



**Cynulliad Cenedlaethol Cymru  
Y Pwyllgor ar Fesur Llywodraeth Cymru**

**The National Assembly for Wales  
The Committee on the Government of Wales Bill**

**Dydd Mercher, 25 Ionawr 2006  
Wednesday, 25 January 2006**

**Cynnwys**  
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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal,  
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.  
In addition, an English translation of Welsh speeches is included.

*Aelodau o'r Cynulliad yn bresennol: Dafydd Elis-Thomas (Cadeirydd), Nick Bourne, Jocelyn Davies, Michael German, Christine Gwyther, Jane Hutt (y Trefnydd), Ann Jones, Ieuan Wyn Jones, Val Lloyd, David Melding, Gwenda Thomas.*

*Swyddogion yn bresennol: Peter Jones, Cwnsel i Wasanaeth Seneddol y Cynulliad; Hugh Rawlings, yr Uned Materion Cyfansoddiadol; Paul Silk, Clerc y Cynulliad.*

*Gwasanaeth Pwyllgor: Siân Wilkins, Clerc; Sarah Beasley, Dirprwy Glerc.*

*Assembly Members in attendance: Dafydd Elis-Thomas (Chair), Nick Bourne, Jocelyn Davies, Michael German, Christine Gwyther, Jane Hutt (the Business Minister), Ann Jones, Ieuan Wyn Jones, Val Lloyd, David Melding, Gwenda Thomas.*

*Officials in attendance: Peter Jones, Counsel to the Assembly Parliamentary Service; Hugh Rawlings, the Constitutional Affairs Unit; Paul Silk, Clerk to the Assembly.*

*Committee Service: Siân Wilkins, Clerk; Sarah Beasley, Deputy Clerk.*

*Dechreuodd y cyfarfod am 5.19 p.m.*

*The meeting began at 5.19 p.m.*

### **Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions**

[124] **Y Llywydd:** Croeso i ail gyfarfod y pwyllgor. Croeso i Christine Gwyther sy'n gweithredu'r newid mewn Rheolau Sefydlog a wnaed gennym y prynhawn yma ac sy'n cymryd lle Leighton Andrews. Croeso hefyd i Hugh Rawlings o'r Uned Materion Cyfansoddiadol.

**The Presiding Officer:** Welcome to the second meeting of the committee. Welcome to Christine Gwyther, who is acting on the change to Standing Orders implemented by us this afternoon by substituting for Leighton Andrews. I also welcome Hugh Rawlings from the Constitutional Affairs Unit.

5.20 p.m.

### **Mesur Llywodraeth Cymru The Government of Wales Bill**

[125] **Y Llywydd:** Bu i ni gytuno yn y pwyllgor neithiwr y byddem yn ystyried Rhannau 3 a 4 o'r Mesur ac yn dilyn gweddill y Mesur yn olynol gan gymryd yr Atodlenni ynghyd â'r Rhannau perthnasol o'r Mesur. Heddiw, ystyriwn bapur 1, fersiwn 1. A oes sylwadau?

**The Presiding Officer:** We agreed in last night's meeting that we would consider Parts 3 and 4 of the Bill and then take the rest of the Bill sequentially, taking the Schedules as well as the relevant Parts of the Bill. Today, we will consider paper 1, version 1. Are there any comments?

[126] **Michael German:** I am afraid that our amendments were e-mailed rather late and I think that they are being secured at the moment.

[127] **The Presiding Officer:** There is no issue with the selection and debate of all amendments that are being tabled or not tabled. I have taken that liberal view of things, if I can use that expression, for today's meeting. Are there any issues on the order of consideration? I am just raising it now to make sure that there is no issue. I see that there is not.

[128] Felly, fe ddechreuwn ar Ran 3 y Mesur, Therefore, we will start on Part 3 of the Bill, cymal 92. Mae'r gwelliant cyntaf gan y grŵp clause 92. The first amendment is by the Ceidwadol. Conservative group.

[129] **Nick Bourne:** I propose amendment 1:

*it is noted that Assembly measures will have the same effect as an Act of Parliament.*

*Amendment: delete Part 3 of the Bill entirely (i.e. clauses 92-101).*

[130] I thank Siân and the clerking service for turning these around so quickly. That is much appreciated.

[131] The issue here, which some have referred to as 'brutal', is consistent with the approach of the Richard commission report on legislative measures, with which we agree. We think that it should be put to the people of Wales in a clear-cut settlement of primary legislative powers based on the devolved areas—asking them for a simple 'yes' or 'no'. We see the inclusion of Part 3 as a compromise, as I have said before, which I understand is to try to keep fractious parts of the Labour Party together, but it is not something with which we agree. We would be happier with this being removed and moving straight to Part 4, where a clear-cut case is put to the Welsh people. That has to be argued for by the relevant pro and anti campaigns as per Schedule 6, which deals with the conduct of a referendum set out fairly as a Schedule to this Bill in terms of Part 4.

[132] We would simply delete this intermediary stage, which we think will be very much a dog's dinner. There are all sorts of problems with how it will operate in terms of, in particular, the role of the Secretary of State. Whether he or she says 'yea' or 'nay' very much depends on what sort of mood they are in, what they have had for breakfast and so on. It just does not seem to us to be a secure settlement even in the short term, and so we oppose this part of the Bill for that reason. Obviously, if we are unsuccessful in this, we will certainly try constructively to make it operate more effectively, but we do not think that this helps the process of devolution. We would favour the Richard commission approach much more of going straight to Part 4 and that is why we have put forward this approach.

[133] **Christine Gwyther:** I will try not to be inflammatory, or get upset at anything that you have said there, but I am surprised that you think that any Secretary of State, of whichever colour, would treat their deliberations on what we need in the National Assembly in such a whimsical fashion. I would just like to draw people's attention to the assurances that we have already had from the current Secretary of State that that would not be the case. I disagree with your reading of how this process will operate. I would expect every request from the Assembly to be treated with the utmost seriousness and not to be decided within a few minutes of someone's day.

[134] **David Melding:** I think that our objection is that Part 3 amounts to primary powers if it works. It is not primary powers if it does not work, and there would be all sorts of interruptions and time delays and machinations from the Executive at Westminster.

[135] Our own reading agrees with yours, Chris, that, in order to work, it is very difficult to conceive of reasons why the parliamentary brake, as it were, would be put on. It would just create a constitutional crisis in practicality, which is why we see this as a way of creating primary powers by the back door, and that is what Lord Richard said when he gave evidence to the Select Committee on Welsh Affairs. We think that we should just be honest and up-front and, when we are ready to move to a referendum, we should put the proper question on primary powers and not have something that could damage the authority of the Assembly if it does not work. If it does work, it creates primary powers, and I think that most people agree that that

should be put to the people before those powers start to operate.

[136] **Ieuan Wyn Jones:** I think that you put forward an interesting argument. It would be helpful for the deliberations of the committee to know whether you foresee an immediate referendum on full powers or whether you would want to see that delayed for some years.

[137] **David Melding:** I defer to Nick.

[138] **Nick Bourne:** When you say 'immediate', I would not necessarily conceive of it being within six months of the passing of the Bill, but I do not see any case for a lengthy delay. I would certainly have thought that it would be within 18 months. You have to allow time for the literature to be printed and for the campaigns to get up and going, but I would not see there being a long delay before that particular referendum question was put to people.

[139] To come back at Chris, I certainly was not personalising it around Peter Hain or any other Secretary of State. I would trust their intentions. However, it is not in the Bill. The Bill does give them the right to say 'yea' or 'nay', which I do not understand. To come back to what we will do if we are unsuccessful in this argument, I would much prefer to say, 'You are constrained'. There may be occasions when a Secretary of State—and, as I say, I do not personalise it—may be obstructive. It could happen, and, under the Bill, that is the danger.

[140] **The Business Minister (Jane Hutt):** This amendment obviously follows your Westminster colleagues in their reasoned amendment in the Second Reading which, of course, would wreck the main purpose of this Government of Wales Bill. I hope that it is the case that there are clear, political dividing lines in terms of the parties represented here, as today.

[141] Following on from what Ieuan said, the issue is about implementing the further devolution of powers and opportunities to Wales in 2007 rather than when the Richard commission said, which was that it would be 2011 before we were ready to take on the opportunities that a referendum and primary legislation might offer. I think that this is, hopefully, about delivering and implementing devolution and recognising that this is a very imaginative opportunity. In fact, in last week's debate, many of your Members said that they were looking forward to it.

[142] **Ann Jones:** I am surprised, Nick, to see you trying to get this one through here now, given that your colleagues in Westminster have clearly just given up on a referendum. To me, it is a wrecking motion. If this is the first amendment that you are putting down, I wonder, for the life of me, what the value of this committee is if we are going to attempt to re-run what you failed to get through in other places. That is not what this committee is about.

5.30 p.m.

[143] **Nick Bourne:** With respect, on that last point first, we are looking at this in the order in which we agreed to look at it yesterday. The first clause that we are looking at is clause 92 and the first Part that we are looking at is Part 3. You should not be surprised by our take on this. On the point that Jane made, this may be following Westminster in terms of time, but it is certainly not following Westminster in terms of slavishly adopting its agenda. It is the view of the entire group that this amounts to primary legislative power and it requires a referendum. Do not be surprised by that.

[144] I also contest strongly the claim that taking this Part out of the Bill wrecks it. Of course it does not; it means that we move to the next Part, which puts the question about primary legislative powers. I have said that that question should be put fairly quickly and we are looking at implementing it perhaps a little earlier than the Richard commission's recommendation of 2011, but not much earlier. I would be interested to hear from you, Jane, when you think Part 4

will be implemented. Do you think that it will be implemented in 2011? If not, when? We are taking a much more progressive view of when this could come in by saying, 'Let us go straight to Part 4'. That will not wreck the Bill. What you are saying is that we disagree with Labour, but that is a very different issue. We are not wrecking the Bill; we are saying that we should move straight to Part 4, which is more or less what Lord Richard said, but on a slightly faster timescale.

[145] **Jocelyn Davies:** I would like to ask Mr Rawlings a question. The Assembly currently holds some powers that amount to primary powers, does it not?

[146] **Mr Rawlings:** I would ask you to define what you mean by 'primary powers'.

[147] **Jocelyn Davies:** That is something that we took some time over in the Committee on the Better Governance for Wales White Paper. We were told that even the Scottish Parliament does not have primary powers.

[148] **Mr Rawlings:** That is quite so.

[149] **Jocelyn Davies:** If you put your black-letter lawyer hat to one side for a moment—

[150] **Mr Rawlings:** I am not easily able to do that.

[151] **Jocelyn Davies:** When we pass resolutions in the Assembly that say 'framework legislation', would most people regard that as our having primary powers?

[152] **Mr Rawlings:** The Assembly does have some powers conferred on it that go wider than the powers that are normally conferred on Ministers in relation to England. Those are framework powers, and the most recent such power envisaged to be conferred is contained in the NHS Redress Bill. Those are powers to enable the Assembly to make law on matters that are quite broadly defined. To that extent, you might call them primary powers if you wanted to, in the sense that they go wider than the sorts of powers that are normally conferred on Ministers, which generally are to implement or give effect to some statutory scheme that Parliament has agreed upon.

[153] **Jocelyn Davies:** We have passed three or four resolutions that call on Westminster to confer framework legislation on the Assembly, and there was never once a call for a referendum in those cases.

[154] **Christine Gwyther:** This matter is quite simple, Chair. We have a gulf between us and, obviously, I will bow to your will, but do you think that it would be fair if we were to take a vote on this matter?

[155] **Nick Bourne:** I would certainly support that. I do not think that that bridge will be addressed in any other way.

[156] **The Presiding Officer:** My practice will be to let the debate run its course.

[157] **Ieuan Wyn Jones:** I have to say that, to a certain extent, I was prepared to listen to what the Welsh Conservative group had to say and to the Government's response. I think that the Government's response is pretty weak, I have to say. I was expecting a coherent response. It is pretty clear that this is not a wrecking amendment at all; basically, it is an opportunity to move away from the Assembly measures stage to having a full Parliament in a short time. The Welsh Conservatives' answer to the intervention that I put to them indicated that they would envisage that there would be a referendum on primary powers within a short time. How can that be a wrecking amendment? That clearly gives the people of Wales an opportunity to move to

Part 4 quickly, so surely that cannot be a wrecking amendment. What I have to say to the Government is that the way in which it has responded makes the Conservatives' argument even more attractive.

[158] **Jocelyn Davies:** It is widely acknowledged that this Part could, theoretically, amount to primary powers; it is a kind of open secret. So I find some merit in David's argument that the only people who are not being allowed to express a view on that are the Welsh public, while everyone else is. However, you must start your journey from where you are, and it is no secret that Plaid Cymru wants a proper Parliament and would want to get there as soon as possible.

[159] **Y Llywydd:** Os felly, Nick, wyt ti'n **The Presiding Officer:** Therefore, Nick, do dymuno pleidleisio ar hwn? you wish to vote on this?

[160] **Nick Bourne:** I would be happy to move to a vote, but I think that Jane has indicated that she wishes to speak.

[161] **Jane Hutt:** Just to come back on that point, as you say, Jocelyn, you must start the journey from where you are. We have a Labour Government in Westminster, and, in fact, it was contained in the general election manifesto that we would move forwards with the Bill to extend powers, and that is what the Bill is about—extending powers with the public confidence that we gained at that election. It is about starting the journey from where you are to expand those powers, but, for the first time, by putting the opportunity of primary legislation in a Bill, which we would have under Part 4. However, let us use Part 3 to build public confidence and consensus, because that is what we need in order to move on to Part 4. On that, I would hope that we could move shortly to a vote.

[162] **Y Llywydd:** Galwaf bleidlais, felly, ar **The Presiding Officer:** I therefore call for a y cynnig i ddileu Rhan 3 o'r Mesur yn gyfan vote to delete Part 3 of the Bill in its entirety. gwbl.

*Gwelliant 1: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 1: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Bourne, Nick  
Davies, Jocelyn  
German, Michael  
Jones, Ieuan Wyn  
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Gwyther, Christine  
Hutt, Jane  
Jones, Ann  
Lloyd, Val  
Thomas, Gwenda

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.*

*As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.*

*Gwrthodwyd y gwelliant.  
Amendment defeated.*

[163] **Y Llywydd:** A oes rhywun am siarad ymhellach ar gymal 92? Fel arall, galwaf am gynnig o welliant i gymal 93, sef gwelliant 2 yn enw Ieuan Wyn Jones a Jocelyn Davies. Nid wyf yn bwriadu mynd drwy'r rigmarôl o gael **The Presiding Officer:** Does anyone wish to make further comments on clause 92? Otherwise, I call for a proposal to amend clause 93, which is amendment 2 in the name of Ieuan Wyn Jones and Jocelyn Davies. I do

dadl am y cymal os nad oes neb am siarad.  
Awn ymlaen at y gwelliant nesaf, felly.

not intend to go through the rigmarole of  
debating the clause if no-one wishes to  
speak. We will therefore go on to the next  
amendment.

[164] **Jocelyn Davies:** I propose amendment 2.

*Insert new clause 93A: Scheme for parliamentary legislative provisions.*

*The Secretary of State shall draw up and publish a scheme setting out the arrangements that Her Majesty's Government proposes to make in order to provide definitions of the scope within the provisions of Government Bills introduced into Parliament for Assembly measures to be introduced in accordance with sections 92 and 93.*

*The scheme referred to in (1) shall include guidance given to Ministers regarding:*

*the scope within legislation for matters to be determined by the Assembly or Welsh Ministers;*

*arrangements for making it readily apparent within legislation or any explanatory notes published by Ministers what the scope is for matters to be determined by the Assembly or Welsh Ministers.*

- 1 The Secretary of State shall amend or revise the scheme referred to in (1) from time to time as he considers appropriate.*
- 1 The Secretary of State shall lay before the Assembly any scheme, or amendments to a scheme, made under this section.*
- 1 No scheme shall be made, amended or revised under this section unless the Assembly has first been consulted on such a scheme or amendments.*

[165] We have had considerable discussions since 1999, and several resolutions, about how we might get powers in new Acts of Parliament, and this is one solution to that—that there be a scheme laid down in statute, drawn up by the Secretary of State, which may then provide us with more clarity, and cut down on the use of discretion, because there is a considerable body of evidence to show that individual departments and different drafting styles and so on affect the powers that we have been given. Those variations have very little logic to them, and the publication of a scheme would address this.

[166] **Christine Gwyther:** I have a question for Hugh Rawlings. Is there any devolution guidance already within UK departments that is used to deal with this matter?

[167] **Mr Rawlings:** There is a devolution guidance note—I think that it is number 9 in the series—which has recently been revised to take account of the statement in the 'Better Governance for Wales' White Paper, which commits the UK Government to the use of framework powers. That guidance note has been issued to all Whitehall departments. As I mentioned previously, the NHS Redress Bill is the first Bill to be published since that guidance was issued, which contains a framework power.

[168] **Christine Gwyther:** I have a supplementary question, if that is okay, Chair. This could be a stylistic question, but what is a guidance note—is it guidance or is it compulsion?

[169] **Mr Rawlings:** The note is guidance to departments, which carries through the Government's statement of policy in the White Paper. So, there is a statement of policy in the White Paper and the guidance is to remind departments what that policy is and what they have



to follow.

5.40 p.m.

[170] **Christine Gwyther:** Okay, so they have to follow that.

[171] **Mr Rawlings:** Yes, because it is Government policy.

[172] **Christine Gwyther:** Thank you.

[173] **Jocelyn Davies:** When you produce a piece of legislation that deals with the very point, it is far better to have that scheme in the public domain and democratically decided upon; this legislation would require the Secretary of State to do that, would have the ability to vary it from time to time, we would be consulted on it, and so on. This is a far better place, and this is an appropriate opportunity and place to have a scheme.

[174] **Nick Bourne:** I have a question for Jocelyn. I think that I can understand what she and Plaid Cymru are getting at here, but you would not, presumably, expect this in all Government Bills, because some Government Bills would deal with matters that were not devolved in the current settlement. Therefore, you would not expect them to be covered by this; it would only be Government Bills that were within the areas set out in Schedule 5. Is that right?

[175] **Jocelyn Davies:** Exactly, and the scheme is adaptable enough to take care of that.

[176] **Nick Bourne:** Right.

[177] **Jane Hutt:** Clause 33 of the Bill preserves the duty on the Secretary of State for Wales to consult the Assembly about the UK Government's legislative programme, which is key to ensuring that there is that full consultation and engagement with the Assembly and between Government and Assembly.

[178] **Jocelyn Davies:** Since 1999, we have failed to get framework legislation, despite the fact that that has taken place every single year. Generally, that consultation is a debate that we have annually about sorts of Bills. During those debates, we have often had resolutions, unanimously passed, that there be framework legislation. We have adopted the Rawlings principles, which, as we know from evidence given to the Richard commission, even though they were adopted and agreed, were not abided by, and I believe that some of the draftsmen said that they had never even heard of them. There are different styles, and it is something that the Assembly has suffered from, because of the lack of a scheme. This would be a good way—although I accept that there are guidance notes—of addressing that. This opportunity of having a scheme laid down in statute will not come by again.

[179] **Nick Bourne:** Clause 33(5), as it is at present, requires the Secretary of State to undertake only such consultation as he feels is appropriate, so there is no fall-back position if it is not felt appropriate; it seems that it does not even have to be reasonable under clause 33.

[180] **Ieuan Wyn Jones:** May I suggest a way forward? It is clear that there is no massive disagreement on the principle. Therefore, I am not sure whether the Minister would be happy to take this away and consider it, and perhaps revisit it when we have the Assembly debate—our Report Stage, as it were. If she is happy to take it away and have a look at it, we will not push it to a vote.

[181] **Jane Hutt:** I understand that this amendment was before the House of Commons at Committee Stage, and was not debated. We have given a fairly robust response that we do not think that such a scheme is necessary, but I am prepared to take it back and look at it and come

back at a further stage with a response.

[182] **The Presiding Officer:** Thank you, Minister. Therefore, amendment 2 is formally withdrawn.

[183] Mae gwelliant 3 i Atodlen 5 yn Amendment 3 to Schedule 5 adds several ychwanegu nifer o wasanaethau ym maes services in the field of law. cyfraith.

[184] **Ieuan Wyn Jones:** I propose amendment 3 in my name and in the name of Jocelyn Davies.

*Schedule 5, page 109, line 46 at end insert:*

*‘Field 21: Police, probation, and prison service.’*

[185] Mae'r Mesur sydd ger ein bron yn gyfle nid yn unig i newid pwerau'r Cynulliad o safbwynt deddfu, ond hefyd inni edrych ar y meysydd y mae'r Cynulliad yn gyfrifol amdanynt. Mae'n rhaid edrych nid yn unig ar gymal 94, ond hefyd ar Atodlen 5. Mae Rhan 1, Atodlen 5 yn cynnwys, ar hyn o bryd, y meysydd hyd rif 20, sy'n cynnwys y meysydd polisi a ddatganolwyd eisoes. Yr hyn a welwn yma yw bod cyfle i ystyried meysydd newydd.

The Bill before us is an opportunity not only to alter the Assembly's powers in legislative terms, but also for us to look at the fields for which the Assembly is responsible. One has to look not only at clause 94, but also at Schedule 5. Part 1, Schedule 5 includes, at the moment, those fields up to number 20, which include the policy fields that have already been devolved. We see an opportunity here to consider new fields.

[186] Yng ngwelliant 3, cyfeiriwn at yr heddlu, y gwasanaeth prawf a'r gwasanaeth carchardai. Bu trafodaeth eang yn y blynyddoedd diwethaf ynghylch y meysydd arbennig hyn. Wrth gwrs, tynnaf sylw at y ffaith bod y rhai sy'n ein gwasanaethu yn yr heddlu, sef y prif gwnstablaid, wedi dweud y byddent yn dymuno gweld y pwerau hyn yn cael eu trosglwyddo i'r Cynulliad gan fod rhan sylweddol o gyllid yr heddlu ar hyn o bryd yn dod oddi wrth drethdalwyr Cymru drwy'r cynghorau sir, a'u bod yn gweld bod dadleuon, bellach, dros gael y pwerau hyn am sawl rheswm.

In amendment 3, we refer to the police, the probation service and the prison service. There have been far-reaching discussions in the past few years on these particular fields. Of course, I draw attention to the fact that those who serve us in the police, namely the chief constables, say that they wish to see these powers transferred to the Assembly, because a significant part of police funding currently comes from Welsh taxpayers through county councils, and they see that there are strong arguments now in favour of devolving these powers, for a number of reasons.

[187] Y rheswm pennaf yw bod rhan o gyfrifoldebau'r Gweinidog dros Gyfiawnder Cymdeithasol ac Adfywio ar hyn o bryd yn ymwneud â materion cyfraith a threfn ac mae rhan sylweddol o'r arian sy'n dod i'r heddlu yn dod o Gymru. Fodd bynnag, mae'r cyfrifoldeb dros yr heddlu yn parhau i fod yn fater i San Steffan.

The main reason is that part of the current responsibilities of the Minister for Social Justice and Regeneration are to do with law and order and a large part of the funding provided to the police comes from Wales. However, responsibility for the police is still a matter for Westminster.

[188] Teimlaf fod penderfyniad yr Ysgrifennydd Cartref i ad-drefnu heddluoedd Cymru yn gyfle i ni ddweud wrtho, 'Wel, gwrandewch, yr ydym ni yng Nghymru yn

I feel that the Home Secretary's decision to restructure the Welsh police forces is an opportunity for us to say to him, 'Well, listen, we in Wales know what is the best

gwybod beth yw'r ffordd orau i ad-drefnu'r heddlu yng Nghymru. Beth am ichi drosglwyddo'r pwerau i'r Cynulliad dan y Mesur, ac yna gallwn ni benderfynu sut yr ydym am weld y peth yn digwydd?'.

way to restructure the police in Wales. Why do you not transfer the powers to the Assembly under the Bill, and then we can decide how we want to see that happen?'.

[189] Yr oedd yn rhyfedd clywed y Gweinidog yn dweud heddiw ei bod yn gorfod pledio gyda'r Swyddfa Gartref ar nifer o feysydd lle nad yw wedi llwyddo i ymgynghori'n deilwng â phobl Cymru ac nad yw'n gallu dweud wrthym beth yw cost yr ad-drefnu. Pan ymddangosodd y Gweinidog o flaen y Pwyllgor Dethol ar Faterion Cymreig, dywedwyd wrthi, 'Wel, cewch arian os unwch yr heddluoedd yn fuan'. Yr oedd yn amlwg bod y Gweinidog yn teimlo'n anghyffyrddus gyda'r ymateb a ddaeth o Lundain. Credaf, felly, fod hwn yn fater y dylid ei drosglwyddo, neu ystyried ei drosglwyddo, o dan y Mesur.

It was strange to hear the Minister saying today that she had to plead with the Home Office on a number of fields on which it has not succeeded in consulting properly with the people of Wales and it cannot tell us what the cost of the restructuring will be. When the Minister appeared before the Select Committee on Welsh Affairs, she was told, 'Well, you can have the funding if you amalgamate the police forces soon'. It was obvious that the Minister felt uncomfortable with the response from London. Therefore, I think that this issue should be transferred, or considered for transfer, under the Bill.

[190] **Val Lloyd:** I found Ieuan's discussion points very interesting. He mentioned that there were very strong arguments in favour of this amendment. I would be the first to admit that he made a reasonably strong, if not strong, case for it. However, I would speak against it simply because, in my thoughts on the Bill to date, I have seen it as something that deepens the devolution settlement rather than something that broadens it. I hope that the broadening will come later, but I see it very much as a deepening and strengthening Bill at this stage.

[191] **Jocelyn Davies:** The subject of our next amendment, energy, for example, is something that is Assembly Cabinet policy. The Minister has written to ask for the power to decide upon energy matters to be further devolved to us, for example. If we accept that this is a process and not an event—those famous words—this is perfectly logical. We seem to be moving towards this, and you can deepen and broaden at the same time.

[192] **Jane Hutt:** We have seen further transfers of power over the past six and a half years, which we have all sought and welcomed. However, this Bill is not intended to alter the boundaries of the current devolution settlement, as Val has said. This is about deepening the devolution settlement, not broadening it. It is not appropriate, therefore, to accept these amendments.

5.50 p.m.

[193] **Ieuan Wyn Jones:** Hoffwn ymateb i sylwadau'r Gweinidog. Nid wyf yn siŵr pam ei bod yn dweud nad yw hyn yn newid y setliad. Wrth gwrs, holl bwrpas y Mesur, hyd y gwelaf fi—er nad fy lle i yw rhoi'r achos o blaid y Mesur—yw caniatáu i bobl Cymru weld fod y Cynulliad, ar ei newydd wedd, yn fwy blaengar ynghylch sut y mae deddfwriaeth yn cael ei chyflwyno. Yn sicr, bydd gan y Cynulliad nesaf, hyd yn oed os aiff y Mesur drwyddo fel y mae, y cyfle i basio mesurau mewn meysydd nad yw erioed wedi bod â phwerau drostynt o'r blaen. Felly, bydd hynny'n rhywbeth hollol

**Ieuan Wyn Jones:** I wish to respond to the Minister's comments. I am not sure why she is saying that this does not change the settlement. Of course, the whole purpose of the Bill, as far as I can see—although it is not my place to make the case for the Bill—is to allow the people of Wales to see that the Assembly, in its new guise, is much more innovative in terms of the way in which legislation is introduced. Certainly, the next Assembly, even if the Bill goes through as it is, will have the opportunity to pass measures on fields over which it has never had powers

flaengar, ac, yn fy marn i, bydd hynny'n newid y setliad gwleidyddol yn eithaf sylweddol.

before. Therefore, that will be totally innovative, and, in my view, will change the political settlement quite considerably.

[194] Felly, nid wyf yn deall yn union beth yw'r rhesymau dros beidio â chynnwys meysydd ychwanegol. Yr hyn y mae'r Gweinidog yn ei ddweud yw bod trosglwyddo meysydd newydd wedi digwydd ers 1999, ond, rhywsut neu'i gilydd, nad yw'n briodol cynnwys hynny yn y Mesur. Efallai y gallai egluro ai gwrthwynebiad mewn egwyddor sydd gan y Llywodraeth i drosglwyddo pwerau dros yr heddlu neu a yw'n credu nad y Mesur hwn yw'r ffordd o gael y pwerau hynny.

Therefore, I do not quite understand what the reasons are for not including additional fields. What the Minister is saying is that the transfer of new fields has happened since 1999, but, in one way or another, it is not appropriate for that to be included in the Bill. Perhaps she can explain whether the Government objects to transferring powers over the police in principle or whether it does not see the Bill as being the right mechanism by which to get those powers.

[195] **Jane Hutt:** In terms of further transfers of responsibilities, this can be done through Acts of Parliament, as has happened in the past, or through the new opportunities with the Orders in Council under clause 58. So, the opportunities will be there. It is not appropriate in terms of this Bill to accept this amendment.

[196] **Ieuan Wyn Jones:** Nid wyf yn bwriadu gwrthio am bleidlais.

**Ieuan Wyn Jones:** I do not intend to push for a vote.

[197] **Y Llywydd:** Felly, tynnwyd gwelliant 3 yn ôl. Y gwelliant nesaf yw gwelliant 4, sy'n mynd i'r un cyfeiriad o ran ychwanegu meysydd.

**The Presiding Officer:** Therefore, amendment 3 is withdrawn. The next amendment is amendment 4, which goes in the same direction in terms of adding fields.

[198] **Jocelyn Davies:** I propose amendment 4:

*Schedule 5, page 109, line 46 at end, insert:*

*'Field 22: Energy.'*

[199] I had understood that the Welsh Assembly Cabinet already had this as a policy, and this Bill presents us with an opportunity to do this. Of course, the Cabinet would have our full support in pressing for the field of energy to be added. We think that it is important, and that is why we have included it. It is not that I am convinced by the arguments already put forward, but I expect to be unconvinced by the rejection of this amendment.

[200] **Nick Bourne:** I support this particular argument. I was not convinced of the case in relation to the police, probation and prison services. However, I think that it is entirely appropriate to propose such an amendment. I cannot see why, within the Bill, such an amendment is inappropriate. It might not be acceptable, but that is rather different.

[201] In terms of energy, we were promised, I think, some four years ago—and we supported it then—that there would be a transfer of functions over energy projects. As far as I can see, we are no further forwards four years on, which militates somewhat against the argument put forward by Jane in terms of this being something that is done by agreement with Westminster. It seems to me that we have made requests and it has not happened. Since it is our policy that this should be transferred, we would certainly support this being included in Schedule 5 to the Bill.

[202] **Michael German:** I would like to ask Jane a question. Yesterday, I raised this matter during questions to the First Minister or in debate. The answer that I received from him was that

we do not have any responsibility for energy policy, only for planning matters. Would the Minister consider whether this is an appropriate divide that we should have in Wales given that it inevitably throws up immense complications because our powers are limited in terms of planning matters to operators below 50 MW? It seems that we have a very complicated and complex arrangement at the moment. Is the Minister satisfied that energy policy, particularly in relation to microgeneration and other matters, should not be within the competence of the National Assembly?

[203] **Jane Hutt:** It was a very interesting interchange between you and the First Minister during questions. The First Minister talked about our energy route-map and the interface with the UK Government. This is a valuable debate, though not one that we should have today in terms of scrutinising this Bill. However, in terms of your amendment, yes, it is an issue that we will continue to debate and look at with the Westminster Government in terms of the boundaries of the current devolution settlement. However, it is not appropriate to accept this as an amendment although there are opportunities, as I have said, which the process of devolution as we describe it will offer through an Act of Parliament or Order in Council under clause 58. Therefore, I await further developments, but we will not support this amendment.

[204] **Ieuan Wyn Jones:** Hoffwn wneud ychydig o sylwadau ar ymateb y Llywodraeth. Mae Mike German yn iawn; mae'r Cynulliad mewn sefyllfa anodd oherwydd bod pwerau ganddo dros gynllunio, ac felly, pan ddaw cais cynllunio yn y maes hwn gerbron y Cynulliad—drwy apêl, dyweder—er nad oes gan y Cynulliad bwerau dros ynni, byddai'n rhaid iddo wneud penderfyniad ar gynllunio. Os ydym wedi cael yr hawl i wneud penderfyniadau cynllunio, beth yw'r broblem gyda rhoi'r hawl dros y maes yn gyfan gwbl? Nid yw hwn yn fater academaidd sych; mae'n fater real iawn. Mae'r Gweinidog yn ymwybodol bod ynni yn fater hynod o ddadleuol yng Nghymru. Mae dadl fawr dros ddyfodol ynni yn gyffredinol, a'r cydbwysedd rhwng gwahanol fathau o ynni, a dadleuon o blaid ac yn erbyn pob un o'r rhain. Mae'n edrych fel bod y Llywodraeth yn fodlon i Lywodraeth San Steffan wneud y penderfyniadau anodd ar ynni, tra bôn ni yng Nghymru yn gorfod gwneud penderfyniadau sydd y tu hwnt i'n cyfrifoldebau. Os dywedwn, er enghraifft, ein bod angen polisi ynni cytbwys yng Nghymru, siarad gwag ydyw os nad yw'r pwerau gennym a phan ydym yn dibynnu ar bobl eraill i wneud y penderfyniadau. Os yw'r Llywodraeth o blaid hwn, onid y Mesur hwn yw'r union ffordd inni ei gynnwys?

**Ieuan Wyn Jones:** I would like to make a few comments on the Government's response. Mike German is right; the Assembly is in a difficult situation because it has planning powers and, therefore, when a planning application in this area comes before the Assembly—through appeal, let us say—although it does not have power over energy, it has to make a decision on planning. If we have been given the right to make planning decisions, what is the problem with giving us powers over the field as a whole? This is not a dry, academic issue; it is a very real issue. The Minister is aware that energy is an extremely contentious issue in Wales. There is great debate about the future of energy in general, and the balance between various kinds of energy, and there are debates in favour and against each one of these. It appears that the Government is willing for the Government at Westminster to make the difficult decisions on energy, while we in Wales have to make decisions that are beyond the scope of our responsibilities. If we say, for example, that we need a balanced energy policy in Wales, it is just rhetoric if we do not have the powers, and if we are dependent on others to make the decisions. If the Government is in favour of this, is not this Bill the very way of achieving that?

[205] **Christine Gwyther:** Believe me, Ieuan, there are many difficult decisions to be made on energy projects below 50 MW as well. I do not think that this Government, or any Member here, is against the Assembly taking difficult decisions. The whole point of what Jane Hutt said is that this Bill is not there for us to cherry-pick issues that we want sorted out; we cannot just hang them on this Bill. We cannot accept this amendment for the same reasons that we could not accept the amendment on the police, probation and prison services. That is not to say that any

Member on this side is not concerned with energy production in Wales; to make that assumption is just not right.

[206] **Jocelyn Davies:** It is all very well to say that this Bill should not be used as a vehicle to cherry-pick things and to hang all sorts of ideas upon, but you seem to be doing that with the idea of Orders in Council, which seem to be the solution to all of our problems. When any further devolution is mentioned, it is, 'Well, we will use an Order in Council'. We will not get that many; there will be precious few. Why waste the opportunity that a Bill presents to expand the number of fields of competence that the Assembly has?

[207] **Nick Bourne:** I am not playing devil's advocate, but I think that debating this Bill is very much about cherry-picking what we think is in the interests of the Welsh people. To take up Jane's point again, it might not be acceptable, but it is entirely appropriate to propose amendments that are within the Bill. You may not want to accept them, but that is a completely different issue.

[208] **Ieuan Wyn Jones:** What still troubles me is that I am not sure what the Labour representatives are saying. Are they saying that they are in favour of the transfer of energy policy, but that this Bill is not the vehicle to do so, or are they saying that they are against, per se, the transfer of energy policy to the Assembly? I am still not clear.

6.00 p.m.

[209] **Christine Gwyther:** As I was the last person to comment on this, I will make it clear that I am for the transfer of energy policy decision-making to Wales. I do not happen to think that this Bill is the vehicle for that. We disagree fundamentally on that.

[210] **Ieuan Wyn Jones:** The disagreement is not fundamental; it is a question of process. We wish to push this to a vote.

[211] **Y Llywydd:** Y cynnig yw bod **The Presiding Officer:** The proposal is that gwelliant 4 i Atodlen 5 yn cael ei gynnwys. amendment 4 to Schedule 5 be included.

*Gwelliant 4: O blaid 5; Ymatal 0; Yn erbyn 5.  
Amendment 4: For 5; Abstain 0; Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Nick Bourne  
Michael German  
Ieuan Wyn Jones  
David Melding  
Jocelyn Davies

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Christine Gwyther  
Jane Hutt  
Ann Jones  
Val Lloyd  
Gwenda Thomas

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.*

*As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.*

*Gwrthodwyd y gwelliant.  
Amendment defeated.*

[212] **Y Llywydd:** Byddai'n hwylus trafod yn awr y gwelliant i Atodlen 5. Er mwyn hwylustod, yr wyf wedi ei alw'n welliant 4a. **The Presiding Officer:** I think that it would be convenient now for us to take the amendment to Schedule 5. I have called it

Gobeithio bod hynny'n dderbyniol. Mae hynny  
ond er mwyn ein hwylustod ni.

amendment 4a for our convenience. I hope  
that that is acceptable. That is just for our  
convenience.

[213] **Michael German:** I propose amendment 4a.

*Schedule 5. Delete Schedule 5, and insert new Schedule 5 as follows.*

## *SCHEDULE 5*

### *RESERVED MATTERS*

#### *PART I*

#### *GENERAL RESERVATIONS*

##### *The Constitution*

*1. The following aspects of the constitution are reserved matters, that is—*

- (a) the Crown, including succession to the Crown and a regency,*
- (b) the Parliament of the United Kingdom,*
- (c) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal,*
- (d) the continued existence of the Court of Session as a civil court of first instance and of appeal.*

*2. - (1) Paragraph 1 does not reserve—*

- (a) Her Majesty's prerogative and other executive functions,*
- (b) functions exercisable by any person acting on behalf of the Crown, or*
- (c) any office in the Welsh Administration.*

*(2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the management (in accordance with any enactment regulating the use of land) of the Crown Estate.*

*(3) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.*

*3. - (1) Paragraph 1 does not reserve property belonging to Her Majesty in right of the Crown or belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown.*

*(2) Paragraph 1 does not reserve the ultimate superiority of the Crown.*

*(3) Sub-paragraph (1) does not affect the reservation by paragraph 1 of—*

- (a) the hereditary revenues of the Crown, other than revenues from bona vacantia, ultimus haeres and treasure trove,*
- (b) the royal arms and standard,*
- (c) the compulsory acquisition of property held or used by a Minister of the Crown or government department.*

*4. - (1) Paragraph 1 does not reserve property held by Her Majesty in Her private capacity.*

*(2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the subject-matter of the Crown Private Estates Acts 1800 to 1873.*

##### *Political parties*

*5. The registration and funding of political parties is a reserved matter.*

##### *Foreign affairs etc.*

*6. - (1) International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and*

*other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.*

*(2) Sub-paragraph (1) does not reserve-*

- (a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law,*
- (b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.*

#### *Public service*

*7. - (1) The Civil Service of the State is a reserved matter.*

#### *Defence*

*8. - (1) The following are reserved matters-*

- (a) the defence of the realm,*
- (b) the naval, military or air forces of the Crown, including reserve forces,*
- (c) visiting forces,*
- (d) international headquarters and defence organisations,*
- (e) trading with the enemy and enemy property.*

*(2) Sub-paragraph (1) does not reserve-*

- (a) the exercise of civil defence functions by any person otherwise than as a member of any force or organisation referred to in sub-paragraph (1)(b) to (d) or any other force or organisation reserved by virtue of sub-paragraph (1)(a),*
- (b) the conferral of enforcement powers in relation to sea fishing.*

#### *Treason*

*9. Treason (including constructive treason), treason felony and misprision of treason are reserved matters.*

### **PART II—SPECIFIC RESERVATIONS**

#### *Preliminary*

*1. The matters to which any of the Sections in this Part apply are reserved matters for the purposes of this Act.*

*2. A Section applies to any matter described or referred to in it when read with any illustrations, exceptions or interpretation provisions in that Section.*

*3. Any illustrations, exceptions or interpretation provisions in a Section relate only to that Section (so that an entry under the heading "exceptions" does not affect any other Section).*

#### *Reservations*

#### **Head A - Financial and Economic Matters**

**A1. Fiscal, economic and monetary policy** *Fiscal, economic and monetary policy, including the issue and circulation of money, taxes and excise duties, government borrowing and lending, control over United Kingdom public expenditure, the exchange rate and the Bank of England.*

*Exception*

*Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates).*

**A2. The currency** *Coinage, legal tender and bank notes.*



**A3. Financial services** *Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.*

*Exception*

*The subject-matter of section 1 of the Banking and Financial Dealings Act 1971 (bank holidays).*

**A4. Financial markets** *Financial markets, including listing and public offers of securities and investments, transfer of securities and insider dealing.*

**A5. Money laundering** *The subject-matter of the Money Laundering Regulations 1993, but in relation to any type of business.*

## **Head B - Home Affairs**

**B1. Misuse of drugs** *The subject-matter of-*

- (a) the Misuse of Drugs Act 1971,*
- (b) sections 12 to 14 of the Criminal Justice (International Co-operation) Act 1990 (substances useful for manufacture of controlled drugs), and*
- (c) Part V of the Criminal Law (Consolidation) (Scotland) Act 1995 (drug trafficking) and, so far as relating to drug trafficking, the Proceeds of Crime (Scotland) Act 1995.*

**B2. Data protection** *The subject-matter of-*

- (a) the Data Protection Act 1998, and*
- (b) Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and on the free movement of such data).*

*Interpretation*

*If any provision of the Data Protection Act 1998 is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.*

**B3. Elections** *Elections for membership of the House of Commons, the European Parliament and the Parliament, including the subject-matter of-*

- (a) the European Parliamentary Elections Act 1978,*
  - (b) the Representation of the People Act 1983 and the Representation of the People Act 1985, and*
  - (c) the Parliamentary Constituencies Act 1986,*
- so far as those enactments apply, or may be applied, in respect of such membership.*

**B4. Firearms** *The subject-matter of the Firearms Acts 1968 to 1997.*

**B5. Entertainment** *The subject-matter of-*

- (a) the Video Recordings Act 1984, and*
- (b) sections 1 to 3 and 5 to 16 of the Cinemas Act 1985 (control of exhibitions).*

*The classification of films for public exhibition by reference to their suitability for viewing by persons generally or above a particular age, with or without any advice as to the desirability of parental guidance.*

**B6. Immigration and nationality** *Nationality; immigration, including*

*asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents.*

**B7. Scientific procedures on live animals** *The subject-matter of the Animals (Scientific Procedures) Act 1986.*

**B8. National security, interception of communications, official secrets and terrorism** *National security.*

*The interception of communications; but not the subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.) or surveillance not involving interference with property.*

*The subject-matter of-*

*(a) the Official Secrets Acts 1911 and 1920, and*

*(b) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.*

*Special powers, and other special provisions, for dealing with terrorism.*

**B9. Betting, gaming and lotteries** *Betting, gaming and lotteries.*

**B10. Emergency powers** *Emergency powers.*

**B11. Extradition** *Extradition.*

**B12. Lieutenancies** *The subject-matter of the Lieutenancies Act 1997.*

## **Head C - Trade and Industry**

**C1. Business associations** *The creation, operation, regulation and dissolution of types of business association.*

*Exceptions*

*The creation, operation, regulation and dissolution of-*

*(a) particular public bodies, or public bodies of a particular type, established by or under any enactment, and*

*(b) charities.*

*Interpretation*

*"Business association" means any person (other than an individual) established for the purpose of carrying on any kind of business, whether or not for profit; and "business" includes the provision of benefits to the members of an association.*

**C2. Insolvency** *In relation to business associations-*

*(a) the modes of, the grounds for and the general legal effect of winding up, and the persons who may initiate winding up,*

*(b) liability to contribute to assets on winding up,*

*(c) powers of courts in relation to proceedings for winding up, other than the power to sist proceedings,*

*(d) arrangements with creditors, and*

*(e) procedures giving protection from creditors.*

*Preferred or preferential debts for the purposes of the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986, and any other enactment relating to the sequestration of the estate of any person or to the winding up of business associations, the preference of such debts against other such debts and the extent of their preference over other types of debt.*

*Regulation of insolvency practitioners.*

*Co-operation of insolvency courts.*

*Exceptions*

*In relation to business associations-*

- (a) the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, and his conduct of it or of that part,*
- (b) the effect of winding up on diligence, and*
- (c) avoidance and adjustment of prior transactions on winding up.*

*Floating charges and receivers, except in relation to preferential debts, regulation of insolvency practitioners and co-operation of insolvency courts.*

*Interpretation*

*"Business association" has the meaning given in Section C1 of this Part of this Schedule.*

*"Winding up", in relation to business associations, includes winding up of solvent, as well as insolvent, business associations.*

**C3. Competition** *Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.*

*Exception*

*Regulation of particular practices in the legal profession for the purpose of regulating that profession or the provision of legal services.*

**C4. Intellectual property** *Intellectual property.*

*Exception*

*The subject-matter of Parts I and II of the Plant Varieties Act 1997 (plant varieties and the Plant Varieties and Seeds Tribunal).*

**C5. Import and export control** *The subject-matter of the Import, Export and Customs Powers (Defence) Act 1939.*

*Prohibition and regulation of the import and export of endangered species of animals and plants.*

*Exceptions*

*Prohibition and regulation of movement into and out of Wales of-*

- (a) food, animals, animal products, plants and plant products for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and*
- (b) animal feeding stuffs, fertilisers and pesticides for the purposes of protecting human, animal or plant health or the environment.*

**C6. Consumer protection** *Regulation of-*

- (a) the sale and supply of goods and services to consumers,*
- (b) guarantees in relation to such goods and services,*

*(c) hire-purchase, including the subject-matter of Part III of the Hire-Purchase Act 1964,*  
*(d) trade descriptions, except in relation to food,*  
*(e) misleading and comparative advertising, except regulation specifically in relation to food, tobacco and tobacco products,*  
*(f) price indications,*  
*(g) trading stamps,*  
*(h) auctions and mock auctions of goods and services, and*  
*(i) hallmarking and gun barrel proofing.*  
*(a) the Hearing Aid Council Act 1968,*  
*(b) the Unsolicited Goods and Services Acts 1971 and 1975,*  
*(c) Parts I to III and XI of the Fair Trading Act 1973,*  
*(d) the Consumer Credit Act 1974,*  
*(e) the Estate Agents Act 1979,*  
*(f) the Timeshare Act 1992,*  
*(g) the Package Travel, Package Holidays and Package Tours Regulations 1992, and*  
*(h) the Commercial Agents (Council Directive) Regulations 1993.*  
*The subject-matter of section 16 of the Food Safety Act 1990 (food safety and consumer protection).*

Exception

**C7. Product standards, safety and liability** *Technical standards and requirements in relation to products in pursuance of an obligation under Community law.*

*Product safety and liability.*

*Product labelling.*

Exceptions *Food, agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides.*

*In relation to food safety, materials which come into contact with food.*

**C8. Weights and measures** *Units and standards of weight and measurement.*

*Regulation of trade so far as involving weighing, measuring and quantities.*

**C9. Telecommunications and wireless telegraphy** *Telecommunications and wireless telegraphy.*

*Internet services.*

*Electronic encryption.*

*The subject-matter of Part II of the Wireless Telegraphy Act 1949 (electromagnetic disturbance).*

**C10. Post Office, posts and postal services** *The Post Office, posts (including postage stamps, postal orders and postal packets) and regulation of postal services.*

**C11. Research Councils** *Research Councils within the meaning of the*

*Science and Technology Act 1965.*

*The subject-matter of section 5 of that Act (funding of scientific research) so far as relating to Research Councils.*

**C12. Designation of assisted areas** *The subject-matter of section 1 of the Industrial Development Act 1982.*

**C13. Industrial Development Advisory Board** *The Industrial Development Advisory Board.*

**C14. Protection of trading and economic interests** *The subject-matter of-*

- (a) section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964 (Treasury power in relation to action damaging to economic position of United Kingdom),*
- (b) Part II of the Industry Act 1975 (powers in relation to transfer of control of important manufacturing undertakings), and*
- (c) the Protection of Trading Interests Act 1980.*

#### **Head D - Energy**

**D1. Electricity** *Generation, transmission, distribution and supply of electricity.*

*The subject-matter of Part II of the Electricity Act 1989.*

*Exception*

*The subject-matter of Part I of the Environmental Protection Act 1990.*

**D2. Oil and gas** *Oil and gas, including-*

- (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas,*
- (b) the subject-matter of section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in connection with mineral exploration) so far as relating to exploration for oil and gas,*
- (c) offshore installations and pipelines,*
- (d) the subject-matter of the Pipe-lines Act 1962 (including section 5 (deemed planning permission)) so far as relating to pipelines within the meaning of section 65 of that Act,*
- (e) pollution relating to oil and gas exploration and exploitation, but only outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974),*
- (f) the subject-matter of Part II of the Food and Environment Protection Act 1985 so far as relating to oil and gas exploration and exploitation, but only in relation to activities outside such controlled waters,*
- (g) restrictions on navigation, fishing and other activities in connection with offshore activities,*
- (h) liquefaction of natural gas, and*
- (i) the conveyance, shipping and supply of gas through pipes.*

*Exceptions*

*The subject-matter of-*

- (a) sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations),*

*(b) Part I of the Environmental Protection Act 1990.  
The manufacture of gas.*

*The conveyance, shipping and supply of gas other than through pipes.*

**D3. Nuclear energy** *Nuclear energy and nuclear installations, including-*

*(a) nuclear safety, security and safeguards, and  
(b) liability for nuclear occurrences.*

*Exceptions*

*The subject-matter of-*

*(a) Part I of the Environmental Protection Act 1990, and  
(b) the Radioactive Substances Act 1993.*

**D4. Energy conservation** *The subject-matter of the Energy Act 1976, other than section 9.*

*Exception*

*The encouragement of energy efficiency other than by prohibition or regulation.*

**Head E - Transport**

**E1. Road transport** *The subject-matter of-*

*(a) the Motor Vehicles (International Circulation) Act 1952,  
(b) the Public Passenger Vehicles Act 1981 and the Transport Act 1985, so far as relating to public service vehicle operator licensing,  
(c) section 17 (traffic regulation on special roads), section 25 (pedestrian crossings), Part V (traffic signs) and Part VI (speed limits) of the Road Traffic Regulation Act 1984,  
(d) the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988,  
(e) the Vehicle Excise and Registration Act 1994,  
(f) the Road Traffic (New Drivers) Act 1995, and  
(g) the Goods Vehicles (Licensing of Operators) Act 1995.*

*Regulation of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road.*

*The conditions under which international road transport services for passengers or goods may be undertaken.*

*Regulation of the instruction of drivers of motor vehicles.*

*Exceptions*

*The subject-matter of sections 39 and 40 (road safety information and training) and 157 to 159 (payments for treatment of traffic casualties) of the Road Traffic Act 1988.*

**E2. Rail transport** *Provision and regulation of railway services.*

*Rail transport security.*

*The subject-matter of the Channel Tunnel Act 1987.*

*The subject-matter of the Railway Heritage Act 1996.*

*Exceptions*

*Grants so far as relating to railway services; but this exception does not*

*apply in relation to-*

- (a) the subject-matter of section 63 of the Railways Act 1993 (government financial assistance where railway administration orders made),*
- (b) "railway services" as defined in section 82(1)(b) of the Railways Act 1993 (carriage of goods by railway), or*
- (c) the subject-matter of section 136 of the Railways Act 1993 (grants and subsidies).*

*Interpretation*

*"Railway services" has the meaning given by section 82 of the Railways Act 1993 (excluding the wider meaning of "railway" given by section 81(2) of that Act).*

***E3. Marine transport*** *The subject-matter of-*

- (a) the Coastguard Act 1925,*
- (b) the Hovercraft Act 1968, except so far as relating to the regulation of noise and vibration caused by hovercraft,*
- (c) the Carriage of Goods by Sea Act 1971,*
- (d) section 2 of the Protection of Wrecks Act 1973 (prohibition on approaching dangerous wrecks),*
- (e) the Merchant Shipping (Liner Conferences) Act 1982,*
- (f) the Dangerous Vessels Act 1985,*
- (g) the Aviation and Maritime Security Act 1990, other than Part I (aviation security),*
- (h) the Carriage of Goods by Sea Act 1992,*
- (i) the Merchant Shipping Act 1995,*
- (j) the Shipping and Trading Interests (Protection) Act 1995, and*
- (k) sections 24 (implementation of international agreements relating to protection of wrecks), 26 (piracy) and 27 and 28 (international bodies concerned with maritime matters) of the Merchant Shipping and Maritime Security Act 1997.*

*Navigational rights and freedoms.*

*Financial assistance for shipping services which start or finish or both outside Wales.*

*Exceptions*

*Ports, harbours, piers and boatslips, except in relation to the matters reserved by virtue of paragraph (d), (f), (g) or (i).*

*Regulation of works which may obstruct or endanger navigation.*

***E4. Air transport***

*Regulation of aviation and air transport, including the subject-matter of-*

- (a) the Carriage by Air Act 1961,*
- (b) the Carriage by Air (Supplementary Provisions) Act 1962,*
- (c) the Carriage by Air and Road Act 1979 so far as relating to carriage by air,*
- (d) the Civil Aviation Act 1982,*
- (e) the Aviation Security Act 1982,*
- (f) the Airports Act 1986, and*

(g) sections 1 (endangering safety at aerodromes) and 48 (powers in relation to certain aircraft) of the Aviation and Maritime Security Act 1990,  
and arrangements to compensate or repatriate passengers in the event of an air transport operator's insolvency.

*Exceptions*

*The subject-matter of the following sections of the Civil Aviation Act 1982-*

- (a) section 25 (Secretary of State's power to provide aerodromes),
- (b) section 30 (provision of aerodromes and facilities at aerodromes by local authorities),
- (c) section 31 (power to carry on ancillary business in connection with local authority aerodromes),
- (d) section 34 (financial assistance for certain aerodromes),
- (e) section 35 (facilities for consultation at certain aerodromes),
- (f) section 36 (health control at Secretary of State's aerodromes and aerodromes of Civil Aviation Authority), and
- (g) sections 41 to 43 and 50 (powers in relation to land exercisable in connection with civil aviation) where land is to be or was acquired for the purpose of airport development or expansion.

*The subject-matter of Part II (transfer of airport undertakings of local authorities), sections 63 and 64 (airport byelaws) and 66 (functions of operators of designated airports as respects abandoned vehicles) of the Airports Act 1986.*

*The subject-matter of sections 59 (acquisition of land and rights over land) and 60 (disposal of compulsorily acquired land) of the Airports Act 1986 where land is to be or was acquired for the purpose of airport development or expansion.*

**E5. Other matters** *Transport of radioactive material.*

*Technical specifications for public passenger transport for disabled persons, including the subject-matter of-*

- (a) section 125(7) and (8) of the Transport Act 1985 (Secretary of State's guidance and consultation with the Disabled Persons Transport Advisory Committee), and
- (b) Part V of the Disability Discrimination Act 1995 (public transport).

*Regulation of the carriage of dangerous goods.*

*Interpretation*

*"Radioactive material" has the same meaning as in section 1(1) of the Radioactive Material (Road Transport) Act 1991.*

**Head F - Social Security**

**F1. Social security schemes** *Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits.*

*Requiring persons to-*

- (a) *establish and administer schemes providing assistance for social*



*security purposes to or in respect of individuals, or  
(b) make payments to or in respect of such schemes,  
and to keep records and supply information in connection with such  
schemes.*

*The circumstances in which a person is liable to maintain himself or  
another for the purposes of the enactments relating to social security and  
the Child Support Acts 1991 and 1995.*

*The subject-matter of the Vaccine Damage Payment Scheme.*

*Illustrations*

*National Insurance; Social Fund; administration and funding of housing  
benefit and council tax benefit; recovery of benefits for accident, injury or  
disease from persons paying damages; deductions from benefits for the  
purpose of meeting an individual's debts; sharing information between  
government departments for the purposes of the enactments relating to  
social security; making decisions for the purposes of schemes mentioned in  
the reservation and appeals against such decisions.*

*Interpretation*

*"Benefits" includes pensions, allowances, grants, loans and any other  
form of financial assistance.*

*Providing assistance for social security purposes to or in respect of  
individuals includes (among other things) providing assistance to or in  
respect of individuals-*

- (a) who qualify by reason of old age, survivorship, disability,  
sickness, incapacity, injury, unemployment, maternity or the care of  
children or others needing care,*
- (b) who qualify by reason of low income, or*
- (c) in relation to their housing costs or liabilities for local taxes.*

**F2. Child support** *The subject-matter of the Child Support Acts 1991 and  
1995.*

*Interpretation*

*If section 30(2) of the Child Support Act 1991 (collection of payments  
other than child support maintenance) is not in force on the principal  
appointed day, it is to be treated for the purposes of this reservation as if it  
were.*

**F3. Occupational and personal pensions** *The regulation of occupational  
pension schemes and personal pension schemes, including the obligations of  
the trustees or managers of such schemes.*

*Provision about pensions payable to, or in respect of, any persons,  
except-*

- (a) the persons referred to in section 81(3),*
- (b) in relation to a Welsh public authority with mixed functions or  
no reserved functions, persons who are or have been a member of  
the public body, the holder of the public office, or a member of the  
staff of the body, holder or office.*

*The subject-matter of the Pensions (Increase) Act 1971.*

*Schemes for the payment of pensions which are listed in Schedule 2 to  
that Act, except those mentioned in paragraphs 38A and 38AB.*

*Where pension payable to or in respect of any class of persons under a public service pension scheme is covered by this reservation, so is making provision in their case-*

- (a) for compensation for loss of office or employment, for their office or employment being affected by constitutional changes, or circumstances arising from such changes, in any territory or territories or for loss or diminution of emoluments, or*
- (b) for benefits in respect of death or incapacity resulting from injury or disease.*

*Interpretation*

*"Pension" includes gratuities and allowances.*

**F4. War pensions** *Schemes for the payment of pensions for or in respect of persons who have a disablement or have died in consequence of service as members of the armed forces of the Crown.*

*The subject-matter of any scheme under the Personal Injuries (Emergency Provisions) Act 1939, sections 3 to 5 and 7 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 or section 1 of the Polish Resettlement Act 1947.*

*Illustration*

*The provision of pensions under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983.*

*Interpretation*

*"Pension" includes grants, allowances, supplements and gratuities.*

## **Head G - Regulation of the Professions**

**G1. Architects** *Regulation of the profession of architect.*

**G2. Health professions** *Regulation of the health professions.*

*Interpretation*

*"The health professions" means the professions regulated by-*

- (a) the Pharmacy Act 1954,*
- (b) the Professions Supplementary to Medicine Act 1960,*
- (c) the Veterinary Surgeons Act 1966,*
- (d) the Medical Act 1983,*
- (e) the Dentists Act 1984,*
- (f) the Opticians Act 1989,*
- (g) the Osteopaths Act 1993,*
- (h) the Chiropractors Act 1994, and*
- (i) the Nurses, Midwives and Health Visitors Act 1997.*

**G3. Auditors** *Regulation of the profession of auditor.*

## **Head H - Employment**

**H1. Employment and industrial relations** *Employment rights and duties and industrial relations, including the subject-matter of-*

- (a) the Employers' Liability (Compulsory Insurance) Act 1969,*
- (b) the Employment Agencies Act 1973,*
- (c) the Pneumoconiosis etc. (Workers' Compensation) Act 1979,*
- (d) the Transfer of Undertakings (Protection of Employment)*

Exception Regulations 1981,  
(e) the Trade Union and Labour Relations (Consolidation) Act 1992,  
(f) the Industrial Tribunals Act 1996,  
(g) the Employment Rights Act 1996, and  
(h) the National Minimum Wage Act 1998.  
The subject-matter of the Agricultural Wages (Scotland) Act 1949.

**H2. Health and safety** The subject-matter of the following Parts of the Health and Safety at Work etc. Act 1974-

Exception (a) Part I (health, safety and welfare in connection with work, and control of dangerous substances) as extended or applied by section 36 of the Consumer Protection Act 1987, sections 1 and 2 of the Offshore Safety Act 1992 and section 117 of the Railways Act 1993, and  
(b) Part II (the Employment Medical Advisory Service).  
Public safety in relation to matters which are not reserved.

**H3. Job search and support** The subject-matter of-

Exception (a) the Disabled Persons (Employment) Act 1944, and  
(b) the Employment and Training Act 1973, except so far as relating to training for employment.  
The subject-matter of-

(a) sections 8 to 10A of the Employment and Training Act 1973 (careers services), and  
(i) section 2(3)(c) (arrangements for the purpose of assisting persons to establish themselves as self-employed persons), and  
(ii) section 12 (disclosure of information).

## **Head J - Health and Medicines**

**J1. Abortion** Abortion.

**J2. Xenotransplantation** Xenotransplantation.

**J3. Embryology, surrogacy and genetics** Surrogacy arrangements, within the meaning of the Surrogacy Arrangements Act 1985, including the subject-matter of that Act.

The subject-matter of the Human Fertilisation and Embryology Act 1990.

Human genetics.

**J4. Medicines, medical supplies and poisons** The subject-matter of-

(a) the Medicines Act 1968, the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994 and the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994,  
(b) the Poisons Act 1972, and  
(c) the Biological Standards Act 1975.  
"Medicinal products" has the same meaning as in section 130(1) of the Medicines Act 1968.

**J5. Welfare foods** Schemes made by regulations under section 13 of the Social Security Act 1988 (schemes for distribution of welfare foods).

**Head K - Media and Culture**

**K1. Broadcasting** The subject-matter of the Broadcasting Act 1990 and the Broadcasting Act 1996.

exception The British Broadcasting Corporation.  
Broadcasting in the medium of Welsh

**K2. Public lending right** The subject-matter of the Public Lending Right Act 1979.

**K3. Government Indemnity Scheme** The subject-matter of sections 16 and 16A of the National Heritage Act 1980 (public indemnities for objects on loan to museums, art galleries, etc.).

**K4. Property accepted in satisfaction of tax** The subject-matter of sections 8 and 9 of the National Heritage Act 1980 (payments to Inland Revenue in respect of property accepted in satisfaction of tax, and disposal of such property).

**Head L - Miscellaneous**

**L1. Judicial remuneration**

**L2. Equal opportunities** Equal opportunities, including the subject-matter of-

- (a) the Equal Pay Act 1970,
- (b) the Sex Discrimination Act 1975,
- (c) the Race Relations Act 1976, and
- (d) the Disability Discrimination Act 1995.

Exceptions The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.

Interpretation "Equal opportunities" means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

"Equal opportunity requirements" means the requirements of the law for the time being relating to equal opportunities.

**L3. Control of weapons** Control of nuclear, biological and chemical weapons and other weapons of mass destruction.

**L4. Ordnance survey** The subject-matter of the Ordnance Survey Act 1841.

**L5. Time** Timescales, time zones and the subject-matter of the Summer Time Act 1972.

*The calendar; units of time; the date of Easter.*

*Exceptions*

*The computation of periods of time.*

*The subject-matter of-*

*(a) section 1 of the Banking and Financial Dealings Act 1971 (bank holidays), and*

*(b) the Term and Quarter Days (Scotland) Act 1990.*

**L6. Outer space** Regulation of activities in outer space.  
*Lembit Clause?*

**PART III**

**GENERAL PROVISIONS**

*Scottish public authorities*

*1. - (1) This Schedule does not reserve any Scottish public authority if some of its functions relate to reserved matters and some do not, unless it is a cross-border public authority.*

*(2) Sub-paragraph (1) has effect as regards-*

*(a) the constitution of the authority, including its establishment and dissolution, its assets and liabilities and its funding and receipts,*

*(b) conferring or removing any functions specifically exercisable in relation to the authority.*

*(3) Sub-paragraph (2)(b) does not apply to any function which is specifically exercisable in relation to a particular function of the authority if the particular function relates to reserved matters.*

*(4) An authority to which this paragraph applies is referred to in this Act as a Scottish public authority with mixed functions.*

*2. Paragraph 1 of Part I of this Schedule does not reserve any Scottish public authority with functions none of which relate to reserved matters (referred to in this Act as a Scottish public authority with no reserved functions).*

*Reserved bodies*

*3. - (1) The reservation of any body to which this paragraph applies has effect to reserve-*

*(a) its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts,*

*(b) conferring functions on it or removing functions from it,*

*(c) conferring or removing any functions specifically exercisable in relation to it.*

*(2) This paragraph applies to-*

*(a) a body reserved by name by Part II of this Schedule,*

*(b) each of the councils reserved by Section C12 of that Part,*

*(c) the Commission for Racial Equality, the Equal Opportunities*

*Commission and the National Disability Council.*

*Financial assistance to industry*

4. - (1) *This Schedule does not reserve giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment.*

(2) *Sub-paragraph (1)-*

*(a) does not apply to giving financial assistance to any activities in pursuance of a power exercisable only in relation to activities which are reserved,*

*(b) does not apply to Part I of this Schedule, except paragraph 9, or to a body to which paragraph 3 of this Part of this Schedule applies,*

*(c) is without prejudice to the exceptions from the reservations in Sections E2 and E3 of Part II of this Schedule.*

(3) *Sub-paragraph (1) does not affect the question whether any matter other than financial assistance to which that sub-paragraph applies is reserved.*

*Interpretation*

5. - (1) *References in this Schedule to the subject-matter of any enactment are to be read as references to the subject-matter of that enactment as it has effect on the principal appointed day or, if it ceased to have effect at any time within the period ending with that day and beginning with the day on which this Act is passed, as it had effect immediately before that time.*

(2) *Subordinate legislation under section 129(1) may, in relation to the operation of this Schedule at any time before the principal appointed day, modify the references to that day in sub-paragraph (1).*

[214] I apologise to the committee that we did not get this to the clerk in time for it to be printed out and circulated. It is not quite as complex as it looks. The amendment is to delete Schedule 5 and insert what is essentially the Schedule from the Scotland Act 1998. The reason for this is twofold: first, for the breadth of powers, but, more importantly, the current Schedule lays out what you can do. It states that you can do these things and these things alone, whereas the Schedule to the Scotland Act 1998 states that these things are reserved. It has a replica, of course, in Schedule 7, which will come up later. Schedule 7 has the same process and we are told that the reason for the 1997 Scotland Bill being put forward was that it was very complex to be able to do that in terms of Wales at the present time because of the legal split between the legal services in Wales and in England. This amendment is a fundamental alteration, seeking to replace in the Bill the whole of the Schedule so that it becomes inclusive rather than exclusive, and states that these are the things that are kept and reserved to the UK Parliament. Therefore, anything else is within the competence of the National Assembly for Wales. In Schedule 5, of course, it would mean that measures would be within that route; in Schedule 7, it would mean that we would have the powers to act within that route and it would produce a route to parity with Scotland, which I think is the purpose of seeking this amendment.

[215] **Jocelyn Davies:** I agree with the principle behind Mike's argument—that it is better to list the things that are reserved rather than to list the things that are devolved. It is a clearer model and gives some transparency and more room for manoeuvre. Not having studied this document, Mike, I am not sure that I would automatically agree with everything that is in the Schedule to the Scotland Act 1998. One or two might be inappropriate; I am not sure. However,

I certainly support the principle of what Mike is saying—that it is better to list the things reserved rather than to list the things devolved.

[216] **Michael German:** I accept entirely that you would want to frame the wording of the Schedule in another way for Wales, but drawing upon the principle, it certainly would be very difficult for parliamentarians to draft a whole Schedule of this sort in any way off their own bat, so it was the principle that we were trying to get across. I am happy in that spirit to accept the principle, but to seek amendments to that Schedule.

[217] **Ann Jones:** Like Jocelyn, I have not had time to go through it in depth, but I have flicked through it.

[218] I always start at the back and work forwards, so I am on ‘Head L—Miscellaneous’ and under ‘L6. Outer space’ it says ‘Lembit Clause?’. Can you explain the Lembit clause to me, please?

[219] **Michael German:** I am afraid that I do not know what that is. Having only seen this today—

[220] **Christine Gwyther:** It is your amendment.

[221] **Ann Jones:** Yes, it is your amendment.

[222] **Michael German:** I know. I had not seen it before, so I apologise. As I said, the wording of this—

[223] **Jocelyn Davies:** It is in relation to activities in outer space. Perhaps Glyn Davies put it in.

[224] **Michael German:** He may have done. [*Laughter.*]

[225] **Ann Jones:** Has Glyn been writing your amendments?

[226] **Michael German:** I am happy to accept the spirit of the method in which it is done. If the Government were prepared to take the Schedule back and revisit and redraft it, then I would encourage it to please do that.

[227] **Nick Bourne:** I am also intrigued by the Lembit clause. I do not think that we could possibly sign up to this. I would never be forgiven by Glyn if we signed up to a Lembit clause. It may be related to a Santa clause, but I am not sure.

[228] Like Jocelyn and Ann, one would obviously need time to study this. Instinctively, we feel that it is better to list the things that you can do—those that are not devolved, as it were—in the way that it is done in the Scottish Act. There are massive consequences of taking the Scottish list, as it were, and just saying, ‘Let us apply this to Wales’. I think that one would want to go away to look at it. It is not inappropriate, just as I do not think that it was inappropriate for Jocelyn and Ieuan to bring forward the other ideas. It is very far-reaching and we would not want to sign up to that, but I think that the general approach has much to commend it.

[229] **Michael German:** I agree with the spirit of Nick’s contribution because, clearly, this would need a considerable amount of work in terms of how you could proceed with this, Chair. If people were keen to examine the principle that has been outlined, I would be happy. I do not know what form of words one would put it in, but I am sure that people would understand what I am getting at.

[230] **Jane Hutt:** As on the previous occasion earlier this evening, I think that it might be useful if we could bring this back to the committee because we have not had time to give it justice. I think that that would be a fair reflection of the comments so far.

[231] **The Presiding Officer:** I am grateful. I see that Mike German is formally withdrawing the amendment and we will return to this.

[232] Symudwn ymlaen at welliant 5 i gymal We now move to amendment 5 to clause 94. 94.

[233] **Ieuan Wyn Jones:** I propose amendment 5.

*Clause 94, page 51, line 29, at end insert:*

*(5A) In the event of the approval of a draft statutory instrument by the Assembly, as specified in (5)(a), but its not being within 60 days of that approval, an approval by a resolution of each House of Parliament as specified in (5)(b)(5) shall cease to have effect in the case of that draft statutory instrument, and the procedure specified in (5B) will then apply to that draft statutory instrument.*

*(5B) The procedure that will apply in cases specified in (5A) will be - No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council*

*(a) has been laid before, and approved by a resolution of, the Assembly, and*

*(b) the resolution of the Assembly is passed on a vote in which the number of Assembly Members voting in favour of it is not less than two thirds of the total number of Assembly seats.*

[234] Cyn symud at y gwelliant, hoffwn ddweud mai un o'r problemau yn y Mesur ar hyn o bryd o safbwynt Gorchmynion yn y Cyfrin Gyngor yw bod cymaint o *hurdles* yn ffordd y Gorchmynion a'r broses a ddilynir fel y gallech ragweld amser maith yn mynd heibio cyn i Orchymyn gyrraedd y llyfr statud. Mae nifer o'r rhain yn y Mesur. Yr oeddwn yn siarad â chyd-Aelodau am y mater hwn ac yn rhagweld, wrth fynd drwy'r broses hon, y gallai'r Ysgrifennydd Gwladol, am ba reswm bynnag—er nad wyf yn cyhuddo'r Ysgrifennydd Gwladol presennol o fod yn meddwl am y pethau hyn, ac mae'n rhaid inni feddwl am unrhyw Ysgrifennydd Gwladol, pwy bynnag fydd yn dal y swydd—deimlo bod rhywfaint o gynnwys y Gorchymyn yn mynd yn groes i safbwynt polisi'r Llywodraeth yn Llundain ac y gallai Llywodraeth San Steffan, felly, ddefnyddio nifer o ffyrdd i oedi cyn symud ymlaen â'r Gorchymyn.

Before moving to the amendment, I want to say that one of the problems with the Bill at present in terms of Orders in Council is that there are so many hurdles in the path of the Orders and the process that is followed that you could anticipate a long period of time elapsing before the Orders reach the statute book. A number of these are included in the Bill. I have been talking to colleagues about this matter and we anticipate that, in going through this process, if the Secretary of State, for whatever reason—although I am not accusing the current Secretary of State of thinking of these things, but we have to think of a Secretary of State, whoever he or she may be—were to feel that some of an Order's content was contrary to the policy of the Government in London, there are many ways in which the Westminster Government could delay moving forwards with the Order.

[235] Hyd yn oed wrth fynd drwy'r broses ar ei chyflymaf, gallai gymryd 18 mis, dwy flynedd neu ddwy flynedd a hanner cyn i

Even at its swiftest, the process could take 18 months, or two to two and a half years before something that the Assembly has



rywbeth y mae'r Cynulliad wedi gofyn amdano droi'n Orchymyn yn y Cyfrin Gyngor cyn troi'n fesur i'w weithredu yma yng Nghymru.

asked for is turned into an Order in Council and then an Assembly measure that is implemented in Wales.

[236] Felly, nid ydym am weld unrhyw oedi yn y broses. Os oes oedi yn y broses yn San Steffan, y *fall-back* yw y gallai'r Cynulliad, gyda mwyafrif o ddwy ran o dair, sicrhau bod mesur yn digwydd a gorfodi San Steffan i symud yn gynt. Byddai hynny'n rhoi tipyn bach mwy o rym i'r Cynulliad ar ei newydd wedd i sicrhau nad yw'r Llywodraeth yn Llundain yn llusgo'i thraed ar gais gan y Cynulliad.

Therefore, we do not want to see any delay in the process. If the process is delayed in Westminster, the fall-back position would be that the Assembly, with a two-thirds majority, could ensure that a measure is made and force Westminster to move more quickly. That would give the Assembly, in its new guise, a little more power to ensure that the Government in London does not drag its feet regarding an Assembly request.

6.10 p.m.

[237] **Jane Hutt:** The important thing is that the Bill already provides for the Secretary of State to give notice of his reasons for refusing to lay the draft Order in Council and for the First Minister to publish those reasons. That is crucial, obviously, and should reassure you. If the reasons were unconvincing or weak, there would be considerable political response and public pressure. It is quite clear that the Secretary of State will have to publish his reasons for refusing to lay the Order and I think that that should be the safeguard.

[238] **Ieuan Wyn Jones:** That is not the point of the amendment. The amendment is not aimed at a case when the Secretary of State refuses the Order in Council, but at when he approves it and does not move quickly to ensure that it is implemented. If the Secretary of State were to refuse an Order in Council, there would be no delay; it would just be refused. The amendment envisages a case when he has approved the Order and said, 'Yes, I am happy for this to happen', but then there is a delay in the system. I fear that the Bill will allow such a delay. I am not saying that that would happen with the current Secretary of State, but Secretaries of State come and go, as a famous politician once said, and the next Secretary of State, whoever he or she may be, might not be as accommodating. Therefore, once a Secretary of State has approved a request, is there a way of ensuring that the Assembly can put pressure on Westminster to secure an early Order in Council? It would be a case of the Assembly, once the Order-in-Council procedure has been approved at Westminster, making sure that that is acted upon, in good order.

[239] **Jane Hutt:** Again, I do not see a convincing need to have this amendment because we have a clause that allows only 60 days for approval to be given. In terms of the political interaction that we will have, including pre-legislative scrutiny and debates in the Houses of Parliament and back in the Assembly, I cannot see that the Secretary of State would be under any illusion about those 60 days, and swift decision-making would then emanate.

[240] **Ieuan Wyn Jones:** May I postulate to the Minister an example of how I think that the Secretary of State might wish to delay the process? Let us assume, for the sake of argument, that you have an Assembly that wants to do something that is totally contrary to the policy direction of the Government at Westminster. It may concern energy policy, if that was to be devolved to the Assembly, but it may be in any other field. The Order-in-Council procedure could be started in Westminster, but what guarantee would the Assembly have that it would be acted upon quickly? We are asking the Government to ask itself what would happen if it remained in power after 2007 and there was a change of Government in Westminster so that it was not as accommodating to the requests of the same party. If the Westminster Government wanted to build in a delaying mechanism, you would be very frustrated were it to say, 'The Assembly has not consulted enough on this measure; why do you not go out and consult a bit

more?'. The Order in Council debate in the House of Commons may be delayed because of the pressure of other business and there may be reasons why the House of Lords could not deal with it for six months. There is nothing in the Bill that tells us that it has to be completed within a reasonable time. The Minister in charge of the Measure in the Assembly would feel extremely frustrated and would have no opportunity to express his or her disappointment other than by telling the press. This amendment allows the Assembly, in a very positive way, to force Westminster to act quickly.

[241] **Jane Hutt:** I think that the guide to the Government of Wales Bill was helpful in this respect. It laid out the procedures for the preparation of a draft Order in Council, following discussion between the Welsh Assembly Government, relevant Whitehall departments and the Wales Office. It also gave clarity about the vires and scope of the Order in Council, which is key, as you will recognise, Ieuan, in terms of political differences that may emerge in terms of UK Government and party-political control, then laying out the pre-legislative non-statutory scrutiny of a preliminary draft Order, moving into the formal statutory processes. It is all laid out in this guide very helpfully to ensure that, as it says here, the First Minister, when the draft Order has been approved by the Assembly, will be required as soon as reasonably practicable to give notice in writing of that fact, and to ensure that, by the end of 60 days, not counting days when Parliament is dissolved, the Secretary of State has either laid the draft Order in Council before both Houses of Parliament or given the First Minister written reasons for not being prepared to do so. That provides the safeguard, as laid out in the guide to the Government of Wales Bill.

[242] **Jocelyn Davies:** I just want to make the point that, with the last Order in Council, which was non-controversial, it took nearly three years for us to receive the powers that would allow local authorities to tow away abandoned dangerous vehicles. That Order was routine and non-controversial. Therefore, the point is that a very long time could pass after an election before you could fulfil your manifesto pledges with new Orders in Council. This would only apply if our amendment were successful, and if the vast majority of Assembly Members had supported that Order in Council. That is an important point to make. So, I do not find much comfort in the assurances that I have received from the Business Minister.

[243] **Jane Hutt:** You have chosen this one example, and it has been repeatedly used in debates. Let us look at transfers of functions and at how speedily they have taken in place. You have chosen to use only one example prior to the Government of Wales Bill, when we know that the Order-in-Council procedure is used, as are transfers of functions, very appropriately.

[244] **Ieuan Wyn Jones:** Can the Minister tell us how long it took for the request for animal welfare legislation to come, and when that happened? What was the period of time between the request and the granting?

[245] **Jane Hutt:** I cannot give you that information today, Ieuan, but we are not starting down a new constitutional route in terms of legislative opportunity. We are now formalising this in the Government of Wales Bill, and it is something that is laid out in the guidance which gives safeguards to ensure that the will of the Assembly—and the will of the Assembly is key, Jocelyn—to have a draft Order in Council in the first place.

[246] **Nick Bourne:** I have become less convinced of the case against this having heard the Business Minister, because the unfortunate example of looking at transfer of function Orders and then not being certain of our ground when challenged on it indicates that it was perhaps not a wise thing to say. The animal welfare powers have taken ages, and the powers in relation to large energy projects over 50 MW are taking ages—it is well over three years already. So, we have doubts about this, and we could not support it, purely because we think that this is primary legislative power and that there should be a referendum. Having said all of that, I have much more sympathy with the case that Ieuan has put than when he started off, because it

seems that there is no guarantee, but, having said that, we just would not be here. That shows how messy the whole thing is.

[247] **Gwenda Thomas:** I just wondered why you have not found it necessary to challenge the wording of the procedure for the transfer of functions, when the wording for the draft Orders in Council is exactly the same. Why has it taken until now to challenge it?

[248] **Ieuan Wyn Jones:** Because there has not been a Bill to challenge before.

[249] **Gwenda Thomas:** The transfer of functions Orders have exactly the same wording as that proposed for the Orders in Council, therefore why have you not, since 1999, felt the necessity to challenge the system, which does not change much at all with this Bill?

6.20 p.m.

[250] **Jocelyn Davies:** In response to that, you will know, if you listen in the Chamber, Dafydd, that we have made a fuss about animal health powers, especially because they have taken years. The example that we have given is the latest example of an Order in Council. It was routine and non-controversial, and yet it took three years. I am sorry if the Minister thinks that that one was wholly exceptional—perhaps she can give us examples of when the system has been much speedier. It is the latest one, and, even though it is routine, local authorities found it quite important, and there have been speeches on it in the Assembly. I am sorry if the Business Minister is embarrassed by that example. However, if she can give us a better example, I would be pleased to hear it.

[251] **Christine Gwyther:** Did this debate happen in the Committee on the Better Governance for Wales White Paper? I am only subbing this evening, but this is new to me. Although opposition and Government backbenchers have complained bitterly in the Chamber about things not being done quickly enough by Westminster to suit our needs and purposes in Wales, I do not remember this coming up in the debates on the White Paper.

[252] **Jocelyn Davies:** We took evidence from several people, and some of them pointed out that this mechanism could take a long time. We had evidence that, in some departments, there was a deliberate slowing down of processes to transfer powers, and so on. You used to be a Minister, Christine, and I believe that you complained about this yourself in the Department for Environment, Food and Rural Affairs.

[253] **Christine Gwyther:** I certainly did.

[254] **Jocelyn Davies:** So there is plenty of evidence in the public domain that that has been the case. We took evidence on that in the Committee on the Better Governance for Wales White Paper. The example that we give about abandoned vehicles is the latest one, and that power has come to us since the White Paper report was published.

[255] **Christine Gwyther:** Thank you for that. In that case, may I ask Hugh Rawlings whether the 60-day rule has already been talked about in the Bill's Second Reading?

[256] **Mr Rawlings:** I find myself in a slightly difficult position here. I am not sure, constitutionally, whether I am here to advise the committee or whether I am here, as I would normally expect to be, to advise the Minister and point out the arguments that she might want to make in response.

[257] **The Presiding Officer:** We are witnessing an innovative procedure, Hugh, which I am finding fascinating; it has made me think again about some of the procedures in other places. However, if it would be helpful to you to indicate that you would like to provide a further note

to the committee, on reflection, we would be happy to have that.

[258] **Mr Rawlings:** No, that is very kind, but I will deal with the point as best I can, and hope that I do not offend either the Minister or the committee.

[259] The parallel being drawn with clause 58, the transfer of ministerial functions, is interesting. In a sense, it points out the strength of what we have in clause 94. Clause 58 is the transfer of functions by Orders in Council, and it provides no timetable. That is because it is understood that an Order in Council transferring functions from the UK Government to the Assembly will come forward only once agreement has been reached between the two administrations. The animal welfare example is a good one, because the parliamentary process there took very little time. The difficulty was in negotiating with the UK Government the exact terms of the transfer. So, it may have taken a long time, but the formal, legal process took a short time.

[260] Clause 94, on the other hand, is stronger as far as the Assembly is concerned, in the sense that it provides not only a transfer of powers, but also a timetable. Clause 94(7) means that, once the Assembly has made its bid, as it were, by passing a resolution for an Order in Council—conceivably on a matter where there has not previously been agreement with the UK Government—there is a statutory timetable for the Secretary of State to respond, either by laying the Order in Council before both Houses of Parliament or by saying ‘no’ and giving reasons for that.

[261] Therefore, there is a timetable. What there is not, I admit, is an end point to the process. There is nothing written that states, for example, that, 120 days after the Assembly has passed the resolution, the matter must be brought to a conclusion. However, the answer to that would be that the Secretary of State, having laid the Order before the Houses of Parliament, would be expected to take the matter forward in due time. He would not lay an Order before the House and then let the matter lie forever. Of course, there would be the pressures of other parliamentary business, but, effectively, you have a 60-day time limit for something to happen. That is something that differentiates the position under clause 94 from the position under clause 58.

[262] In relation to the two-and-a-half-year timescale that Jocelyn Davies referred to, I do not know the details of that case. We must be very careful when extrapolating from previous experience on the timing of Orders in Council how these will work. I think that the whole committee can agree that this is a novelty; it is new. The sorts of Orders in Council that have gone forward hitherto have, generally, effected changes in the law. For example, if you take the most extreme case of Northern Ireland Orders in Council, you will see that those make significant, substantive changes to the law, as do regulatory reform Orders, which everyone knows seem to take forever to go through.

[263] Therefore, I do not think that you can generalise or extrapolate from previous experience of how Orders in Council have worked how these will work. I come back to the point that clause 94(7) gives the Assembly a rather stronger position with regard to the timescale for possible transfers of legislative power than does clause 58, which works on the assumption that there will always be agreement, and that therefore a timescale is not needed. If there was not agreement, the Order in Council would not have come forward.

[264] **Ieuan Wyn Jones:** That was a very useful setting out of the effect, as it were, of clauses 58 and 94, if implemented. However, there is an issue concerning the timescale for laying an Order in Council and for its approval. Our amendment says that the approval, rather than just the laying of the Order, should be within 60 days. Let us be honest, with goodwill on all sides, we accept that there need not be a considerable delay. However, we must consider what would happen when, frankly, Westminster did not like an Order in Council. We have got

to consider what will happen when—and it seems to me to be inevitable—the Government in Westminster says, ‘If we cannot defeat them, let us delay them’. Our amendment would make it clear that the 60 days apply to the approval, rather than the laying, of the Order. Laying an Order does not mean that a debate will take place within 60 days; it could be at any time thereafter.

[265] Therefore, the issue is the clarification of what would happen in the event of that delay. If Westminster must approve the Order, there cannot be any delay. So, I understand the point that you are making, but our amendment gives the Assembly even greater opportunities, by saying that an Order in Council would have to be approved within a timescale. Therefore, that strengthens the position.

[266] **Jane Hutt:** I do not know whether we are going to have a vote on this, but perhaps we should move on. I am glad that Ieuan and Jocelyn see that Orders in Council will be a robust way of enhancing and extending our powers.

6.30 p.m.

[267] **Jocelyn Davies:** When you read the Record, Jane, I think that you will find that Ieuan and I did not say anything remotely similar to that.

[268] **Jane Hutt:** The fact that you have laid an amendment that seeks, in your view, to strengthen the opportunities through Orders in Council—

[269] **Jocelyn Davies:** You could just as well say that the fact that we have bothered to turn up here today means that.

[270] **The Presiding Officer:** Order.

[271] **Jane Hutt:** We are moving into positives now rather than the negatives that we had earlier. I think that Hugh has laid out very carefully, as he would, the key prerequisites for the Order in Council route to work. Both ‘statutory’ and ‘novel’ are obviously key prerequisites. Political will is clearly of the essence in moving this forward, but I do not think that the amendment is necessary, because we have those key prerequisites of the statutory basis that the Government of Wales Bill offers us. So, I would suggest that we decide how to move on.

[272] **The Presiding Officer:** Ieuan?

[273] **Ieuan Wyn Jones:** I ask that we move to a vote on amendment 5.

[274] **Y Llywydd:** Galwaf am bleidlais, **The Presiding Officer:** I call for a vote, felly, ar welliant 5. therefore, on amendment 5.

*Gwelliant 5: O blaid 3; Ymatal 0; Yn erbyn 7.  
Amendment 5: For 3; Abstain 0; Against 7.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Jocelyn Davies  
Michael German  
Ieuan Wyn Jones

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Nick Bourne  
Christine Gwyther  
Jane Hutt  
Ann Jones  
Val Lloyd  
David Melding  
Gwenda Thomas

*Gwrthodwyd y gwelliant.  
Amendment defeated.*

[275] **Y Llywydd:** Er mwyn hwylustod, yr wyf am gymryd dau welliant nesaf y Rhyddfrydwyr Democrataidd gyda'i gilydd. Gyda chaniatâd y cynigydd, yr wyf am eu hailrifo fel eu bod yn gyson â'n rhifau ni. Maent yn ymddangos fel 36 a 37 ar eich taflen, ond, i'n pwrpas ni fel eu bod mewn trefn, fe'u galwn yn 5a a 5b.

**The Presiding Officer:** For convenience's sake, I will take the next two Liberal Democrat amendments together. With the proposer's permission, I will renumber them so that they are consistent with our numbers. They appear as 36 and 37 on your sheet, but for our purposes, so that they are in order, we will call them 5a and 5b.

[276] **Michael German:** I propose amendment 5a.

*Clause 94(7) page 51 line 36—insert at end of (b) 'Reasons for the refusal must fall within (8).*

[277] I propose amendment 5b.

*Clause 94(7) page 51 line 36—insert new subsection after (b):*

*(8) A refusal that falls within (7)(b) applies only if the Secretary of State has reason to believe that the Assembly measure—*

*(a) would have an adverse effect on any matter that is not specified in Part 1 of Schedule 5,*

*(b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England,*

*(c) would have adverse impact on the law as it applies in England; or*

*(d) would be incompatible with any international obligation or the interests of defence or national security.*

[278] These amendments relate to the gatekeeper role of a Secretary of State—and I wish to make it clear that we are not talking about the present Secretary of State, but any Secretary of State—because we do not know how long it will take before we move to the second stage of the proposals in this Bill. The Bill is silent on the reasons why a Secretary of State can turn down an application for an Order in Council that has been passed by the National Assembly for Wales. The amendments seek to bring forward the reasons that are contained within clause 100 of the Bill, namely the reasons why a Secretary of State could turn down a measure passed by the Assembly, which, therefore, creates equivalence between the two clauses.

[279] At the moment, clause 94 says nothing about why the Secretary of State can refuse a request that has been passed by the Assembly. We think that it is reasonable—well, we do not actually think that the one on water is reasonable, but we will come to that later—to pull forwards the conditions in clause 100, which are labelled 94(8)(a), (b), (c) and (d) in our amendment, as they seem to be reasonable safeguards for the UK Government. If there are to be safeguards about Assembly measures, which will eventually have the same power as Acts of Parliament, it seems to me that there should be the same safeguards for Orders in Council.

[280] The danger is that we could have a Secretary of State of another political persuasion, whatever that might be, who might not have the same reasons for supporting devolution as the existing one has. It may even be someone from the same party; people have different views about devolution. We know that that is possible. It does not require much for a Secretary of State to say, 'I do not want to approve this proposal, because—', and then to lay out a reason,

which he or she might consider to be reasonable but for which there is no test. Given that Parliament is making the judgment on whether it is reasonable, as that is what the Bill lays out, we do not believe that that third lock, the Secretary of State, should also be subjected to conditions, especially as this is where political influence might well best be exerted. You could turn down our bids, find a reason, bung it into a document and that is what the Assembly has to put up with, whereas, if the document is laid and there are reasons that are not in that clause, Parliament can determine whether it is reasonable. We believe that that should be the true and proper job of a parliament and not that of the Secretary of State for Wales, hence the amendments, which link together.

[281] **David Melding:** If it helps, we will withdraw what was amendment 6 in the original documentation, because it is the same point, in essence, as the amendments that Mike has proposed—in fact, I think that Mike’s is a better draft than ours. We are concerned that a Secretary of State, on grounds of policy, may refuse to lay an Order for Parliament’s consideration. The legislature at Westminster may decide not to approve the Order in Council. To allow another Executive into this process seems to us to be very strange. It would invite constitutional conflict if it happened in reality should this veto rest with the Secretary of State. The elegance of what Mike has suggested is giving the criteria for refusal, and otherwise we move quickly to a resolution in Parliament. That is where the matter ought to be decided, not by another Government.

[282] **Jocelyn Davies:** Obviously, the White Paper said that the Secretary of State would not be able to refuse for trivial reasons, and we have no test of reasonableness on the face of the Bill. I agree, again, with the principle of what Mike is saying, although there is an assumption that you feel that this is a reasonable test of reasonableness, and I am not sure that I agree entirely about the test. However, the criteria for that test should be on the face of the Bill, so that we know what is trivial and what is not. The content of that might be debatable, but I think, as a matter of principle, that the reasonableness test should be there.

[283] **Jane Hutt:** I made a couple of points in relation to previous amendments about issues in relation to the preparation of a draft Order. Clearly, there will be discussion about scope and about vires regarding the nature of that draft Order in Council, and the confidence that it would give the necessary legislative competence for the Assembly Government to achieve the desired objective. This relates to the point that I made earlier, that the Bill provides for the Secretary of State to give notice of his reason for refusing to lay the draft Order in Council. These reasons would be published, and the First Minister would have to answer for them. As I said earlier, we have to recognise the functions relating to Wales that the Orders in Council can emerge from, so I do not see the need to put this on the face of the Bill.

[284] **Michael German:** Could I ask our independent consultant, Hugh Rawlings, whether there are examples of current UK legislation where tests of reasonableness are placed within a legislative framework?

[285] **Mr Rawlings:** There are certainly statutory provisions that work on the basis that discretions must be exercised reasonably, yes.

[286] **Michael German:** And are those discretions, or the reasonableness, described in any way in any Bill?

[287] **Mr Rawlings:** No, generally not.

[288] **Michael German:** How are the tests of reasonableness decided?

[289] **Mr Rawlings:** On a case-by-case basis. If you are talking about a case that is coming to court, then considerations of proportion, proportionality, and the relevance of the

considerations is taken into account.

6.40 p.m.

[290] **Nick Bourne:** The issue that I have is that there is no requirement on the face of the Bill for the Secretary of State to act reasonably. Clause 94(7) requires him or her to give reasons for that refusal. I heard what the Business Minister said and she seemed to suggest that there was some sort of safeguard in the fact that they had to publish the reasons, but I do not know what the safeguard is there. They have to publish the reasons, the First Minister has to provide an answer for those reasons, but the First Minister and Secretary of State might be from different parties. The First Minister would not have to provide an answer for those reasons if they were from different parties.

[291] It is a recipe for constitutional chaos if you do not put in the Bill reasons or criteria—and I agree that they are set out very elegantly in the Liberal Democrat amendment—for refusal. It seems to me that they encompass the reasonable, rational grounds on which a refusal could be given. There may be others. There could be disagreement, as Jocelyn has indicated, but the basic principle of setting out criteria either in the section or in the Schedule seems to me to be pretty unanswerable, if we are not going to be making a recipe for constitutional chaos in this part of the Bill—which I disagree with anyway, as I said. Given that it is going to be there, I think that it at least makes it more workable if the Secretary of State, of whatever party, can act only within those grounds in terms of turning it down. As David rightly said, you have still got the laying on of hands of both Houses of Parliament having to vote on it. This is just about the Executive, which could simply say ‘no’ without giving any reason at all. If Jane Hutt is satisfied with that, I have to say that I am absolutely not.

[292] **Ieuan Wyn Jones:** What strikes me about the proposal as it is in the Bill is that the Secretary of State has an absolute veto on a request. He has to tell us why, but that is all. He has absolute veto and if he wants to refuse, he can refuse. We cannot challenge that refusal, except by making a bit of fuss in the press, I suppose. I would have thought that any Government of any colour in the Assembly would want the Secretary of State at least to be put to a test, namely the test of reasonableness. I have particular concerns about the wording in clause 100 because the four issues there would not have been my choice. I have some difficulty with the content of the particular use of that clause, but I cannot really understand the Business Minister’s refusal to countenance an amendment for a test of reasonableness bearing in mind that she might be the Minister who had made the request and who had been turned down flatly.

[293] One of the things that I do not understand, so perhaps the Minister can explain to us, is why there was a qualification in the White Paper—it might not be an excellent one—where the word used was ‘trivial’. It says that the Secretary of State could not turn one down for trivial reasons, but that is not in the Bill. It would be useful to know why even that small qualification has been removed and whether the Minister is satisfied that the absolute veto is something that should remain.

[294] **Michael German:** The point is amplified if you put it into context. Let us assume that the National Assembly sought legislative power over the structure of the health service in Wales, asked for an Order in Council for that purpose, and that the Secretary of State, from whatever party, simply turned around and said, ‘I refuse this Order in Council because it conflicts with the policy of Her Majesty’s Government’. That is a reason. Is it reasonable? What is the test? It does not have to be reasonable and, as it is not even specified in the Bill, there is no remit for that to happen. If devolution is to mean anything, surely it means that, if there is a democratic vote in Wales and it does not affect the workings of the UK Government in the way that is described in clause 100—and I agree with Ieuan’s point about those conditions; I would support the one about the removal of the water supply, but I will come to that later—since we are at this point in the debate on the Bill, those clauses at least give some



grounds for reasonableness. This is an absolute power that lies with the Secretary of State.

[295] If the circumstances that I described were to take place, there would be no recompense in the courts or in any other measure, because this Bill would have permitted a Secretary of State to do that. I ask Labour Members to think in reverse about the situation and imagine that there was an unwilling Secretary of State in London, and that you were a willing Government here. That is the situation that you are putting yourselves in. It could well be the case that any Government in London that did not have the same policy objectives as the Government here could say ‘Sorry, but that conflicts with our policy’. We might even consider the issue of a choice agenda for schools.

[296] **Jocelyn Davies:** I agree with what has been said about the fact that the White Paper said that we would not be refused for trivial reasons. This provides an absolute veto. The reason would have to be given, but the reason could be that the Secretary of State thinks that it is inappropriate. Hugh Rawlings mentioned earlier that this would be considered on a case-by-case basis, and that, therefore, reasonableness would be decided by the courts—and we do not want to put ourselves in that position—but, without a requirement of reasonableness, there is an argument that it would never get to the courts, and that it would be impossible to challenge it. Am I to take from Hugh Rawlings’s nod that that might be the case?

[297] **Mr Rawlings:** I am shaking my head rather than nodding. It is not for me to give legal advice to the committee. I would even stop my brother from doing it.

[298] **The Presiding Officer:** I think that that is quite disorderly. [*Laughter.*]

[299] **Mr Rawlings:** The Secretary of State has a statutory discretion. Statutory discretions must be exercised reasonably. The White Paper said that the discretion could not be exercised one way rather than another for trivial reasons. The Secretary of State must reach a conclusion on a reasonable basis. One would hope that it would never get to this position, but the possibility of judicial review must always be there. If the Secretary of State were to publish reasons that, on their face, did not seem to support the conclusions that he had reached, there would have to be the possibility of judicial review. This is so theoretical; it is not the sort of proposition that you want to develop in detail because it is the sort of situation that you hope would never arise.

[300] Effectively, the point is that the Secretary of State is asked to give reasons for his conclusion if he decides that he would not be prepared to lay the Order. The practical consequence of a decision not to lay an Order would be fought out at the political level, not at the legal level.

[301] **Gwenda Thomas:** The best safeguard against a Secretary of State taking an unreasonable view of Orders in Council—which would have received a majority agreement in the Assembly in any case—is contained in the Bill: the provision for a referendum. Peter Hain himself has said this, and that any Secretary of State acting unreasonably would trigger that process. That in itself makes this amendment unnecessary.

[302] **Michael German:** That has probably moved us to a step that is beyond what I was trying to get at.

[303] **Ieuan Wyn Jones:** Gwenda has given us a nice invitation—

[304] **Michael German:** Yes—cause constitutional crisis, and then you can have your referendum.

[305] **Jocelyn Davies:** You want us to turn him down.

[306] **Michael German:** That would occur only if there were, as I explained, that sort of difference between the Secretary of State and the Government. May I ask Peter, who is the legal adviser to the committee, first, to reply to the point made earlier about the Secretary of State having to be reasonable because there would be some recourse? As far as I can see, the only recourse would be an almighty political row, which, in trying to take this forward, would provide very little opportunity for reconciliation.

6.50 p.m.

[307] I wonder whether Peter could tell me whether he believes that, without the test of reasonableness in the Bill, we would have that potential for a challenge.

[308] **Mr Jones:** As far as the exercise of statutory discretion is concerned, in all sorts of statutes it says that the Minister may do so and so. There is an element of discretion there and I think that the courts, in any of those situations, would be of the view that they could intervene and deal with it on a judicial-review basis. If there is any sort of discretion, it is up to the courts whether they want to get involved or not. However, here, there is discretion and I would have thought that it was always open to the courts to intervene and apply the usual tests of reasonableness and whether it is perverse and so on. I think that the courts could well get involved.

[309] **Nick Bourne:** I would need to go away and look at this, but I think that it is a bit different from statutory discretions in relation to licences and so on; this is in the political sphere. I would be very surprised if the judiciary marched in and said, 'We are going to question the Minister's political decision not to grant this power'.

[310] **Mr Jones:** It is up to the courts.

[311] **Nick Bourne:** Yes, but I am almost certain that the courts would not intervene. I can see Hugh nodding his agreement and I just do not think that it would happen.

[312] **Mr Rawlings:** I agree. What I was saying was that there is a presumption that the power must be exercised reasonably. As to whether the courts would actually ever step in to say that a Secretary of State in such a situation had acted so exceptionally that his decision would be quashed, strikes me as quite an unlikely proposition.

[313] **Nick Bourne:** I am relieved to hear you say that. I do not think that it is like immigration and licence cases, which are quite different, involving the rights of the citizen. This would be an unholy political row and I do not think that the courts would get involved. It comes back to the issue that if we are to avoid the potential constitutional crisis that could arise—it may not be between different parties, it could be in the same party as views may be different here and there, as has happened within the same party on more than one occasion—we must put in what is reasonable and define it, which is what the Liberal Democrat amendment seeks to do. I think that it is sensible.

[314] **Christine Gwyther:** I would hate to see Gwenda's premonition coming true, as I am sure that we all would. Is it not the case that any Minister of the Crown has to, under the ministerial code, discharge their functions in a reasonable manner? Would this not actually come under that catch-all requirement?

[315] **Ieuan Wyn Jones:** I am praying in aid the explanatory notes to the Bill. On page 68, paragraph 338 says that:

[316] 'The Secretary of State is not obliged to lay the draft before Parliament but if the

Secretary of State does not do so before the end of 60 days'

[317] he must give his reasons. There is no requirement there on him to act reasonably. When the Secretary of State was challenged in another place—

[318] **Christine Gwyther:** There is no requirement there, but there is in the ministerial code.

[319] **Ieuan Wyn Jones:** Yes, but we are looking at the Act, and the Act is the only thing that we can amend. We cannot amend the ministerial code and I doubt whether the provisions in the ministerial code would override the provisions of an Act of Parliament; I have never heard that proposition being put before.

[320] If we can come back to the provisions in the Bill, and the provisions in the explanatory note, it is pretty clear to me that the clause gives the Secretary of State an absolute veto—not a qualified veto—and there is no test, other than the Secretary of State giving his reasons for refusal. Therefore, I cannot imagine circumstances in which the court would intervene to overturn his decision, unless it was illegal, and I doubt that that would be the case. When one read the reports of the proceedings of the House of Commons, one had the impression that the Secretary of State was at pains to make clear that Parliament would remain in charge. He said that eight times during the course of the debate. Of course, under the Bill, Parliament will be in charge, and the Assembly cannot challenge that legitimacy. If I could put it in a converse way, if the Secretary of State acted unreasonably, that could not be challenged. So, I cannot understand the objection to adding a clause to the Bill that says, for example, in giving his reasons, the Secretary of State must show that he has acted reasonably. What on earth would the Minister have against that?

[321] **Jane Hutt:** We have had a very good and robust debate around this issue. We need to go back to what will be laid down in statute in the Bill, and those are the safeguards that we have already gone through, not just in terms of the procedural arrangements for the Orders in Council and timescales, but also in the fact that the Bill provides for the Secretary of State to give notice of the reasons for refusing to lay the Order in Council, and for the First Minister to publish these. You are talking about what is debated in the Houses of Parliament; this is what we have in terms of powers here in the Assembly. We had quite a discussion about this last week in the debate. There were interventions on the First Minister's opening speech in the debate, and he made it clear that the custom and practice that we will build—which is crucial to this—will dictate that a Secretary of State, even a John Redwood II, would not like to say, 'No, I do not like this proposal', as he would be exposing himself as a colonial governor-general. I thought that that was a very pertinent point that he made in the debate last week. The custom and practice that we will build on a positive basis will not lead us down those routes, except possibly, as Gwenda Thomas so aptly said, triggering the third stage, and I now propose that we move to a vote.

[322] **Michael German:** Unless the Minister is prepared to go away and think about putting something to do with reasonableness as an amendment, I must put this to a vote, because a Secretary of State who says, 'I refuse this because it conflicts with Her Majesty's Government's policy on education or health', would meet the requirements of the Bill, but clearly that would be a political reason, and would lead us into constitutional conflict.

[323] **Ieuan Wyn Jones:** It might be helpful to Mike, in order to garner as much support as possible for this amendment, if he would not regard the wording 'the test of reasonableness' to be confined to the three items in his amendment, but look for a vote on the principle of the test of reasonableness.

[324] **Michael German:** I am happy to do that, because the amendment that I put down is about reasonableness, and I am happy to concede that if it were seen as a matter of principle,

rather than a matter of detail. If it is passed, the hope is that the Government would come back with some wording for us.

[325] **Gwenda Thomas:** So you are amending the amendment?

[326] **The Presiding Officer:** Order. No, the amendment has been further explained—it has not been reworded as it stands. Its import has been further explained.

*Gwelliant 5a: O blaid 5; Ymatal 0; Yn erbyn 5.  
Amendment 5a: For 5; Abstain 0; Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Nick Bourne  
Jocelyn Davies  
Michael German  
Ieuan Wyn Jones  
David Melding

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Christine Gwyther  
Jane Hutt  
Ann Jones  
Val Lloyd  
Gwenda Thomas

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.*

*As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.*

*Gwrthodwyd y gwelliant.  
Amendment defeated.*

[327] **Michael German:** I propose that we vote on amendment 5b in the terms that I described earlier.

[328] **Ann Jones:** Sorry, Chair, may I have a point of clarification on that?

[329] **The Presiding Officer:** There are no points of clarification on that—you can make a point of order.

[330] **Ann Jones:** I will raise a point of order, then—I am never sure which I should use.

[331] We must vote on the amendment as it is stated before us, surely. Mike cannot add a rider to what he wants—

[332] **The Presiding Officer:** Order. I have dealt with that matter, and a vote took place on that point.

[333] **Ann Jones:** But he was about to do it.

[334] **The Presiding Officer:** No, this is a further amendment, namely amendment 5b.

*Gwelliant 5b: O blaid 5; Ymatal 0; Yn erbyn 5.  
Amendment 5b: For 5; Abstain 0; Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Nick Bourne  
Jocelyn Davies  
Michael German  
Ieuan Wyn Jones

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Christine Gwyther  
Jane Hutt  
Ann Jones  
Val Lloyd

David Melding

Gwenda Thomas

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.*

*As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.*

*Gwrthodwyd y gwelliant.*

*Amendment defeated.*

[335] **Y Llywydd:** Mae gwelliant 6 wedi ei dynnu'n ôl. Mae gwelliant 7 i gymal 95 yn enw Ieuan Wyn Jones.

**The Presiding Officer:** Amendment 6 is withdrawn. Amendment 7 to clause 95 is in the name of Ieuan Wyn Jones.

[336] **Ieuan Wyn Jones:** I propose amendment 7:

*Clause 95, page 52, line 11:*

*After 'Counsel General', insert 'or the Assembly'.*

7.00 p.m.

[337] Yr ydym yn awr yn symud i sefyllfa o dan y Mesur lle mae'r corff corfforaethol wedi dod i ben, ac felly mae gennym y Llywodraeth a'r Cynulliad.

We are moving now to a position under the Bill where the corporate body has been wound up, and therefore we have the Government and the Assembly.

[338] Mae'r gwelliant hwn yn nodi, lle mae anghydfod, bod hawl gan y Cynulliad—nid dim ond y Cwnsler Cyffredinol a'r Twrnai Cyffredinol—i apelio i'r llys ynglŷn ag unrhyw anghydfod sy'n ymwneud ag a yw'r Cynulliad yn gweithredu o fewn ei bwerau. Mae hyn yn golygu y bydd amgylchiadau pan fydd y Cynulliad eisiau gweithredu, a'i fod yn cael rhyw fesur yn y Cynulliad, lle mae'n cael mwyafrif, nad yw wedi ei symblu gan y Llywodraeth, ond efallai fod Aelod Cynulliad yn cynnig mesur. Mae hyn yn caniatáu i'r Cynulliad fynd i gael dyfarniad yn y llys heb orfod ei wneud drwy gyfreithiwr y Llywodraeth.

This amendment notes that, where there is conflict, the Assembly has the right—and not just the Counsel General and the Attorney-General—to appeal to the court regarding any conflict relating to whether the Assembly is acting within its powers. This means that situations will arise in which the Assembly wishes to take action, and that it has some measure in the Assembly, where it has a majority, that does not emanate from the Government, but perhaps an Assembly Member could propose a measure. This would allow the Assembly to approach the court for a ruling without having to do it through the Government's lawyer.

[339] **Nick Bourne:** We support it.

[340] **Gwenda Thomas:** This clause refers to the Counsel General or the Attorney-General. That means that the Assembly, the House of Commons, and the House of Lords are involved in the process. Would your amendment then open up the possibility for the House of Commons, and other Houses, to require the same right to move a matter to the Supreme Court, and would that not become extremely impractical?

[341] **Ieuan Wyn Jones:** No, it does not mean that of necessity. Our proposal is that the Assembly would, for example. It is highly unlikely, and I cannot imagine circumstances in which the House of Commons would want to get involved, because the only body that can deal

with Orders in Council is the Government in Westminster. Parliament would have no locus at that point, because the Secretary of State would have to deal with whether an Order in Council is approved or not. However, if, for example, Gwenda, you were to promote a measure in the Assembly, as the Bill gives you the right to do, you would be at the mercy of the Government in terms of your legal representation. What we are saying is that, since the Assembly commission will have its own legal advice, then it is quite proper that the Assembly, which will then be a totally separate legal entity from the Government, should be entitled to that representation at that appropriate juncture.

[342] **Gwenda Thomas:** But would it not be sensible to rely on the office of the Counsel General and the Attorney-General to be the means by which this process could be triggered in the Supreme Court? Otherwise, it could lead to debate upon debate in the Assembly, the House of Commons and the House of Lords, surrounding this issue of referral to the Supreme Court. I would think that it would be important for the Counsel General and the Attorney-General to be the people to take this provision forwards.

[343] **Nick Bourne:** I have a few points in response to Gwenda's point. First, this is just a reference to the Supreme Court; it does not determine the issue. Secondly, there is a difference here between the Counsel General and the Attorney-General. Under the provisions of the Bill, and I understand the reason for it, the Counsel General might not be an Assembly Member, so there is not that same political accountability as there is in relation to the Attorney-General, who would be a Member of Parliament. I do not think that there is a party-political angle here; I think that there might be a genuine reason why it would be helpful to put the Assembly in here as an additional reference point. I do not think that it detracts from the fact that it will usually be the Counsel General or the Attorney-General, but the Attorney-General—

[344] **Ieuan Wyn Jones:** In most cases it would be.

[345] **Nick Bourne:** Yes, in most cases it would be. The Attorney-General is a different beast from how the Counsel General would probably be under our arrangements.

[346] **Jane Hutt:** I think that that is precisely the danger of putting the Assembly in because it would become a political issue. This is about legal interpretation. I think that Gwenda has said it all as to why we cannot support this amendment. We know that, if you do involve the Assembly in that way, you are not talking about legal interpretation. This is the purpose of this clause. That would be our case.

[347] **Nick Bourne:** With respect, it is not making the legal decision but referring it to the Supreme Court. If that were the will of the majority of the Assembly, that would seem to be a sensible way of proceeding.

*Gwelliant 7: O blaid 5, Ymatal 0, Yn erbyn 5.*

*Amendment 7: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Nick Bourne  
Jocelyn Davies  
Michael German  
Ieuan Wyn Jones  
David Melding

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Christine Gwyther  
Jane Hutt  
Ann Jones  
Val Lloyd  
Gwenda Thomas

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.*

*As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.*

*Gwrthodwyd y gwelliant.  
Amendment defeated.*

[348] **Gwenda Thomas:** It does not say 'the majority of the Assembly'.

[349] **Michael German:** It would have to.

[350] **Jocelyn Davies:** It would require an Assembly resolution, or how could it be done in the Assembly's name? There is no mechanism.

[351] **Y Llywydd:** Symudwn ymlaen at welliant 8 ar gymal 96. **The Presiding Officer:** We will move on to amendment 8 on clause 96.

[352] **Ieuan Wyn Jones:** I propose amendment 8.

*Clause 96, page 52, line 21, at end insert:*

*' or (c) by any committee of the Assembly established under section 28 or section 30.'*

[353] O dan y Mesur, mae'n eithaf priodol bod y Llywodraeth ac Aelodau'r Cynulliad yn medru cyflwyno mesurau. Am ryw reswm, nid yw'r Mesur yn ei gwneud yn glir bod pwyllgor yn y Cynulliad yn medru cyflwyno mesur. Mae'r Gweinidog yn defnyddio'r geiriau 'partneriaeth' a 'consensws' a dyma'r cerbyd, mewn gwirionedd, i ddefnyddio partneriaeth a chonsensws, oherwydd os ydyw pwyllgor wedi trafod pwnc yn fanwl ac yn ystyried bod mesur yn briodol, ni welaf pam na ddylid caniatáu hynny. Wrth gwrs, byddai'n rhaid i'r Cynulliad fod yn gefnogol a byddai'n rhaid cael penderfyniad gan y Cynulliad cyn iddo allu fynd at yr Ysgrifennydd Gwladol. Serch hynny, credaf fod gweithredu ar sail consensws o fewn pwyllgor yn un o'r dadleuon cryfaf o blaid gwneud cais am ddeddfwriaeth, ac eithrio llwybr y Llywodraeth. Credaf y byddai hyd yn oed yn anos i'r Ysgrifennydd Gwladol ddadlau yn gyhoeddus yn erbyn cais gan bwyllgor na chan y Llywodraeth neu Aelod unigol. Byddai'n dda pe bai'r Llywodraeth yn medru egluro pam nad ydyw'r hawl yn y Mesur beth bynnag.

Under the Bill, it is quite appropriate that the Government and Assembly Members are able to propose measures. For some reason, the Bill does not make it clear that an Assembly committee can propose a measure. The Minister uses the words 'partnership' and 'consensus', and this is the vehicle, in a way, to use partnership and consensus, because if a committee has discussed a subject in detail and considers that a measure is appropriate, I do not see why consent cannot be given. Of course, the Assembly would have to lend its support and it would have to be the subject of an Assembly resolution before it could go to the Secretary of State. I believe that acting on consensus within committee is one of the strongest arguments in favour of making a request for legislation, with the exception of the Government route. I imagine that it would be even more difficult for the Secretary of State to argue publicly against a request from a committee than from the Government or an individual Member. Perhaps the Government could explain why the right is not in the Bill in the first place.

[354] **Jane Hutt:** I hope that, as you say, this is something that we could clarify and debate, and you might consider withdrawing it on the basis that, under the Bill as drafted, committees are not precluded from proposing measures. Standing Orders, I think, are key here because they could provide for committees to propose measures. Therefore, it is a matter for Standing Orders to decide. Under the Bill there is, as I said, nothing to stop committees from proposing measures.

[355] **Ieuan Wyn Jones:** Can you tell me which provision allows it?

[356] **Jane Hutt:** I think that committees are not precluded from proposing measures. That is the key issue, is it not, Hugh? They are not precluded from proposing measures. Given the clause in relation to committees, I think that we could provide for that in Standing Orders. Hugh is nodding, so I presume that I have it half right. Do I have it right, Hugh?

7.10 p.m.

[357] **Mr Rawlings:** Of course, Minister. There are two points to make. First, if a motion is to be introduced in the Assembly, it would normally need to be in the possession of a Member. This provision was originally intended to make clear the fact that the possibility of introducing Assembly measures is not reserved to Government only. Therefore, other Members can introduce Assembly measures. However, as was pointed out—and I fortunately saw this on television last evening—when the amendment was debated in the House of Commons last night, I saw that that provision is subject to the Standing Orders. In other words, clause 96(1)(a) and (b) list the people who can, potentially, bring forward Assembly measures, but that is subject to Standing Orders. If Standing Orders were to provide for a measure to come forward in the name of a committee, that could be done.

[358] **Nick Bourne:** I did not have the advantage of being able to watch television last night, but, to be clear, do you think that, subject to Standing Orders, that gives a wider power? You do not think that that is restrictive but that it actually expands on clause 96(1)(a).

[359] **Mr Rawlings:** That was the interpretation of the Minister in the House of Commons last evening.

[360] **Nick Bourne:** Do you agree with it, legally?

[361] **Mr Rawlings:** I do not give legal advice, Nick. My team was advising the Minister last night, and that is the advice that it gave him, and that is the advice that he used, so I am not changing it. The answer is ‘yes’; that is the advice that the Minister was given, and that would have been legally cleared.

[362] **Jocelyn Davies:** We took evidence on this in the White Paper committee, and we all agreed that committees should be able to initiate Bills in the same way as they do in Scotland, where there have been several examples of that. In fact, in your evidence to the committee, Christine, you said that you favoured that. It was unanimously agreed. The Bill says ‘and any other Assembly Member’; our Standing Orders could provide for that being the Chair of a committee on behalf of a committee. We said that, as far as possible, we want control in our Standing Orders, rather than on the face of the Bill. Therefore, if the interpretation of this is that a committee Chair could, on behalf of a committee, initiate an Order in Council, and if we can use this transcript and that available from the House of Commons to ensure that that happens, I would accept that.

[363] **Mr Silk:** I think that this provision, ‘any other Assembly Member’, must, by definition, include committees, because committees are made up of groups of Assembly Members. The basic idea means that ‘any other Assembly Member’ would automatically include a committee.

[364] **Jocelyn Davies:** This would also allow, for example, backbenchers with their private Member’s Bills to be included, if the Standing Orders made provision for that. I favour doing as much as possible within our Standing Orders. If this enables us to do that, we should welcome it. I hope that Peter is not going to spoil this wonderful consensus that we have built up tonight. *[Laughter.]* He looks pleased with himself

[365] **The Presiding Officer:** Order. It is not fair to refer to the way that officials look.



[*Laughter.*]

[366] **Mr Jones:** I am always smiling. Under the Interpretation Act 1978, the singular includes the plural, so ‘any other Assembly Member’ would include a committee.

[367] **Jocelyn Davies:** We also know that, under the Interpretation Act 1978, ‘he’ means ‘she’. If this means that the Standing Orders can take care of this matter and that we are all agreed that this will definitely happen, we would be happy to withdraw the amendment. It seems to have everyone’s support.

[368] **Nick Bourne:** That has my support. I agree with what Paul just said—it would necessarily include any member of a committee and, therefore, the committee Chair. However, having said that, I wish to note that everyone listed in clause 96(1)(a), bar the Counsel General, is also an Assembly Member, and that it has set out

‘the First Minister, any Welsh Minister...and Deputy Welsh Minister’

where it did not need to do so. Therefore, there is nothing that would preclude our including a representative of a committee to make it absolutely clear. Clause 96(1)(a) and (b) are already, largely, tautologous.

[369] **The Presiding Officer:** Do you wish to withdraw the amendment?

[370] **Jocelyn Davies:** I think that we do.

[371] **Michael German:** However, we could make the recommendation that the Standing Orders committee should look at the issue when it comes to it.

[372] **Jocelyn Davies:** I think that we would all be shocked if this did not come to pass.  
[*Laughter.*]

[373] **The Presiding Officer:** The Standing Orders committee, whoever its members will be, will no doubt read the record of this committee with interest and understanding.

[374] Symudwn ymlaen at welliant 9, sy’n We will move on to amendment 9, which  
ymwneud â chymal 96. relates to clause 96.

[375] **David Melding:** I propose amendment 9 relating to clause 96.

*Recommendation: Standing Orders should protect a set amount of time for AMs not in the Welsh Assembly Government to introduce Assembly measures.*

[376] We think that the principle of a set amount of time being preserved for backbenchers is important in devolved legislatures. We hope that that would be done through Standing Orders. We do not have an amendment to the Bill. However, if Members were to indicate that they would hope that there would be a set amount of time reserved for backbenchers, then that would be valuable.

[377] **Jane Hutt:** We are certainly happy for that to be done under Standing Orders, and it follows on from the previous debate.

[378] **Nick Bourne:** I have a question for Jane, and I apologise for the fact that it is not contained in the amendments, on something that causes us slight concern. I apologise that we did not get an amendment in, but, coming back to 96(1)(a), it seems to us, generally at least—and I cannot think of a case where it would not be—inappropriate for the Counsel General, as

someone who is not an Assembly Member, to put forward an Assembly measure. I cannot see why that cannot be done by a Minister. What is the thinking behind this?

[379] **Jane Hutt:** Perhaps we could come back with clarification on that.

[380] **Nick Bourne:** I am happy for you to do that.

[381] **Jane Hutt:** We agree with the principle of what you recommend. I will clarify that point.

[382] **The Presiding Officer:** Are you therefore withdrawing amendment 9?

[383] **David Melding:** We have had agreement that Standing Orders will be the way of progressing this.

[384] **Y Llywydd:** Trown at welliant 10 ar gymal 98. **The Presiding Officer:** We turn to amendment 10 on clause 98.

[385] **Ieuan Wyn Jones:** I propose amendment 10.

*Clause 98, page 53, line 44:*

*after 'Counsel General', insert 'or the Assembly'.*

[386] Yr un ddadl yw hon mewn gwirionedd â'r un flaenorol. Yng nghyd-destun gallu'r Cwnsler Cyffredinol neu'r Twrnai Cyffredinol i gyflwyno cwestiwn ynglŷn â mesurau'r Cynulliad i'r llys am benderfyniad, ni fyddem yn disgwyl i'r Cwnsler Cyffredinol fynd i'r llys bob wythnos; yr ydym yn sôn am achlysuron anaml iawn. Teimlwn y byddai'r Cynulliad, fel corff, am fynd yn llai aml na hynny. Teimlwn ei bod yn bwysig bod y Cynulliad, yn yr amgylchiadau yr ydym wedi egluro mewn cyd-destun arall, yn gallu troi at y llys.

This is essentially the same debate as our previous one. In the context of the ability of the Counsel General of the Attorney-General to refer a question regarding an Assembly measure to the court for a decision, we would not expect the Counsel General to be in court every week; we are talking about rare occasions. We feel that the Assembly as a body would want to go even less often. We feel that it is important that the Assembly, under the circumstances that we explained in another context, could turn to the court.

[387] Ar bwynt Gwenda yn y ddadl flaenorol ynglŷn ag a yw hynny'n golygu y byddai hyn yn rhoi'r un gallu i Dŷ'r Cyffredin a Thŷ'r Arglwyddi, yr ateb yw 'na', oherwydd bydd amgylchiadau yn codi lle bydd, er enghraifft, un o bwyllgorau'r Cynulliad neu Aelod unigol yn cyflwyno mesur, nid y Llywodraeth. Byddai hwn yn bwyllgor neu Aelod sy'n cael eu gwasanaethu gan gomisiwn y Cynulliad ac yn dibynnu ar gymorth gan weision y comisiwn i hyrwyddo'r mesur. Byddai hawl ganddynt yn yr amgylchiadau hynny i droi at y llys. Yr ydym, felly, yn ceisio amddiffyn hawliau Aelodau mainc gefn, fel nad oes rhaid iddynt ddibynnu ar wasanaeth y Llywodraeth. Gobeithiaf y byddai Aelodau mainc gefn y Blaid Lafur hyd yn oed yn sylweddoli bod

Regarding Gwenda's point during the previous discussion about whether the House of Commons and the House of Lords would have the same ability, the answer to that is 'no' because circumstances will arise in which, for example, an Assembly committee or an individual Member proposes a measure, not the Government. This committee or Member would be served by the Assembly commission and would depend on support from commission staff in order to promote a measure. They would have the right to turn to the court in those circumstances. Therefore, we are trying to protect the rights of backbenchers, so that they do not have to depend on the services of the Government. I would hope that even Labour Party

achos dros wneud y cais hwn.

backbenchers would see the case for making this proposal.

7.20 p.m.

[388] **Jane Hutt:** This takes us back to our discussion regarding whether it is appropriate for the Assembly to play this role. We have to consider the purpose of clause 98, which is, of course, that it relates to the overall context of the process for making Assembly measures. Really, we ought to have sorted out whether an Assembly measure is within our legislative competence before we even get to this stage. So, on that basis, I do not think it appropriate for the Assembly to be used as a point of reference to the Supreme Court. We would have the same view in not supporting this amendment.

[389] **Ieuan Wyn Jones:** I put it to the Minister that, if I, as a backbench Member, were to propose an Assembly measure, as I would be perfectly entitled to do, and that were to receive the support of the Assembly and passed as an Assembly resolution, why should a backbench Member have to rely on Government lawyers to promote a reference to the Supreme Court?

[390] **Jane Hutt:** Is this not a matter of whether this is within the Assembly's legislative competence?

[391] **Ieuan Wyn Jones:** Yes.

[392] **Jane Hutt:** That is the key point. Of course, the Council General or Attorney-General could refer that question, and that is what the clause lays out, but I cannot see how it would be appropriate to bring the Assembly into that as an alternative to the Counsel General or the Attorney-General, because we would have to be clear about our legislative competence for that proposed measure. It goes back to the point, and Nick raised the issue, that it is legal and not political. However, when does that balance shift between political and legal issues?

[393] **Gwenda Thomas:** Dyna'r pwynt yr oeddwn ar fin ei wneud, Lywydd. Mae hwn hyd yn oed yn fwy o fater cyfreithiol na chymal 95. **Gwenda Thomas:** That is the point that I was about to make, Presiding Officer. This is even more of a legal matter than clause 95.

[394] **Michael German:** I can see two potential scenarios in this regard, and I would like the Minister or Peter Jones to answer me in this respect. The first scenario involves a private Member's Bill being put forward and receiving majority support in the National Assembly, which would then require an Order in Council. What would happen if the Government of the day were in a minority, as is currently the case, and said, 'No, we do not believe that to be the case', even though a majority in the Assembly had approved the proposal? That is, the will of the Assembly was that the matter be taken forward as an Order in Council, but the Government was not of that persuasion. It would be the Government that was taking it to the Supreme Court if there was a judgment to be made—if it was refused on the grounds that it was not an Assembly competence—as to whether it was within the powers. In such a circumstance, which is not as hypothetical as it sounds, how could the Assembly resolution be carried out, if it was the Government controlling the role of the Counsel General? The Counsel General would not be answerable to the Assembly as a whole. That is a question for Peter or for Jane.

[395] **Jane Hutt:** It follows what Gwenda Thomas said about this being very much about legislative competence. Peter may be able to comment on this matter from the Assembly Parliamentary Service perspective, but it seems to me that the issue itself will be pretty clear cut, as to how it would then come before the Supreme Court for decision.

[396] **Ieuan Wyn Jones:** The Minister has totally missed the point, which is that the

Government in Mike German's example would be opposed to the measure. How can you have a Government lawyer to argue a case to which the Government is opposed? It would be beyond the realms of credulity. You would have to have separate legal representation in those circumstances, because the Counsel General is a member of the Government that opposes the measure. How do you then get the courts to determine something when the Assembly wants to do something but the Government opposes it? What happens?

[397] **Jane Hutt:** Does it not go back to the fact that, if Assembly Members wish to make proposals under Standing Order No. 31, they go to Peter for advice before they move forwards in legislative competence, even in the limited parameters that we have now? I would have thought that that was the point of having legal advice and interpretation for Assembly Members in the instance that you described, before we even got to the point of a measure's being rejected. I am not a lawyer, as many of you are, but this is about legislative competence, not the political reasons for rejecting measures.

[398] **Mr Rawlings:** I will make two points. First, with respect to those who proposed the amendment, I do not think that it works, simply because, post the Bill, the Assembly will be an unincorporated association of 60 Members, it will not have legal personality and it will have no right to bring any sort of court action in its own name. So, merely adding the words, 'the Assembly', into this Part of the Bill would not enable the Assembly, as I understand it, to bring the matter forward.

[399] A separate point is that clause 49 makes it clear that the Counsel General is appointed with the Assembly's approval and can be dismissed only with the Assembly's approval. The provisions also make it clear that he can participate in Assembly proceedings in accordance with Standing Orders. I find it almost impossible to imagine a situation in which the Assembly resolved to have the vires of one of the measures that it proposed to adopt tested before the courts, and the Counsel General saying, 'No, I am going home'. That is just not where we are.

[400] It seems to me that there are two points. First, this does not work technically because the Assembly cannot bring actions in its own name. Secondly, while I appreciate that the Counsel General is a rather odd beast because he—

[401] **Jocelyn Davies, Gwenda Thomas and Jane Hutt:** Or she.

[402] **Mr Rawlings:** Indeed. The Counsel General serves the Assembly Government and, in a wider sense, the Assembly. In those circumstances, it would seem to me inevitable that, if the Assembly resolved to test the vires of any action that it purported to take, the Counsel General would do it.

[403] **Mr Jones:** I will just point out that any legal proceedings involving the Assembly would have to be brought or instituted by the commission, and not by the Assembly as such.

[404] **Nick Bourne:** That certainly clears up the first point; I was going to say that I was sure there was a way around that, and that is it. On the second point on the Counsel General, he will be a member of the Government if the Bill goes through, under clause 45.

[405] **Jocelyn Davies, Gwenda Thomas and Jane Hutt:** Or she.

[406] **Nick Bourne:** Well, I think that we have already established that, under the Interpretation Act 1978, 'he' may include 'she'.

[407] **The Presiding Officer:** Order. I think that it might be for the convenience of this committee if we stood by the Assembly's Standing Orders and our general use of orderly and non-sexist language.

[408] **Nick Bourne:** Whether it is a 'he' or a 'she', the Counsel General has to be, under the provisions of clause 45, a member of the Government, assuming that that provision goes through. If it does, the Counsel General will be in an invidious position on such a measure because he or she will be a member of the Government. I can certainly think of instances in which Attorneys-General have acted in political rather than legal ways. I am not sure whether I share your very sanguine view that he or she would be obliged politically to take that course of action, because I am not sure whether that is the case. I have to say that it is distinctly arguable, Hugh.

[409] **Michael German:** Perhaps the amendment could reflect the fact that it would be the Assembly commission rather than the Assembly itself.

[410] **Jocelyn Davies:** Or the Assembly's legal entity.

[411] **Michael German:** Yes.

[412] **Y Llywydd:** Ieuan, a hoffech dynnu'r gwelliant yn ôl a'i gynnig ar ffurf newydd yn nes ymlaen? **The Presiding Officer:** Ieuan, would you like to withdraw the amendment and propose it in a new form at a later date?

[413] **Ieuan Wyn Jones:** Yr wyf yn hapus i wneud hynny. **Ieuan Wyn Jones:** I am happy to do that.

[414] **Y Llywydd:** Diolch. Felly, tynnwyd y gwelliant yn ôl. **The Presiding Officer:** Thank you. Therefore the amendment has been withdrawn.

7.30 p.m.

[415] Gan ein bod ni yn y sefyllfa hapus o fod wedi ystyried yr holl welliannau i Ran 3, efallai y byddai er hwylustod i Aelodau, am 7.30 p.m., ein bod yn rhoi'r gorau i ystyried y Mesur tan ein cyfarfod nesaf brynhawn Llun, 30 Ionawr. Ni welaf neb yn anghytuno. Fe'ch hatgoffaf y bydd angen cyflwyno gwelliannau erbyn 5 p.m. ddydd Gwener, 27 Ionawr, a bydd rheiny'n cael eu cylchredeg fore Llun. Diolchaf i'r swyddogion a'r Aelodau am y ffordd hwylus iawn yr ydym wedi ymdopi â'r gwelliannau heno. Byddwn yn cyfarfod eto ddydd Llun nesaf. As we are in the happy position of having considered all the amendments to Part 3, it may be convenient for Members, at 7.30 p.m., to cease considering the Bill until our next meeting on Monday afternoon, 30 January. I do not see anyone disagreeing, but I remind you that amendments will need to be tabled by 5 p.m. on Friday, 27 January, and they will be circulated on Monday morning. I thank the officials and Members for the expedient way in which we have coped with the amendments this evening. We will meet again next Monday.

*Daeth y cyfarfod i ben am 7.31 p.m.  
The meeting ended at 7.31 p.m.*