreed matter, as one would with the transfer of Ministers, between the Whitehall Government and the Cardiff Government—between Westminster and the Assembly—could be transferred by an Order in Council? Would that not be a more appropriate way of doing it, rather than saying 'no new fields'? Otherwise, what happens, for example, to the administration of justice, which, conceivably, could have been transferred in the old system from the Secretary of State for the Home Department, or the Secretary of State for Constitutional Affairs, or whomever may be currently doing it, to the old Welsh Office, but would be debarred by the wording of the White Paper at the moment?

Sir Christopher Jenkins: It is true, if I understood you right, that the proposal for the first change will mean that the Assembly cannot operate in completely new fields. Taking education, for example, as a field, it will be possible to pass almost complete powers to the Assembly. So, to that extent, you are preserving existing limits. However, that also seemed to me to be true of the second stage, but perhaps that is a separate point.

[94] **Kirsty Williams:** In your paper, Sir Christopher, apart from drawing our attention to this situation regarding new fields, you also state that paragraph 3.18, with regard to whole fields, is an arbitrary one, and the White Paper does not set out a rationale for it. Would you care to speculate on perhaps why that is there?

Sir Christopher Jenkins: I can only do that, because I am so ignorant about what is going on and what has gone on. That is to say that I have no idea what the actual reasons were at all. However, I wondered whether it was to do with the fact that a two-stage process is wanted and anticipated and aimed at, and that the second stage will be the one that requires a

referendum. If there is to be a referendum, and if there are to be two stages, then some differences have to be found between the first stage and the second stage. Otherwise, why do you have a referendum at that stage rather than now? Therefore, it seems possible to me that these are the signs that differences must be found, or indeed that progress is expected to be such that there will be a difference between the powers actually passed in the first stage and the powers passed in the second stage after the referendum. That seems to me quite likely, but it is sheer speculation on my part.

[95] **Kirsty Williams:** I think that we could all speculate on why there is a need to have a referendum later rather than sooner. However, turning to Standing Orders, do you foresee any circumstances why an institution such as this would not, or could not, be responsible for drawing up its own Standing Orders?

Sir Christopher Jenkins: It depends rather on what goes into the legislation and what is left of Standing Orders. There are some things of great importance, but even those may be left to the Assembly in due course. For example, in Westminster, the financial initiative is wholly with the Government, but that is because of Standing Orders, rather than because of anything else. I simply do not know whether that sort of subject—control over finance—is so important that it would be thought desirable to put something about it into the proposed Act, or whether it is intended that it should be left to Standing Orders. I have no idea. However, if Westminster thinks that it is so important that it should be specified and controlled by it, then it might be that it might want to put it into the Bill, in which case it would leave other Standing Orders to be decided upon by the Assembly.

7.00 p.m.

What I meant to point to in my note was that it seems to me that, so far, flexibility has been very important. The Act has allowed for a good deal of flexibility in the way that the Assembly organises itself, and that is good; it has meant that you could grow organically. It seemed to me that in the new regime, under the proposed Bill, it is also going to be desirable that there should be a lot of flexibility, that is to say that perhaps there should be some fuzzy edges in the definition of the powers coming to the Assembly, and even some awkwardnesses, so that there are reasons for making progress, for changing things in the future, rather than rigid boundaries that cannot be passed and that will make life much more difficult for the Assembly if they are too rigid and clear.

So, there is a case in some context for flexibility, and that is true of Standing Orders too. You do not now know exactly how you want to operate in five years' time. If it is in an Act, or in Standing Orders, even, which are fixed by the Secretary of State, there is nothing you can do about it. That is all that I was getting at there.

[96] **The Presiding Officer:** Our colleague, Lorraine Barrett, is unwell and has lost her voice. Thank you for turning up, Lorraine. Jane Hutt?

[97] **Jane Hutt:** Sir Christopher, you said that this White Paper will bring clarity to the miscellany of powers inherited by the Assembly. I shall use that quote frequently.

Sir Christopher Jenkins: It is capable of that.

[98] **Jane Hutt:** I am grateful for your positive contribution in your evidence to us. It is important for us to try to look further at this issue of the fields. It has already been raised in the evidence that we have taken so far, and there are concerns that there may be limitations. I just wanted to explore with you this issue about the fields. Clearly there are ragged edges in terms of the fields because of non-devolved matters, for example, in education and in other fields of policy that cover local government or the Inland Revenue. There are fields that are

not devolved, and that will be a limiting and restricting factor in relation to the fields. We will be abutting our non-devolved responsibilities.

So, it would be helpful to have your further views on this, by clarifying how you think we can take this forward in terms of being clear about what we want to achieve as a result of an Order in Council. It will be policy derived from Government, and, indeed, backed by the whole Assembly, hopefully, that we will want to take forward through an Order in Council. We know from our brief history that, for example, we could have had an Order in Council to enable us to have a children's commissioner, without having a Wales-only Bill for that, or could have added it to the Care Standards Bill, which was the first step that we had to take. This was, therefore, prolonged, and there were lots of committee sessions at Westminster. I believe that we could have done that through an Order in Council.

Sir Christopher Jenkins: Yes. That is a good example of the kind of thing that could be done much more quickly. On the basic question of the precise definition of the fields, or areas of policy within which the Assembly can legislate, there are difficulties either way. If the limits are defined extremely precisely, then the Assembly will knock up against them and will be able to do nothing about it. If they are very vague, then the Assembly might be uncertain about whether or not it can do something, even though it is convinced that it should be able to do something. So, it is a matter of guessing in advance whether you would want to argue with London that you have perfectly clear powers that include something that you want to do, or that you would want to argue with London that your powers are not terribly clear, and that, on balance, they give you the ability to do what you want to do. In other words, it depends which way round you are trying to argue it.

There are precedents for this kind of difficulty, particularly over the long term, with Northern Ireland, where there has always been a division between what Northern Ireland could do and what had to be done at Westminster. There were always some arguments about what was devolved and what was reserved. However, I think that it is inevitable that it is going to happen, and, in general, I would guess that the devolved administration might be better with not rigidly defined fields than with rigidly defined fields because, very often, what the devolved legislature will want to do is to introduce new policies and new law, which everybody accepts is desirable. It will not always be so, but that will happen sometimes. If that is the case, and the Assembly proposed to bring forward some legislation that was generally accepted to be desirable, both here and in London, then a slight or even a medium-sized uncertainty about whether it was within the Assembly's powers would be likely to be resolved in favour of the Assembly. The opposite is true, of course, if what the Assembly was proposing was something that was, in London at least, considered undesirable. However, in general, if the Assembly is fixed on something that concerns Wales and not London, and has a strong argument that, despite uncertainties at the edges, it has the power to do these things, then, on the whole, I would have guessed, in real life, that would be accepted and nobody would argue that it did not have those powers.

[99] **Jane Hutt:** Perhaps I could just come back to existing examples. Recently, we have been looking at the banning of smoking in public places, and we are moving in a different direction to the policy being developed in England at the same time. Another example is our decision to keep our community health councils, and England wanted to abolish them. We managed to get that through—quite laboriously, I must say—all the legislative procedures, but that was a very different policy direction. So, if there is a different government in power, and if it is the same government in power, these are things that we can test in history, as well as to look forward to the issues that might arise.

Sir Christopher Jenkins: Yes, it is very difficult to predict exactly how you will want to play things in the future, but in so far as one has to decide in advance what the structures are going to be, the more flexibility you have, the better.

[100] **The Presiding Officer:** Could I ask you, Sir Christopher, to comment on something that Lord Evans, the Minister answering for the Government in the House of Lords, said when the statement was repeated and the White Paper was announced? He implied that an Order in Council would be, more or less, similar to the long title of a Bill and that it could be as simple as that. Do you think that this is likely to happen and that there would be that flexibility and liberality in the content of the Orders in Council?

Sir Christopher Jenkins: I suppose that it depends what the Assembly wants, or, in other words, what the Order in Council is responding to. However, if, for example, it was about creating a children's commissioner, it is possible that the Order in Council would have simply authorised that and left everything else to the detailed working out by the Assembly. If it is to reorganise local government altogether, then it would probably put a bit more into the Order in Council—I do not know—but it depends what Ministers wanted to do and whether they wanted to restrict or not. I think that it depends entirely on each case, but it certainly could be as short as a long title, as it were.

[101] **The Presiding Officer:** I was very interested in the examples given to us by the Minister responsible for some of this legislation at this end. This points to a possible way of operating, where, depending on the will and the responsiveness of the Government and Parliament at Westminster, that, to go back to your earlier views, it is the equivalent of primary powers, whatever we mean by that. The Orders in Council can be very flexible and a rapid tool for the delivery of enhanced legislative powers, as described in the White Paper. Do you agree with that?

7.10 p.m.

Sir Christopher Jenkins: I would agree with that. As described in the White Paper, the limit to what can be done by an Order in Council is almost coterminous with the fields described in the Schedule to the Act, in single or very few words. So it is very general.

[102] **The Presiding Officer:** It was put to us in discussion, and we have also received a letter in evidence from Elin Jones AM, who intends to appear before us, and I know of your interest and sterling contribution to the making of the Welsh Language Act 1993, that the Welsh language is a field that would surely be mainly of interest to the Assembly. Do you think that it would be possible legally, and likely procedurally, that such a field would be left almost wholly to the Assembly?

Sir Christopher Jenkins: That would be very difficult to predict. I do not think that it is plain at first sight that it would be left entirely to the Assembly, though, on the face of it, it is a very good candidate for that. It partly depends on the expected reaction of the Members of the two Houses in London. Both Houses of Parliament have to approve the Order in Council, and, if it seems to Ministers that there would be strong opposition to a general transfer of that kind, then they might take account of that in drawing up the Order in Council. For example, if it were thought that the new powers would give the Assembly the ability to dictate much more to the private sector than the present Act does, or, for example, to require all companies employing fewer than X people to employ only people who spoke Welsh—it depends what people foresaw as the likely use of what is proposed to be transferred.

[103] **Jocelyn Davies:** As we are on the issue of the long titles of primary legislation, putting aside the Orders in Council, is there any reason why, in new Acts of Westminster, the Assembly should not be given powers as wide as the title of the Bill?

Sir Christopher Jenkins: No, I do not think that there is. The title of the Bill has some influence, especially in the House of Lords, over the extent to which the Bill can be debated,

so the draftsman drafting a long title will often be aiming not only to describe what the Bill does, but to control, through the rules of procedure, what debates can take place in the two Houses. The more detail that he puts into the long title, then the more restricted the debate will be, in general. That is not an exact science, but it is very alive in the mind of the draftsman drafting a long title. A long title could say, 'a Bill to amend the Local Government Acts', but that would be undesirable if the Government only wanted to make a minor change to do with the running of a council. So it is more likely that it would specify in the title, if it were only a small change, what the small change was. On the other hand, if it was something non-contentious, then a general long title would do no harm, because no difficult debates are foreseen in any case. In other words, the purpose for which a long title is devised would not be the same as the one that you are speaking of, that is, to describe an area that might be transferred to the Assembly. However, in principle, there is no reason why a transfer could not be of something as wide as a fairly wide long title.

[104] **David Melding:** I do not know if I can ask a hideously simplistic question, but the difference between Acts of Parliament and Orders in Council is in what they describe, is it not? I presume that Orders in Council do not state that there shall be a Bill to determine the regulation of the Welsh language or something. Also, would an Order in Council grant perpetual powers, such as the power to amend and return or even completely repeal something in the Assembly, with regard to the something like the Welsh language, for example? The Welsh language would fall into the category of something that would be entire if you were not careful, would it not, if the Order in Council states that the Assembly should have legislative competence over Welsh-language issues, whereas the children's commissioner is obviously not a whole field, but a small part of the regulation of children's services or giving children a voice, is it not? I am not a lawyer, however, and I am not sure that I understand what the actual difference is at that level. Is it just a procedural difference, or is there a different legal result that you get via an Order in Council compared with via an Act of Parliament?

Sir Christopher Jenkins: Not in this case. Orders in Council are, generally speaking, a form of delegated legislation. That is to say, they are made under a power that is granted to make Orders in Council by an Act of Parliament. So, the Act describes what can be done by the Order. From the point of the view of the White Paper, the big difference is procedural. That is to say that the Order in Council will need a debate in each House, whereas the Bill leading to an Act would need to go through the usual stages for a Bill. From the point of view of the result, there will not be any difference as far as the Assembly is concerned, except that an Order in Council, like any other delegated legislation, can be amended or revoked by a later Order in Council. That means, in theory, as I think would be true with the existing transfer of functions Orders, that they can be revoked. However, that is, of course, politically, likely to be extremely difficult, and, in any event, Acts can be repealed. There is therefore not much difference. The form of an Order in Council will be very much the same as that of an Act, insofar as it is transferring powers to the Assembly so that the Assembly may make laws within the areas of the children's commissioner, local government, or the whole field of education.

[105] **David Melding:** Is it fair to say that what an Order in Council spawns in terms of what it allows a delegated authority to do can end up being a fairly distant cousin to the primary legislation from which it originally emanated? In a way, the Act of Parliament generates the power to create Orders in Council and other subordinate devices. It is a fairly distant thing, really, is it not, compared with what you end up with in using the delegated procedures?

Sir Christopher Jenkins: Yes, absolutely. It will be at least a grandson, and, if Ministers get the powers that are conferred on the Assembly, it will be a great-grandson. So, there is a fairly long line of descent, but it should not make any difference to the powers. The power that matters is the last in line.

[106] **Jocelyn Davies:** On the issue of repeal, what is the mechanism to repeal an Order in Council? As you say, an Act of Parliament can be repealed, but what is the mechanism to repeal an Order in Council?

Sir Christopher Jenkins: It depends on the Act that authorises the making of the Order in Council in the first place, but it will most likely be another Order in Council made by the same procedure as the first one.

[107] **Jocelyn Davies:** So, two debates.

Sir Christopher Jenkins: Yes.

[108] **The Presiding Officer:** And keeping Her Majesty busy once a week. We are very grateful to you, Sir Christopher, for your evidence. If you have any further thoughts as you follow your proceedings or if anything occurs to you, we would be grateful to receive a further written note. Thank you. That brings the formal meeting to an end.

Daeth y cyfarfod i ben am 7.20 p.m.
The meeting ended at 7.20 p.m.