

**EVIDENCE TO THE COMMITTEE ON THE BETTER GOVERNANCE FOR
WALES WHITE PAPER**

6 July 2005

Dr John Marek, Chair of House Committee and Deputy Presiding Officer

Background

1. Standing Order 18 contains the terms of reference of the House Committee, the relevant part is attached as **Annex 1**. The House Committee's representations in respect of the content of the White Paper prior to its publication are attached as **Annex 2**. The Chair's correspondence with the First Minister and the Secretaries of State for Wales and for Constitutional Affairs is attached as **Annex 3**.
2. This evidence will concentrate upon those elements of the White Paper's proposals of particular relevance to the House Committee's functions, and will deal with relevant areas where the White Paper is silent.

The New Corporate Body

3. The White Paper is silent as to the form the Assembly's corporate body may take. Some form of incorporation will be necessary to allow the Assembly to hold property, employ staff and enter into contracts and other legal relationships. The House Committee believes that the new legislation should contain provision similar to that in the Scotland Act 1998 Section 21. This states that "*There shall be a body corporate to be known as "The Scottish Parliamentary Corporate Body" ...to perform the functions conferred on the corporation by virtue of this Act or any other enactment*". This body would replace and perform the functions of the current House Committee, together with other functions as the Assembly sees fit.
4. Section 21 and Schedule 2 of the Scotland Act go on to set out, in general terms, the role of the Corporate Body and its relationship with the Assembly as a whole. These provisions are enabling in nature and widely drafted. In particular, Schedule 2 of the Scotland Act provides that "The corporation may determine its own procedure"¹ and allows it to delegate functions to either the Presiding Officer or the Clerk². Currently, House Committee may formally delegate only to the Clerk.
5. The Assembly's corporate body should be placed in the best position to secure effective and flexible support for the Assembly, whilst allowing the Assembly to govern its own internal affairs without further reference to Westminster.

¹ Scotland Act 1998 Schedule 2 Paragraph 6(2)

² Scotland Act 1998 Schedule 2 Paragraph 5

Financial Arrangements

6. Paragraph 2.18 of the White Paper outlines the proposals for determining and allocating the resources of the Assembly. The Committee does not take issue with these proposals, but believes that the arrangements for the distribution of the Welsh Consolidated Fund should be similar to those in place in Scotland. The Assembly Corporate Body would then be in a position to prepare its draft budget and open it to whatever form of scrutiny and approval the Assembly determines (in Scotland, this is by way of a Finance Committee). The other calls on the budget, including that of the Government, are dealt with in the same way in Scotland. The Assembly would consider and approve the budgets.
7. It would be helpful to have a specific power for the Corporate Body to charge for goods or services, invest and borrow (the latter subject to the Assembly's approval). This would allow it to function more effectively, and is similar to the powers of the Corporate Body in Scotland.³

Members' Salaries, Allowances and Pensions

8. The House Committee has responsibility for making recommendations to the Assembly on this matter. The current statutory scheme for Members' salaries and allowances is broadly satisfactory. In framing the new legislation, care should be taken to allow the Assembly to continue to change the Members' pensions scheme, as in Scotland, due to an omission in the Scotland Act, the Westminster Parliament is the only body competent to change the scheme.

Assembly Staff

9. The White Paper proposes that the Assembly, as the legislature and scrutiny body, will employ its own staff (currently the APS) who will no longer be civil servants. The Assembly "would be expected to maintain terms and conditions for staff broadly comparable to those applying to Assembly Government civil servants"⁴. The staff would have continued membership of the Civil Service Pension Scheme. These proposals are welcomed.
10. We believe that APS staff should have terms and conditions aspiring to those of other legislatures elsewhere within the United Kingdom and are at least equivalent to those of the Civil Servants working for the Welsh Assembly Government. However, to allow the Assembly to recruit and retain staff more effectively, it may be necessary to offer

³ Scotland Act 1998 Schedule 2 Paragraph 4

⁴ Better Governance for Wales Paragraph 2.20

different terms to staff of the Assembly post-separation, in order to reflect the constraints of working in a parliamentary environment.

11. The Committee believes that the new Corporate Body should have the authority to arrange for the appointment of staff solely on merit, following open competition. This would allow the potential for freedom of interchange between APS and Welsh Assembly Government staff, which will be necessary to maintain individual career development and a good spread of experience.
12. In Scotland, the position of the Clerk is recognised in statute, and it would appear to be appropriate to recognise this position in Wales also.⁵

Support for the Legislature

13. The House Committee supports the ability of Members to pass or to reject the legislation proposed by the Welsh executive. The Committee is responsible for making sure that Members have the facilities and support to enable them to scrutinise, amend and challenge legislation, and would like to understand fully the nature and extent of the facilities required. The White Paper is not entirely clear in this area, my views on this are as follows.
14. The Assembly should have the ability to set its own procedures in terms of how it addresses legislation, building upon the six years' experience of its Members and staff. There should be scope within the legislation for the Assembly to decide how and to what extent it should produce, consider and scrutinise legislation, including the ability to propose amendments in Committee.
15. In particular, Assembly Members should retain the ability to produce "private bills", the current Assembly Standing Order 31 procedures allow this at present, and the ability of the ordinary Member to propose legislation should be enhanced in parallel to the enhancements in the devolution process proposed by the White Paper. There may also be scope for the legislation to allow the Assembly to take ownership of "Private Bill" type provisions which are private in nature and which relate only to land or property in Wales.
16. To secure the best support for Members in this context, the Assembly Corporate Body will need to ensure that properly experienced staff are in place in advance of the legislation.

Support for Committees

17. The House Committee is responsible for the support given to Members in their Committee roles and is aware that the restrictive nature of the

⁵ Scotland Act 1998 Section 20

Government of Wales Act 1998 has caused difficulties in providing the most effective scrutiny, particularly in Subject Committees. The Committee therefore welcomes the proposal that the Assembly will be free to make its own arrangements for Committees.

18. I find it surprising that the White Paper contains the suggestion that there will be a legislative requirement for the Assembly to have an Audit Committee, on the basis that in my view it is inconceivable that the Assembly would not appoint such a Committee. It seems to be unnecessarily prescriptive to require such a Committee, especially as the Scotland Act does not appear to include such a requirement, nor do the provisions in respect of local government in Wales. I am in favour of a strong audit committee, but believe that the Assembly should be able to provide for this itself.

Assembly Standing Orders

19. Being aware of the individual knowledge and experience of Members and responsible for the provision of experienced staff who advise Members on the content and interpretation of Standing Orders, the Committee supports the proposal to remove most of the restrictions and requirements in respect of Standing Orders from the legislation. This will allow those who have the greatest knowledge of the operation of Assembly procedures, the Members themselves and those who support them, to determine their own procedures.
20. The Committee does not, therefore, support the White Paper proposal that the Secretary of State should make the Standing Orders of the new Assembly, with advice from an advisory committee. It believes that the Assembly itself, with its six years experience of working with its standing orders and supported by its experienced staff, is the only body capable of making rules to govern its proceedings.

Terms of Reference of the House Committee – Standing Order 18

The House Committee has delegated authority from the Assembly to discharge the following functions, as set out in Assembly Standing Order 18:-

18.2 Subject to the following provisions of this Standing Order, the Committee is responsible for:

- (i) the provision to and for Members (including when acting in proceedings of the Assembly) of facilities, accommodation, staff and such other support services as are reasonably necessary for the better performance by Members of their position as Members of the Assembly, including in its capacity as a legislative body;*
- (ii) the provision of translation services between English and Welsh for proceedings of the Assembly;*
- (iii) the preparation of guidance to Members on matters within the Committee's responsibilities;*
- (iv) the provision of advice to the Assembly on matters relating to its terms of reference and to Members' salaries, allowances and pensions;*
- (v) the preparation of a draft budget for the expenditure to be incurred by it and for the administration of the approved budget; and*
- (vi) the provision of such other services to and for Members of a similar nature to those described above including responsibility for any extension to the building where the Assembly normally meets in plenary, as the Assembly may from time to time authorise by resolution in plenary.*

18.3 Nothing in Standing Order 18.2 shall make it part of the Committee's terms of reference to have responsibility:

- (i) in any field in which the Assembly has functions (within the meaning of section 57 of the Act); or*
- (ii) in respect of proceedings of the Assembly Cabinet*

House Committee representations prior to the publication of the White Paper

In considering its views upon matters likely to be included in the White Paper, the House Committee resolved on 19 April 2005 as follows:-

Members agreed that the House Committee should be consulted in detail about any proposals. The Committee further expressed its broad acceptance that the following principles should be contained in any White Paper:

- the Assembly should have the power to pass or to reject the legislation proposed by the Welsh executive;*
- a Welsh Consolidated fund should be created, on the model of the Scottish Consolidated fund, with similar procedures;*
- there should be a mechanism for the dismissal of a Government if Members have no confidence in it;*
- the responsibility for writing the Standing Orders of the new Assembly should be the responsibility of Members of the current Assembly;*
- a statutory National Assembly Commission should be created as a body corporate to provide the property, staff and services required by the Legislature, and to employ its staff;*
- staff of the Legislature should be appointed solely on merit, following open competition; they should have terms and conditions which aspire to those of other legislatures elsewhere within the United Kingdom and are at least equivalent to those of the Civil Service; and should remain within the Principal Civil Service Pension Scheme.*

A majority of Members agreed that the Chair should write immediately to convey the views of the House Committee to the Secretary of State for Wales, the First Minister and the Secretary Of State for Constitutional Affairs.

Correspondence between the Chair of the House Committee and the First Minister, Secretaries of State for Wales and Constitutional Affairs

* The following letter to the First Minister has the same text as those sent to the Secretary of State for Wales and the Secretary of State for Constitutional Affairs

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Rt Hon Rhodri Morgan AM
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21st April 2005

At its meeting this morning the House Committee considered its approach to any White Paper or Bill which follows the Assembly's resolution of 16 March 2005 that there should be a Bill in the next session of Parliament to "abolish the 'corporate body' status of the Assembly and establish a constitutional structure for Wales on traditional Whitehall/Westminster lines, creating a Welsh executive distinct from the Assembly but accountable to it".

The Committee agreed that the following principles should be contained in any White Paper:

- the Assembly should have the power to pass or to reject the legislation proposed by the Welsh executive
- a Welsh Consolidated fund should be created, on the model of the Scottish Consolidated fund, with similar procedures
- there should be a mechanism for the dismissal of a Government if Members have no confidence in it
- the responsibility for writing the Standing Orders of the new Assembly should be the responsibility of Members of the current Assembly

- a statutory National Assembly Commission should be created as a body corporate to provide the property, staff and services required by the Legislature, and to employ its staff
- staff of the Legislature should be appointed solely on merit, following open competition; should have terms and conditions which aspire to those of other legislatures in the United Kingdom and are no worse than those of the Civil Service; and should remain within the Principal Civil Service Pension Scheme.

It was decided that, as Chair of the Committee, I should convey these views to you and to the Secretary of State for Wales and the Secretary of State for Constitutional Affairs and Lord Chancellor

The Committee also decided to press for the full involvement of the House Committee, and of the staff of the Assembly Parliamentary Service, as the separation legislation is developed.

I am copying this letter to Secretary of State for Wales and the Secretary of State for Constitutional Affairs and to the Presiding Officer.

Yours sincerely

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29th April 2005

Dear John

IMPLICATIONS FOR PROPOSALS FOR CHANGE OF CORPORATE STATUS OF THE ASSEMBLY

Thank you for your letter of 21 April giving me the views of the Assembly's House Committee on what should be included in any White Paper which made proposals to change the corporate status of the National Assembly for Wales and create a separate legislature and executive. I understand that you wrote to Charlie Falconer in similar terms and I would be grateful if you would take this letter as a reply from us both.

I can assure you that we will take full account of the points made by the Committee in preparing any White Paper or any legislation that might be proposed. As you know, a White Paper tends to describe the policy without going into the detail of how it will be implemented. In the light of that, I am not sure whether it would be appropriate to discuss the mechanics of funding or of owning property and employing staff in such a document; important as they are, they might be better left for the detail of the legislation.

I am grateful for the Committee's interest and for this helpful contribution to the debate.

Yours

Peter

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15 June 2005

Dear John

You wrote to me on 21 April, setting out the House Committee's preferred approach to the content of the White Paper on devolution. While it was not possible to provide you with a substantive reply to the six matters you raised in advance of its publication, I am pleased to do so now that the White Paper is in the public domain.

The matters raised in your letter are all listed below, with the proposed way of dealing with them in italics:

- **"The Assembly should have the power to pass or to reject the legislation proposed by the Welsh executive"**. *This will certainly be the case in respect of legislation made under the Assembly's new enhanced legislative powers. So far as exercise of the Assembly's existing delegated legislative powers is concerned, these will in future generally be exercised by Ministers, but will be subject to either negative resolution or affirmative resolution procedure.*
- **"A Welsh Consolidated Fund should be created, on the model of the Scottish consolidated fund, with similar procedures"**. *Although the technical term "Consolidated Fund" does not actually appear in the White Paper, we are making provision for the creation of such a Fund in the Bill, together with appropriate procedures based on Scottish and Northern Irish precedents.*
- **"There should be a mechanism for the dismissal of a Government if Members have no confidence in it"**. *There will be appropriate provision in the Bill. There is no specific reference to this in the White Paper, although it is implicit in the description of the new arrangements.*

- **"The responsibility for writing the Standing Orders of the new Assembly should be the responsibility of Members of the current Assembly".** *The White Paper says that the Secretary of State will make the new Standing Orders, with the support of an advisory committee. We may well need to return to this issue.*
- **"A statutory National Assembly Commission should be created as a body corporate to provide the property, staff and services required by the Legislature and to employ its staff".** *We are making provision for this in the Bill, although there is no specific reference in the White Paper to a Commission as such.*
- **"Staff of the Legislature should be appointed solely on merit, following open competition; should have terms and conditions which aspire to those of other legislatures in the United Kingdom and are no worse than those of the Civil Service; and should remain within the Principal Civil Service Pension Scheme".** *Provision for all of this will be in the Bill, and the position is described in general terms in the White Paper.*

I hope this is helpful. There will of course be an opportunity to discuss these matters further when the Secretary of State makes his statement on the White Paper.

I am copying this letter to Peter Hain and to the Presiding Officer.

Yours
Khodri