

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

16/11/2015

Trawsgrifiadau'r Pwyllgor Committee Transcripts



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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn
ogystal, cynhwysir trawsgrifiad 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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Dafydd Elis-Thomas	Plaid Cymru The Party of Wales
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair

Eraill yn bresennol
Others in attendance

Y Fonesig/Dame Rosemary Butler	Aelod Cynulliad, Llafur (y Llywydd) Assembly Member, Labour (the Presiding Officer)
Adrian Crompton	Cyfarwyddwr Busnes y Cynulliad, Comisiwn y Cynulliad Director of Assembly Business, Assembly Commission
Y Gwir Anrhydeddus/ The Rt Hon Carwyn Jones	Aelod Cynulliad, Llafur (y Prif Weinidog) Assembly Member, Labour (the First Minister)
Elisabeth Jones	Cyfarwyddwr Gwasanaethau Cyfreithiol, Comisiwn y Cynulliad Director of Legal Services, Assembly Commission
Hugh Rawlings	Cyfarwyddwr Materion Cyfansoddiadol a Chysylltiadau Rhynglywodraethol, Llywodraeth Cymru Director of Constitutional Affairs and Intergovernmental Relations, Welsh Government

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Clerc Deputy Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Gareth Pembridge	Cynghorydd Cyfreithiol Legal Adviser
Naomi Stocks	Clerc Clerc
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerc

*Dechreuodd y cyfarfod am 13:29.
The meeting began at 13:29.*

**Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest**

[1] **David Melding:** Good afternoon, everyone, 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 routine fire drill so, if we hear the alarm, please follow the instructions of the ushers. Can you switch all mobile devices onto at least silent? These proceedings will be conducted in Welsh and English and, when is Welsh spoken, there will be a translation on channel 1, and channel 0 will amplify proceedings.

[2] I've had apologies from William Powell, and I'm very pleased to welcome Peter Black to our meeting this afternoon.

13:30

Tystiolaeth mewn Perthynas â Bil Cymru Drafft

Evidence in relation to the Draft Wales Bill

[3] **David Melding:** We'll now move then to our evidence session in relation to the draft Wales Bill, and I'm delighted to welcome Dame Rosemary Butler, our Presiding Officer, to our committee this afternoon, accompanied by Adrian Crompton, director of Assembly Business at the Commission, and Elisabeth Jones, director of Legal Services. Presiding Officer, if we may move straight to questions, and I'll use the prerogative of the Chair to put the first one to you, and that's really an overall look at the draft Bill. Would you say that it conforms to the principle of subsidiarity?

[4] **The Presiding Officer (Dame Rosemary Butler):** If I could just thank you very much, Chair, for inviting me this afternoon. I would like to say that there is much in this Bill that I welcome, and I want to see the Assembly recognised as a permanent, mature body responsible for its own affairs. This draft Bill makes great strides towards that aim. However, the way in which reserved powers are currently drafted is overly complex. I've made several suggestions within my written evidence to simplify and clarify the proposals and to move us some way towards the sustainable devolution settlement that Wales needs. These do not go so far as to redraft the Bill along the lines of the principle of subsidiarity, which I feel would be the best way to deliver a lasting settlement. However, they are suggestions to aid clarity and workability, and I am committed to continuing to work constructively with the Secretary of State to strengthen this Bill.

[5] Sorry, just remind me, Chair, you wanted to start on—?

[6] **David Melding:** Subsidiarity, which you've just touched upon.

[7] **The Presiding Officer:** Fine. The reserved-powers model must deliver clarity, workability and no roll-back of competence, and the proposed model does not do this. I think the starting point for this legislation should be that principle of subsidiarity to which you refer, and our national governance should be clear and understandable for everyone. It does not conform to the principles of subsidiarity. The draft Bill seems to be the result of a technical, piecemeal consideration of powers that are to be devolved to Wales from Whitehall departments. It's not clear; it's not understandable.

[8] **David Melding:** I wonder, given that you clearly believe it's complex and doesn't obviously accord with the principle of subsidiarity, is it your view

that it doesn't build on the previous Government of Wales Acts? Would it have been better to have consolidated the legislation in this area and just stated what the constitution law is simply and possibly come up with a different version of the statute, rather than one that seeks to pick through the existing ones at the moment?

[9] **The Presiding Officer:** I think the list of reservations is very long and very varied, and it does not appear to have been drawn up in a consistent fashion, to which you refer. A draft Bill along the lines of subsidiarity would be the best way for a lasting settlement. I think we are rolling back on what we've got at the moment. The new tests of competence should be clear, but they are not. They are less clear and less workable. At the moment, we have nine tests for assessing whether something is devolved, and this proposal suggests there should be 10. The new tests are also more complex and it introduces a new necessity test. So, I think it's totally not well thought out, and I think that what we need to consider is that we'll constantly have to consider whether a provision in the Bill has no greater effect than is necessary. To achieve its purpose, it really is making it far worse than it is because we would need to create new criminal offences in our Acts unless they have no greater effect than is necessary. So, the whole thing is just rolling back from where we are at the moment, and I have great concerns.

[10] **David Melding:** We'll have a chance to look at some of these specifics. Can I just finally ask about the issue of reservations? I think, in any constitutional settlement, there would be reservations—there are reservations in Scotland and in Ireland—but do you have any views on the list of reservations in terms of the number of them, for instance?

[11] **The Presiding Officer:** Yes, we do have a number of reservations, and I'd ask Elisabeth Jones if she would expand on that for you.

[12] **Ms Jones:** There do seem to be a very high number of reservations, do there not, Chair? Well over 200. You can count them in different ways, obviously, and many commentators have commented on this. The level of certain of the reservations does seem a very long way from the principle of subsidiarity that your question started with. Things like safety at sports grounds and some of the entertainment reservations have been picked out, again by commentators, as going to a level that, surely—. It is hard to see why they need to be reserved to the centre. But, the Assembly Commission has concentrated its efforts mainly on analysing the new tests under the proposed settlement for competence, rather than looking at individual

reservations, which the Presiding Officer felt was more a matter for the Welsh Government, except where those reservations touched on the Assembly's own internal affairs or electoral matters.

[13] **David Melding:** I'm keen to move to a more specific question, but on the broad introduction, Alun, did you want to clarify something before we do move on?

[14] **Alun Davies:** Yes, if I could. I'm grateful to you, Presiding Officer, for your clarity there in those opening remarks. I wonder, in order for us to understand the process that we've followed over the last period, have you met the Secretary of State to discuss any of these matters, and has he shared any of the earlier drafts of this legislation with yourselves?

[15] **The Presiding Officer:** Yes, I have met the Secretary of State on a number of occasions and we've had very positive meetings. I would hope that we would continue with those very positive meetings. However, we're not actually getting to where I would like to be, although we will keep trying. My concern is that there's not one overall view of how the settlement should be made. It seems to be left to departments in Whitehall to come up with their own suggestions, and there doesn't seem to be this overall approach. At the moment, we really should be looking at all four nations coming together to see how we should run the country, but that isn't happening. It is this piecemeal effect, which is making it less clear and less workable. But, yes, I am working with the Secretary of State, I hope to continue to, and our officials are continuing to have discussions.

[16] **Alun Davies:** I'm just interested in how we've arrived at this situation because I think you opened your remarks by saying that there is much to be welcomed there, but subsequent answers weren't quite as positive, and probably reflect where this committee feels it is at the moment. Did the Secretary of State share earlier drafts of this legislation with you? Did he specifically discuss individual areas of this proposed draft Bill with you? So, to what extent were those conversations simply talking about the overall direction of travel, and to what extent were they actually talking about this legislation that we've seen published last month?

[17] **The Presiding Officer:** Well, I had discussions, and my officials did as well. So, perhaps I can ask either Elisabeth or Adrian to come in and expand on that for you. Adrian.

[18] **Mr Crompton:** Thanks, Presiding Officer. The Wales Office did share with us, as officials, and with the Presiding Officer, in the early part of the summer, the section of the draft Bill that relates to the reservations. So, we didn't see the other parts of the Bill, but we did get early sight of an earlier draft of the Schedules relating to the reservations.

[19] **Alun Davies:** Did you make representations to the Secretary of State on that basis?

[20] **David Melding:** That's the last one. Thanks.

[21] **Mr Crompton:** The Presiding Officer wrote a very full response to the Secretary of State, yes.

[22] **The Presiding Officer:** Which I think is available to you.

[23] **Alun Davies:** Okay.

[24] **David Melding:** Okay. Suzy Davies.

[25] **Suzy Davies:** Thank you, Chair. Thank you, Presiding Officer. Yes, I have some sympathy with you when you express some confusion over how the list of reservations has been met, but even under our current conferred model, should we really be making any laws that are unnecessary?

[26] **The Presiding Officer:** Well, absolutely not. I mean, it's up to the Assembly to decide what's necessary and what's unnecessary. I think what we've delivered so far is absolutely necessary and is appropriate for the—. Well, it's the best kind of law we can make for the people of Wales. My concern over this is, if we can't understand it, how can the average person in the street understand it? That's what we need. We need this clear and workable model, otherwise we'll be returning to it in no time at all.

[27] **Suzy Davies:** Well, again, I have some sympathy with your position on this one and I would like to ask you what you think is unclear and unworkable at the moment, but perhaps you could include in the answer what you think the words 'necessary' and 'unnecessary' might mean—whether there's actually a difficulty with this Bill, because the word 'necessary' itself isn't defined.

[28] **The Presiding Officer:** This sounds like a legal thesis, Chair.

[29] **David Melding:** It's one for the lawyers, often, yes.

[30] **The Presiding Officer:** Absolutely. Well, I've got two lawyers here, so I'm going to ask one of those—

[31] **Suzy Davies:** I'm quite happy for anyone to answer.

[32] **The Presiding Officer:** —to, quite briefly, explain what the issues are here. Elisabeth.

[33] **Ms Jones:** Certainly, yes. So, you asked about the key areas of lack of clarity and lack of workability. In terms of both lack of clarity and lack of workability, the four new necessity tests are, I think, the area of greatest concern, particularly where they impact on the Assembly's ability to use what the draft Bill calls 'the private law' and 'the criminal law'.

[34] **Suzy Davies:** Yes. I have some specifics on those for you in a minute, I think.

[35] **Ms Jones:** Right. And, another key area of lack of clarity and therefore workability is the overlap between some of the general restrictions, specific restrictions and those necessity tests. So there are, I think, both in relation to private law and criminal law, three aspects of the draft Bill, all of which could be seen as locks or impediments on the Assembly's ability to use that infrastructure of the law.

[36] You asked specifically about the word 'unnecessary'—

[37] **Suzy Davies:** Well, can I help you with that, just as a focus, really?

[38] **Ms Jones:** Of course.

[39] **Suzy Davies:** I'm just trying to get to the bottom of this: if the additional test, the main one that's vexing everyone, were to be taken away, does it add or take away anything from the Bill? Because I notice that you—. And, thank you, Presiding Officer, for coming up with some alternatives that could improve this Bill. I wondered if that was part of the thinking.

[40] **Ms Jones:** That is very much part of the thinking, absolutely. I think the key thing here is what the Presiding Officer said a minute or two ago: it is

for the Assembly to decide what is necessary in terms of legislation. I don't think that that should be for the courts. We recognise that the courts have a role in deciding what is necessary in terms of human rights; that human rights are an internationally recognised standard; and even the UK Parliament is, in a sense, bound by decisions of the courts on what is necessary, at least in terms of declarations of incompatibility of primary legislation. But, in policy choices and in how to enforce and make those policy choices effective using the infrastructure of the private and criminal law, then I am absolutely with the Presiding Officer and that is a choice for the Assembly. What it seems to me the draft Bill does is move that to being a choice for the courts, with a kind of ruler to look at whether what the Assembly has done has just a little bit more impact than was strictly necessary or not, and I don't think that that's constitutionally appropriate. I think that simply removing that test would move us back to a situation that was much more constitutionally appropriate.

[41] **The Presiding Officer:** I think, at the moment, in devolved areas, we can change the law as we choose as an Assembly, but in the future, we won't have that freedom.

[42] **Suzy Davies:** But in choosing to amend the law, the Assembly as a whole, I think, is mindful that it doesn't go berserk and go stomping over areas of law that are currently not conferred or not even in the silent bracket. I have the same concerns as you about this issue of necessity and I'm trying to—. I think your suggestions are very helpful in this.

[43] In terms of definitions, though, can I take you to another area? We've been talking about private and criminal law, which are, in and of themselves, vast areas of law and to even attempt to define them as we currently have in the Act is going nowhere near far enough. Do you think one way around this might be to concentrate on the word 'modifies'? The way the draft Bill is at the moment is that the Assembly is prevented from modifying UK law, if I can call it that, beyond the point of necessity. Is this 'modification' a problem? I'm thinking of criminal law in particular. Are we talking about whether it's okay to create new offences and new penalties, but saying that it's not okay to deal with intrinsic concepts like mens rea or changing laws of evidence? Is the Bill an appropriate place to try and distinguish between the types of thing we mean by 'criminal law'? Is that half the problem?

[44] **The Presiding Officer:** I think you're going to need a lawyer's answer to that in about two minutes.

[45] **Suzy Davies:** I'm sorry. I should've asked it a bit more succinctly, but—

[46] **The Presiding Officer:** No, I know where you're coming from.

[47] **Suzy Davies:** Criminal law can mean absolutely anything, really, can't it?

[48] **Ms Jones:** I agree with you. I think the word 'modify' is a problematic word in legislation and it surprises me that it has such continuing popularity in legislation. Even though it has been interpreted by the courts, it still retains a grey area within it.

13:45

[49] For me, though, changing the word 'modify' wouldn't be enough, because, to my mind, the key tests of devolved competence should simply be: is it a devolved area, or, in future, a non-reserved area, and does the law, essentially, apply only to Wales? If you pass both those tests, then I think that the Assembly should be able to do whatever it likes and make as radical a change as it wishes to the criminal and the civil law to make its policy effective. If it feels that a radical change to the criminal and civil law is necessary to make its policy effective, only in relation to Wales and only in a devolved area, then it seems to me that those are the key tests that should be passed.

[50] **The Presiding Officer:** I think, too, one of the things would be for the Presiding Officer to, whatever the Bill is, stipulate what is within competence and what is not within competence, but I'm not sure I would agree with you about using the word 'berserk'. [*Laughter.*]

[51] **Suzy Davies:** I'm sure we wouldn't do that, Presiding Officer.

[52] **The Presiding Officer:** But it is very important that the Assembly is mindful of the law and they will only produce laws that are actually within competence, but it is what is within competence that's going to be the big issue. I mean, I can see there'll be back and forth with the Supreme Court, more than there was before. Some of the proposals now will actually reverse the ruling of the Supreme Court—when we talk about the agricultural wages board—and so things are really being rolled back.

[53] **Suzy Davies:** Well, could I ask a question on that? The agricultural wages Bill, of course—the Supreme Court surprised some people with how far the judgment went on that—

[54] **Alun Davies:** It didn't surprise me. [*Laughter.*]

[55] **Suzy Davies:** Arguably, you can say if it wasn't specifically excepted, the Assembly could make law in anything that was silent, effectively. Do you have any suspicion that part of this Bill may be trying to—I won't say 'roll back', but recover the position from that particular Supreme Court judgment, on the basis that, perhaps, the judgment went too far? I mean, I don't know whether it is for us to gainsay—[*Interruption.*] I'm only asking whether you think that might be what's happened.

[56] **The Presiding Officer:** We can't comment on the Supreme Court ruling. It was made and, therefore, that's how we operate now. But this Bill is suggesting the reverse of what the Supreme Court proposed.

[57] **Suzy Davies:** I agree with you, and that's why I'm testing it.

[58] **The Presiding Officer:** So, that is roll-back, as far as I'm concerned—absolute roll-back.

[59] **Suzy Davies:** From one judicial decision? Okay. Thank you. Can you take us through some of your suggested amendments, which I think are helpful to the discussion, about why you think the document that you presented in evidence is able to improve the position today?

[60] **The Presiding Officer:** Well, I thought I'd stated that at the beginning, really, that it's got to be—. I'm sorry to keep coming back to it, Chair, but it's got to be clear, it's got to be workable and there's got to be no roll-back from where we are at the moment. I'm concerned that the way it's come about has not been a logical way of coming to where we are. I think my concern is, in addition, for a new Presiding Officer—it's going to make the decision on what is within competence more difficult in future than it is at the moment, and I think that's where we're going to be in real, serious trouble.

[61] **Suzy Davies:** It's primarily deleting parts of sections, which is absolutely fine.

[62] **The Presiding Officer:** I've said the point is that, you know, devolved areas, at the moment, we can change as we choose—. It won't be happening in the future. Of course, we're being treated differently from Scotland in this matter, and that's another thing we need to consider. Elisabeth, do you want to expand on that?

[63] **Ms Jones:** I can certainly walk through some of the detail of the alternative drafting, if that would be helpful.

[64] **David Melding:** I don't think we need to do that. We can stay at the level of principle, really—

[65] **Suzy Davies:** It was just the general principle behind it. It is just deletion, primarily.

[66] **Ms Jones:** Right, by all means. So, the A options, that is Nos 1 to 4A, which sit as a package—essentially, there's a twofold aim. One is to somewhat simplify the number of tests for competence and, secondly, to pretty much restore the legal position as it would be now with the ancillary competence that the Assembly has currently under section 108(5) of the Government of Wales Act and taking into account the agricultural sector judgment as well on silent subjects. So, that's the essential aim of the A options. The B and C options are essentially about simplification, so they do less to restore the current position, the current level of competence in terms of England—what would now be exceptions and silent subjects, private law and criminal law—but they do simplify the number of tests, and in particular they simplify the necessity tests. They reduce them from being double-headed tests in each case to single tests in each case. So, that's a very broad and brief overview of options 1 to 4. And then options 5A and 5B are about a different part of new Schedule 7B. They're about the ministerial consents regime.

[67] **David Melding:** And we're coming to that.

[68] **Ms Jones:** So we'll leave that for later, shall we?

[69] **Suzy Davies:** That's very helpful, to let us know how it's been developed. Thank you.

[70] **David Melding:** I'm clear the preference would be the status quo ante. That's very clear evidence.

[71] **The Presiding Officer:** That really is very important, and I would just like to stress that my alternative drafts are only suggestions, and I don't say they're the perfect solution, but I offer them up to widen the debate. But these are not the true aim of what I want. We must have a devolution settlement based on the principle of subsidiarity, and I think we shouldn't move away from that, Chair.

[72] **Suzy Davies:** Thank you.

[73] **David Melding:** We'll now look at the issue of Crown consent, which is linked in many ways to the whole issue of competence and reservations. Alun Davies.

[74] **Alun Davies:** Thank you very much. Presiding Officer, you say in your evidence that the provision for ministerial consent represents a significant roll-back of the ability of the Assembly to legislate free of UK ministerial consent. I wonder if you could explain to us why you've reached that conclusion.

[75] **The Presiding Officer:** I think I'll ask Elisabeth to deal with that because there is a huge complexity to the new requirements.

[76] **Ms Jones:** By all means, Presiding Officer. So, the draft Bill introduces six new additional requirements for consent that do not exist at present. So, firstly, consent would be required for the removal or modification of any Minister of the Crown function. Currently, the Assembly is, as you will know, able to remove or modify Minister of the Crown functions where to do so would be incidental or consequential—that was the basis of the Local Government Byelaws (Wales) Bill 2012 judgment of the Supreme Court—and you are also able to remove or modify UK ministerial functions. The restriction on your removing or modifying UK ministerial functions is confined to functions that were created before the Assembly's current competence came into being on 5 May 2011. But with the draft Bill, you would be restricted, you would be prohibited, from removing or modifying more recently created, and indeed even future Minister of the Crown functions—so, Minister of the Crown functions that were created in full knowledge of the Assembly's competence.

[77] The second way in which the draft Bill extends the requirements for consent is that it extends the restrictions to UK Government departments—

so, non-ministerial Government departments like HM Revenue and Customs, for instance—whereas the current restriction is only in relation to Ministers, ministerial functions. Thirdly, the restriction is extended further to what the draft Bill defines as reserved authorities—a definition that is in itself complex and lengthy. Fourthly—or I might have got to fifthly—you will be restricted from removing, modifying, or conferring functions specifically exercisable in relation to a reserved authority—so, not the functions of the reserved authority, but the functions exercisable in relation to the reserved authority—and you will also be restricted from modifying the constitution of a reserved authority. So, there's a whole range of new restrictions. Whether or not you consider those restrictions to be reasonable, they are undoubtedly a roll-back of competence because they are new and additional, and they are also complex in that the definition of a reserved authority and a Welsh public authority, the two sides of the coin, is a complex one, and one that the Bill itself recognises is one that may shift, because the draft Bill says that in every case the status of the body will be assessed at the date of introduction of the Assembly Bill that proposes to make the removal, modification, conferral or whatever. So, it's a highly complex and moveable feast.

[78] **Alun Davies:** So, the interpretation of 'competence' is something that you wouldn't necessarily know when you are drafting the policy objectives of a piece of legislation.

[79] **Ms Jones:** You would have to check it again—. If there was any doubt about whether the functions had changed between the development of the policy and the introduction of the Bill, you would have to check it again. In advising the Presiding Officer on competence, even in that four-week period that we have to assess competence, we will have to be very alive to any changes to the functions of bodies, absolutely.

[80] **Alun Davies:** Do you regard any of these new provisions as being reasonable?

[81] **Ms Jones:** The Presiding Officer's alternative drafts, which she's put forward in option 5B—

[82] **Alun Davies:** You seem to strike out nearly all the provisions.

[83] **Ms Jones:** So, 5A—I didn't actually say this before—unashamedly restores the current GOWA position, and even that is not the ideal position that the Presiding Officer has put forward in previous evidence, including

evidence, I think, to the Silk commission. In that evidence, the Presiding Officer called for parity with Scotland. In other words, a wholesale transfer of UK ministerial functions in devolved areas to the Welsh Ministers, because that would vastly simplify the devolution settlement and make it more rational. But, we are a very long way from there in the draft Bill, so the Presiding Officer's two compromise positions, if you like, that she's put forward for discussion are: firstly, we simply restore the current position under GOWA, with a limited ability to remove or modify functions created before 5 May 2011, or functions that are merely incidental or consequential; and then the second compromise position, option 5B, goes further towards the Secretary of State's position, then, shall we say. So, it posits the proposal that, maybe, there is no rational difference between a UK Minister and a UK non-ministerial Government department. Maybe it is reasonable to treat them in the same way. It also posits the idea that the thing that one can understand rationally the UK Government's concern about is the imposition of new duties in particular—or new functions, shall we say—and that it might be possible to accept some additional restrictions there, but not where the Assembly Bill is essentially affecting all actors in Wales in the same way, or all public authorities in Wales in the same way, because if reserved authorities have to be picked out of that policy implementation, then that could have a very practical and detrimental effect on the effectiveness of the particular policy.

[84] **Alun Davies:** Thank you for that—that's very useful, actually—but you seem to be describing a situation whereby, when we go to the polls next May to elect a new Assembly, we won't actually know the parameters of its competence.

[85] **Ms Jones:** That's inevitably going to be the case, isn't it, if the draft Bill proceeds?

[86] **Alun Davies:** But what I mean is in terms of the legislation that is in front of us, because so much of it relies on interpretation.

[87] **Ms Jones:** Yes. That point is also correct. Obviously, it's not for me to have a view about the desirability or the validity of the provisions of the Bill, but what I can, I think, comment on is the certainty and the clarity of it, and that is my overriding concern about the draft Bill.

[88] **Alun Davies:** And even if this was enacted before May, we still wouldn't know what the parameters of competence are, because competence

would depend on the interpretation of lawyers, and potentially judges, rather than on statute.

[89] **Ms Jones:** Yes. An element of that is inevitable, I think, isn't it? In a constitutional settlement, we will not be able to remove all elements of uncertainty. There are elements of uncertainty in Scotland's settlement, and there are elements of uncertainty in Northern Ireland's settlement, although I think that's probably the most certain of the three. But, the Secretary of State himself has said, hasn't he, that he wishes to reduce that uncertainty as much as possible? That is certainly the Presiding Officer's wish also. Unfortunately, my view is that it increases the uncertainty.

[90] **The Presiding Officer:** I think, just on that point, if I may, it's very important and I am concerned about the introduction of this Bill being in February before the Assembly elections. What is the rush? We really need to take our time about it. I think any issues need to be considered by the next Assembly. I think it's worth pointing that out now, Chair, in case I don't get time later.

14:00

[91] **Alun Davies:** Thank you for that. The Secretary of State, in speaking to the Welsh Affairs Committee in the House of Commons in October, made the point, in terms of ministerial consents, that, since the United Kingdom Government would need the consent of the National Assembly prior to any legislation on a devolved competence, it's only fair, essentially, that the Welsh Government would require the consent of a UK Minister or a UK reserved body if the Welsh Government is making legislation that would affect them. Do you think that's a fair comparison to make, and do you think it's a workable point to make?

[92] **Ms Jones:** I don't think it's a fair comparison, no, setting aside the fact that the current situation is that it is merely a convention whereby the Assembly's consent is asked for, although the draft Bill will seek to give that some statutory force. But, setting aside that fact, which in itself means that there is no priority on this, the Assembly can't legislate to affect UK Ministers' functions in non-devolved areas at all. The other tests for competence still apply when you wish to remove, modify or whatever UK Ministers' functions. Even with Secretary of State consent, you couldn't remove or modify or whatever a function that wasn't in a devolved area. So, the ability of Parliament to affect the functions of Welsh bodies is always

going to be greater and less fettered than the Assembly's ability to affect UK Ministers. So, no, I would not say there was equivalence.

[93] I have heard in other evidence sessions UK Ministers' functions being talked about as if they were, by definition, non-devolved, and I think that's where a misunderstanding arises. The key thing is whether the function is in a devolved area or not.

[94] **David Melding:** Presiding Officer, when you first called, a number of years ago now I think, for a reserved-powers model, did you think that this may be one of the range of options that would be presented to us? So, how did you react when you saw the publication of the draft Bill?

[95] **The Presiding Officer:** I was very disappointed, because I thought a reserved model or whatever model—I keep coming back to it—has got to be clear, it's got to be understandable and it mustn't roll back from where we are now. What is being proposed is certainly none of those, and I was very disappointed, because it's just going to cause huge confusion as to whether you can legislate on a bit of the Bill, you can't legislate on another part of it, and I just think it's a really missed opportunity to have something that is perfectly understandable, more along the lines of the Scottish settlement—which isn't perfect, but at least people understand it. I know Members around this table have been very confused over what's within competence and not within competence; we've been to the Supreme Court a couple of times. I just thought it was an opportunity that hasn't been taken.

[96] **David Melding:** Given that's your judgment, the statements made by the Secretary of State around the St David's process and then when he came to address the Assembly—a lot of what he said in principle was welcomed. So, what's gone wrong, do you think, if anything has gone wrong, in your view? I suppose I shouldn't lead you. Why have we ended up here, given that what people were saying in principle seemed to be quite well matched earlier in the year?

[97] **The Presiding Officer:** I think if I knew the answer to that, then it would be—I'd do the lottery tomorrow. I really don't know. I think it's interpretation. I think there's some concern about losing more powers. I think some departments felt those powers shouldn't have come over in the first place, and I just think it's—. Certainly, when I was talking to the Secretary of State, he had openness of mind—I thought we were really going down the same direction—but what actually his officials have come back with

is not quite what I'd anticipated, and I really can't say why, other than the fact that perhaps they just don't want to let go.

[98] **David Melding:** Finally, I wonder if I could ask Elisabeth Jones—. You know, think about your answer, because this could be seen as a leading question; I just don't know of any other way of doing it. Given the number of reservations to which then there are—. And we don't even know how many there are—it's 250 plus and then there are various calculations beyond that. There are then exemptions to the reservations to try and pull back some into the Assembly's orbit. You then have a vastly expanded—at least potentially—ministerial consent process. We've ended up with a hybrid, haven't we? This isn't a reserved-powers model. In fact, it looks more like a conferred-powers model by the time you reserve and then exempt.

[99] **The Presiding Officer:** Well, I can say 'yes' to that. I'm not sure about Elisabeth, but she might want to comment on it.

[100] **Ms Jones:** It certainly looks like a reserved-powers model with a conferred-powers mindset behind it.

[101] **David Melding:** Okay, I think that's very elegantly—you reach an elegance that I did not quite attain. Talking about elegance—Dafydd Elis-Thomas.

<p>[102] Yr Arglwydd Elis-Thomas: Gan fod fy nodiadau i yn Gymraeg, fe fyddaf i'n holi yn Gymraeg. Er ei bod hi'n arfer gen i i gyfarch tystion yr wyf i'n arfer siarad Saesneg â nhw yn yr iaith Saesneg, rwyf i am gyfarch y dysgwyr yn eich plith yn ogystal heddiw.</p>	<p>Lord Elis-Thomas: As my notes are in Welsh, I will be asking my questions in Welsh. Although it is my practice to use the English language to address witnesses with whom I usually converse in English, I would like to greet the learner amongst you today.</p>
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<p>[103] Mae gen i ddiddordeb mawr yn atodiad C, ac fe wnes i ddarllen y cynigion yma ynglŷn â threfniadau gweithredol y Cynulliad gyda brwdfrydedd mawr, os caf i ddweud. Dyma'r hyn rwyf am ei ofyn yn gyffredinol, yn gyntaf, i'r Llywydd ac i'r swyddogion sydd yn amlwg wedi</p>	<p>I'm very interested in annex C, and I read these proposals on the internal operations of the Assembly with great enthusiasm, if I may say so. Firstly, I would like ask a general question to the Presiding Officer as well as to her officials who have clearly been negotiating these issues</p>
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bod yn trafod efo swyddogion with Wales Office officials: there are Swyddfa Cymru: mae yna hanner half a dozen recommendations here dwsin o argymhellion yn fan hyn i to create a more cogent greu statws cyfansoddiadol callach i'r constitutional status for the Cynulliad mewn gwahanol feysydd, a Assembly in different areas, and what beth rwyf i eisiau ei wybod yw beth I want to know is what the Secretary oedd ymateb yr Ysgrifennydd of State's response was to these Gwladol i'r cynigion hyn yn atodiad proposals in annex C. For example, C. Er enghraifft, yn gyntaf: firstly, a:

[104] 'Rôl ar gyfer Comisiwn y 'Role for Assembly Commission in Cynulliad yn achosion y Goruchaf Supreme Court proceedings'. Lys'.

[105] Mae hwn yn gynnig newydd ac This is a novel proposal and gives the yn rhoi statws newydd i'r Cynulliad. Assembly a new status.

[106] Yr ail un yr wyf i eisiau gofyn The second point that I want to ask amdano ydy'r ymgais i gyfyngu about is the attempt to restrict the pwerau'r Ysgrifennydd Gwladol powers of the Secretary of State in ynglŷn ag ymyrryd yn y cyfnod ar ôl i terms of intervention once Assembly Filiau'r Cynulliad gael eu pasio, cyn Bills have been passed, before they iddyn nhw gael Cydsyniad Brenhinol. receive Royal Assent. The third point is the powers to remedy ultra vires A'r trydydd ydy'r pwerau i unioni acts, where this provision is one that gweithredoedd ultra vires, lle mae'r you are eager to retain, but you are ddarpariaeth yma yn un yr ydych also eager to have the Assembly's chi'n awyddus i'w chadw, ond rydych consent as a prerequisite for an chi'n awyddus i gael cydsyniad y Order to amend legislation passed by Cynulliad fel rhagofyniad ar gyfer the Assembly. May I ask about those Gorchymyn i addasu deddfwriaeth a three first, and then I have similar basiwyd gan y Cynulliad. A gaf i ofyn questions on the other three? am y tri yna i ddechrau, ac yna mae gen i gwestiynau tebyg am y tri arall?

[107] **The Presiding Officer:** Perhaps I can just say what I'm pleased about in the Bill, which might be helpful. It's important that the Secretary of State's duty to attend the Assembly after the Queen's Speech—that's no longer there. And also the repeal of section 29 of the 2006 Act: we can decide on the set-up of our own committees. And then we start going along the lines—

[108] **Lord Elis-Thomas:** Then it's downhill, isn't it?

[109] **The Presiding Officer:** I didn't quite say that. Who's going to start on this one? Adrian or Elisabeth?

[110] **Ms Jones:** So, as you will have seen, Lord Elis-Thomas, there is no response to these proposals in the draft Bill; they are simply absent. I think the Secretary of State's reply to the Presiding Officer's previous letter has itself been published, hasn't it, and, again, there is no response in there. So, we do not know the current thinking on this at the moment. But, as the Presiding Officer said, dialogue is continuing between ourselves and Wales Office officials, and this hasn't been on the table recently, but it will be on the table again to be discussed.

[111] **Lord Elis-Thomas:** Can I ask you a cheeky question? Do they understand what you're asking for?

[112] **Ms Jones:** I'm afraid I genuinely and honestly don't know, because we haven't actually discussed it face to face, so I haven't had the opportunity to tease out whether there is a full understanding or not.

[113] **Mr Crompton:** I've been in meetings where we have worked through a very long list of the sections that the Presiding Officer was pushing for change on. So, I'd be confident that there is an understanding.

[114] **Lord Elis-Thomas:** But no response?

[115] **Mr Crompton:** Not on these particular issues, no.

[116] **Yr Arglwydd Elis-Thomas:** A **Lord Elis-Thomas:** May I therefore
 gaf i ofyn, felly, am y pwerau pellach ask about the further powers referred
 y cyfeiriwyd atyn nhw yn atodiad C, to in annex C, which relate to the
 sef diwygio adran 152 o Ddeddf amendment of section 152 of the
 2006 i gyfyngu ar bŵer yr 2006 Act to narrow the power of the
 Ysgrifennydd Gwladol i rwystro Secretary of State to block the
 Gweinidogion rhag arfer exercise of Welsh Ministers' functions
 swyddogaethau yn ymwneud â dŵr, affecting water, and linked to that are
 ac yn gysylltiol â hynny y mae'r the definitions of 'Wales' and 'Welsh
 diffiniad o 'Cymru' ac o 'parth zone' in section 158 of the
 Cymru' yn adran 158 o Ddeddf Government of Wales Act? And then I
 Llywodraeth Cymru? Ac yna mae gen have a separate question on
 i un cwestiwn arall ar wahân ynglŷn â promoting public awareness.

hyrwyddo ymwybyddiaeth.

[117] Y rheswm yr oeddwn i'n gofyn y cwestiynau penodol yma ydy fy mod i wedi—. Yr unig ddehongliad y medraf ei wneud o'r broses yr ydym ni wedi ein landio ynnddi ar hyn o bryd—fel y mae'r Cadeirydd wedi cyfeirio—ydy nad oes yna awydd ar ran yr Ysgrifennydd Gwladol, na'r swyddogion sy'n gweithio iddo fo, i gynnal trafodaeth gyfansoddiadol aeddfed â'r Cynulliad Cenedlaethol, ac mae hynny'n siom i mi. Nid oes rhaid ichi ateb y rhan yna, ond os gallwch chi esbonio beth ydy'r hyn yr oeddech chi'n ei geisio ynglŷn â'r newidiadau ym mhwerau'r Ysgrifennydd Gwladol a'r materion eraill.

The reason I asked these specific questions is that I have—. The only interpretation that I can come to of the process that we have landed in at present—as the Chair has already referred to—is that there is no desire on the part of the Secretary of State, or the officials who work for him, to hold a mature constitutional debate with the National Assembly, and that's a disappointment to me. You don't have to respond to that part, but if you could explain what you were seeking in terms of the changes to the Secretary of State's powers and those other issues.

[118] **Mr Crompton:** When we started this process, we worked through the existing Act to identify provisions that in some way placed constraint or requirement on the Assembly. And, in many of those cases, our argument for bringing those sections within the competence of the Assembly was not particularly motivated by knowledge that there is pressure for change, but a reflection of the changed constitutional position of the Assembly. And so, for many of the things that we have requested competence over, that's because, in our view, it's right and proper that those things, those decisions, should lie with the elected National Assembly rather than being imposed on it by a piece of legislation. So, it's not necessarily a reflection of a desire for change, but more a reflection of that constitutional principle.

[119] **Lord Elis-Thomas:** But was this constitutional principle understood by those you asked about it?

[120] **Mr Crompton:** I attempted to make it clear, certainly.

[121] **Lord Elis-Thomas:** Well, I'm sure you did, but they haven't responded in any way.

[122] **Mr Crompton:** We've not had specific responses to all of those provisions.

[123] **Lord Elis-Thomas:** And there is nothing the Bill.

[124] **Mr Crompton:** Correct.

[125] **The Presiding Officer:** So, we have no negative response. That's a double negative, isn't it?

[126] **David Melding:** That's very optimistically put.

[127] **Yr Arglwydd Elis-Thomas:** A **Lord Elis-Thomas:** May I ask about gaf i holi ynglŷn ag un mater arall, one other issue, namely the proposal sef y cynnig eich bod chi'n awyddus i that you are eager for some of the rai o ddarpariaethau'r Bil ymddangos provisions of the Bill to appear as fel cymhwysedd i'r Cynulliad, fel y competence for the Assembly, so gall y Cynulliad wedyn ddeddfu, a that the Assembly can then legislate, hefyd wneud darpariaethau yn y and also make provisions in Standing Rheoliadau Sefydlog, efallai fel un—? Orders, perhaps as someone—? We Y buom ni'n gweithio efo ein gilydd have worked together in the past in yn y gorffennol yn y maes anodd yma this difficult area of Standing Orders. o Reolau Sefydlog. Beth fyddai What would be the advantages of that mantais hynny i ni fel Cynulliad? Mwy for us as an Assembly? I assume it's o hyblygrwydd, rwy'n cymryd, ie, more flexibility. Is that it? ydy'r fantais?

[128] **The Presiding Officer:** Absolutely. I mean, I don't see the point of legislation if you could deal with it in Standing Orders. Then we can amend Standing Orders, if necessary. But if it's a legislative Bill, you have to then go through the process of spending some considerable time actually providing a new Bill. I honestly think in this case that Standing Orders are the best way to deal with it.

[129] **Yr Arglwydd Elis-Thomas:** A **Lord Elis-Thomas:** May I also ask, gaf i hefyd ofyn felly—? Rydych chi'n therefore—? You suggest that section awgrymu y dylid cadw cymal Atodlen B1 of Schedule 7A, which relates to 7A adran B1, sy'n ymwneud â'r the boundary commission, should be comisiwn ffiniau, ac y byddai'n retained, and it would be an eithriad i'r Cynulliad roi exception for the Assembly to give swyddogaethau i'r comisiwn mewn functions to the commission in

perthynas â threfniadau etholiadol y relation to electoral arrangements for
 Cynulliad. Beth ydy ymateb yr the National Assembly. What has the
 Ysgrifennydd Gwladol wedi bod i Secretary of State's response been to
 hynny ynglŷn â bod gan Gomisiwn y that in terms of the Assembly
 Cynulliad gyfle, a chyfle i'r Cynulliad, Commission, and the Assembly itself,
 i ymwneud yn uniongyrchol â'r having the opportunity to become
 comisiwn ffiniau? directly involved with the boundary
 commission?

[130] **The Presiding Officer:** Well, generally speaking, I do welcome this draft of the Bill with regard to this particular issue. However, I have suggested that, in the future, the Assembly may wish to consult and seek advice from the Boundary Commission for Wales, and I believe that the draft Bill should be amended to enable this. We've asked for that, but that has not been given at the moment, but I think there's no point in setting up another body when you have a body with such competence as the Boundary Commission for Wales. When we come to look at how the electoral arrangements may be altered in Wales, then we need to consult, and consult the appropriate people.

[131] **Lord Elis-Thomas:** Would you also say, Presiding Officer, if I may, without asking any leading questions, that the boundary commission is the more experienced body to deal with these issues than perhaps the passing membership of the Assembly Commission? Or is that too leading?

14:15

[132] **The Presiding Officer:** Well, I would never argue with what you're saying—

[133] **Lord Elis-Thomas:** Not publicly. [*Laughter.*]

[134] **The Presiding Officer:** But, there are interpretations of this. I would like to say that the Commissions that have been—. Are you talking about our Commission, the Assembly Commission?

[135] **Lord Elis-Thomas:** What I'm saying is that you mentioned the boundary commission, which is an experienced body of long standing. So, the Assembly Commission clearly is a committee of the Assembly.

[136] **The Presiding Officer:** It is, and it might be passing, but it does have

great powers and does leave legacies, as you know. I think it's absolutely important, if there's a body there that has been set up of experts within the field, why shouldn't we be allowed to consult them? I know not why.

[137] **Yr Arglwydd Elis-Thomas: Lord Elis-Thomas:** I think that's Rwy'n credu bod hynny'n ddigon am enough for today. heddiw.

[138] **David Melding:** This committee did a lot of work, at your request and the Government's request, on disqualification, and part of that work has been carried forward from our report, that bit that was within the powers of the Assembly. But there was a fair bit that required primary legislation. Are you disappointed that we don't have the competence to legislate over issues like disqualification of AMs?

[139] **The Presiding Officer:** I think it's absolutely essential. The body that is responsible for the Assembly Members—they don't have the right to call them back. It would be for the UK Parliament. I think that one is a big mistake. I think we should be able to deal with our own electoral arrangements and arrangements for Assembly Members here, and not someone in Westminster.

[140] **David Melding:** Thank you very much, that's very clear. I now ask Peter Black to take us through the last set of questions we want to put to you, Presiding Officer.

[141] **Peter Black:** Yes, thanks. For the last session, we are going to clause 1. Presiding Officer, you've raised concerns regarding clause 1 in terms of the permanence of the Assembly and the Welsh Government. How would you like to see that strengthened?

[142] **The Presiding Officer:** I think it's absolutely essential that the Assembly should [*Inaudible.*] and that there should be no Act of Parliament put through without a referendum for the people of Wales. The Assembly is here, it's a Welsh body well respected by the public in Wales, and if someone else is going to suggest it's not going to happen again, then the public should have a referendum on that issue.

[143] **Peter Black:** This is an interesting section, isn't it, because you do have the long-held constitutional convention that a parliament can't bind its successor, and there's obviously an attempt to do that in this particular

clause. If you were to add to this clause in terms of saying there should be a referendum or the consent of the Assembly, what's to say a future parliament would not ignore that and legislate anyway?

[144] **The Presiding Officer:** That could happen. Of course, a referendum is my suggestion. It's got to be a matter for the National Assembly. I generally think, we live in a democracy and if there is true democracy, you can't have one body deciding to do away with another body.

[145] **Peter Black:** I'm not disagreeing with the principle. I think the proposed amendments in the Bill seem to me to be academic given that a future parliament could just basically ignore it anyway and just legislate it away.

[146] **The Presiding Officer:** Well, I would like to see them try.

[147] **David Melding:** Yes, it would be harder to abolish a law that had a referendum embedded in it than one that didn't, but possible I suppose.

[148] **Peter Black:** Okay, moving on to clause 2, you have concerns regarding clause 2 of the Bill on legislative consent. How would you like to see that strengthened?

[149] **The Presiding Officer:** I do welcome the fact that the Bill formalises the legislative consent convention and it makes it a parliament-to-parliament consent process rather than intergovernmental. I think that's important. This is a significant issue for Wales, more so than for Scotland, as more parliamentary Bills actually relate to Wales. I would like to see the draft Bill broadened so that the convention also covers any UK Bills that add to or take away Assembly competence or Welsh Government functions. Ideally, it would also cover any change of functions of the Assembly as well. I think this is a very important constitutional issue.

[150] **Peter Black:** So, it's currently putting the Sewel convention into the Bill. I think you're looking to have that judicially enforced. That's the key issue there. Okay. we've had written evidence from Thomas Glyn Watkin about the provision in clause 30 of the draft Bill, which gives the Secretary of State Henry VIII powers to amend, repeal, revoke or otherwise modify enactments contained in primary legislation, including Assembly Acts and Measures. Do you share his concerns about that provision in clause 30 of the draft Bill and would you be promoting that that should be taken out of the Bill altogether

or do you have other alternative proposals?

[151] **The Presiding Officer:** My expert on all things to do with Henry VIII is Elisabeth, so I'll ask Elisabeth to deal with that one.

[152] **Ms Jones:** Hopefully, I'm not going to be beheaded—at least not today. The short answer is 'yes'. I certainly do agree with Thomas Glyn Watkin that, if the power to make consequential provision was used to amend an Assembly Act or an Assembly Measure, then that should be subject either to a consent procedure or, even better, it should have to go through both parliamentary and Assembly procedure.

[153] **Peter Black:** Right. So, you're not saying, 'Take it out', but you're saying that you will expect us to consent to that.

[154] **Ms Jones:** Yes. I mean, I think it's a useful mechanism, and it can be a flexible mechanism, but I think that there should be that procedural safeguard or, obviously, the power could be taken away. It depends how far you want to go constitutionally.

[155] **Peter Black:** Yes. Okay, thank you.

[156] **David Melding:** Presiding Officer, perhaps I could put the final question. If there's a breakthrough and the Secretary of State next week tells us, 'I've seen Dame Rosemary's suggestions for amendments and I'm persuaded', at that point would we be on the road to a settlement or would our constitutional law still be needing some further adaptation in the future?

[157] **The Presiding Officer:** Well, I would be delighted if that happened, but I still think it's done with a terrible rush. I mean, this Bill won't be put until February. We're then finishing in March for the elections. It is a very short space of time for real, considered judgments on it, and I feel it should be left to the next Assembly. Even though, if he did agree with me, that would be wonderful, but I still think it needs serious long-term consideration.

[158] **David Melding:** So, would you be inclined to recommend that the draft process proceeds but then the draft Bill, or the final Bill, is left for some time so that, in effect, we see that introduced as a new piece of legislation over a longer time scale?

[159] **The Presiding Officer:** Well, I think whatever legislation comes in,

whether it's a completely new piece or this one amended, I generally think there'll be no harm done in giving it more time. We've waited a long time for it, and the thought of having the Bill agreed in a rush and then, within 18 months, having to produce another one—. It's not going to affect how the internal arrangements—. My particular concern is that it's going to affect the internal arrangements for the next Assembly. It's not going to alter that anyway, so why not just leave it some more time and serious considered thought.

[160] **David Melding:** Thank you very much. I think that's a very clear statement on which to finish. Thank you, Dame Rosemary, and your officials for your attendance this afternoon.

[161] **The Presiding Officer:** Thank you. I'd just like to give you my assurance that we are continuing to discuss with the Secretary of State and his officials, and we will continue to do so.

[162] **David Melding:** Thank you very much. That concludes our proceedings with you, Presiding Officer. You're welcome to stay for our consideration of secondary instruments, but I'm not sure it's enticing enough.

[163] **The Presiding Officer:** Very kind. Thank you.

14:23

**Offerynnau Nad Ydynt yn Cynnwys Materion i Gyflwyno Adroddiad
Arnynt o dan Reolau Sefydlog 21.2 neu 21.3
Instruments that Raise No Reporting Issues Under Standing Orders
21.2 or 21.3**

[164] **David Melding:** I'm just going to interrupt the order of the items and move to item 4, which is instruments that raise no reporting issues under our Standing Orders. They are, however, listed. There are quite a lot of them. Are Members content?

14:23

**Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad Arnynt i'r
Cynulliad o dan Reolau Sefydlog 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly Under
Standing Orders 21.2 or 21.3**

[165] **David Melding:** Then, item 5 years is instruments that do raise reporting issues. There's one. It's listed there. Are we content? We are. Thank you very much.

14:23

**Papurau i'w Nodi
Papers to Note**

[166] **David Melding:** Then, item 6 is papers to note. This is really for our ongoing work on the draft Wales Bill, but we have had responses now from the Chair of the Finance Committee, the Chair of the Public Accounts Committee, and the Chair of the natural resources—. I beg your pardon, that's separate. Sorry, separately we have a letter from the Minister for Natural Resources in relation to the Environment (Wales) Bill. So, if we can note the letters from the Chairs of the finance and public accounts committees. We're expecting others, I think, Gareth, aren't we? So, they'll be circulated when they arrive. Then, sorry, there's a separate letter then altogether from the Minister for Natural Resources in relation to the Environment (Wales) Bill. So, we can note that correspondence as well.

[167] Can I suggest that we now take a short break before we receive evidence from the First Minister?

*Gohiriwyd y cyfarfod rhwng 14:25 a 14:30.
The meeting adjourned between 14:25 and 14:30.*

**Tystiolaeth mewn Perthynas â'r Bil Cymru Drafft
Evidence in Relation to the Draft Wales Bill**

[168] **David Melding:** Welcome back, everyone. We now continue our evidence-gathering on the draft Wales Bill, and I am delighted to welcome the First Minister this afternoon, the Rt Hon Carwyn Jones. You're very welcome, First Minister. And he's joined this afternoon by Hugh Rawlings from the Welsh Government, who is well known to us for his expertise on

constitutional matters.

[169] First Minister, I wonder if I can start with a general question, really. Given that, earlier this year, all the statements in principle from the main actors—yourself, the Presiding Officer, and the Secretary of State—seemed to be pretty much in accord, did you expect anything like the draft Bill within the range of options that might be presented?

[170] **The First Minister (Carwyn Jones):** No—I have to say that. I was aware of the fact that there was a write-around of Whitehall departments that was taking place before the Bill was drafted. I suspect this is what happens where those Whitehall departments are given free rein. We have a Bill that doesn't reflect what we would want, and nor, indeed, what the Secretary of State has said publicly what he wants, and nor, indeed, what the Prime Minister has said that he wants. So, there is a good bit of work to be done in order to put the Bill into a format that would be close to being acceptable.

[171] **David Melding:** Perhaps I can ask you a slightly purist-type question. In terms of a settlement and a piece of constitutional law, would you have preferred to have seen an approach that presented a consolidated, clear statement of the constitutional position rather than a draft that picks its way through three existing statutes?

[172] **The First Minister:** Yes. As you will know, Chair, I've been an advocate of a constitutional convention across the entire UK to get the constitution right across the four nations. We have before us a Bill that tries to build on previous legislation that the Secretary of State himself has said is flawed. Therefore, it would have been easier—far easier—to have started off on the basis, for example, that there would be a distinct jurisdiction. That would have made drafting far easier than the Bill that we have now. That's not the approach that's been taken, and there are many areas where more work needs to be done in order for the Bill not just to be acceptable to this institution but to fit with the result of the referendum in 2011.

[173] **David Melding:** I'll now move to Peter Black.

[174] **Peter Black:** Thank you. Minister, in terms of the list of reservations in section 7A of the Government of Wales Act 2006, as inserted by Schedule 1 here, what changes do you believe should be made to that to strengthen the Bill?

[175] **The First Minister:** There are several. In many ways, this is the easiest part of the Bill, but I can offer some examples: civil contingencies—executive devolution of that is not proposed, as it is in Scotland, and that does create difficulties; if we look, for example, at licensing; if we look at the community infrastructure levy, which is, in effect, a planning levy—but that’s not proposed for devolution. There are other areas where it appears that devolution is being curtailed. For example, adoption, which is an area that is largely devolved at the moment, I would argue is being curtailed quite drastically. There are other areas where the status quo is re-expressed but, to my mind, it’s done in a way that is not helpful to this institution, and nor, indeed, to the Welsh Government. I will give an example that is to do with opencast mining, where the licensing of opencast mining remains with Westminster but land restoration remains here. In other words, the licensing is done in London and the mess is cleared up by Cardiff.

[176] **Peter Black:** And they’ve given you fracking licensing but not this.

[177] **The First Minister:** That’s right. That seems to me rather obvious. If you say you’re going to keep the licensing of opencast mining and then say, ‘Incidentally, at the end of it that, if, for example, the developer goes bust, it’s your responsibility, Welsh Government’, well, that’s clearly unacceptable.

[178] **Peter Black:** Yes, okay. You’ve also identified, in paragraph 20 of your evidence, defective drafting in relation to individual reservations. You say the subject matter of specified Acts of Parliament is referred to. Is that rectifiable, or is it best left out?

[179] **The First Minister:** Well, it’s rectifiable, but it will take an awful lot of work because of the approach that’s been taken. It would have been far easier to have approached it in a different way: rather than specifying an Act, specifying which areas are to be reserved. For example, if you take an approach that says that aspects or matters related to the Modern Slavery Act 2015 are not devolved, that then sends a lawyer off somewhere else, to try and find out what that says, rather than introducing clarity on the face of the Act itself.

[180] **Peter Black:** Okay. Are you actually coming up with a Welsh Government list of reservations that you think are more appropriate?

[181] **The First Minister:** Yes. That work is ongoing. There are three areas, as I’ve said before, where there are areas of concern. One is the list of

reservations, then of course the Minister of the Crown functions, and the necessity test. But discussions on this, and on all things, will continue.

[182] **Peter Black:** Yes. Okay.

[183] **David Melding:** I'll now ask Suzy Davies to take us through some questions on necessity and competence.

[184] **Suzy Davies:** Thank you, Chair. I have a couple of other questions about necessity in a minute, but can I just ask you generally at the moment about how you think the competence tests as they're currently drafted impact upon the legislative abilities of the Assembly?

[185] **The First Minister:** I'm not sure that they do at the moment. In fact, we have competence at the moment with regard to the two cases that went to the Supreme Court, which are substantial. What this Bill tries to do is put a boundary in place. I understand that, but the boundary is very firmly where we were before the Agricultural Sector (Wales) Bill went to the Supreme Court, and indeed before the Local Government Byelaws (Wales) Bill went to the Supreme Court. It takes us, indeed, beyond that in some areas. So, therein lies the difficulty, to my mind, in terms of trying to define competence in the way that the Bill actually does.

[186] **Suzy Davies:** So, those two judicial decisions have been responsible for solidifying the original legislative intention of GOWA. The reason I'm asking that is because I think the word 'necessity' in this Bill is potentially going to cause the same kind of problem in terms of, 'Here's a word that needs interpreting'.

[187] **The First Minister:** There is no doubt in my mind that pretty much every Bill that passes through this place will be challenged in court, not just by the Attorney General or Counsel General, but by individuals and organisations, if the word 'necessity'—well, if the necessity test remains. I don't see what the necessity test adds apart from confusion and a restriction on the powers of the Assembly itself. For me, it should simply be enough to say that the Assembly can legislate where there is a devolved purpose. I don't see the point of then adding lots of tests on top of that in order to make things more complicated.

[188] **Suzy Davies:** Well, on the basis of the Presiding Officer's answer to a question during her evidence session, where she said that she thought it's up

to the Assembly to decide what's necessary, because the Assembly only passes law that is necessary, would you say that having any kind of necessity test in here just adds to the confusion, and that the Act would lose nothing if it were taken away, because the Assembly itself is quite capable of deciding what's 'necessary'?

[189] **The First Minister:** I agree with that. I don't see what the necessity test adds. What we would have here is a situation where, instead of the elected Assembly deciding what is necessary, the courts would do it, and that can't possibly be right. We have to remember that the test itself has its genesis in the legislation affecting Scotland, but the devolution settlement there is profoundly broader than the settlement here. The reason why it's there, and many of the other tests are there, is that there is an—well, 'obsession' is the word, and I choose that word deliberately—with keeping the single jurisdiction, and on top of that ensuring that there is not much divergence between England and Wales in terms of the law. Now, that goes right against what people voted for in 2011. It is inevitable after the 2011 referendum that there will be significant divergence in the law—not in procedure, but in the law between England and Wales. That's what people voted for, and I think that to curtail that would go against the result of the 2011 referendum.

[190] **Suzy Davies:** Okay, I've got some questions on that, but I just want to cover this one off in the meantime. The Presiding Officer has come up with some alternatives to help improve the Bill or actually change some of the wording in it. I know that you've got particular concerns about whether the wording 'relates to' and the word 'ancillary' are competitive in some way. If you had to scrap one of those particular terms, which would you scrap?

[191] **The First Minister:** I would have approached it in an entirely different way, to be honest, rather than try to do it in this way and keep it in the same jurisdiction. It can be done. You don't have to have a distinct jurisdiction, but it's easier to do it that way. The problem with 'ancillary' as a word is that it suggests that the Assembly does not have a right of itself to amend the law—for example, to create criminal penalties—unless it's part of another process, so that the standalone right isn't there, which I think is wrong. I don't think the people of Wales actually decided that should be the case in 2011. I think it should be sufficient simply to say that the Assembly can legislate in—well, along the lines of what exists at the moment, where it 'relates to' a devolved purpose. I don't see what's wrong necessarily with the wording that exists now. It's certainly better than the wording that's proposed by the Bill itself at the moment.

[192] **Suzy Davies:** Okay, that's helpful. Obviously, 'relates to' is the wording that's used in Scotland as well, so there'd be some consistency on that.

[193] On the particular areas of private law and criminal law, which are vast areas of law, despite the draft Bill's attempt to define those—

[194] **The First Minister:** It's everything.

[195] **Suzy Davies:** Funnily enough, that's what I said just before. Do you think there is, perhaps, a failure in the Bill, and that what is needed is an attempt to try to distinguish between the Assembly's ability to pass law that creates penalties, which I think you mentioned earlier—the distinction between that and whether the Assembly should have the power to—modify, I think, is the word in the draft Bill? It's the more general concepts. I've tried to ask this before.

[196] **The First Minister:** Yes, I know what you mean.

[197] **Suzy Davies:** So, is it right that the Assembly should talk about mens rea or the laws of evidence?

[198] **The First Minister:** I follow that. I would not want to see us not being a common-law jurisdiction. I think there are great strengths in that. But there are examples where you have a common-law jurisdiction where the laws might be different, even though the principles are the same: Northern Ireland, the Isle of Man, Jersey, Guernsey, Canada and its provinces, Australia—in fact, most of the US states are common-law jurisdictions; they have different laws but the same principles. Now, if it's the case that there is nervousness that we would in some way change the principles of how a contract is formed, I don't think that would be in our interest. I think it's useful to have the same principles as other common-law jurisdictions. But what the Bill does is to go a step further and effectively prevent the Assembly from changing the law, except in very strictly-defined circumstances, and I think that is down to the fact that there is this obsession in Whitehall with a single jurisdiction and not having divergence, or a lot of divergence, within the single jurisdiction. Again, that goes behind what the result was in 2011.

[199] From our point of view, I don't make the distinction between principles and laws necessarily, although my view is that we wouldn't want to mess around with the basic principles of actus reus and mens rea, for

example, in criminal law, but that does not mean that it should restrict our ability to pass laws, particularly given the fact that it would restrict our ability to pass laws as we can now.

[200] **Suzy Davies:** So, if I characterise it like this: you wouldn't particularly want to see the Assembly having the right to change the meaning of what a restrictive covenant is, but you might want to have a right to change what the penalty is for a breach of restrictive covenant, just for example.

[201] **The First Minister:** That's a difficult example, restrictive covenants, because—

[202] **Suzy Davies:** Because there are already existing responses, I appreciate that.

[203] **The First Minister:** That takes us, of course, into landlord and tenant law, where we've got extensive powers at the moment.

[204] **Suzy Davies:** But what I was going to ask is: what could you do with the Act as it's currently drafted to make that distinction clear? Bearing in mind that it's unlikely that the UK Government's going to—

[205] **The First Minister:** What you need to—. From my point of view, Northern Ireland operates happily like this; it is a separate jurisdiction, but it's a parallel jurisdiction. Now, the Isle of Man is the same, Jersey is the same, Guernsey is the same. It's perfectly possible for lawyers who are qualified in England and Wales to operate in Northern Ireland. When I was in practice, it was £70 and you could practice in Northern Ireland. There was no requirement of further training, because the principles were the same. Lawyers are used to dealing with different laws, but they're used to dealing with similar principles within the jurisdictions that they're familiar with. I don't see why Northern Ireland—which, again, has an identical court structure, as well, to England and Wales—why that model can't be applied to Wales. Northern Ireland, of course, is pretty much half the size of Wales.

[206] **Suzy Davies:** But this is an argument about the jurisdiction now, which we've rehearsed here before. In terms of the Bill itself, is it a case that a big chunk of the Bill needs to come out of the original completely, or should we just start again with this Bill?

14:45

[207] **The First Minister:** I would not have started from this point, I think it's fair to say. Does it mean that this Bill is impossible to salvage? No, but it's difficult, and it will need goodwill and hard work—here, yes, but also in London. There has to be recognition—

[208] **Suzy Davies:** Apologies. Is it possible to salvage it through changes to definitions? That's my last question.

[209] **The First Minister:** It might be possible; as I say, this would need to be looked at very, very carefully, but it might be possible to do that. For me, the important principle is that the Assembly's current competence to change the law should not be reined back on, that it should be extended, and we should not be in a position that, simply because there is a single jurisdiction, there is therefore a quota, effectively, or a restriction on the Assembly's ability to legislate in devolved areas that the people of Wales voted for four years ago.

[210] **Suzy Davies:** Thank you.

[211] **David Melding:** Alun Davies.

[212] **Alun Davies:** Thank you very much. How did we get here?

[213] **The First Minister:** That's a very philosophical question; the big bang

[214] **Alun Davies:** You've met the Secretary of State on a number of different occasions, and I assume that you meet him on a regular number of occasions to debate and discuss these matters. You've also previously told this committee that the Secretary of State shared some elements of this Bill with you back in July. I would have anticipated and expected—and I think you've made the case in other places—that you had made representations to the Secretary of State about some of the deficiencies which you've rehearsed this afternoon, and which you've done so on other occasions. Could you describe to the committee the process of that debate and discussion that you had with the Secretary of State from that period?

[215] **The First Minister:** We would have been happy to have been involved in drafting the Bill from the start. I think it's fair to say that, as a Government, we have far greater resources than the Wales Office, particularly legal resources and staff resources, and we would have been happy to have been involved in that process at the beginning. That wasn't the case. We saw some

of the Bill—that much is true—in July, but not all of it. What I saw of the Bill in July caused me great concern. I did say that I was concerned to the Secretary of State, and I said to him that much work would need to be done on the Bill in order to make it in any way acceptable. I did say to him that there was merit, in my mind, in delaying the publication of the draft Bill, to revisit it to get it right. I was willing—and I told him this—to actually effectively make a joint statement to that end. I wasn't going to try and make any political capital out of it; I said 'Look, let's get this right; I'm happy to make a joint statement; we can say that it's going to be delayed in order for it to be re-examined; there's no problem here'. That wasn't taken up as an offer. It wasn't in some way trying to delay the Bill or to score political points; it was genuine, because I could see what the problems were going to be, and we are now where we are.

[216] **Alun Davies:** So, you had that conversation back in July?

[217] **The First Minister:** I had the conversation with him between July and September.

[218] **Alun Davies:** So, over the summer. And you've met him since then, I presume, to continue these conversations, and you've made that offer—

[219] **The First Minister:** Well, it's too late now.

[220] **Alun Davies:** But on subsequent occasions—

[221] **The First Minister:** We'll continue to discuss this with the Wales Office—of course we will. I don't think any kind of delay is going to be possible now, because the Bill is on the table. The difficulty for all is that the timetable of the Bill means that it will be going through Parliament next year, and it means that parties entering the election in May won't really be sure what powers the Assembly will have. So, writing manifestos for all and sundry is going to be very tricky, because we'll have no idea what the final Bill might look like. We can only operate on the basis, I would suspect, of the powers as we know them now. It's even possible, if changes were to be made to the Assembly's powers halfway through an Assembly term, that there would be a legislative programme pre-change and one after change. That's not a good way to create certainty.

[222] **Alun Davies:** No, it's not, and I understand that, because much of what is proposed in this Bill will depend upon interpretation rather than statute,

then there will be a continuing lack of clarity even when a Bill of this sort becomes law.

[223] **The First Minister:** If the necessity test remains, I can't see any alternative other than probably every Bill ending up in the Supreme Court, and that's not what this Bill was designed to do. The idea was to remove, as much as was possible, the need for any Bill to be referred to the Supreme Court; this actually makes it worse because of the introduction of that test.

[224] **Alun Davies:** Thank you for that. You've said in your evidence—and you touched on this in answer to questions from Suzy—that the creation of a Welsh legal jurisdiction would be the most desirable and effective legal framework to accompany the implementation of a reserved-powers model. I have to say, having gone through this process, that I do not see any alternative to a separate jurisdiction in real terms. We can play games with more fudges, but more fudges will be more fudges, and we will have further legislation further down the road and we won't be delivering the clarity that I think the people of Wales want and deserve. So, do you, First Minister, agree with the need for a separate jurisdiction or are you prepared to continue working—within your evidence to suggest that you would be prepared to work—towards something that is between where we are today and a separate jurisdiction? You call it a 'distinct' jurisdiction. Isn't that just another fudge?

[225] **The First Minister:** No, my preference would be to have a distinct jurisdiction. If that, however, is not on the table, there are ways of making the Bill workable, but it's far more complicated than it needs to be and it will affect the durability of the Bill. Without addressing the issue of the jurisdiction, the Bill won't endure for many years. The Lord Chief Justice made the point that it was possible to have—you can call it 'distinct' or 'separate'; it's the same thing in my mind—a separate jurisdiction without the need for a separate court system. Given the fact that the Northern Ireland court system is identical, to all intents and purposes, to the system here, I think that's a practical suggestion. It's already the case in reality that judges are not going to be able to sit in Wales without proper training in Welsh law. I have had conversations about, and the Lord Chief Justice has mentioned this to me, where counsel have turned up in Welsh courts and tried to argue the wrong law. I think that keeping the same jurisdiction just perpetuates that problem. That's a matter for them; I think that wasted costs orders all round would soon get the message across to those lawyers.

[226] So, we can have a separate jurisdiction, but not go to the expense of a

separate court and penal system. What's the advantage in that? It makes drafting the Bill easier. The whole premise behind this Bill, all the way through it, is that a single jurisdiction cannot have too much divergence in the law. That's not what people voted for in 2011. That's not what Members of the Assembly, I would argue, would want to see or what any party would want to see, but that nevertheless is what it does. If we started off on the basis of a separate jurisdiction, many of the drafting complications would disappear. So, in summary, a separate jurisdiction is the best way and the easiest way, but it's not the only way.

[227] **Alun Davies:** Okay. I'll leave it at that. In terms of Minister of the Crown consents, you've been quite brutal in your analysis of the impact of Minister of the Crown consents and the ability of this place to legislate. Are you scaremongering or do you believe that the consents, as conceived in the current draft Bill, really do create problems for the Assembly?

[228] **The First Minister:** No, I'm not. I know that there are two separate lists that exist: one of Acts that we say could not have been passed freely by the Assembly with the Bill; and the Wales Office has circulated a smaller list of Acts that they say could have been passed. The main difference is this: there are assumptions in the Wales Office's document that consent would have been given. No-one can make that assumption. No-one knows. I mean, the Secretary of State's predecessor was not one to give consent even to the most trivial of Bills—the Local Government Byelaws (Wales) Bill was a supreme example of that. That's an issue.

[229] With the Minister of the Crown functions, there are three points to make, I suppose: first of all, the ability of the Assembly to modify Minister of the Crown functions where they are consequential or incidental disappears. That means that the local government bye-laws Bill would not even have got to the Supreme Court because there would have been no power even to make the argument that we could change Minister of the Crown functions. Secondly, if consent were refused by a Minister of the Crown, it's quite possible that there would be a challenge in court over whether that consent was reasonably withheld. It takes us back to the court again. But, prevarication, of course, delaying consent, can effectively scupper Bills in the Assembly. For example, there were some aspects of the social services and wellbeing Bill that took 16 months to get. Whitehall is a very slow beast to give answers. So, it would be quite possible, where there's a need for Minister of the Crown consents, for those consents to be delayed, no decision being taken, and a Bill being scuppered as a result of it.

[230] **Alun Davies:** The Secretary of State—

[231] **The First Minister:** Sorry, the third point that I then make is this: the argument is made—. Well, let me split that into two parts. The Bill retains Minister of the Crown functions and the need for consents in areas that are wholly devolved. That is wrong, and that is a relic, and that must go. There is no reason at all why the Secretary of State should reserve that power.

[232] Secondly, it's argued that Minister of the Crown functions or consents should be retained where reserved authorities are involved. Now, there is an argument for saying that, but there is a difference between Scotland and Wales in this regard: in Scotland, Scottish Ministers exercise Minister of the Crown functions, except functions that are specifically reserved. In Wales, it would be the opposite. So, if the Scottish model was adopted, in terms of Minister of the Crown functions, and that then applied to reserved authorities, I think that would be acceptable.

[233] **Alun Davies:** Okay.

[234] **The First Minister:** Sorry, could I—. Hugh is sitting next to me. Have you got anything to add?

[235] **Mr Rawlings:** I don't think so, First Minister. Only just to say this: this is not a new issue. If you go back to the all-Wales convention report of 2009, that makes the point that the existence of this constraint on the Assembly, the inability of the Assembly to modify Minister of the Crown functions of any kind without consent, is a real problem, not least because it's not clear. They litter the statute book. The whole point of the bye-laws case, in a way, was that it provided a possible let-out in those circumstances where consequential or incidental amendments to Minister of the Crown powers that the Supreme Court held, could be done without consent. What the Bill does is not only say that that is impossible, but, under the current legislation, it's Minister of the Crown powers deriving from legislation passed before 5 May 2011, when the Assembly assumed legislative powers. What the new Bill does is to say that no Minister of the Crown powers may be amendable, whether or not within devolved competence, without consent. We may be in a position in relation to elections where the Assembly is getting new powers with respect to elections. There are powers, I believe, in the Electoral Registration and Administration Act 2013 that Ministers might want to exercise and which the Assembly might want to modify. At the moment,

as the Bill stands, no Minister of the Crown functions, whether or not within devolved competence, can be modified, save with consent. So, this opens out into a whole new territory of constraint.

[236] **Alun Davies:** The Secretary State, of course, argues, and did so in front of the Welsh Affairs Committee at its meeting at the end of last month, that since the Westminster Government, the UK Government, has agreed that it will seek consent from this place prior to legislating on matters that may be devolved, therefore it is only right and proper that a Welsh Government seeks equivalent consent from a UK Minister.

[237] **The First Minister:** There are two points in that regard. We're talking here partially about Minister of the Crown functions that exist wholly in devolved areas. There is no interest for the UK Government at all in devolved areas, and that restriction is being extended. So, that's one to consider. Secondly, there is no equivalence. If a Minister of the Crown consent is refused, it might be possible to judicially review the decision, but it's a very high bar that is set. To give another example, clause 30 of the Bill gives the Secretary of State very wide-ranging powers to do anything that the Secretary of State feels is appropriate in certain circumstances. There's no comeback on that.

15:00

[238] However, if the UK Government decided to ignore a legislative consent motion, it could do it, because parliamentary sovereignty dictates that it can. As to the definition of not normally legislating in areas that are devolved, what is 'normally'? That's another vague term, I would argue, that's introduced. It's not a question here of quid pro quo. The reality is that the Assembly is constrained, whereas the UK Parliament and the UK Government are not. It's more of a convention than something that's legally enforceable.

[239] **Alun Davies:** Of course, they do propose making it more enforceable.

[240] **The First Minister:** But, it's not a—. First of all, what is 'devolved'? We know that there are issues around that at the moment and there may well be in the future. Secondly, what is 'normally'? The reality is that there is no absolute bar to the UK Government or Parliament legislating in devolved areas without the consent of the National Assembly.

[241] **Alun Davies:** Finally, on this matter, the issue of consents goes beyond

that of simply Minister of the Crown, but also what is described as reserved authorities. I wonder if you could give us your assessment of any definitions of this and how it might potentially impact on the competence of the National Assembly.

[242] **The First Minister:** The definition of reserved authorities should be on the face of the Bill—what is a reserved authority and how does that authority exercise its functions? I think that clarity is needed in order for there to be an assessment of whether an authority is wholly reserved or not.

[243] **David Melding:** Peter.

[244] **Peter Black:** Just to focus on a particular disagreement, or one of the many disagreements, between the Welsh Government and the UK Government, we're well used to, as opposition Members, having Assembly Commission lawyers having disagreements with Welsh Government lawyers. There seems to be a fundamental disagreement between the Welsh Government lawyers and the UK Government lawyers on which current Acts of the Assembly could not be passed under this particular Bill. The Secretary of State thinks it's just five. I think you have come up with 15 or so. Which analysis is correct? Why are they so different in terms of the analysis?

[245] **The First Minister:** There are going to be differences, I suppose, in terms of interpretation, but there's one fundamental area that has nothing to do with the law. If you look at the list the Wales Office has provided, it has said, in relation to some legislation, 'Well, of course, Minister of the Crown consent would be granted in these circumstances'. Well, there are two points there: firstly, they cannot say that and nobody can give that absolute assurance; and secondly, what's the point of the Minister of the Crown consent being needed in the first place? Our interpretation is that where the Assembly cannot freely legislate without the need for any kind of Minister of the Crown function, then that's a restriction on devolution. Their interpretation is that there are some areas where, of course, consent would be given, so therefore it's within the competence of the Assembly. That's not the approach we take.

[246] **Peter Black:** So, the actual disagreement is, 'These are the five Bills that they wouldn't have consented to'.

[247] **The First Minister:** They make the assumption that, if consent is sought, of course it will be given. Well, nobody can make that assumption.

That then, in their mind, brings a Bill within competence. Whereas, to our mind, the interpretation we give is that, unless the Assembly can legislate freely, without even the need to obtain Minister of the Crown consent, that's a restriction on the Assembly's ability to operate.

[248] **Peter Black:** It's interesting, because one of the Acts that you say would need consent is the Local Government Byelaws (Wales) Act 2012, which they say would be okay. But that's one of the ones they challenged at the time.

[249] **The First Minister:** That's the point. The very point is that there are a huge amount of assumptions that are made. Yes, in a rational world, there was nothing controversial, I would argue, about that Bill, and yet, we saw what happened. So, they can never say, 'Of course consent will be given', because we know that the current Secretary of State's predecessor was not usually of that mind.

[250] **Peter Black:** So, in terms of your list, you're sticking by your list because, in a sense, you're saying these would all need consent from a UK Government Minister.

[251] **The First Minister:** Not just consent; there are other areas as well where there are difficulties. As I say, the approach we've taken is, unless it is clear that the Assembly can legislate freely in this area, or could have passed an Act, then it is not something that is within the full competence of the Assembly.

[252] **Peter Black:** Okay, thanks.

[253] **David Melding:** Thank you, Peter. Dafydd, the questions are now with you.

[254] **Yr Arglwydd Elis-Thomas:** Diolch yn fawr, Gadeirydd. A gaf i droi at faes cyfrifoldebau sydd yn cael eu gosod ar y Cynulliad ynglŷn â threfnu ei etholiadau ei hun a materion cysylltiol â hynny, a gofyn am dy farn di ar hynny? Rydym wedi trafod hyn yn barod efo'r Llywydd. Mae yna bwerau newydd i'r Cynulliad

Lord Elis-Thomas: Thank you very much, Chair. May I turn to the areas of responsibility that are conferred on the Assembly in terms of arranging its own elections and issues related to that, and ask for your view on that? We've already discussed this with the Presiding Officer. There are new powers for the

a Gweinidogion Cymru, gan gynnwys gweinyddu etholiadau mewn gwahanol ffyrdd, ond yn sgil hynny, er bod amseriad etholiadau'r Cynulliad, pleidleisio, ymgeiswyr, cyfrifo a dyrannu Aelodau rhanbarthol, swyddi gwag achlysurol, ac yn y blaen, i gyd yn cael eu dwyn yma i fod yn gymhwysedd i'r Cynulliad Cenedlaethol, nid yw hynny'n cynnwys cyfnod swydd Aelod Cynulliad na darpariaethau ynglŷn ag anghymwysu. A oes gan y Prif Weinidog farn fel Prif Weinidog, ac fel arweinydd y blaid fwyaf yn y lle yma ar hynny?

[255] **Y Prif Weinidog:** Dylai popeth ddod i'r un lle. Nid wyf yn gweld pam y dylai fod rheolaeth gan y Cynulliad dros etholiadau, ond dim rheolaeth ynglŷn ag ymgeiswyr ac os ydynt yn gallu bod yn Aelodau ai peidio. Nid wyf yn gweld pam y dylai hynny gael ei gadw yn San Steffan ac nid ei roi yn gyfan gwbl i'r Cynulliad.

[256] **Yr Arglwydd Elis-Thomas:** Diolch am hynny. Mae'r Bil, yng nghymal 20, yn derbyn awgrym a wnaed beth amser yn ôl gan rai ohonom ni a hefyd gan y Gymdeithas Diwygio Etholiadol y dylai newidiadau cyfansoddiadol sylweddol fod yn ddarostyngedig i fwyafrif o ddwy ran o dair o Aelodau'r Cynulliad—hynny yw, newidiadau i'r etholfraint, y system etholiadol, nifer yr Aelodau, etholaethau, ac yn y blaen. A ydy'r syniad cyfansoddiadol yna yn un derbyniol?

Assembly and Welsh Ministers, including the administration of elections in various different ways, but in light of that, although the timing of Assembly elections, voting, candidates, calculation and the allocation of regional Members, casual vacancies, and so on, are all brought within the competence of the National Assembly, that doesn't include the term of an Assembly Member, nor provisions on disqualification. Does the First Minister have a view on that, as the First Minister and as the leader of the largest party here?

The First Minister: Everything should be brought to the same place. I don't see why the Assembly should have control over elections, but no control with regard to candidates and whether they can be Members or not. I don't see why that should be reserved to Westminster and not given entirely to the Assembly.

Lord Elis-Thomas: Thank you for that. The Bill, in clause 20, accepts a suggestion that was made some time ago by some of us and also by the Electoral Reform Society that significant constitutional changes should be subject to a two-thirds majority of all Assembly Members—that is, changes to the franchise, the electoral system, the number of Members, constituencies, and so on. Is that constitutional concept one that is acceptable to you?

[257] **Y Prif Weinidog:** Ydy, i fi. Rwy'n credu, gyda rhywbeth fel hynny, ei fod yn bwysig dros ben fod yna gefnogaeth eang i newidiadau o'r fath. Ni fyddwn am weld sefyllfa lle byddai'r system etholiadol a'r nifer o Aelodau yn cael eu newid o achos un bleidlais ac efallai un blaid. Nid wyf yn credu y byddai hynny'n rhywbeth y byddai pobl Cymru yn derbyn, gyda rhywbeth sydd yn gyfansoddiadol bwysig dros ben.

The First Minister: Yes it is, to me. I think that, with something like that, it's very important that there is broad support for changes of that kind. I would not want to see a situation where the electoral system and the number of Members could be changed because of one vote and, perhaps, one party. I don't think that the people of Wales would accept that, with something that is an important constitutional issue.

[258] **Yr Arglwydd Elis-Thomas:** Mae hynny, wedyn, yn mynd i olygu y bydd angen chwilio am gonsensws ar draws pleidiau ar y newidiadau hynny.

Lord Elis-Thomas: That will then mean that we will need to seek consensus on a cross-party basis on those changes.

[259] **Y Prif Weinidog:** Mae hynny'n iawn. Ni fyddwn am weld sefyllfa lle y byddai'n bosibl, gydag un bleidlais, i newid trefn etholiadau er mwyn helpu un blaid neu'r llall. So, rwy'n credu ei fod yn bwysig i gael cefnogaeth eang er mwyn sicrhau bod mwy nag un blaid o leiaf yn gefnogol i'r newidiadau.

The First Minister: That's right. We wouldn't want to see a situation where it would be possible, with one vote, to change the electoral arrangements in order to help one party or another. So, I think that it is important to have broad support in order to ensure that more than one party at least supports the changes.

[260] **Yr Arglwydd Elis-Thomas:** A derbyn, felly, nad oes yna gymaint o anghytundeb ynglŷn â rhoi cymwyseddau ychwanegol i'r Cynulliad ac i Gomisiwn y Cynulliad ynglŷn â materion gweinyddol mewnol ag sydd ynglŷn â'r pwerau, a oes yna unrhyw rinwedd mewn ceisio dadlau y dylid symud i ddeddfu ar y materion lle mae yna gytuniad—er enghraifft, ar etholiadau a phethau

Lord Elis-Thomas: Accepting, therefore, that there isn't as much disagreement on providing additional competence to the Assembly and to the Assembly Commission on its own internal administration as there is around the issue of powers, is there any merit in making the argument that we should move to legislate on these issues where there is agreement—for example, on electoral

cysylltiol—gan fod hynny, o bosibl, arrangements and ancillary issues—
 yn rhywbeth y mae angen symud because that is possibly something
 arno er mwyn inni allu paratoi ar ei that we need to move on more swiftly
 gyfer, yn gymaint ag y mae'r so that we can make preparations for
 cwestiwn pwerau? it, as much as is the issue of powers?

[261] **Mr Rawlings:** Perhaps I could respond on that point. First of all, on clause 20, it's not immediately obvious to me, looking at clause 20(2), that the Assembly has been given power to lay the established rules for the determination of constituency boundaries. Now that actually, if that is true, is a clear gap in provision. The provision talks about, for example,

[262] 'the number of constituencies, regions or any equivalent electoral area',

[263] but if, for example, the Assembly decided that it wanted to break from the existing parliamentary constituencies and have its own system of Assembly constituencies, I'm not quite clear whether that is available as it stands at the moment, and it's something that I need to take up with Wales Office officials.

[264] On a broader theme, in terms of legislation using these powers, I think my assumption had been—and obviously it will depend on the decisions of the incoming Government next May—that the Assembly will want to legislate in the lifetime of the next Assembly on electoral arrangements, and it would need to do so in time to enable those to come in in place for the elections in 2021. The interesting feature of this is that the Law Commission is currently doing a very substantial piece of work on the reform of electoral law that very conveniently will come to a conclusion in February 2017. That work could very well inform the content of an Assembly Bill in the lifetime of the next Assembly, although, of course, there would need to be local decisions made about constituencies, the electoral system and all the rest of it. But there is the prospect in the next Assembly of a comprehensive piece of legislation on elections for Wales covering both Assembly elections and local government elections, if that was what was—

[265] **Lord Elis-Thomas:** And this could include them confirming, or indeed amending in certain ways, the relationship between the Assembly, the Assembly Commission and the boundary commission.

[266] **Mr Rawlings:** Between the Assembly and the local government body,

because under the Wales Bill it will be for the Local Democracy and Boundary Commission for Wales to set any new Assembly constituencies. The Bill draws—well, it's not a clear distinction; again, it's something we'll have to pursue, but what it is seeking to do is say that parliamentary boundaries will be set by the Boundary Commission for Wales, in respect of which the Assembly will have no responsibility; and Assembly constituencies, if they are to be different from the parliamentary constituency boundaries, are to be set by the local government boundary commission.

[267] **Lord Elis-Thomas:** And if they had coterminous boundaries but there was a difference in the numbers of membership and in the voting system, that again would have to be dealt with in such a Bill.

[268] **Mr Rawlings:** Indeed. In the same piece of legislation.

[269] **Lord Elis-Thomas:** Clearly you have your eyes fixed on the potential of such legislation.

[270] **Mr Rawlings:** My eyes are fixed on retirement, my lord.

[271] **Lord Elis-Thomas:** Well, neither of us has been able to manage that yet, is my answer to that one. But can I ask then both of you—?

[272] **Gwnaf ofyn i'r Prif Weinidog yn gyntaf. A oes yna ryw rinwedd mewn ceisio symud ymlaen efo'r agweddau yma o ddeddfu ar gyfer cymwyseddau etholiadol i'r Cynulliad ei hun ar wahân i weddill y Bil yma?** I'll ask the First Minister first. Is there any merit in trying to proceed with these aspects of making legislation for electoral competence for the Assembly itself and set that apart from the rest of this Bill?

[273] **Y Prif Weinidog:** Cyn bod y pwerau yn dod? **The First Minister:** Before the powers come?

[274] **Yr Arglwydd Elis-Thomas:** Ie. **Lord Elis-Thomas:** Yes.

[275] **Y Prif Weinidog:** Mae'n anodd, wrth gwrs, achos nid ydym yn gwybod beth fydd cyflwr y Bil ar y diwedd, neu os bydd yna Fil ar y diwedd. Mae hon yn rhan o'r Bil, wrth gwrs, rwy'n credu bod pawb yn gytûn **The First Minister:** It's difficult, of course, because we don't know what the condition of the Bill will be at the end, or whether there will be a Bill at all at the end. This is a part of the Bill, of course, that I think everyone

arni, ond rwy'n credu y byddai'n agrees on, but I think we'd have to
 rhaid cael mwy o sicrwydd ynglŷn â have more assurance in terms of
 gweld Deddf yn dod, a sicrwydd seeing an Act coming, and when
 ynglŷn â phryd yn gymwys y byddai'r exactly the powers would start, or
 pwerau yn dechrau. Mae sôn wedi commence. It's been mentioned that
 bod y byddant yn dechrau hanner they will start halfway through the
 ffordd drwyddo'r Cynulliad nesaf. next Assembly, but we have to have
 Mae'n rhaid cael sicrwydd ar hynny, that assurance, of course, before we
 wrth gwrs, cyn symud ymlaen gyda move on with that kind of measure.
 mesur o'r fath.

[276] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Thank you very
 Diolch yn fawr. much.

[277] **David Melding:** First Minister, in response to an earlier question, you
 said the draft Bill was salvageable, but that it would be difficult. Presumably,
 it could be salvaged if your suggestions were taken up, and possibly those of
 the Presiding Officer, which I'm sure you've had sight of. If that happens, if
 there's a change of heart and the Secretary of State next week says that he's
 persuaded to follow that course of action, would we then have a settlement?

[278] **The First Minister:** It's too early to say, of course. I think what's
 important is that we see a demonstration from the UK Government, and the
 Prime Minister for that matter, that there is a willingness to listen, to
 understand the difficulties, and not to impose. I think imposing a Bill like this
 is fraught with constitutional difficulties. What message does that give to
 other parts of the UK, particularly Scotland, for example? Of course there is
 an assumption that somehow the constitutional discussion is a sideline, but
 it goes to the very heart of what all parties will put in their manifestos in next
 May's election, and the people of Wales deserve that clarity.

[279] In terms of what needs to be done, in terms of general principle, there
 needs to be a look again at some of the powers. I've mentioned some
 already. Two others that are anomalies: one is the Milford Haven exception
 that exists in the first part of the Bill with regard to trust ports. In other
 words, it says that if a trust port has a particular turnover, and it's above that
 particular turnover, therefore the UK Government is responsible. Well, that is,
 to my mind, an incentive for ports not to grow. If a port becomes successful,
 if the Welsh Government makes a port successful, it loses control of that
 port, because it goes above a certain turnover. In the same way, if a port
 goes into decline, it is handed back to the Welsh Government as it goes into

decline. That can't be right.

15:15

[280] With regard to energy, what's been suggested in terms of energy is welcome. The 350 MW limit, we could argue about, but the principle of devolution of energy consents is welcome. But, of course, unlike in Scotland, grid connections aren't going to be devolved. So it means, for example, that permission might be given for a particular development, but it would be scuppered because the permission wouldn't be given for the grid connection. So, it's not quite what it appears to be in that regard. In Scotland, that is—*[Inaudible.]*—work needs to be done. But, in some ways, that is the easy bit, going through what is and what isn't devolved: that should be fairly clear in terms of what the different positions are.

[281] Minister of the Crown consents have to go, to my mind, in devolved areas. The same arrangements as exist in Scotland regarding Minister of the Crown functions and consents with regard to reserved authorities should apply in Wales and, to me, the necessity test has to go. I think those are fundamental—. It's never as easy as that, but those are fundamental principles that should be observed. Ideally, it should have been done on the basis of a separate jurisdiction but with a shared court system. It's still my view that that would be by far the most sustainable option.

[282] Will we then have a Bill that creates a sustainable settlement? It'll hopefully be clearer, but the jurisdiction point won't be addressed, and that still creates problems. We will still have issues such as policing and licensing that will be unaddressed. They don't go to the architecture of the constitution but are more to do with powers. We will approach it with an open mind, but the principles I've outlined there are obviously principles that the Welsh Government will be looking to follow.

[283] **David Melding:** Alun.

[284] **Alun Davies:** That's a very comprehensive response to the question and does provide the overview, as you say, for the architecture of a settlement, of a constitutional settlement. But a fundamental part of that architecture is the balance between what is reserved and what isn't. Clearly, the anticipation of most of us, I felt, when we argued for a reserved-powers model, is that powers would be devolved unless there was a good reason for them not to be, so the balance of the argument would change. Clearly,

however you want to list the reservations, something over 200 powers being reserved probably does not reflect the assumptions made at the beginning of this process. So, how would you seek, in terms of principle rather than arguing about each and every reservation—? There are clearly some fundamental issues. You've mentioned the police, and it's difficult to see a reserved model without the police being devolved, in my view. What point of principle would you adopt in addressing that issue of reservations—what is reserved and what isn't reserved?

[285] **The First Minister:** The presumption should be that something should be devolved unless there is a reason for it not to be. Defence is one obvious example, to my mind. A commonality, not an identical tax system, but a commonality in the tax system is another. Immigration and border control are another. But that should be the assumption, rather than—. That is the nature of a reserved-powers model. If you start off on the basis that everything sits in Westminster and then decisions are taken as to what should be devolved, that is a conferred-powers model, regardless of what it's described as.

[286] One of the questions we've been wrestling with is: is this really a reserved-powers model? The retention and extension of the Minister of the Crown functions and the consents that are needed drive a hole through that. When it comes to the necessity test, the fundamental problem is this: within the Bill itself, the law, in its entirety, is reserved. So, as far as the law is concerned, it's a conferred-powers model, and that then introduces the difficulties that we have now, where, if there is an ambiguity as to whether something is devolved or not, the presumption would be that it's not devolved. That's not the case in Scotland. The law is devolved in Scotland. In Wales, it's assumed that the law is not devolved, and that's why we have all these restrictions, including the necessity test, that are imposed as part of the Bill.

[287] Coming back to this point again, if the law isn't devolved, therefore, there should be as small a divergence as possible between England and Wales when it comes to having different laws. If we look at the Renting Homes (Wales) Bill, for example, it could well be that that Bill would be caught up and would have difficulties with competence under this new arrangement because it seeks to change the law of contract. The court might say, 'Well, actually, no; you're going further than you need to'. If the law itself is not devolved, then there's little scope for—there's less scope for calling this a reserved-powers model.

[288] When I gave evidence last week to the Welsh Affairs Committee I was questioned by Antoinette Sandbach MP. She described it as a reserved-powers model and then talked about powers that were being conferred on us, as the record shows. [*Interruption.*] She denied it, but the record shows otherwise. Therein lies the rub: that what is said to be a reserved-powers model cannot be properly a reserved-powers model with the proposals for Minister of the Crown functions and consents, and the proposal, in effect, to reserve the whole of the law. That takes away a substantial amount of—a large chunk out of the reserved-powers model and, in effect, retains an even more restricted conferred-powers model.

[289] **Alun Davies:** We seem to be discussing something that isn't simply about a different political vision of what a future United Kingdom will look like. What you appear to be describing, First Minister, is a model of devolution that isn't workable under any vision of a future of the United Kingdom.

[290] **The First Minister:** Well, it's workable to the extent that it moves the boundaries of devolution further away from this institution—even, in some cases, beyond where it was in 1999. Yes, it is true that far more Bills would end up in the Supreme Court, but they would be resolved in some way, but that's not satisfactory. In effect, Welsh legislation would be taken out of the hands of the Assembly and placed very firmly in the hands of the courts. That's something that the Supreme Court itself has been reluctant to do, and they said so in the Local Government Byelaws (Wales) Bill. That's the issue. Is it durable? No. Will it create friction in the future? It is bound to.

[291] Now, the odd thing is, of course, that the Secretary of State and I appear to be on the same page. There's no fundamental difference—. There'll be issues over the jurisdiction, I suspect, but there's no fundamental difference of approach in terms of what the Secretary of State wants to see devolved. But what we have in the Bill is something that says exactly the opposite. As I say, instead of Whitehall departments being told, 'This is what's going to happen in Wales', they have been given free rein in terms of what they think should and shouldn't be devolved and have tried to ignore the 2011 referendum in doing that. That's why we have a Bill drafted as it is.

[292] **Alun Davies:** From an executive point of view—. That's a very good description from the legislator, but, from the executive point of view, and the point of view of law-making and delivering policy instructions to legislative

counsel, reading through the Bill and the advice we received on that, and listening to your evidence, which coincides with other evidence that we've received during this inquiry, it would appear that it would be difficult to give very clear policy instructions, and for legislative counsel to come back to a Minister with very, very clear means of giving legislative life to a policy objective that falls full square within a devolved competence.

[293] **The First Minister:** There are two effects. Firstly, a Government programme could be delayed or destroyed. Secondly, you would end up in a situation where instead of being where we are now, where we would assume that very few Bills would end up in the Supreme Court, we would have to make the presumption that they would. That would have to be built into the timetable of delivery of legislation. You know, not just a case of, 'Okay, we've got to take this to Stage 4', but build in a possible referral to the Supreme Court—well, a probable referral to the Supreme Court—on top of that. It just delays legislation needlessly, as far as I can see, and it makes it more difficult for a Government, whatever that Government might look like, to be able to deliver its programme here in the Assembly.

[294] **David Melding:** The Supreme Court, presumably, would move quickly to give a definition of necessity, though, wouldn't it? This is a tepid defence, I grant you, but that's what would happen presumably. You wouldn't be going back all the time for a new definition of necessity.

[295] **The First Minister:** The difficulty is that, even if there were a definition, each Bill would be judged on its own merits in accordance with that definition. So, the likelihood is that, even if there were to be a definition of what necessity means, each Bill would end up in the Supreme Court anyway to judge whether the content of that Bill could be assessed against that test. So, it wouldn't help.

[296] **Alun Davies:** The Supreme Court as Stage 5.

[297] **The First Minister:** That's a good description.

[298] **David Melding:** Okay. With that unhappy thought, I do want to move to Dafydd, finally.

[299] **Yr Arglwydd Elis-Thomas: Lord Elis-Thomas:** Thank you very Diolch yn fawr a hwn yw fy much and this is my final question. nghwestiwn olaf. Mae gosod yr holl Setting the whole debate that we've

drafodaeth rydym ni wedi'i chael y prynhawn yma ac yn gynharach gyda'r Llywydd ar y manylion ac ar y cyfyngiadau, i mi, yn taro, yn chwithig iawn, yn erbyn cymal 1 a 2, sydd yn gosod i lawr y datganiad mawr yma am y ffaith bod y Cynulliad yn rhan barhaol o ddodrefn y Deyrnas Unedig, os caf ei ddweud fel hynny, a phwysigrwydd hefyd yn y cymal dilynol am gonfensiwn na fydd Senedd y Deyrnas Unedig yn deddfu fel arfer ar faterion datganoledig heb gydsyniad. A oes modd i ni, rhyw fodd, achub manylion y Bil yma a dod â nhw yn ôl i'r gosodiadau democrataidd dechreuol yma?

[300] **Y Prif Weinidog:** Y broblem gyda'r Bil ar hyn o bryd yw nad yw'r Bil yn dechrau o'r sylfaen y dylai popeth cael eu datganoli os nad oes eisiau cadw'r pwerau yn San Steffan. Hefyd, nid yw'r Bil yn wir adnabod y ffaith bod yna fwy o bwerau wedi dod i'r Cynulliad, yn enwedig o achos refferendwm 2011.

[301] Gyda chymal 1 o'r Bil, datganiad yw hynny; nid oes modd cyfreithiol i newid hynny, o achos sofraniaeth Senedd San Steffan, ac nid wyf i o blaid system o sofraniaeth fel yna. Mae yna fodelau eraill yng Nghanada, er enghraifft, lle mae yna rannu'r sofraniaeth rhwng y rhanbarthau a'r canol. Rwy'n credu hynny, felly, dylai fod y model yn y Deyrnas Unedig. Nid yw hynny'n mynd i newid gyda'r Bil hwn; rwy'n

had this afternoon and earlier on with the Presiding Officer on the details and on the restrictions, to me, seems to go against clauses 1 and 2, which set down this major statement on the fact that the Assembly is a permanent part of the fixtures and fittings of the UK, if I can put it in those terms, and the importance also of the following clause about the convention that the UK Parliament wouldn't normally legislate on devolved matters without the consent of the Assembly. Could we somehow save the details of the Bill and bring them back to these initial democratic declarations?

The First Minister: The problem with this Bill at present is that the Bill doesn't start from the basis that everything should be devolved if the powers don't need to be kept in Westminster. Also, the Bill doesn't really recognise the fact that more powers have come to the Assembly, particularly because of the 2011 referendum.

With clause 1 of the Bill, that's a statement; there's no legal means to change that, because of Westminster's sovereignty, and I'm not in favour of that sovereignty system. There are other models in Canada, for example, where there is shared sovereignty between the regions and centrally. I think that should be the model in the UK. That's not going to change with this Bill; I understand that. Because of

deall hynny. O achos hynny, wrth gwrs, gall Senedd San Steffan y Deyrnas Unedig wneud beth maen nhw'n moyn. So, mae'n bwysig i gael e yno. Rwy'n credu ei fod yn bwysig ac rwy'n croesawu'r ffaith bod yna ddatganiad bod y Cynulliad yn barhaol fel rhan o'r cyfansoddiad. Ond, wrth gwrs, fe all Senedd arall ddod yn Llundain a dweud, 'Dyna fe. Nid yw hynny'n wir ragor' a hefyd cael gwared ar y Cynulliad heb unrhyw fath o bleidlais. Nid wyf yn credu bod hynny'n mynd i ddigwydd mewn ffordd ymarferol o gwbl, ond mae'n bwysig cael datganiad cyfansoddiadol sydd yn dweud hynny. Mae fe'n ei wneud yn fwy anodd, wedyn, i newid y sefyllfa gyda datganiad sydd mor glir.

that, of course, the UK Westminster Parliament can do what it wants. So, it is important to have it there. I think it is important and I welcome the fact that there is a statement that the Assembly is a permanent part of the constitution. But, of course, another Parliament could come in in London and say, 'Well, that's not true anymore' and get rid of the Assembly without any kind of vote. I don't think that that will happen in a practical sense at all, but it's important to have a constitutional declaration that says that. It makes it more difficult, then, to change the situation with a declaration that's so clear.

[302] **David Melding:** Thank you, First Minister. I think we all found that an absorbing session. Thank you very much for your participation this afternoon and also to Mr Rawlings, as well. Thank you.

15:28

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:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog 17.42(vi).

Cynigiwyd y cynnig.

Motion:

that the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

Motion moved.

[303] **David Melding:** I move the relevant Standing Order that we conduct the rest of today's meeting in private, unless I see any Member object. I don't see any Member objecting. Please clear the public gallery and switch off the broadcasting equipment.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 15:28.

The public part of the meeting ended at 15:28.