



**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 Iau, 21 Gorffennaf 2005  
Thursday, 21 July 2005**

**Cynnwys**  
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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), Jocelyn Davies, Jane Hutt, David Melding, Carl Sargeant, Kirsty Williams.*

*Eraill yn bresennol: Ben Cottam, Busnes Cymru; yr Athro a'r Arglwydd Morgan; David Rosser, Busnes Cymru.*

*Swyddogion yn bresennol: Paul Silk, Clerc y Cynulliad.*

*Gwasanaeth Pwyllgor: Siân Wilkins, Clerc.*

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

*Others in attendance: Ben Cottam, Business Wales; Professor Lord Morgan; David Rosser, Business Wales.*

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

*Committee Service: Siân Wilkins, Clerk.*

*Dechreuodd y cyfarfod am 2.30 p.m.  
The meeting began at 2.30 p.m.*

### **Papur Gwyn—Trefn Lywodraethu Well i Gymru: Tystiolaeth The Better Governance for Wales White Paper: Evidence**

[512] **Y Llywydd:** Croeso i'n tyst diweddaraf, yr Arglwydd Morgan o Aberdyfi. Mae'n rhoi pleser mawr imi ddweud y teitl ac i groesawu'r gwrthrych. Diolch yn fawr ichi am ddod ac am eich tystiolaeth ysgrifenedig.

[512] **The Presiding Officer:** I welcome our latest witness, Lord Morgan of Aberdyfi. It gives me great pleasure to say the title and to welcome its object. Thank you for coming and for your written evidence.

[513] **Jane Hutt:** Welcome, Professor Morgan. I am very pleased that you have given us written evidence and that you have joined us today. I found your written evidence very helpful in terms of helping us to take forward our aspiration and in terms of contesting, I am sure on many points, the aspirations of the White Paper, which is what we would like to explore with you.

I am very interested in your written evidence. You say that the two purposes of devolution are to ensure that we can develop all-Wales policies suited to the needs of the people of Wales and to be able to deliver them through executive action, and to ensure that we can develop public policy, which might mean a divergence, and to develop that on a UK basis, which may go beyond devolution to a regional dimension. I would hope that the steps that the UK Government is taking in the White Paper would move us on one step further to achieve that, through the greater use of framework legislation and through the Order in Council route. I would say that we have perhaps already started to achieve this all-Wales purpose in terms of policy, delivery, legislative action and divergence, on occasion, from UK Government policy here in Wales. Could you respond to that? Do you feel that this will give us the opportunity? You said that the Orders in Council route may be helpful but that it is not good enough, but we feel that that may be the next step in terms of the maturing process of devolution. Could you comment on those points?

**Yr Athro a'r Arglwydd Morgan:** Diolch yn fawr i chi i gyd am fy ngwahodd i yma.

**Professor Lord Morgan:** Thank you all very much for inviting me here.

I think that there are many helpful proposals in the White Paper, and I indicated, in my letter, points that I particularly agree with. Yes, the Order in Council route could be helpful; I think that it could also be the reverse. A great deal depends on how, particularly, the Secretary of State responds and, for that matter, how parliamentarians in Westminster respond and, if there is a negative outcome from the attempt to use Orders in Council—let us say the Assembly expresses a wish that is not acknowledged or supported in Westminster—things could go backward. I think that it is a step forward, Jane, without question, but it is just one step and we need many, many more. It seems to me that the essential point about prime responsibility resting with the Assembly rather than the Assembly's being a kind of client, almost, of Westminster and Whitehall, is not addressed. There are many important aspects of the problem, which are, frankly, not argued at all; they are simply asserted, and no evidence is quoted. So, it seems to me that we need to go a major step further and that the basic conceptual point that responsibility should lie with the Assembly, except in clearly devolved areas, and, furthermore, that there is a logic even in the way you are already going, which implies that the Assembly would take on further powers, is simply not grasped.

On the whole, while I welcome some features, I found the White Paper disappointing and, I am almost tempted to say, predictably disappointing when, as a historian, I look at the history of Wales over the last 150 years. We have been taking a number of small steps for mankind and we need some giant steps.

[514] **Jane Hutt:** That is why we have the benefit of your presence here. It is about having that historical perspective, which is extremely helpful to us. However, even in our brief history, post-1999, we can demonstrate that, through having Wales-only Bills, we have had some divergence of policy. I engaged with that when I was Minister for Health and Social Services, with right and pertinent scrutiny from you, as a keen working peer, testing a particular development in health policy that was substantially different from the English direction. For example, we kept our community health councils and we are not having foundation hospitals, and that was our divergence of policy. We are developing policies through education such as the early years foundation phase. That, again, is a divergence in policy, which is meeting Welsh needs.

To take this point further, in terms of why you feel we could have been bolder because we have the opportunity for a referendum and I am sure that you welcome the fact that that is in the White Paper in terms of primary powers—

**Professor Lord Morgan:** I am not too keen on the referendum; I would not anticipate my views on that.

[515] **Jane Hutt:** No, but the opportunity to gain primary powers is in the White Paper.

**Professor Lord Morgan:** Yes, the opportunity is there.

[516] **Jane Hutt:** Also, to follow through the point on the Secretary of State and where the Assembly lies in terms of pre-eminence and what we want to do, it is clearly about when it would be appropriate for us, the Assembly, to approach the Secretary of State and say, 'This is appropriate for us; we want this Order in Council'. It is not necessarily appropriate for a Secretary of State to say that something is inappropriate; it is for us to say that. We need to test that out through this route.

**Professor Lord Morgan:** It is not only appropriate, but essential for the Assembly to raise these matters. I am worried about the response and whether there will be a response. My

starting point is that of the House of Lords Constitution Committee report on devolution, in which I had some part, which effectively said that there should not be a Secretary of State. That is not a comment on any particular individual. No doubt, if, for example, John Redwood were our Secretary of State, the point might be made with greater clarity, so to speak, than it is now. The Secretary of State is there, possibly as a conduit, possibly as a barrier. It depends on the Secretary of State whether or not there will be Orders in Council, but he has to give reasons. We are assured in the White Paper that his reasons will not be trivial; I do not share that confidence, as a historian, at least. Many foolish things have been done over the years.

Basically, I do not think that these matters should rest on the decision of a Secretary of State. I think that it is indicative of the very ambivalent nature of the Secretary of State, as a potential obstacle, which, as Mr Murphy once told me, is about presenting but not representing the views of the Assembly. That is a very honest view and, I think, a totally unsatisfactory one. However, it also reflects something much deeper, which is that it all depends on *laissez-faire*, shall we say—how things will go and how the Parliament will respond. It depends on informal structures and convention. I have always been a believer in a written constitution. Devolution strengthened the case emphatically.

There are things in the present settlement that most certainly should be written down. These include, for example, the so-called concordat between Whitehall and Cardiff. This is not generally accessible. It seems to me that the way that an Order in Council works, assuming that matters will not be trivial and that Parliament will respond, is precisely the kind of slow-moving, conventional process that is a drag on the wheel. I have never been a conservative with a big or a small ‘c’, as you know, but informality is an argument in favour of conservatism—of having major changes but of ensuring that they operate in a cautious and limited way. Hitherto, I do not feel that the constitutional settlement for Wales has been fully enacted, and I would like it to be.

I greatly admire what the Assembly has done and the opportunities that you have taken, but the basic step forward has not been made. Sorry to go on a bit, but we heard a great deal of evidence in the House of Lords Constitution Committee, including a great deal of academic and civil service evidence on how unsatisfactory the Welsh legislative process was, and the anomalies are still there.

2.40 p.m.

You rightly mentioned your very interesting health Bill. That should not have come before Parliament. I saw no reason why a measure in relation to Welsh priorities, from the elected Assembly—elected by the people of Wales—was considered by the totally unelected House of Lords. I think that I may have made that point then. It came before the Lords, and the Lords had no view on the matter. Ironically, it occurred just before a Bill on fox hunting, which meant that Tory peers flooded into the Chamber; several of them voted against your particular Bill, which did not get through by very many votes, for this utterly absurd and adventitious reason. It seems that if not only Orders in Council, but everything within the devolved sphere—primary and secondary—came within the orbit of those appointed or elected to carry them through, then this confusion would not occur. We received evidence from Professor Patchett and Professor Rawlings, which no-one contradicted; it was a clear academic diagnosis of what was wrong with the whole legislative process. Ivor Richard’s report demonstrated that with great clarity. I hope, following your committee report, that perhaps the Government will look again at this, in my opinion, rather timid document.

[517] **Jocelyn Davies:** I know that you say in your submission that you are not a nationalist, but you are certainly a Richard man rather than an Orders in Council man.

**Professor Lord Morgan:** Indeed.

[518] **Jocelyn Davies:** Do you think that Orders in Council provide an appropriate tool or model for the governance of a country? They are based on the royal prerogative and rely on goodwill, which has been described to us, in evidence here, as unstable.

**Professor Lord Morgan:** One of the problems, Miss Davies, as you can imagine, is that the extent, or even the existence, of goodwill is a matter of guesswork, is it not? At the moment, the process has benefited from having people in all of the assemblies who are members of the same party. One can imagine the confusion, and indeed the conflict, that would arise if that were not so. I would have thought that Orders in Council would be ad hoc and would depend on the particular viewpoint of a particular official. They would always be open to Members of Parliament—and we are probably, in this case, talking about Labour Members of Parliament—who could block them and be obstructive. My colleague, Lord Gwilym Prys-Davies, raised a very important point in, I think, a written question to the relevant Minister in the Lords: where is the dispute resolution mechanism? What happens if the Assembly takes one view and the Secretary of State takes another, and the Secretary of State says that his reasons are not trivial though the Assembly may believe that they are? Where do we go from here? That is not even approached or raised, let alone answered. On the whole, therefore, my answer to your question would be no, I do not think that they do.

[519] **Jocelyn Davies:** This White Paper will form, not the second Government of Wales Act, but an amendment to the Government of Wales Act 1998. From the evidence that we have heard so far, some people have felt that it could, in itself, be the end of a journey, and that we would live very happily in this Orders in Council phase, while others have suggested that it is just a way to cross the road—that it will last five minutes and will become so unworkable that we will then have to go for another Government of Wales Act, which would, I suppose, be the Bill that contains the referendum and the proper Parliament. What is your view on those two options? Would the second phase be something that we could endure for a long time, or would it very swiftly lead to a third Government of Wales Bill?

**Professor Lord Morgan:** Either scenario is possible; however, considering the way that devolution has already gained momentum in the six years since the Assembly was established, a scenario of conflict is more likely, simply because the Assembly would be pushing for more and the authorities in Whitehall would be trying to maintain the status quo. It does not add up to devolution; it does not add up to the legislative initiative residing primarily in Cardiff. Every aspect of devolution is hedged by Whitehall control; the Treasury arrangements, including the Barnett formula, are determined by Treasury priorities. We have already discussed the role of the Secretary of State. We have the very strange situation in which you might well have a block of Welsh matters dealt with in a Bill, as we have had in relation to health, or we might have Welsh measures dotted like currants in a bun all over the place. It is a very messy procedure; I think that the Richard commission called it a hybrid form of legislation, which is putting it politely.

[520] **David Melding:** Lord Morgan, you have clearly indicated to us that you take Occam's razor to this, by establishing the classic British parliamentary model of locating executive and legislative functions in the same institution. Do you feel that the intention of Orders in Council is to establish primary powers without the need for the promised referendum?

**Professor Lord Morgan:** No, not on paper. Looking at intentions is a difficult game, as they are not overtly stated. I am in favour of the greatest possible clarity in the arrangement, which is why I am so keen that this is so in devolution, as in a good many other matters, ranging from civil liberties to royal prerogative, which is far beyond our purview this afternoon. I am in favour of having them written down; written constitutions have a way of not being frozen in time, not set in stone for all time. If you consider the United States or France, you will see all sorts of examples why that is not so. However, it would lay down clear fundamental

principles. At the moment, the principle of where legislative initiative is located is not set down; it is not even asked in this paper. Many parts of this paper's logic is extremely weak. If it was an undergraduate's essay, you would mark it with a B double minus and say 'have another go next week'. It is disappointing since it is put together by able people, with whom I am in agreement on other issues. So, I think that it is very unsatisfactory.

[521] **David Melding:** I will ask you to make a leap of the imagination and accept that this system, by custom or practice, becomes quite durable, and survives a change of administration in Westminster; how would you see the scrutiny side of this working in the Assembly? If that worked well, would you be reassured, or would you remain fundamentally concerned that the scrutiny needed for any legislative activity devolved by these mechanisms to the Assembly may not be robust?

**Professor Lord Morgan:** There are proposals about scrutiny, as you know, Mr Melding—particularly in the first part—and they would certainly improve matters. To me, the question is not the process of scrutiny but what is scrutinised and whence it comes. Essentially, it would come directly or indirectly from Westminster. That is a perfectly tenable point of view, but I am sure that that was not what was intended, and not what the Welsh people were asked to vote on in 1997. The question is, therefore, avoided.

[522] **David Melding:** I understand that the power of initiative may rest in Westminster, and that Westminster may prevaricate or delay. I assume, however, that the Government, possibly committees, or even backbenchers, could request that the Assembly deals with legislative activity in a particular field via an Order in Council. In the House of Lords, the responsible Minister speaking to the statement said that the Government saw the Orders in Council likely to emerge, as the long title of a Bill, not as the whole detail. So, the scrutinising function would come to the Assembly, would it not, because the Executive would have drawn up its proposals, and would go through them line by line in examination? Would that not be robust?

**Professor Lord Morgan:** As a scrutinising process, that depends on where it comes from. It depends what agenda they are scrutinising. You can, of course, have over-scrutiny. Some examples of measures taken to almost excessive detail were quoted in the evidence of the Richard commission. There should be a brisker process for what is conceived to be Wales-only legislation. One important point made by the Richard commission report which, off the top of my head as it were—I do not remember it coming up here—is that it assumes that there will be use of more Sewel motions. In other words, the Assembly would be freed up, and measures that could be dealt with by the Assembly would be handled by Westminster, and there would, of course, be plenty of work for Welsh MPs to do in that particular connection.

2.50 p.m.

Therefore, I think that you could have a balance there. However, scrutiny is important, but scrutiny is not enough. If we take the first part of the report, which states that there should be a Welsh Executive that looks like a Government, which I think is probably generally agreed now, then the assumption is that it would have, as it were, a statement of priorities, a legislative programme and, within the guidelines of the devolution settlement—which are constantly being tested, of course—that should go through, and it really would not. I think that the outcome would probably be a rather fragmented process, and the, so to speak, bits that did not work would be the ones that would cause the ill will.

[523] **David Melding:** Finally, in response to a question from Jane Hutt, you said that the Orders in Council procedure is perhaps a step in the right direction, but many steps need to be taken. From that, can I at least infer that you do not think that this type of procedure, with all its ambiguity and possible flaws, would put back the case for primary legislation—that it would not damage that in the long term? Or, do you fear that, if this becomes a dog's

breakfast, then the whole legislative potential of the Assembly will be downgraded?

**Professor Lord Morgan:** I do not think that it will damage it in the long term, because I regard the case for primary legislation as absolutely irresistible—it has happened to every other legislative power in the world. I suppose that you might say that, given that the Assembly has only been in being for six years, you have advanced quite rapidly in that time. I think that I take the Richard commission's point at the beginning of the report, when it says that the fact that we have got so far indicates what a very sensible and sound idea devolution is.

People find all sorts of parameters that they had not anticipated before; each of the previous ones has proved limited. The Orders in Council may make some progress; it could be argued, as I say, that, if you have a quite different view taken in Westminster, the Orders in Council could be enormously harmful, and could slow up matters. My feeling is that the main political parties have taken it on board. I believe that you are a Conservative, are you not? Your party seems to me to have advanced admirably in its thinking on these matters, and realised the potential for it. As a historian, it always seemed to me that the Conservatives absolutely should support devolution, because, since 1868, it has been the party of born losers, so to speak, whereas now you have a real and creative role, which, frankly, you have hardly ever had in nearly 200 years. So, that is welcome.

Therefore, things do advance. They advance, and I referred to the Conservative Party, very importantly, on a consensual front. Devolution is a community advancing, and not a particular political party. Although I am a Labour peer, I am not a partisan person in these matters at all—I certainly hope not.

[524] **David Melding:** I will ensure that your remarks are passed on to my colleagues.

**Professor Lord Morgan:** Thank you.

[525] **The Presiding Officer:** There are no further questions about the Welsh Conservatives, are there?

[526] **Kirsty Williams:** Lord Morgan, my colleague, David, suggested, and you did not disagree, that the Order in Council could take the form of nothing more than the equivalent of a long title of a Bill—indeed, that was the idea advanced by your colleagues in the House of Lords. However, this committee has also received evidence that that would not be an acceptable way to proceed, and that the Orders in Council would have to be far more detailed if they were to be passed by the House of Commons and the House of Lords. What would your opinion be of your colleagues' expectations of what an Order in Council would look like? Is it something as simple as the long title of a Bill, or would they require almost a worked up Bill to be presented before they would consider it?

**Professor Lord Morgan:** It is difficult; the House of Lords is not a very obvious collective unit, even on the Labour benches—my father's house contains many mansions, as they say. However, I think that the House of Lords would probably be very happy to take the simplest possible view of what an Order in Council is.

The expectation is that legislation, or any enactments, relating to Wales are part of a devolution process on which the decision has been taken. The normal procedure is that we get through Welsh legislation quite rapidly. A large number of my colleagues and the people who normally take an interest in these matters are Labour and Liberal Democrat peers—and, indeed, the Plaid Cymru peer, should he be there. The expectation is that these are matters that should have only the most peripheral role anyway. In a way, that is not so much the problem. Wales-only Bills are seen as a natural outgrowth of devolution. It is more of a



problem when Wales measures, or measures that might be Wales measures, become entangled in an England and Wales Bill, where the boundaries are not clear.

It is in that connection, if I recall, that I mentioned in my letter the Children Act 2004. I thought that it was potentially a very disturbing affair. That Act should have had separate legislation in Wales. It had separate legislation for Wales earlier in the process, in which I took part, in 2000-01. That was clearly an England and Wales Bill that began with a separate Wales rubric. The English rubric superseded and swamped the Welsh rubric, with the extraordinary result that a Welsh children's commissioner could potentially be overridden by the English children's commissioner, who had reduced powers and a completely different philosophical rubric, which is not geared to the United Nations convention on human rights. I hope that that never happens again. We were defeated—quite narrowly, in single figures—by the Government on that. Such things should not come to the House of Lords. It is not the role of the House of Lords to consider legislation for Wales, particularly as the House of Lords, contrary to my opinion of what it should be, is not elected. That makes it even more appropriate for you, as you are elected.

[527] **Kirsty Williams:** One example of a potential Order in Council that has been given to the committee is on the issue of the welfare of children. To what extent would it be appropriate for Parliament, including committees of the House of Lords, to lay down restrictions—as some have suggested might happen—on the nature of legislation that could be made under Orders in Council?

**Professor Lord Morgan:** It would be nice if Parliament, rather than the Government, did so. The Government has a standpoint that, according to the White Paper, is rather narrow. It would be far better if we had a new or supplementary Government of Wales Act that set out these things in written form to make it quite clear. We do not stop with the written form; we can go on from that, but it would give us an essential, clear starting point of what a Wales Bill is and what would be appropriate for a devolved matter. The children's measure pushes into Home Office matters, which are not devolved. However, in so many instances they actually are. That could be set down clearly. I am all in favour of clarity in these matters.

[528] **Kirsty Williams:** I am too, but perhaps you could give us clarity on what might constitute an appropriate legislative workload and timescales. I am concerned that we could have a very go-getting administration in Cardiff that wanted to make the most of the opportunities, limited though they may be under this system, and that really wanted to get things done and push for the Orders in Council, but that it could take two or three years at a time to secure that. I am not optimistic that anything that the committee or anyone else might say will change the Government's mind about the sort of settlement that we may have on the amendment to the Government of Wales Act 1998. What is a realistic timescale, and how many legislative opportunities do you think that we could look to enjoy in a four-year term of the Assembly?

3.00 p.m.

**Professor Lord Morgan:** Possibly not many, but more than you are getting at the moment. Your esteemed First Minister, who is a very old friend of mine, pointed out that Wales legislation had shown a 500 per cent improvement. That is the difference between five and one, so that is not a great advance over the period of time. Again, it is a fairly small step for us all. I would have thought that it was a matter of a few weeks at the most, really; I do not see why these Orders in Council should take any time at all, but I think that they are bound to, given the institutional complexities.

So, I do not view them with enthusiasm. I suspect that the most positive aspect of this White Paper—though I know that we have not talked about other bits of it—would be encouraging

the use of secondary and delegated legislation and taking more opportunities there, but Orders in Council are ad hoc. You just need one stumbling block, I think, and the whole thing will fall apart. It is not the way to go forward at all; it is another aspect of governing by convention rather than by written contract.

[529] **The Presiding Officer:** Carl Sargeant is next, then Jane Hutt, and I might ask one or two questions to wind up.

[530] **Carl Sargeant:** Lord Morgan, good afternoon to you. My personal view is that devolution is a rolled-out process, but we will get to that—and I accept some of your comments in your paper—and, for today, if we can accept that Orders in Council may be part of the process that we will be entering into post 2007, do you believe that Orders in Council should primarily be made only by the Assembly Government, or should it be opened up so that all Members of the Assembly, or even committees, could put an Order in Council forward?

**Professor Lord Morgan:** I am reluctant to offer a view on what ought to happen in your Assembly. I will not offer a view on that, if you forgive me. I have thoughts on it, but I might be discourteous if I gave them.

[531] **Carl Sargeant:** Okay.

[532] **David Melding:** Others have offered. [*Laughter.*]

[533] **Carl Sargeant:** Accepting that, on the basis that—

**Professor Lord Morgan:** One point that I had in mind was that we are moving more towards a Government and parliamentary situation in the Assembly. I think that that would presuppose putting the main initiatives with the Executive after the proper process of discussion, but I would not wish to intrude.

[534] **Carl Sargeant:** Thank you for that response. On the basis that you suggested to my colleague, Kirsty Williams that we may get a few Orders in Council through each year, it could, potentially, be open to everyone in the Assembly to raise Orders in Council. It could be about just firing Orders in Council into Westminster and so on. Therefore, the pre-legislative scrutiny would be particularly important before the Order leaves the Assembly. Do you have any views on that?

**Professor Lord Morgan:** I think that it would. I think that that happens now, and I think that it could be eased, frankly, by one aspect that we have not hitherto mentioned, namely having a bigger Assembly. It is already a very big workload for 60 people, of whom 50 or so are not Ministers, so they have to work extremely hard. No, that would be fine.

I think that what I am worried about with all this business of Orders in Council is not what happens here, but what would happen in Westminster. I think that it is likely to be protracted. It is clear from the language and tone of the White Paper that these steps are not to be taken lightly, and they will be considered with great care, and perhaps by the Welsh committee in the Commons, and individual gatherings of Welsh MPs. These are just a whole series of obstacles, which slow up the process enormously.

As Ms Williams suggested, there might well be a very pro-active Government in Wales that is just seeking to be frustrated. I guess—as I am sure that we all do—that I contrast in my mind the Assembly and the Scottish Parliament, where these issues do not appear to exist, because, if I may say so, public esteem for the Scottish Parliament is much higher—not because the Members are any better than you, but because they have a much clearer pro-active role, and it

is so obviously their policy. I do not think that Orders in Council would play particularly well with the Welsh voters or attract an enormous amount of interest.

Mr Hain would probably be benevolent and well-meaning, but in relation to who might follow him, one does not know. However, the tendency of the Government generally, and I speak as, broadly, a supporter of the Government, is to propose initiatives. Many of these came from Lord Irvine's wonderful period, whom I would assess as being the greatest Lord Chancellor this country has ever had—he was much better than Cardinal Wolsey to whom he was once compared. Since then, things have not been followed up. The Department for Constitutional Affairs has been very disappointing, and anything that follows Mr Hain might be a let-down. So, it is not very good news.

[535] **Jane Hutt:** I wish to just briefly follow that up, Ken. We obviously have to take your forewarnings. I am interested in the fact that we have talked a lot about Orders in Council as a means to an end. All of this is a means to the end of delivering better policies that fit the needs of the people of Wales. When Rhodri Morgan came here to give evidence, he talked about the principle behind the White Paper being powers for a purpose rather than powers for their own sake. We also have to recognise the commitment of the UK Government to more framework legislation; we know that we have opportunities with regard to the public health Bill and smoking in public places. Do you agree that that will also be an important route, that commitment to more framework legislation in this stepped process?

**Professor Lord Morgan:** Absolutely, yes, but I would like it as an addition and not as a substitute for the powers of the Assembly, but it will help.

[536] **Jane Hutt:** I suppose that it goes back to the Government's indication in the White Paper of a commitment to making this work, which I am obviously optimistic about, and you are quite rightly scrutinising. However, you have also mentioned the Scottish situation, but there are areas that are reserved and, interestingly, that came up in relation to the non-devolved issues relating to our children's commissioner and the Scottish children's commissioner. They were reserved by the legislative process through the Children Act 2004.

I suppose that my question is whether you feel, looking at it as a powers-for-a-purpose project in the devolution process, that it is robust enough to allow us to deliver the policies that emanate from the Executive, which are backed by the Assembly and that then go forward for action in Westminster.

**Professor Lord Morgan:** On the whole, I think that my answer is 'no', Jane. I do not think that it is at all robust enough. Even Ivor Richard, whose proposal was very radical, proposed a transfer by 2011. I do not know what the timetable would be in achieving these particular purposes under this proposal.

You desperately need to make people see the point of devolution to generate enthusiasm for it. You also need to use one of the well-worn clichés of New Labour—you need 'joined-up government'. I do not see how you are going to have joined-up government in Wales if powers are dispersed and if legislation is hybrid in this particular way. It seems to me that the whole initiative is weakened. As for whether the outcome in due course is an independent Wales or not, I do not think that it would be, and would not support that. However, it would be a Wales that felt, at this level, that it was in command of its destiny.

If we had a federal system in the United Kingdom—I do not know whether I would particularly support that—things would be absolutely clear. One could say with some degree of clarity, and almost spell out the timetable, when things would change. On the whole, this is a kind of long-grass solution, and I would like the grass to be avoided and certainly cut.

[537] **The Presiding Officer:** I was not going to ask you this, Lord Morgan, but I am now tempted to do so. In the long march to devolution, if I can use that expression, which you have very elegantly charted since the middle of the nineteenth century, where do you put this document?

3.10 p.m.

**Professor Lord Morgan:** I would put it with a long list of documents that show timidity about change; they do not really grasp it. I wanted to say this in my letter. It is argued, or we are told, that there is not a consensus on this matter, but, as a matter of fact, if you looked at the evidence from our admirable institute in Aberystwyth, of which I had the privilege of being vice-chancellor, you would see a good deal to show that the overwhelming view of the people of Wales is that they want the Assembly to have many more powers, and to have them quickly. However, the point is not discussed.

The record of Wales goes back to the fact that it was a conquered country; it was not an independent state as Scotland was. It does not have the concept of statehood and citizenship that Scotland has, and things are slow to change. There was a dramatic period of change, which owed a great deal to the presence of the admirable Lord Irvine, between 1997 and 1999. That was a unique period of dynamic movement, not only in Wales, but in the history of the people of this country. That period, as you know, included the enactment of the Human Rights Act 1998 and other wonderful pieces of legislation. I think that this White Paper is well in line with what Wales has had to put up with for 150 years.

[538] **The Presiding Officer:** I do not think that I can follow that.

Diolch yn fawr am eich presenoldeb.

Thank you for your attendance.

**Yr Athro a'r Arglwydd Morgan:** Diolch yn fawr. Yr oedd yn hyfryd iawn.

**Professor Lord Morgan:** Thank you very much. It was wonderful.

[539] **The Presiding Officer:** It is my pleasure now to welcome representatives of Business Wales. I would like to thank David Rosser and Ben Cottam for their presence and for their joint paper. Mr Melding, do you feel able to start the proceedings?

[540] **David Melding:** I will start with a good Tory question on value for money and what we will get as a return. You seem very sceptical about some of the suggestions, particularly formalising the roles of the Deputy Ministers and, presumably, increasing the size of the Executive who will all get busy and generate lots of red tape. Is that a fair summary?

**Mr Rosser:** On the issue of Deputy Ministers, we possibly strayed into constitutional issues. Scrutiny will clearly be desperately important in the new system, and it should not be a job just for opposition parties. On value for money, the Assembly is clearly not flush with funds at the moment and we would not wish to see a great diversion of funds from the delivery of services to administration. We have seen recent examples of change management in the Assembly, where the costs of change have possibly not been identified at the outset. We just wish to avoid seeing a repeat of that situation.

[541] **David Melding:** In terms of the civil service and the support staff that we would have, most of us believe that the costs would be considerable. I am not saying that the Government shares that view, but if more policy is to be determined, certainly on the legislative side, we will need more legal draftsmen and more policy experts and, for the legislative side to scrutinise effectively, the committees will need more technical support. This will come at quite a cost. Do you object in principle to that or are you warning us that people would expect good value for money from that investment?

**Mr Rosser:** Business Wales has not formed any particular view on the transfer of further powers to the Assembly and whether that, in principle, would be a good or a bad thing. If the Assembly adopts and receives further powers, we have a distinct preference for good legislation as opposed to poorly thought out and poorly crafted legislation. We have no problem with employing resources to ensure that the Assembly is able to pass good-quality legislation. I think that it is then the job of the Assembly to demonstrate value for money and that the legislation that it is passing will make a real difference, to the benefit of the people of Wales.

[542] **David Melding:** Let us assume that the legislative side of our work increases, and that the mechanism that is proposed is, more or less, Orders in Council, but also greater scope for delegated legislation. Are you confident that the business community will be able to cooperate in this process and have a role, or are you concerned that in what is proposed it is not quite clear yet as to how you would influence that process?

**Mr Rosser:** We listened with some awe to the previous speaker and the dialogue across the table.

[543] **David Melding:** I do not want to take you down that road again.

**Mr Rosser:** I claim no constitutional expertise.

[544] **The Presiding Officer:** We all listened in awe to Kenneth Morgan.

**Mr Rosser:** I am not at all clear in my mind, from having read the proposals, as to how the new system will work. I wait with interest to see what will happen. As to your question on whether the business community can get fully and properly involved, it is incredibly fragmented, which is the first problem. The real issue is whether the business community feels able to get fully and properly involved in the current system. A number of our comments in the paper were around trying to strengthen the ability of the business community to engage formally with the Assembly and to ensure that, where we make the effort and put the resources in to engage, we feel as though we are having a real say in the process and that our views are taken on board.

**Mr Cottam:** As we have outlined in the paper, there is an opportunity within any change to the Assembly's structure and powers to enhance the role of business in consulting not only with the Assembly as a legislature, but also with the Government with regard to policy making. The business community would inevitably rise to the challenge, as it is in its interests to do so, and would want to interact in whatever way it could to make sure that whatever policy making and legislation comes from the Assembly, it is properly responsive to the needs of the business community in Wales and keeps the business community at least on the footing that it enjoys at the moment, if not on a more competitive footing with its counterparts outside Wales.

[545] **David Melding:** I have a couple of other issues, to which I will perhaps come back.

[546] **The Presiding Officer:** Okay.

[547] **Jocelyn Davies:** Thank you for your paper. Paragraphs 19 and 20 talk about the requirement to set up a scheme for consultation, and you think that there should be a statutory requirement to establish the business partnership council. How will you justify to me that Westminster should create statutory requirement for the Assembly to set up that partnership council instead of our deciding for ourselves and putting it in our Standing Orders? Why should it be a statutory requirement?

**Mr Cottam:** Obviously, such a scheme exists currently with the public and voluntary sectors, and, broadly, we would like to see the private sector treated in a similar way and have a similar opportunity to have a broad plan of work, if you like, and reflect on that work on an annual basis. However, we feel that we have an arrangement at the moment which, although it does give business the opportunity to input into the Assembly's thoughts and processes, is a rather informal process, and, given what is outlined in the White Paper, if that were to be taken forward, the process would need to be properly formalised.

[548] **Jocelyn Davies:** But does it require a statutory basis, or could Standing Orders accommodate that?

**Mr Cottam:** I do not see any reason, from my experience, why Standing Orders could not accommodate that.

[549] **Jocelyn Davies:** Thanks. In paragraph 29, you mention the existing split of powers between the National Assembly and the UK Parliament, and you quite rightly say that it is not clear, because of the way in which the devolution settlement was created, there is a danger that that situation might not be clarified by these new proposals. Why do you feel that these proposals will further complicate things? Is it because we could have our powers from several sources, and some will reside with the Assembly and some with the Government?

3.20 p.m.

**Mr Cottam:** That is certainly what lies behind it. I do not think that you can expect the business community to get down and understand the nitty-gritty of the legislative process. There was certainly concern around the Business Wales table that whatever comes from any reform, as proposed in the White Paper, there needs to be clarity as to what comes from where, and I think that that is a reflective comment.

[550] **Jocelyn Davies:** A simpler situation would be your preference, obviously.

**Mr Rosser:** Clarity would be our preference. Much of the discussion in the first half of your meeting highlighted where it may not happen.

[551] **David Melding:** May I just clarify something?

[552] **The Presiding Officer:** Indeed.

[553] **David Melding:** The way in which the Government, and potentially the Assembly, relates to you could be in Standing Orders, as you say, or by statute, but presumably you want to be treated the same as the voluntary sector and the local government sector. Was that the point?

**Mr Cottam:** Certainly.

[554] **David Melding:** So it would be the same system for all.

[555] **Jocelyn Davies:** And something formal rather than informal.

**Mr Cottam:** Yes.

[556] **The Presiding Officer:** Further to that, would your general opposition to proliferation of bureaucracy and unnecessary and unbusiness-like meetings—I am playing devil's advocate here—not point to more direct relations to Government, rather than going through the

rigmarole of these statutory councils, which meet because they have an agenda and have to meet?

**Mr Rosser:** I am not sure that we accept that it has to be bureaucratic—that is your interpretation. We would be very happy to sit down and look at a simple way of ensuring that we have a strong dialogue with the Assembly and clear working arrangements in a way that would bring speed and consistency to both our sides.

[557] **Jane Hutt:** Thank you for your paper, David and Ben. I know that you sat in on Professor Morgan's evidence, and you say in paragraph 24 that you see that we must have legislation passed where there is a definite need, and not passed merely to demonstrate that the National Assembly for Wales can legislate. It goes back to the point I made about powers for a purpose, in other words, we legislate because we want to do something in terms of policy, and not for the sake of it. So, I presume that you are into a more timid or gradual approach towards devolution—you may wish to comment on that. Clearly, business has much to contribute, for example, in relation to sustainable development, the social economy and the macro and micro economics of Wales. We need to understand from you how you feel that business can be more clearly mainstreamed into what we do in Government, as well as in the legislature. Perhaps you could comment on those points.

**Mr Rosser:** I am not sure that it is a timid approach to devolution—there are some strongly held principles at different levels of different business people as to where devolution should get to and at what stage. As I said, Business Wales as an organisation has not formed a view on where devolution should get us to and to what timescale. The Confederation of Business and Industry has—its view is that, broadly, the current devolution settlement, albeit that we could clarify the powers, is probably the right place to be at the moment. I think that it is largely based on the fact that the business community, possibly of all the stakeholder communities in Wales, is probably the most affected by what happens outside Wales. The border really is not terribly meaningful for business in the way that it can be meaningful for many other stakeholder groups. The vast majority of businesses in Wales either trade outside Wales or are subject to competition from outside Wales. So, a different operating environment for its own sake is something which really impacts on business to a great extent.

If it is a company that is outside Wales, we have to face the fact that Wales, whether we like it or not, has a terribly small market: it is 5 per cent of the UK market and less than 1 per cent of Europe's market. If we make Wales a very different place in which to operate, requiring businesses to do things very differently in order to operate here, some businesses will decide that the size of the market does not warrant that. Other businesses already located within Wales may find that the need to invest in understanding and complying with the different legislative environment has a real impact on their ability to operate outside Wales. So, there is a meaningful reason why businesses are, to use your words, more timid; I would say that businesses are more cautious, or would prefer a much more gradualist approach to devolution. It is based on that.

As to how we engage with the Assembly, part of our concern is that, while we have had a dialogue with the Assembly and the Assembly Government, most business organisations have been less than convinced that the needs of the business community have been fully taken on board in the wide spectrum of Assembly policy making, even, sometimes, in areas such as economic development, which are aimed at the business community. That is why we would like to see a formal relationship between the business community and the Assembly Government, based on a clearly stated scheme of how we will relate to each other, how the Assembly will operate for the benefit of the business community, and promote it, and an accounting to that scheme on a periodic basis. As Ben says, most of the business organisations and a number of our individual members, as companies, have put an awful lot of effort into that engagement with the Assembly over the past five or six years and would be

prepared to continue to do so. However, the appetite to do that varies according to the difference that they think that it will make and the degree to which their views are understood and taken on board in Assembly policy making. We are flexible about the exact method and the bureaucratic nature or otherwise of the meetings and so on, but we would welcome having that formally laid out.

[558] **The Presiding Officer:** You mentioned the separation of powers between the Government and the legislature and the clarity that that might introduce, but, at the same time, you expressed concern about an increase in running costs for legislative and scrutinising activity. Do you have a steer to help us to close that issue, as it were, and to take us through the conundrum? If we are to properly represent different interests, whether they are to do with environmental policy or they are those of business or the countryside—and I notice that the National Farmers Union is among your members—or to have them represented to us as Assembly Members, we need the ability to scrutinise and to deliver scrutiny, which means measuring outcomes—not just imagining policy but looking at its outturn. That is perhaps not done very well by any legislature in the UK at present. Can you suggest any ways to guide through some of that, because you have obviously thought about this?

**Mr Cottam:** What is proposed, as I mentioned earlier, provides an opportunity for business to get more involved. In terms of representing interests, it is important that we take the opportunity to ensure that interests are represented as early as possible in any legislative proposals or policy making. At the moment, there is concern among the membership of Business Wales that, although consultation is widespread and welcome, our views tend to be entertained quite late in the day, and that means that they can only have a minimal impact on what comes from the consultation. There is an opportunity now to ensure that the Assembly and the Assembly Government invite the views of the business community as early as possible to ensure that the views are properly represented and fed in.

[559] **The Presiding Officer:** By that, I take it that you are saying that you would welcome pre-legislative scrutiny so that proposals are properly thrashed out before they reach the consultation stage.

3.30 p.m.

**Mr Cottam:** I certainly agree with that.

**Mr Rosser:** Your point about the contradiction between costs and better scrutiny comes down to Mr Melding's point about value for money. We would not make simplistic comments about the sheer number of civil servants and criticise on that basis, but it puts more pressure on the Assembly to clearly demonstrate that its employment levels and way of organising its work is efficient and is delivering. As an example, many of my members will comment on the propensity of the Assembly to multiply everything by 22 so that we can do things according to local authority boundaries. That is one example perhaps of where our members see form taking precedence over substance. So, that puts the pressure on the Assembly to demonstrate value for money.

[560] **The Presiding Officer:** However, if we were to try to look for a sharper committee structure—although that may not necessarily be in our report—whereby we are seen to be delivering in the way that the Audit Committee delivers, having the very substantial resources of the Wales Audit Office, and being able to ask questions, in a select committee mode, of Government and Ministers and to do an assessment of programmes, including, as I mentioned earlier, of their out-turn, impact and effect, and if we could demonstrate that we were delivering value for money there, then that would interest your members.

**Mr Rosser:** Undoubtedly. I think that you will find that, as now, many people will not



differentiate between the Assembly and the Assembly Government. I suspect that that may continue to be the case post changes and post the split. People will still ask, ‘Why do we have all these people doing this?’, when it adds no value in their perception. It is an issue for both sides in future—for the Assembly and the Assembly Government—to demonstrate value for money and efficiency.

[561] **Carl Sargeant:** I have a brief question. Your paper and evidence is pretty consistent with the business industry as it would normally present itself, in terms of value for money and early consultation, which I appreciate. I also accept the danger posed by dual legislators and the pressures that that would put on businesses across England and Wales. This is slightly unfair, but I will say it anyway, that I saw your body language in response to an earlier comment by Professor Morgan on gaining more powers for the people of Wales. He said that it was evident that the people of Wales were quite keen to have more powers. Is that the view of the business industry? What are your thoughts on that?

**Mr Cottam:** Speaking as a representative of the Federation of Small Businesses rather than of Business Wales, if I may, I do not find that reflected among the membership of the Federation of Small Businesses and we have some 8,000 members in Wales. So, that is quite a high number. I have to say that we have not conducted extensive work into this, but the views that come my way do not reflect that.

**Mr Rosser:** As I said, the Confederation of British Industry has a formal policy on this issue, namely that it is not appropriate at this stage to see increased powers going to the Assembly. My body language might have reflected the fact that we are all in favour of evidence-based policy making and we keep quoting evidence without seeing it, so I would be interested to see it. I understand that there is a phrase going around at the moment which is ‘policy-based evidence making’; we would not want to see too much of that.

[562] **David Melding:** There is a lot of that.

[563] **The Presiding Officer:** Some of us also have an interest in philosophically based policy making, where you work from first principles, but we will not go into that this afternoon.

We are very grateful to you. If you have any further ideas, particularly on what is the value for money of democracy and democratic scrutiny and what that delivers, we would be happy to hear those. It is something that will be occupying our minds as we try to move forwards without incurring too much cost. Diolch yn fawr.

*Daeth y cyfarfod i ben am 3.35 p.m.*

*The meeting ended at 3.35 p.m.*