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Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

20/3/2017

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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 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

Nathan Gill Bywgraffiad Biography	Annibynnol Independent
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Dai Lloyd Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Desmond Clifford	Llywodraeth Cymru Welsh Government
Carwyn Jones Bywgraffiad Biography	Aelod Cynulliad, Llafur (y Prif Weinidog) Assembly Member, Labour (the First Minister)
Hugh Rawlings	Llywodraeth Cymru Welsh Government

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

Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Gerallt Roberts	Dirprwy Glerc Deputy Clerk
Tanwen Summers	Ail Glerc Second Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service

Gareth Williams Clerc
 Clerk

*Cynhaliwyd y cyfarfod ar Gampws Dinas Casnewydd, Prifysgol De Cymru.
The meeting was held on the Newport City Campus, the University of South
Wales.*

*Dechreuodd y cyfarfod am 14:56.
The meeting began at 14:56.*

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

- [1] **Huw Irranca–Davies:** Good afternoon.
- [2] Prynawn da. Croeso i chi i Good afternoon. Welcome to you all.
gyd.
- [3] Welcome to you all here today to Newport city campus, University of
South Wales. I'm very thankful to them for allowing us to host this session of
the Constitutional and Legislative Affairs Committee today, on Monday 20
March 2017.
- [4] A couple of housekeeping issues first of all, not simply for committee
members and staff but also for those in the audience. If you can—and I'm
just doing it myself—switch off your mobiles entirely. The reason is we have
our mobile units here, which are very sensitive to any electronic interference.
So, don't just put them to 'quiet'; if you can actually switch them off entirely.
That's the first time mine has been switched off for about two years.
- [5] In the event of a fire alarm, if Members could leave the room by the
marked fire exits behind us and follow instructions from staff and ushers.
There is no test forecast for today. We do operate through the medium of
Welsh and English, as committee members will know. So, it's available here
on channel 1—simultaneous translation. No need to touch any of the
microphone buttons because they automatically work—I think I'm right there,
Tanwen? Right, okay. And that is all our housekeeping announcements.
- [6] We have, under item No. 1, apologies from Dafydd Elis–Thomas, who

can't be with us today. That's the only apology that we have.

14:58

**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**

[7] **Huw Irranca-Davies:** If we move on to item No. 2, under item No. 2 we have instruments that raise no reporting issues under Standing Order 21.2 or 21.3. Under that item, we have, in paper 1 in your packs, statutory instruments with clear reports. We have two of these. An affirmative resolution instrument, SL(5)073, the Marine Licensing (Notices Appeals) (Wales) (Amendment) Regulations 2017. And, under negative resolution instruments, we have two—SL(5)074, the Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017, and also SL(5)075, the Marine Licensing (Fees) (Wales) Regulations 2017. Now, all of these have clear reports. We've got nothing from our team to say on these. Are Members happy to note them, or any observations? Happy to note? Content. Thank you very much. So, we'll note those and move on to item No. 3.

14:59

**Papur i'w Nodi
Paper to Note**

[8] **Huw Irranca-Davies:** Item No. 3—in the packs distributed to Members before this meeting, we have a piece of correspondence from the Minister for Social Services and Public Health, related to the Public Health (Wales) Bill. It's simply to note at this moment. We might want to return to it at some point to discuss it, but for the moment, are you happy to note that correspondence? Thank you very much; we note that.

15:00

[9] Having whizzed through that at breakneck speed, we will now pause temporarily while we wait to begin the main part of the inquiry: our evidence session with the First Minister. We're a couple of minutes ahead of time. We'll

wait for him to come.

Ymchwiliad Llais Cryfach i Gymru: Sesiwn Dystiolaeth 5 **A Stronger Voice for Wales inquiry: Evidence Session 5**

[10] **Huw Irranca-Davies:** Whilst we wait for the First Minister, we'll take this opportunity, not only for those listening in to the evidence session, but also for our audience here today—and it's great to see that we have future professionals in the legal and journalistic professions here from the university today in the audience—we'll outline the purpose of the inquiry.

[11] Good afternoon, First Minister.

[12] **The First Minister (Carwyn Jones):** Good afternoon, Chair.

[13] **Huw Irranca-Davies:** Good afternoon, and thanks for joining us.

[14] The purpose of the inquiry we're looking at currently is into inter-institutional working in order to produce best practice principles for inter-institutional working for constitutional legislation and to reflect and build on the work of other legislatures on inter-institutional working as it relates to broader policy areas, and to seek, establish and promote opportunities for inter-parliamentary working, including the promotion of citizen engagement. That's the broad scope of our A Stronger Voice for Wales inquiry, and we're looking at that today, First Minister, as well as, of course, some areas that we know we want to inquire into with you on 'Securing Wales's Future' as well.

[15] So, you're very welcome this afternoon. Have you caught your breath and you're okay to begin?

[16] **The First Minister:** Yes, of course, Chair.

[17] **Huw Irranca-Davies:** Thank you very much. I know you've had a very busy day already, but you know that one of the main purposes of our inquiry is to look at what has worked well in terms of inter-institutional working between governments, between parliaments, and so on, and what may be the barriers. Reflecting on your time, but also your longer experience in devolution, can you tell us what has worked well in terms of inter-institutional arrangements?

[18] **The First Minister:** In terms of inter-institutional arrangements, I'm

not perhaps the best to comment on that, having been an AM for 18 years and in Government for 17 years. So, it's been a long time since I dealt with inter-institutional relations between the Assembly and Parliament.

[19] **Huw Irranca-Davies:** But part of that, of course, and what I'd like to focus on, is the inter-governmental aspect of that.

[20] **The First Minister:** Well, I mean, basically, the relationship is governed by the workings of the Joint Ministerial Council, and also the memoranda of understanding that exist between the different Governments. That system has worked, to an extent, but now the situation has changed, because we now find ourselves in the situation where the EU will no longer be a factor in terms of the single market, the UK single market in terms of regulation, and so a new mechanism has to be found in order for the UK to survive in this century. I think it can be done fairly easily. How should that be done—

[21] **Huw Irranca-Davies:** Well, if I can just pause you there for a moment, we come to that, and in some detail. But, as we currently are, before we move ahead, before we look at the future, or the transition to an exit from the EU scenario, reflecting on where we've got to now, do the inter-governmental relationships work well—the mechanisms, the way that devolution currently works?

[22] **The First Minister:** I think the picture is mixed. Some of the Whitehall departments understand devolution, and they understand the need to consult and the need to work with us. Others find it more difficult. So, there's a variation in terms of the way things have operated in the past.

[23] **Huw Irranca-Davies:** And does that vary between departments, between Ministers, or is it based on relationships?

[24] **The First Minister:** Departments, rather than Ministers. For example, with the Home Office, the relationship has always been more difficult, because they're not used to dealing with us in terms of a devolved context. With the Department for Environment, Food and Rural Affairs, the relationship was always better. It doesn't tend to depend on the person occupying the Secretary of State role or the Cabinet Secretary role in Government. We've tended to find the same issues have arisen regardless of who the ministerial team are who are place.

[25] **Huw Irranca-Davies:** I don't want you to put yourself in the heads of

any other First Ministers from other devolved administrations, but do you think the same overall perspective would be shared that there is good and there is bad? Would there be a different perspective from Northern Ireland, for example, or would they say, 'Well, actually, everything's absolutely fine and dandy'?

[26] **The First Minister:** It's all quite different. I mean, I suspect the First Minister of Scotland would take a very different view on the nature of the relationship. In Northern Ireland, there are internal dynamics that are difficult to manage and the viewpoint in the Northern Ireland Executive hasn't always been the same between the First Minister and deputy First Minister. So, I can only really speak in terms of the Welsh context.

[27] **Huw Irranca-Davies:** I fully understand. If I can turn to one specific example, and this is interesting, we've had some evidence already from those in the higher education sector and this area where there are some areas that are devolved and some areas that are UK-wide or even wider than the UK; they're international, so areas of research and so on. We noticed that, for example, Universities Wales have written to us and said that

[28] 'the success of universities in Wales and across the UK, is dependent, not only the successful development of devolved policy but our ability to work with our colleagues across the UK and beyond to rise to the challenges of rapid global expansion of higher education, seen as a key driver of many competing economies.'

[29] The same has been—in a different way—reiterated by evidence from the Open University as well, where they say that

[30] 'different HE policies in each nation and associated funding regimes result in differing fee levels and student support packages.... This should be seen as a positive consequence of devolution rather than a problem, but it does require co-ordination, collaboration and communication across and between governments.'

[31] So, I think that it's interesting that you're saying in some areas it works well and in others it doesn't. What are the barriers when it doesn't work well?

[32] **The First Minister:** From our perspective, it's not so much the issue of the way that universities operate; it's the issue of access to research funding,

particularly in the future. When we leave the EU, that doesn't mean that we should divorce ourselves from the funding that's available at European level. If we look at schemes like Horizon 2020, for example, there's no particular reason why we'd have to leave those schemes as we leave the EU. I mean, universities compete in the global market. The UK is too small to operate on its own. It's hugely important that our universities are able to collaborate and work with universities across the world, not just elsewhere in the UK. As soon as you become insular, the quality of your research work starts to diminish. I know that there is an argument that some have put forward that we should have a Welsh research pot. I'm unconvinced by that, because I think the rigour wouldn't be there on the part of Welsh universities to produce the kind of work that we would want them to produce in order to get that research funding. So, to me, there is merit in our universities competing in a much deeper pool for research funding and I think that sharpens their ability to put forward good research projects in the future.

[33] **Huw Irranca-Davies:** So, in that particular instance—it's only one in many areas we could pick up—but in that area, you would be working really closely; you would be doing that collaboration and co-operation that the Open University has been saying to try and get that right now.

[34] **The First Minister:** We always encourage our universities to work with other universities across the world. We were very active through schemes such as Sêr Cymru in—

[35] **Huw Irranca-Davies:** And what about you as a Government, though? Would you also be working closely with the UK Government to try and get it right for Welsh, English, Scottish and other universities as well?

[36] **The First Minister:** There's not been any conflict between the governments in terms of promoting universities within the UK. Naturally, we want to see as much collaboration as possible in order to produce the best research work possible.

[37] **Huw Irranca-Davies:** Brilliant. That's great, and I think a lot of people looking in—that's what they want to see. But there was an interesting illustration I think last week or the week before where there were quite outspoken comments by one of your Ministers. It wasn't in respect of higher education; it was to do with—the BBC reported a Welsh Government spokesperson saying, in terms of somebody being vetoed from a public position, that it was

[38] 'unfortunate the secretary has been unwilling to have a proper dialogue with them'.

[39] The Welsh Government spokesperson said that the

[40] 'latter stages of this process have been deeply unsatisfactory and we believe it is in both Wales and the BBC's interests that we now reopen the process.'

[41] Your Minister, Alun Davies, repeated that same sort of very strong criticism of the process that had led them to that place. Is this accurate? And if that's the case, what has broken down there?

[42] **The First Minister:** Well, we've had this situation before. There was a long debate about who should chair the Food Standards Agency. It's a joint appointment between the four administrations. Eventually, of course, an appointment was made. The situation with regard to this appointment is that it's an appointment by the Secretary of State but with the agreement of Welsh Ministers. The decision that was taken was that there was a preferred candidate on the part of the Secretary of State and there was a preferred candidate that we had as a Government—no reflection at all, I have to stress, on the person that the Secretary of State wanted to put forward. There was no reflection on her at all, but it was just a simple difference of opinion on who the strongest candidate should be. It's happened before. Unfortunately, the impression I had was that this was taken as some kind of attempt to undermine the process. It never was. It was a simple disagreement, and, of course, the process will now be reopened.

[43] **Huw Irranca-Davies:** But that's fascinating for us as a committee as we look at inter-institutional working between Governments, between parliaments, between Ministers—not necessarily in that one instance but, as you say, it's not the only time that that's happened. What is it that goes wrong when something like that fundamentally breaks down? Is it the mechanics that have broken down or is it interpersonal relationships that have broken down? What's going on?

[44] **The First Minister:** No, it's different viewpoints, that's all. People will take different views on different candidates. In the main, wherever these appointments are made, there's an agreed position. Everybody comes to the same conclusion. There are rare occasions—this is one—where there is a

genuine difference of opinion. It's not down to politics; it's not down to some kind of underlying reason, but that's what happened on this occasion. So, the way to resolve it is to reopen the process.

[45] **Huw Irranca-Davies:** Dai Lloyd is going to take us on into another area, but—

[46] **David Melding:** Can I just—?

[47] **Huw Irranca-Davies:** Indeed; yes, David.

[48] **David Melding:** So, your view is that, whilst you would have preferred a positive outcome, the mechanism did work as it should work. You had an overriding interest to veto the appointment and—sorry, to exercise your rights under the joint decision-making, which, as I understand it, was for the UK Government to propose candidates, but you had the right to say that you could not agree with a particular candidate actually being proposed, but you couldn't then alternatively come up with a counter proposal. So, whilst it's not an ideal situation, the mechanism is designed, however, to come up with these results occasionally, isn't it?

[49] **The First Minister:** Yes. I think it would have been better, though, had there been more dialogue on an informal basis between the two Governments. It has happened in the past with other appointments. On this occasion, the impression that we had was that that avenue for dialogue wasn't there. It was unfortunate. It may have led to the same result, of course. Even though the process is a formal process, I don't think that that should mean that, somehow, there should be no further dialogue between the Governments to see if there's a mutually acceptable conclusion.

[50] **David Melding:** So, it was the softer parts—or the implied parts—of the process that didn't work effectively.

[51] **The First Minister:** Yes, I think that's fair.

[52] **David Melding:** Okay.

[53] **Huw Irranca-Davies:** Which—before I bring Dai in—leads me neatly onto the final question that I wanted to ask you on this opening series of questions, which is: what is your assessment, in your long experience as First Minister, and previous experience, of the importance of those soft

interpersonal relationships? You can have all the mechanics—the JMCs, the bilaterals, this, that and the other—but ultimately, dialogue is important. It doesn't mean that you'll avoid any flash point, any controversy. It will happen. It's the nature of the beast.

[54] **The First Minister:** Yes. The nature of the personal relationship between Ministers obviously is a factor. It's important sometimes to have an informal back channel in order to resolve an issue on that basis. I've dealt with Governments of different parties. It's right to say that it is possible to have an informal relationship across the border, as it were, in order to look to resolve issues. That doesn't always happen. On the occasion that we're talking about now, it wasn't possible to have that informal dialogue.

[55] **Huw Irranca-Davies:** Okay. Thank you. Dai Lloyd.

[56] **Dai Lloyd:** Diolch yn fawr, Gadeirydd. Gan droi at faterion mwy strwythurol, efallai, a ydych chi'n credu bod y memorandwm cyd-ddealltwriaeth rhwng Llywodraeth y Deyrnas Unedig a'r gweinyddiaethau datganoledig yn effeithiol o ran ei weithrediad? A ydy'r cyd-ddealltwriaeth yna yn gweithio? A yw'n effeithiol? A allwch chi egluro sut y mae'n effeithiol, os yw e'n effeithiol?

Dai Lloyd: Thank you very much, Chair. Turning to matters that are more structural, perhaps, do you believe that the memorandum of understanding between the UK Government and the devolved administrations is effective in terms of its operation? Does that memorandum work—in operation? Is it effective? Could you tell us how it's effective, if it is effective?

15:15

[57] **Y Prif Weinidog:** Mae e wedi gweithio'n dda, fwy neu lai, ond, wrth gwrs, mae achlysuron wedi codi lle nad oedd modd cytuno, felly roedd y Goruchaf Lys yn dod mewn i'r cwestiwn ac yn gorfod delio â'r cwestiwn o ddatganoli. I fi, mae'r memoranda wedi gweithio lan at nawr, ond nid wyf i'n credu taw model o gael memoranda yw'r model i'r dyfodol. I fi, model o gael

The First Minister: It has worked well, generally speaking, but occasions have arisen where it wasn't possible to come to agreement, therefore the Supreme Court then became involved in issues and had to deal with issues relating to devolution. Now, for me, the memoranda have worked to date, but I don't think that the model of memoranda is an appropriate model for the future. For me, it's a model of

cydgyngor neu gyd-bwyllgor o having a joint council or a joint
Weinidogion yw'r ffordd ymlaen committee of Ministers, and I think
unwaith rŷm ni'n gadael yr Undeb that is the way ahead once we leave
Ewropeaidd. the European Union.

[58] **Dai Lloyd:** Reit. Fe ddown ni at **Dai Lloyd:** Right. We'll come to that
y cyd-bwyllgor yn nes ymlaen, ond joint committee later on, but in the
yn y tymor byr a fuasech chi yn short term would you support the
cefnogi'r syniad bod angen adolygu'r idea that we need to review the
memorandwm cyd-ddealltwriaeth memorandum of understanding
yma rhwng y Llywodraeth i fyny yn between the Government in London
Llundain ac i lawr yn fan hyn? and here?

[59] **Y Prif Weinidog:** Gofynnaf i **The First Minister:** I'll ask Hugh
Hugh Rawlings ddod mewn mewn Rawlings to come in in a second, but
munud, ond mae yna broses o a review process has taken place
adolygu wedi cymryd lle ta beth dros anyway over the years. It depends, of
y blynyddoedd. Mae'n dibynnu, wrth course, what kind of interpretation is
gwrs, pa fath o ddehongliad sydd yn placed on the memorandum by
cael ei roi ar y memorandwm gennym ourselves as a Government and the
ni fel Llywodraeth a'r adran yn relevant department in London.
Llundain sydd yn delio â'r
memorandwm.

[60] **Mr Rawlings:** Thank you, First Minister. In, I think it was 2014, the
Joint Ministerial Committee plenary remitted officials to review the
memorandum of understanding, and quite a lot of work was done about that.
But, it proceeded before the referendum vote, because quite a lot of the work
was concerned with the relationship between the devolved administrations
and the UK Government in relation to European business, and how the UK
lines should be developed in councils of Ministers and so on and so forth.
Following the referendum outcome, that work has been effectively
suspended and I think it will be a matter for the JMC plenary at a later
meeting, in the light of developments, to decide how it wants to proceed. I
don't think, in any event, we ever envisaged a wholesale rewriting of the
memorandum of understanding, but there was going to be a restatement of
certain important principles to add to the memorandum. But, as I say, that
work has been put into suspension now.

[61] **Dai Lloyd:** Diolch yn fawr am **Dai Lloyd:** Well, thank you very much
hynny. Ymhellach i hynny, felly, yn yr for that. Further to that, in this new

hinsawdd newydd rydych chi wedi awgrymu eich bod chi'n rhagweld diddymu'r memorandwm cydweithio yma, a wedyn rhoi mwy o stôr, felly, yn Cyd-bwyllgor y Gweinidogion fel y ffordd ymlaen. A allaf i jest ofyn yn y lle cyntaf, wrth inni symud ymlaen felly i sôn am Gyd-bwyllgor y Gweinidogion, beth ydy eich profiad chi o ba mor dda y mae o'n gweithio ar hyn o bryd, a sut mae o'n debygol o weithredu yn awr yn sgil y penderfyniad i Brydain adael yr Undeb Ewropeaidd? Ar hyn o bryd, a ydy Cyd-bwyllgor y Gweinidogion yn addas at ei ddiben ar gyfer yr hyn sydd ar y gorwel?

[62] **Y Prif Weinidog:** Cymysgedd, byddwn i'n dweud. Fel rheol, yn y gorffennol, mae'r cyngor ei hun wedi tueddu i fod yn rhywle lle roedd lot fawr o ddadlau cryf, a allaf i ddweud, lle roedd cyfle i'r Llywodraethau datganoledig i fynegi barn cryf ynglŷn â rhai o'r pethau oedd yn cael eu codi, ond nid oedd dim byd yn digwydd o achos hynny. Lle mae yna anghytuno, mae yna system i ddelio ag unrhyw fath o anghytundeb, ond ar ddiwedd y dydd, Llywodraeth y Deyrnas Unedig sydd yn penderfynu, felly nid oes system annibynnol i ddelio ag unrhyw fath o broblem sy'n codi rhwng y Llywodraethau. Mae yna is-bwyllgorau—mae yna is-bwyllgor sydd yn delio â Brexit ar hyn o bryd. Mae hwnnw wedi bod yn effeithiol i raddau—mae'n dibynnu pwy sy'n cadeirio'r cyfarfod hwnnw—ond mae e'n ffordd i ni fel Llywodraeth i fynegi

climate you've suggested that you foresee the abolition of these memorandum of understanding, and placing greater store against the Joint Ministerial Committee as the way forward. So, can I just ask first of all, as we move on to talk about the JMC, what's your experience of how well it operates at present and how is it likely to function in the wake of the decision for the UK to leave the European Union? At present, is the JMC fit for purpose for what is on the horizon?

The First Minister: It's a mixed picture, I would say. As a rule, in the past the JMC itself has tended to be a place where there's been a great deal of robust argument, shall I say, where there was an opportunity for the devolved Governments to express strong views on certain issues that were raised, but nothing would actually happen as a result of that. Where there was disagreement, there is a system of dealing with that disagreement, but at the end of the day it's the UK Government that makes the ultimate decision, so there's no independent system to deal with any kind of dispute that arises between Governments. There are sub-committees—there is currently a sub-committee dealing with Brexit. That's been effective to a certain point—it depends who chairs that particular meeting—but it is a

barn ac i ddelio â pethau fel y Papur Gwyn sydd wedi dod o Lywodraeth Cymru ynglŷn â'r dyfodol. Ond, nid yw'n bosib i ddweud, 'Hwn yw'r strwythur i'r dyfodol.' Nid yw'n ddigonol.

[63] **Dai Lloyd:** Yn sgil yr adolygiad yma, rydym ni wedi clywed cryn dipyn o feirniadaeth o'r ffordd y mae Cyd-bwyllgor y Gweinidogion yn gweithredu ar hyn o bryd, ac, wrth gwrs, roedd Mark Drakeford yn un ohonyn nhw. Fe wnaeth o roi tystiolaeth fendigedig gerbron, sydd yn olrhain rhai o'r heriau sydd ynghlwm â Cyd-bwyllgor y Gweinidogion. Yn y lle cyntaf, mae'n dweud,

[64] 'it needs to have a better grip of very simple administrative arrangements.'

[65] Felly, sut i drefnu cyfarfod, yn y lle cyntaf. Yr ail beth mae'n ei ddweud yw bod angen rhaglen waith. Pethau elfennol fel hyn, jest ddim yn digwydd. Buaswn i'n meddwl, y rhai ohonom ni sydd ar lefel is, wrth gwrs, mewn pwyllgorau ac ati, buaswn i o leiaf yn disgwyl bod y fath o bethau hynny mewn lle. Pan fyddwch chi'n sôn am Gyd-bwyllgor y Gweinidogion ar gyfer yr ynysoedd hyn, buasech chi'n disgwyl bod y materion elfennol hynny yn eu lle. Yn ogystal, roedd Mark Drakeford yn mynd ymlaen i ddweud pan fydd pobl yn troi lan i'r cyfarfodydd hyn, nid oes neb yn siŵr iawn beth yw'r *policy positions* y tu ôl

means for us as a Government to express our views and to deal with issues such as the Government's White Paper on the future in the wake of Brexit. But, it's not possible to say, 'This is the structure for the future'. It's not adequate.

Dai Lloyd: Following on from this review, we've heard a great deal of criticism about the way that the JMC operates at present, and, of course, Mark Drakeford was one of those dissenting voices. He gave excellent evidence that pursues some of the challenges related to the JMC. First of all, he says,

grip of very simple administrative arrangements.'

So, how to arrange a committee in the first instance. The second thing he says is that there needs to be a work programme. So, fundamental things like this aren't happening. Those of us who are on a slightly lesser level, perhaps, in committees and so on, I would at least expect that that kind of thing would be in place. When you're talking about the Joint Ministerial Committee of these isles, you would expect that those fundamental aspects would be in place. Mark Drakeford also went on to say that when people turn up to these meetings, nobody is quite sure about what the policy positions are

i'r gwahanol adrannau. Beth bynnag a oedd yn cael ei drafod, nid oedd pobl yn siŵr iawn beth oedd y cefndir a beth oedd Llywodraeth y Deyrnas Unedig, felly, yn gobeithio cael allan o'r cyfarfod yna. A fyddech chi'n tueddu i gytuno efo beirniadaeth Mark Drakeford yn fanna?

[66] **Y Prif Weinidog:** Nid wyf yn credu eto bod yna safbwynt cyson gan Lywodraeth y Deyrnas Unedig. Rwyf i wedi clywed sawl barn yn cael ei fynegi—rhai yn fwy pragmatig na'r lleill—ond, ar hyn o bryd, nid ydym ni'n gwybod yn gwmws beth yw'r siwrne yn eu barn nhw.

[67] Rŷm ni wedi gweithio, wrth gwrs, i greu Papur Gwyn sydd, yn ein barn ni, yn rhoi ffordd ymlaen nid dim ond i Gymru ond i'r Deyrnas Unedig yn gyfan gwbl. Mae hynny'n rhywbeth sy'n cael ei ystyried ar hyn o bryd. Mae'n wir i ddweud, er bod ein barn ni fel Llywodraeth wedi bod yn eithaf cadarn a chlir, mae barn yr Alban yn glir mewn ffordd wahanol eto, ac mae barn Gogledd Iwerddon yn gymysg, unwaith eto, ond beth nid ydym yn gwybod yw beth yn gwmws—. Rŷm ni'n gwybod bod Llywodraeth y Deyrnas Unedig yn moyn sicrhau bod yna fynediad rhydd i'r farchnad sengl—nid wyf yn gwybod sut mae hynny'n mynd i ddigwydd, ond mae'n rhywbeth maen nhw wedi ei ddweud—ond, ar ben hynny, nid ydym yn gwybod eto beth yn gwmws yw'r daith. Mae'n rhaid inni ystyried beth yw eu safbwynt

behind different aspects of the discussion. Whatever was being debated, people weren't sure what the background was and what the United Kingdom Government wanted to get out of these meetings. Would you tend to agree with Mark Drakeford's criticism there?

The First Minister: I don't think that there is yet a consistent position being set out by the UK Government. I've heard a number of viewpoints expressed—some more pragmatic than others—but, at the moment, we don't know exactly what journey lies ahead.

We have worked, of course, to draw up a White Paper that expresses our view, not only on the future for Wales, but for the whole of the UK. That's something that's currently being considered. But it is true to say that although our view, as Government, has been robust and clear, the Scottish view is different, but clear, again, and in Northern Ireland, there's a mixed picture, but what we don't know is what, exactly—. We know that the UK Government wants to ensure that there is unfettered access to the single market—I don't know how that's going to happen, but it's something they've said—but, in addition to that, we don't yet know what the future holds. We need to know what their view is so that we can discuss it properly.

nhw er mwyn ein bod ni'n gallu
trafod y peth.

[68] **Dai Lloyd:** Diolch yn fawr. **Dai Lloyd:** Thank you very much.

[69] **Huw Irranca-Davies:** David, go on, please, yes.

[70] **David Melding:** When you look at the evidence in terms of how the Joint Ministerial Committee works, it's almost comic, and Mr Drakeford compared it to St Fagans—. Sorry, he said, St Fagans Community Council operates with alacrity compared to the JMC. But you touched on the real problem here. There isn't a joint purpose or vision for the JMC, is there? I mean, I think your vision is a very coherent one and it's the one I would personally sign up to. I think it should become a council of Ministers—an insular version, almost, of the EU—to formalise areas of policy and agree on them where joint approaches are in everyone's interest. But that's the problem. The view of the Scottish Government is very different to your view. Northern Ireland is in this state of extreme flux and Westminster's eyes are elsewhere. What they see, sometimes, perhaps, is the bigger stage in terms of Brexit. Isn't that the problem—that there is no joint vision for it at the moment?

[71] **The First Minister:** No, that's true. I raised this with the Prime Minister this morning, and it was a constructive meeting this morning, I have to say. I don't believe that they've got their heads around this at all in Whitehall at the moment. They operate in a very different context. We operate on a daily basis by looking at boundaries and devolved competencies in the way that Westminster doesn't have to do. The assumption that's been made in Whitehall is that, when powers return from Brussels, they will rest in London. We don't accept that view. We take the view that where powers are already devolved, they will bypass London and come to Wales. Why do we say that? Well, if we look, for example, at our devolution settlement, agriculture and fisheries are devolved. There's no caveat—they're devolved.

[72] So, to remove competencies from us would require legislation in Westminster and an overriding of any legislative competence motion that the Assembly might want to reject. So, there's the fundamental problem that we have to deal with first. How can that be resolved? Well, as members of the committee will have heard me say on many occasions, for me, it's a council of Ministers dealing with devolved areas. I understand the sense in having a general set of common rules that we follow when we pay agricultural

subsidies. There are issues with fisheries that are extremely complex. Who fishes in whose waters? What are the quotas in those waters? How will those quotas apply to boats of different sizes? We all have different views. The Welsh fishing fleet is small; the boats are smaller. The Scottish fleet is very different again. I think that needs to be resolved, and I understand the reasons for that.

[73] When we leave the European single market, potentially then we leave and have an internal single market in the UK with no state aid rules. Now, we can either have a free for all, in which case we have, I've used the phrase 'trade war', which is no-one's interests, least of all Wales's, or we establish a set of rules for that internal single market that is then policed by an independent adjudication body such as the Supreme Court, if you're looking to have faith in the objectivity of that process.

[74] But the key for me is—all these things are sensible, but should be agreed and not imposed. Rules that are agreed will have far more currency than those that are imposed. If they are imposed, then every devolved Government has an interest in driving a coach and horses through the rules, and that's not what we want. So, that's where we are. My view is that that structure, which is quite easy to set up in the next two years, is what will maintain the coherence of the UK. My concern is that that's not yet well understood in Whitehall, and we might end up in a situation where they do see it as their job to impose rules within a single market, and I think that's bad for the relationship between the nations of these islands.

[75] **David Melding:** But given the profound flux we're in—. I think this is very interesting, what you've just said. I have to say, quite genuinely, despite the fact we are political opponents, I think you are probably the most articulate unionist in the British isles at the moment in some of the proposals you are making, but there is the problem: what you want to do with the council of Ministers is to make the UK state fit for purpose in the twenty-first century, and the Scottish Government simply don't share that vision.

[76] **The First Minister:** We know, as of last week, that the Scottish Government see themselves as taking a very different journey. For me, I think there is merit in establishing the structure that I've talked about, which is a partnership of nations, which then offers an alternative to other constituent nations of the UK—alternatives to independence. For me, clearly, I want Scotland to remain. Scotland's a very useful counterbalance for the UK and, to my mind, it's in Wales's interests that Scotland remains part of the UK, as

well as Scotland's, I would argue. But the concern that I have is that we will find ourselves in a situation in two years' time, when none of these things have been addressed, where we end up in quite a serious constitutional conflict at that point, when, in fact, all these things could have been dealt with quite easily over the course of the coming two years.

[77] **David Melding:** I suspect the Scottish Government would not sign up to your vision until they have the second referendum. If the second referendum confirms the first, I think they'll be very quick to join you, but I think that's the problem, it seems to me, but perhaps I'm now speculating, rather than putting a question—

[78] **The First Minister:** It's unfortunate that this wasn't agreed earlier. I think it would've made things—the dynamic would have been different, if I put it that way.

[79] **Huw Irranca-Davies:** I'm going to bring Nathan in, both on this and to take us forward, as well. When would you see this as being a necessity—that we have some evolution of the JMC, either towards something like a council of Ministers or something else that achieves more parity of agreement, of meaningful engagement on the agenda, on the outcomes, et cetera? It seems that the flux that we're currently in, as we negotiate transition from Brexit, means it has to be sooner rather than later, and yet, of course, what you're saying is—and you have to advocate the argument to change the whole mindset in Whitehall, but we could be a long way off that. We're just at the start of that.

[80] **The First Minister:** This has to be in place by the time the UK leaves the EU, ideally, within the currency of the two-year period. I don't think it's difficult. I've seen the model work in years gone by. When I was rural affairs Minister, we would meet every month in London, there were different parties involved around the table, and we would agree the UK's common line for the forthcoming Council of Ministers meeting. The system worked. The odd thing about agriculture, particularly, was that we all had vetoes in the areas that we were responsible for, so there had to be discussion, but it worked. It was a mature discussion and nobody went there to grandstand, nobody went there to try to undermine the position taken by other administrations. So, there's already a model—on a small scale, that's true—that could simply be broadened in order for it to be adopted in the future.

15:30

[81] **Huw Irranca-Davies:** You sound so eminently reasonable, as David was saying, on this, and—

[82] **The First Minister:** You're worrying me now—

[83] **Huw Irranca-Davies:** I know, I know. [*Laughter.*] You must have had these discussions either today or at other times with the Prime Minister. Do you think that they see you as that reasonable, sensible, constructive partner that has got something to put on the table, rather than pure yelling and shouting—that actually there is a way to do this that could be of benefit to the UK as a union as well as to Wales?

[84] **The First Minister:** I think what's important is that, in Whitehall, they don't see all the devolved administrations in the same way. Yes, we stand up for our interests, of course we do. But we all have very different views as to what the future of the UK should be. I think there has been a tendency in years gone by to treat us all in the same way—'There are the devolveds, and here we are as the UK Government'. Well, we're very different. Within Northern Ireland there are differences again, within the Northern Ireland administration. But what we've tried to put forward is to look beyond Brexit—Brexit is happening, but look beyond at what that means for the UK. What does it mean for the UK's single market? What does it mean for beneficial arrangements and relationships between the nations of the UK? There is a mindset amongst some—not all, but there is a mindset amongst some—in the UK Government that we will simply return to what we were in 1972, when the UK was a unitary state with one Government. Well, that's not going to happen, and it's hugely important that that's understood by all in the UK Government so that we can work together to create a stable arrangement for the future.

[85] **Huw Irranca-Davies:** Nathan, over to you.

[86] **Nathan Gill:** Thank you, Chair. You mentioned that we have probably a two-year period, then, to get the Joint Ministerial Committee working in a way that you'd like to see it working. Who should drive that? Who should be the driving force with that: the Government, or the actual members—yourself included?

[87] **The First Minister:** The UK Government has to be on board. We can't do very much if the UK Government doesn't agree with that position.

Scotland will take a different view, but we need at least two administrations who take the same view. We're not in that position as yet, but, for me, I don't believe that we will be in a position at the end of the two-year period where we have a lasting settlement. I think we will have to look at transitional arrangements. But what's absolutely crucial is that the UK is ready with its own internal arrangements at the point when it leaves the EU—before then, clearly.

[88] **Nathan Gill:** I completely agree with that, but what I would say is that unless something proactively is being done to achieve that, then that's just a pipe dream, isn't it? What can be proactively done from your Government, and also from your partners on the JMC?

[89] **The First Minister:** Well, we could be doing more, I'd argue. We've made this view very clear. We've produced the White Paper, which offered a way forward, to our minds. But it is—. I have to say, I repeated these arguments to the Prime Minister today. There was a better understanding of them. I think it's fair to say that, that there's a recognition that, actually, there's more to this than meets the eye, if I can put it that way, and that a lot of work will need to be done, not just in terms of finalising the UK's relationship with the EU—we know that—but also in terms of finalising the relationship between the nations of the UK. In the absence of the European Union as the single market, in the absence of the European Court of Justice as the trade court, something has to replace that. It can be done. To my mind, it can be done fairly easily, but it does involve quite a substantial change of mindset at Whitehall and in Westminster, because, ultimately, the driving force of the constitution for many centuries has been parliamentary sovereignty. I don't subscribe to that anymore; I think sovereignty is best shared. Canada does it well. You have stability, you have prosperity. It doesn't lead to chaos. For there to be a JMC, of course, there would have to be an acceptance that parliamentary sovereignty is, at the very least, diluted, and that the devolved administrations are seen as partners rather than subordinates.

[90] **Nathan Gill:** Okay. Well, on the basis of what you've said, some of the evidence that we received basically tells us that, certainly within Whitehall, there's not a very good understanding of devolution. I just wondered whether you agreed with that, and whether you've had experience where the civil service within Whitehall does not understand how things are devolved here in Wales.

[91] **The First Minister:** It's inconsistent, the approach. As I said earlier on, some departments are better than others. There will be—. I've had experience of the Home Office not really understanding the different structures that we have in Wales. On the other hand, I've had experience of departments like the Department for Environment, Food and Rural Affairs, who understand it full well, and who understand devolution very, very well. But it's not even; it's inconsistent across Whitehall—some are better than others.

[92] **Nathan Gill:** Okay. You mentioned that you felt that there was an assumption that, when we finally left the European Union, those areas that are devolved will return to Whitehall. What evidence do you have for that assumption, for your saying that there was an assumption of that?

[93] **The First Minister:** The front page of *The Guardian* this morning will give you an idea, when a Downing Street spokesperson said—and this is the first time it's actually been said as plainly as this—that, where powers come back from Brussels, they will all go to Westminster, and then it will be for Westminster to decide which powers are then devolved. All right, it's not an on-the-record comment from a Government Minister, but it's as close as we've seen so far. I think that's wrong. I think that we have the potential to end up in the Supreme Court over that, because that is not the way we read our devolution settlement. It is the way that many in the UK Government see it: 'These powers will come back from Brussels to London, then we'll decide what we do, if anything, with them.' It's the wrong approach.

[94] **Nathan Gill:** So, in a way, this common cause, then, of ensuring that the devolved powers come back to the correct areas would be a way of galvanising the JMC and allowing you for the next two years to work in the same direction, would you say?

[95] **The First Minister:** I think that would be perfectly sensible. If we could move the JMC to a position where it was a proper council of Ministers, where there was a decision-making process, where there was a dispute-resolution process that was independent of one of the Governments, which it isn't at the moment, then we have the makings of something that I think would work very, very well. We need then to look at those areas of policy that will return from the EU. We've mentioned agriculture; we've mentioned fisheries, which is probably the most complicated of all. We then look at how the internal single market of the UK operates, but do it collaboratively rather than the UK Government seeing itself as the sole arbiter and constructor of the internal

single market of the UK.

[96] **Nathan Gill:** Okay. Thank you. I just wondered whether you see the role of the office of the Secretary of State for Wales—how you see that now going forward, now that we're going through the Brexit process and with the new Wales Bill. How do you see that role?

[97] **The First Minister:** It's difficult. The Secretary of State has very little power and almost no budget. There's a facilitation role for the Secretary of State, but it would be wrong to suggest that, in the contacts that we have with the UK Government, we always go through the Secretary of State. There are contacts on a department—

[98] **Nathan Gill:** Is he your link with No. 10, basically—your link with the Prime Minister?

[99] **The First Minister:** Not completely, no. There's a direct link to the Prime Minister as well. So, it's not right to say that everything goes through the Secretary of State. The Secretary of State is copied in, but he's not the filter for the relationship that we have with the UK Government; it tends to be a direct link with the appropriate department or Secretary of State, and, from my perspective, a direct link with the Prime Minister, and that works pretty well. It's not—. With the Wales Bill, or the Wales Act, as it is now, in place, the Secretary of State's role is not as it was when that Bill was going through.

[100] **Nathan Gill:** Okay. And the Wales Office—would you say it was a barrier to you working with the Government and with certain departments that you want to? Is it ever that filter that you mentioned?

[101] **The First Minister:** It depends on the occupant. At the moment, no, in fairness, I wouldn't see it as a barrier. There's always been a question mark to my mind, regardless of the occupant, as to how much influence the Wales Office actually has in Government. It's a very small department. It's not always been clear that it has that much influence. We have to wait and see on that. With the Wales Bill, it was quite clear that there were some areas that, no matter what the Wales Office said, they just weren't going to get the devolution that we would have wanted. So, it's not absolutely clear how much influence the territorial departments have any more in Whitehall, compared to what the situation might have been 15, 20 years ago.

[102] **Nathan Gill:** Did Dai want to come in?

[103] **Huw Irranca-Davies:** Dai, do you want to come in on that?

[104] **Dai Lloyd:** Dim ond yn fyr, achos roeddwn i'n clywed eich atebion chi i gwestiynau, yn enwedig rhai David Melding, ynglŷn â'r dyfodol ffederal yma, neu beth bynnag rydych chi eisiau ei alw fe. Ond mae yna her sylweddol yn fanna, onid oes, yn enwedig yng nghydestun y colli pwerau posib yn awr efo'r Bil diddymu mawr—hynny yw, pwerau sydd gyda ni nawr, fel rydych chi wedi'i ddweud eisoes, mewn amaethyddiaeth a physgota ac ati. Os ydy hynny yn golledig i ni, beth am y berthynas arbennig yma, felly, rhwng dwy Lywodraeth? Hynny yw, byddwn ni jest yn cael ein sugno fewn i fod yn un Llywodraeth, oni fyddwn ni? Bydd y Cyd-bwyllgor Gweinidogion yma yn bwyllgor o Weinidogion San Steffan. A fyddwch chi'n ailfeddwl eich ffordd ymlaen o weld y weledigaeth yna?

Dai Lloyd: Just very briefly, because I heard your answers, especially to David Melding's questions, about this federal future, or whatever you want to call it. But there is a significant challenge there, especially in the context of the rollback of powers, perhaps, with this great repeal Bill—that is, powers that we currently have, as you've already said, in agriculture and fisheries and so on. If they are lost to us, what about the special relationship between two Governments? We'll be sucked into being one Government, won't we? This JMC will be a committee of Westminster Ministers. Will you be rethinking your approach in seeing that vision?

[105] **Y Prif Weinidog:** Wel, pe byddai sefyllfa yn codi lle byddai'r pwerau yn cael eu tynnu wrthym ni, fyddem ni ddim yn derbyn hynny, wrth gwrs. Ac rŷm ni wedi dweud hynny yn blwmp ac yn blaen i Lywodraeth y Deyrnas Unedig. Mae pob Llywodraeth wedi dweud hynny. Nid felly yw nod Llywodraeth y Deyrnas Unedig, yn ôl beth maen nhw wedi'i ddweud, ond, wrth gwrs, mae'n rhaid i ni weld beth sy'n mynd i ddigwydd. Gyda'r Bil ei hunan, beth maen nhw wedi dweud wrthym ni sawl gwaith, ac eto y bore yma, yw i gyd mae'r Bil yn mynd i'w

The First Minister: Well, if a situation arose where powers were rolled back, we wouldn't accept that, of course. And we've made that very clear to the UK Government. Every Government has done the same. That isn't the aim of the UK Government, according to what they've said, but we'll have to wait and see what happens. In terms of the Bill itself, what they've told us many times, and they've told us again this morning, is that all that the Bill will do is ensure that the statutory body of European law will still be on statute, and then it will be

wneud yw sicrhau bod y corff statudol Ewropeaidd yn dal i fod yn y gyfraith, ac wedyn, wrth gwrs, bydd e lan i'r Seneddau benderfynu beth yn gwmws maen nhw'n moyn cadw neu beidio. Nid oes sôn ar hyn o bryd y byddai unrhyw beth yn y Bil hwnnw a fyddai'n effeithio pwerau y Cynulliad, neu Seneddau'r Alban a Gogledd Iwerddon.

[106] **Dai Lloyd:** Rwy'n falch o glywed hynny, ond rydw i'n dal i feddwl bod her sylweddol o'n blaenau ni. Ac yn mynd yn ôl i un o'r cwestiynau gwnaeth Nathan eu gofyn ynglŷn â'r ffaith bod y gwasanaeth sifil yn Whitehall yn aml—rhannau ohonyn nhw ta beth—jest ddim yn deall datganoli, ac efallai, yn anfwriadol felly, yn anwybyddu Cymru, mae yna gryn jobyn o waith o'n blaenau ni fanna i drïo darbwyllo'r adrannau yma fod partneriaeth i fod i ddigwydd, ac nad ydym ni wastad ar ddiwedd ba bynnag *drip* yw e. Felly, sut ydych chi'n gweld medrwn ni hybu fwy o ddealltwriaeth, achos rydym ni wedi clywed, dro ar ôl tro, tystiolaeth o flaen y pwyllgor yma, fel rhan o'r arolwg yma, bod gwasanaeth sifil San Steffan jest ddim yn deall datganoli? Mae yna her sylweddol i wneud yn siŵr eu bod nhw yn ei ddeall.

[107] **Y Prif Weinidog:** Mae hynny'n iawn. Un o'r pethau sydd wedi lleihau dros y blynyddoedd yw'r llif o bobl a oedd yn gweithio mewn un Llywodraeth yn mynd i weithio i

up to the Parliaments to decide what they want to retain. Now, there's no talk at the moment that there's anything in that Bill that would have an impact on the powers of the Assembly or the Scottish and Northern Irish Parliaments.

Dai Lloyd: I'm very pleased to hear that, but I do still think that there is a significant challenge ahead of us. To go back to one of the questions that Nathan asked with regard to the fact that the civil service in Whitehall—parts of it anyway—just don't understand devolution, and that, perhaps unintentionally, therefore, they ignore Wales, there's a job of work to do to convince these departments that there is a partnership that's supposed to exist, and that we're not just at the end of whatever drip it might be. So, how can we promote greater understanding, because we've heard, time and time again, evidence before this committee, as part of this inquiry, that the civil service in Westminster doesn't understand devolution? There is a significant challenge to ensure that they do.

The First Minister: That's quite true. One of the things that's reduced over the years is the flow of people who worked for one Government and then would go to work for another for a

Lywodraeth arall am gyfnod o amser. Nid ydym ni'n gweld hynny yn yr un ffordd ag yr oeddem ni. Ac, i fi, mae'n hollbwysig bod yna lif o bobl, nid yn unig rhwng Cymru a Lloegr a'r Alban, ond hefyd llif o bobl rhwng awdurdodau lleol a Llywodraeth Cymru, er mwyn bod pobl yn gallu cael y profiad mwyaf eang maen nhw'n gallu ei gael. Nid ydw i'n ei weld e fel rhyw fath o gynllwyn, ond mae fe'n wir i ddweud nad yw'r dealltwriaeth yna yn y ffordd cyson y dylai fe fod.

period of time. We don't see that happening as much as we have seen in the past. And, for me, it is crucial that there is a flow of people, not just between Wales, England and Scotland, but also between central Government and local government, so that people have the broadest experience possible. I don't see it as any sort of plot or ploy, but it is true to say that the understanding isn't consistently applied in the way that it should be.

[108] **Nathan Gill:** A kind of Erasmus for civil servants.

[109] **The First Minister:** Well, you use the European programme there.

[110] **Nathan Gill:** Which we can of course sign up to, at any time we choose to. My final question then, really, is to do with the Wales Bill. I just wondered what your views were, First Minister, on the way that the Silk Commission's report was dealt with by the UK Government.

[111] **The First Minister:** It was not dealt with to our satisfaction. The Wales Bill is a flawed concept, but has taken us forward. People have asked me, 'Well, why did you support it?' I looked at it as a package. There are some parts of it I don't like, but, overall, and given the fact that the opportunity for further powers may not arise for some time in the future, I took the view that this was something that took us a step forward. There are many unresolved issues. There is no reason why policing should not rest with the Welsh Government and Assembly. The issue of the legal jurisdiction is still odd, and, to my mind, certainly in the short to medium-term, unworkable. There are issues such as air passenger duty, for which no satisfactory explanation has ever been given as to why it should be devolved in Scotland but not in Wales. My suspicion is that they took the view that it was a mistake to devolve it to Scotland, and so Wales wasn't going to get it.

[112] So, we produced a comprehensive Bill that we believed, and still believe, was a better settlement, and a lasting settlement, because the last thing that we want is to spend years and years going back to the same issues

over and over again. The UK Government took a very different view. Why is licensing not devolved? No reason given as to why that should be. Yes, we did get areas such as the community infrastructure levy, and the areas that we already knew about in terms of energy, for example, but it's not the kind of comprehensive settlement it could have been, and is an example of Wales not being treated in the same way as Scotland, when there's no earthly reason why the devolved administrations should be treated—. That a different approach should be taken. I don't argue necessarily that the powers should be identical, but the approach to devolution should be the same.

[113] **Nathan Gill:** Thank you very much. Thank you, Chair.

15:45

[114] **Huw Irranca-Davies:** Before I bring David in, can I just ask on that, it's interesting, because, very often, you see in the public domain, people will say, 'Well, maybe some more megaphone diplomacy, some more yelling and shouting, would get us more'. And I think, I get the impression that the First Minister's office, in the inter-government relationships, prides itself on trying to be a constructive, engaged partner, pushing constructively, gently, getting things right for Wales but also for the UK. What do you make of that, when you acknowledge, as you did, that it wasn't everything that we wanted to get? There were steps forward, but it wasn't everything. How do you reflect on that?

[115] **The First Minister:** I'll repeat what I've said to the Prime Minister, and that is that it would be hugely unfortunate if it was seen that the way to get things is to shout and threaten, whether that is a fear of a return to conflict, as in Northern Ireland, or the threat of an independence referendum, as in Scotland. There has to be a dividend—I've used that word—a dividend, as a devolutionist government, but one that is supportive of the union. Otherwise, what example is that giving—the more you shout, the more you get? And I think that's bad for the UK.

[116] **Huw Irranca-Davies:** Okay, thank you. David.

[117] **David Melding:** First Minister, looking back on the Wales Bill, or the Wales Act—version 4, or whatever we're on—it started, really, with the St David's Day process, and I wonder what your view of that form of working was. Because, fairly—well, I can't remember how soon after it was—but, eventually, your response was actually to publish your own draft as soon as

the draft was produced by the UK Government, arising out of the St David's Day process. You came up with something that you thought was more coherent at that stage. But what did you think of the actual process, of getting all the political parties together, presumably so that a definitive clarification of the constitution could occur?

[118] **The First Minister:** Well, the first thing to clarify is that it's sometimes called an agreement. There was no agreement. The process was, by and large, Westminster based. There wasn't enough involvement from the parties in Wales. And we found ourselves in a situation where it was said that there was agreement in certain areas when there never was. So, that was one of the major flaws with the process itself. It was very much Westminster driven, on the basis, I suppose, that devolution is not devolved. And, unfortunately, it didn't go anywhere near being a satisfactory process for looking at further devolved powers. Silk worked very well, I thought; the St David's Day process, not at all well.

[119] **David Melding:** What did you think of the all-party nature of it? Even if it is very flawed, in your view, did you find that a coherent way of progressing?

[120] **The First Minister:** I think an all-party process, looking at constitutional issues, makes perfect sense, but it's got to be an effective process, and the St David's Day process wasn't, to my mind.

[121] **David Melding:** And then, obviously, you've described the process where you had quite a lot of reservations about the eventual Bill that was introduced, and you made a decision—very maturely, I think—to say, 'Well, there's enough in it for us to support it, and our own views on its shortcomings are also on record; we move on'. But, you know, when you were trying to get Westminster to change its mind and respond to some of the shortcomings in your view, what sort of contact did you have with the UK Government? Was that always through the Wales Office, or did you have access there? Did you ever pick the phone up to the Prime Minister? I mean, what sort of—

[122] **The First Minister:** It was pretty much through the Wales Office. Now, that process was run through the Wales Office. Whether it was—we had contact with the Secretary of State, and also with Lord Bourne, and discussions with him. But that was largely the way the process was managed. And the Whitehall departments saw it in the same way—that this was

something that they would liaise with us on via the Wales Office, which is not the normal way of working, but that's the way they saw it on this occasion.

[123] **Huw Irranca-Davies:** Could I just ask, though—?

[124] **The First Minister:** Yes, sorry, Chair—Huw has—.

[125] **Huw Irranca-Davies:** Go ahead. Huw Rawlings.

[126] **Mr Rawlings:** Just to add a little colour or flavour, obviously, as the First Minister has said, there were exchanges at the political level, but they were, to some extent, influenced by what was a fairly intense process of almost weekly meetings with the Wales Office in which we went through the Bill line by line. This was a Wales Office Bill, and so our direct dealings were with the Wales Office, but it was for the Wales Office then to bring in, as appropriate, the relevant Whitehall department representatives for discussion, and, indeed, on some occasions, we had a free, frank and open exchange of views with the relevant Whitehall department, and the Wales Office officials tried to find a *modus vivendi*, as it were.

[127] But some of these were on really highly technical matters. We had the most extraordinary set of detailed discussions on compulsory purchase, which is not something that sets the blood racing, but, on the other hand, it was that the initial draft of the Bill was such that, actually, it would have been severely inhibiting for the Welsh Government, which, of course, uses compulsory purchase powers in a wide range of areas. So, we had a lot of dealing about compulsory purchase, so that, underneath what one might call, the big-picture political engagement, there was a really intense process. I think, from recollection, there were 60 meetings of this working group, on a more or less weekly basis, going through the Bill, line by line, and, to be fair to the Wales Office, them sometimes saying, 'We can't move on this because department such and such is putting a block down.'

[128] **Huw Irranca-Davies:** Well, Mr Rawlings, contrary to your assertion, we have students of law in the gallery today and some of them may be very excited by compulsory purchase. [*Laughter.*]

[129] **Mr Rawlings:** Yes, it's the sort of thing I love. [*Laughter.*]

[130] **Huw Irranca-Davies:** But before we move on and bring Dai Lloyd in on another matter, of course, a Government department has to have ownership

of a Bill going through Parliament to turn it into an Act, and it makes complete sense that that would be the Wales Office. But, in terms of David's point on the overall process—the high-level engagement and the agreement that you've expressed your frustration at—do you look back and think, 'Well, as a First Minister, where would we have set that agreement?' Would it have been with the Wales Office, with the Secretary of State? Or would it have been directly First Minister to Prime Minister?

[131] **The First Minister:** No, it was never that. It was a Wales Office Bill. We would push for things to be devolved. The Wales Office would—. In fairness, they did a fair bit of work in looking to advocate what we had said. We were successful on some occasions such as with CIL, for example. On other occasions, the response would be, 'We've tried, but we can't get the Whitehall department to shift.'

[132] **Huw Irranca-Davies:** Yes, and I can see, Mr Rawlings, you are nodding there as well on the engagement with the Wales Office. David.

[133] **David Melding:** You may not have the information to hand, but was your impression that—I think there've been two Scotland Acts, more or less, in this same period as well or in the last few years—the process there was any different? Was there more interaction between the Governments? It sounds almost that you were one of the consultees really when the Bill was published. You could make your representations and you could work through some of the things, but you weren't co-drafting it in any way.

[134] **Mr Rawlings:** Very far from it. I think—

[135] **David Melding:** But, in Scotland, was there more of that type—?

[136] **Mr Rawlings:** Sometimes there was, because, if you look at the Scotland Act 2016, that was a product of the Smith Commission and, clearly, the Scotland Office had a responsibility within the UK Government to deliver the Smith Commission proposals and, of course, the Scottish Government was taking a view as to the nature of those proposals and the extent to which what the Scotland Office was doing—whether it was delivering them or not. So, I think there was fairly intense engagement there.

[137] Our engagement with the Wales Office was very intense once we had a Bill on which we were working. The point, I think, is correctly made, that the initial drafting of the Bill took place without any significant Welsh

Government input. That was a conscious policy decision taken by the UK Government. At that point, when the first version of the Bill was produced, we pushed back very hard and, as you will recall, that Bill was paused and then it was reworked and, in that reworked phase, once we had a reworked Bill, that is when we got into this very detailed engagement with the Wales Office to say, 'Yes, but', and, 'You need to this', and so on.

[138] **Huw Irranca-Davies:** It's a very important—sorry, Dai, I promise I won't delay. A very important thing, in terms of the inquiry that we're looking at, is how you do constitutional arrangements. It's great to hear and reassuring to hear of the constructive engagement with the Wales Office. I think all committee members will have taken note of that, but, in taking forward anything in future—heaven forfend we end up here again at some point, once Brexit and everything else is out of the way, and we're doing it again—First Minister, what would be your idea of the conception of another stage of constitutional reform, not the detailed technical and legal issues, but how it's actually formed and where it comes from? I would just suggest that it seems to me that it needs to be from the First Minister of each nation to Prime Minister. It needs to be at that level to be agreed.

[139] **The First Minister:** Yes, ideally it should be. I don't think there's a difficulty in the day-to-day shaping of the legislation being done by the Wales Office. But, yes, it should be an agreement between heads of Government in that sense. Part of the problem with the Wales Bill process was that the original Bill was so dire that literally nobody supported it. It was an example of what happens if you write around to Whitehall departments and ask them what they think should be devolved. Inevitably, we had the situation then where the whole ethos behind the original Bill was that, because of the single jurisdiction, as much limitation as possible should be put on the Assembly's ability to legislate, which went right across the 2011 referendum result.

[140] So, the process was not helped at the start because of that original Bill. It would have been better for there to have been co-drafting. That doesn't mean there would have been agreement on absolutely everything, and we understood that. But, because of the process around the original Bill and the original Bill itself was so flawed, that influenced, inevitably, the way we saw the second Bill.

[141] **Huw Irranca-Davies:** Thank you. Dai Lloyd.

[142] **Dai Lloyd:** Diolch yn fawr, Gadeirydd. A symud ymlaen i fater a fydd o ddiddordeb mawr, yn naturiol, i rai o fyfyrwyr y gyfraith—confensiwn Sewel—nid wyf i'n credu eu bod yn siarad am ddim byd arall yn y parthau yma.

Dai Lloyd: Thank you very much, Chair. Moving on to a matter that will be of great interest, naturally, to some of the law students here—the Sewel convention—I don't think they talk about anything else in this part of the world.

[143] Yn y lle cyntaf, confensiwn Sewel, lle mae, dywedwch, Llywodraeth Llundain yn pasio rhywbeth ac, yn ôl y confensiwn yna, yn cael rhyw fath o gytundeb efo chi yma yng Nghaerdydd ac eraill yn yr Alban. Wrth gwrs, buasai nifer ohonom ni yn licio gweld y confensiwn yna yn fater o gyfraith. Nid yw e, ac fe gawsom ni hynny, wrth gwrs, pan ddywedodd yr Uchel Lys beth ddywedodd ynglŷn â'r busnes erthygl 50, yn y lle cyntaf.

In the first instance, the Sewel convention, where, say, the UK Government passes something and, according to that convention, then would have some sort of agreement with you here in Cardiff and others in Scotland. A number of us would like to see that convention being made a matter of law. It's not, and we heard that when the Supreme Court said what it did about the article 50 ruling.

[144] Wedyn, yn fwy cyffredinol, i fynd ar ôl y mater o adael Ewrop, yn y lle cyntaf, ac erthygl 50, a ydych chi'n credu bod y dyfarniad yna ar erthygl 50 wedi gwanhau confensiwn Sewel? Wedi dweud hynny, confensiwn ydyw, nid mater o gyfraith. Hynny yw, mae'n ddigon gwan fel yw e, ond a yw e wedi cael ei wanhau yn fwy cyffredinol, yn bellach, y tu hwnt i hynny, wrth i ni adael yr Undeb Ewropeaidd?

Then, more generally, to pursue the issue of exiting the EU, first of all, and article 50, do you think that that ruling with regard to article 50 has weakened the Sewel convention? Having said that, it's a convention, not a matter of law. That is, it's sufficiently weak at the moment, but has it been weakened more generally, and further beyond that, as we exit the EU?

[145] **Y Prif Weinidog:** Nid wyf i'n credu ei fod e'n gwneud gwahaniaeth yn un ffordd neu'r llall, achos confensiwn yw confensiwn. Wrth gwrs, mae hyn yn dod nôl i'r syniad o sofraniaeth seneddol, sef bod Senedd

The First Minister: I don't think it makes a difference one way or the other, because a convention is a convention. Of course, this brings us back to this concept of parliamentary sovereignty, namely that the

Llundain yn gallu gwneud beth bynnag maen nhw'n moyn ta beth. Er mwyn newid y system fel bod y confensiwn yn troi mewn i rywbeth cryfach, byddai'n rhaid newid y system ar hyn o bryd, ynglŷn â sofraniaeth, i system lle mae sofraniaeth yn cael ei rhannu, yn yr un modd â Chanada. Wedyn, byddai modd troi confensiwn mewn i rywbeth mwy cadarn a chyfreithiol.

Parliament in London can do as it chooses in any case. In order to change the system so that the convention becomes strengthened, you'd have to change the system's current position on sovereignty, to a system where sovereignty is shared, as is the situation in Canada. Then, one can turn a convention into something that is more robust and legally binding.

[146] **Dai Lloyd:** Wrth gwrs, pan gawsom ni'r trafodaethau wedyn ar yr LCM ar Ddeddf Cymru 2017, ni ddaeth o'n fater o gyfraith. Mae'n dal yn fater o gonfensiwn, y busnes yma efo Sewel. A ydy o'n fater o bryder i chi eich bod chi wedi colli cyfle neu wedi colli pwerau?

Dai Lloyd: Of course, when we had the discussions with regard to the LCM on the Wales Act 2017, it didn't become a matter of law. It is still a matter of convention, this issue of Sewel. It is a cause for concern for you that you've lost an opportunity or lost powers?

16:00

[147] Byddai rhai ohonom ni'n dweud ein bod ni yn colli pwerau achos rhan o'r ddadl, fel rŷch chi'n cofio ar y dydd, a rhan o bwmpas y peth, pan wnaeth Plaid Cymru bleidleisio yn erbyn Deddf Cymru, oedd ein bod ni'n credu ein bod ni yn colli pwerau nôl i Lundain, ddim jest achos bod nifer o bwerau yn cael eu cadw i fyny yn Llundain. Mae'r rhestr yna yn eang iawn, yn hir iawn—193 o bwerau, o gymharu efo rhestr weddol fer i'r Alban, er enghraifft, sydd efo'r un math o *reserved model*, felly. Ond, wrth gwrs, mae'r pethau sydd yn cael eu cadw i fyny yn fanna nawr lawer iawn yn hirach nawr nag yn nhw hyd yn oed heddiw. Felly, rydym

Perhaps some of us would say that we are losing powers here because part of the debate at the time, and the purpose when Plaid Cymru voted against the Wales Bill, was because we thought that we were losing powers and that they were being rolled back to London, not just because a number powers are reserved in London. The list there is very long. I think there are 193 powers as compared to a relatively short list of powers with regard to Scotland, which has the same kind of reserved model. But, of course, the issues that are reserved there are much longer now. So, we are losing powers. But specifically with regard

ni yn colli pwerau. Ond yn benodol ar ben hynny hefyd, mae'r Llywodraeth, o dan Ddeddf Cymru 2017—Llywodraeth y Deyrnas Unedig, felly—yn dal i allu cerdded i mewn a dweud, a newid pethau, heb gael eich cysyniad chi fel Llywodraeth Cymru.

[148] **Y Prif Weinidog:** Mae hynny yr un peth ag unrhyw ran o'r Deyrnas Unedig. Ac unwaith eto, mae'n dod yn ôl o'r syniad hyn o sofraniaeth seneddol. Byddai pris enfawr gwleidyddol, wrth gwrs, ynglŷn â gwneud hynny. Yr un peth—mae yna bris enfawr gwleidyddol ynglŷn â cheisio newid cyfraith yng Nghymru, o achos y ffaith, er ei bod hi'n bosib yn gyfansoddiadol i wneud hynny, mae yna bris enfawr ynglŷn â'r pris gwleidyddol. Y ffordd i newid hyn yw ystyried system lle mae sofraniaeth yn cael ei hailystyried a'i rhannu, system o bartneriaeth ynglŷn â'r cydgyngor, fel y dywedais i. Rŷn ni'n gwybod ei bod yn gweithio mewn gwledydd eraill. Nid oes rheswm pam na ddylai hyn weithio yn y Deyrnas Unedig. Tra bo sofraniaeth seneddol gyda ni fel syniad, bydd hi wastad yn bosib i Senedd y Deyrnas Unedig wneud beth bynnag mae hi'n ei moyn yng Nghymru, yn yr Alban a Gogledd Iwerddon. A'r syniad yna sydd eisiau ei newid ar gyfer y dyfodol.

[149] **Dai Lloyd:** Ac yn bellach at hynny, cwpl o wythnosau nôl yn unig nawr, roeddem ni'n trafod yn y pwyllgor yma Fil yr Unedau Llafur (Cymru) eich Llywodraeth chi eleni.

to that, the Government, under the Wales Act 2017—the United Kingdom Government, that is—can still walk in and say, and can make changes without having the consent of the Welsh Government.

The First Minister: That's true of any part of the UK. And again, it comes back to this issue of parliamentary sovereignty. There would be a huge political price to pay, of course, in terms of doing that. Just as there would be a huge political price to pay in terms of seeking to change law in Wales. Although it is constitutionally possible to do that, there would be a huge political price to pay for doing that. Now the way to change this is to consider a system where sovereignty is reconsidered and shared—a partnership in terms of the JMC, and we know that this works elsewhere, and there's no reason why it shouldn't work within the UK. But whilst we do have parliamentary sovereignty as a concept, it would always be possible for the UK Parliament to do as it chooses in Wales, in Scotland and in Northern Ireland. And that's what we need to change for the future.

Dai Lloyd: And further to that, a few weeks ago, we were discussing in this committee the Trade Union (Wales) Bill—the Bill put forward by your Government that you hope to

Rydych chi'n gobeithio ei basio e, ac yn ddigon teg—rydym ni hefyd yn cefnogi hwnnw fel plaid. Ond wrth gwrs, yn naturiol, pan fydd Deddf Cymru 2017 yn cicio i mewn ym mis Ebrill nesaf, bydd yna bwerau ynglŷn â *employment law, industrial relations*—maen nhw'n cael eu tynnu nôl i'r rhestr sy'n cael eu cadw i fyny yn Llundain, rhan o'r *reserved model* yna—hynny yw rydym ni'n colli pwerau. Ac wrth gwrs, rydym ni wedi gweld llythyr oddi wrth y Gweinidog cyfatebol i fyny yn San Steffan sy'n rhagweld defnyddio hynny er mwyn efallai diddymu eich Bil chi a chael un newydd o dan y pwerau newydd, achos o'r flwyddyn nesaf ymlaen bydd e'n gallu gwneud hynny. Sut ydych chi'n ymateb i hynny?

[150] **Y Prif Weinidog:** Mae'r asesiad yna'n iawn. Roeddwn i'n gwybod bod y pŵer yn mynd i gael ei golli, ond gwnaethom ni ystyried y pecyn yn gyflawn. Nawr, wrth gwrs, mae yna sialens i Lywodraeth y Deyrnas Unedig, a'r sialens yw hyn: bydd y gyfraith yn cael ei phasio yn y Cynulliad. Wedi hynny, wrth gwrs, bydd Senedd San Steffan yn ceisio newid cyfraith sydd wedi cael ei chreu yng Nghymru, ac felly bydd gan Dŷ'r Arglwyddi farn ar hynny. Yn fy marn, mae e'n *precedent* gwael iawn lle mae Senedd y Deyrnas Unedig yn trial gwrthdroi beth mae Senedd Cymru wedi ei basio, a bydd hynny'n gwestiwn, rwy'n credu, y bydd Tŷ'r Arglwyddi â diddordeb mawr ynddo.

pass. And we also support that as a party. But, of course, naturally, when the Wales Act 2017 kicks in next April, the powers with regard to employment law, industrial relations—they will be rolled back to that reserved-powers list kept in London, part of that reserved model. And as part of that we'll be losing powers. And we've seen the letter—the corresponding Minister in Westminster foresees using those powers in order to perhaps abolish your Bill, and to have a new Bill in place under those powers, because from next year on he'll be able to do that. How do you respond to that?

The First Minister: That assessment is accurate. We knew that the power was to be lost, but we considered the package in its entirety. Now, of course, there is a challenge for the UK Government and the challenge is this: the Bill will be passed in the Assembly and then the Westminster Parliament will be seeking to change a law made in Wales. And I'm sure the House of Lords would have a view on that. In my view, it is a very dangerous precedent where the UK Parliament tries to overturn the will of the Welsh Assembly, and I think this is a question that the House of Lords will be extremely interested in.

[151] **Dai Lloyd:** Diolch.

Dai Lloyd: Thank you.

[152] **Huw Irranca-Davies:** David, do you want to take us on?

[153] **David Melding:** In fairness to the First Minister, I think he's respectfully said that how Parliaments arrange their own work is for Parliaments. But if I can just tempt you to say—you know, issues that traditionally have involved a sharing of competence or cross-border issues, and certainly given what's likely to happen post Brexit—what's your view of, say, Westminster UK Ministers coming to Cardiff to give evidence occasionally and, vice versa, Members of the Welsh Government giving evidence to Westminster committees in areas where we are looking at joint competences, or the exercise of policies under framework agreements, for instance, if that's where we end up? Do you think there ought to be more effective measures put in place to allow Members of the UK Executive to come here and be, to some extent, scrutinised and vice versa?

[154] **The First Minister:** It's been fairly common practice for Welsh Government Ministers to give evidence to committees of both the Commons and the Lords. I've done it myself. It's not an issue, as long as it is understood, of course, that those Ministers are not answerable or accountable to the Westminster committees. The same applies, of course, if UK Ministers come and give evidence to Assembly committees. We have always taken the view that we will look to give evidence to a committee on constitutional issues, or other issues in the past, as long as it's understood that we're not there to be answerable to those committees.

[155] **David Melding:** There could be a level of scrutiny but there isn't accountability, you're right, and that would rest in Cardiff, or in Westminster, depending on which Government we're talking about. So, anyway, I think that's a clear answer. Thank you.

[156] **Huw Irranca-Davies:** Now, we've overlapped—I'm going to bring Nigel in here—in some of our questions into—. Sorry, 'Nigel'—Nathan. My apologies. My apologies. I'm going to bring Nathan in in a moment. We've overlapped slightly into the area covered in 'Securing Wales' Future', but it's no surprise there, as some of the areas we're taking evidence on very much run over that, so we make no apologies for that, but it might be quite interesting if we try and drive down a little bit deeper into your thoughts. So, what we will do, first of all—for ourselves as well as for you, First Minister,

because I know your stamina is fine—we're flagging a little bit, so we're going to take a very short break, and we will return in 10 minutes. So, we'll close the session there and return in 10 minutes.

*Gohiriwyd y cyfarfod rhwng 16:06 ac 16:17.
The meeting adjourned between 16:06 and 16:17.*

**Papur Gwyn Llywodraeth Cymru—‘Sicrhau Dyfodol Cymru’:
Sesiwn Dystiolaeth 1
Welsh Government White Paper—‘Securing Wales’ Future’:
Evidence Session 1**

[157] **Huw Irranca-Davies:** First Minister, welcome back—[*Inaudible.*]—to the Constitutional and Legislative Affairs Committee, where we have the First Minister. It was remiss of me, as we began earlier on, because we were already under way, that I didn't ask you—sorry—to introduce those beside you who've already spoken or who are hiding there quietly. Would you like to, or would they like to introduce themselves, please?

[158] **The First Minister:** Yes, Hugh.

[159] **Dr Rawlings:** I'm Hugh Rawlings, director of constitutional affairs and inter-governmental relations.

[160] **The First Minister:** Des.

[161] **Mr Clifford:** I'm Des Clifford, director of the Office of the First Minister.

[162] **Huw Irranca-Davies:** Brilliant, thank you very much. You're on record now, so you can't hide anymore. [*Laughter.*] Okay, we're going to move straight into the second session, and, Nathan, you're going to begin for us.

[163] **Nathan Gill:** Yes, thank you. First Minister, is the proposal for a constitutional convention now a non-starter on the basis that the Scots have decided to go ahead with a second referendum?

[164] **The First Minister:** Far from it—I think we have to plan for the future on the basis that the UK will keep its current boundaries and borders. So, no, I think the constitutional convention is still very much alive and there is still a need to make sure that we have a constitutional that fits the twenty-first

century, not the nineteenth.

[165] **Nathan Gill:** Okay, I would completely agree with that. Thank you.

[166] **Huw Irranca-Davies:** David.

[167] **David Melding:** In our discussions earlier with the law students here, a couple of them asked me what I thought it was a very pertinent question: ‘Will we end up with a written constitution?’ Would that be the main outcome, really—the sign of agreement and success of a constitutional convention?

[168] **The First Minister:** There is no reason why the UK couldn’t have a written constitution. In Wales, effectively, we do have a written constitution because that’s what the legislation gives us. We know that there are plenty of other Commonwealth countries that are in that sort of position. That said, I don’t think this is something that’s going to happen immediately. We all know that this would be many, many years in the making. There are arguments both ways. An unwritten constitution delivers a degree of flexibility that has enabled the UK to bend to the demands of the national identities within it; we know that in some written constitutions they become quite rigid. The US constitution is possibly an example of that, where things are—. You know, the constitution was written many centuries ago and that tends to corral constitutional thinking in America in a particular way.

[169] **David Melding:** But there is a sense, isn’t there, that some sort of act of state-wide reaffirmation is required now because of what’s happening at an incredible pace to the British state?

[170] **The First Minister:** I think the issue of the Council of Ministers and, indeed, the issue of the internal single market can actually be done by convention to begin with. I think it’s possible to do that without the need for legislation. But with all these things, the conventions only work if the conventions are respected. They have been, by and large, so far, but if a situation was to arise that the conventions themselves were ineffective, then that would be the time to look at a written constitution.

[171] **David Melding:** To go a bit more—. Adopting a wider scope, are you surprised sometimes that there isn’t a greater sense of danger amongst the politicians you talk to, perhaps in Westminster, about the state the British state is in at the moment?

[172] **The First Minister:** I think the focus has been very heavily on Brexit and the UK's relationship with the EU. The danger with that is that people don't look over their shoulders to see what's happening within the UK itself. People heard arguments in the EU referendum that powers would be returned to Parliament. Which one? That question was never put. So, I think we must guard against failing to understand the need to see change within the UK, even as we deal with the complex question of the UK's relationship with the rest of Europe.

[173] **David Melding:** I think one criticism, perhaps, some could make of some of the ideas that you're putting forward is that they have a great sort of internal coherence, and if we were agreeing as first principles our system of governance, and the peoples of the United Kingdom were coming together to form a constitution, they may well adopt the sort of institutions you are proposing, but we're coming at the whole challenge from the other side. We have a state that was unitary, then became partially devolved and then has gone through some really big critical shifts like a call for secession movement and then Brexit. Trying amongst all that rubble to get people together and say, 'Ah, but this is the core of what a British state should be, and this is how the sovereignty should be shared'—it's a big task in that sort of maelstrom, isn't it?

[174] **The First Minister:** That can't be done in two years. I'll outline what I think is important to do within the article 50 period, but the issue of the wider working of the UK constitution obviously will take some years to resolve. I think sometimes there's an element of self-delusion in the UK, where people think the UK has always operated in a particular way for centuries. The current UK is only about 100 years old with its current borders. The UK's constitution evolved itself. It wasn't written in stone in the thirteenth century or the fourteenth century—it evolved itself with the Bill of Rights, with the—. The same arguments were used with the great reform Acts—we don't want people to vote unless they have a property qualification because it's the way it's always been. Well, countries prosper as they adapt. The great challenge for the twenty-first century is to adapt to the strong national identities that exist, and have grown again, in the UK, but to create a state where people feel their national identities have a home in that state and the state provides a sense of common purpose for everybody.

[175] **David Melding:** I think another fact is that the union is 69 years older than the United States of America, but often in the behaviour of British politicians it seems to be Arthurian in its antiquity, which is obviously not

true. It comes back to—. The lack of appetite among certain politicians who would describe themselves as unionists for change must be holding back your vision a bit, it seems to me. And that's amongst all parties. We can't even—. Let's face it, we can't even reform the House of Lords, which is screaming out for a purpose that doesn't overshadow the House of Commons and would be useful. I couldn't think of anything more logical to do with it than make it the chamber of the union and the great federal institution in our constitution, and we can't even get agreement on that.

[176] **The First Minister:** Tradition is important, but it's important not to be hidebound by tradition. We see, in history, countries that have been powerful and then become inward-looking, and become so traditional that they can't change even if circumstances mean that change has got to happen. China's a prime example of that. China was by far the most powerful nation on the planet up until about the sixteenth century. They decided they would then no longer sail the world with their ships and became very inward-looking. As a result of that, two centuries later, they were very weak when faced with the challenge of the Western navies. Those mistakes have to be understood in history in order for them not to happen again. So, for me, people will look at institutions, and institutions are important, but people get the impression they've always operated in a particular way. They haven't—they've had to adapt.

[177] The reason why the great reform Acts were passed in the nineteenth century was because there was overwhelming demand for—it wasn't universal suffrage at the time, as we know, but for greater suffrage, rather than people saying, 'We can't do this, because it's always been this way'. This is the reason why the Republic of Ireland exists. If the British state in the late nineteenth century had been flexible enough to accommodate a degree of home rule, Ireland may well not have become an independent state as it did. But it wasn't flexible enough, and then we saw the ending of the UK of Great Britain and Ireland in 1920, and the UK with its current borders. I wouldn't want to see that situation repeat itself when it comes to Scotland.

[178] **David Melding:** I share your sense of urgency—there's very little you're saying that I profoundly disagree with. My final question is: what happened in Scotland last week, where does that put your sort of vision? It seems you've got to have a level of buy-in, or some influence in Scotland, where, if they don't get plan A, which, for them, for the Scottish Government, is independence, then they're going to need other arrangements that make the UK state more amenable to them. How are you going to use your diplomatic

charm to get some level of engagement, because, without them, we're not going to go forward, are we, on these fundamentals?

[179] **The First Minister:** With the first Scottish referendum, it's fair to say that whenever we looked to a particular issue where we'd want to form common cause with Scotland the response was always, 'Well, no, we've got our trajectory—we want to be independent and that's it. Good luck, but this is what we want'. In the discussions I've had with the Scottish First Minister, that's not the view that she's taken. I've said to her, 'Look, there are issues here that will still need to be resolved'. They don't see themselves as disappearing off the scene. They've outlined a particular trajectory, that's true—the Scottish Government has expressed its view on where it wants to go—but I have outlined my concern that I wouldn't want that to mean that Scotland disappears from the stage in the meantime. Scotland will still be an important country in shaping these islands in the future.

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

[181] **Huw Irranca-Davies:** First Minister, Chapter 7 of the White Paper 'Securing Wales' Future' turns to constitutional and devolution issues, and that's excited us a lot. Within it, you do turn to some of the issues we've already been discussing—the frameworks that would be potentially good frameworks, as you've just described them, fit for this century and hopefully beyond. Within that, it says within the White Paper that one of the things that would underpin this is

[182] 'the free consent of the three devolved legislatures and administrations to participate on equal terms with the UK Government, representing the interests of England'.

[183] Just explain to us how that works. The parity issue is significant, clearly, because there has been good practice on this before where there's been genuine engagement and understanding, when it works well, by consent. But, this issue of the UK Government sitting at that table representing the interests of England—in your mind, how does that work?

[184] **The First Minister:** This is the great dilemma, in the sense that the UK Government is not the UK Government at all times—in some areas that are devolved, it is effectively the English Government. That's recognised, of course, by English votes for English laws in Parliament. This is not some kind of strange radical idea—it has already been noted in Parliament.

[185] **Huw Irranca-Davies:** But we know how complex that is proving.

[186] **The First Minister:** Hugely complex, but it needn't be that complex. Let's take, for example, the issue of agriculture and fisheries—wholly devolved. In reality, the UK Government's role in a Council of Ministers meeting on agriculture is to represent England, because that is what it does now. So, there is no difficulty there in the UK Government wearing that hat when it comes to discussions along those lines. The same with fisheries—there has been an ongoing issue for many years between ourselves and the Department for Environment, Food and Rural Affairs over the issue of fishing quotas, where they wanted us to give up part of our quota. Naturally we've said 'no'. The EU has been the back-stop—if that's gone, there's nothing to stop DEFRA's intentions from being made real. Now, in those circumstances, we would need to make sure that there's a council of Ministers looking at fisheries, and that DEFRA in those circumstances is representing England in order to avoid that conflict of interest.

[187] **Huw Irranca-Davies:** So, clearly, you are optimistic that, if there was a will to make that happen, that model could actually work. There needn't be a conflict between being a UK Minister and an England Minister. In fact, it's been proven to work before where there's a real willingness to make it work in some—if not the JMC, certainly in agricultural meetings and so on.

16:30

[188] **The First Minister:** When I was attending meetings in the early part of the last decade—the monthly meetings that I've mentioned before, where we would agree the line for the UK to take at the Council of Ministers—there was a Minister there representing England at that. It was Joyce Quin, actually, and her role was to be the Minister representing England. It didn't really work, because, at the end of the day, Nick Brown, who was there at the time, had the international role for the UK. Of course, I understood that, but in the main he was the English agriculture secretary in that sense. Where you have clear delineation, such as in agriculture and fisheries, it's actually quite easy to set up a Council of Ministers process, because it's quite clear who does what.

[189] **Huw Irranca-Davies:** Indeed, but you could see it working in areas where there are more complex issues, where it isn't so clearly delineated, and where you'd have confidence that, if there was a will, you could indeed

sit around a table where the Minister sitting in that pole position, potentially chairing that meeting, could step aside from being the UK Minister and just be the England Minister for a moment and then step back into the role of being the UK Minister.

[190] **The First Minister:** As long as the process is one that leads to agreement—that's the important thing—and not a process where the UK Secretary of State puts on a different hat and then at the end of the day takes the decision for everyone else—that clearly doesn't work. But I think this is easily manageable. There are many issues over the past 20 years that we've dealt with and that we've managed, and it would be perfectly possible in an area that's devolved, knowing that there needs to be collective agreement on a way forward, for that UK Minister to act as the English Minister in those circumstances, because de facto that's what's happening now in a lot of areas.

[191] **Huw Irranca-Davies:** Yes. I assume that your argument would be that this would not be a difficult step to take—it would almost be within the current structures if there was a will to do it. Okay, you can move towards a council of Ministers structure, perhaps, but it's not full-blown federalism—it's not saying, 'Let's rotate the leadership of a JMC meeting around each one of the different devolved administrations and so on'. It's not that far a step from—

[192] **The First Minister:** No, it's not. As the senior head of Government, of course, these days, I could make that argument that the tendency, I think, in the G7 is for that to happen, but I won't make that argument today. I think what's important is that it's understood that there will be occasions when UK Government Ministers are there to represent England. It's been a reality for years. It's not a weakness—it reflects what has become practice over many years, and, as long as you have a mechanism to resolve issues and agree issues, I don't see that's a problem.

[193] **Huw Irranca-Davies:** Okay. I'm going to come to, in a moment, whether these ideas and aspirations are realistic, based on the politics of where we are at the moment, but I want to ask one other thing. You've mentioned in the previous session the importance of an arbitration mechanism to this, otherwise it goes into gridlock—that type of JMC or even Council of Ministers—where there cannot be agreement. Would I be right in saying that that is a key part of what your proposals would be—some form of arbitration—and, if so, who would do it?

[194] **The First Minister:** An adjudication process, rather than arbitration—it has to be a body that decides.

[195] **Huw Irranca–Davies:** A binding adjudication, yes.

[196] **The First Minister:** It could be the Supreme Court, but it needs to be a trade court of some kind. The European Court of Justice performs that role in the European single market, and the US Supreme Court regulates interstate commerce in the US. If you have a single market, either you have no rules, in which case, you don't really have a single market, or you have rules that reflect state-aid rules, as now. But, if you have those rules, there has to be somebody to police those rules and police those rules in such a way that is objective.

[197] **Huw Irranca–Davies:** With those, and the other proposals that you have within the White Paper on constitutional matters, are you in a position to tell us whether you've begun those discussions, even informally, with the Prime Minister, to say, 'Look, here's a way in which not only can we bring forward a process, a mechanism that's fit for the twenty first century, but one that might even help hold the union together'—are you at the foothills of those discussions yet?

[198] **The First Minister:** Yes, and we discussed it further this morning.

[199] **Huw Irranca–Davies:** Productively.

[200] **The First Minister:** Certainly, we went into greater depth this morning, and I felt that the discussions were more constructive this morning. Ultimately, of course, there's this dilemma: if there were to be rules for the internal single market of the UK, but no mechanism to enforce those rules, the incentive would be for each devolved Government to drive a coach and horses through those rules on the basis that there's nobody to enforce them. That's not a stable way of doing things. The current dispute resolution process within the JMC is unsatisfactory in the sense that, if there is a dispute with the UK Government, it's the UK Government ultimately that resolves the dispute. We put forward alternative mechanisms. It's not actually been a problem. Disputes have been resolved satisfactorily before getting to the final stage, but it doesn't look right for a dispute, effectively, to run into the sand because there's no independent person or body who can provide a definitive ruling.

[201] **Huw Irranca-Davies:** I only have one other question before I hand over to colleagues, and it's to come back to that earlier aspect. You highlighted, with some concern, some of the comments that have been made, including this morning, about where powers coming down in this transition out of the EU, where they come to, and yet the Prime Minister has said, and I quote:

[202] 'we must ensure that right powers sit at the right level to ensure our United Kingdom can operate effectively'.

[203] That, from the Prime Minister, sounds quite reassuring: recognise where they are and make them sit at the right level. So, how much should we be concerned about the conflicting statements that are out there when the Prime Minister says something like that?

[204] **The First Minister:** Well, the issue is: what are those powers? It's the detail, at the end of the day. There are some areas that, on the face of it, are not devolved, but where we would have a very strong interest. Let's take, for example, the issue of trade agreements. Free trade agreements are not devolved; clearly so. But if, for example, there were to be a free trade agreement with New Zealand, which meant that the current restrictions on New Zealand lamb were removed, that would be very bad for Welsh farmers. Clearly, we have a role there in influencing the UK Government's view when it comes to free trade agreements. So, the line is not always clear to that extent. We know that international relations are not devolved—quite so, in terms of concluding treaties—but an extreme interpretation of that would mean that we don't have the right to have any kind of representation abroad. There has to be some give and take here in terms of the way that these things are interpreted. The problem is, what the Prime Minister has said sounds fine, in principle, but how will it work in practice? The devil is in the detail.

[205] **Huw Irranca-Davies:** I'm going to bring Nathan in in a moment, but that is a very good example: the trade aspects of our food produce and the New Zealand trade agreements. That's not devolved. So, in your scenario, if there was a working mechanism of the type that you now describe—the type that you can now envisage—there would be a role for devolved Ministers to set the agenda in a council of Ministers to say, 'This needs to be on it, and we need an agreed UK approach that must take into account the needs of Wales, as well as Northern Ireland and Scotland, because it's not a devolved issue.'

[206] **The First Minister:** I wouldn't go as far as to say that there will be a veto because that could work in the other way—in the other direction—but I would go as far as to say that it's hugely important that, where free trade agreements are concluded, there is, firstly, a full process where the devolved Governments can make their views known, and there is a process where the UK Government understands what the consequences would be of a particular course of action.

[207] **Huw Irranca-Davies:** Practical examples are sometimes quite useful. So, in a clear issue like that where, actually, even though it's of vital importance to Wales—this issue of New Zealand quotas, let's say, for example—and trade is not a devolved issue, you might argue very eloquently, powerfully and repeatedly in the run-up to a council of Ministers that this is a real red line, almost like we used to do in Brussels—'This is a real red line; we cannot come out without it'—and yet the UK Minister is saying, 'It's vitally important for you, I know, but I've got Scottish interests, I've got Northern Ireland interests, I've got English interests; within our UK framework, I'm sorry, you can't get it.' We'd have to accept that.

[208] **The First Minister:** In an area that wasn't devolved, the answer to that has to be 'yes', logically; but in an area that is devolved, the answer to that has to be 'no'. Why should we have to accept the creation of a general framework of agricultural policy that we had no role in creating? Because the suspicion would be that it's been set up for a particular group of farmers, for example, in a particular part of the UK, whereas something that has wider buy-in has greater strength.

[209] **Huw Irranca-Davies:** So, what I find interesting there—the key words there:

[210] 'that we had no role in creating'.

[211] So, part of the key to this is actually in creating the agreed agenda—the terms of reference for discussion—and making that a meaningful engagement. You might occasionally lose the odd battle, but you need to be—

[212] **The First Minister:** Yes, that's the nature of a discussion or negotiation. There are some areas—. Let's take animal health. I've used this before. Great Britain is one animal health zone. It would make little sense for

there to be three_conflicting animal health regimes on one island. In fact, even though this is devolved, that's not what happens; we work very closely together. Now, in a situation such as that, it would make sense to sit down and work out a common approach, pretty much as happens now, to disease control. But that's very different from being told by one of the three, 'This is what is going to happen, like it or not,' as opposed to, 'This is what we've agreed, we've all signed up to it, let's do it.'

[213] **Huw Irranca-Davies:** Yes. Nathan.

[214] **Nathan Gill:** Thank you, Chair. Just looking then, still at the internal single market for the UK, you mentioned about dispute resolution. Do you see that the Supreme Court would be where this would be resolved, or maybe a new institution?

[215] **The First Minister:** It's quite possible, it could be the Supreme Court. I'm not wedded to any particular court. I think it has to be a court. I think it would be better if a specialist trade court was established—it doesn't have to be—but the important principle is that it is an independent court that's able to police the rules of the single market. That's the norm in other single markets around the world.

[216] **Nathan Gill:** And how long do you think that would take to set up if it was a new organisation?

[217] **The First Minister:** It's already there. If the Supreme Court was the designated body, it's there already. It doesn't need any more work.

[218] **Nathan Gill:** Okay. Just looking back at the House of Commons committee on leaving the EU on 7 March, when they interviewed Mark Drakeford, and Jonathan Edwards, the MP, he asked specifically:

[219] 'Do you expect to have foresight of that letter before it goes?'

[220] They're talking about the article 50 letter here. And he says:

[221] 'Are you having any input into that letter?'

[222] To which Mark Drakeford replied—I'm just going to paraphrase him—basically, it depends a great deal on what the nature of the letter will be, whether it's a very short, simple letter, basically just triggering article 50, or

whether or not it's a letter that goes further and actually created parameters for the triggering of article 50, because then that would be a different matter. So, my question is, based on the fact that, obviously, you've met with the Prime Minister this morning: are you aware of what the letter triggering article 50 will contain? Will it be a very succinct, 'We are now triggering article 50', or is there more to it? And if there is more to it, what input will you have and do you feel that you should have with regard to that?

[223] **The First Minister:** We did discuss this this morning. The honest answer is, 'No-one knows', because it's never been done before. There's no precedent. I think the UK Government are genuinely wrestling with what the letter— Is it simply, 'Dear Sirs, take notice that article 50 is now triggered, yours et cetera'? Or, does it have to be more detailed than that? No-one actually knows. To me—

[224] **Nathan Gill:** So, they haven't actually written a letter yet then.

[225] **The First Minister:** I've not got the impression that a letter is ready yet.

[226] **Nathan Gill:** Okay.

[227] **The First Minister:** To me, I think the shorter the better. This is about triggering a process. There's no point going into more detail if no more detail is required at this stage, so, for me, it's just a question of triggering article 50, and then getting to work on the negotiating process.

[228] **Nathan Gill:** Okay. Thank you very much, First Minister.

[229] **Huw Irranca-Davies:** Dai, you're going to take us onto the great repeal Bill.

[230] **Dai Lloyd:** Yes, well, less of the great, really.

<p>[231] Diolch, Gadeirydd. Trof ymlaen at y rhan o'r Papur Gwyn sy'n sôn am y Bil diddymu mawr, a ydy Llywodraeth Cymru wedi bod yn rhan o unrhyw drafodaethau o gwbl gyda Llywodraeth y Deyrnas Unedig ynglŷn â'r Bil diddymu mawr?</p>	<p>[232] Thank you, Chair. Turning now to the part of the White Paper that talks about the great repeal Bill, has the Welsh Government been involved in any discussions at all with the United Kingdom Government on this great repeal Bill?</p>
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[233] **Y Prif Weinidog:** Ynglŷn â'r manylion, na. Mae'n wir i ddweud taw nid Bil mawr i gael gwared ar bethau yw hwn, ond Bil mawr i gadw pethau. Dyna'r ffordd mae wedi cael ei gyflwyno i ni. Beth sydd wedi cael ei ddweud wrthym ni yw taw natur y Bil yw sicrhau bod y corff cyfreithiol Ewropeaidd sydd gennym ni nawr yn sefyll yn y gwahanol systemau o gyfiawnder trwy'r Deyrnas Unedig er mwyn i'r Seneddau gwahanol ystyried beth yn gwmws maen nhw'n moyn cadw neu na. Mae hynny'n hollol synhwyrol. Wrth gwrs, petasai'r Bil yn mynd ymhellach ac yn dechrau edrych ar ble fyddai ffiniau datganoli, wel, byddai barn gwahanol gyda ni. Ond, nid dyna'r ffordd y mae'r Bil wedi cael ei gyflwyno i ni.

The First Minister: In terms of the detail, no. It's try to say that this isn't a great repeal Bill, but a Bill to retain certain things. That's the way it's been presented to us. Now, what we've been told is that the Bill aims to ensure that the European body of law that we have now will remain in the various justice systems throughout the United Kingdom so that the various different Parliaments can consider what they want to retain and what they don't want to retain. That's quite sensible. If the Bill were to go further and were to look at the boundaries of devolution, then our view would be different. But, that's not how the Bill has been presented to us.

[234] **Dai Lloyd:** Diolch am hynny. Ymhellach i hynny—ac rydw i'n dyfynnu nawr o'r Papur Gwyn—rŷch chi'n dweud na ddylai'r Bil diddymu mawr arwain at y Deyrnas Unedig yn

Dai Lloyd: Thank you for that. Further to that response—I quote now from the White paper—you state that the great repeal Bill

[235] 'crafangu pwerau datganoledig yn ôl. Bydd unrhyw ymgais o'r fath yn cael ei gwrthwynebu'n gadarn gennym'.

'must not result in devolved powers being clawed back to the UK Government. Any attempt to do so will be firmly resisted by us.'

[236] Gennyich chi, felly. Nawr, mae yna her sylweddol yn y fan hyn hefyd, yn naturiol. Ni wnaf ailadrodd y busnes ynglŷn â Deddf Cymru, ond buasai rhai ohonom yn dweud ein bod ni'n colli pwerau yn fanna, mae yna beryg efo'r Bil diddymu mawr y bydd pwerau Ewropeaidd sydd yng Nghymru ar hyn o bryd, byddan

Or by you. Now, there's significant challenge here as well, naturally. I won't repeat what we've said about the Wales Act, but some of us would say that we're losing powers there, and there's a danger with the great repeal Bill that European powers that lie in Wales at present will be devolved from Europe to London and

nhw'n cael eu datganoli o Ewrop i Lundain a ddim pellach. Mae hynny'n golygu Cymru eto yn colli pwerau yn fanna.

16:45

[237] Rwy'n clywed beth rŷch chi'n ei ddweud ynglŷn â'ch gwrthwynebiad tawel, i wrthgyferbynnu â beth sy'n digwydd yn yr Alban—mae yna lot o glochdar yn fanna—ac yng Ngogledd Iwerddon. Ond, ar ddiwedd y dydd, mae'r setliad salaf yn nhermau datganoli yng Nghymru. Nid ydy hyd yn oed yr heddlu wedi cael ei ddatganoli i fan hyn. Mae'r heddlu hyd yn oed wedi cael ei ddatganoli i Gynulliad Llundain, i'r Alban, i Ogledd Iwerddon a hyd yn oed i Fanceinion, ond ddim yma i Gymru.

[238] Bydd rhai pobl, megis yn fy mhlaid i, yn gofyn: sut y mae'r gwrthwynebiad tawel yma, o'ch plaid chi, felly, yn talu ar ei ben, achos ar ddiwedd y dydd, rŷm ni yn y man gwanaf yn ddatganoledig? Dyna sy'n pryderu rhai ohonom ni ynglŷn â Deddf Cymru, ond rŷm ni wedi cael y ddadl yna ac rŷm ni yn mynd i golli pwerau. Ond hefyd nawr, ynglŷn â'r Bil diddymu mawr yma, mae yna beryg y byddwn ni eto yn colli pwerau amaethyddiaeth a physgota sydd gyda ni y nawr. Y gwrthwynebiad tawel yma sydd gyda chi, a ydych chi'n mynd i ddibynnu ar hwnnw i ddwyn ffrwyth yn fan hyn hefyd, ac unrhyw obaith ar ben

no further. That would mean then that Wales again loses out on the powers.

I've heard what you said about your quiet resistance, in contrast with what happens in Scotland—there is a lot of noise there—and in Northern Ireland. But, at the end of the day, the poorest settlement, in terms of devolution, is in Wales. Even the police have not been devolved to here. The police have even been devolved to the London Assembly, to Scotland, to Northern Ireland and even to Manchester, but not here to Wales.

Some people, such as those in my party, will ask: how is that quiet resistance from your party, therefore, paying dividends, because ultimately, we are in the poorest position in terms of devolution? That is what concerns some of us with regard to the Wales Act, but we've had that discussion and we are going to lose powers. But now also, with regard to the great repeal Bill, there is a danger here again that we'll lose powers with regard to agriculture and fisheries that we currently have. So, this quiet resistance that you have, are you going to rely on that to bear fruit here as well, and is there any hope in that regard?

hynny?

[239] **Y Prif Weinidog:** Ni fyddwn ni'n dawel os bydd hynny'n digwydd, fe allaf i ddweud hynny. Byddwn yn eithaf uchel fy nghloch ynglŷn â hynny.

The First Minister: We won't be staying quiet if that were to happen. I would certainly be raising my voice in those circumstances.

[240] Sawl gwaith y mae Llywodraeth y Deyrnas Unedig wedi dweud wrthym taw nid nod y Bil hwnnw yw tynnu pwerau yn ôl neu gadw pwerau yn Llundain sydd yn dod o Frwsel. Byddem yn hollol yn erbyn hynny. Ni fyddem yn dawel ynglŷn â hynny a byddem yn gwrthwynebu'r holl beth achos byddai hynny'n effeithio ar yr Alban ac ar Ogledd Iwerddon hefyd. Byddai'r un egwyddor yn iawn i Gymru—ddim yn iawn ei fod e'n rhywbeth y byddwn yn ei gefnogi, ond byddai'r un egwyddor ynglŷn â delio â Chymru a'r Alban a Gogledd Iwerddon. Nid oes modd tawel i fod yn erbyn unrhyw fath o drosglwyddo pwerau o Gymru i Lundain o achos y Bil hwn.

On a number of occasions the UK Government has told us that the aim of the Bill is not to withdraw powers or to retain powers in London that are repatriated from Brussels. We would be entirely opposed to that. We would not remain silent in opposing the whole issue because that would affect Scotland and Northern Ireland too. The same principle would apply to Wales—not that it's something that I would support, but it would be the same principle in terms of dealing with Wales as would be the case in Scotland and Northern Ireland. One can't remain silent in one's opposition to any powers being clawed back from Wales to London because of this Bill.

[241] **Dai Lloyd:** Ar hyn o bryd, a oes yna broses lle fedrwch chi fynd i'r afael â'r manylion sydd ddim yn eglur i rai ohonom ni nawr? Beth sydd yn mynd i ddigwydd ynglŷn â'r Bil diddymu mawr yma? A ydych chi, fel Llywodraeth Cymru, yn rhan o unrhyw broses sydd yn gallu craffu ar sut y mae'r broses yma yn mynd ymlaen? A ydych chi'n gallu dylanwadu nawr yn lle aros tan y bydd pethau wedi cael eu cyhoeddi

Dai Lloyd: At present, is there a process whereby you can get to grips with the details that are not clear to some of us at present? What is going to happen with the great repeal Bill? Are you, as the Welsh Government, part of any kind of process that can scrutinise how this process goes forward? Can you have any influence now instead of waiting for things to be published when it might be too late?

ac efallai y bydd yn rhy hwyr?

[242] **Y Prif Weinidog:** Nid yw'n sefyllfa lle gallwn ni gyd-ddrafftio'r Bil—eu Bil nhw yw hwn. Maen nhw wedi addo y byddan nhw'n siario'r Bil drafft gyda ni cyn gynted ag sydd yn bosib. Maen nhw wedi dweud wrthym ni beth yw nod y Bil ac rydym ni wedi ei wneud yn berffaith glir beth yn gwmws na fyddem am ei weld yn y Bil, sef newid y ffiniau datganoledig.

The First Minister: We're not in a position where we can jointly draft a Bill—this is their Bill. They have promised that they will share the draft Bill with us as soon as possible. They've told us what the aim of the Bill is and we've made it entirely clear what we wouldn't want to see included in the Bill, which are changes to the boundaries of devolution.

[243] **Dai Lloyd:** Diolch yn fawr. **Dai Lloyd:** Thank you.

[244] **Huw Irranca-Davies:** David, did you want to come in on this?

[245] **David Melding:** Yes. I just wanted to ask the First Minister what planning has been done on your interpretation of what happens to current EU competencies, and that they are returned basically to Edinburgh, Cardiff and London. What legislative workload would the Government have to sort out how much of that will be what we'll just leave in place, acquiesce to, and how much would be changed? And what sort of balance between primary legislation and secondary legislation would your Government be relying on?

[246] **The First Minister:** Our view is that the status quo means that we will see the devolution of these powers once they return. There is no need to be proactive. In fact, it will be the Government in Westminster who'd need to be proactive in preventing those powers from being devolved automatically. That's our view of the situation.

[247] In terms of what happens when we examine which legislation we'd want to keep as we leave the EU, I think the environment is probably the most complex area: there are, I think, 4,000 different sets of regulations in the environment, many of them made on an England and Wales basis, when the Environment Agency was the single regulatory body. So, that's quite complex. We'd have to go through that and I suspect most of it we'd keep. We'd have to go through every regulation, all secondary legislation, and then if we decided that we wanted to amend or repeal various items of secondary legislation, we'd then have to untangle that legislation from the English

legislation, England and Wales legislation, and then go from there. So, the environment is pretty much the most complex area, I would say, in terms of the volume of legislation—almost all of it secondary, and because of the fact that so much of it was made jointly in years gone by.

[248] **David Melding:** The point I'm making is that, if your interpretation, and it's also the interpretation of the Scottish Government—I'm not sure about Northern Ireland—. Then current EU competences will have to be—you'll either accept the current legislation that underpins them, or you will start to adapt it or amend it or even pass alternative legislation. Now, that's likely to be a huge workload—even if you just decide you're not going to change something, you need to go through some sort of process. I don't know if you've had sight of the Institute for Government's report today, 'Legislating Brexit', where it kind of warns the UK Government not to over-rely on secondary legislation and, in particular, the use of Henry VIII powers. And, you know, you do have a sort of duty of care, if you're going to go down this line of saying, 'Look, it all comes back to us in our interpretation', and then what we agree for a UK framework is what we agree, and we then have to underpin everything else in terms of either confirming current EU legislation as written into our law, or amending the bits that we want to change—and, presumably, there'll be a high expectation among the public that you're not just going to have everything that Europe did still applied domestically in Wales. I mean, that seems very illogical if you wanted to take back control and have less regulation or whatever the demands will be. What's the plan?

[249] **The First Minister:** I'll ask Des to come in in a moment, because this is something that we've been looking at. We know that there's a need to build capacity in policy in areas that previously were dealt with by EU. So, we know that those are challenges for us, and, Des, I might ask you to come in in terms of what we've done in terms of staffing.

[250] **Mr Clifford:** Thanks, First Minister. So, I think it is pretty clear that, whatever happens, there is a whole bunch of scenarios that might potentially develop. It's pretty clear, whatever happens, that there will be a substantial amount of new work for the Welsh Government, some of it legal, some of it policy-related, some of it to do with implementation of policy in the long term. We have corralled various parts of the staff already working directly on European business—I would say there's probably around 30 or 40 full-time equivalent people working directly at the moment on issues relating to EU exit, and then a much wider group of people than that working indirectly and

partially. Because we're a small administration, we can't approach this in the same way as Whitehall, where Whitehall has built a great big mansion at the centre of Whitehall called DExEU and has given it 350 staff and is still recruiting. The UK Government has, you know, a couple of hundred thousand civil servants; I think we have a little over 5,000 across Wales. So, we have to work differently and, of course, we have to do all this managing within the civil service running cost budgets, which are themselves under a downward pressure, rather than an increasing pressure. So, I think that what we have to do in the years ahead is to reprioritise—I say years ahead; I mean now and in the months and years ahead—staff away from work for which there won't be a demand once we're outside the European Union and switch and retrain people to accommodate new types of work that we know will come on stream. We almost certainly can't do all of that within the existing body of staff; there will have to be selective recruitment in specific areas of expertise. And so, as we manage our resources in the years ahead, we have to make sure that there is enough headroom for us to recruit additional staff for, with reference to Mr Melding, some of the legal challenges that we face, and that's one obvious area where we may have to explore getting in additional expertise to help out, but there will be other areas as well. I'm quite sure that we don't have the existing capacity within the current civil service structures.

[251] **David Melding:** So, let's take environment, which, obviously, is a very important area and impacts directly on people and is of great concern to people. As I understand it, the Welsh Government's position is that EU competences in the field of environment will, nearly all of them, come back to Cardiff. The Welsh Government will then enter into negotiations with the other Governments to see if a UK framework is appropriate, and I think all the hints are that you think it probably would be. So, presumably, a UK framework will deal with some of the competencies and the work therein, but an awful lot of the work in this interpretation inevitably will be demanded of the Welsh Government. And how are you going to do that? Would you be taking quite a lot of regulations from England, and thinking, 'Well, although we have the power here in Wales, actually what they're going to do in England seems fairly sensible, and we'll just sort of write in their regulations or how they've drafted certain pieces of law, and we'll use their resources, but, obviously, we'll always be able to run a check over it and decide whether we want to do it'? It seems to me such a vast job. As you said, the capacity problems of the Welsh Government would come into play, potentially.

[252] **The First Minister:** Well, we do just that. We've done it with legislation, with legislative consent motions—that's the purpose of the LCM process,

where a vehicle is going past us in Westminster that is a convenient way for us to get the law changed rather than going through an alternative route. Not for major legislation—that has to go through the Assembly, of course. Where regulations, environmental regulations, are drafted in England, quite often, they are identical in Wales. The reason for that is, of course, that they quite often stem from the European directive, so there'd be no reason for them to be substantially different in any event, and I suspect that's true of most of the environmental regulations that we have. What we're not planning on doing it at this moment in time is saying, 'Right, let's go through absolutely everything and decide what we want to keep and what we don't want to keep.' We'll look carefully at areas that people have raised with us, but there's no point having a bonfire of the regulations just for the sake of it, because most of them are sensible regulations that we'd want to keep in any event.

[253] **David Melding:** Andrea Leadsom said that about two thirds of current EU legislation in the area of the environment probably can just be accepted, and, as you said, is probably already in UK law. But the point there is that one third is a huge amount of legislation and that, sometimes, is lost, isn't it, and how you'll manage that is going to be a challenge, though I do note that you intend to be fairly flexible.

[254] **The First Minister:** I don't know which regulations England would look at getting rid of. I've not seen any examples of that. It's the easiest thing in the world to say, 'Well, there are 1,000 regulations that we want to get rid of' but what are they? That's the issue.

[255] **Mr Clifford:** Could I just add a word on the back, if I may? What you've described there is also one of the reasons why we have emphasised, in the White Paper, the need for a transition period, which is precisely to allow, over a longer period of time, a methodical look at the things that we need to do as an administration. Obviously, the UK Government will do the same in respect of what it wants to do. So, if we had to do all this by March 2019, I think I and my colleagues would be queuing up to jump off the cliff, but, if we have a longer period, with transition built in, if we think we have four, five or six years to prepare the ground for all of this, then that seems to us a sensible way forward.

[256] **Nathan Gill:** Bearing in mind that you've possibly only got two years, are you doing anything proactively to find out, for instance in the field of the agriculture, what kind of legislation our Welsh farmers would like to see cut?

Are you being proactive in actually finding out, regardless of what England would like to cut, or what they may or may not, what our own people would like to see reduced?

[257] **The First Minister:** I have heard people say to me that they want to get rid of sheep identification. That's a mistake, because we wouldn't be able to sell to the market. I know it's a burden for farmers; I understand that, but it was a real issue at the time of foot and mouth, where we knew where cattle were going because of the British Cattle Movement Service, but we had no idea where sheep were going at all, because there was no identification system. It helps us in terms of disease control. It helps us in terms of being able to say to buyers of Welsh lamb, 'This animal was born, reared and raised in Wales—here's the proof.'

[258] **Nathan Gill:** But I guess if you were a Welsh farmer who genuinely was only going to sell sheep within the Welsh market, or the UK market, that would be acceptable. If you wanted to sell your sheep on the wider market, then you must keep the electronic identification.

[259] **The First Minister:** No.

[260] **Nathan Gill:** Would you not—

[261] **The First Minister:** It doesn't work that way. The world market is massively important for farmers. There are very few farmers who choose to sell in the UK, because the UK is not a good market for Welsh lamb. The UK market tends to demand larger cuts of lamb, and tends to look at New Zealand, and the Suffolks and Texel breeds—going back now to a language I once spoke—that exist in the lowland areas. So, it wouldn't really be—. You couldn't really operate a system where you had two different systems according to where lambs were being sold. You'd then have to separate them all the way through. And, with Welsh lamb, Welsh lamb is a premium product. It sells itself on the basis of having, if you like, a back story that the animal has been raised in a particular way, to a particular set of standards. I don't think we need to create a market where, effectively, you've got lamb of a lower standard and lamb of a higher standard. I don't think that would work.

17:00

[262] **Nathan Gill:** Okay. So, you've used that as an example, but are you

doing anything to—? Are you planning to lobby or to find what people would genuinely want to see cut?

[263] **The First Minister:** Well, Lesley Griffiths has been chairing a group that's brought together agriculture, fisheries and the forestry industry within her portfolio to start to discuss these issues and that work is ongoing.

[264] **Nathan Gill:** And is she doing that with representatives from the industries, or from—?

[265] **The First Minister:** Yes.

[266] **Nathan Gill:** Okay, thank you.

[267] **Huw Irranca-Davies:** First Minister, the clock is against us and you've been very generous with your time. But I—. Just following on from David's question, you wouldn't have had time to see this today because I know you came straight to us from other—

[268] **The First Minister:** [*Inaudible*].

[269] **Huw Irranca-Davies:** But there's been a very interesting report from the Institute for Government. They're quite a good organisation, they have a sort of disinterested look at how you improve efficiency within government. Their observation today is typically, within any Queen's Speech, you might have 20 new Bills within any session. They anticipate that in addition to the, in quotes, 'great repeal Bill', there could be another 15 specific Bills related to Brexit, some of them dealing with things like customs union issues and so on and so forth. And they say within it—.

[270] 'It warns that this will mean ministers having to achieve a fine balance between giving too little parliamentary scrutiny and too prolonged, in-depth examination of Brexit-related legislation.'

[271] If they are right, then the same applies to the Assembly when these matters come before us. This is not going to be a question in a limited time frame, with limited resources, that we are going to be able to fine tune, analyse, scrutinise everything to the nth degree. We're going to have to come to some pretty clever analysis of how to scrutinise the important things and get those right.

[272] **The First Minister:** That's a matter, of course, for the Assembly and the way it operates in terms of scrutiny. But I take the point. I take the point.

[273] **Huw Irranca-Davies:** But in terms of getting this right for the people out there who, ultimately, this matters for, if we get this wrong with ineffective scrutiny, or if we cause inordinate delays by the problems of resources or taking too long at scrutiny, either one could mess it up for the public out there who are relying on whether it's the implementation, of, what, environmental regulations, animal welfare, plant hygiene regulations, et cetera, et cetera—all of those things. This is going to be difficult. This is three quarters—. If they're right, three quarters of the Westminster entire legislative procedure is now going to be taken up by this. We're going to have legislative consent motions and so on coming down here.

[274] **The First Minister:** None of this is easy, but this is not, of course, a scenario where the entire corpus of European law vanishes when we leave the EU. It will still be there, so it's not as if we need to reconstruct the whole thing from the start. So, really, the role that the Assembly would have would be a reviewing role of the legislation that's already there, rather than trying to construct a whole raft of legislation from scratch.

[275] **Huw Irranca-Davies:** So, in which case, following on from Nathan's point there, this probably isn't the time to start doing anything major on reviewing regulations and so on. What we need to do first of all is transpose things.

[276] **The First Minister:** Well, the first thing we need to do is to get the process of leaving right. That's hugely important. You mentioned the customs union—hugely complicated, because the Isle of Man, Jersey and Guernsey are in the customs union, but not the EU. If the UK left the customs union, they would be taken out without being asked and they have no locus in negotiating their way back into the customs union because they don't have any control over foreign affairs. So, their position is uniquely disadvantaged compared to others.

[277] So, to my mind, the way this would operate would be the first thing you have to do is to get it right as far as Brexit is concerned—we talk about a hard or soft Brexit; I'd move it on to a sensible Brexit—to get it right in terms of the way the UK operates, then there's the opportunity to look at regulation. To my mind, there's no huge rush in having to look at all the regulations that are in place because of the European corpus. That can be

done over a longer timescale.

[278] **Huw Irranca-Davies:** Okay, thank you very much. First Minister, and your colleagues, thank you very much for a large amount of time that you've spent with us this afternoon and gone into great detail. We appreciate your responses. We will send you the transcript so that you can check through that in case we've recorded anything inaccurately. Whilst you're here, I'd simply like to give our thanks as a committee and as a committee team to the University of South Wales for lending us this excellent Newport city campus today and this afternoon. I hope it's been interesting for them and for their students as well who have been here this afternoon hearing the evidence that you've given.

17:05

**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'r cyfarfod yn exclude the public from the unol â Rheol Sefydlog 17.42(vi) ac remainder of the meeting in (ix).

accordance with Standing Order 17.42(vi) and (ix).

Cynigiwyd y cynnig.

Motion moved.

[279] **Huw Irranca-Davies:** And with that, and with thanking you, Minister, and your colleagues, we will close this session and, under Standing Order No. 17.42, if Members are content, we will resolve to meet in private. We are content. Thank you, and if we can clear the gallery please. Thank you.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 17:05.

The public part of the meeting ended at 17:05.

