



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol **The Constitutional and Legislative Affairs Committee**

Dydd Llun, 1 Gorffennaf 2013
Monday, 1 July 2013

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgriafiad o'r cyfieithu ar y pryd.

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.

Aelodau'r pwyllgor yn bresennol

Committee members in attendance

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Julie James	Llafur Labour
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

**Eraill yn bresennol
Others in attendance**

Paul Cairney	Athro Gwleidyddiaeth a Pholisi Cyhoeddus, Prifysgol Stirling Professor of Politics and Public Policy, University of Stirling
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**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance**

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Siân Richards	Y Gwasanaeth Ymchwil Research Service
Owain Roberts	Y Gwasanaeth Ymchwil Research Service
Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 2.45 p.m.
The meeting began at 2.45 p.m.*

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

[1] **David Melding:** Good afternoon and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. We do not expect a fire drill, so, if you hear the alarm, please follow the instructions of the ushers, who will help us to leave the building safely. Please switch off all electronic equipment. These proceedings will be conducted in Welsh and English, and, when Welsh is spoken, a translation is available on channel 1; channel 0 will amplify our proceedings.

[2] We have received no apologies. I am delighted to welcome Julie James back. We look forward to hearing your wise and sage advice in our proceedings.

2.46 p.m.

Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reolau Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise no Reporting Issues under Standing Order Nos. 21.2 or 21.3

[3] **David Melding:** There are two instruments to discuss under this item. The legal team wants to point something out, but, before I ask it to do that, are there any issues? I see that there are not. Who is going to tell us about this strange anomaly, whereby some great, august encyclopaedia of law was misinforming people that something pertained in Wales when it did not?

[4] **Mr Griffiths:** Mae nodyn byr ar y ddesg o'ch blaenau chi o ran gwybodaeth i'r pwyllgor hwn. Nid oeddwn yn ystyried fod hwn yn bwynt o ddigon o sylwedd bod angen tynnu sylw y Cynulliad llawn ato, ond mae'n wybodaeth gefndirol ddefnyddiol i aelodau o'r pwyllgor hwn. Mae methiant yr adran yn San Steffan i wneud yn glir hyd ei deddfwriaeth wedi arwain at gamddealltwriaeth gan *Halsbury's Laws of England* a Westlaw UK ynglŷn â hynny. Felly, mae rhai o'r gwelliannau sy'n cael eu gwneud gan yr offerynnau eisoes wedi eu gwneud yn yr *encyclopaedias* y mae cyfreithwyr yn aml iawn yn dibynnu arnynt. Felly, dyna'r nodyn yr oeddwn am dynnu at eich sylw chi.

Mr Griffiths: There is a brief note on the desk in front of you with regard to information for this committee. I did not consider this to be a point that was substantial enough to draw the attention of the whole Assembly to it, but it is useful background information for members of this committee. The failure of the department in Westminster to make the reach of its legislation clear has led to a misunderstanding by *Halsbury's Laws of England* and Westlaw UK with regard to that. Therefore, some of the changes made by the instruments have already been made in the encyclopaedias that lawyers very often depend upon. Therefore, that is the note that I wanted to draw to your attention.

[5] Mae ail beth yr hoffwn gyfeirio ato yn fyr iawn. Byddwch wedi sylwi bod y rhain yn delio â deddfwriaeth sy'n ymwneud â chartrefi symudol, sydd, wrth gwrs, yn berthnasol i Fil sy'n mynd drwy'r Cynulliad ar hyn o bryd. Deallaf mai'r bwriad yw y bydd gwelliannau yn ystod Cyfnod 3 i alluogi'r Bil presennol hefyd i gynnwys y materion hyn.

There is a second thing that I would like to refer to briefly. You will have noticed that these deal with legislation that relates to mobile homes, which, of course, is relevant to a Bill that is currently going through the Assembly. I understand that the intention is that amendments will be laid during Stage 3 in order to enable the current Bill also to include these matters.

[6] **David Melding:** So, that will appear on our record. It is a reminder of how complicated these areas are and how vigilant we have to be. I do not know whether that is the first time that it has ever happened, but it is the first time that it has been brought to our attention in the Assembly.

[7] **Mr Griffiths:** It is the first time that we have spotted it; it may have happened on other occasions.

[8] **David Melding:** How humble of you to say that. [*Laughter.*] We are grateful for your efforts in guarding the statute book on our behalf.

[9] We will now have a short break as we set up for the evidence session, during which we will take evidence via video link. We will reconvene at 3 p.m.

Gohiriwyd y cyfarfod rhwng 2.48 p.m. a 3.01 p.m.

The meeting adjourned between 2.48 p.m. and 3.01 p.m.

**Tystiolaeth mewn perthynas â'r Ymchwiliad i rôl Cymru yn y Broses o Wneud
Penderfyniadau yn yr UE
Evidence in relation to the Inquiry into Wales's Role in the EU Decision Making
Process**

[10] **David Melding:** The committee is back in session, and I am delighted to welcome, via video link, Professor Paul Cairney of the University of Stirling, where he is a professor of politics and public policy in the department of history. He has helped us in our inquiries before, so he gets a very big medal this afternoon for coming back and devoting some of his time to help our inquiry, which, this time, is into Wales's role in the European Union decision-making process. Professor Cairney has done a lot of work in this area and has published extensively on multilevel governance, inter-governmental relations and policy making, which take us to the heart of the issues that we want to examine.

[11] So, we have a variety of questions that we want to put to you and we will be delighted if, at the end, if there is anything that we have left out that you think is pertinent to our inquiry, that you add that at that time. Please indicate if you have any difficulty in hearing precisely the question, because even though it is second best to take evidence this way, in the case of getting evidence of the quality that I am sure that you are going to give from Scotland, it is a means that we want to take advantage of. So, let us hope that the technology is our ally this afternoon. I ask Eluned Parrott to take us through the first set of questions.

[12] **Eluned Parrott:** Thank you, Professor Cairney, for your draft chapter. One of the things that you state in there is that

[13] 'The main problem in researching IGR, particularly when it is conducted informally, is that the relations are kept fairly secret'.

[14] In which case, how do you go about researching IGR if most of it is kept under wraps?

[15] **Professor Cairney:** That is a good question. I think that there is feedback on the line; I might confuse myself, because I can hear myself a few seconds after I speak.

[16] Some studies do interviews to find out these things, so they interview Ministers, civil servants, party members and suchlike. A lot of that work was done during the Labour years, so Scottish Labour was in Government here and new Labour was in Government in the UK. So, there were a lot of studies of parties and the way that they interacted as well. Apart from that, you rely on the minimal documents that are available and academic practitioner conferences where you can talk about those things with a bit more informality.

[17] **Eluned Parrott:** Has your access to that kind of information changed with the change of power in the two Governments?

[18] **Professor Cairney:** Not appreciably. If I spoke to former heads of the Scotland Office or something like that, then they would not change, so that would be okay. You might, for example, speak to special advisers in Government, so they would be relatively willing to talk as well.

[19] **Eluned Parrott:** Can you explain to us how you would define the difference between multilevel governance and inter-governmental relations?

[20] **Professor Cairney:** That is a great question—a proper academic question. You would expect people in the real world to ask it.

[21] **Eluned Parrott:** Apologies, but I cannot take the credit for it; it is the Research Service that prepared it, but there we are.

[22] **Professor Cairney:** It is really about the things you focus on. When you focus on inter-governmental relations, people may be interested in things like the balance of power and who wins and who loses in disputes and that sort of thing, or the formal mechanisms they have to deal with each other. The term ‘multilevel governance’ refers to something much less tangible. The governance part comes from the study of the influence of non-governmental groups that have an influence on government through their interaction with it. You might say that the outcome of that is the product of those deliberations, so that is governance rather than government. The ‘multilevel’ just extends that to the local and the European level and says that some governments may not be formally responsible for these areas, but they still have an influence through the way they interact with those who are responsible.

[23] **Eluned Parrott:** Do you find that this informal and under-wraps nature of things makes it difficult to be able to see what activity is going on, on that basis?

[24] **Professor Cairney:** I think so. Government is generally like that. The interesting thing about inter-governmental relations or multilevel relations is that it is not too difficult from the point of view of the day-to-day policy processes that you associate with government. So, if they are not consulting informally with each other, they are consulting often informally with interest groups and other bodies. So, it is no less open than most other processes, I would say.

[25] **Eluned Parrott:** Another challenge in your area of work is what you have described as the ‘blurry boundaries’ between UK and Scottish powers and how they are complicated by the European dimension. Will you explain to us what you mean by the ‘blurry boundaries’? From our point of view here in Wales, with a conferred powers model, we see the Scottish model as being much cleaner in its divisions.

[26] **Professor Cairney:** It does seem very straightforward. The Scotland Act 1998 sets out what is reserved, and everything else is devolved. You can produce this neat little table with, on the left hand side, all that is reserved and, on the right, all that is not. However, I suppose that what we are saying is that the experience is that whenever you have tried to deal with any area, they tend to be cross-cutting and there tends to be a level of interpretation about what this policy area is. So, when you go into the detail, many areas are cross-cutting and you are not quite sure who is responsible each time. Some of that was to do with teething problems of initial Governments—they were not sure who was responsible because they did not have experience. However, it has not gone away with experience. There is always an issue about what you think are the main things to solve with a policy or who is responsible.

[27] **Eluned Parrott:** Do you feel that there is an issue with regard to having a democratic deficit, if you like, in terms of scrutiny, if you are not able to clearly define whose responsibility lies where?

[28] **Professor Cairney:** That is certainly an issue for government. I engage regularly with civil servants on teaching programmes and one of the things that you find is that I am more comfortable talking about this idea that no-one seems to be quite responsible for outcomes, but they do not have that luxury. They have to be accountable to Ministers and to Parliaments. It is very difficult to say who is responsible, in a meaningful way.

[29] **Eluned Parrott:** Are you able to give us any examples of the kinds of policy areas

where you feel that this has been a particularly problematic issue and whether the lines appear to have been blurred?

[30] **Professor Cairney:** Anything to do with welfare is tricky. Let us say that you had a fuel poverty strategy, the devolved Governments might be responsible for the insulation of homes and the provision of certain services, but the UK Government would be responsible for the taxes on the fuels and the benefits to do with any sort of income. Those are properly cross-cutting, and if you wanted a strategy on those areas, you would have to involve both Governments. Then there are the single issues, such as tobacco or alcohol control, where different levels of Government are responsible for different aspects of the same thing. I suppose that the most famous Scottish Government thing might be the smoking ban in public places. That was presented very much as a public health measure, therefore the Scottish Government is responsible. However, in Ireland, just before, they had legislated on health and safety grounds—it was about the health and safety of bar workers—which would have been a reserved area in Scotland. In the European Union, they do not have responsibility for public health, so, if they were trying to encourage smoking bans, that would be a health and safety issue. If you look at the smoking ban regulations, you will see that a lot of it is to do with employment policy, which is not a Scottish Government responsibility.

[31] **Eluned Parrott:** We understand where you are coming from there—we have experienced many of those kinds of issues ourselves. When you add the European level to it, you talk about devolved policy areas becoming Europeanised. Can you tell us what you mean by ‘increased Europeanization’, and also give us an idea of particular areas in which the European dimension has been the complicating factor, rather than the relationship perhaps between the UK and Scotland?

[32] **Professor Cairney:** In general, the issue is that, if there are any European laws or regulations, Scotland—I am sorry, I will say ‘Scotland’, but you can say ‘Wales’ in your heads—has the responsibility, but it is a European issue, and therefore the UK Government monitors the duties. The most extensive European involvement is in environmental policy. Most environmental regulation is driven by Europe. Things like recycling targets, for example, are implemented by the Scottish authorities, and are maybe co-ordinated by the Scottish Government, but the ultimate state that is responsible is the UK. Then you have areas in which the Scottish Government has a particular interest, like fishing and agriculture—it is particularly interested in those policies—but it has no significant influence on how those policies play out. So, those are devolved areas, but the big issues are being debated at the European level.

[33] **David Melding:** I will now ask Simon Thomas to take us through the next set of questions.

[34] **Simon Thomas:** Good afternoon, Professor Cairney. I wish to continue with the European dimension issue. I was struck by the fact that you state that it is ironic that, formally, Scottish Government Ministers may have less of a role in the EU than their Scottish Office predecessors. Could you expand on that a little, and perhaps say what evidence, in practice, you have for that kind of statement?

[35] **Professor Cairney:** I would not exaggerate this point, but, if you imagine the early years of devolution, you had the possibility, just before devolution, for Ministers in the Scottish Office to be formally a part of the UK delegation, because they were all UK Government Ministers. After devolution, those members of the Scottish Executive, as it then was, were not formal members of the UK Government, and therefore they could not formally take a part in that process, even if they were heavily involved. I would not exaggerate that difference, because I am not convinced that Scottish Ministers, before devolution, were right at the centre of those negotiations anyway.

[36] **Simon Thomas:** I was interested to read in your statement that you used the word ‘formally’. That suggests that there might be an informal alternative route, by which the same objective was being achieved—or the same amount of influence on policy making at the UK level was being achieved. Is that the case?

[37] **Professor Cairney:** One former First Minister—First Minister McConnell—would say, ‘Our influence is away from the table’. That means that negotiations are taking place in one room, but that, when everyone moves to socialise, or to deal with the details, they are more involved. To a large extent, if you accept that most Government policy making happens away from that formal process, you can see that they would have those avenues for influence. The additional Scottish dimension is that they are involved in the European civil service, in a way, for example, that English regions would not be. They have access to that constant flow of information and they meet each other on a recognised basis more than you might see in the rest of the UK.

3.15 p.m.

[38] **Simon Thomas:** Following on from that theme, are there examples of how the Scottish Government—not just its civil service level, but the Government itself, the Ministers—interact directly with the European Commission outside of the formal UK relationships? How does that happen? Are there examples of successes or failures in terms of putting direct Scottish Government influence on the Commission, or on negotiation, I should say?

[39] **Professor Cairney:** That is the thing. I could not give you examples of success there. There may be some, but it is difficult to say. I think that Ministers might have been keen to say that they had that influence, but it is very difficult to reinforce. Instead, you tended to have the more publicised aspect of that—Ministers would go to those negotiations, but not be part of them, and be quite embarrassed in the newspapers, because they could not formally take part. It may be that, simply by being there, they had this intangible influence in certain areas, but they are very difficult to tie down, I would say.

[40] **Simon Thomas:** How is that viewed in Scotland? You mentioned the embarrassment of being in the meeting, or in and around the meeting, where the UK Government is striking the bargain, or the agreement. Presumably in Scotland, as in Wales, there is a kind of collective responsibility not to talk against the agreement made between the UK Government and the Commission, or the rest of the decision-making European structures. Does that hold water in Scotland as well?

[41] **Professor Cairney:** Perhaps, only because very few people pay attention to those sorts of arguments. It does not hold water in, say, the parliamentary committees that are trying to get answers from the Scottish Government, to the extent that we heard a very odd irony that, before the SNP Government, the Minister responsible for a specific area had been on a Scottish parliamentary committee and had said publicly that she was not satisfied with that level of secrecy within Governments under that banner of collective responsibility. However, when she became a Minister, she pursued that Scottish Government line. So there is tension between the roles, which I think that they both recognise, but there has been very little movement since devolution.

[42] **Simon Thomas:** Is there any sense of Scottish Ministers making a statement to the Parliament there about what they hope to see coming out of a set of EU negotiations, say on fishery policy, then coming back and making a different statement on what has been achieved? Is there any measure of the difference between the two, if there is a difference, in terms of any scrutiny of what happens in that process, given that the process is so often

intangible?

[43] **Professor Cairney:** I have never seen a measure of their influence. In the early days, you saw a lot of coverage about what their hopes were for meetings, and they would come back and talk largely about being disenchanted with the process, I guess. The example I would tend to focus on usually is the fisheries policy, which is very important in Scotland in particular areas and has a disproportionate importance there compared with the rest of the UK. There would be a lot of media attention on that, but there would never be a time when a Minister would come back and say, ‘Yes, we have been more successful than we thought’, because they generally were not.

[44] **Simon Thomas:** What about any evidence of co-operation between Scottish Ministers and the other devolved administrations? With fisheries being so important to Scotland and farming—upland sheep farming, in particular—being so important to Wales, what about a kind of pincer movement on the UK position by the two administrations? Is there any evidence of that kind of co-operation and behind-the-scenes working in order to change the UK Government’s position, making it slightly more favourable towards the devolved administrations?

[45] **Professor Cairney:** If there is evidence, I have not seen it. In fact, I have been struck mostly by the lack of a relationship between the Scottish and Welsh Governments. I suppose that we tend to think that, because they are both devolved and both have an uneasy relationship with the UK Government, they would recognise a common interest, but I do not see it.

[46] **Simon Thomas:** Do you think that there is scope for that in terms of the way that this intangible multi-level governance works? You spoke earlier about the influence of external bodies, pressure groups or non-governmental bodies in that multi-level arrangement. Is that a possible way forward for how Governments could work? By that, I mean the devolved administrations, to be clear.

[47] **Professor Cairney:** Yes, I think so. There will be lots of areas in which they can learn from each other. I know that there is a tendency for there to be an assumption that Wales learns from Scotland, because it is more devolved or has more experience of legislative capacity, but I do not see it. The Scottish Government could learn just as much from Wales, because they would have different experiences. There was, perhaps, more experience of that between the two parliaments in the early years of devolution, for example, Ministers away from the EU. The Scottish Parliament adopted the children’s commissioner idea from Wales. That very quickly went, however, and I think that they were relatively independent of each other quite early on.

[48] **David Melding:** I will ask Julie James to take us through the next set of questions.

[49] **Julie James:** Good afternoon, Professor Cairney. In your paper, you state that, while the UK centre controls the response to European policy, which you have talked a little bit about, you think that the Scottish Government enjoys considerable access to decision-making machinery. Could you just expand on what you meant by that?

[50] **Professor Cairney:** I should say that I have not read my own chapter for a while. [*Laughter.*] So, I am not quite sure about that.

[51] **Julie James:** Our experience in the EU is that our officials have a lot of access to the officials that service the Parliament, the Commission and so on. Was that what you were meaning? So, that sort of indirect—

[52] **Professor Cairney:** Yes. If we say that most policy making is about the relationships between the civil servants and between civil servants and groups, it stands to reason that there may not be formal involvement at ministerial level, but there is that day-to-day interaction between civil servants. Again, that varies considerably by policy area; so, the Scottish Government departments most likely to have a relationship with the UK departments are the ones that deal with Europe. It is often the case that, with areas such as health or education, because they are so distinct, they have much less of a reason to have a constant interaction with civil servants in those departments. Then, when you have European issues that come up, they do not have the relationships on which they can build and adapt. It is a very mixed experience.

[53] **Julie James:** Our First Minister is on record as saying—I think that he is trying to reverse the West Lothian question at the European level, but he has called it the Bridgend question, although I do not know whether that sheds any light on it at all. I think that what he is trying to get across is that we have no formal voice in some of the councils in Europe, even though the issues matter very much more to Wales than they perhaps do to the English Government. Fishing is an example in Scotland, and we have convergence areas in Wales. So, it was very important to us that the convergence funding stayed high, whereas the UK Government, as you know, was trying to reduce the budget overall. So, that is a good example for Wales. However, he was of the view that the policy is made up on an English basis before you even get up into the meeting, and that the devolved nations have very little say in that policy at that level. Is that also your view?

[54] **Professor Cairney:** It certainly has been expressed many times in Scotland. The general feeling—and this is actually a general feeling across society, I would say—is that people in the rest of the UK and in London do not pay attention to distinctive Scottish issues. So, it could be that it just does not occur to civil servants or Ministers in UK departments to think that they should consult on these issues because they will be different. They just assume that they can act on a UK basis. It is that sort of benign neglect that tends to be the problem, rather than some conspiracy to exclude the devolved administrations.

[55] **Julie James:** I think that that is broadly our experience also. For example, my understanding is that Scotland has a little bit more freedom in the transposition of European directives into Scottish law than we currently have in Wales. There has been some discussion here about how we might influence the transposition, for example, of the reconfigured procurement directive or the reconfigured fisheries directive into British law. I do not know whether you want to comment on how that formal process looks from the Scottish point of view.

[56] **Professor Cairney:** I would say that Scotland has always had that ability to have some discretion, because it has always had its own legal system, and people outside Scotland do not understand it, so they have to defer to the expertise and the technicalities. That was an argument well before devolution—that the implementation of policy is always a little bit Scottish, because they have to devolve some of the responsibility for it. That sort of understanding went forward into the European arena as well.

[57] **Julie James:** I do not want to put words into your mouth, but, reading between the lines, you are saying that, if you want to have influence in Europe, you need a better relationship between the devolved Government department and the UK Government department prior to the discussions in Europe, rather than the existing state of affairs between departments. Is that putting too much of a proposition into your mouth?

[58] **Professor Cairney:** No, that sounds fine—until Scotland is independent, of course. [*Laughter.*] The general feeling is that, just as interest groups have to influence legislation at a very early stage, so, too, do Scottish Government departments. They have to get in there as

the decision is being discussed, rather than seek influence once they have been formalised, when they are more difficult to reverse.

[59] **Suzy Davies:** Good afternoon, Professor Cairney. I would like to develop this area that Julie James has been talking about. You mentioned that, with the so-called Bridgend question, there is a perception that there is limited Scottish influence on the UK argument being put forward in the Council of Ministers, albeit through benign neglect. However, you said earlier that, when it comes to areas where there is a European dimension, those particular UK departments and the civil servants there have a pretty good, albeit informal, working relationship with the civil servants in Scotland—that is, in areas such as fishing or common agricultural policy. So, I am slightly bemused as to why there seems to be this very good relationship between civil servants in specific departments that are relevant to Europe and yet there is a perception that, at ministerial level, there is no influence at all. Is that a question of the message not coming up from civil servants to the relevant Ministers, or are they separate worlds? Is it that the civil servants all get on amazingly well and talk about useful policy ideas, but the Ministers do not?

[60] **Professor Cairney:** I suppose the way to tie those two things together is maybe to say that the links in some departments are relatively good. I would not say that that they are very good; they are just better than the rubbish links elsewhere. It is just that, if there is a general tendency to talk to each other regularly, that gives you more chance that you will not be ignored compared to when they have to really think about who to speak to.

[61] **Suzy Davies:** Is there an argument, then—I am thinking of our devolution guidance notes, for example, which help assist the relationship between Whitehall departments and here—that those should be slightly more robust, if I can put it like that? That is, should they actually oblige these civil servants to work more closely together—certainly Ministers?

[62] **Professor Cairney:** Yes, I can see that that would be a good recommendation. I suppose the problem is that these written documents about how Governments should deal with each other are almost written so that they do not have to be referred to: if they have got it written down, then that is that covered. I suppose the equivalent in my student days was when you used to photocopy an article, and that meant that you did not have to read it. [*Laughter.*]

[63] **Suzy Davies:** I think we still recognise that here. Let me ask you this the other way around, then. You made reference to the Aron report. I am not quite sure why that is no longer on the internet. Would you like to express an opinion?

[64] **Professor Cairney:** It was leaked—

[65] **Suzy Davies:** Yes, but what was in there was just confirming what was already known. I appreciate that it represented the voice of civil servants, which perhaps should be more confidential, but surely the actual content was not that problematic?

[66] **Professor Cairney:** No, I do not think so, but it was never put on the internet by the Scottish Government. You used to be able to find it on the SNP's website—before the SNP was in Government.

[67] **Suzy Davies:** Oh, that is interesting. [*Laughter.*]

[68] **Professor Cairney:** I do not know whether it is still there.

3.30 p.m.

[69] **Suzy Davies:** I would imagine that has disappeared as well now. One of the things

that was very interesting in that was the observation that departments, or at least Governments, did not consult each other in time for them to be of influence. That is something that concerns us here in Wales quite notably at the moment. Can you suggest any ways in which earlier formal consultation might be incorporated into the relationship between UK Government Ministers and Scottish Government Ministers, or their departments?

[70] **Professor Cairney:** Again, I think that, if you have to write it down, the chances are that it will not work. The main thing to come out of that report is that, if the devolved Governments want to have any influence on UK Government deliberations on Europe, they have to be the ones doing the running. They have to check constantly what issues are coming up from the UK Government, and they have to find out and come up with a strategy to deal with it, rather than hoping that the UK Government will consult them. I think that is the only realistic way to do it.

[71] **Suzy Davies:** Finally, Chair, do you not think that presents a problem for people like me, who represent an opposition party, to scrutinise what the Government is up to?

[72] **Professor Cairney:** It is a really rubbish arrangement. I cannot describe it any better than that.

[73] **Suzy Davies:** I like ‘really rubbish arrangement’—that will do fine. Thank you very much.

[74] **David Melding:** It is now with me, Professor Cairney, just to finish. Following on the point that was raised by my colleague, Suzy Davies, on the joint ministerial committee structure, it, presumably, simply does not meet often enough. Given the fast-moving nature of events in terms of liaising with EU institutions, is it not really very realistic to expect the Governments at various levels within the UK to agree some of the big formal lines and policy issues that are really important to them in the JMC structure—or could we look at that as one area that could be developed?

[75] **Professor Cairney:** My impression is that JMC Europe was the only one that ever met regularly. The JMC Plenary met once in a blue moon, but the Europe one had a reason to consult regularly. So, if it has not really worked, then I am not sure what to say about that. I guess, as in all the other areas that we are talking about, the JMC, if that is the high-level negotiation, is maybe not how they operate anyway. My impression is that the JMC is largely there to resolve disputes or tensions between Governments. The problem with European policy is that it may not necessarily be a tension between Governments that is the issue; it is a simple lack of communication between them. That forum might be difficult to shift from that tension-based approach to a regular routine approach; I am not sure how that would work.

[76] **David Melding:** I do not know how much comparative work you have done in this field, but are there European states that seem to have a better record of involving their sub-state Governments, or are our difficulties fairly typical of a complicated governmental structure?

[77] **Professor Cairney:** I do not know. I could find out. I could chase this up. The German Länder would spring to mind; they might have that open, direct relationship. If that is the case, part of the problem in the UK is that there is such an asymmetry between the UK and the devolved Governments. Scotland and Wales are so small compared to the UK that they can often be overlooked. Whereas the Länder in Germany are of roughly proportionate size, which perhaps makes the federal Government more aware of them than is the case here. I think that the approach in the UK is that the UK Government thinks that it is acting on behalf of Governments in the UK, in a way that maybe other countries would not.

[78] **David Melding:** What is your view on Scottish participation in the Committee of the Regions? Is that a forum in which the Scottish voice—more parliamentary, I suppose—can be heard on European questions? Or, in your view, does the Committee of the Regions not have much salience in Scotland in terms of its work?

[79] **Professor Cairney:** To be honest, the attention I have given to that in the chapter you talk about is about two or three lines. I think that that is largely because it is often described as a talking shop. I think that there were high hopes within the European Union that it might develop into something, but I do not think that the experience backs that up. There is work by Michael Keating, if you want to look at that in more detail. He is a prominent academic, and also someone who was involved in that committee in the early years.

[80] **David Melding:** To pursue the more parliamentary line, is there any evidence of the Scottish Government working through the MEPs in a relatively non-partisan, team Scotland way to influence legislation when it does come to the Parliament for amendment and adoption? I know that that is the end of the process, but actually quite a lot of change can now occur at the end, when the process becomes a more formal, parliamentary one.

[81] **Professor Cairney:** I honestly do not know whether they have that relationship. The only thing I know about MEPs is that there was a case of a ban on the use of cats and dogs for fur, but that is largely because a student of mine did her dissertation on it. I do not have any knowledge beyond that.

[82] **David Melding:** I do not know whether you have looked at the role of Scotland Europa in Brussels, which is again looking at various institutions, including the Parliament, that want to project Scottish interests in Brussels. Have you had the chance to look at how that operates, and perhaps how it co-operates with the Scottish Government in getting somebody's messages across in Brussels?

[83] **Professor Cairney:** It is certainly talked about a lot. If I was advising Governments or groups on how to influence a Government, I would say, 'Operate very closely to it, and spend a lot of time talking to people there'. So, in that general sense, you can see that it is a good idea. The problem in Scotland was that the Executive, as it was, was trying to build the capacity itself, to have a direct influence just by being there and speaking to people, but it was criticised in various ways by the UK Government, which felt that, to paraphrase, that it was standing on its toes in doing that.

[84] **David Melding:** And potentially cutting across UKRep—however that acronym is pronounced. Has that been a danger with the direct representation that the Scottish Government has sought to make in Brussels? It is of course mirrored by a similar approach that the Welsh Government takes in having a presence also in Brussels.

[85] **Professor Cairney:** I think that the civil service links would be less controversial. You could call that information sharing—you know, just being kept informed about developments. The tricky bit comes when Scottish Ministers try to get directly involved, because—

[86] **David Melding:** Sorry, I cut across you. Just to take up that thought, it is officials who are placed in Brussels permanently. Have you sensed that the Scottish Government has put some of its higher-level officials, say, on fishery policy or a particular strand of policy that is being Europeanised, or has a big European dimension at any one time? Is there an investment of senior staff being placed in Brussels because that is quite an important place for them to be in the earlier stages of policy formulation? Are you sensing that, or, in your experience, is it the more mid-level officials who are going to get posted to Brussels?

[87] **Professor Cairney:** My sense is that it is quite a small unit, and the officials are not particularly senior. So, they perform a co-ordinating role. If there are more senior civil servants in home departments, then they play that role of telling them how the EU operates and who they might get in touch with, rather than doing the detailed policy work themselves.

[88] **David Melding:** My final question, then, Professor Cairney, is on the UK's current review of the balance between UK and EU competences. Have you seen any evidence that the Scottish Government is making any contribution to that process?

[89] **Professor Cairney:** No, but, to be honest, that is just because I have not been paying much attention. I would not go by me on that one.

[90] **David Melding:** Okay. Do you sense that the review of the balance of competence is a fairly hot topic at the moment, or has that perhaps been overtaken by calls now for a referendum and a renegotiation? Is it alive in terms of being discussed at the minute, or is it moving backstage?

[91] **Professor Cairney:** In terms of that wider media public debate, or even parliamentary debate, you would struggle to know that the European Union existed when you were in Scotland. There is very much a focus on the future of Scotland within the UK. It is only recently, since the extreme debate has come up in Europe, that you would pay attention to that in any great detail.

[92] **David Melding:** Finally, how strong is the Commission's voice in Scotland? Presumably, there is a permanent office of the Commission in Edinburgh. I wonder what role it plays or how conspicuous it is in its work.

[93] **Professor Cairney:** You do hear about meetings that take place between high profile Commission officials and Scottish Government officials. However, I could not give you any great sense that it meant anything in policy terms beyond the usual diplomatic role.

[94] **David Melding:** That covers the questions that we want to put to you, but if there is anything relevant that you think we should know about, now is your chance. We have certainly enjoyed the opportunity to put to you the range of questions that we wanted to ask this afternoon. However, please add anything if you think that there is anything relevant.

[95] **Professor Cairney:** I would say two things, briefly. First, if your impression of the role of the Welsh Government in Europe is largely of frustration at the lack of influence, I would not look to Scotland and be envious, because the things that you face in Wales would be very similar in Scotland—we have just dealt with them for a bit longer. Secondly, I would like to thank you for reading that chapter, because it is very unusual for people in the real world to read something that you have written.

[96] **David Melding:** It was the least we could do as you have been generous enough to give evidence this afternoon. We very much appreciate it. It will greatly help us in our inquiries. I reassure you that Professor Michael Keating will be giving evidence to this inquiry. He is scheduled to come in later in July, so we will have a chance to return to some of those subjects that we put to you, for which you indicated that his area of expertise is something that we could draw on in that area as well. So, thank you very much. Perhaps, sometime in the future, we will see you for a third time before this committee. I hope that you have not found the video link too tiresome to navigate. I certainly think that we have been able to clearly hear your views and they have been very helpful. So, thank you very much.

3.43 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**
**Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from
the Meeting**

[97] **David Melding:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi).

[98] Is everyone content? I see that they are.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.43 p.m.
The public part of the meeting ended at 3.43 p.m.*