

**RESPONSE BY RICHARD LIVSEY,  
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to the  
BETTER GOVERNANCE FOR WALES WHITE PAPER.**

**INTRODUCTION.**

The Government has chosen this particular time to review the working of the National Assembly for Wales and make proposals for reform. I welcome the opportunity, as former Leader of the Welsh Liberal Democrats, and as the Party's spokesman on Wales in the House of Lords, to comment on the Governance for Wales White Paper.

We originally proposed a review of the existing legislation in the 1998 Wales Act, which set up the National Assembly. The conclusions of the subsequent all-party Richard Commission set out a template for the National Assembly to become a Parliament with full primary legislative powers, and 80-member Assembly elected by STV, more effective scrutiny of legislation, and a separation of the Cabinet Executive from the Assembly legislature. It must be added that this was aligned to a practical and realistic timetable.

I regard the conclusions of the Richard Commission proposals as entirely the correct procedure to give Wales effective power within the United Kingdom. The report maps out how Wales can achieve its rightful status within the UK. The response from the people of Wales would be far greater national self-confidence, and the creation of a much more dynamic society in Wales.

**COMMENT.**

Frankly, the White Paper "Better Governance for Wales" does not measure up to these objectives. There are no primary legislative powers granted – only some dim and distant possibility of this occurring if subjected to an extraordinary Westminster obstacle course. Power will continue to reside at Westminster. There will remain a 60-member Assembly, so scrutiny will be inadequate. STV is rejected, presumably in favour of closed party lists for elections. I welcome proposals for the separation of the executive from the Assembly legislature but even here, it will place more power in the hands of the executive Ministers by taking it away from the Assembly itself. The issue of a timetable hardly surfaces, and has effectively been kicked into touch.

Briefly, I will comment on three of the main proposals in the White Paper to enlarge upon my comments as above.

## **1. Executive Powers – Corporate Status.**

Clearly, it was a mistake in the 1998 Wales Act to incorporate both Executive and Legislative functions into one corporate body – the National Assembly for Wales. I agree with the conclusion in the White Paper that there should be a clear separation between the Assembly Ministers on the one hand, and on the other, the Assembly itself. This also applies to staffing, with civil servants serving Ministers, and the Assembly having its own separate staff.

However, the Assembly is not able to engage in primary legislation, and further, if the Assembly is to lose its executive functions, then the balance of power will have moved decisively in favour of Ministers. This, combined with inadequate scrutiny powers for Assembly Members, alters the balance between the Assembly and government Ministers. Primary Legislative powers for the Assembly would require an 80-member Assembly, and enable much more legislative scrutiny, as recommended by the Richard Commission.

The overall conclusion must surely be an efficient Assembly Government, called to account by an effective Assembly legislature with the powers and resources to do the job properly.

## **2. Legislative Powers and Legislative Enhancement.**

The advent of devolution for Wales and the creation of a National Assembly has assisted the democratic process and improved accountability.

The Assembly, however, only possesses secondary legislative powers. I have been a spokesman for Wales in the Commons and the Lords for the entire period since Wales achieved its Assembly in 1999. I am dismayed that only six “All-Wales” Bills have passed through Parliament between 1999 and 2005. This, I know, has also been very disappointing for the Assembly, and demonstrates the legislative log-jam at Westminster. In contrast, the 17 England and Wales Bills which have passed through at the same time have highlighted the different priorities in Wales and England. Welsh clauses have littered these Bills, where an “All-Wales” Bill would have been far better. The case has now been made for “All-Wales” Bills, and has been accepted. Primary Legislative powers in the Assembly would, however, produce good Bills, tailored *in Wales for* Wales. Moreover, the throughput of Bills would be much higher, and would meet urgent needs in Wales. In comparison with the new Scottish Parliament, the Welsh Assembly has only been able to pass a fraction of the number of Bills in the same time frame.

A number of issues in the White Paper are proposed to further the legislative process. Enhanced legislative powers are to be given over an undefined period of time. The vehicle employed would be the Assembly’s secondary legislative powers, but these would be subject to veto both by the Government and both Houses of Parliament at Westminster.

Great emphasis has been placed on the use of "Orders in Council" to make new provisions, or to amend, repeal or extend Acts of Parliament within the Assembly's current areas of jurisdiction. Although this would be a useful move forward, it is still subject to the same caveats as secondary legislation, in that Orders in Council can be rejected at Westminster. One does not have to use much imagination to envisage the impact of rejection of legislation by an unsympathetic Westminster government on public opinion in Wales!

Reference is also made to the Assembly being given in the "long term" (undefined) general powers to make Primary Legislation in those areas where functions have already been devolved. This would be subject to a referendum. The reason for this appears to be that the Government thinks that there is no consensus on this in Wales at present. Yet opinion polls in Wales in the past 12 months unequivocally favour the granting of Primary Legislative powers for the National Assembly. The real reason for the rejection of the Primary Legislative proposals in the Richard Commission report is clearly a result of differences of opinion on the issue by Welsh Labour MPs in Westminster.

### **3. Electoral System.**

There appears to be no desire in some quarters to discuss the proposed electoral system. The Richard Commission was clear in proposing an STV system of election. I believe that two Members should be elected per Welsh constituency by STV. This would provide choice and election by the majority of electors.

The proposal for a combination of First Past the Post, and a closed Regional list, even with different candidates in each category, does not fulfil the advantages of an STV system operating in existing constituencies.

### **CONCLUSION.**

The proposals in the White Paper do move matters forward, but eventually are likely to result in deadlock and dissent between the National Assembly and Westminster. Ultimately, this will fan the flames of Welsh Nationalism.

There will never be a better time to reform the Assembly and replace it with a Parliament similar to the Scottish model. I think that MPs should show far more vision and realise that the granting of Primary Legislation to the Assembly does not undermine their roles. They would have a choice of standing for the Assembly, or concentrating on the affairs of the UK State at Westminster. Surely, there is plenty of scope in Foreign Affairs, the Treasury, Defence and other areas of the state to carve out a Parliamentary career.

There will be a vibrant alternative in the Assembly with Parliamentary powers. This will provide a clear and strong Welsh voice with an effective Welsh Parliament.

There may be fewer Welsh MPs in Westminster, but more power would reside in Wales for the benefit of all our people. The reduction in the number of Welsh MPs should not occur unless and until Primary Legislative powers are vested in the Assembly. The post of Secretary of State must remain right through the establishment of Primary powers. The two issues of Block Grant negotiations and the reform of the Barnett Formula make it imperative that the position of Secretary of State for Wales continues. A possible review of this position would only be made if these two latter issues become resolved.

The model of democratic governance proposed in this White Paper is an unsustainable compromise, and would perpetuate the production of hybrid England and Wales Bills. There may be a modest increase in "All-Wales" Bills, but the reality would result in the Assembly being unable to produce clear, coherent legislation for Wales. The original 1998 Wales Act was a compromise; these proposals incorporate yet another. Time is not on our side, and Wales deserves better!

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**HOUSE of LORDS,**

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