



# **Cynulliad Cenedlaethol Cymru**

## **The National Assembly for Wales**

### **Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

### **The Constitutional and Legislative Affairs Committee**

**Dydd Llun, 8 Gorffennaf 2013**  
**Monday, 8 July 2013**

#### **Cynnwys**

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trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In

addition, a transcription of the simultaneous interpretation is included.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Jocelyn Davies	Plaid Cymru (yn dirprwyo ar ran Simon Thomas) The Party of Wales (substitute for Simon Thomas)
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Julie James	Llafur Labour
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
William Powell	Democratiaid Rhyddfrydol Cymru (yn dirprwyo ar ran Eluned Parrott) Welsh Liberal Democrats (substitute for Eluned Parrott)

**Eraill yn bresennol**  
**Others in attendance**

Alun Davies	Aelod Cynulliad, Llafur (Y Gweinidog Cyfoeth Naturiol a Bwyd) Assembly Member, Labour (The Minister for Natural Resources and Food)
Victoria Davies	Uwch Gyfreithiwr, Llywodraeth Cymru Senior Lawyer, Welsh Government
Gary Haggaty	Pennaeth Is-adran Amaethyddiaeth a Chefn Gwlad, Pysgodfeydd a'r Strategaeth Wledig, Llywodraeth Cymru Head of Agriculture and Rural Division, Welsh Government
Rob Halford	Swyddfa Cyllid Ewropeaidd Cymru Welsh European Funding Office
Robert Parry	Pennaeth Polisi yr UE, Llywodraeth Cymru Head of EU Policy, Welsh Government
Andrew Slade	Llywodraeth Cymru Welsh Government

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

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

*Dechreuodd y cyfarfod am 2.01 p.m.*  
*The meeting began at 2.01 p.m.*

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

[1] **David Melding:** Good afternoon. Welcome to this meeting of the Constitutional and Legislative Affairs Committee. I have apologies from Eluned Parrott and Simon Thomas. However, I am pleased to welcome William Powell and Jocelyn Davies as substitutes this afternoon. The usual housekeeping announcements apply: there is no routine fire alarm test expected this afternoon, so if we hear the alarm, please follow the instructions of the ushers, who will help us leave safely; please switch off all electronic equipment completely as it will interfere with our broadcasting equipment; and these proceedings will be held in Welsh and in English—when Welsh is spoken there is a translation on channel 1, and, if you are hard of hearing, then you can get amplification on channel 0.

## **Tystiolaeth mewn Cysylltiad ag Ymchwiliad i Rôl Cymru yn y Broses o Wneud Penderfyniadau yn yr UE Evidence in Relation to the Inquiry into Wales's Role in the EU Decision-making Process**

[2] **David Melding:** This is the second evidence session that we have held as part of this inquiry. I am delighted to welcome the Minister for Natural Resources and Food, Alun Davies, who is taking a lead given his portfolio in many issues relating to Wales's role within the European Union. Minister, do you want to introduce your team?

[3] **The Minister for Natural Resources and Food (Alun Davies):** Yes, thank you. Thank you for the invitation to join you this afternoon. I am enjoying something of an embarrassment of riches when it comes to officials this afternoon. I have Andrew Slade and Rob Halford joining me at the table, and we also have Steve McGregor and Robert Parry joining us for the committee this afternoon. Steve McGregor, as Members will be aware, heads up the EU office in Brussels, and Robert Parry provides policy support here in Cardiff.

[4] **David Melding:** We are grateful for your attendance and that of your team. I will ask Suzy Davies to start the questioning.

[5] **Suzy Davies:** Good afternoon, Minister and everyone. I am just looking at a transcript of some evidence that you gave to the Assembly's Common Agriculture Policy Task and Finish Group in 2011. It explains a little about the process in terms of how you engage early with European officials. I know that it is going back a few years, but I will just read parts of it, if that helps you at all.

[6] **Alun Davies:** Thank you; it will help me greatly.

[7] **Suzy Davies:** It is only about a little piece of process that I was very pleased to read. This is what it says about CAP in particular:

[8] 'We know that the European Commission's proposals on CAP reform were published on 12 October 2011. We discussed the proposals, and the commissioner gave a presentation and an analysis of them at the meeting of the Council of Ministers in Luxembourg three weeks ago.'

[9] That meeting was a few weeks after that. So, you know what the proposals are and you then meet with the Council of Ministers, which is at state level. Then, there is a further meeting between the Ministers of all the devolved administrations of the UK and the Department of Environment, Food and Rural Affairs, as they are talking about CAP in particular. This is when you go through some initial positions, as it says here. The next time

there is a meeting with the commissioner in Brussels, it is the UK delegation that meets him. There is a meeting with you—after that one—and the Council of Ministers as representatives of the devolved administrations. What I am struggling to work out is this: it does not seem to be a straightforward process at the moment. So, with CAP, you were given some Commission proposals; the Council of Ministers looked at them first; you then met the Council of Ministers; then there was another Commission meeting; then the Council of Ministers met the Commission again; and you met the Council of Ministers after the event again. What I am trying to ask you, I suppose, because this is confusing, is whether you will be meeting the UK representatives of the Council of Ministers before they make their representations to the Commission or afterwards, or whether it is a mixture of the two, and how formal those meetings are.

[10] **Alun Davies:** I will try to be clearer on this occasion than I was on that occasion. Thank you for reminding me of what I said: it strikes terror into my soul when people start quoting me from some years ago.

[11] **Suzy Davies:** I may not have quoted it correctly, but I did so just to reinforce the point that it is not very straightforward.

[12] **Alun Davies:** It is, as it happens, reasonably straightforward. On 12 October—which is the date I think that you said—in Luxembourg, Commissioner Ciolos published his proposals for CAP reform. That was a very formal occasion, in the sense that the proposals were formally introduced—that is the beginning of a legislative process, essentially. He made that statement on all four regulations, as it turned out, that day; they were published and the debate began. It started a period of reflection, as it was called, which lasted for the first six months or so. It was a period when there were opportunities for people not just through instructions of Governments, but across the whole of Europe, to talk about those proposals.

[13] We had been involved in discussions with the United Kingdom Government, the Commission, parliamentarians in Brussels and Strasbourg, and stakeholders here in Wales. I made a statement to the National Assembly, just after my appointment as a Deputy Minister, in July 2011, setting out the approach that this Government would be taking. So, conversations, on a formal and informal basis, had taken place in the run-up to the publication of legislation, as would happen in any legislature anywhere in western Europe. So, 12 October was a formal occasion. The commissioner published his proposals. We met—and I remember it very well—on a very wet day in Luxembourg. Perhaps it would be useful, Chair, if I outlined how councils tend to work for the UK delegation. Would that be useful at this point?

[14] **Suzy Davies:** It certainly would be useful for me.

[15] **Alun Davies:** A Council of Ministers, such as the Agriculture and Fisheries Council, meets almost every month of the year, and it follows on from a period of special committee on agriculture, which takes place with officials on, sometimes, a two-weekly basis, or recently on a weekly basis. A number of proposals and an agenda are agreed between the presidency and the Commission, and that agenda is then circulated to member states. Within member states, it is then circulated to officials and Ministers. So, when we get to Brussels, or three times a year in Luxembourg, we will have had the agenda for that particular council, and our officials, between Welsh Government, Scotland, Northern Ireland and DEFRA, in this case, will have discussed the agenda and started to work out the lines and approach that the UK delegation will take.

[16] We will usually arrive the night before the council starts. Sometimes, we have an informal conversation as Ministers about what is on the agenda at that point. The day starts with a formal meeting of the UK delegation, and that takes place, depending on the

arrangements for council, in the United Kingdom delegation room. All four administrations are represented. It is chaired by DEFRA and we agree a speaking note that the UK will then use for its contribution to the Council of Ministers. So, normally, four Ministers sit around the table with officials, and we go through a draft speaking note and make amendments to it. Sometimes, those amendments can be tonal amendments, in terms of what is said and the way it is said. Sometimes, they can concern quite difficult policy issues. However, by about 10 a.m., we have a speaking note agreed. We will then go to council and will be in council—some of these meetings have been two-day meetings, because we have had the CAP reform issue—usually from 10 a.m. until about 5 p.m. or 6 p.m., when I would tend to leave to come back.

[17] **Suzy Davies:** Would it be the UK Ministers speaking at those councils?

[18] **Alun Davies:** That has been a matter of some conversation. The previous UK Government was moving to a situation whereby a UK Minister, whether a UK Government Minister or a UK Minister from one of the devolved administrations, would speak to the UK speaking note. The key thing has always been that a UK Minister—

[19] **Suzy Davies:** Could the Minister have been from any of the four administrations?

[20] **Alun Davies:** Yes. The current UK Government has taken a somewhat different attitude to that. In my experience, speaking rights are being restricted at council, and I have not been given an opportunity to speak to the UK line at full meetings of council. I have done so in other trilateral meetings with the Presidency and the Commission. I have spoken as a UK Minister in those circumstances. Certainly, I have made several requests to speak. On one occasion, I was the only Minister there with a CAP responsibility—last year in Luxembourg; about eight or nine months ago—and we were discussing CAP and the UK Government refused my application to speak, which I thought was a very poor way of working. We are continuing conversations with the UK Government about these matters. We have just agreed amendments to the memorandum of understanding, which governs the relationship between UK Government and devolved administrations, so I am hoping that that will improve matters. However, in the time that I have been a Minister in the Welsh Government, the situation has depended too much on the personal goodwill and personal wishes of UK Ministers and not enough on structured relationships.

[21] **Suzy Davies:** I might ask you some further questions about that, but I do not want to lose sight of the question that I wanted you to answer. You mentioned right at the beginning of your explanation that you receive an agenda, but you also mentioned that you had been speaking with the devolved administrations and DEFRA a little bit before that. How much influence over that agenda does that combined force have at the moment?

[22] **Alun Davies:** The UK probably would not influence the agenda unless we asked for an item to be on it. The agenda process would be led by the Presidency of the Council, so it would be the Presidency that would be responsible for assembling the agenda. Clearly, any member state can ask for an item to be placed on that agenda, and there are occasions when that might happen—for example, in the last few months, the UK has requested that issues around horsemeat be placed on the agenda. At a General Affairs Council that I was at last year in Luxembourg, we asked for a statement on the simplification and harmonisation of rules around structural funds. So, we put those sorts of items on the agenda as well. However, the Presidency leads on the agenda for Council and the Presidency will finally determine the agenda for Council, and each member state can then raise issues with the agenda; the first item of business for any council is the formal adoption of the agenda.

[23] **Suzy Davies:** That is very helpful. Can you give us a little bit of insight as to how it works when you are talking to DEFRA civil servants and civil servants from the other

devolved administrations beforehand? How do you come to a decision that you might try to influence an agenda or what your plans are likely to be after an agenda is published? I am trying to get a sense of how you work together and how your officials work with other officials.

[24] **Alun Davies:** That is a good question, Suzy. In terms of characterising that relationship, things usually work far better than people tend to understand or realise. There tends to be a focus on public disagreements when the United Kingdom and a devolved administration—whether it is Wales, or one of the other administrations—take a different view on a policy or an issue. You will then see press releases, speeches and the rest of it going on, and there is focus on that point of disagreement.

[25] However, take a look at where we were two weeks ago, as we were coming to the end of the CAP negotiations. We were sitting in quite small rooms—certainly smaller than this room today—with three or four Ministers and three or four officials each. You can have a dozen or sometimes two dozen officials sitting in a room. We will then say ‘Well, where do we go on this; what is the United Kingdom view?’—we had this conversation in Luxembourg two weeks ago—and ‘Will the United Kingdom vote for these CAP reform proposals?’ I was happy to do so and Owen was happy to do so, although he had some concerns about elements of one of the four regulations, but the other two administrations had more fundamental problems with some of them. In the end, we will say ‘What do we do? We are a UK delegation here; what are we going to do around the decision?’ It was not a formal, structured meeting; it was a group of people sitting in an uncomfortable room, all of those people had drunk too much coffee and not eaten enough food, and it was the end of a long few days. We were talking very much as individuals, sometimes, and saying ‘I think we should just do this and vote for it’. So, the negotiations and conversations can be very unstructured and a lot more informal than people would perhaps anticipate. There are no microphones or anything like that in the rooms; we are just sitting around a table.

[26] I was very clear two weeks ago; I think that the UK should have voted for all four of the reform regulations. I made that proposal but the UK voted in favour of three, and abstained on one.

2.15 p.m.

[27] **David Melding:** I presume that there is note-taking at these meetings.

[28] **Alun Davies:** We all take our own notes.

[29] **David Melding:** So, there is no joint note.

[30] **Alun Davies:** No, there is no joint note, and there are no minutes—there is nothing like that. What I am trying to say—I do not know whether I am communicating this easily or well—is that we will arrive at a meeting, we will sit around, and we will all have a file, as well as the agenda, supporting papers, papers from UKREP, and papers from DEFRA. We will see what the UK line proposals are, and we will have a proposed draft speaking note on each of the issues that are under consideration. We will then talk through all those issues. Sometimes, we will say, ‘I really do have a problem here’, but, generally, because many of these issues will have been discussed at official level beforehand, it is a matter of agreement, and a matter of my saying, ‘From a Welsh perspective, we need paragraph 3 changed—it really must be changed’. Then we have that process of iteration. If you take, for example, coupled payments, on the CAP issue, which we have seen during the past few weeks, I really did not want to see coupled payments, except in the transitional way, whereas Scotland wanted to see them, not just in the regulations, but wanted to ratchet it up, and see the budget increased. So, we have very different policy objectives, at different times.

[31] I know that, sometimes, there is this sense that the devolved administrations will gang up against DEFRA. However, I do not see myself as being sent there to represent anyone except the Welsh Government. I try to take a view that is very much about what Welsh interests are best served by, and what we need. I am told that a change of Government in Westminster two years ago led to a change of policy and a change of emphasis, but the need to work together did not change at all. So, we tend to try to work together very well. Furthermore, as Ministers for agriculture we meet with DEFRA regularly, to ensure that, when we are in this process of change and debate and discussion, and long before we have got to a negotiation or to a delegation room, we have agreed what our joint positions will be.

[32] **Suzy Davies:** Subject to what you said earlier that there may be a slight change in emphasis regarding who should do the speaking, you are pretty confident that Welsh interests are fairly represented in the process as it currently stands, whether it is after an agenda has been set up, or beforehand, whether it is a formal meeting or more of a horse-trading meeting, as you have been talking about.

[33] **Alun Davies:** The way that the structures work at present, we work to maximum effect. Are Wales's best interests well served? They are not well served by the multi-annual financial framework agreement in February. That was a disaster for Wales, and it is going to be a disaster for Welsh farmers, and for rural communities. Are Welsh interests best served by all decisions being taken by the United Kingdom Government? I do not think so. Can we improve them? Yes, we can improve the way that we do things.

[34] **Suzy Davies:** That is what I wanted to ask you about next. You mentioned the statement that you made in April, about the Council itself having recognised that the devolved administrations—

[35] **Alun Davies:** The legislation does.

[36] **Suzy Davies:** The devolved administration could be seen a bit more as the front face. How did this decision come around? Were you involved in saying, 'We have a feeling that the Welsh voice is being left behind', or was this more of a pan-European decision after other concerns had been raised, that other countries perhaps were not getting their voice properly heard?

[37] **Alun Davies:** It is not about voices being heard; it is about the legal interpretation of the new CAP regulations. We were concerned—and I have to say that the United Kingdom Government, and Owen Paterson himself, did a very good job of negotiating this—that the CAP regulations can be read in many different ways, as you can imagine. One interpretation is that of the term 'member state'. We were concerned to ensure that, where the term 'member state' is used, it refers to a member state while recognising the constitutional arrangements within member states. Here in Wales, in the United Kingdom, we have devolved responsibilities for agriculture; what we did not want was for them to be sent back up the M4, not by an Act of the Westminster Parliament, but by an inadvertent mistake, if you like, by parliamentary draughters in Brussels. We needed to make sure of that. It was not about voices being heard, or anything like that; it was a legal interpretation of the new regulations, which would enable us to continue to implement CAP in the way that is determined in Wales, rather than CAP being almost nationalised back to London, if you like. That is what I meant in April.

[38] We succeeded, you know—I say 'we succeeded'; it was very much a joint United Kingdom position. I pay tribute to the work that Owen Paterson and his officials did in helping to deliver that. It would not have been possible to do it had Owen and his officials not worked so hard.

[39] **Suzy Davies:** That is good to hear. So, in terms of negotiating positions, it does not have a huge effect, that particular point. May I come to my last question? We have talked about CAP, and I appreciate your current ministerial role, but you have had previous experience with European programmes generally; would you say that the format that you have explained to us is pretty much what is followed by other portfolios involved in European programmes?

[40] **Alun Davies:** It can sometimes—it depends. You know that we talk about the interrelationship between the Welsh Government and the United Kingdom Government on European matters; very often, the success of that relationship can depend on the experience of working within a ‘devolved settlement’. Certainly for DEFRA it is second nature, because so many of DEFRA’s responsibilities are England only, so it and its officials are used to talking to Welsh Government and other officials about a UK position. Clearly, that is not the case in other departments of state in Whitehall, so I do not think that that would be the case on all occasions. I will give you an example. I attended General Affairs Council in December 2011—I am looking at Steve just to check that I get this right—and I was the first member of any devolved administration to attend a General Affairs Council since 1999. As such, there was not any experience, if you like; there was a sense of ‘What do we do here?’ Whereas on agricultural, fisheries and, to some extent, environmental matters, you would have a structure whereby the four administrations in situ in Brussels would have an opportunity to create the United Kingdom line, and the United Kingdom position, on those other issues—whether it is finance, or structural funds in this case—that structure does not exist, or not in the same way, at least. There is not that experience of the same relationship and interaction between the United Kingdom Government and the Governments of the devolved administrations. So, it does depend on where the devolution settlement lies. For example, the Scots are very active with the justice Council; clearly, we would not have an interest there. So it does vary according to different policy areas.

[41] I would say that a good deal of work goes on outside of councils. Councils are formal meetings lasting, on average, one or two days, whereas most of our work—and certainly most of my focus as a Minister on EU matters—tends to occur elsewhere. I am making a statement tomorrow about how we implement the CAP agreement, and that is where most of our work gets done. Officials have a very good relationship with officials in the Commission, and our office in Brussels does an excellent job in ensuring that Welsh interests are served when our policy officials are back home in Cardiff. All those different institutions working together ensure that the Welsh voice is well heard in Brussels.

[42] **Suzy Davies:** As long as it is transparent enough for us to scrutinise as well.

[43] **Alun Davies:** Absolutely. I am sorry if I have been unclear in the past.

[44] **David Melding:** May I just check? That was a very eloquent opening, I have to say, and I think some Members are already looking at me, because our briefs are structured to drag information out of slightly reluctant witnesses, perhaps, and we do not have that problem today. I am sure that we will adapt our scripts accordingly. You obviously regret the fact that there is a much more restrictive policy in terms of whether devolved Ministers can speak at the table on behalf of the UK—obviously, to the agreed line; whereas previously that was possible, it does not seem to be the practice of the current Government, or something that the coalition Government is comfortable with. Has there been any diminution in your ability to influence the speakers—which is the most important part of this, would you agree?

[45] **Alun Davies:** In fact, our ability to do that has probably been strengthened—I am looking at officials for advice—in recent years because of the work that has been done on developing the memorandum of understanding. I would not want to give the impression that

there was an abrupt change in May 2010. All too often, there is too much emphasis on the personal decision making of a Secretary of State and of individuals, and we rely too much on goodwill. What we need is a structured relationship whereby we each understand what each other's expectations are. I have made the point about speaking about and developing the United Kingdom line because I believe that the United Kingdom is strengthened by the experience of devolved government and that we are able to add strength to the UK negotiating position and UK arguments. I will give you an example of that again in terms of structural funds. When we made that point on harmonisation and simplification, we were able to put a point of view to the Department for Business, Innovation and Skills, UKREP and the Foreign Office to say, 'We actually have great experience of doing this in Wales; we are actually able to demonstrate how we can improve the administration and management of these funds'. That then adds strength to what the UK is saying about the whole simplification agenda. So, it is not from the point of view of wanting to wave flags or make speeches and issue press releases that I say this; I think that it is important that the United Kingdom is seen to be a multinational state where we work together, argue the same or an agreed position, and we look to the people who are best positioned to argue that place for us in council. In a similar way, if we are talking about the cod recovery plan, for example, I think that the Scots are in a far better position than the Welsh, and I would not seek to speak on that matter.

[46] **David Melding:** I think that Jocelyn may pursue these themes about how the UK acts as a multinational state in these councils.

[47] **Jocelyn Davies:** Yes. You seem to be describing a negotiating situation where people are trying to accommodate each other and trying to work together. I think that you used the expression 'joint position' on a number of occasions. I do not know whether you have relayed any of this back to the First Minister, but certainly stuff that he said in public would lead me to believe that he does not entirely agree with you. He has coined this phrase, 'the Bridgend question'. He says that the current arrangements in the Council of Ministers is,

[48] 'increasingly unsatisfactory and unsustainable as time goes by'.

[49] He also says that the UK Minister exercised 'an effective veto'. He does not say 'exercised a veto effectively', but he says,

[50] 'an effective veto on the views of his Scottish, Welsh and Northern Irish counterparts.'

[51] Is there a case for Welsh Government voice and representations in council meetings to be strengthened and enhanced? A Welsh Government spokesperson said,

[52] 'for the first time, there is serious concern about whether the interests of Wales can be advanced effectively in Europe by the UK Government.'

[53] **Alun Davies:** Those two things were said at different times.

[54] **Jocelyn Davies:** They might have been, but I think that these are things that are being said by the Welsh Government. Perhaps the First Minister is thinking back to the days when he used to attend, which was a long time ago. He was making speeches and things. Was he over-elaborating, do you think?

[55] **Alun Davies:** No, I do not think that he was. It is important to take both of those points that he made in context. The second point that you made about whether it is possible for the United Kingdom Government to represent Welsh interests properly was made in the context of Cameron's use of a veto 18 months ago, and a real crisis in UK-EU relationships. I am trying not to get involved in 'Political' issues here, as far as I can, but it is difficult to

overestimate the difficulties and the damage that David Cameron's approach to European relationships has caused for us, particularly the use of a veto 18 months ago, and also the language that is being used by successive and too many UK Ministers. I am trying to emphasise the positive here. I could come here and make similar speeches. However, certainly, I was in Brussels for the General Affairs Council that I just described the week after the use of a veto and I was in Strasbourg during the week running up to it. I can only describe the atmosphere as poisonous. The attitude from some of our closest friends and allies in our own European culture towards the UK was terrible at that time. It was awful. That anti-Europeanism and strident nationalism undermines our ability to negotiate. There is no doubt about that. That is something that I think that we would probably agree on here.

2.30 p.m.

[56] In terms of what the First Minister was saying about the Bridgend question, he was outlining a very real difficulty that we face. If we are unable to reach agreement, and if, for example, you have a situation where the UK Minister for agriculture—whomever that is—says, 'I want this and I am not prepared to compromise', that person can vote; they can use UK votes in that chamber in an unfettered and, I would say, an undemocratic way. What we have been able to do, through negotiation, is reach agreed positions. However, Jocelyn, you know that if Owen Paterson had wanted to do so two weeks ago, he could have gone into the council chamber and voted as he chose without any consultation with us and without agreement with us. The point that the First Minister is making—one with which I would agree and tried to make earlier in perhaps a more subtle way—is that we rely too much on goodwill and not enough on structures.

[57] We need a structure in place in the United Kingdom that recognises the multinational characteristics of the United Kingdom, whereby each of us, as a different administration, has the opportunity to structurally ensure that we are represented by the UK vote and by the UK speaking note. We currently have a memorandum of understanding that I think has improved over the last few years. William Hague made a very helpful intervention in July 2010, which I felt moved the debate on significantly in terms of the place of the devolved administrations' representation in EU matters. I am not convinced that the United Kingdom Government has delivered on that in the three years since then, and I would hope that if the UK were able to deliver on William Hague's ambitions, then perhaps the threat—that is probably the best word to use—that you have quoted from the First Minister, and with which I presume that you would agree, would be one that we could remove. So, I certainly would like to see a far stronger structure and relationship within these isles.

[58] **Jocelyn Davies:** So, you do not have separate memoranda of understanding for different portfolio areas; it is one memorandum of understanding between Welsh Government and UK Government, or is it different across different departments?

[59] **Alun Davies:** It is a single memorandum of understanding. I am looking directly at Robert now who will shake his head if I get this wrong.

[60] **David Melding:** Would you like to come to the table and say who you are? Then we will certainly hear your evidence.

[61] **Mr Parry:** I am Robert Parry. I work for the Welsh Government on EU policy. There is a concordat—a subset of the memorandum—that determines a co-ordination of the EU policy issues. There are other concordats and annexes in the MOU that relate to different policy areas, but not necessarily to EU matters.

[62] **Jocelyn Davies:** I see. So, this is a memorandum of understanding of the relationship between yourself and the UK Government in relation to how things go—

[63] **Alun Davies:** The Welsh Government.

[64] **Jocelyn Davies:** Yes, the Welsh Government. It seems to be as if it is one, but, from what you are telling us, in your policy area, it seems to be working better than in others. So, the changes to the memorandum of understanding might not be as effective, depending on the personalities involved.

[65] **Alun Davies:** That is why we need the changes. We need to move away from a situation in which the relationships between the Governments in the United Kingdom are determined by the personal relationships between individual Ministers. We need to have a structural relationship that enables us to get along—not when we agree, but when we disagree. If you take the money side of things out of the conversations that we have had on, say, CAP over the last two years or so, there would probably be more areas of agreement than disagreement. Where there are differences is in the relative import of different matters. Bill Powell will be aware of the issues that we have discussed on the agriculture side, about the move from historic to area payments, which is absolutely of essential importance to Welsh agriculture and completely irrelevant in England. That is something that I want to emphasise.

[66] **Jocelyn Davies:** I can see that, but coming back to the First Minister's point about this veto, he made that speech, I think, in November last year. So, the changes to the memorandum of understanding have happened since November last year.

[67] **Alun Davies:** Yes—the concordat. Was it last July, Robert?

[68] **Jocelyn Davies:** So, there would not be an effective veto now.

[69] **Alun Davies:** There would be, because the member state is the United Kingdom. Wales is not a member state of the European Union. The United Kingdom Government is the member state and it is the United Kingdom Government Minister, or somebody appointed by that Minister—either an official or a Minister—from the devolved administrations who would exercise the vote—

[70] **Jocelyn Davies:** I can see that they would exercise the vote—

[71] **Alun Davies:**—and therefore the veto.

[72] **David Melding:** Do not both speak at the same time.

[73] **Jocelyn Davies:** Okay.

[74] **David Melding:** Let the Minister finish. Have you finished that part of your answer?

[75] **Alun Davies:** I am just saying that EU relations are a United Kingdom responsibility. Therefore, if there is a veto exercise, it can be exercised only by the United Kingdom.

[76] **Jocelyn Davies:** I can see that. So, with regard to this effective veto, even though there have been improvements to the memorandum of understanding, this effective veto that the First Minister talked about still exists.

[77] **Alun Davies:** Yes, absolutely.

[78] **Jocelyn Davies:** You mentioned earlier the Whitehall department in relation to DEFRA, obviously, that has an English focus, but does that have a huge influence? Are there practical difficulties in getting the Welsh view across?

[79] **Alun Davies:** I am looking at Andrew here. I do not think that there are practical difficulties.

[80] **Mr Slade:** No. Just to pick up on one of the earlier questions, we have regular contact at official level, both informally and formally through structured meetings, telephone calls, e-mails and so on. In preparation of the UK line, a lot of these issues would be thrashed out internally at official level before Ministers took a view on them. As the Minister said, ultimately, the UK as the member state has the right to speak and has the final say over what is said in any council.

[81] **Jocelyn Davies:** So, on the memorandum of understanding, you still hope that there will be further improvements to it, from what you were saying. Are there any other strategies for improving the Welsh position?

[82] **David Melding:** Before the Minister answers that bit, I would like to ask something of Mr Slade: are you involved, therefore, in the preparation of the speaker's note?

[83] **Mr Slade:** Yes, we are. My team is.

[84] **David Melding:** So, the draft speaker's note will reflect contributions that you and your colleagues would have made.

[85] **Mr Slade:** Absolutely. We would see the draft speaking note, assuming that we have time beforehand. Sometimes, these things happen at very high speed and have to be done in the delegation room on site, as the Minister described earlier. However, in the run-up to a major council, we would have an opportunity to contribute and feed our views into the draft speaking note.

[86] **David Melding:** I am sorry to have interrupted you, but the speaker's note is key. This is where we get benefit of evidence, because we do not have experience of how these things are run. This is new material for us, really.

[87] **Jocelyn Davies:** On the memorandum of understanding, you have said that there have been some changes to that in recent times, but that you hope that there will be further changes to it. Are there any other strategies for improving the position so that the Welsh voice is heard?

[88] **Alun Davies:** In council or in general?

[89] **Jocelyn Davies:** In general and, if you want to, you can say something about in council.

[90] **Alun Davies:** We could be here for some time, Jocelyn.

[91] **Jocelyn Davies:** I am sure that you will not run out of things to say, Minister.

[92] **Alun Davies:** Shall we just focus on council because we have had that conversation now? In terms of where we are, I think that we should strengthen it. I think devolved administration Ministers should have the absolute right of attendance and it should be written in the concordat. I think we should have the right to speak where necessary, rather than the Secretary of State taking a view on that. One Secretary of State could say, 'Yes, you go to speak, I am going to fly back after lunch' and another one could say, 'Under no circumstances'. The current situation, where the Secretary of State just determines everything, is wrong. I would like to see more absolute rights provided to us and for us as Ministers.

[93] **Jocelyn Davies:** If you spoke, you would have to stick to the speaking note.

[94] **Alun Davies:** Yes.

[95] **Jocelyn Davies:** So, it is just a matter of who says it, but the speaking note provides the text of what somebody is going to say anyway.

[96] **Alun Davies:** We certainly have to agree—

[97] **Jocelyn Davies:** So, why are they so hung up on somebody else saying what is on the speaking note?

[98] **David Melding:** The witness can give evidence according to his own experience and responsibilities.

[99] **Alun Davies:** I would say that we need to have those matters dealt with. In terms of wider engagement between the Welsh Government and the institutions of the European Union, if you look at those different institutions, the overwhelming body of work between Welsh Government and the Commission is carried out at official level on a regular basis, whether it is Rob speaking to colleagues in the Commission about the round of structural funds, or Andrew talking about rural development regulations and what is possible for Glastir and what is not, and the rest of it. That happens on a daily, weekly and monthly basis, generally, without much ministerial intervention at all. The office that we have in Brussels, as I said, does an excellent job of ensuring that Wales is represented at meetings in Brussels. It establishes structures within which we are able to meet the Commission and the rest of it. As a Minister, I meet commissioners and senior Commission officials on a regular basis. We are setting up the next round of that to start in September, now that we have been through this period of negotiation and discussion. So, we will have a very good, structured and ongoing relationship with the Commission. I have made it a matter of priority to speak to Members of the European Parliament. We now have post-Lisbon, of course, a different—

[100] **David Melding:** That will come up in a specific question. I do not want to limit your narrative style, because it is so candid and it is of great benefit to us, but I think that we will deal with the European Parliament separately, if that is okay.

[101] This question of how the devolved administrations perhaps work together—or not—and then relay that in terms of a strategy to influence the UK Government, is quite interesting. William Powell will take us through the next couple of questions.

[102] **William Powell:** Thank you very much, Chair. Good afternoon, Minister. I am grateful for your run-through earlier of what has happened in relation to the CAP process, in terms of engaging with the Northern Ireland Executive and the Minister from the Scottish Government. Indeed, you have been very open with me, and with other colleagues in this Assembly who speak on these matters, in terms of regular feedback, and I am grateful for that.

[103] **Alun Davies:** Those were private briefings, Bill, before you actually—

[104] **William Powell:** Indeed.

[105] I note that, as recently as 1 July this year, Professor Paul Cairney said in evidence to this committee that he was not aware of any significant co-working between devolved administrations in relation to influencing UK Government policy, and that is rather at variance with what you have said and the impression that I had. I wonder whether you could

give some additional examples, which would be useful for the committee to be aware of, of where there is effective co-operation in refining a position to inform the UK Government position.

[106] **Alun Davies:** I understand your question, Bill. I see myself as very much representing Wales. I do not see myself as being part of a Celtic-United team, and I do not see part of my role as taking on DEFRA in any way at all. I am very anxious to co-operate closely with DEFRA. I think that our relationship with DEFRA is enormously important, in terms of agricultural and other matters. So, I would not seek at any time to create a sort of coalition of Celts; I would seek to pursue Welsh interests and to do that in the way that I determine is best done.

[107] Clearly, there will be a different emphasis in different places and there will be, from time to time, political differences between the different administrations. If you think that, going back to the agriculture and fisheries side of things, you have Sinn Féin, the Scottish National Party, Welsh Labour, Liberal Democrats, and Conservatives all sitting around the same table—how shall I put it?—the capacity for mischief is very great. We do try to focus in on some of the issues, and I would tend to try to pursue Welsh interests, rather than identify interests that are not important to us in order to create that sort of division, if you like, within the United Kingdom.

[108] Clearly, there are some issues where, as Celtic administrations, we have a different and a collective view—such as on the budget issues, for example, over the last year or two, where we have had an agreement, if you like, across the three Celtic territories, and a disagreement with DEFRA, over budgetary issues. That is something that has been aired in the press and in public. However, if you look at a lot of the issues in terms of the CAP negotiations, there have been different needs and a different emphasis in different parts of the United Kingdom. There have been issues on greening that are far more difficult for England than for Wales. So, the issues there are very different in terms of where we have come from. Then again, it is very different in Scotland and Northern Ireland as well. So, it is not necessarily the case that, because we have different interests from those of England, we have the same interests as Scotland and Northern Ireland. So, I do try to take a positive approach to these matters, and it is my style, as you know, Bill, to seek agreement and common ground, rather than to seek disagreement on these and other matters.

2.45 p.m.

[109] **William Powell:** It would be also be useful if you could share your thoughts about the Welsh Government's relationship with the United Kingdom Permanent Representation to the EU, and whether you think there are any improvements that would bring benefit there in terms of the way in which Welsh interests are represented.

[110] **Alun Davies:** That is a very good question, but let us be absolutely clear: Wales is not a member state. Our ability as a Government to interact with all of the institutions of the European Union is determined by the United Kingdom and the United Kingdom Government's willingness and preparedness to share information and access with us. I would like to use this opportunity to put on record my own gratitude to UKRep and UKRep officials, who have been extraordinarily generous with their time and expertise to enable us to better represent Welsh interests. I discussed the delegation; it is a UK delegation, not a Wales delegation, but we are able to go there, because UKRep facilitates our presence there. Our ability to represent Wales in terms of the Commission is facilitated by UKRep and our ability to access Council is facilitated by UKRep. So, we have a very good relationship; Steve has worked with UKRep in the past, and we also have had a number of different secondees with UKRep to improve their knowledge of Wales and to improve our knowledge of how UKRep works. So, in terms of working together, certainly on the structural funds side of the house,

the work that UKRep has done has been second to none in terms of ensuring that a perspective that has come from Wales is communicated through the United Kingdom voice and is then used and is able to reach the agenda of the Council of Ministers and the wider agenda of the European Union.

[111] We will speak to UKRep officials in the European Parliament if we are in Strasbourg, for example, and we will speak to UKRep whenever we are in Brussels or Luxembourg. UKRep councillors and officials, such as Tim Render, who is retiring next week, or moving on rather than retiring—we will have a little fight if he sees that—have done a tremendous job in ensuring that the technical policy objectives that we need to achieve are represented within some of the technical officials meetings, which take place outside of the formal agendas of different institutions. So, I am very grateful to UKRep for all the work that it does. The deputy head of UKRep is in Cardiff this week and I will be seeing her on Thursday. She has done a tremendous job, particularly at some of the fisheries councils, where she has provided help and support to us to ensure that our voice is heard. So, I have only gratitude for UKRep and the Foreign Office for the work that they do to support us.

[112] **William Powell:** My final question is: what relevance to these matters does the British-Irish Council have, and do you believe that there is any scope for more informal networks, such as the British-Irish Parliamentary Assembly, of which our Chair is the leader of our delegation, in relation to shaping these matters with the different devolved administrations on a more informal basis?

[113] **Alun Davies:** I am sure that the Chair has a very important role to play in these matters, and one which he plays with some grace and dignity—

[114] **David Melding:** I am waiting for the ‘but’. [*Laughter.*]

[115] **Alun Davies:** We would look forward to seeing more, not less, of the Chair in Brussels, of course. However, what you tend to find in many of these Council meetings is that groups of nations tend to think along similar lines, so you will hear very similar lines from the Scandinavians, the Balkans and from southern Europe. It is no surprise that many of us in north-western Europe and the British Isles share very similar perspectives about things. I think Simon Coveney has done an absolutely tremendous job guiding through CAP reform. I met him in Dublin last September to talk through some of the specific Welsh issues, which are very similar to Irish issues, of course, and we talk very regularly to Irish officials from the Irish permanent representation base there and, as Celts, we get on like a house on fire. Perhaps we should leave it at that for now.

[116] **David Melding:** I will now ask Julie James to take us through the next range of questions of interest to us.

[117] **Julie James:** Thank you, Chair. I am mindful of the time.

[118] **David Melding:** You have time. I will be cutting this session. We will not go through all the questions that we intended to put to the Minister. However, some of the questions at the end are more technical, and I am sure that they can be dealt with in correspondence. So, do not feel cramped.

[119] **Julie James:** Okay. In that case, Minister, would you like to outline to the committee how you and your officials work with other MEPs, and in particular the Welsh MEPs, to get Welsh interests heard?

[120] **Alun Davies:** I have tried to make it a feature of my tenure in office that I visit the European Parliament at least twice a year. We try to go to Strasbourg, where things tend to be

a bit easier, and a bit less chaotic, than Brussels. We will seek to have a dinner or a lunch with the four MEPs from Wales, so that we can speak informally, and so that I can talk to them about issues that are coming up, and about where we stand on individual issues. We will also have an opportunity for them to ask me questions. So, we will try to have that sort of informal conversation over a period of time, at least twice a year. I met all four Welsh MEPs on my first visit to Brussels, some two years ago now, and I have tried to ensure that I meet with the four of them on a regular basis to talk about specific issues around where we are as a Welsh Government. So, we have that sort of structured and informal relationship.

[121] I will say that, during my visits to the European Parliament, I also take a considerable amount of time to talk to MEPs who hold roles outside—not just Welsh or UK MEPs, but rapporteurs on individual issues. So, looking at CAP again, we have spoken at length to De Castro and to Luis Manuel Santos about the issues that they were bringing, so, when we were coming to the end of CAP negotiations, they had a very good grip of where Wales was, and we had a very good grip of where they were. So, we were able to influence their conversations, I hope, but also their conversations were influencing us, in that we could see where negotiations were heading. So, I have tried to focus a great deal of time on ensuring that we spend time with the European parliamentarians, talking to them, attending their sessions, and ensuring that Welsh views, and Welsh voices, are heard.

[122] **Julie James:** Thank you, Minister. The committee has had some evidence, from Professor Cairney and others, that leads us to believe—I think that what you have just said illustrates this—that, although there are a lot of good systems, which work, they are all largely informal, and a little bit personality-dependent, so, Welsh voices are heard best if two people get on together, and perhaps not so well when people do not. He gave us the example of the Joint Ministerial Committee on Europe, which he thought met more frequently than any other. However, he thought that the stated aim of that committee, which was to develop policy and to get a UK policy framework—or the statement that you were just talking about—did not happen that much, and was actually used as a sort of forum for ironing out tensions and disagreements. My question is on that theme of everything being a little bit more informal than most people are led to believe. Could you comment more generally—it does not matter on which forum, really—on that feeling that we are getting as a committee? Also, at the end, could you indicate whether you think that that is a good or a bad thing?

[123] **Alun Davies:** It is always important to have formal structures, so that you can cope with disagreements—that is the fundamental importance of it. However, when I meet with a rapporteur, for example, to discuss structural funds or fisheries or whatever, it will be a formal meeting between a Welsh Government Minister and that rapporteur. Sometimes it takes place in a coffee bar, sometimes it takes place in an office, and sometimes it takes place in a meeting room, but they are structured meetings between those two individuals, where individual chemistry is, frankly, less important, because it is more about an exchange of views, and a communication of views. So, we ensure that that happens.

[124] Your wider question about JMCs is an interesting one. JMCs have been revived, of course, since we have had different political colours represented on the UK political map. Jane Hutt attends on behalf of the Welsh Government at present, but I attended them up until the reshuffle in March. I found them to be very useful meetings. They would be either chaired by David Lidington, the Minister of State for Europe, or by William Hague, the Foreign Secretary. To some extent, they would be rehearsals of firmly-held views, but they were also opportunities for a level of discussion.

[125] I think that it is fair to say, Robert, that we had a very animated conversation after the Cameron veto, for example, and about some of the multi-annual financial framework matters; it was the case that all three Ministers from the devolved administrations were very clear on their views. I think that it is fair to say that those views were not entirely welcomed by the

United Kingdom Government, but we had the opportunity to debate and discuss those matters and other issues.

[126] I have found the meetings to be very useful opportunities to share perspectives on forthcoming European Council agendas. The agendas are set by forthcoming heads of Government meetings. We will discuss all of the items on that agenda. Sometimes, I will be very clear that Wales does not have a position on a certain issue, such as Libya, which dominated the discussions last year. We clearly did not take a view on that, whereas the Scots, because of their issues on justice, and the Lockerbie issue, did take a view on that. So, we will take different views.

[127] Certainly, they were important fora for us to discuss some of the more detailed matters of policy that had not been resolved at official level. Some of the issues around structural funds were important, and we would resolve most of the issues around CAP. We would have the rows and those animated discussions that are necessary between governments. So, yes, we had some very lively discussions about the impact of cuts to CAP budgets, which are now being pushed through, and potential cuts to structural funds, which we have been able to avoid because of the negotiations within the United Kingdom. However, I am pretty sure that had we not had JMCs, we would not have had the result on the structural funds that we do have. That is my view on that. We were able to argue a very strong case in JMCs on structural funds that then created the context for the inter-governmental negotiations within the United Kingdom that followed on from that. Had we not argued that case in the first place, we would not have been starting from the same position. So, I think that JMCs are very useful fora for those discussions and for debate.

[128] **David Melding:** I will take the last set of questions. We will not quite be able to cover everything that we would have liked to this afternoon, Minister; you have led us in other directions, which we had not necessarily anticipated, but which is of great value to our inquiry. I am sure that you and your officials would be happy to respond in correspondence on some of the further points that we want to explore.

[129] It seems to me that the rigour that you need in the system to get the Welsh voice properly heard is a good bilateral relationship between the Welsh Government and the UK Government. You may have similar interests to the Scottish Government and the Northern Ireland Executive, but, while they might be helpful when they occur, they are, in a way, coincidental. So, you do not see their role—as you have described it—as being a sort of Celtic block trying to influence the UK. Would it be fair for me to infer from that that any attempt at more informal direct connections between the Welsh Government and the Commission, for example, are, first, not practical—because how you would get access?—and, secondly, would not be very constructive in any case? So, you see any stronger system having to come about through UKRep or the UK Government. You have obviously outlined ways of making it a bit more formal.

[130] **Alun Davies:** I would not say that that is the way that we need to go. UKRep facilitates our approach by giving us the accreditation and so forth. However, I do not feel that I require UK agreement to meet a commissioner, for example. We have direct relationships with the Commission in terms of the implementation of regulations, and on CAP and structural funds. I certainly do not feel that I would need to seek the consent of the United Kingdom prior to meeting commissioners. I would always seek to inform the UK that we are doing it, and inform the UK of the matters that were discussed.

[131] **David Melding:** Does the Government ever have those sorts of discussions in policy areas at an early stage of development, before anything very formal is brought or presented to the Council of Ministers and then into the UK system for its consultation?

[132] **Alun Davies:** Yes.

3.00 p.m.

[133] **David Melding:** So, there is a direct relationship in a way, which is a little subtler and gives you more room for manoeuvre.

[134] **Alun Davies:** Absolutely. There is a direct relationship. I am sorry, I was trying to answer a question in terms of emphasising the role of UKRep in facilitating and helping us in terms of what we do. I wanted to emphasise that. However, certainly, yes, our EU office does have those direct relationships. The point that I would make is that they are UKRep diplomats. There are Welsh diplomats and UKRep diplomats—

[135] **David Melding:** And they would be present with you, would they, at these meetings?

[136] **Alun Davies:** Yes, and we would have that informal relationship with the Commission—that form of direct relationship with the Commission—and the approach that the Welsh Government is taking, as you know, is as a very pro-European Government. We want to broaden, deepen and strengthen the Welsh Government's and Wales's relationship with the European institutions, and as a consequence of that, we want to ensure that we are able to have those direct relationships with each one of the institutions of the European Union to enable us to ensure that, first of all, issues that are specifically Welsh are heard, and recognised and identified; and, secondly, that the contribution that Wales can make as a country is recognised. We had a very interesting conversation on city regions, and Johannes Hahn talked about that as a commissioner some years ago, but, clearly, that did not affect Wales, because we did not have any urban areas that came within his classification, so we commissioned work here, led by Elizabeth Haywood—Edwina led that—and then we wrote to feed that into the Commission and help develop policy. So, I see Wales certainly as a component part of the United Kingdom, but as having an ability to have a direct relationship with the European Union, not only in a responsive way, but also in a way in which we can lead European thinking. Where we do have a level of expertise, we contribute that to develop and improve European policy making.

[137] **David Melding:** As you have very clearly outlined, this part of the process is an early part of the process in general.

[138] **Alun Davies:** It is an ongoing part of the process, yes.

[139] **David Melding:** And your feeling is that the UK Government is fairly relaxed about this. You are doing this through UKRep structures, so presumably it is aware that discussions are taking place.

[140] **Alun Davies:** No UK Minister or senior official has ever shown discomfiture that we have direct relations with the Commission or with commissioners—not in private, informally or formally.

[141] **David Melding:** However, you then feel that real discipline kicks in once the UK has a line—and you try to influence that, obviously, through the speakers, no doubt. At that stage, there is not much to be gained from splitting away.

[142] **Alun Davies:** Yes, particularly in formal meetings. For example, in some of the conversations that we have been having around CAP, we have been going to meet the Commission, or commissioner, to discuss issues that are important to us: for example, the transition from historic to area, which is irrelevant to England, but central to us; or greening, where we have a lot to contribute, and I think that we did contribute towards the development

of European policy on greening because of our Glastir project. So, we have done things like that. We would go to see the Commission to talk about Welsh issues, not to criticise UK issues or the UK position. We would not do that. It would be irresponsible to do such a thing.

[143] The purpose of Welsh Ministers or Welsh officials meeting with the Commission, for example, would be to pursue and advance those issues that are important to Wales. An agenda for a meeting with a Welsh Minister would be different in tone and emphasis to an agenda of a UK Minister on a similar issue, because we have slightly different issues and a slightly different emphasis on different matters. So, we would have a meeting and inform the United Kingdom that we were having it. We would tell the United Kingdom what happened at the end of it, so we would have that exchange of information. For me, the key issue—going back to Jocelyn’s question about how we can improve things—is to ensure that, when we are in negotiations, and when we do have the trilaterals between the Commission, the presidency and the member state, Welsh Ministers are there at all times as well, so that we can make sure that Welsh issues are progressed from that very early stage of policy genesis that you have described, Chair, through to that horrible, nasty, dirty compromise at 2 a.m. We would really want to be sure that a Welsh voice is there at that late hour, even if it is croaky.

[144] **David Melding:** I am setting you a mission impossible as a task now, namely to give a fairly concise answer to what is going to be a rather open-ended, potentially expansive question. You did say that you found at the joint ministerial council, in terms of being the UK’s way of discussing EU matters, that the Foreign Secretary had been helpful in his approach. There is a general review of competencies, and certainly the Foreign Secretary, but I think DEFRA as well, has emphasised the importance in that review of hearing the devolved voice, as it were. How do you rate its performance in doing that at the moment?

[145] **Alun Davies:** Do you mean the UK Government’s performance?

[146] **David Melding:** Yes, in the review of competencies that is going on.

[147] **Alun Davies:** It is a political issue, is it not? It is not about the review of competencies, but about the relationship with the European Union and with those people who wish the United Kingdom to leave the European Union. So, I have no illusions that this is a document that will struggle to see the light of day at some point before the 2015 UK general election and will be used to inform or misinform the manifestos of the different political parties at that time. As a Government, we are clearly going to play our role in it. We are going to play our role differently according to different areas of policy. So, the environment, some of the Department for Business, Innovation and Skills’s issues and agriculture would have a different emphasis, perhaps, to justice and foreign affairs.

[148] **David Melding:** That sounds as if you are having to work quite hard to make sure that, even if you do not think that the process is particularly well motivated or whatever, the Welsh Government is actively going to get its voice heard, rather than that the UK Government is very keen to have a genuine and deeper consultation on principles.

[149] **Alun Davies:** The Welsh Government’s voice is being heard. We have responded to different calls for evidence and we will continue to do that through to the end of the process. We will be emphasising what Wales gains and benefits from membership of the European Union to the UK Government, and we will be making very positive presentations and arguing that case very strongly. I suspect that there are others with darker motives at play.

[150] **David Melding:** We will not speculate further. I am going to draw the session to a close now. Thank you very much, Minister and your officials. I think that we have had a very interesting evidence session. As I said, we have not quite covered all the ground, but we may enter into correspondence on one or two issues if we really do want to seek further evidence

on those. We are in the slightly unusual position of having a second session with the Minister, who will be giving evidence on the emergency Bill on the agricultural wages sector—I have got that title wrong, but I will get it right when I introduce it in the next item of evidence. However, I suggest that we all take a breather and reconvene at around 3.20 p.m. Thank you very much.

*Gohiriwyd y cyfarfod rhwng 3.08 p.m. a 3.23 p.m.  
The meeting adjourned between 3.08 p.m. and 3.23 p.m.*

### **Tystiolaeth mewn Cysylltiad â Bil Sector Amaethyddol (Cymru) Evidence in Relation to the Agricultural Sector (Wales) Bill**

[151] **David Melding:** Welcome back, everyone. This meeting of the Constitutional and Legislative Affairs Committee is back in session, and we now move to item 3, which is the evidence in relation to the Agricultural Sector (Wales) Bill—referred to as ‘the emergency Bill’ by some as well. I am delighted to welcome back the Minister for Natural Resources and Food, Alun Davies. Do you want to introduce your team, Minister?

[152] **The Minister for Natural Resources and Food (Alun Davies):** Thank you very much, Chair. With me this afternoon are Gary Haggaty and Victoria Davies. Victoria is a lawyer working with us, and Gary Haggaty is head of Agriculture and Rural Division.

[153] **David Melding:** I should say to the officials that these proceedings can be conducted in Welsh and English. If Welsh is spoken, there will be a translation on channel 1.

[154] I will start, then, Minister, and dive straight into this. You said in Plenary that the description of this as an emergency Bill could be seen as a somewhat overly dramatic form of words. So, is it an emergency, or is it not?

[155] **Alun Davies:** It is the Assembly that describes it as an emergency, not the Government. We are using emergency procedures. The point that I was trying to make in Plenary last week is, as some Members were saying, what is an emergency? They were describing all the different emergency scenarios that they could think of. What I was trying to say was, ‘*Gan bwyll*—steady, now—this is the use of a specific procedure that is described by the Assembly in those terms, not by the Government’.

[156] One of the things that I have certainly considered—and this is me speaking individually, rather than expressing a Government position—is that there is a lack of flexibility in our legislative processes and procedures. As I have said in public before, I think, it would have been my wish to have brought this matter before the Assembly and to have been able to have a longer process, which would have involved a longer committee stage, rather than using this process. It might well be—and it is a matter for this committee, of course, to determine these matters—that we need to look at a process whereby we can expedite legislation rather than having to use either our full legislative processes or the emergency process. Also, I have recently concluded some consultation on fly-grazing; so, I will be coming to the Assembly to make a statement on that—hopefully before recess. That is another example of something on which I would like to expedite legislation in order to have new structures in place before next winter. However, the current legislative framework means that we will not be able to do that until the autumn of next year. Therefore, we do have two choices and it might well be that, as an Assembly, and as Members, we might wish to introduce a level of flexibility to enable us to have a third choice.

[157] **David Melding:** It is quite a pragmatic answer. I suppose that some would say that if it is an emergency, you cannot be that pragmatic about it. However, in terms of using other

procedures, did you consider just asking the Assembly to bypass Stage 1 and then move into the legislative process more quickly, perhaps allowing for consultation over the summer period, even though there is not an official Stage 1 committee, and then coming back in September and dealing with the committee stage and the third and fourth readings then? There would still be a week to do that, potentially. Indeed, the Assembly could have been asked to come back a week earlier, for instance.

[158] **Alun Davies:** I did consider all of those matters. Of course, we could have sat as a committee taking evidence, rather than the whole Assembly returning, so that those matters could be dealt with. I have agreed to appear before the Environment and Sustainability Committee at the Royal Welsh Show, for example. So, there were opportunities. If Members recollect, I did intervene last week in a contribution by Simon Thomas, who made a similar suggestion. It would have been my preferred way of working. The advice that I received from the Presiding Office is that we have to follow this process, which is why I make the point to the committee that, in the future, we might well wish to look at our procedures to ensure that we have more flexibility and other alternatives.

[159] **Jocelyn Davies:** It has been known for Ministers to make requests to do away with some of the stages that we currently have. Of course, if our Standing Orders prevent us from doing something, we can always suspend the Standing Orders, but you do need the support of two-thirds of Assembly Members in order to do that. Therefore, it is possible to suspend Standing Orders.

[160] **Alun Davies:** I know that.

[161] **Jocelyn Davies:** Did you consider a sunset clause?

[162] **Alun Davies:** No.

[163] **Jocelyn Davies:** Did you consider retrospective legislation?

[164] **Alun Davies:** No.

[165] **Jocelyn Davies:** So, when you say that you considered a whole range of things, you did not include those.

[166] **Alun Davies:** You challenge my assessment of where we are, and the decisions that I have taken, but my assessment was that we were in the position whereby on 14 May, I think, I was informed by letter that the Agricultural Wages Board would be abolished on 25 June, that the agricultural wages Order in October would not be renewed, and that, as a consequence of that, I needed to take a decision. When I launched the consultation on this matter at the end of April—correct me if I am wrong—those things were unknown to us. We did not know that the abolition of the AWB would take place on 25 June. So, in that position, I needed then to take a decision as to what we needed to do and what alternatives were available to us.

3.30 p.m.

[167] The point that I made to the Assembly in an oral statement in April was that we had a number of different options available to us. I speak from memory, but the first option was to do nothing in order to allow the abolition to take place. The second option was to legislate, and the third option was to put in place a non-statutory function. When I received the letter from David Heath on 14 May, I was looking at those options to see which options we had available to us. I asked officials then whether there was anything we could do to prevent this from taking place, and the answer was 'No; this has now passed through all of its parliamentary processes and is now law. The Enterprise and Regulatory Reform Act 2013 has

now allowed for this and therefore there are no further options available to us.’ I was then in the situation in May where the abolition was going to take place and therefore we needed to decide which way we would go. I certainly took advice on that matter from Victoria, Gary and others. We had a series of conversations and I felt that the least disruptive approach would be to legislate to maintain the status quo. It is important to recognise that, and, if the committee is still being advised by Gwyn in the way that it was when I was a member of this committee, I am sure that you will have a number of questions for me on things that are not written on the face of the Bill and all the rest of it. I felt—and, once again, this is my view and my assessment—that it was right and proper to legislate to maintain the status quo in terms of the wages order, but also to legislate in a way that enables us to do far more than the AWB has done.

[168] **David Melding:** We do not need to rehearse the meeting last week; our focus is a bit narrower in terms of the constitutional procedures that have been used. Indeed, we do want to come to more of the nitty-gritty things about what is on the face of the Order—

[169] **Alun Davies:** I am sorry; I spent four years doing this.

[170] **David Melding:** I would like to clear up the point about a sunset clause. You said that you either did not consider it or did not think that it was appropriate. Are you against it in principle?

[171] **Alun Davies:** No, not in principle. My feeling is that the UK Government has made an error of judgment in terms of the abolition of the AWB. I do not come at that from a philosophical point of view, if you like; I am using my experience as someone who has run a small business and appreciate the importance of support and help to maintain agricultural businesses. The AWB has performed a very good role over a large number of years. However, I believe that there is scope and capacity for an AWB to do far more than is being done at the moment. The issues that I would like to take forward include skills and training; that is, the professionalisation agenda. So, the point that I am making is that what I have sought to do in this piece of legislation is to legislate to maintain the status quo, but to do that in a way that enables us to do more in the future.

[172] **David Melding:** I cannot anticipate what the committee might conclude, but looking at an issue similar to this, we might say, ‘Well, we are not completely convinced that it is an emergency, but it is clearly important and urgent’. One compromise might be to say that the Government has to move quite quickly, so we will agree to a fairly truncated system that is limited in terms of the scrutiny potential, but ask for a sunset clause, which means that, if it is more controversial than it was thought it might be, you could then have a full process again and, in all likelihood, if it has not been that controversial, then the confirmation of the original Bill would be fairly speedy. Do you think that would be an unreasonable position for this committee to take?

[173] **Alun Davies:** I do not think that it is an unreasonable position at all; it is an entirely reasonable position to take. There is no black and white, right or wrong here. However, if you were to take that position, you would be looking at simply doing what we are doing now with no further follow-on from that. One of the things that I would like to be able to do in the future, and one of the things that we really need to look at in terms of the development of the agricultural industry and public support for agriculture is to continue to press ahead on the whole skills and training agenda; that is, the professionalisation agenda. If you look at the responses that we have had to the consultation, you will see that a number of people have said that this is a very useful piece of legislation that can be built upon and developed. One thing we can do very usefully, perhaps this afternoon or at another time, is to look at how we can enhance the legislative scrutiny of any proposals to further develop this piece of legislation in the future. I would be very comfortable with any suggestions that the committee wishes to

make on that matter.

[174] **David Melding:** Was there a plan B? It may not have gone through last week. In fact, at one stage, it looked as if it would not go through.

[175] **Alun Davies:** I have no comment to make on that.

[176] **David Melding:** I do not want to throw light on to some of these darker, mysterious corners, because the magic of legislation and the forces therein is part of the whole scenario, I suppose, but did you have a plan B, if you had not had permission last week?

[177] **Alun Davies:** We were clearly in different dark corners. [*Laughter.*] My feeling was that it would go through. I know that there have been some conversations—I have seen it said on Twitter and elsewhere that we brought this forward after Ieuan Wyn's resignation. That is absolute nonsense.

[178] **David Melding:** We do not need to speculate, but I just think—

[179] **Alun Davies:** Sometimes, you really want to put some things to bed.

[180] **David Melding:** You are a pragmatic man, so was there a plan B?

[181] **Alun Davies:** Was there a plan B? There would have been a plan B, C and D. I think that we would have had to take stock of where we were and follow on from there. My feeling was that that we would have the votes to be able to proceed in the way that we did. So, I was hoping that I could convince my fellow Members that this is a process that we are seeking to use; it is not the Government's process—it is the Assembly's process, and I think it is important to recognise that.

[182] **David Melding:** I am keen to move on, Suzy, but if it is—

[183] **Suzy Davies:** I do not think that it is a question that has been asked, and it is quite specific.

[184] **David Melding:** Okay. Go on, Suzy.

[185] **Suzy Davies:** Thank you. Minister, quite a lot of what have you just said was about this being your attempt to maintain the status quo and go beyond that far more—

[186] **Alun Davies:** A capacity to go beyond.

[187] **Suzy Davies:** Yes, it is quite a bit of it. In which case, it is not a carbon copy of the Agricultural Wages Act 1948, and so I am led to ask why you did not just include it as part of your Government's legislative programme and pursue it in the normal way, if it is not just a reiteration of existing legislation.

[188] **Alun Davies:** I think that Bill made the point—you look surprised, Bill—in his response to the consultation that this could have been planned back in 2010. Well, of course, back in 2010, we did not know that the AWB was going to be abolished.

[189] **Suzy Davies:** You would not need to—that was my point. This is not just a replacement of the AWB, it is something else.

[190] **Alun Davies:** No, it is a means of establishing the status quo in such a way as to enable us to do more in the future. I understand the point you make. You are right in the sense

that that extra, that more, is something that we can do. However, over the last two years, certainly in the time that I have been in office, Suzy, we have been working hard with the UK Government—I have met something like eight different Ministers from the UK Government—in order to prevent the abolition of the AWB. It was always my intention to build upon the structures of the AWB to do something more and something different in terms of the training and skills agenda that I have already spoken about. That is why, over that time, I have sought the transfer—I am looking at Victoria for help here—of the relevant Orders and functions—

[191] **Ms Davies:** Under the Public Bodies Act 2011.

[192] **Alun Davies:** We sought a transfer of functions Order under the Public Bodies Act 2011 to give us that legislative basis upon which to build. You are absolutely right; had we been able to achieve the transfer of functions Order, then we would have built upon that, and we would have built a statutory basis on the basis of that transfer of functions Order, which we would have pursued either in this Assembly or the next one.

[193] Over the last two years, we have been trying to find an agreed way forward with the United Kingdom Government. The point at which I realised that we were not going to do that was the week before Christmas of last year, when the UK Government tabled amendments in the House of Lords at the last moment before Christmas recess to amend the Regulatory Reform Bill to seek the abolition of the AWB. Up until that point, I still felt that there were opportunities for us to work with the UK Government to seek an agreed way forward. I met Wales Office and DEFRA Ministers to try to do that over an extended period of time, and I felt that there was still capacity in the system to enable that to happen.

[194] So, we have not had two or three years to prepare this at all; that would be to entirely misread what has happened over the last few years. We have been in extended negotiations with the UK Government to find an agreed way forward. It was only when the UK Government sought to deliberately circumvent the devolution settlement that we recognised that there was no way of finding a compromise.

[195] **David Melding:** Julie James is next.

[196] **Julie James:** To pursue that a little bit further, have you had any discussions specifically about this Bill? You have just told us that you have had a lot of discussions about the previous situation. Have you had discussions about this particular Bill with the UK Government, and do you think that it is likely to challenge it?

[197] **Alun Davies:** That is clearly a matter for it. I would hope that it would not. I spoke informally to Owen Paterson when we were in Luxembourg two weeks ago and told him that this was going to be my preferred way forward.

[198] **Julie James:** Do you have a contingency plan in case it does challenge it, in terms of the time—

[199] **Alun Davies:** I am completely confident—. I understand the debate that is going on around this matter, and it is clearly a matter for the Secretary of State for Wales whether he wishes to challenge the democratic legitimacy of this place. Clearly, I would hope that he does not. We have a settlement that has been endorsed twice now by referendum. We have a settlement that, I think, many of us would like to see changed and strengthened; I accept that. However, I would hope—I would appeal to the Secretary of State not to challenge this legislation. This is about underpinning the development of the agricultural industry; it is a fundamental part of what we are trying to do to develop agriculture for the future, and so I would hope that people will work with us to enable us to do that.

[200] **Julie James:** Thank you, Minister. That is a clear argument, in my view, for a reserved powers model, but that is an argument for another day.

[201] Turning to the Bill itself, the first thing that strikes you when you read the Bill is that it starts off with a series of Order-making powers, as opposed to anything being on the face of the Bill. I just wondered whether you wanted to comment on why it has been done in that way. It does not even establish the board on the face of the Bill. The whole lot is done by Order.

[202] **Alun Davies:** I will ask Victoria to take that.

[203] **Ms Davies:** The Bill, as you said, gives the Welsh Ministers the power, by Order, to create a panel. The Bill gives absolute flexibility, because we want to ensure that there is adequate and appropriate consultation carried out before any panel is established. That requirement for consultation is written into the Bill in subsection 2(4). In addition to that, the Order to establish a panel is subject to the affirmative procedure, so there will be an opportunity for Assembly scrutiny at that stage. Clearly, the—. Sorry. I think that that answers your question.

[204] **Alun Davies:** We are putting in a process, as you will see from the legislation and from the explanatory memorandum, of affirmative scrutiny, which will allow this Assembly to have far greater scrutiny than has ever taken place of any agricultural wages Order before. In establishing the panel, the Assembly will have the opportunity to comment upon that and to scrutinise me on how we go about doing that. I understand the concern of Members, and that Members would prefer to see more written on the face of the Bill and less left to Order-making powers; I accept that. The point that I would make to Members is that we are seeking flexibility, but sufficient flexibility with enhanced scrutiny to enable Members to scrutinise decisions that are taken under this legislation. I am prepared to return to this committee, at this committee's invitation, to give further evidence and to submit to further scrutiny on all of these matters.

[205] **Julie James:** Thank you for that, Minister. That is very interesting and very welcome, I am sure. However, I remain completely puzzled by why we are not even establishing a panel on the face of the Bill. I take the point about consultation and all the rest of it, but you have already stated that we need to go very quickly in order to get the panel in place before the other one is abolished, and then, on the face of the Bill, we have something that does not necessarily establish the panel.

[206] **Alun Davies:** The fact of the panel is, of course, established by this Bill, and the way in which we will do that is established by this Bill. You will see that subsection 2(2) includes a number of different roles for the panel as well. So, I would dispute the—

[207] **David Melding:** However, it says you 'may' establish; it does not say 'must'.

3.45 p.m.

[208] **Alun Davies:** I understand that, but it does provide us with the roles that a panel would pursue and fulfil. So, I hope that that would provide Members with the picture of what we are asking the panel to do—the work that we are asking the panel to do.

[209] **Julie James:** I would like to pursue that one last time. Minister, I absolutely understand that, and I understand about the list and that is all very laudable. I understand the points that you are making about consultation and about scrutiny. However, I wonder whether you would want to have another look at subsection 2(1), where it states that you

‘may, by order, establish a panel’.

[210] It does not even say ‘shall establish a panel’. That is the bit that I was just a little bit surprised by, that is all. I take the point on all of the other issues that you raise, but that was the point that I was particularly concerned with.

[211] **Alun Davies:** I accept the point that you are making. I would take you back from section 2 to section 1, which states:

[212] ‘This Act makes provision for—

(a) the establishment of the Agricultural Advisory Panel for Wales’.

[213] So, it does clearly say there that this is what the legislation is seeking—

[214] **David Melding:** It shows your absolute intention to establish.

[215] **Julie James:** I understand that entirely, Minister, but I have long been a pedantic lawyer, as you know.

[216] **Alun Davies:** And, no doubt, extremely well paid to be so. [*Laughter.*] I would contend that, notwithstanding the use of the word ‘may’ rather than ‘shall’—and I accept that—the introduction section and the agricultural advisory panel for Wales section, section 2, do give the committee the sort of detail that perhaps you are seeking.

[217] **Julie James:** Okay. Thank you.

[218] **David Melding:** William Powell is next.

[219] **William Powell:** Thank you very much, Chair. I find myself sharing a number of the concerns that have already been articulated by other members of the committee here, particularly around the definition of this as an emergency. I think that even Len McCluskey, someone who is an august commentator on these matters, has not regarded this as a situation that could be appropriately described as an emergency. At the same time, how is it possible, Minister, that we have come to a situation where we are having this fast-track procedure, which is circumventing so many of the mechanisms of the Assembly in terms of scrutiny, and yet, as Julie James has outlined in her earlier questions, there is far less on the face of the Bill, in terms of protecting the rights of workers in this sector as you see it, than is, for example, the case in the arrangements that apply in Scotland and Northern Ireland? To what extent have you and your officials given consideration to the Agricultural Wages (Scotland) Act 1949 and the much more recent Agricultural Wages (Regulation) (Northern Ireland) Order 1977? In both those cases, it is for the board and the advisory panel, and not for the Minister, to be determining these matters. Some commentators have even suggested that the powers that are to come forward in this emergency legislation would give you powers over agricultural wages that would be greater than those of pre-Glasnost Gorbachev in the Soviet Union. This is something that is quite extraordinary, and, in the hands of a less benign Minister, would actually be very alarming.

[220] **Alun Davies:** I can see the press release has already been written on this matter. I have to say, Bill, the reason that we are in this position is because the Tory and Liberal coalition in London—

[221] **David Melding:** We are having the same debate as we had last week, so my pleas that Members did not do this are being ignored.

[222] **Alun Davies:** —circumvented the devolution settlement. I know that you have not expressed a view for two years, and now you are telling me that I am taking autocratic powers. Well, Bill, you could actually have played a stronger role yourself in some of these debates and discussions that we have had.

[223] **David Melding:** Okay. We do not really need to go into this. We are here to scrutinise the constitutional issues involved, particularly the balance of the Bill as it is structured, the potential for scrutiny, what is left to Order-making powers, and issues of competence, et cetera.

[224] **William Powell:** I think that there is the issue of the situation that you are seeking to bring about, in contrast to the settlement that has been reached and seems to work quite effectively in Scotland and Northern Ireland. To what extent have you taken that as a point of reference in your framing of this emergency legislation?

[225] **Alun Davies:** What we have tried to do, as I have said, is to reinforce the status quo in a way that gives us the freedom and the flexibility to develop that status quo in the future. What we have not sought to do in this legislation is to try to do more than is simply being done at present. We have attempted to ensure that we have an agricultural advisory panel for Wales that has a role, as outlined in section 2(2) of this Bill, that is able to deliver the agricultural wages Order that I think most of us on this committee would accept is necessary. You have accepted in your evidence that the Bill is necessary and provides for a good and important role in Welsh agriculture. So, you agree with that as well, I presume.

[226] Now, if you look at what we are seeking to do, all of us would also agree that if we simply try to reconstitute AWB Cymru-Wales in the way that was outlined in the 1948 legislation, which itself was derived from legislation in 1924 and 1917—we understand the genesis of it—then we would be doing a minimum, and I accept that, but we would not be providing the capacity to do far more to support the agriculture industry.

[227] I will come back to a point that you made. This is about the agriculture industry in Wales. The response to the consultation has been very strong, as you would expect, possibly. There has been a groundswell of support for this Bill in different parts of the industry in Wales. We are looking at working with the industry in Wales to ensure that we have something that has the flexibility to underpin development and investment in the industry in future, but that will also enable us to do more. I keep coming back to this point about the professionalisation of skills and the training agenda. It will be absolutely crucial to the future success of agriculture. I see this as a means of helping us to do that.

[228] Suzy was quite right in what she said earlier: had we had the opportunity to do so two years ago, we might well have introduced something different. We might well have had the opportunity then, through a transfer of functions Order, which I have sought repeatedly from the UK Government, to build upon the AWB in a way that would have enabled us to do more. We were not given that opportunity by the UK Government, so we have had to go down this route. However, I would have preferred to have gone down a route that would have been agreed with the UK Government, which would have been to work alongside the UK Government to deliver its policy objectives in England, which would have enabled us to achieve our policy objectives in Wales.

[229] **William Powell:** Thank you, Minister, for that. Certainly, I would accept that there is no monopoly of best practice in the way that this has been handled from any of the administrations. Clearly, there have been—

[230] **Alun Davies:** I do not accept that, actually, Bill. I have worked extremely hard since

this was first brought to my attention to reach an accommodation and an agreement with the United Kingdom Government. I have not created this position and this difficulty. This has been done because the United Kingdom Government has quite deliberately sought to circumvent the devolution settlement. The agreement when this was first put forward was that the abolition of the AWB would be achieved through the Public Bodies Act 2011, and a mechanism set out. The point at which the UK Government changed that, without reference to the Welsh Government, and without reference to the National Assembly for Wales, was the point at which I said ‘no’. At that point, rather than accept the structure of the settlement and the structure of the legislative and statutory framework, the UK Government, quite deliberately, sought to avoid the obligations that it has created itself under the Public Bodies Act. So, no; I do not accept that there are faults on both sides here. I do not accept that the situation is the fault of the Welsh Government. We have worked in good faith, consistently for two years, to avoid the situation in which we now find ourselves.

[231] **David Melding:** That is the second time that you have put that on record. I did not interrupt you, because I realise how passionately these views are held. However, I do remind Members that there are a lot of things of a technical, constitutional nature that we need to scrutinise, so I would rather that you focus on some of those matters. Also, in the answers, not much rhetoric, please.

[232] **William Powell:** Thank you very much, Chair. The only reassurance that I was seeking from you with the preamble that provoked your intervention, Minister, was that due consideration will be given to the appropriate representation of unions—both the farming unions and the appropriate unions of this sector of agricultural workers—in the constitution of such a panel in the future. At present, there is no such undertaking and there is considerable alarm out there. Farming unions have a recent memory of being excluded from some of your important advisory panels, such as the RDP panel, and therefore if excess power is vested without appropriate safeguards, my contention would be that there will be cause for concern.

[233] **Alun Davies:** It is not correct to say that there is great concern out there. That is not the situation at all. The vast majority of the agriculture community in Wales opposed the abolition of the AWB and accept and support the position that I am proposing. In fact, Bill, your own farming union supports the Government on this matter, which is something that I am sure that you will accept. I notice that you do accept it. So, there is not that large-scale opposition out there. In fact, there is large-scale support for this point of view. Of course, we will ensure that there is fair representation from all sectors of the agriculture community. By that, I do mean both farming unions; however, I also mean Unite and other important stakeholders. I can give that undertaking to the committee this afternoon.

[234] **David Melding:** Minister, how confident are you that the provisions in sections 9 and 10 of the Bill, relating to the National Minimum Wage Act 1998 and the Working Time Regulations 1998, are within the Assembly’s legislative competence?

[235] **Alun Davies:** I will ask Victoria to respond.

[236] **Ms Davies:** The Welsh Government position is that all of the provisions within this Bill are within the legislative competence of the National Assembly for Wales because of section 108 of and Schedule 7 to the Government of Wales Act 2006.

[237] **David Melding:** Could you explain what those are?

[238] **Ms Davies:** Yes. Section 108 of and Schedule 7 to the Act describe the scope of the National Assembly for Wales’s legislative competence. The provision is within competence if it relates to one or more of the subjects that are listed in Part 1 of Schedule 7 and does not fall within any of the exceptions that are listed in that Part. Agriculture is a subject that is listed in

paragraph 1 of Schedule 7, and there is no express exception to competence that is engaged here. To determine whether provision relates to one or more of the subjects that are listed in Part 1 of Schedule 7, what is called the purpose test falls to be applied. That is found in section 108(7) of the Government of Wales Act 2006. That section states that the question of whether a provision relates to a subject or falls within an exception is to be determined by reference to the purpose of provision having regard to its effect in all the circumstances. The Welsh Government's position is that the provisions in the Bill relate to agriculture.

[239] **David Melding:** And not employment law.

[240] **Ms Davies:** And not employment law.

[241] **David Melding:** It is incidentally connected to employment.

[242] **Ms Davies:** Indeed. Employment law is not an exception that is listed in Schedule 7. We say that the purpose of the provisions in this Bill relates to agriculture. The purpose of the Bill is to provide an important structural foundation for an effective and efficient agriculture sector, with an ample supply of well-trained and well-motivated agriculture workers who are able to view agriculture as a long-term career option.

[243] **David Melding:** Minister, I think that that eloquently expresses your position.

[244] **Alun Davies:** It certainly does, and I concur with every word.

[245] **David Melding:** That is splendid. I now call on Suzy Davies.

[246] **Suzy Davies:** I will go back to a series of questions that were prompted by Jocelyn's question about the sunset clause and whether this piece of legislation that is before us now is the best law that it can be. Without a sunset clause it needs to be the best law that it possibly can be. I understand what you told us earlier that you want this Bill to at least have the capacity to include all those ambitions that you have for training and a better trained workforce. I am absolutely fine with that as an ambition. However, you will also have heard the concerns that the actual mechanism for setting up anything to do with this Act, really, is dependent on the use of 'may' instead of 'must'. I have had a quick look through it and all the important clauses have the word 'may', rather than 'must'; the only 'must' seems to be in relation to third parties.

4.00 p.m.

[247] In which case, are you satisfied that a Bill that is predicated on your potential to set up certain structures, backed up by regulation rather than full scrutiny of the Assembly—because the regulations are a case of saying 'yes' or 'no'; we cannot amend them—includes so many criminal offences with a liability to convict, and on issues that do not relate to that skills agenda that you were talking about? Do you think that that is a fair balance in a Bill?

[248] **Alun Davies:** I think that it is a reasonable balance. One of the conversations that we will always have between the Government and the legislature is the extent to which powers are prescribed on the face of primary legislation and the extent to which powers are taken by Ministers to exercise in the way in which you describe. What I have sought to do in this legislation is to ensure that we use the affirmative mechanism far more than the negative mechanism, which provides the Assembly with far greater powers of scrutiny where that is necessary. I am prepared to accept amendments that you believe would further strengthen scrutiny where you believe that that is necessary. So, if you have proposals on that, Suzy, I am very happy for you as an individual or for the committee as a whole to make proposals on that. It is not my intention to avoid scrutiny—it was me who suggested to the Chair that I

appear today. It is not my intention to avoid scrutiny or to prevent scrutiny from taking place. So, if the committee has amendments that it would like to see to improve the levels of scrutiny, I am very happy to consider any of those amendments.

[249] **Suzy Davies:** Are you saying that you are in a position to bring forward draft regulations for the structure of this panel by the time that we will debate this matter?

[250] **Alun Davies:** No, I am not saying that. I am saying that I am prepared to consider amendments that the committee might make to this legislation to improve it.

[251] **Suzy Davies:** That this committee is in a position to make amendments by the day after tomorrow—

[252] **David Melding:** We can make recommendations.

[253] **Alun Davies:** You can make recommendations. We do not have regulations. Just to clarify your point—

[254] **Suzy Davies:** It is regulations that you cannot amend; that was my point.

[255] **Alun Davies:** We do not have draft regulations to do this at the moment; we will need to do that subsequent to next week.

[256] **Suzy Davies:** You still have not answered my point about the fact that you are very clear on what constitutes a criminal offence in the latter half of this particular Bill—it might be section 4 where you are very clear, and you have a little piece of algebra that explains what constitutes ‘minimum rates’. Going back to the central question about the balance of the Bill, why is there so much detail about that sort of subject, when we cannot even be sure that this panel will happen?

[257] **Alun Davies:** I would say to you that the panel will happen, and we will create such a panel in order to deliver this piece of legislation. I understand the points that you and other Members have made in terms of the way in which some clauses have been worded and the way in which the panel is being created. However, I would say to you that I think that the first few clauses—first two clauses, certainly—of this legislation are very clear about the panel that we are looking to create, the way in which we will do that and the role that the panel will take. I understand that, as a Member, you would want greater certainty and that you would want to reduce the scope that a Minister would have in order to act by Order and by secondary legislation. I understand that, and I think that there is always that tension between the executive and the legislature. It is something that I asked Ministers about for four years when I was a member of this committee, and we had exactly those same conversations.

[258] There will be areas where I believe, as a Minister, that it is better to be able to act with the flexibility of regulations, rather than to prescribe precisely on the face of legislation. We will have a debate over that, and we will have disagreements. On this issue, we will ensure, through this piece of legislation, that there is far greater scrutiny of the agricultural wages Order by this place or the Houses of Parliament than has ever happened before in Wales. There will be greater scrutiny as a consequence of this legislation than we have had in the six years that I have been a Member of this place, when there has been no scrutiny at all of these matters.

[259] **Suzy Davies:** May I bring one particular thing to your attention? If this Bill goes ahead, by the end of next week or by the time that it is given Royal Assent, it will be possible for somebody who does not give an agricultural worker a holiday to be liable for a criminal offence. However, by that time, we will not have an Order in place to protect the minimum

wage situation or the rights of workers, which are the reasons that you are bringing this Bill in.

[260] **Alun Davies:** The examples that you have given are the situation as it is today. We are not introducing new legislation in that sense. What we are doing is introducing legislation that will maintain the status quo—

[261] **Suzy Davies:** So, why is it in here at all, if there is existing legislation for it?

[262] **Alun Davies:** It is because it has been abolished now—

[263] **Suzy Davies:** That is the agricultural wages board.

[264] **Alun Davies:** Yes, and this is what will replace it. If you look at what is in here, you will see that this is the replacement for that mechanism. What you are reading here is the replacement for the agricultural wages Order and the sustaining legislation—the sustaining legislation has been abolished by the United Kingdom Government and the wages Order will be allowed to run out in October. What we are doing is setting up a process by which that legislation and that statutory structure are replaced. I understand that some people might not wish to do that—that is fine; that is the debate that we will have. However, what we are doing here, Suzy, is maintaining the status quo.

[265] **Suzy Davies:** Let me push you on another specific example—if that is okay, Chair. It is section 2. You have already explained that you do not want certain things on the face of the Bill—we have disagreements about that in particular—but the existing legislation on the agricultural wages board includes provisions on how to appoint its equivalent of your advisory panel on the face of the legislation. If you are planning to bring in legislation that is better, would you not have thought that, if it was good enough for that legislation, it is probably good enough for this Bill, bearing in mind that what you have replaced it with is something about which we are far more uncertain?

[266] **Alun Davies:** We will bring forward Orders and secondary legislation that you can examine, which will provide a process by which that is completed and done. We already, of course, have a number of different statutory and non-statutory processes in place that guide Ministers in the appointment of different individuals to advise Government. So, we already have in place a great deal of the information and the structures that you seek. What we will do, as a consequence of this legislation, is to put a new structure in place—a piece of secondary legislation—that will achieve the objectives that you have laid out. You will have the opportunity to scrutinise that and you will have the opportunity to vote upon it. Currently, you do not have the opportunity either to scrutinise or to vote upon any appointments made to the AWB, so you will have more opportunity to do that following this legislation than you have today.

[267] **Suzy Davies:** Perhaps they did in 1948, so they were able to vote on—

[268] **David Melding:** We do not need to be as deeply retrospective as that.

[269] **Suzy Davies:** Let us not go back 65 years; it is a little unfair.

[270] **Alun Davies:** People have been appointed to the AWB since 1948. It is not still working with the same membership.

[271] **Suzy Davies:** No, but it was voted on. May I move on, please?

[272] **Alun Davies:** This is an important point, Suzy. You will have the opportunity to vote

on and to examine these matters. We are using the affirmative process deliberately to open up the Government and the actions of Ministers to scrutiny and to provide you with the opportunity to vote on these matters if you so wish.

[273] **Suzy Davies:** Scrutiny, but not change, and that is a significant difference. Can you envisage a situation whereby you might want to abolish the advisory panel, bearing in mind that there is no sunset clause?

[274] **Alun Davies:** No, not at the moment, but—

[275] **Suzy Davies:** Is that why there is no power in the Bill to be able to abolish it?

[276] **Alun Davies:** I do not foresee the requirement to do that at the moment, but, of course, subsequent primary legislation can abolish it, as it can any other piece of legislation.

[277] **Suzy Davies:** So, you still think that this is the best Bill that it could be.

[278] **Alun Davies:** I think that this is the best Bill that we have, yes.

[279] **David Melding:** I have to say that I thought that you could abolish it, through this legislation. Will your legal adviser just clarify that?

[280] **Ms Davies:** Section 2(1) gives the power to create the body by Order, and there is an implied power, by provision within the Interpretation Act 1978 that would allow you to abolish it, and it would be subject to the same scrutiny.

[281] **David Melding:** The Minister has clearly indicated that it is not his intention, anyway, but it could be the intention of a future Government or Minister.

[282] **Jocelyn Davies:** Coming to the wages Orders, perhaps you would explain why the Bill confers, in section 3, powers on Welsh Ministers to make the wages Orders, rather than the provisions that were contained in the 1948 Act, which conferred those powers on the wages board?

[283] **Alun Davies:** In terms of why we do that, it is to enable the Minister to take responsibility for those Orders. They will be done by the Welsh Government, by the Minister, in order to ensure that there is that level of accountability.

[284] **Jocelyn Davies:** I see. So, you said earlier that you wanted to maintain the status quo, and this is a change. Instead of the board setting the wages in an Order, you, as the Minister, or rather the Welsh Government, will maintain that. Are you not concerned—

[285] **Alun Davies:** Please do not make an assertion and not allow me to challenge it. We are doing it in the name of Welsh Ministers, so Welsh Ministers will be accountable for that. However, we would clearly be taking the public advice of the advisory panel for Wales. We would have to explain very clearly, and it would add additional accountability for you as AMs, the Minister's decision to accept or not the decisions of the panel.

[286] **Jocelyn Davies:** Minister, my point was that it is not the same. You said that you wanted to maintain the status quo. I said that this is a change. There was no criticism in that. It is just that it is a change. You explain that you feel that it would be a change for the better—that you would take advice and that you would then be accountable for it—but it is a change. Are you not concerned that that might politicise the setting of agricultural wages across Wales?

[287] **Alun Davies:** I hope not. I understand the point that you are making, Jocelyn. I did not understand it as a criticism, but I wanted to ensure that there is recognition that we are trying to increase levels of scrutiny here, and not simply avoid scrutiny. In terms of where we are today, we are trying to translate the current structures into new structures and doing that with a minimum of disruption, while maintaining the status quo. In creating a Welsh system, or a Welsh structure, clearly we will have to make amendments around that in order to deliver, hopefully, a similar structure within a different context. I am seeking to do this in a far more open way than is being done at present. So, there will be more opportunities for scrutiny of the Minister and of the Order. We will ensure that that that is done.

[288] **Jocelyn Davies:** In scrutinising the Minister, I am just suggesting that to say that something is maintaining the status quo when it is different is not exactly accurate.

[289] **Alun Davies:** We have tried to maintain the status quo.

[290] **Jocelyn Davies:** I am not criticising; I am just saying that it is not a true reflection—this does not maintain the status quo. This allows the Minister to set the wages. I will repeat my question: do you not think that that might unnecessarily politicise the setting of agricultural wages in Wales? I accept what you are saying—that we will be able to see it and that it will be more open—but will it politicise it?

[291] **Alun Davies:** That is not the intention. I hope that that will not occur. In terms of agricultural businesses and the agricultural industry, we are seeking to maintain the status quo as far as is possible, and I think that we are doing that. If you are running a farm business in Wales, I hope that what we are doing here is ensuring that there will be very little, if any, change in the operation of that farm business. We are seeking to maintain the status quo in terms of the impact that it will have on the agricultural industry, and seeking to do so in a way that enhances and strengthens scrutiny. To answer your question, it is not my intention to politicise the issue of wages paid to agricultural workers. This is something for which I am seeking legislative agreement from the National Assembly, to strengthen Welsh agriculture and to strengthen Welsh agricultural businesses.

[292] **Jocelyn Davies:** The—

[293] **David Melding:** May I—

[294] **Jocelyn Davies:** I just wanted to ask one more question.

[295] **David Melding:** Okay, and then I will say what I wanted to say.

[296] **Jocelyn Davies:** In relation to the setting of the wages by the Minister, rather than by the board, as it was in the past, is this something that the unions want?

[297] **David Melding:** What I was going to say is that we are drifting into policy considerations here. I am a fairly lax Chair sometimes, I think—if I can self-criticise—so I will allow it. I like us to be able to develop points. However, there are real issues of technical scrutiny that we need to get to as well, so please answer briefly, Minister.

4.15 p.m.

[298] **Alun Davies:** ‘Yes’ is the answer to your question. The Unite union is very strongly in favour of what we are doing, as is the FUW and the young farmers clubs; the NFU has said that it opposes what we are doing, but it has not raised this with me at a single formal or informal meeting that we have had in the last two years. So, I suspect that its objection might not be as firmly held as, perhaps, some might believe.

[299] **David Melding:** Minister, you have said that you believe that an Order-making power here will increase the scrutiny of these matters, but you are going to use the negative procedure. That seems slightly contradictory.

[300] **Alun Davies:** In terms of placing the Order on the agenda of the National Assembly, it will be there—

[301] **David Melding:** I know what the negative procedure is, Minister, but if scrutiny is the purpose, why is it not subject to the affirmative procedure?

[302] **Ms Davies:** The current Order, the agricultural—

[303] **David Melding:** I know, and that is marvellous, but why not improve it? The Minister has said that he wants to improve scrutiny, so why leave it as the negative procedure?

[304] **Ms Davies:** The current Order is about 64 pages long. It is a very technical Order—

[305] **David Melding:** However, the Minister wants scrutiny, and he did not tell us that it was a technical issue. I am sorry to be so firm, but if you are giving evidence, you must expect this.

[306] **Alun Davies:** Absolutely; I am very relaxed about it, Chair. In terms of the process that we choose to propose for different elements of the legislation, some will be done under the affirmative procedure and others will be done under the negative procedure. We choose what we believe is the most appropriate process to propose for each different element of it.

[307] **David Melding:** It is our job to scrutinise it.

[308] **Alun Davies:** It is absolutely your job to scrutinise it. We believe that, where we are proposing a technical document, which is a very complex document, as Victoria has outlined, and for some of the reasons that Jocelyn has outlined in terms of the debate that would surround such an Order, the negative procedure is the best to use and to employ in this particular instance.

[309] **David Melding:** Presumably, because it was so technical, it was left to the panel under the previous regime. We are going around and around in circles here.

[310] **Alun Davies:** It is a fair point, and it is an understandable point. We understand that, if a specialist panel—a group of people—makes a recommendation to the Minister, the Minister then has a very clear responsibility either to accept that advice or not to accept that advice. The process that we have put in place here means that Members here, for the first time, will be able to see both that evidence and understand the decisions of the Minister. I am more than happy to ensure that the evidence, the advice to the Minister, and then the ministerial decision, are made public and are available for scrutiny both here, formally, within the National Assembly for Wales, but perhaps equally as importantly, out there in the country as well.

[311] **Jocelyn Davies:** I would just like to raise the issue of the consultation, Chair. The Bill does not include the provisions in terms of the procedure or the minimum time frame for consultation with section 2 and section 3 Orders.

[312] **Alun Davies:** We expect the panel to operate in such a way as to ensure that consultation is not something that happens once a year, but that it is something that happens

as a part of its activities. So, we did not feel that it was necessary to put that on the face of the legislation.

[313] **Jocelyn Davies:** However, you will be making the section 3 Orders, not the panel.

[314] **Alun Davies:** We understand that they will be subject to widespread debate, so we will be very happy not to put those on the face of the legislation.

[315] **William Powell:** Minister, one issue on which you have been very consistent during your tenure of office to date has been reducing the burden of bureaucracy on farm businesses, and the Working Smarter agenda has been very much at the heart of that. In that context, can you explain what type of record-keeping requirements you anticipate Welsh Ministers will be placing on farm businesses in future, by regulation under section 6, and why that particular important aspect is not included on the face of the Bill?

[316] **Alun Davies:** We will expect farming businesses to maintain the sort of records that any business would maintain in terms of the payment and remuneration of staff and employees. We would expect that any good business would be doing that. You are very right when you speak about the Working Smarter agenda. We started two years ago on the process of reducing unnecessary regulation, administration and bureaucracy, and of working with the agricultural industry to improve the way that business is done. This is a key part of that, because any of us who have run small businesses will know that some of the most difficult issues that we have to deal with are those around staffing. Let me tell you, when I was running a small business before I was elected, I would have given my right arm to have an AWB to resolve staffing issues. That is possibly why the AWB has been so popular among the farming community and why people do not see the need for its abolition. So, record keeping is something that we would expect all small businesses to maintain. It is done in a way to ensure the protection of both the employer and the employee.

[317] **William Powell:** That reassurance will be welcome. Could you please reassure those farm businesses whose operations straddle the English and Welsh border that some account will be taken of their situations in respect of this important matter of record keeping, because it introduces an extra layer of complexity in the bureaucracy that they would face?

[318] **Alun Davies:** No. That is not true at all and should not be true. Those businesses should always maintain records in terms of employment of staff. That should happen in all businesses whether they are on this side of the border, or the other side. We are very used—I do not know whether Gary wants to come in here—to dealing in agriculture on both sides of the border. There are sometimes wrinkles, but generally, things tend to work very easily either side of the border, and I would not anticipate any difficulties as a consequence of this legislation.

[319] **Mr Haggaty:** To add to that, in terms of the cross-border issues, bear in mind that somebody previously mentioned the experience of Scotland, which, of course, already has those issues in terms of its AWB with certain farms that straddle the English and Scottish border. We will very much look at this in the context of, ‘Where is the business registered?’ That will have primacy in terms of how we handle this issue, but, obviously, there will need to be conversations in that respect.

[320] **William Powell:** That is useful; thank you.

[321] **David Melding:** Minister, we have not quite got through all of the material, but I do not think that we need to eat the whole cow to know whether the steak is any good. However, could you give us an assurance—you did hint at this in an earlier answer—that all of the SIs will be in place by 1 October?

[322] **Alun Davies:** Yes.

[323] **David Melding:** Thank you very much for your evidence, and to your officials. I hope that it was not too bruising, but these are quite complex matters, and we do not quite have the time that we normally would have to examine them all. However, we are very grateful for your participation this afternoon. Thank you for the double-header, or whatever I should call the two sessions that you have had to do this afternoon.

[324] **Alun Davies:** I would like to thank the committee as well. If the committee wishes to make recommendations to the Government that would allow us to make Government amendments to this legislation, I would be more than happy to take a report and recommendations from the committee, but we would need to receive those in time for us to make any amendments that the committee wishes to make.

[325] **David Melding:** I should tell everyone that, given the sensitivity and importance of this subject, I understand that the Record of Proceedings staff hope to provide the transcript by tomorrow. I am sure that that will help all of our colleagues as well in their determination of this matter. Thank you very much.

4.23 p.m.

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

[326] **David Melding:** We now move to the instruments that raise no reporting issues under Standing Order Nos. 21.2 or 21.3. They are listed for you. There are three negative and one affirmative. Do we have any issues? I see that you are all satisfied with these. There is one paper to note from an organisation that is concerned with puppy breeding, I think. Is that right?

[327] **Mr Williams:** Yes. It is from CARIAD.

[328] **David Melding:** CARIAD is the organisation. It is there for you to note. Are there any further comments? I see that there are not.

4.24 p.m.

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

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

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

[330] Are there any objections? I see that there are no objections.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 4.24 p.m.*  
*The public part of the meeting ended at 4.24 p.m.*