



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

6/7/2016

Agenda'r Cyfarfod

Meeting Agenda

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Michelle Brown Bywgraffiad Biography	UKIP Cymru UKIP Wales
Yr Arglwydd / Lord Dafydd Elis-Thomas Bywgraffiad Biography	Plaid Cymru The Party of Wales
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Adrian Crompton	Cyfarwyddwr Busnes y Cynulliad, Comisiwn y Cynulliad Director of Assembly Business, Assembly Commission
Elin Jones Bywgraffiad Biography	Aelod Cynulliad, Plaid Cymru (y Llywydd) Assembly Member, the Party of Wales (the Presiding Officer)
Elisabeth Jones	Cyfarwyddwr Gwasanaethau Cyfreithiol, Comisiwn y Cynulliad Director of Legal Services, Assembly Commission

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Naomi Stocks	Ail Glerc Second Clerk

Dr Alys Thomas Y Gwasanaeth Ymchwil
Research Service

Gareth Williams Clerc
Clerk

*Dechreuodd y cyfarfod am 11:00.
The meeting began at 11:00.*

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant Introduction, Apologies, Substitutions and Declarations of Interest

[1] **Huw Irranca-Davies:** Welcome to this session of the Constitutional and Legislative Affairs Committee on 6 July. Just a couple of normal housekeeping announcements first of all. We're not expecting a fire alarm but if there is a fire alarm, we know where the exits are here. Could you make sure that all mobile phones are switched to 'silent' please, or switched off? And, of course, we have translation facilities here for anybody should they want to avail themselves of it. Interpretation is available on channel 1 and verbatim is on channel 0. We've no apologies; we have a full turnout here.

Offerynnau Nad Ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reol Sefydlog 21.2 neu 21.3 Instruments that Raise No Reporting Issues under Standing Order 21.2 or 21.3

[2] **Huw Irranca-Davies:** So, if we could move swiftly to item number 2, statutory instruments. We have three statutory instruments in front of us with clear reports under item 2: the European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016; the Waste (Meaning of Recovery) (Miscellaneous Amendments) (Wales) Regulations 2016; and the Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2016. They all have clear reports, but if the committee doesn't mind, I just want to turn briefly to Gwyn; you wanted to make some observations on this.

[3] **Mr Griffiths:** Diolch, **Mr Griffiths:** Thank you, Chair. There Gadeirydd. Mae yna gwpwl o are a couple of general points that I bwyntiau cyffredinol hoffwn i dynnu would like to draw to the sylw'r pwyllgor atynt, gan eu bod committee's attention, as they are

nhw yn bethau sy'n mynd i godi dro ar ôl tro ynghylch deddfwriaeth o'r math yma. Mae'r tri offeryn sydd o'ch blaen chi y bore yma yn ymwneud â deddfwriaeth Ewrop, ac felly mae yna ddau bwynt yn codi. Y pŵer sy'n cael ei ddefnyddio yn y tri achos ydy adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972, sydd yn rhoi dewis o weithdrefn i'r Llywodraeth. Mae'r tri offeryn yma wedi eu gwneud o dan y weithdrefn negyddol, ond mae dewis i'r Llywodraeth a ydyn nhw'n defnyddio y weithdrefn gadarnhaol. Felly, mae angen cadw golwg ar a ydy'r dewis sy'n cael ei wneud yn rhywbeth priodol. Yn yr achos yma, byddwn yn dweud ei fod o oherwydd y cyfan maen nhw'n wneud ydy diweddarau croesgyfeiriadau a rhoi ar waith rheoliadau Ewropeaidd, sydd felly yn weithredol yn uniongyrchol. Ond mae angen trefniadau ar gyfer gorfodi, ac yn y blaen, ac felly dyma sydd yma.

[4] Yr ail bwynt roeddwn i am ei godi ydy'r ffaith bod paragraff 1(a) o Atodlen 2 i'r Ddeddf Ewropeaidd yn caniatáu cyfeirio at ddeddfwriaeth fel y'i diwygir o dro i dro—y cyfeiriad *ambulatory*. Nid yw'r Llywodraeth wedi dewis defnyddio'r pŵer hwnnw yn yr achosion yma, a'r rheswm dros beidio â gwneud hynny fyddai efallai y byddai diwygiadau canlyniadol eu hangen yn sgil newidiadau pellach mewn deddfwriaeth Ewrop, ond hefyd fyddai yna ddim cyfle i ailedrych ar sgrïwtineiddio is-ddeddfwriaeth pellach petaen nhw wedi dewis

issues that will arise time and again in terms of legislation of this kind. The three Instruments before you this morning relate to European legislation, and therefore there are two points arising. The power used in the three cases is section 2(2) of the European Communities Act 1972, which provides an option in terms of procedure for Government. These three instruments were made under the negative procedure, but there is an option for the Government as to whether they use the affirmative procedure instead. Therefore, we do need to keep an eye as to whether the choice made is appropriate. In this case, I would say that it is, because all these instruments do is to update cross-references and to implement European regulations, which is therefore applicable directly. But we do need enforcement powers, and so on, and so this is what we have here.

The second point that I wanted to raise is the fact that paragraph 1(a) of Schedule 2 of the European Act that I mentioned does allow reference to legislation as amended from time to time—it's an ambulatory reference. The Government hasn't chosen to use this power in these cases, and the reason for that would be that perhaps consequential amendments may be needed in light of further changes to European legislation, but also there would be no opportunity to review and scrutinise further subordinate

defnyddio'r pŵer hwnnw.

legislation had they chosen to use that power.

[5] Felly, roeddwn i jest am dynnu'r rheini i'ch sylw chi fel materion sydd yn debyg o godi o dro i dro fel mae'r pwyllgor yma yn mynd drwy ei waith ar is-ddeddfwriaeth. So, I just wanted to highlight those issues as issues that are likely to come up from time to time as we go through our work on subordinate legislation.

[6] **Huw Irranca-Davies:** Thank you. But you're content that these are in order.

[7] **Mr Griffiths:** Yes.

[8] **Huw Irranca-Davies:** Any observations or comments from committee members? If not, we note those papers.

11:03

Papurau i'w Nodi Papers to Note

[9] **Huw Irranca-Davies:** We can move on to paper number 2 under item number 3, which is papers to note that have come in over the last few days. They're within your papers in front of you, and some of them have been circulated. A letter from the Presiding Officer to the Chair regarding the appointment as committee Chair—this is quite helpful because it may allow us to revisit the issues raised in this letter about ways of working as a committee and potential subject inquiries, but I think we can turn our attention to that at the start of the autumn term. We'll discuss that amongst ourselves how we take that forward, but it's very helpful advice within that letter. Paper 3: a letter from the Presiding Officer to the Secretary of State for Wales regarding her proposed amendments for 5 July and the Wales Bill; a letter from the Presiding Officer to all Welsh Members of Parliament regarding proposed amendments to the Wales Bill on 30 June; and a briefing on the Presiding Officer's proposed amendments for day 1 consideration of the Wales Bill. All of these, of course, are relevant to the Presiding Officer's appearance in front of us this morning. Are you content to note those? Thank you to all the committee members.

11:04

Tystiolaeth mewn Perthynas â Bil Cymru
Evidence in Relation to the Wales Bill

[10] **Huw Irranca-Davies:** We can now move to the substantive item of the morning and of this session, which is item 3, evidence in relation to the Wales Bill. Diolch, Lywydd. Thank you, Presiding Officer. It's a delight to have you here in front of us and thank you for sparing the time. Would you like to simply introduce your two colleagues to us, please?

[11] **Y Llywydd:** Ie, diolch yn fawr, **The Presiding Officer:** Yes, thank you Gadeirydd. Y bore yma, rwy'n cael very much, Chair. This morning, I'm cwmni Elisabeth Jones, sydd yn brif joined by Elisabeth Jones, who is the gynghorydd cyfreithiol i'r Comisiwn, lead legal adviser to the Commission ac Adrian Crompton, sydd yn un o and Adrian Crompton, who is one of the gyfarwyddwyr y Comisiwn. Fe fyddaf the directors of the Commission. I i'n ddibynnol arnyn nhw am dipyn o'r will be dependent on them for a manylion wrth inni fynd ymlaen yn great deal of the detail as we ein cyfnod sgrwtini y bore yma, continue the scrutiny process this mae'n siŵr. morning.

[12] **Huw Irranca-Davies:** Thank you very much. You're all very, very welcome. I wonder, Presiding Officer, whether you'd like to begin for us by making any opening remarks about your own role as Presiding Officer in the scrutiny of this Bill; how you perceive that role, and, interestingly, your aims in publishing proposed amendments to the Bill. That's quite significant.

[13] **Y Llywydd:** Ychydig o sylwadau **The Presiding Officer:** A few opening wrth gychwyn ar y sesiwn sgrwtini remarks at the outset of this scrutiny yma. Mae'n amlwg bod yna rywfaint session. It's clear that there's been o gynnydd wedi'i wneud o'r Mesur some progress made in terms of the drafft Cymru, ond mae'n glir i fi bod the draft Bill, but it's clear to me that yna waith pellach i'w wneud ar y there is further work to be done on Mesur sydd o'n blaenau ni nawr i the Bill before us now to turn that Bill droi'r Mesur hwnnw'n setliad sy'n fwy into a settlement that is more ymarferol ac yn fwy eglur i ni i gyd. practical and clear for us all.

[14] Mae'r amserlen sgrwtini yn The scrutiny timetable is tight, as dynn, fel rŷch chi, fel pwyllgor, yn you, as a committee, will be very ymwybodol iawn ohono. Rwy'n aware. I appreciate very much that gwerthfawrogi'n fawr eich bod chi you have gone about your work with

wedi bwrw at eich gwaith gyda a great deal of eagerness from the
brwdfrydedd o'r cychwyn. Wrth gwrs, very beginning. Of course, the
mae'r amserlen yn arbennig o dynn timetable is very tight in the House of
yn Nhŷ'r Cyffredin ar hyn o bryd. Commons at the moment. That is
Dyna pam rwyf i wedi ceisio, fel why I, as Presiding Officer, have tried
Llywydd, o'r cychwyn, gyfathrebu from the very beginning to
gyda'r Ysgrifennydd Gwladol o ran communicate with the Secretary of
rhai o'n sylwadau a'n safbwyntiau State with regard to some of our
cynnar wrth weld y Mesur yn cael ei early comments in seeing the Bill
gyhoeddi, ac i wneud hynny mewn being published, and to do that in a
ffordd mor ymarferol â phosib trwy way that's as practical as possible by
gyfrannu, wedyn, at gyhoeddi contributing, then, to publishing
gwelliannau penodol a fydd o specific amendments that would be
gymorth i Aelodau Seneddol ac i Dŷ'r of assistance to Members of
Arglwyddi yn y pen draw wrth iddyn Parliament and to the House of Lords
nhw fynd ati i sgrwtineiddio'r Mesur ultimately as they go about
yma, ac i sicrhau bod y Mesur yn cael scrutinising this Bill, and to ensure
ei gryfhau ac yn cael ei wneud yn fwy that the Bill is strengthened and is
eglur ac yn fwy ymarferol i ni, fel made clearer and more practical for
Cynulliad, ac i fi fel Llywydd a'r us, as an Assembly, and to me as
Comisiwn yma i weithredu maes o Presiding Officer and the Commission
law. here to implement in due course.

[15] **Huw Irranca-Davies:** I think that's very helpful. You're stressing there the constructive role both of your office, as Presiding Officer, but also of the institution we have here in assisting the scrutiny. But, it is an interesting dynamic that we don't have a direct in to putting forward amendments; it's suggesting amendments, suggesting improvements and hoping that they are taken up.

[16] **The Presiding Officer:** It is an unusual approach to scrutiny; it is indirect, as you say, so, as Presiding Officer, and in the amendments I've published—they are available to the Government, to the Secretary of State, of course, and they are also available to Members of the House of Commons and the House of Lords to be pursued should they choose to do so. So, that is the indirect nature of my ability to provide suggestions to both those Houses and Members, and I'm pleased that many of the amendments were taken up and were tabled by Members of Parliament and discussed yesterday in the first committee session in the House of Commons.

[17] **Huw Irranca-Davies:** Very good. As you know, we're hopeful, still, of

the Secretary of State perhaps accepting our still-extended invitation to come in front of us, because we think we also can play a constructive role in providing the evidence that we've heard already and perhaps suggesting some improvements, as well, some of which may echo with yours. But, just as a final comment before we open it up wider to the committee, how do you regard the Bill as it currently stands, as it progresses? Is it an improvement from where we are? Are there any dangers in it as it currently is?

[18] **The Presiding Officer:** I accept that it is an improvement on where we were with the draft Bill. Whether it is an improvement or whether it has some dangers within it in terms of where we are as a National Assembly, now, in our ability to legislate, I think there are matters of detail where there are some inherent dangers in powers being rolled back and in competence being rolled back, and we may come to that detail as we go on, because I do have concerns on some aspects of competence being rolled back.

[19] **Huw Irranca-Davies:** I said there was—sorry, David, I'm going to come to you in a second. But do you think this Bill provides greater clarity than where we currently are?

[20] **The Presiding Officer:** I think it could be even clearer. It has the potential to be a clearer settlement; we're not quite there yet with the Bill in front of us, and I think there is an ability to amend this current Bill to make it a clearer settlement for us as a National Assembly.

[21] **Huw Irranca-Davies:** Potential.

[22] **The Presiding Officer:** Potential.

[23] **Huw Irranca-Davies:** We had one witness in front of us who suggested this might be a D-, but it does have potential. I'm not going to ask you for a score, don't worry. David.

[24] **David Melding:** Bore da, Lywydd. I want to ask what your views are about clause 1, related to the permanence of the Assembly. You've suggested an interesting amendment to actually move this to Part 1 of the 2006 Act; it currently appears in Part 2. Is that because, you know, you and your advisers think that a declaratory statement really has to come at the head of an Act rather than halfway through it? Why is that really an amendment that would strengthen that statement, which, of course, carries no ultimate force, but most witnesses have said they think it's useful to have

it there, nevertheless?

[25] **The Presiding Officer:** The simple answer is ‘yes’. I welcome the declaratory statement that recognises the permanence, in as much as it is only a declaratory statement, and it is—is the correct word ‘presentational’ in terms of—? It would be better located as a declaratory statement of this nature at the start of the Government of Wales Act. That’s the reasoning behind this particular amendment. Elisabeth, I don’t know whether you want to add anything on that.

[26] **Ms Jones:** The only thing I would add, Llywydd, is that we also felt that it was not entirely constitutionally appropriate for the clause to, to speak colloquially, lump together the Assembly—the legislature—and the Welsh Government. We thought it was more constitutionally appropriate to separate those two out, with separate commitments, to use the Bill’s language, to each of those and place them in the appropriate Part of the Bill. The Llywydd recognises that the approach taken in the Bill is the approach taken in the Scotland Act 2016, but we have no reason to follow the approach taken in relation to Scotland if we don’t feel that it is the most appropriate constitutional approach.

[27] **Mr Crompton:** The approach we’ve suggested is taken would be consistent with the much maligned draft Bill, which was published last year.

[28] **David Melding:** Now that’s—I’m not sure we’ve picked up much where it’s actually worse than the draft Bill. That might be a point to bear in mind.

[29] **Huw Irranca-Davies:** Yes, that’s fascinating.

[30] **David Melding:** Okay, and then clause 2 states Parliament will not normally legislate on devolved matters, and you are very exercised by the word ‘normal’ because you think it could be interpreted broadly. Is that over-anxiety or are there indications it might be?

[31] **The Presiding Officer:** Well, I’m not naturally over-anxious as a person, but I think it’s clearer, if we are to address this legislative consent clause with the ability of Parliament to only legislate in exceptional circumstances, and then we outline what those would be. As I said at the start, I am seeking greater clarity for the National Assembly from this legislation, and I believe that this amendment provides that greater clarity of what ‘exceptional circumstances’ would be rather than the use of ‘normally’,

which is open to interpretation.

11:15

[32] **David Melding:** And you would like, in this case, for us to follow the Scottish wording, is that right, or the wording in the Scotland Act? Have I got that wrong?

[33] **The Presiding Officer:** No, I don't think so. Elisabeth—

[34] **Ms Jones:** No, in fact the wording in the Bill follows the Scottish wording.

[35] **David Melding:** So they use 'normally' as well.

[36] **Ms Jones:** Yes, but, again, the fact that this is being used in legislation in relation to Scotland, in which neither the Llywydd nor the Welsh Government was at the negotiating table, shall we say, with the UK Government, should not in my view bind us in any way in seeking a more appropriate, equal-respect relationship with the UK Parliament.

[37] **Huw Irranca-Davies:** If I could add to that, does it cause any difficulties, the way that it's worded within the Scotland Bill?

[38] **Ms Jones:** Of course, the Scotland Act 2016 is very recent, so we don't know yet how that will play out in practice. It's true that the wording in the Scotland Act 2016—what was the Scotland Bill until recently—reflects—. The word 'normally' appears in the non-statutory convention that previously governed relationships between the Scottish Parliament and the UK Parliament, and whether that caused difficulties, I don't know. Certainly, we know that, in Wales, there were occasions when the Assembly refused consent to UK Parliamentary legislation on the grounds that that legislation dealt with a devolved matter, and the UK Parliament, or rather the UK Government, took the view that it didn't deal with a devolved matter. So, there was certainly disagreement about that. Although that's not directly about the meaning of the word 'normally', if the understanding is very clear that the UK Parliament will only legislate on devolved matters in exceptional circumstances, and those circumstances are defined, that will necessarily, firstly, increase the care with which the question of whether the UK parliamentary legislation does deal with a devolved matter is addressed, and, secondly, it's simply going to cut down the circumstances in which that will

happen.

[39] **David Melding:** The description of exceptional circumstances that you put in the amendment—if that doesn't come from the Scotland Act, where does it come from? Or is it just your creation?

[40] **Ms Jones:** We looked at legislation and, indeed, international conventions that seek to carve out exceptional circumstances from normal circumstances, if you like, or normal discretion. So, we drew inspiration from the European convention on human rights, the exceptions from freedom of movement in the treaty on the functioning of the European Union, and we also looked at the legislation on civil contingencies in the United Kingdom.

[41] **David Melding:** Thank you.

[42] **Huw Irranca-Davies:** Mr Crompton, you want to add to that.

[43] **Mr Crompton:** The other element of the Llywydd's suggested amendment is also about the breadth of coverage of the application of the clause. So, at the moment it's limited just to matters that are within the competence of the Assembly, but we have suggested that it be broadened to be in line with the view taken by this committee in the last Assembly that consent would be sought if the UK Parliament were also seeking to add functions to the Assembly, or to affect the functions of the Assembly, or to affect the competence of the Assembly.

[44] **David Melding:** Finally on this, I can see how you can argue this is an improvement in terms of it being more rigorous than, say, even the Scotland Act, but do you see any problems with the way 'normally' is interpreted in regard to the Welsh settlement as being more acute than the Scottish settlement? Could it be more troublesome for us than it is for the Scots if the word 'normally' is allowed to remain?

[45] **Ms Jones:** Well, in the sense that, clearly, our settlement is still going to be less generous than the Scottish settlement, if this Bill goes through. Whatever you think about the comparison between the settlement in this Bill and the current settlement, it is definitely going to be less generous than either the Scottish or the Northern Irish settlements, and so that in itself gives more latitude for the UK Parliament to consider legislating normal or not normal.

[46] **David Melding:** Thank you.

[47] **Huw Irranca-Davies:** Before we pass to Michelle, could I simply ask your thoughts, Presiding Officer, or your officials, on the process of getting to the amendment that you've got and how that might work better, because it seems to me, in light of David's further questioning, that you are—your office is—putting forward a suggestion here of a convention around legislating on devolved matters that goes beyond that broad description of 'normal', but you're coming up with it and putting it forward, as opposed to engaging directly with those who are actually drafting the legislation and taking it through. There have been previous iterations of Wales's governance legislation where there has been a very immediate engagement to try and craft together a way forward on various legislative matters.

[48] **The Presiding Officer:** Well, it may be that officers can offer some light on that, but I would say that officials, of course, have been in discussion behind the scenes as much as we are now in discussions openly through correspondence with the Secretary of State and also with publishing suggested amendments. So, it's worked all ways, and it's worked constructively—

[49] **Huw Irranca-Davies:** But you're not actually crafting this together, are you? Sorry, this isn't a criticism of you and your team, but in the process of devising good legislation that affects not only the UK constitutionally, but Wales constitutionally, you're not actually putting this together, together.

[50] **The Presiding Officer:** You're going to get to 'Together Stronger' any minute now, aren't you?

[51] **Huw Irranca-Davies:** You've ruled me out of order already.

[52] **The Presiding Officer:** I'll ask for comments from people who have dealt with this before.

[53] **Mr Crompton:** No, we're not. Elisabeth and I and colleagues have had regular meetings with Welsh Government colleagues and with the Wales Office over the last year. Since the pause on the previous draft Bill, I think it's fair to say the level of engagement has increased and improved, so we're now meeting more or less weekly. The Wales Office has been very helpful to us in opening channels in turn to the Ministry of Justice, the Cabinet Office, and others as well. So, it has been very constructive from that point of view.

It means that we are able, very readily, to explain what's in the pipeline from our perspective and to explain the rationale. But, you're right, it doesn't go one step beyond that to us sitting down and crafting something jointly.

[54] **Ms Jones:** We have discussed, certainly, what we would like to achieve in the Bill in detail and all these points and others with Wales Office and other UK Government officials. As you will know better than most people, drafting of UK legislation is, of course, done by the Office of Parliamentary Counsel, and they're not at the table in these meetings, and they don't tend to like one proposing wording to them. So, it's been more a question of proposing, as I said, what we would like to achieve. I don't think it would be giving any secrets away to say that there are changes to aspects of the Bill where we probably have got quite a long way towards crafting together with the UK Government something that may hopefully come out in the wash at some point in this Bill, and, in other cases, we have been less successful in persuading them of our view. But, if the Llywydd considers that improvements to the Bill in an area are important and should be aired, then we will go ahead and air them anyway.

[55] **Huw Irranca-Davies:** Yes; very good. Lord Dafydd Elis-Thomas wants to come in.

[56] **Lord Elis-Thomas:** Can I just ask Elisabeth Jones—. I thank her for that explanation; we had a similar explanation from the First Minister and Mr Hugh Rawlings, when they were with us, complaining about—well, not complaining, indicating that they were unable to communicate with parliamentary counsel in the way you describe, because parliamentary counsel take orders, usually, from one department in Whitehall, and neither did they think they were experienced in the process of drafting amendments for Members of Parliament as opposed to drafting Government amendments for themselves, and these are the difficulties. But my question is this: this, after all, is the constitution of Wales we are talking about. We are not talking about something that goes on in the secret corridors of Westminster and Whitehall. Therefore, wouldn't it be far more sensible if there was an agreed means of co-legislating between two parliamentary bodies—between the National Assembly and its committees and Parliament and its two Houses and its committees?

[57] **The Presiding Officer:** Well, just as Llywydd and as a new Llywydd, and coming across this reasonably recently, then it strikes me that that would be very much a beneficial way of doing this in future because, as we started off,

it is an unusual route and an indirect route that the Llywydd has to represent the National Assembly now through means of amendments that are at the discretion of individual MPs and Members of the House of Lords as to whether they are discussed even, in reaching the eventual legislation that we will get to. So my view, as a new Llywydd, is surely there should be a better way of doing this than this way.

[58] **Lord Elis-Thomas:** [Inaudible.]—but you indicated this is better than before.

[59] **Mr Crompton:** The openness of the dialogue is definitely an improvement, I would say, but that is about attitude of officials and the brief that we're both working to, but we're a long way, I think, from the model that you've ideally described.

[60] **The Presiding Officer:** And my publishing of the amendments and this process is in no way a challenge to the Secretary of State. You know, it is meant as a constructive way of having an open and public discussion on what the end legislation would be best as in order to ensure that we have a workable, effective, clear settlement that we can get to work and legislate within in the future.

[61] **Lord Elis-Thomas:** If I may, perhaps it is worth putting on record that this did happen once on the second Government of Wales Act when Mr Peter Hain was Secretary of State.

[62] **Huw Irranca-Davies:** Indeed.

[63] **Lord Elis-Thomas:** Just in passing.

[64] **Huw Irranca-Davies:** Whilst you are a new Presiding Officer, I'm a new Chair and it's quite fascinating for me to learn from the more experienced colleagues how it has worked previously; and whilst I was scrabbling around in the foothills there to try and probe at this, I think Lord Dafydd Elis-Thomas has summed it up quite succinctly what arrangement we—

[65] **Lord Elis-Thomas:** It's only because I have a long memory, that's all.

[66] **Huw Irranca-Davies:** Indeed. It's a slight diversion, but it's pertinent to questions we might come to at the end about the durability of this as well and how this goes forward. Michelle, if we can turn to you.

[67] **Michelle Brown:** Thank you. Could I ask you, Presiding Officer, you need to give a view or have to give a view on whether a Bill is within the competence of the Assembly; do you think that the new draft of the Bill is going to make that task easier, harder or longer? What impact, do you think, it's going to have?

[68] **The Presiding Officer:** Well, there is a long list of reservations again, and that will be a pretty complex task, especially in first legislating within this new framework. I think that the biggest concern is the way in which the Assembly competence will be restricted, and the new settlement will have no competence to touch on reserved matters at all. The fact that there is a prohibition from legislating in any way that relates to a reserved matter, and that is an aspect of this Bill that causes us considerable concern in our ability to judge on competence but also to be able to allow legislation that touches both on a reserved and a non-reserved purpose to be within competence in this place. It's certainly a danger that this is a rolling back of powers that we would have seen, and that's why we've offered amendments again to restrict the rollback on this and to allow legislation that touches in an ancillary way on reserved matters. So, we do have significant concerns on the particular clause that prohibits legislating on matters that relate to reserved matters.

11:30

[69] **Huw Irranca-Davies:** Just to direct Members, they were published in hard copy—sorry, they were published yesterday, so we have them in hard copy in front of us, on clause 3. You were indicating that Elisabeth Jones might want to say a few words on these.

[70] **The Presiding Officer:** Yes.

[71] **Ms Jones:** By all means, yes. Essentially, the amendments to clause 3, the key legislative competence provision of the Bill, are designed to take out one of the remaining necessity tests still in the Bill—the necessity test where Welsh legislation, Assembly legislation, touches on England. And, also, to introduce, as the Llywydd said, an ancillary type of competence. And that's purely designed to restore the situation to what it is really under the current settlement, where the Assembly can legislate in a way that relates to conferred subjects and can also legislate in a way that is ancillary to conferred subjects. So, on incidental or consequential matters—matters that enforce our legislation in relation to conferred subjects and matters that

make our legislation in relation to conferred subjects effective. So, we would lose that little bit of breathing room, if you like, that sort of penumbra around the core competence under the proposed settlement, and we think that it would be appropriate to restore that. And, again, I think that's in line with the recommendations of your predecessor committee in the last Assembly.

[72] **Michelle Brown:** Just moving on to the reservations again, certainly when I read the draft Bill and the reservations, I was kind of left with the feeling, 'There's not a great deal left for the Assembly to legislate on'. It seems to me as well that because it's all so complicated, because there's a reservation and then an exception to the reservation, and then there's this statute being referred to, and that statute being referred to, and what happens if those are amended and repealed and things? Will it not cause tension between the Assembly and Westminster, and do you think it will make your role harder in consequence?

[73] **The Presiding Officer:** I think the fact that there isn't a guiding set of principles for the reserved list—that it's just a list with exceptions—that doesn't make the role of the Llywydd's office in deciding on competence—. That doesn't aid it in any way. The fact now that we have, within that reserved list, matters that were previously silent subjects, as I've learnt they are, could be particularly problematic for legislation that Welsh Government or individual Members here may well have had an impression may have been within competence, and we will find, if the Bill goes through, as currently drafted, would probably not be within competence. The obvious example that I can think of is that employment rights are now a reserved matter, and we would be prohibited from legislating in the Assembly on matters that relate to employment rights, and, therefore, if anybody is tempted to offer legislation on wages and holidays and terms for people working in the social care sector for example, that could well be now outside of competence because it relates to employment rights, and that certainly, to me, feels like a rollback of competence and powers. Elisabeth might like to add to that.

[74] **Ms Jones:** I completely agree with what the Llywydd said. Currently, in my view, following the last but one Supreme Court judgment on our current settlement, the Assembly could have legislated on terms and conditions of employment in the social care sector, provided that the purpose of that legislation was to protect the people who were being cared for, to prevent, for instance, social care workers being incentivised, or forced, to cut down the time that they spent with each patient. Whereas it seems to me very clear

that that is not going to be possible under the proposed settlement.

[75] In terms of complexity, and the workability, the operability, of the Llywydd's role, and of course understandability of the settlement for the people of Wales, I do think it is extremely complex. I think the reasons that you gave, the layers of complexity that you outlined, are absolutely the cause of that. Having said that, I have to accept that Scotland has operated a system like this pretty successfully for 16 years. I think that, in terms of the Llywydd, and us advising the Llywydd, we will manage it, we will get through it, and it will be the most difficult initially as we get used to the new system, but we will do it. It is more, really, for the people of Wales that my concern is, that this is, again, another settlement with no guiding principles underpinning it, a huge amount of complexity in the detail, and that is not a healthy situation in a democracy, for people not to understand the system under which they're governed.

[76] **Michelle Brown:** And if I could just ask one more question: what's your view on the proposed transitional arrangements in relation to competence?

[77] **The Presiding Officer:** You wanted to add something before we go on to that.

[78] **Mr Crompton:** Just a very brief point. The complexity of the new settlement will not just be an issue for Welsh Government, or Members in charge of legislation, or for the Llywydd in her judgment, because it will also bite our Members more generally, as you scrutinise legislation. There were several occasions in the last Assembly where judgments on competence were finely balanced, and the Llywydd at the time took the view that, in those sorts of cases, the Assembly should be given the chance to explore that further, and potentially amend the legislation. So, these issues with complexity will bite our Members, generally, as well.

[79] **The Presiding Officer:** In terms of transitional arrangements, then, it will be difficult to run in parallel probably two processes, and we're not completely confident that what we have in the current Bill will not create problems or stall the process of Stage 1 scrutiny, or the introduction of Bills. And we are in discussions with the Wales Office on how we could provide a better way of transitioning from the current settlement to the new settlement, without it putting too much hold on the everyday work of progressing with legislation that's already in the pipeline here.

[80] **Mr Crompton:** I think a problem we have with the Bill at the moment is the part that says a Bill would fall if it had not successfully passed Stage 1. I don't think—well, that clearly would not be acceptable. The Assembly would have started its work on a piece of legislation, the public and other stakeholders would have been heavily involved, and, potentially, the Bill would then fall. At this stage, we've not suggested an amendment to remove that. That's partly because we have had relatively positive signals from the Government that they recognise the difficulty there. So, at the moment, we're keeping our powder dry and hoping that the Government themselves will recognise that that's something that needs to be addressed. But, otherwise, I think we would have to come back to it further down the line.

[81] **Michelle Brown:** Okay, thank you.

[82] **Huw Irranca-Davies:** I have two short questions further to Michelle's line of questioning here. One is, you've given a very good explanation of the rationale behind your amendments on 'ancillary to another provision'—'ancillary to'. You're trying to, if my understanding is correct—let me put it in layperson's terms—put some wriggle room back in there. You're nodding, Elisabeth Jones. [Laughter.] You're nodding, Presiding Officer. We're putting wriggle room back in to what we know currently has been a contested area constitutionally. So, what you're saying is that it's better to have that wriggle room in and look ahead to inevitable areas of contestability between two jurisdictions, than to go forward with the Bill as it is.

[83] **The Presiding Officer:** Yes. I'd prefer a little room for the National Assembly than complete prohibition on legislating on matters that relate to reserved matters, where there is a crossover, of course, with areas that are wholly within our competence, and we would be prohibited from legislating should they touch on reserved matters.

[84] **Huw Irranca-Davies:** It's quite fascinating that, in effect, you're trying to build back in a little bit of wriggle room because this could actually lock doors that were previously open. How much of this—and this is the second part of my question on this, further to Michelle's line of questioning—concern that you have to get this right is to do with the larger scope of reservations that exist within the proposals here, compared to what is in Scotland?

[85] **The Presiding Officer:** I think that that's most definitely true for us in that our ability to legislate will be comparably much less than Scotland's, so

if they are finding that it has not been that problematic in Scotland, that's because the reserved list is—. We're in a different place to Scotland here, so our concern over this prohibition relating to reserved matters is greater here in Wales, I would suggest, than it needs to be Scotland, probably. Elisabeth.

[86] **Ms Jones:** I just wanted to make a pitch for the fact that I don't think we are, in seeking that little bit of extra wriggle room, compromising on clarity there. The former Presiding Officer and the Llywydd have made clarity a big part of their platform, so that little bit of wriggle room that we're arguing for is well defined: 'incidental', 'consequential', 'effectiveness' and 'enforcement'—they are well-understood terms and are fairly specific and narrow, just giving that little bit of wriggle room.

[87] The other thing that I wanted to add was that our concern is both with the list of reservations, as compared to that in Scotland, but also with the list of reservations, as compared to the current settlement, because, as the Llywydd said, what are currently silent subjects have, in many, many cases, been converted into reservations and there we are definitely losing competence. Building in that little bit of wriggle room won't restore that competence; it would only restore part of it; so, again, we're trying to be very reasonable in discussions with the UK Government.

[88] **Huw Irranca-Davies:** That's very helpful, thank you. Lord Dafydd Elis-Thomas.

[89] **Lord Elis-Thomas:** I've got no complaint about wriggling, but the Reverend Professor Thomas Watkin used a slightly more elegant phrase, as he would as a good canon lawyer, as well as a constitutional lawyer: 'gofod i ddeddfu'—'the space to legislate'. I think that's a very important principle.

[90] A gaf fi fynd yn ôl at yr hyn y Mae I return to what the Llywydd, mae'r Llywydd, Elisabeth Jones ac Elisabeth Jones and Adrian Crompton wedi'i ddweud a have said and say how grateful I am dweud pa mor ddiolchgar ydw i am y for the evidence today and especially dystiolaeth yma heddiw ac yn for the draft amendments? Certainly, enwedig am y drafft welliannau? Yn if the Government hasn't changed its sicr, os na fydd y Llywodraeth wedi mind by the further stage in the newid ei meddwl erbyn y cyfnod second house in Parliament, I'm sure, pellach yn yr ail dŷ yn y Senedd, if I can use her name, that Baroness rwy'n sicr y bydd, os caf fi Eluned Morgan and I and several ddefnyddio ei henw hi, y Farwnes others will be very eager to ensure

Eluned Morgan, a minnau a sawl un further amendments.
arall yn awyddus iawn i geisio cael
gwelliannau pellach.

[91] Rydych wedi ateb y cwestiynau You have answered the questions I
yr oeddwn yn mynd i'w gofyn ynglŷn was going to ask about necessity
â'r profion angenrheidrwydd yn tests and so on, and you've
barod, ac wedi pwysleisio bod yna emphasised that there are necessity
brofion angenrheidrwydd yn parhau a tests continuing and that
bod angen gwelliannau i gael gwared amendments are needed to get rid of
â rheini. Ond, fe garwn i ofyn un those. But, I'd like to ask a more
cwestiwn mwy cyffredinol. Rwy'n general question. I see this Bill, and
gweld y Bil yma, ac yn sicr ei certainly its predecessor Bill, as the
ragflaenydd yn waeth felly, fel response of an angry Government to
ymateb Llywodraeth flin i the decision of the Supreme Court. I
benderfyniad y Goruchaf Lys. Nid wyf don't expect the officials or the
yn disgwyl i Lywydd y Cynulliad na'r Llywydd present today to make a
swyddogion deallus sydd yma heddiw comment on what the judges of the
i wneud unrhyw sylw ar beth y mae Supreme Court have said, but it
barnwyr yn y Goruchaf Lys wedi'i appears to me, and Elisabeth made
ddweud, ond mae'n ymddangos i mi, the point very clearly, that there are
ac mi wnaeth Elisabeth y pwynt yn restrictions that have been increased
glir iawn, fod yna gyfyngiadau wedi on the right of the Assembly to
cael eu cynyddu ar hawl y Cynulliad i legislate as compared to the
ddeddfu o'i gymharu â'r sefyllfa yn y arrangements in the previous regime.
drefn flaenorol. Felly, y cwestiwn ydy, So, the question is, to get to it: is it
i ddod ato fo: onid ydy hi'n wir ein not true that we're in a situation now
bod ni mewn sefyllfa, erbyn hyn, lle where the conferred powers with
mae pwerau gosodedig gydag reservations that we had up until now
eithriadau, fel yr oedd gennym ni tan will be overtaken by reserved powers
hyn, yn mynd i gael eu goddiweddid with a list of stricter reservations? So,
gan bwerau wedi'u cadw yn ôl gyda we're in a worse position.
rhestr eithriadau mwy llym? Felly,
rydym ni mewn lle gwaeth.

11:45

[92] **Y Llywydd:** Mae hwnnw'n **The Presiding Officer:** That is a fair
ddehongliad digon teg ac y mae'r interpretation and the example I gave
esiempl a roddais i yng nghynt earlier on those reservations in
ynglŷn â'r testunau sydd wedi cael eu relation to employment rights is an

cadw ar hawliau cyflogaeth yn esiampl o hynny, achos yr eithriad i hynny yw amaethyddiaeth, oherwydd yr achos yn y Goruchaf Lys a'r ddeddfwriaeth sydd eisoes mewn lle. Oni bai am amaethyddiaeth, mae'r holl faes o gyflogaeth nawr wedi cael ei eithrio—wedi cael ei gadw, felly. Oherwydd y cymal sydd yn dweud nad oes gennym ni unrhyw gymhwysedd deddfwriaethol i ddeddfu mewn mater sydd mewn unrhyw ffordd yn gysylltiedig, yna mae hynny'n lleihau ar ein pwerau ni, byddwn i'n dadlau, ac mae yna gysylltiad amlwg yn fanna rhwng y trafodaethau yn y Goruchaf Lys a'r hyn sydd bellach yn y Mesur yma o'n blaenau ni, o bosibl.

[93] **Yr Arglwydd Elis-Thomas:** Diolch. Mae hwnnw'n ateb cystal â'r Athro Thomas Watkin ei hun, buaswn i'n ei ddweud. Diolch yn fawr amdano fo.

[94] A gaf i fynd ymlaen at y cwestiwn rŵan o'r gwelliannau ynglŷn ag awdurdodaeth, a pha un a ydych chi'n sôn am awdurdodaeth benodol neu am awdurdodaeth wahanol i Gymru? Mae'r Ysgrifennydd Gwladol wedi dweud peth digrif iawn, yn fy marn i, sef dweud yn y Trydydd Darlleniad, rwy'n meddwl—yn yr Ail Ddarlleniad yn Nhŷ'r Cyffredin y dywedodd o—y byddai llawer o ddadleuon o blaid awdurdodaeth gyfreithiol wahanedig i Gymru yn diflannu oherwydd y newidiadau yng nghymal 3 ac Atodlen 2. A ydych

example of that, because the exception to that is agriculture, because of the Supreme Court case and the legislation already in place. Apart from agriculture, the whole area of employment rights is now reserved to Westminster. So, because of the clause that states that we have no legislative competence to legislate on issues that are in any way related to that, then that actually reduces our powers and our competence, I would argue, and I would say that there's a clear link there between the proceedings in the Supreme Court and what is now in this Bill before us, possibly.

Lord Elis-Thomas: Thank you. That was an answer worthy of Professor Thomas Watkin, I would say. Thank you for that.

May I go on to the question of the amendments in relation to a jurisdiction, and whether you are talking about a separate legal jurisdiction or a distinct jurisdiction for Wales? The Secretary of State has said something very interesting, in my opinion, in that, at the Third Reading, I believe—at the Second Reading in the House of Commons was when he said it—he said that many of the debates in favour of a separate legal jurisdiction for Wales would fall away because of the changes in clause 3 and Schedule 2.

chi'n credu bod hynny'n dipyn bach yn ffansiol, neu a ydw i'n bod yn annheg?

Do you believe that that's rather fanciful, or am I being unfair?

[95] **Y Llywydd:** Nid wyf yn rhannu barn yr Ysgrifennydd Gwladol. P'un ai a ydy'n ffansiol neu beidio, fe gewch chi benderfynu ar hynny, ond nid wyf yn rhannu ei farn e fod y ddadl dros awdurdodaeth gyfreithiol benodol yn gwanhau mewn unrhyw ffordd. Mae'n para i fod yna, yn ymarferol. Fe fyddai'n gliriach o lawer i bawb os byddai yna ffiniau penodol ar hyn, ac rwy'n ymwybodol, rwy'n meddwl, eich bod chi wedi cael tystiolaeth weddol gadarn yn cefnogi hynny yn eich gwaith chi hyd yn hyn fel pwyllgor.

The Presiding Officer: I don't share the Secretary of State's opinion. As to whether it's fanciful or not, that's for you to decide, but I certainly don't share his opinion that the argument for a specific legal jurisdiction is weakened in any way. It remains in place, in practical terms. It would be far clearer for all concerned if there were specific boundaries placed on this, and I am aware, I think, that you've had some robust evidence supporting that in your work as a committee to date.

[96] **Yr Arglwydd Elis-Thomas:** Diolch yn fawr. A gaf i ofyn ynglŷn â'r gwelliannau ynglŷn ag amseriad Aelodau'r Cynulliad ac etholiadau llywodraeth leol yng nghymal 6 o'r Bil? Beth yn union yw bwriad y rheini?

Lord Elis-Thomas: Thank you very much. May I ask about the amendments in relation to Assembly Members' timing and local government elections in clause 6 of the Bill? What exactly is the intention in that regard?

[97] **Y Llywydd:** Bwriad y gwelliannau yn y cymal yma yw gwella'r hyn sydd yn y Mesur drwy roi'r pŵer i'r Llywydd i fod yn penderfynu ar y materion yma, yn hytrach na Llywodraeth Cymru. Yn wahanol i'n dadleuon ynghynt yn y pwyllgor, lle rŷm ni wedi dweud nad oes rhaid o anghenraid ddilyn trywydd yr Alban, yn hyn o beth dilyn yr hyn sydd wedi cael ei sefydlu eisoes yn yr Alban a gosod y pŵer gyda'r Llywydd, pwy bynnag fydd y

The Presiding Officer: The aim of the amendments in this particular clause is to improve what's in the Bill by giving powers to the Presiding Officer to make decisions on these issues, rather than the Welsh Government doing so. Unlike the arguments that we've put forward previously to the committee, where we've said that it isn't necessarily required that we follow the furrow ploughed in Scotland, in this regard we do believe that what has been put in place in

Llywydd ar unrhyw bwynt, a taw gyda'r Llywydd y mae'r lle mwyaf priodol i fod yn cymryd penderfyniadau o'r math yma o fewn y ddeddfwriaeth ar newid cyfnodau etholiad.

Scotland is appropriate and the powers should lie with the Presiding Officer, whoever he or she may be at any point, and that with the Presiding Officer is the most appropriate place for decisions of this kind to be taken in relation to these issues within the legislation and a change in election timing.

[98] **Yr Arglwydd Elis-Thomas:** A fydddech chi'n cytuno bod yna egwyddor ddemocrataidd sylfaenol ar waith yn fan hyn, sef mai Aelodau etholedig o Gynulliad Cenedlaethol Cymru a ddylai fod yn gyfan gwbl gyfrifol am eu trefniadau etholiadol ym mhob ffordd?

Lord Elis-Thomas: Would you agree that there is a fundamental democratic principle at work here, which is that it is the elected Members of the National Assembly for Wales who should be wholly responsible for their electoral arrangements in every way?

[99] **Y Llywydd:** Ydw. Rwy'n cytuno â hynny, ac mae'n un o'r egwyddorion sy'n sail i'r gwelliannau rŷm ni wedi ceisio eu cyflwyno a bod y mater penodol yma'n fwy priodol o lawer i Lywydd, yn cynrychioli holl Aelodau'r Cynulliad, i benderfynu arno yn hytrach na Llywodraeth Cymru.

The Presiding Officer: Yes. I would agree with that, and it is one of the principles that underpins the amendments that we have introduced, and this specific issue is far more appropriately dealt with by the Presiding Officer, representing all Assembly Members, rather than it being dealt with by the Welsh Government.

[100] **Yr Arglwydd Elis-Thomas:** Ac a gaf i ofyn un cwestiwn olaf ynglŷn â statws cyfansoddiadol mater arall, sef cydsyniadau gweinidogol yn y Bil? A ydy'r rheini yn gyffredinol yn ymddangos yn gyfansoddiadol briodol i chi, neu a ydych chi'n meddwl bod yna le i ryddhau yn y fan yna hefyd o ran cynnal gofod deddfu tecach?

Lord Elis-Thomas: And one final question, if I may, with regard to the constitutional status of another matter, namely ministerial consents in the Bill. Are they constitutionally appropriate in general, or do you believe that there is room for manoeuvre there to maintain a fairer legislative space?

[101] **Y Llywydd:** Gwnaf ofyn i **The Presiding Officer:** I will ask Elisabeth. Elisabeth.

[102] Elisabeth, can you answer that one?

[103] **Ms Jones:** This is a difficult one to assess, I think. There has certainly, as I think you will have noted, been considerable progress by comparison with the draft Wales Bill, particularly in relation to where there is a need for consent where the Assembly is modifying functions of UK Ministers themselves. However, even in that area, this Bill imposes some new requirements for consent that wouldn't exist in the current settlement, as well as not in the draft Bill. So, that problem isn't solved—the problem of effect on UK ministerial powers.

[104] A particular manifestation of that is that the provisions of the Bill would reverse another Supreme Court judgment in relation to our competence here. At the moment, Assembly legislation can remove or modify a function of a UK Minister where that function was conferred before 5 May 2011, if we are doing so merely incidentally or consequentially; the Bill would take that away. But, there are other categories, as well, of UK ministerial function where the ability to remove or modify will fall away. That will extend into the future as well. So, new UK ministerial functions will become embedded and need consent to take them away, which wouldn't be the case under the current settlement.

[105] The really big issue, though, that makes it difficult to compare the current settlement with the Bill is that there is a whole new area of need for consent, which is where Assembly legislation affects reserved public authorities—so, essentially, public authorities that are, if you like, accountable to UK Ministers and largely funded by UK Ministers. That's not an unreasonable thing in itself, I think, but it then depends on getting the definition of what is a Wales public authority, within the competence of the Assembly without the need for consent, and what is not a Wales public authority, what is a reserved public authority—getting that right. That adds another layer of complexity to the Bill and, again, makes it harder for the public to understand the Bill and makes it harder for public authorities to understand how they can be affected and creates uncertainty and fluidity in the settlement—none of which is desirable. So, there are still problems there. There is some rollback from our competence, there is some giveback to our competence, and there are areas of uncertainty and instability. So, it's not ideal, but, on the whole, it's probably better than the draft Bill.

[106] **Yr Arglwydd Elis-Thomas:** Dyma'r cwestiwn olaf un, rwy'n addo. A ydych chi o'r farn, felly, Lywydd, swyddogion Comisiwn y Cynulliad a'r swyddogion cyfreithiol, y dylai'r system gydsyniadau gweinidogol ar gyfer Gweinidogion y Goron yn y Deyrnas Unedig adlewyrchu'r model yn Neddf yr Alban 1998, sef y farn a fynegwyd gan ragflaenydd y pwyllgor yma yn y Cynulliad diwethaf?

Lord Elis-Thomas: This is the very final question, I promise. Are you, therefore, of the opinion, Llywydd, officials of the Assembly Commission, and legal officials, that the ministerial consent system for UK Crown Ministers should reflect the Scotland Act 1998, which is the opinion stated by the predecessor of this committee in the previous Assembly?

[107] **Ms Jones:** The former Presiding Officer put forward the position that the situation in Wales should be equivalent with Scotland; that is, that all ministerial functions, functions of Ministers of the Crown, exercisable within devolved areas, or what we must now learn to call 'non-reserved areas', should lie with Welsh Ministers. From a constitutional law point of view, that would be a very logical situation and would also increase the clarity of the settlement very considerably.

[108] **The Presiding Officer:** And the current Presiding Officer is of a similar view.

[109] **Lord Elis-Thomas:** And so was another previous one. [*Laughter.*]

[110] **Huw Irranca-Davies:** Thank you. David, do you want to take us on to another area?

[111] **David Melding:** If we have that hat-trick or trinity—[*Laughter.*] No, that would inch towards inappropriate metaphor. The powers over our own elections to the Assembly are to be devolved, and I think that's been widely welcomed, but there is a requirement under clause 8 for a super-majority to apply. I just wonder if you think that's appropriate and is there any degree of ambiguity as to when you have to determine that such a super-majority is applicable? Or do you think it's quite clear in the Bill when that will actually be required?

[112] **The Presiding Officer:** Well, in principle, I have no objection to the use of a super-majority for these particular matters, because it allows for greater protection from change, or too frequent change. These are big matters and

they deserve to be undertaken through significant consensus across the National Assembly, so I have no issues with requiring a super-majority. In terms of clarity, Elisabeth, I think we're okay.

[113] **Ms Jones:** Yes.

[114] **The Presiding Officer:** Yes, we are. I think we're okay in terms of being able to clearly define where the use of the super-majority would be required.

[115] **David Melding:** That's a very clear answer. I don't need to spend any more time on that.

[116] The justice impact assessments—I think we've found some difficulty in trying to establish their purpose. So, do you think they're purposeful? And are there any implications in the fact that they would be required under our Standing Orders that you would want to comment on?

[117] **The Presiding Officer:** Just to comment that one of the principles that guided me in deciding on where to seek amendments and to improve the legislation was to be clear that matters that are related to our own internal decisions, or how we best exercise the powers that are given to us, and the processes of legislation, should be matters for the National Assembly to decide. Therefore, by our own Standing Orders, and requirements through explanatory memoranda—that is the appropriate way of seeking clarity on costs, and costs to justice as well as other costs of legislation. That's why we've proposed that they are unnecessary in the context of this legislation, and that they are best dealt with by allowing us, as a National Assembly, to clarify within our own procedures and Standing Orders how to meet the obvious need for clarity on costs of legislation.

[118] **Huw Irranca-Davies:** Mr Crompton.

[119] **Mr Crompton:** Just to reinforce that point, if you look at our Standing Orders already, about the documentation that's required to accompany a Bill, Standing Order 26.6—I shan't read it out, because it goes on for the best part of two pages; it's very long. It requires a lot of information in relation to administrative costs and impact already, and that is a part of the Standing Orders that, over the course of the last Assembly, was strengthened quite considerably in response to views that came from this committee and elsewhere. So, our requirements, already, to address this sort of issue are very strong, and as the Llywydd said, as a point of principle, this is

something that should not be dictated by a Westminster Act rather than our own procedures.

[120] **David Melding:** Thank you.

[121] **Huw Irranca-Davies:** Thank you, David. Michelle.

[122] **Michelle Brown:** Can I ask you about clause 51? It gives the Secretary of State the power to amend Assembly Acts and Measures, provided that approval has been given by the Houses of Parliament. Do you have any comments about the exclusion of the consent of the Assembly from that mechanism?

[123] **The Presiding Officer:** Do you want to comment on that, Elisabeth?

[124] **Ms Jones:** By all means, Llywydd. Again, this falls within the Llywydd's guiding principle about where the Assembly should have control, or should have a voice, because she believes that the consent of the Assembly should be sought where changes to Assembly legislation are made by the Secretary of State. So, if this power was used to affect an Assembly Act or Measure, as it can be, then she considers that the Secretary of State's subordinate legislation should go through Assembly procedure also. Absolutely.

[125] Having said that, turning more to my view as a lawyer, I do think that the power of the Secretary of State to make changes is relatively narrow, and relatively well understood and defined.

12:00

[126] 'Consequential' is a relatively narrow term and capable of objective definition, so not too much of a worry. But we have got this constitutional principle at stake here about where the Assembly should play a part, and that's what the Llywydd is seeking to defend with her amendment.

[127] **Michelle Brown:** And with regard to the general principle that an Assembly Bill falls if its general principles aren't agreed before the new Wales Act is commenced, what's your view on that?

[128] **The Presiding Officer:** Well, we referred earlier to the fact that we have concerns about the transitional arrangements in running two settlements concurrently, and especially if effort is made here to commence on

legislation and then that has to fall, that could curtail scrutiny or it could just hold back legislation. We believe that there are probably more appropriate ways in which we can accommodate or pursue a transitional process. We are in continuing discussions with the Secretary of State on how that could be pursued, and we're hopeful that that can be agreed without the need to publish amendments, but we will do that if needs be at a later stage.

[129] **Michelle Brown:** Okay, thank you.

[130] **David Melding:** Could I just follow up on that? I'm glad to hear that they want to try to sort that out because it would be messy, but if it isn't sorted out, the Assembly could just accelerate a new Bill, couldn't it, and say that Stage 1 isn't needed. I don't think that's a good way of proceeding—you know, it wouldn't send the right signals—but I suppose if there was real need because we'd lost a Bill that had a robust Stage 1, we could just move a new Bill to proceed from Stage 2, couldn't we?

[131] **The Presiding Officer:** Yes, we could, but that's not a good way to legislate—

[132] **David Melding:** I agree.

[133] **The Presiding Officer:** And that's not what we would want to do. So, in giving the Secretary of State the confidence that that's not what the Assembly would want to seek to do—

[134] **David Melding:** I completely agree that it's not an elegant way of proceeding, but in terms of practicalities, then we would be able to probably respond to any flaws of that nature in the Bill.

[135] **Huw Irranca-Davies:** As we move towards concluding this session, which has been very, very helpful for us—and I'd like to invite your comments at the end, just to forewarn you, if there's anything else that we haven't raised you'd like to add—but could I just ask you, Presiding Officer: do you think this Bill as it's going forward serves the purpose of making the understanding of our constitutional and legislative affairs clearer, more transparent and more understandable for the public?

[136] **The Presiding Officer:** I think it has the potential to do that, but we need to aid it in ensuring that its clarity is better for the public, and ultimately also for us as elected Members here in being clear at a very early

stage on where competence lies to legislate—Welsh Government and Assembly together. So, that clarity is something that we seek, this is a vehicle to certainly aid that, but it can be improved in order to better that clarity.

[137] **Huw Irranca-Davies:** And do you think this helps in any way in terms of the durability of our constitutional arrangements? Does it take us forward or will we back here in short order?

[138] **The Presiding Officer:** Given the nature of the political context that we live in these days, especially in the last two weeks, then I've no doubt that issues around competence and legislation will be matters that the National Assembly and UK Parliament will return to possibly frequently, and probably sooner rather than later.

[139] **Huw Irranca-Davies:** Perhaps I could ask the same question of your advisers, legally, technically, in terms of the understanding of the implementation of the law. Does this give us something that will last for five years, 10 years, 20 years, if all the improvements that we've talked about could be made—if we do all those improvements, how long will this last us?

[140] **Ms Jones:** The big improvement would be what the Llywydd has called for—a set of principles underpinning the reservations. If that were put in place, and the other technical amendments, then I think we really could see durability with just a little bit, hopefully, more competence being given to the Assembly over time—well, not a bit—more competence being given to the Assembly over time, but not changing the fundamental framework. But, without that logical boundary, while we continue with this Slartibartfast boundary between the competence of the Assembly and the competence of the UK Parliament, I don't think that you can call our settlement truly certain and durable.

[141] **Mr Crompton:** I completely echo that. It's the absence of something at the heart of this that is based on principle that would allow us and our staff to explain the settlement to Members or to the public, or whomever; that's what's missing.

[142] If I may just add one point, which is related to all of this, which goes back to Lord Elis-Thomas's question earlier about the role of the LCM, this is the major tool that the Assembly has at its disposal to apply pressure for change. We can propose amendments and watch them proceed in Westminster, or not, but that, at some point, is the tool that the Assembly

has available to apply greater pressure if you need more significant change.

[143] **Huw Irranca-Davies:** Thank you very much. Presiding Officer, is there anything else that you'd like to add to these proceedings today, or do you think we've covered everything?

[144] **The Presiding Officer:** Only to thank you for the work you're undertaking and to look forward to your views as they contribute to the scrutiny process in the Houses of Parliament, and to hope that the Secretary of State does agree to your invitation to come to this place to be scrutinised on this Bill, which will affect us in such a significant way.

[145] **Huw Irranca-Davies:** Thank you very much. Thank you to you, Presiding Officer, and to your two expert colleagues as well.

12:07

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Motion:

bod y pwyllgor yn penderfynu that the committee resolves to gwahardd y cyhoedd o weddill y exclude the public from the cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in 17.42(vi).

accordance with Standing Order 17.42(vi).

Cynigiwyd y cynnig.

Motion moved.

[146] **Huw Irranca-Davies:** We now, under Standing Order 17.42, resolve to exclude the public from the meeting for private business. Thank you very much.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 12:07.

The public part of the meeting ended at 12:07.