



**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, 7 Gorffennaf 2005  
Thursday, 7 July 2005**

**Cynnwys**  
**Contents**

Cyflwyniad, Ymddiheuriadau a Chofnodion y Cyfarfod Blaenorol  
Introduction, Apologies and Minutes of the Previous Meeting..... 3

Papur Gwyn—Trefn Lywodraethu Well i Gymru: Tystiolaeth (Cwestiynau 170-266)  
The Better Governance for Wales White Paper: Evidence (Questions 170-266)..... 3

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: Ashok Ahir, BBC Cymru; Kevin Davies, Ochr yr Undebau Llafur; John Osmond, y Sefydliad Materion Cymreig; yr Athro Keith Patchett, y Sefydliad Materion Cymreig; Laurie Pavelin, Ochr yr Undebau Llafur; Graham Pogson, Ochr yr Undebau Llafur; Syr Jon Shortridge, Ysgrifennydd Parhaol Cynulliad Cenedlaethol Cymru; Gwenda Thomas, Cadeirydd, Pwyllgor Cyfle Cyfartal.*

*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: Ashok Ahir, BBC Wales; Kevin Davies, Trade Union Side; John Osmond, the Institute of Welsh Affairs; Professor Keith Patchett, the Institute of Welsh Affairs; Laurie Pavelin, Trade Union Side; Graham Pogson, Trade Union Side; Sir Jon Shortridge, Permanent Secretary of the National Assembly for Wales; Gwenda Thomas, Chair, Committee on Equality of Opportunity.*

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

*Committee Service: Siân Wilkins, Clerk.*

*Dechreuodd y cyfarfod am 10.19 a.m.  
The meeting began at 10.19 a.m.*

### **Cyflwyniad, Ymddiheuriadau a Chofnodion y Cyfarfod Blaenorol Introduction, Apologies and Minutes of the Previous Meeting**

**Y Llywydd:** Bore da a chroeso.

**The Presiding Officer:** Good morning and welcome.

Mae cofnodion i'w cadarnhau. A gaf i gadarnhad eu bod yn gywir? Gwelaf fod pawb yn cytuno.

We have minutes to ratify. Can I have confirmation that they are correct? I see that everyone agrees.

*Cadarnhawyd cofnodion y cyfarfod blaenorol.  
The minutes of the previous meeting were ratified.*

10.19 a.m.

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

[170] **Y Llywydd:** Estynnaf groeso arbennig i'n dirprwyaeth heddiw, John Osmond a'r Athro Keith Patchett. Diolch yn fawr am eich papurau.

[170] **The Presiding Officer:** I extend a special welcome today to our delegation, John Osmond and Professor Keith Patchett, and thank you for your papers.

[171] **David Melding:** I would like to ask a question based on your paper, John. You look, at

the process that Orders in Council would take, and you say that Orders in Council would have to be approved by both Houses of Parliament in short debates. You then go on to say that the Assembly Government's parliamentary draughtsmen would then proceed to draw up the required legislation which would be considered by the Assembly, and so on.

10.20 a.m.

These are points (iii) and (iv) on page 3. We were told by Cardiff Law School yesterday that it envisages the process being the diametric of reverse. We would develop the legislation here, and the Order in Council would just be the end point, where a brief debate—an hour or an hour and a half—in both Houses would then approve the finished product, unamendable but by an affirmative procedure. I would like to flesh out whether you feel that the system starts with a decision in principle in Parliament to grant the power, and then the whole process trickles down from that. I wonder whether Professor Patchett shares that understanding of how the mechanism would work in opposition to the Cardiff Law School's interpretation. I accept that the White Paper does not spell this out, so we are in a slightly grey area.

**Mr Osmond:** I think that that sums up the generality of the position in terms of the White Paper. All that my points (i) to (iv) intimate is my reading of the White Paper, and what I took my understanding of it to be. It could be interpreted the other way. It may be that your committee will want to make a recommendation from your perspective of what way it should be. However, that is how I read the White Paper, and that is all I can say. I did not have any intelligence, so to speak, from the drafters of the White Paper as to what they meant. I do not know whether you want to add to that, Keith.

**Professor Patchett:** The first point is that I do not think that John's item (iv) refers to the preparation of the Order in Council, but to the preparation of the measures under the Order in Council. Therefore, the procedure about the preparation of the Order in Council is quite a separate matter. I, too, am puzzled and concerned about this particular aspect, not least the extent to which the Assembly itself can be engaged with this process. The first question that I ask is whose initiative will it be? Will there be a kind of legislative programme from the Government, which is then discussed and approved by the Assembly, and the Orders in Council will be based upon this, or will the Assembly have its own right of initiative in relation to an Order in Council? That is an important issue that the Assembly will have to address.

My second question is at what stage negotiations with London take place. I am not one of those who believe that getting these Orders in Council will be as straightforward as some people think. I have seen the comings and goings that have taken place in relation to getting powers in legislation. In the book that the Constitution Unit has recently published, it draws a nice distinction between those institutions that are power sharing, and those that are power hoarding. The experience that we have had here is of both types of response—there are two different cultures there. We may find that, particularly in the early stages, certain line departments may be power hoarding in this respect. Therefore, the question arises, at what point do negotiations start to discover what is feasible. Does the Government do this before it produces its legislative programme, or does it wait until the Assembly has had a go at it and then enter into discussions about that? Will the Order in Council then be drafted here on the basis of the discussions that take place, or will the Welsh Office feel that it has to be involved in the preparation of an instrument, which is the central Government instrument, after all?

[172] **The Presiding Officer:** You are talking about the Wales Office, I believe.

**Professor Patchett:** Did I say the Welsh Office? I am terribly sorry.

[173] **The Presiding Officer:** The Welsh Office is, as I understand it, now extinct, but I am

not certain.

**Professor Patchett:** You sometimes see remnants of it, do you not? I meant the Wales Office, I apologise.

However, the question as to whether there will be involvement is significant, and then the question arises about Assembly debate and the approval of the draft Order in Council. Will the proposal be amendable if it has come from the Assembly Government? Is that one of the reasons why the Secretary of State has retained the power to turn down the Order in Council? My concern at the heart of this is that this process must not be a formality as far as the Assembly is concerned. Gaining powers, and gaining them in a way that makes good sense in the interests of Wales, is absolutely crucial, and the Assembly has to be as fully engaged as possible at every stage of the process. I am not as convinced as the law school was that this will not require a lot of careful thought.

**Mr Osmond:** I would have thought that it would be a matter of how the precedent was set at the beginning, and that depends on the politics. There seems to be little point to go through the whole process of drafting the legislation as a draft Bill here and taking it to Westminster for approval, if Westminster will not approve it in the first place. That is just a waste of time for everyone.

[174] **David Melding:** Let us take a benign interpretation; if the flow was from the Assembly to Parliament and so the legislative instrument, or whatever we will call it, that would need an Order in Council to make it law went through what was, in effect, a Bill procedure here, it would be initiated here after the Welsh Assembly Government, or whatever it is then called, lists its priorities and identifies the areas where legislation will have to be modified. Let us take the welfare of children as an example, as we did yesterday; the Government identifies the legislation that needs to be amended in terms of its application to Wales. It is all fleshed out, and then you just have the Order of Council which permits the power, and, if that is passed, then becomes law. That goes up in a finished form to Parliament for the affirmative resolution of the Order in Council, a 'yea' or 'nay'. That places the power of initiation with the Assembly. It also makes it extremely unlikely that Parliament would say 'no', because it would then be dismissing the wishes of an elected body.

If the reverse is the case, that the whole principle of being able to amend, adapt and extend legislation kicks off with an Order in Council in Parliament, it seems to me a much less durable system, because it is possible to have a Government in Westminster that, for whatever reason, would not want this power to be exercisable in the Assembly. Is this a view that you share?

**Mr Osmond:** Just to reiterate the point: when I read the White Paper, it seemed to me that that was what was being put forward. There was a clarity about it for me. You may wish that it were the other way, but that would give, as you say—

[175] **David Melding:** This is Westminster having the power of initiation?

**Mr Osmond:** Yes, that would be entirely the way that it was going to be, or so it strikes me. Going the other way, as the law school was saying yesterday, which sounds to me quite odd, involves giving extraordinary discretion to the Assembly and it is quite clearly upping the ante in a political way from the beginning. Having said all that, all these things are conditioned by politics, because if you have a Labour administration here and in Westminster, they are going to do the deal beforehand, are they not? On the other hand, circumstances could be quite different if there were different administrations in different places, but from a Westminster and Wales Office point of view, there would be a wish to set a precedent from the beginning that, so far as they could, they would call the shots.

[176] **David Melding:** I know that it is not absolutely clear in the White Paper, but is that your interpretation? Is that what you infer from it?

10.30 a.m.

**Professor Patchett:** I infer that Whitehall or Westminster will not readily concede all the ground. Let us put it this way, I was listening to something that Lord Dahrendorf, who chairs the Delegated Powers and Regulatory Reform Committee, said about concerns over the Henry VIII clauses and so on, and I think that there will be some obstacles that will have to be faced in that regard. The Orders in Council may well have to be drafted in a way that meets those concerns. For example, I have heard it said that the powers of amendment and repeal and so on would be tied in with a specific list of Acts that could be subject to that process, not an open-ended power, but one that is limited. Similar constraints might be built into the Order in Council to ensure that it can only be used in particular ways. For example, again, I have heard it said that the Assembly Government will have to explain why it wants particular powers on particular occasions, which will be the justification for the grant. That being so, the temptation at the other end must be to put restrictions in the Order in Council that will ensure that it can only be used for that purpose.

If we are talking about prospective legislation, there are significant problems in that area, particularly if there are changes of administration, where one Government might not be happy to see the Assembly pursuing policies that in some way conflict, or do not meld, with the policies in London. I feel that at least in the early stages, and probably for a longer period, the Orders in Council will not be simple documents at all. They will be the result of negotiations within which the interests in London will take steps, as best they can, to ensure that their interests are protected.

[177] **The Presiding Officer:** May I pursue one issue? Not all legislation emanates from Government. We have a very unsuccessful Standing Order—I think that it is No. 31—relating to proposals for legislation by Assembly Members. I would obviously want to protect that in my present position. That type of legislation could not possibly emanate from any inter-Governmental discussion. In that context, presumably, there would have to be a request at some stage in the process here for an Order in Council, unless it was within a policy area of a field that had already been agreed.

**Professor Patchett:** There are always problems with private Member's legislation, at the best of times. Government takes an interest in these when they come in Parliament and will sometimes make resources available to ensure that the instrument is improved, but sometimes it will use its political forces to ensure that that instrument is not proceeded with. I suspect that initiatives of this kind would run into similar considerations here.

[178] **Lorraine Barrett:** Good morning, gentlemen. We have had varying evidence about future workload, with regard to enhanced legislative powers. That evidence has ranged from, 'We will do a little bit, one or two Bills a year', to, 'We are going to have loads to do and we will have to sit right through the night'—perhaps a slight exaggeration—'and take on lots more staff'. What are your views on what we want and what it is that we cannot do at the moment, cutting our cloth accordingly and looking for quality rather than quantity?

**Mr Osmond:** My first thought is that despite the lack of clarity around these proposals and a lot of grey areas that we have partially discussed already, it seems to me that a large advantage of the proposals is that they give the Assembly time to build up capacity and experience, which, in a sense, is what the Richard commission proposed as an interim measure before primary powers, in its putative timetable, would have kicked in around 2011, I think it was. A reading of the White Paper suggests to me that it very much implies itself to

be an interim measure in that same sense. Otherwise, why have the notion of a referendum at some later stage, leading to full primary powers?

You alluded to problems of capacity and so on, and they are key issues. It seems to me that what we are building here is a parliament and that we have been doing that from the start. This is just another stage in that process.

**Professor Patchett:** I hope that, when it comes to Assembly measures that implement Orders in Council, there will be a new set of procedures established to produce a staged process that is analogous to dealing with a Bill, and that will put extra pressure on the Assembly. It is important that that is put in place, because that is the proof of the Assembly's capacity to handle legislation and it lays the foundation for a grant of primary powers in a securer way. The more the Assembly can do to show that it is able to fulfil the legislative role within the new confines, the stronger the argument for moving to the latter stage. So, staging this legislative process for measures is absolutely central in the Standing Orders.

In relation to the general workload, people have been talking about the theoretical advantage that will come from these in being able to produce coherence, as it were, in a particular policy area by perhaps producing an integrated piece of legislation that brings together the fragmented stuff—the kind of part amendment, part consolidation process. It would be a lovely idea for this, and although I wish it could be given a high priority, I cannot think that that is likely given the day-to-day demands on Members and on the support services. The latter point is important, and I am sure that attention is being paid to the question of strengthening the capacity in this area, and there is no doubt at all that that is essential. Capacity in analysing legislation and in helping Members to get to grips with the features that really should be their primary concern, which means extra work, of course, in getting proper briefings and so on. There is an extension of work, which is why some of us said that there should be more of you.

**Mr Osmond:** To add to that, what is obvious and what you must already have taken on board, is that it is stated in the White Paper that you will have to completely recast the committee structure in the Assembly. The whole notion that the Assembly will engage in an iterative process with Government on the development policy will have to go—you will have to abandon that completely. That is implied with the Minister leaving the committees in any event. The committees will have to have a primary legislative role, and you will have to think seriously about establishing new committees such as a finance committee. Also, you may have to have ad hoc committees established from time to time in relation to particular issues on which you may wish to hold the Executive to account. So, the name of the game will be a legislative committee role in relation to Bills and so on, and scrutiny, and you will have to be fleet of foot. You do not want committees to be there just because they are there—you want committees and activities to be constructed, and a strategy adopted in relation to what is actually going on in the Executive from time to time. The place will have to change radically, in that sense.

10.40 a.m.

**Professor Patchett:** I would like to add a further point. Under the new arrangements, most secondary legislative powers are now going to go with the Assembly Ministers, which means that the scrutiny role becomes very important in another very interesting sense. The chairman of the Lords' delegated powers committee was expressing deep concerns the other day about Wales getting secondary legislative powers, which were not going to the Secretary of State in England, for England. The argument that has been used in the past to justify that is that the Assembly, as a democratic institution, is the legislative authority for secondary legislation, and, therefore, you have a sound input from elected representatives. Under the new arrangements, that will not be the case, because the power will rest with the Ministers.

Therefore, if you are going to meet some of the concerns that are felt by people like those on the delegated powers committee, it is vital that the scrutiny procedures in relation to secondary legislation are robust and effective and are seen to be much more meaningful, perhaps, than those that exist in relation to secondary legislation in London. That will take away some of the concerns that are expressed at that level.

[179] **The Presiding Officer:** Do you think that we should have an enhanced legislation committee—we have discussed this matter—that would issue regulatory appraisals? You have previously, very helpfully, suggested a course, which we were then unable to take, but we may be able to take it now. Do you have a view on how we might be able to do that?

**Professor Patchett:** I have not given thought to that, but I would have thought that there would be a good argument for having a deliberate focus upon that area of activity and, obviously, having a committee is a way of doing that.

[180] **The Presiding Officer:** If you have any further thoughts, we would like to have them.

[181] **Jane Hutt:** I thank Professor Patchett and John for their written evidence. Inevitably, much of the evidence that we have taken and the questioning have been about the legislative process that is coming through the White Paper, and both of you referred to that as being an ingenious device in relation to Orders in Council. Keith, you honed in on the key point of all this. This is about having powers for a purpose and opportunities for policy development, and that would apply to a policy that may emanate from a Member, which, under Standing Order No. 31, has to be tested and debated and the Government would respond, as you said. However, that would also apply from the Executive, the Government, perspective. So, I was interested in the points that you made in your written evidence, Keith, in particular, on the opportunities for integrated policy development. I hope that the Institute of Welsh Affairs will be putting its resources, thinking and discussions to this purpose. This is turning it round to say that we want to have more opportunities in terms of policy development and integrated policy development, and this is a process and procedure with which we think we will be able to take that forward, and, as I say, having powers for a purpose is what we are seeking. So, I welcome both of your views on that in terms of the approach to the policy issue.

**Professor Patchett:** I would have thought that there would be strength in the case for asking for Order in Council powers in relation to particular policy areas if one were able to say that a primary purpose of this is to enable the Assembly to produce an integrated legislative framework within which that policy area could be pursued, in substitution for what is, at the moment, fragmented or which has gaps and lacks the kind of integration that is necessary in legal terms to allow integration in policy terms. I would have thought that that would be one of the major justifications that could be put for using this procedure. However, at the same time, the Assembly must be in a position to be able to realise that, and that demands a great deal of commitment of resources, which in some respects do not necessarily move the policy on immediately, because you have the powers already, in many respects. What we are asking for is a much more coherent presentation of those. In the order of things, those factors do not come high compared with new policy initiatives that require new legislative powers. So, it may be that the Assembly has to look at this issue of, let us call it consolidation for the moment, and have a rolling programme in relation to this, so that every session it is agreed that this particular sector should have this kind of attention paid to it, so that at the end of it you have a much more solid legislative base on which to proceed.

[182] **Jane Hutt:** Yesterday, we talked about the possibility of a welfare for children Bill of that kind of scope. That came through in David Lambert's evidence.

**Mr Osmond:** The thought that occurs to me is that you can overestimate the need for legislation in relation to policy. An awful lot of policy is being done here without the need for

legislation, and it is very significant policy indeed. You have done quite a lot of it yourself. If you would describe reorganising the health service, for example, as a major policy intervention, you managed to do that. I suppose that you had legislation to do that, but I was thinking more, say, of some education initiatives, particularly early years initiatives, which I regard as being among the most important things that have been done since the Assembly was established. That did not require legislation. Effective service delivery, which the Assembly Government is responsible for, mainly in terms of education and health, is the vital thing for the Assembly's success. So, I am all in favour of extending the powers, but, in a sense, I do not think that we should get caught on that hook and say that this will be the necessary litmus test for the success of the Assembly. That is certainly not the case.

[183] **Jocelyn Davies:** We did not mention the fact that subject committees might like to pursue a piece of legislation. That has happened in the Scottish Parliament, and I am sure that it would have happened here had we been able to do that. So, perhaps the Assembly should be allowed direct access to Parliament for a request. What I got from the Cardiff Law School yesterday was that a request is unlikely to succeed unless it has a robust pre-request stage of some sort. So, I would like your views on that. I thought, Professor Patchett, that you put it rather diplomatically, that powers for a purpose are all very well, but that powers as a matter of principle are also worth pursuing, even without justifying what you are going to use them for. That is certainly something that I would like to pursue.

Things up until now have not been all that encouraging. You say about these Orders in Council that the proof will be in the eating. I know that you have mentioned in writings that you have published already that the Department for Environment, Food and Rural Affairs opposed the passing of powers to the Assembly under the Pollution Prevention and Control Act 1999 for years, because it did not want to give us the discretion to use them. I thought that it was a shame that the Richard commission did not speak to UK Government departments, because all that is a bit of a mystery to us, is it not? Is there a danger then, with the Orders in Council idea, that the UK Government, as you mentioned earlier, might put in caveats and provisos that could make our already complicated situation rather more complicated?

In your paper, you mention the need for principles, and mention specifically the devolution chapter in the Cabinet Office's *Guide to Legislative Procedures*, which you have already described as placing undemanding requirements on the UK Government. How can we make those measures robust? At the moment, this is rather secretive and has a cloak over it. It is certainly not open to democratic scrutiny.

10.50 a.m.

The other issue, Mr Osmond, is that you mentioned that Governments do much more than simply legislate, and I agree with that. The Richard commission concluded that scrutiny was sadly lacking. If we busy committees with legislation that the Executive wants, I wonder how we will have time for scrutiny of the things that Governments do that do not require legislation. If we are failing to scrutinise them now, when we do not have a legislative burden, how is that going to happen afterwards? When we visited the Scottish Parliament, it became apparent that the committees were not carrying out that scrutiny role at all. In some committees, all they did was deal with legislation that the Executive wanted. Any thoughts on that would be welcome.

In your paper, judicial review is mentioned several times, as if we are going to be pounced on by lawyers the minute that this starts. Everything that we have done up to now was capable of being subject to judicial review, but I doubt that you could quote us many examples of judicial reviews of the Assembly's work. I do not suppose that we would even be made aware of them; there have been very few examples. I think that the sea fisheries committees got a judicial review, because of a statutory instrument. I wonder whether it is pure speculation that

we will be bogged down in going back and forth to court every five minutes for judicial reviews. The other thing that I wanted to ask—

**Mr Osmond:** I am losing track of the questions.

[184] **Jocelyn Davies:** I thought that you would be making a note of them as I was going along. I might not have another chance.

[185] **The Presiding Officer:** You will have another go.

[186] **Jocelyn Davies:** May I ask one last question?

[187] **The Presiding Officer:** Yes, but I hate to burden my distinguished witnesses beyond their intellectual capacity, although huge. [*Laughter.*]

[188] **Jocelyn Davies:** Just remember the last question that I am going to ask you. You called your paper ‘Virtual Parliament’. As a matter of principle, do you find it objectionable that the National Assembly becomes a virtual parliament without a Bill in Westminster to say so?

**Mr Osmond:** Whether I find it objectionable is not relevant, really. This is just the way that the British system works. It is the way that it works in the relationship between England and Wales. This England and Wales notion, which Richard Rawlings has drawn attention to, has a cultural aspect to it. Keith could perhaps enlarge on this, but there is something in the mind of legislators in Westminster that makes them recoil from doing anything that has England attached to it. That is a deep cultural problem.

[189] **The Presiding Officer:** Is that not simply because it has always been done it that way, except for obvious things such as the Welsh education and language?

**Mr Osmond:** Yes, but for whatever reason it is the case, it is the case, and it presents us with a difficulty in trying to unpack these things. Therefore, it seems to me perfectly normal that we should be proceeding in this fashion, albeit it is not intellectually kind of—

[190] **David Melding:** Elegant.

**Mr Osmond:** ‘Elegant’—that is the word that I am looking for. It certainly is not elegant. In the short remarks that I have made, one of the points that I made was that it does not lead to clarity of understanding for the poor benighted public. It would be nice to make the step change that the Scots made in 1999, and have clarity about it all. We are all going through this learning process, I think. This is just a way of getting across the road, really.

To pick up on one of your earlier points about the importance of scrutiny and the lack of it here, that raises the serious point that backbenchers will have to come to terms with the fact that they are not going to be initiators of legislation in this phase—they should not, in my view, think of themselves as such. It is not going to happen, in practical terms, because the majority here will prevent it. What you should do is what you can do best, which is to concentrate on subjecting the legislation that comes forward—in whatever way that happens, whether initially or having gone first for an Order in Council in Westminster—to scrutiny. You should also devise your committee structures in such a way to enable you to hold the executive actions of the administration outside legislation to proper and effective account. The worst thing that you have done—in collaboration with Westminster, it has to be said—fobbing the presence of Jane, relates to the organisation of the health service, which I regard as catastrophic; there was no examination of that whatsoever. That was a huge failing.

[191] **The Presiding Officer:** We are now getting into policy areas that are ancient history.

There is a helpful paragraph in the companion to the House of Lords, which states that if a Member asks many questions, the Minister answering for the Government need only answer two of them. You might like to try to answer one more of Jocelyn's questions.

**Mr Osmond:** I will hand that over to Keith.

**Professor Patchett:** Let me pick up on one or two points. Regarding judicial review, it is not that we imagine that there will be any more litigation than there has been at the present time. There has not been any litigation, by and large, because the work has been done excellently at every level in relation to the drafting of powers and instruments. However, the people who do that work are well aware of the risks involved and, therefore, take the appropriate action to ensure that those risks are reduced to the minimum. We should give great credit to the people who have been involved in that process. Our argument is that the new procedures add yet another area in which those safeguards have to be built in. These areas are potentially more important for the development of the future activities of the Assembly. Therefore, it is important that they are got right. It is also important that the scrutiny applies the criteria to that process to assist and encourage those who prepare them to get it right. So, I do not consider a judicial review to be a threat; it is a factor that feeds into the way in which the processes are carried through.

I have certain concerns about what I called power hoarding. We must remember that under our system, line Ministries in London have a high degree of autonomy in the way they go about their tasks. Some kind of principled approach to devolution issues has been lacking in relation to when you can move and what kind of restrictions you should enforce and so on. That has all been very much driven by the particular project concerned and that is absolutely inevitable. However, under-riding that should be some kind of criteria by which these decisions are judged. I get a feeling—I was at a meeting on Monday, at which there were many Government law officers—that there is a degree of sympathy for that thinking.

However, there is no mechanism in central Government at the moment to ensure that devolution issues are looked at in the round. This aspect, about principles, is one of those issues. We have to live with that, but the consequence is that we should not expect that getting new permissive powers or Order in Council powers, will, in every case, necessarily be an easy task.

**Mr Osmond:** I will just briefly add that we drew attention to the judicial review issue for two reasons: first, because we felt that this new procedure opens up more opportunities, potentially, for that, but, more importantly, to underline the fact that this is still secondary legislation in the technical sense. It is not primary legislation. As I understand it, primary legislation in Westminster is less vulnerable to judicial review because it is primary and is the will of Parliament. So, the judges, shall we say, are less inclined to challenge it. However, this can potentially be subject to challenge and it is important to understand that.

11.00 a.m.

[192] **Kirsty Williams:** I think that Jocelyn has covered most of my points, so I would just like to ask the guests whether they believe the Assembly to be competent to draft its own Standing Orders.

[193] **The Presiding Officer:** The answer is 'yes'.

[194] **Kirsty Williams:** For the record, Presiding Officer, I would like to hear what the witnesses have to say.

[195] **The Presiding Officer:** I was making light of what is a serious matter for us and I

apologise.

**Professor Patchett:** I would be very sad to think that it was otherwise. One has very considerable respect for the way in which the Assembly has tackled procedural reforms and issues. When it comes to devising what should go in the Standing Orders, I hope that Assembly representation will be as full as possible. When it comes to drafting them, I am sure that the people who are responsible for that in the Assembly are very competent to do it.

**Mr Osmond:** I would only add that there is a sense that you have established the precedent in any event, because you have had a year-long procedural review, which, in essence, was revisiting the Standing Orders that you had inherited. To the extent that you could, you changed them in a more rational way. I think that you have made your own point with regard to that.

[196] **Kirsty Williams:** Obviously not loudly enough.

[197] **The Presiding Officer:** I thank you both very much, not just for appearing today and for the paper, but also for the sterling help that you have given us on that review of Assembly procedure, which, as you implied, we see as a model of what we might be able to do again if we were allowed to do so. No doubt we will be calling upon your advice in future. Professor Patchett, if you have any further thoughts on what we have discussed, we would be very glad to hear them.

**Professor Patchett:** Thank you very much indeed.

[198] **The Presiding Officer:** There is some coffee available outside. I am afraid that we soldier on, but Sir Jon, we are very pleased to see you.

Felly, mae'n bleser gennyf goesawu'r It is my pleasure, therefore, to welcome the  
Ysgrifennydd Parhaol, Sir Jon Shortridge, i'r Permanent Secretary, Sir Jon Shortridge, to  
pwyllgor. committee.

[199] **Jane Hutt:** I am just going to start with a question about staffing issues, because you will know that there has been some evidence-giving during questioning about the role of the Assembly Parliamentary Service and its staff not ceasing to become civil servants, as outlined in the White Paper. Obviously, we will be talking to staff about those issues to ensure that they have appropriate terms and conditions, but the issue about our trying to develop a Welsh public service is important. What do you feel about the permeability of working in the Assembly Government and in the Assembly Parliamentary Service? There is a question mark about that permeability in terms of developing the Welsh public service.

**Sir Jon Shortridge:** I would hope that there would be the fullest appropriate permeability between the two sets of staff, and that is entirely in keeping with the vision that underlies Public Service Management Wales. As an official, I feel very strongly that we need to be reducing the barriers to the movement of staff between various parts of the Welsh public sector, and it would be very disappointing if, as a result of these important changes, a new barrier was established. I personally do not think that there is a need for such a barrier to be created. I am sure that we can find practical ways, through protocols or whatever it may be, to ensure that staff who want to move in either direction can certainly do so in an appropriate manner. That might mean secondments, for example, as opposed to having to go through open competition. I would want to use all my influence to ensure that that happened satisfactorily. Ultimately, issues around terms and conditions of what are currently APS staff will be a matter for the commission, and I cannot speak for it.

[200] **Jane Hutt:** Just to follow that up, I think, in Scotland, there is a divergence emerging

with regard to terms and conditions, and there is inevitably an issue about the size of APS. You have just said that it is not a matter for you to comment on terms and conditions, but do you think that there will be a difficulty in how we approach that in relation to the opportunities for the Welsh public service?

**Sir Jon Shortridge:** I would have thought that any variation that emerges will be for good business reasons and can therefore be introduced in a way that seeks to minimise any subsequent problems. It is most unlikely that there will be a wish to move away from the principal civil service pension scheme, for example, which is a fundamental condition of service. There will probably be a business need to have some flexibility around the time at which people work, but that is not a significant barrier. There may be issues around pay but, in the wider scope of things, that should be manageable in terms of people moving between the two services. So, I would have thought that as long as there is goodwill from the Members of the new Assembly, all the time that I am here, and equally, I would hope, my successor, there will be the necessary goodwill to make this work. It is a question that I am sure you will want to hear the trade union side's views on as well.

[201] **Kirsty Williams:** During our six years here, it has always struck me as slightly strange that, whereas the likes of Sir Nigel Crisp would regularly appear before House of Commons Select Committees to be directly scrutinised, in his case on his running of the health service, attempts to bring Ann Lloyd to the Health and Social Services Committee for such questioning, for instance, have always been quite robustly resisted. Could you foresee, in the new set up, given that the Assembly committees would perhaps want to truly enhance their scrutiny role of Government delivery, a situation in which officials would regularly, if called by a committee, attend to answer questions?

**Sir Jon Shortridge:** My view is that officials do not have a separate and different responsibility from the Minister whom they serve. So, any invitations from Assembly Members and committees should be addressed, in the first instance, to Ministers who can then decide whether they want to accept that invitation or to have an official respond on their behalf. The exception to that is where you have an official, like me, who exercises separate and different responsibilities and then, obviously, I have to account for the way in which I exercise them.

[202] **Kirsty Williams:** I appreciate the difference, and, of course, officials have regularly appeared before the Audit Committee over the last six years in that kind of capacity. However, why is it different in England, where officials regularly attend committees without the Minister being present?

**Sir Jon Shortridge:** I do not think that there is a problem with officials attending without the Minister being present, but the Minister should have an opportunity to decide who is going to account for the way in which he or she has exercised his or her responsibility.

[203] **Jocelyn Davies:** Further to that point, when we were speaking to the Clerk to the Scottish Parliament yesterday, we were told that the Auditor General for Scotland produces reports for the subject committees. I am assuming that the officials who are the accounting officers probably have to appear before the subject committees. Could that be something that we could develop here?

**Sir Jon Shortridge:** If it is an auditor general who has reported to a committee, and under the new dispensation that might well be the case, then, clearly, as accounting officer, I have a responsibility to account to Members for any matters in that report. I would expect that either I or one of my sub-accounting officers would attend committees under those circumstances. However, I make a distinction, and it is an important one, between officials who are serving Ministers, where it is, essentially, the Minister's call, and where officials are exercising

separate responsibilities.

11.10 a.m.

[204] **Kirsty Williams:** Maybe I am not getting it right in my own mind. However, using the health service as an example—which is perhaps an area that I know better than any other—surely there is a difference between the Minister’s role and the role of the chief executive of NHS Wales in her day-to-day management of the national health service. It may be that committee would like to question her on that. The Minister constantly, in the field of health, would get up and say, ‘It is not my job to run the day-to-day health service. I set the strategic direction in which the health service should be run, and it is then up to the director of NHS Wales and those officials below who are responsible for that aspect of it’. It could, quite legitimately, be an issue on which a committee may want to scrutinise that official. I do not see why it would be appropriate for that to happen in England, Scotland, and, I believe, Northern Ireland—God willing, when that place is sitting again—and why it would not be appropriate here for the director of the new Economic Development and Transport Department, which will employ vast arrays of people managing huge programmes, to be able to be called to the Economic Development and Transport Committee should its members desire that.

**Sir Jon Shortridge:** I do not think that I am necessarily disagreeing with you. However, I think that the Minister should have an opportunity to decide whether he or she wants to account for the performance of a particular service or not, as opposed to officials finding themselves in the situation where they have to deal with matters that they may think are better handled politically. In a sense, I think that I am making a bit of a distinction without a difference, but I would just ask you to remember the situation surrounding David Kelly. You can have circumstances where officials are put in difficult situations, and you need to think about what procedures are needed to protect officials best.

[205] **The Presiding Officer:** I believe that we are perhaps discussing history and Scotland, neither of which really applies to our present case. However, I can see that this is relevant in pursuing whether we should have similar powers to section 23 of the Scotland Act 1998, which is the power for what I still call ‘calling for persons and papers’, and all the rest of it, in that rather wide way. As a committee, we may want to consider whether we think such powers important for us.

[206] **Carl Sargeant:** Can we look at capacity on the basis of power for a purpose—and my thoughts relate to what Jane mentioned earlier—as opposed to giving us all the powers and putting them in a cupboard and not using them. Let us have the power-for-a-purpose scenario. On the basis that the Scottish Parliament has passed around 250 pieces of legislation, for which the Assembly is responsible since the devolution process, can you quantify the amount of legislation that is currently within the capacity of Welsh Assembly Government officials, assuming that there is goodwill in London?

**Sir Jon Shortridge:** Sorry, what did you want me to quantify?

[207] **Carl Sargeant:** The amount of legislation that is within the capacity of the Welsh Assembly Government at present, assuming that there is goodwill in London.

**Sir Jon Shortridge:** You need to distinguish between the capacity to instruct draftsmen and the drafting capacity itself. In terms of Assembly measures, we do not have that capacity at present, because we do not have that responsibility. Therefore, that is an additional capacity that we will need to create at short notice, which will be quite challenging, because high-quality parliamentary draftsmen are in short supply, so that is an issue for me.

In terms of the capacity to instruct, it depends on the extent to which the new Assembly—if I can call it that—chooses to make use of these legislative powers. If the view of those Members is that they want the Assembly to turn into something like a manufacturing plant for legislation, we will need to have much more capacity both for policy officials to develop the instructions and for the lawyers to convert them. I cannot give you a straightforward answer.

We clearly have a problem in terms of the parliamentary drafting; I am dealing with that. For the rest, until I have better intelligence as to what the balance will be between administrative oversight and scrutiny and legislative development and scrutiny, I cannot make the necessary plans to enhance my staff. However, I hope that there will be an evolutionary process so that I will not hit a wall in year one.

[208] **Carl Sargeant:** Following up on that, on the assumption that when you know you will then have the capacity to deal with that, are you currently satisfied with the legislative arrangements outlined in the White Paper? Are they sustainable if there are different political parties in Westminster and the Assembly?

**Sir Jon Shortridge:** With respect, I do not think that that is a question for me. As officials, we will make the system work to the best of our ability in whatever political context and environment we find ourselves. If there are problems, they will be problems of a political nature, frustrating—if I can put it that way—what the Assembly or the Assembly Government might want, as opposed to problems that are intrinsic to the way in which officials perform their duties.

[209] **David Melding:** On the issue of capacity, if the system of enhanced powers and Orders in Council works, there will be more mock primary legislation—if I can refer to this new area in that way—in Welsh, which would not have been in Welsh; it would previously have existed in English-language-only Bills. How will we cope as a bilingual institution; for all of the scrutiny that we do, everything would have to be available in English and Welsh, and there would have to be officials who could conduct legal conversations in Welsh if the committees required advice to aid their scrutiny of the legislation. This will be quite a challenge.

**Sir Jon Shortridge:** Yes, it will. In the short term, there may need to be certain appropriate—I would like to emphasise that—expedient solutions to that. We are up against the capacity constraints for written translation at the moment, so, in the short term, if you have a fixed capacity, you have to reprioritise within that capacity. Legislation would obviously be right at the top of those priorities. The impact would be downstream rather than intrinsic to this new function. The same principle applies to bilingual scrutiny orally; as you know, I am not a Welsh linguist, but I would think that the simultaneous translation challenge must be much higher when you are dealing with quite esoteric legal terminology.

[210] **David Melding:** I certainly share that view, it is important that we look at how we will conduct our business as a bilingual institution, which has been one of the great advances in Welsh public life. I respect that you cannot answer the question about whether you feel that the new system would be sustainable if there was a change of administration in Westminster. However, you have well-honed political antennae; do you distinguish, in terms of preparing for whatever the concrete outcome will be, that if the Order in Council process was initiated by the Assembly and then delivered to Parliament in a more or less completed stage, subject to a vote, that that is likely to lead to certain dynamics? If it is the Assembly Government applying in principle for a certain area to be subject to an Order in Council, and then that being affirmed or not, leading to the legislative process being devolved to the Assembly on a piece-by-piece basis, the political dynamics would be very different, would they not?

11.20 a.m.

**Sir Jon Shortridge:** This is mainly a question for the First Minister next week. My understanding is that the hope and intention is that the formula to be adopted will be the latter, the second of your approaches, and if that is the one that is sustained in practice, it will cause the fewest problems.

[211] **The Presiding Officer:** If there are no more questions from colleagues, may I refer you to paragraph 2.4 of the White Paper, which makes this general statement:

‘The civil service supporting the Assembly is expected to serve both the Ministers discharging executive functions and also the legislative branch of the Assembly’.

It also includes a sentence with which I think that we could both empathise:

‘it can place officers at the highest levels of the civil service in Wales in difficult positions of apparently conflicting loyalties’.

Are you relieved at that paragraph and the consequences of the White Paper?

**Sir Jon Shortridge:** On a personal basis, I am looking forward to the successful implementation of these proposals by May 2007.

[212] **The Presiding Officer:** Thank you very much, Sir Jon; there are no further questions.

We are about to call the trade union side, but Members seem to be signalling that they would like some coffee. I do not normally chair Assembly committees, and I am not used to breaks. However, it seems to be an appropriate time, before we call the trade union side, for Members to have a break. You must understand that, when the White Paper is implemented and the Bill is through, there will not be any breaks. However, in view of the old dispensation, if our witnesses do not mind, we will break for five minutes.

*Gohiriwyd y cyfarfod rhwng 11.22 a.m. a 11.30 a.m.  
The meeting adjourned between 11.22 a.m. and 11.30 a.m.*

[213] **Y Llywydd:** Croeso i gyfarfod y pwyllgor i bob un ohonoch o ochr yr undebau, sef Kevin Davies, Graham Pogson a Laurie Pavelin. Diolch ichi am ddod.

[213] **The Presiding Officer:** I welcome to this committee everyone from the union side, namely Kevin Davies, Graham Pogson and Laurie Pavelin. Thank you for coming.

[214] **Lorraine Barrett:** How concerned are you for your members about the proposals that Assembly Parliamentary Service staff should no longer be civil servants? What implications are there for the future development of staff? Do you think that there are any lessons that we can all learn from the position of staff in Westminster and the Scottish Parliament in the future?

**Mr Pogson:** We know that the Assembly will employ its own staff, but we wonder whether existing civil servants would have the option to retain their civil service status, for example through some kind of loan or secondment arrangement. We also believe that any staff transferring to the new employer should have protection under the Transfer of Undertakings (Protection of Employment) Regulations 1981. Those thinking of moving to the Assembly Government before and at the time of the separation should be given support, and we would strongly advocate arrangements to facilitate two-way transfers between the Assembly and the Assembly Government in the future for the purposes of career and professional development and to allow staff to broaden their experience. A system of two-way secondments would be helpful, as would be the ability to apply for internally advertised posts. The Permanent

Secretary's remarks earlier were reassuring in that regard.

On another related matter, there is currently a great deal of goodwill and co-operation between officials in the Assembly Government and APS, which has helped to make the Assembly a success. We would want this culture of co-operation to be maintained and fostered post separation.

[215] **Lorraine Barrett:** Do staff generally welcome these proposals, or are they worried about what the future might hold as something different is going to happen? Is there any apprehension or is this move welcomed?

**Mr Pogson:** I think that it would be fair to say that we broadly welcome the thrust of the White Paper. We have collected some comments so far, and we are also holding a meeting for members next Monday. If any new substantive points come out of that, we will write to you. We think that separation will remove the confusion in terms of roles, responsibilities and lines of accountability. We welcome the enhancement of legislative powers as this will increase the status of this Assembly and make the devolution settlement work more effectively.

[216] **The Presiding Officer:** That is helpful, not only in terms of your positive comments, but your willingness to provide any further feedback that you have from staff discussions. Those of us who have participated in open meetings with staff during the course of this process have found them extremely helpful opportunities, and we will certainly participate in such meetings again. Is there any apprehension about being managed indirectly by a National Assembly for Wales commission, or the equivalent of the House of Commons Commission or the Scottish Parliament corporate body? Presumably, you are assured that politicians will not seek to interfere with staff management issues, which seems to me to be quite important.

**Mr Pogson:** Our members would need some reassurance that their political impartiality could be maintained and that appointments and promotions would be based on merit. There are some existing mechanisms to guarantee a lack of political interference. We think that this is an important issue, and the potential for political patronage must be avoided. You could consider having some sort of recruitment commissioner.

Alternatively, you could ask the civil service commissioners to vouchsafe our procedures, although their powers would need to be extended. Another possibility is to make it a legal requirement that staff not be asked to act in a way that might bring into question their political impartiality, and that appointments and promotions must be on merit. A code for staff, similar to the civil service code, should be introduced. There is a whole panoply of existing codes and protocols that would need to be updated, which contain important references to staff remaining politically impartial.

[217] **Jocelyn Davies:** Those practical examples are very helpful. These changes could come very quickly. Do you think that we will be able to cope with the changes in the timescale?

**Mr Pogson:** We are not totally certain at the moment. We would want an assessment of staffing needs and skills required to be made fairly urgently. Clearly, there will be additional work because of the legislative functions. That alone would seem to call for an increase in staff, particularly for legislative work.

[218] **David Melding:** I want to pursue the question of how the institution is going to continue to exist as a bilingual one. We have heard some evidence from the Permanent Secretary that the need to ensure that we remain bilingual in our legislative capacity is very important. That may create problems elsewhere, because resources will have to go to that as it is a top priority. It strikes me that that might lead to some difficulties and strain on the system. Will you comment on that and on what the challenges might be?

There will also be quite a demand on policy staff, because they will have to instruct the lawyers when they are drafting legislation. What are your views on the existing capacity there? We hear the occasional whisper on this side of the fence that it is not necessarily as strong as it needs to be—I must emphasise that that is in terms of the numbers, rather than the quality, of the people.

**Mr Pogson:** On the face of it, there is a strong case for additional staff. If there is a lot more legislation to be drafted and to go through this institution, on the face of it, more staff are needed. Increasing numbers of policy staff are used to giving instructions for secondary legislation, so they do possess the skills. However, giving instructions for the equivalent of primary legislation would be another step change again. There would certainly be some initial significant challenges and training needs.

The Welsh language aspect would be an issue, particularly with regard to the high-level technical translation of legislation and dealing with line-by-line amendments. That is potentially a big problem.

**Mr Pavelin:** There are quite a number of colleagues with experience of providing instructions for the Parliamentary Counsel in the form of the Bills that go through Parliament at the moment. The numbers would need to be enhanced, and the organisation of that work would probably need to be enhanced. At present, we try to find somebody with the knowledge and skills to deal with a particular task or support a particular area of work. That gets us by at the moment. There are people who, over the years, may have had a lot of experience of that, but they would probably need to be brought together in a different structure and organisation, so that that knowledge could be spread around and experience gained over time.

[219] **Kirsty Williams:** Do you think that it would be appropriate to be able to require that the most senior officers of the Government of Wales, or whatever it might be called, appear before a subject committee, or do you share the concern of the Permanent Secretary that officials at all levels need to be protected?

11.40 a.m.

**Mr Pavelin:** I listened to what the Permanent Secretary said, and he explained that it was merely an emphasis on a particular point. I think that the expectation for senior officials is that they will appear before committees, as they do now. The point that the Permanent Secretary made was that requests for people to appear should be funnelled through the Minister, in the first instance. If the Minister decided that he or she should come before the committee to discuss a particular issue accompanied by an official, then that decision would be made by the Minister. However, in most instances, senior officials would expect to continue to appear before committees, and I am certain that they would be very happy to continue to do so.

[220] **The Presiding Officer:** There do not seem to be more questions. Is there anything else that you would like to tell us?

**Mr Pogson:** There are a couple of things to add. Whatever the shape of the future Assembly, I am confident that our members will give their full commitment to making the new arrangements work.

On the staffing issues, we welcome the statement that Assembly staff will continue to be eligible for membership of the civil service pension scheme, but we wonder if the Assembly would have any say if there were to be any future changes proposed to the scheme. Who would fund and underwrite APS staff pensions? Would APS be an integral part of the civil

service scheme or would it be a 'by analogy' scheme? If it were the latter, we would have concerns.

On staff working for the Assembly having broadly comparable terms and conditions with Assembly Government staff, it would help to have on the face of the Bill something similar to the wording in the House of Commons Administration Act 1978. We would welcome some kind of analogous arrangements on pay and grading to those of the Assembly Government staff, with periodic reviews. That would facilitate two-way secondments.

We would press for current opportunities for flexible working and a commitment to family-friendly policies backed by strong principles of equal opportunities to be, at least, maintained. APS should continue to recognise the existing trade unions and honour agreements with staff until they are renegotiated.

[221] **The Presiding Officer:** Would it be helpful for you if we were to explore further the implications of paragraph 2.20 of the White Paper on Assembly staff?

**Mr Pogson:** Yes.

[222] **The Presiding Officer:** If you have any further views or thoughts on this in the next weeks, up until the end of the August at the latest, we would be glad to have them because we may then be able to put some more specific points in our report, which might assist you in getting those assurances.

Clearly, the assurances in terms of pensions are specifically outlined in the White Paper. However, there may be other assurances that you would like to seek, if they are not on the face of the Bill, through debates. Although, I accept your point about the House of Commons Commission legislation, which seems to be a model for us, along with that of the Scottish corporate body. I am not offering you my services as an advocate; I should not be doing that. However, if there are issues that you want raised in Parliament, I am sure that we could ensure that that happened.

**Mr Pogson:** Thank you very much.

[223] **Lorraine Barrett:** Graham mentioned something that we should all have asked at the beginning. None of us have an idea of how this will work, but there will be a gradual step change in the working hours in this building. Occasionally, we run over in Plenary, for example—more so than in committees—to 6.00 p.m. or 6.15 p.m. and that obviously has a knock-on effect on our staff and on your staff. So, have you given much thought to possibly a complete change of working hours and flexibility in shifts and all sorts of issues for working later, longer or earlier—we do not know—and I do not expect an answer now. It is something that you are probably addressing already, so I wondered what your thoughts were briefly, and, obviously, you could feed them back to us once you have given it more thought and as the whole thing progresses and we get a clearer picture of how it all might work.

**Mr Pogson:** Clearly, over time, there will be variations to terms and conditions of the staff working here, which is normal with non-departmental public bodies. However, there are opportunities here for staff, as well as the Assembly, to benefit, and I am sure that through a spirit of partnership, we can negotiate in a constructive way.

[224] **Lorraine Barrett:** That is reassuring from the staff side. That is great, thank you.

**Mr Davies:** One thing to add is that there is already a precedent in terms of flexibilities within the system, such as the recording of proceedings and security, and we have been involved in discussions in looking at reviews in the security services at present. So, I think

that Graham was right in terms of the commitment that staff have shown already to want to embrace the changes that we are looking forward to. The lack of concern perhaps shown by staff about civil service status and the actual changes is probably a good thing, because I think you would hear more if people were a little bit more concerned. However, questions have certainly been asked about career development in terms of a smaller organisation, the link back into the Assembly, the centre and WAG itself, and about the initial timescales in which staff will be expected to make decisions for example, such as, 'When do I make a decision about whether I want to join the new organisation and will there be safeguards about going back if it is not quite the right move for me', and things like that. Those are the staffing issues that we need to be addressing, but the actual change is being embraced and welcomed by the staff as an opportunity. A number of the staff who work in the area are quite new to the civil service and have only ever worked on the Assembly side rather than the Government side, and they see it as being their workplace and see this as something that they want to see through.

[225] **The Presiding Officer:** I will ask a general question that I had not prepared. Obviously, you represent the trade union side, so is there a lot of active interest in trade union membership, and do staff here participate widely in trade union activity in a way that would assure us, which I am sure, hopefully, is the case, that you are clearly representing the views of the staff here?

**Mr Davies:** The answer is 'yes', as we have representation as much as any other place. We have certainly looked at APS as being slightly different, and we are actually in the process of setting up a separate branch within APS to deal with separation and looking forward to the future, and that is in progress at the moment. I am in discussions with human resources about facilities and the way forward with the numbers of people we are talking about. I already have volunteers, and we have already agreed, following the members' meeting that we will hold on Monday, to set up an advisory group from areas within APS. We are seeking volunteers from among staff in those areas to advise me and my colleagues about what is really happening at the grass roots and at the coalface. We can only act upon the information that is provided to us, and the advisory group has worked well in other areas, such as with the Merthyr relocation, where we dealt with the package and transfer of staff there. So, we see that as being a positive. I have a number of interested parties, and I will address that following the members' meeting on Monday.

**Mr Pavelin:** I would add that union membership is growing at the present time, both in APS and across the Welsh Assembly Government as a whole. There is much greater interest, stimulated by the many changes that are going on relating to mergers, location and the present proposals in respect of the separation between the Welsh Assembly Government and the Assembly.

[226] **The Presiding Officer:** I never thought that the devolution project itself would be an encouragement to trade union membership, but, as an almost lifelong member of the Transport and General Workers Union until recently, I obviously welcome that. Are there any other questions? I do not think so. Thank you very much for the positive tone of your presentation.

11.50 a.m.

<p>Mae hi'n bleser, fel arfer, i groesawu Gwenda Thomas, sydd ger ein bron heddiw fel Cadeirydd y Pwyllgor Cyfle Cyfartal. Galwaf David Melding.</p>	<p>It gives me pleasure, as usual, to welcome Gwenda Thomas, who is attending today as the Chair of the Committee on Equality of Opportunity. I call David Melding.</p>
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[227] **David Melding:** I did not realise that I was starting, but I am delighted to.

[228] **The Presiding Officer:** I thought that, as Chair of a committee, you might like to begin the proceedings.

[229] **David Melding:** Okay. Gwenda, the equality duty is likely to fall on Assembly Ministers under the White Paper, because of the separation of the executive—*[Interruption.]*

**Gwenda Thomas:** There was some background noise then, David. Would you mind starting again, please?

[230] **David Melding:** If there is a division between the executive and legislative functions, the responsibilities in terms of equality, and the duty on the Assembly, will now transfer to the Ministers. Do you see that as a welcome step? Do you think that perhaps there needs to be a mechanism for the Assembly to have an analogous duty, and should that be in any legislation, or should it be addressed via Standing Orders as an Assembly duty on equality?

**Gwenda Thomas:** If we refer to section 120 of the current Act, I certainly would not be content for the contents of the current Act to fall on Ministers only. The committee and I strongly believe that this should include the legislative part of the Assembly, the Members and the staff. In the committee's opinion, and in my own, issues arising in relation to equality issues would not be satisfactorily dealt with if section 120 referred to and fell on Ministers only.

[231] **David Melding:** Ministers will have some form of duty—I presume that they will, anyway; we are not moving away from that principle. Will that be more difficult to scrutinise than it is at the moment, with a committee structure that includes all of the Ministers? They will not be included in future on committees, so how will the ministerial duty be scrutinised in future? Will this create fresh challenges for us?

**Gwenda Thomas:** In my view, the answer to that is that the Committee on Equality of Opportunity should be retained after 2007, with the onset of the implementation of the White Paper. Without the Committee on Equality of Opportunity, I think that the monitoring and the co-ordination of mainstreaming equality issues across portfolios would definitely weaken. If we were to suggest that the committee should cease to be, I think that that would immediately raise questions. Standing invitees to the committee would want to look at their roles immediately. Not only would it weaken the monitoring and the co-ordinating role after 2007, but it would dilute the purpose of the committee from now until 2007.

[232] **The Presiding Officer:** I know that you and your committee will be aware, as are all other committees, that, as far as I read the White Paper, it is only the Audit Committee that would have a statutory basis under the current proposals. You are clearly concerned about this.

**Gwenda Thomas:** I am very concerned. I would like to see section 120 and section 48 retained. Section 48 is just as important. On the issue of section 48 of the Act, the Committee on Equality of Opportunity is adamant that there should be in no way a watering down of what is now the legislative requirement of the National Assembly. It is unique as a legislature in having this as a statutory duty, and my view is that we could follow the Westminster model too closely, and perhaps lose the important work and focus that this Assembly has on equality of opportunity issues.

[233] **Jocelyn Davies:** So you think that this should be in the Bill rather than in the Standing Orders of the new Assembly? Do you feel that this is an obligation that should be placed on us by the Westminster Parliament rather than one that we take on ourselves by way of our Standing Orders?

**Gwenda Thomas:** Yes, I think that it should be retained as it is in the current Act. Standing Orders should then support the requirement in the new legislation. I certainly do not think—and neither does the committee—that this should be left to Standing Orders alone.

[234] **The Presiding Officer:** What is wrong with Standing Orders, if they are not able to do this?

**Gwenda Thomas:** There is nothing wrong with Standing Orders. However, at the moment, it is not a requirement under the Act for us to have a Committee on Equality of Opportunity. It is a requirement that we have due regard to equality of opportunity issues in all of our work, in policy development and scrutiny. Standard Orders give us a way of implementing the legal requirement under the Act. In that way, I see Standing Orders at the moment as being very supportive of the requirement of the Act.

[235] **Lorraine Barrett:** As a member of the Committee on Equality of Opportunity, Gwenda, I was going to ask you about the continuation of the committee, but you have already answered that in saying that, as a committee, we feel strongly that it should continue. Have you given any thought to how different that committee might be? At the moment, we call in the Permanent Secretary and the Ministers regularly. Do you see the committee operating any differently in the future? For example, we do reviews looking into Gypsy traveller requirements, and so on. Do you see our role changing in future?

**Gwenda Thomas:** I do not think that it needs to change. We can always move with the times, but it depends on what times we will be dealing with in 2007. I certainly do not think that we should be prescriptive about the roles of committees, or even their existence. As far as the Committee on Equality of Opportunity is concerned, the arrangements that are in place at the moment for what the committee can do as regards auditing equality arrangements in the future, and scrutinising Ministers across portfolios, have represented a step forward. In contrast to the subject committees, the Committee on Equality of Opportunity has worked without having a Minister as a member, and I think that that is developing quite successfully. The present Minister has made it clear that she would like to attend the committee in order to assist her policy development activities, and the committee feels that it should have the right to call any Minister when it feels that that will promote equality of opportunity. We have seen that happen very successfully in the review of services for Gypsies and travellers, where there were obvious cross-portfolio issues. Each Minister with an equality responsibility has been called to committee. So, I really do not think that the committee needs to change very much. The fact that it does operate without a Minister as a member has probably taken it ahead of some other Assembly committees.

[236] **The Presiding Officer:** What do you say to that, Minister? [*Laughter.*]

12.00 p.m.

[237] **Jane Hutt:** I will start by acknowledging the unique contribution of the Committee on Equality of Opportunity over the past six years. It would not have had such force and influence had we not had the statutory duty under section 120, and section 48 is key to the business of the whole Assembly with regard to equality of opportunity. The separation is a challenge, is it not, in terms of how we take this forward, in ensuring that the Ministers are held to account and the views of the committee are clear, but also that the Assembly plays its part as well and is held to account? I know that this is an issue in terms of the Assembly Parliamentary Service, and I think that work on the mainstreaming of equality really does provide us with a vehicle to see how we can take that challenge forward with the White Paper recommendations, because it does apply to the Assembly Government across the board. As you said, all Ministers have a role to play in mainstreaming equality, as does the Assembly

Parliamentary Service. There is an issue of capacity in terms of Members and the Assembly Parliamentary Service with regard to mainstreaming equality, and you may wish to comment on that.

Also, do you feel that the committee—I understand that, in Scotland, a committee has been set up very similarly to the Welsh committee—is a model or a vehicle for us to look at in terms of other committees as we move into the recommendations of the White Paper, whereby Ministers might not be involved as members? The Committee on the Equality of Opportunity might be an example that we can usefully look at in terms of a Minister not being involved as a member on a committee, but being called for scrutiny, and also in relation to other Ministers being called for scrutiny, as well as to learn from your policy development. Perhaps it could be a vehicle.

**Gwenda Thomas:** I think so. In Scotland—I believe I am right in saying this—the committee is there by way of Standing Orders, and not by way of the requirement of an Act. That makes us different from Scotland, and, as I have already said, we need to preserve the status of equality of opportunity as it stands in the current Act. I think that I have explained the issue of Ministers not being members of the committee in that the Committee on Equality of Opportunity has been operating in that way, and that took a change in Standing Orders for that to happen. Indeed, at one point, there was a requirement for the Minister to chair the Committee on Equality of Opportunity, so it can be said that we have moved in stages to what we have now: a committee without a Minister as a member of it. However, we have a Minister in yourself who has overall responsibility for equality of opportunity, and the committee has the ability to call for evidence from across the portfolios. I certainly think it worth repeating about section 120 that, where it will fall on Ministers, that section of the Act could mean that the equality of opportunity duty would fall on Ministers only, and I think that that would be a dreadful mistake. A requirement should remain on the APS as well to have a statutory obligation to look at equality of opportunity issues, and I would be really upset, as would others, and it would send out a very wrong message indeed to the standing invitees who attend the committee meetings and to the public if the APS did not have to have regard to gender issues, to recruitment issues, to the Welsh language—I certainly want to see that retained—and I think that there are other important equality issues for which it is just as important for the APS to have a statutory requirement to consider, as it will be for Ministers when we have the split of the Executive from the Assembly.

[238] **The Presiding Officer:** I do not want to get into an argument with one of my favourite Assembly Members, and we go back a long time, but, do you think it appropriate or necessary to put a statutory responsibility on a parliamentary body? Can I explain this by saying—and you referred to the Welsh language—that I was the one, I am afraid, who resisted all along the call for the Assembly Parliamentary Service, as it is now called, to have a language scheme. I took the view that we are the body responsible for the administration of the law and our statute, and, therefore, we do not need to have someone else telling us, by statute or by scheme, what we should be doing.

**Gwenda Thomas:** But we already have that in Wales, and it has worked well. It has worked well for the Welsh language and for other equality issues, such as gender and race, and will now embrace the other equality strands. It would be a retrograde step to step outside the statutory requirement as contained in the original Government of Wales Act 1998, and would give the wrong messages. I fear that it would appear as though we were diluting the requirement towards equality of opportunity.

[239] **Y Llywydd:** Clywaf beth yr ydych yn ei ddweud, Gwenda. Gadawn y mater yn y fan honno.

[239] **The Presiding Officer:** I hear what you are saying, Gwenda. We will leave the matter there.

[240] **Kirsty Williams:** May I just clarify, Gwenda, that you and your committee believe that there should be specific mention in the Bill of a requirement to have a committee on equality of opportunity?

**Gwenda Thomas:** I am not saying that. We do not have that now, of course. What I am saying is that sections 120 and 48 should remain, and should require the Executive and the Assembly to have due regard to equality of opportunity matters in all of its work across the board. I am saying that Standing Orders—and one would hope that the Assembly would have a say in its Standing Orders—could then be written, or rewritten if needs be, and I am not convinced that they need to be insofar as the Committee on Equality of Opportunity is concerned. However, Standing Orders would then need to be the means by which we implement the statutory requirements to have due regard to equality issues.

[241] **Kirsty Williams:** Via a committee?

**Gwenda Thomas:** Yes.

[242] **Kirsty Williams:** That clarifies it. Thank you.

[243] **Jocelyn Davies:** You argue strongly that the Committee on Equality of Opportunity should remain. What about human rights, which is another of our statutory obligations? Do you think that that should also continue, and that the Committee on Equality of Opportunity could also be the committee on equality of opportunity and human rights in one?

**Gwenda Thomas:** There is an inevitable movement towards that. Human rights, for the time being, will remain within the existing legislature. However, with the setting up of the commission for equality and human rights in 2007, there will be an emphasis on human rights. Human rights issues have already touched the committee's work, particularly in its review of services to Gypsies and travellers. When the CEHR is in place in 2007, there will be a Welsh committee, and I can see an enhanced role for the Committee on Equality of Opportunity at that point to work with that Welsh committee to ensure that we embrace human rights. It is inevitable that we move towards that situation with the onset of the new arrangements. I think that we can have a supportive role in supporting the different strands and the different bodies, such as the Equal Opportunities Commission and others, who will have to look at their role and bring their roles together.

Therefore, to answer your question, human rights should become more of a part of the Committee on Equality of Opportunity's work post 2007. One good thing is that there will be a coincidence in time, and there will be the need to develop with the human rights aspect and to consider how we embrace the commission for racial equality, which will not join until 2009. Insofar as our race relations scheme is concerned, and the mainstreaming of equality commitments made by the Welsh Assembly Government at the moment, and the Assembly Parliamentary Service, then there will certainly be a need to support the movement into the new body.

12.10 p.m.

[244] **Y Llywydd:** Nid wyf yn credu bod neb arall eisiau gofyn cwestiwn. Diolch am y cyflwyniad ac am ddadlau mor gadarn o blaid y pwyllgor.

[244] **The Presiding Officer:** I do not think that there are any further questions. I am grateful to you for your presentation and your spirited argument on behalf of your committee.

We now welcome our friendly media.

Yr wyf yn rhoi croeso mawr i Ashok Ahir. Mae bob amser yn braf croesawu'r cyfryngau i'n pwyllgorau. A very warm welcome to Ashok Ahir. It is always a pleasure to welcome the media to our committees.

[245] **Jane Hutt:** Ashok, obviously, you are here from BBC Cymru, and I am interested in the role that the media can play, in terms of the whole issue of political engagement and awareness raising. You will know from the research that was undertaken for the Richard commission and follow-through from polls that you have done that there is a strong measure of awareness about devolution, and of the Welsh Assembly Government as a tier of government that people relate to. In the Richard commission, it came out that people saw that they ought to be relating more to the Assembly Government. That has come through your polling as well, and puts a big responsibility not just on the political world, but also on the media to respond and enable that level of political engagement. So, I want to tease out how you feel the media, and the BBC in particular, can play its full part in the maturing of democracy in Wales through that kind of political engagement?

Also, in the Ofcom report, as a Government, we said that there should be more recognition of the devolution of Welsh issues at a UK level. How are you seeking to address that? Those are my two questions.

**Mr Ahir:** On the first question, the BBC Cymru political reporting team that is based in this building shares journalistic responsibilities for the Assembly, Cardiff bay and the European Union. We are the biggest political reporting team, other than the one that is based at Westminster, for the BBC. In sheer numbers, we are probably the second biggest political reporting team anywhere in the UK. In itself, that shows the importance that BBC Wales puts on reporting Welsh politics in a post-devolution age.

If you look at what we do, we probably have more programming per se in both Welsh and English, on radio and television, than any other part of the BBC when it comes to politics. In Scotland, for example, some of my colleagues are quite jealous of the fact that we have a channel like S4C2 that gives wall-to-wall coverage of proceedings here, because they do not have that provision in Scotland. That is why they do most of their stuff online, with the [www.holyrood.tv](http://www.holyrood.tv) service.

In terms of what would happen to our reporting if this place changed, nothing much would change. We may well have more to report, and we may well have more important things to report. For example, the transition of a Bill is more important than a debate, which has no conclusion. However, I would not see us changing what we do. We would certainly give greater importance to particular things that had more relevance to the public out there, but I do not see us changing as a team in any form.

In terms of the question about the UK networks, and how the BBC reports Welsh politics on a UK level, one of my main roles is to liaise with colleagues in London and at Westminster on how they should report Welsh politics. One of my tasks is to pick them up when they are saying things that are wrong. As the media, not just the BBC, we report Welsh politics badly. A lot of that has to do with the fact that they report things as being done by the Welsh Assembly or the National Assembly for Wales as opposed to the Welsh Assembly Government. That creates confusion, because if the public sees things being done either well or badly by the Assembly, then it is the Assembly that gets either the benefit or the negative aspect of that perception. That does not really help. At BBC Wales, we have a quite strict style guide on how we should refer to distinctions between the Assembly and the Welsh Assembly Government, and how committees should be referred to. We are always trying to improve the language that we use to refer to different parts of Welsh politics and devolved politics.

Post devolution, a lot of training went on at the BBC. There was ‘The New Devolved Britain’, a course that everyone had to attend. There were seminars across the BBC, but that was in 1999 to 2000, at the cross-over point. There has been a big slippage, which is what I think that you are referring to. Across all broadcasters, not just the BBC, and particularly in the written press, we often see references to Welsh politics that say, ‘The Welsh Assembly has done this’, whereas it was actually the Welsh Assembly Government. That is misleading, because that is not what should be getting across to the public. I pick people up and point out that they should be saying ‘the Welsh health Minister has said this’ rather than ‘the Welsh Assembly has said this’ or whatever else it could be.

We are currently undergoing a lot of journalistic training post Hutton. A series of courses were run five or six months ago, post Hutton, to reinforce editorial values across the BBC. That is being taken a step further in the autumn. There will also be a focus in that training on intermittent things that we think that all BBC journalists and editorial staff should be aware of. The first two things that will go into that training are Europe and the middle east. At the moment, in conjunction with a college in London, we are also working on a new devolved Britain module, which will be rolled out across the BBC next year. Hopefully, before the elections in Wales and in Scotland, we will reinforce to our staff in Wales and to BBC staff across the UK the differences that now exist in a new devolved Britain. In a sense, a lot of the stuff that we tried to teach people in 1999 has changed, because powers have changed and responsibilities have shifted to a certain extent. I think that we are working on it, but we do not get it right.

[246] **Jane Hutt:** That was helpful. Training on post devolution Britain, beyond Wales, is important in terms of your colleagues. I will always remember, not long ago—I think that it was 1 April 2004—someone coming down from London to ask about abolishing prescription charges and questioning me about whether we were allowed to do so.

[247] **The Presiding Officer:** That is the BBC for you.

[248] **Jane Hutt:** That was the point when we realised that they did not really understand that devolution had happened and that the terms of the settlement, within the transfers of power, enabled us to do that. There will be a big step change as we take the White Paper through to a Bill and through to 2007. It is welcome, but I am sure that you will recognise that it is still a big challenge for the confidence of the people of Wales. Understanding what we have done and what we can do is important for our confidence.

**Mr Ahir:** When major policy areas are devolved, such as health and education, and now there are distinct policies developing across the UK, it is also important to say that there is a tendency in the BBC for us to jump on the back of whatever the Department of Health or the Department for Education and Skills put out in terms of the big thing that the Ministers will be doing this week. To me, that works both ways. It is a problem for us in the BBC, but it is also a problem that exists with Whitehall departments.

Far too often, press officers in Whitehall departments sell a line to the papers, particularly at the weekend, which then gets picked up by the broadcasters, and no-one makes any reference to the fact that it is a major devolved area and that the policy that is being pushed forward does not have any relevance in Wales or Scotland. We kind of catch up by the middle of Sunday or Monday morning and note that it is an England-only policy. Given that it is sold straight to the newspapers as a new policy to do with health, it is splashed on the front of *The Mail on Sunday* as ‘prescription charges frozen’, or whatever it might be. Given that newspapers are worse than broadcasters in terms of explaining devolution and including references to devolution, colleagues—not just in the BBC, but a lot of network colleagues who work for other broadcasters—fall into that trap quite easily. We pick up newspapers on a Sunday or on a weekend and think ‘Oh, there is a major decision being made this week’ or we

see that there is a major policy rollout on a particular devolved field, without thinking about its having no relevance outside of England. The prime example that I keep picking people up on is foundation hospitals. You know better than I do that there are no foundation hospitals in Wales or Scotland; yet, in the media, and, I dare say, within a Westminster context, within political parties, there is a lot of talk about foundation hospitals, but it is not relevant to one sixth of the population of the UK.

12.20 p.m.

[249] **The Presiding Officer:** Your frankness is an inspiration to us all in these matters.

[250] **David Melding:** Ashok, I presume that your stylebook will be made a little simpler by the fact that we will have a split between the legislative and executive arms. I assume that you feel that that would be useful in terms of projecting to the people what goes on here and in the Government.

I want to draw you out a little on the current reporting arrangements. You mentioned that there is wall-to-wall coverage on S4C2. That coverage is of Plenary, as I understand it, and some committee work is also chosen to be shown, on a piecemeal basis. Let us assume that the Order in Council process creates something that is very similar to having a Bill stage, where a Bill goes through Parliament, and a committee stage. There will be some issues—we might be dealing with something on the environment or whatever—on which there is genuine concern among the public, especially among those involved in voluntary groups. If you are living in Bangor or somewhere, you would find the service very useful, but you would want it fairly immediately, I would have thought; you would not want to see it on the highlights for the month or something. So, what type of decision would you be making in terms of what to cover, and would it be important to cover some of the committee work that was really getting to grips with the line-by-line scrutiny? Would there be any knock-on effect on the UK parliamentary channel? That is an excellent channel, but I do not think that it covers any, or very little, of our committee work at the moment, which I quite understand. It covers quite a lot of Plenary, although that is not full coverage, and, again, one can understand that.

[251] **The Presiding Officer:** I was hoping that it would cover this committee, because it is so germane to the whole issue of devolution.

**Mr Ahir:** It may well cover it next week, I am told, and I can encourage that if you like.

On the matter of committees, we do not traditionally broadcast on a Monday on S4C2—you sat on Monday this week, is that correct?

[252] **The Presiding Officer:** We sit every day, except Saturdays and Sundays.

**Mr Ahir:** I meant in the committee form. If there is a development whereby we see committees being held on Mondays, for example, we would have to think again about whether or not it becomes, in effect, wall-to-wall coverage, every day, as in four days a week as opposed to the three days a week that it is at present. Most of what we transmit is Plenary, but when work has been done around Plenary elsewhere in the Assembly, we have covered that. There will always be a distinction and editorial judgment about what we broadcast. If you think of Parliament, BBC Parliament has to choose between House of Lords committees, Westminster Hall debates, subject committees—it has much more than we have, and I am sure that there are things that the great British public are interested in that are never shown on BBC Parliament, and, unfortunately, that will happen in terms of what we do. However, I would hope that we would make the correct editorial judgments and that, whatever business is happening in committees, we show the right ones. We have a tendency to record some, when there are clashes, and we try to show them at periods when there is not as much interesting

stuff going on, shall we say. Given that, I would hope that if there was an interesting hearing on the environment that people in Bangor wanted to see, they would get it two days later rather than at the end of the month.

I have forgotten your second point.

[253] **David Melding:** It was just on the legislative-executive split.

**Mr Ahir:** From a journalistic perspective, I do not think that what we say has changed. I am probably a bit fascistic as an editor about the distinction between the Welsh Assembly Government and this institution and the way in which we refer to them. Even in the White Paper, there is still reference to Assembly Ministers. If I can dare to speak as a citizen, and not on behalf of the BBC, Ministers do not serve the Assembly. I know that there is a delegation of functions, but they actually serve the people of Wales, or the Crown if that is what happens in term of development. So, I do not think that there should be a reference to Assembly Ministers anywhere, which is why we try to avoid using the title ‘Assembly Minister’ and refer to them instead as the health Minister, the environment Minister, the education Minister and so on. Given that, when there is a distinction between something that is happening in the Assembly on which Assembly Members are voting, it needs to be quite clear that it is the Members that are taking that vote and that a decision will or will not then be taken up by the Welsh Assembly Government. If there is an official split in the corporate structure, it needs to be a fairly clear one as it is important.

[254] **The Presiding Officer:** On that theme, I wish to draw attention to paragraph 2.6 of the White Paper, which I am sure Ashok is well aware of. The whole logic of this section, relating to where you are and where I have been for some time, is that you cannot have democracy without having a Government and a Parliament that are distinct. However, in 2.6, it says—and this takes up your point—that

‘Welsh Assembly Ministers collectively will be known as the Welsh Assembly Government’.

Is that a severe disappointment to you as a citizen and a journalist?

**Mr Ahir:** If I can go back to being a BBC journalist for a moment, I think that it is important, when we are trying to make the workings of the Assembly better known and understood by our audiences, which is our key aim as broadcasters, that they are aware of how they are governed. I think that an important part of what the BBC does is to explain the governance of Britain, and the governance of Wales in a Welsh context. We are all aware that there is confusion regarding the Assembly as an institution and the Government. Any distinction that is made would be helpful to us as broadcasters and ultimately to our audiences.

[255] **The Presiding Officer:** I wish to pursue this a little. I know how creative you can be in the BBC, and one of things that you do is to try to think of different ways of saying something using synonyms, because it makes the discourse of the news a bit more interesting. Have you thought of the various possible titles that could be used, such as Welsh Executive, Welsh Government, Government of Wales and so on?

**Mr Ahir:** As we know, there is a precedent in Scotland, and there is a distinction and a body called the Executive. Initially, the Welsh Assembly Government was known as the Welsh administration.

[256] **The Presiding Officer:** Sometimes. It was also occasionally known as the Government of Wales, and then on the morning of one St David’s Day it became the WAG.

**Mr Ahir:** I think that any subsequent new Government of Wales Act has to make it clear that

the Executive is one thing and the legislature is another. Whether or not that means that there needs to be a removal of the term 'Assembly' from the Government's name is for other people to decide.

[257] **The Presiding Officer:** We are grateful for your professional advice, as always. Jocelyn?

[258] **Jocelyn Davies:** The White Paper is obviously about more than just the split in the corporate body, and you are well ahead of the Bill in that regard because you have already decided that you will make that distinction. It is quite complex in some areas, and it will be difficult, and a challenge, for you to explain that to the public, and not just to the knowledge rich but to the knowledge poor. How do you intend to set about explaining this White Paper to the people of Wales?

**Mr Ahir:** At the outset, well ahead of publication, as a broadcaster, we did plenty to outline what may or may not come in this document. Now that it is here, a lot of what was discussed on our programmes is in this document. A lot of the stuff has been outlined. As a broadcaster and a team, we work both at Westminster and at the Assembly. We have reported at both ends of the M4 corridor in terms of the opinions and the stuff that was going on. Now that the document is here, I think that it is fairly clear that, however you read it, there will be greater powers for this place. There will be a clearer distinction between the institution and the Executive. We need to keep reinforcing that during the process of the White Paper becoming a Bill and the debates that follow.

12.30 p.m.

As a broadcaster, our primary function is to explain what is in the White Paper and what it could mean in the short term. However, obviously it is only a White Paper, and we will see what happens when the Bill comes into being, and if an Act is passed. With regard to what we are doing, we would not argue a case one way or the other. That is not our role. In the BBC, we will just explain what is being put forward.

[259] **Jocelyn Davies:** It will probably be quite a challenge to explain the Orders in Council. Most people will not even have heard of an Order in Council.

**Mr Ahir:** That is the point, but that is what the White Paper says. It is a bit difficult to explain what Orders in Council are, even to politicians. All the public need to know is that there will be a mechanism by which powers can be transferred easily, if that is the case. That is the shorthand that we are trying to use.

[260] **Jocelyn Davies:** As we have heard from some witnesses, it could amount to what most people would regard as primary legislative powers—although the lawyers would argue about the definition of that—without needing to legislate for a Welsh Parliament.

When we visited Scotland, we discovered that the timing of the First Minister's questions was changed to accommodate the media. They wanted it at midday, rather than in the afternoon, so that they could report it at lunchtime. Do you have any views on the practical organisation of committees and questions? You might not be asked again, so I am asking now. This is your opportunity. If we moved things around, would it be better for you?

**Mr Ahir:** We changed our schedules around to accommodate First Minister's questions live a couple of years ago. We changed the time of *AM.PM* on Tuesdays to start at 2 p.m. so that we could carry it live. I would have to talk to our schedulers to see what would happen at 12 p.m. on a Tuesday or Thursday. Obviously, we could not do Wednesdays, because that would clash with Prime Minister's question time. Tuesdays and Thursdays at midday may not be a

bad time for us to transmit a programme. However, it depends on what else BBC 2 across the UK is showing at that time. We have worked out quite a nice slot between 2 p.m. and 3 p.m. on Tuesdays. However, if moving it meant that we could report it better on the lunchtime news on a Tuesday, I am sure that we could look into it.

[261] **Lorraine Barrett:** To be honest, most of what I wanted to ask has been asked. I want to make the point of how irritating it is to all of us that UK national reporting, on all channels, will state that the education secretary has said that something is going to be implemented in all schools, without reference to the fact that it would be only in England. I often scream at the television.

[262] **The Presiding Officer:** We have often done it two years before, thanks to our Ministers, which makes it even more annoying.

[263] **Lorraine Barrett:** That is right. I go along with everything that has been asked, and I am grateful for your response. The digital age will be presenting you, as a public service broadcaster, with even more challenges in helping us to get the message out to the people of Wales about these changes and how it will work. Do you have anything to say about that? Everything else that I wanted to ask has been asked.

**Mr Ahir:** In the first instance, the only thing that I can think of is whether we would increase our coverage of daily proceedings, if there were more committees and sittings on Mondays. We must look at that in conjunction with S4C, which owns the multiplex on which we broadcast the live coverage.

[264] **Carl Sargeant:** Thank you for coming. You have made some very interesting points, but we need to clarify some, if I may, Chair. When we talk about the Welsh Assembly Government and the Assembly, people, even in north Wales, where I live and where the Assembly perhaps does not have such a high profile as it has in some areas, know that it is based in Cardiff and know what we do. I cannot think of anybody—and certainly not people in Asda in Queensferry—other than those of us in the room, and some of this morning's witnesses who would know what this was about if they heard anyone talking about the White Paper or its impacts.

It is increasingly difficult to sell the Assembly or politics in any way. When will the big bang for the White Paper happen and how will you sell that? There will be a point when it will be meaningful for Mr or Mrs Jones in Shotton. Up until then, it is significant to us, but it may not be as significant to the general public. So, how will you sell that point, and what will be the most important and sellable point of the White Paper?

**Mr Ahir:** We had this situation when the document was published, in a sense. People asked what difference it would make even if it went through in its simplest form, what do Orders in Council mean, what kinds of things could come through council? That is the tipping point. The point is when something is granted through council quickly and efficiently, and people say, 'It was worth doing that' and say that they are glad that the Assembly, or the Assembly Government—whichever they want to refer to it as—is doing that, and ask whether it is a new law and find that it does not need to be a new law. That is the tipping point. Until everything is in place and we have an Act, that cannot happen. It is important for politicians across the board, in terms of the political background, to really get across to their public, as much as we do to our audiences, what that will mean in practical terms and the kind of things that could happen if this stuff became an Act. We can only do so much because we reflect back the political arena. We search out and try to examine the political structures and ask what has not been looked at.

I believe that you had representatives from the Institute of Welsh Affairs here today. Think-

tanks are few and far between in Wales. There are not a lot of ideas floating around in Wales as there are, for example, in Westminster, where you have tonnes of think-tanks throwing things at the media and policy makers. What is important is for us, collectively, journalistically, is to look into what the opportunities are, and it is important that politicians and political parties look at what the opportunities are. When the Government of the day, whatever name you give it, comes forward and says, 'Actually, we have asked for these Orders in Council and it means that we are going to do this within six months or a year', that makes things newsworthy and interesting to your person in Asda in Queensferry. However, until that point comes, I am not sure how people, in Queensferry or wherever, will get a greater understanding of what is going through. It is one for us to mull over, but, at the forefront of what we are trying to do is say, 'Okay—simplicity—you are not going to get a St David's Day holiday out of this by the look of things, but you might get something else to do with tourism', for example.

[265] **Jane Hutt:** I will briefly follow that through. There is an opportunity now to explain that we have more powers in relation to decisions about smoking in enclosed public places. That is a very clear example of where we have a piece of framework legislation, namely the Health Improvement and Protection Bill, to which we have given extensive consideration, and on which we have taken evidence, through our cross-party group, in terms of what policies we would like in Wales. It is about having powers for a purpose—I used that expression earlier on today—and having tools for the job and giving examples, and that is a very clear example that we can use now to show that what that means is that Wales can do what it wants to do, even though that might be different to English policy, on the back of a Bill and a piece of legislation.

[266] **The Presiding Officer:** Thank you very much. That is the end of our public session.

*Daeth rhan gyhoeddus y cyfarfod i ben am 12.39 p.m.  
The public part of the meeting ended at 12.39 p.m.*