



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

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

Dydd Llun, 25 Tachwedd 2013
Monday, 25 November 2013

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

The proceedings are reported in the language in which they were spoken in the committee. In
addition, a transcription of the simultaneous interpretation is included.

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

Suzy Davies

Ceidwadwyr Cymreig

Welsh Conservatives

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

Eraill yn bresennol
Others in attendance

Tim Hemmings	Pennaeth yr Undeb Ewropeaidd-Mewnol, y Swyddfa Dramor a Chymanwlad Head of EU-Internal; Foreign and Commonwealth Office
Andy Hood	Dirprwy Gyfarwyddwr Cydbwysedd y Cymwyseddau, Sefydliadau'r UE a Gweinyddiaethau Datganoledig, Swyddfa'r Cabinet Deputy Director Balance of Competences, EU Institutions and Devolved Administrations, Cabinet Office
Y Gwir Anrhydeddus/Rt Hon David Lidington	Gweinidog Gwladol y Deyrnas Unedig dros Ewrop Minister of State for Europe

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Francesca Rowley	Dirprwy Glerc Deputy Clerk
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 15:01.
The meeting began at 15:01.

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

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. We do not expect a routine fire drill, so, if we hear the bell, please follow the instructions of the ushers, who will help us leave the building safely. Please switch off all mobile phones and other electronic equipment completely, as, even on silent, it will interfere with the broadcasting. These proceedings will be conducted in Welsh and English, and, when Welsh is spoken, there is a translation on channel 1. If you are hard of hearing, you will get an amplification of our proceedings on channel 0.

15:02

**Tystiolaeth mewn perthynas â'r Ymchwiliad i Rôl Cymru ym Mhroses yr UE o
Wneud Penderfyniadau
Evidence in relation to the Inquiry into Wales's Role in the EU Decision-making
Process**

[2] **David Melding:** I am delighted to welcome the Rt Hon David Lidington MP, Minister of State for Europe, and his two officials. Welcome to you all. You have paid us a great compliment in appearing in person, David, this afternoon. We had perhaps anticipated a video link, with all the technological challenges that poses, but we do appreciate the trouble you have taken, both in agreeing to give evidence and to be here in Cardiff.

[3] I will start the questioning, and then my colleagues will have blocks of questions to put to you. We have conducted a fair amount of evidence, and there are quite a lot of questions to get through, so I would appreciate Members being fairly snappy. I always encourage responses that are as succinct as possible as well.

[4] Minister, I wonder if, by way of introduction, you could just give us the general framework that you see from the Foreign and Commonwealth Office as to how you relate on European matters that need to be discussed both with other departments in Whitehall, and also with the devolved administrations.

[5] **Mr Lidington:** Thank you, Chairman. I think this is an arrangement that, to work well, needs to operate and be seen to operate right across Government departments in Whitehall for them to each see their duty to engage with the devolved administrations as a mainstream part of the way they handle European Union business. So, we have the regular meetings of the joint ministerial committee on Europe, which either the Foreign Secretary or I chair. That provides opportunities for Ministers from the devolved administrations and Westminster to sit around the table together. I think that, at an operational level, the key to the relationship is the duty that is required of every Whitehall department to consult, and consult seriously, the devolved administrations about all areas of EU policy and decision making that impinge upon devolved responsibilities. This is triggered when a proposal comes out of Brussels that then results in an explanatory memorandum having to be commissioned for Parliament. At that point, there is formal notification of the devolved administrations, and, when the relevant Minister, whichever department it is, has to present his or her proposed negotiating position to the European Affairs Committee of Cabinet, there is an explicit paragraph—it is part of the fiche of that negotiating position—to ask whether there are devolved interests involved and, if there are, what the views of the relevant devolved administrations are about the pros and cons of the measure and whether there are any problems in terms of the proposed negotiating position with the expressed interests of the devolved administrations. That is the formal process. Clearly, that needs to be underpinned by a culture of regular contact and interaction, not just at ministerial level, but at official level as well.

[6] **David Melding:** Thank you for the general introduction, Minister; it gives us a good starting point. Members will now take us through the more specific points, and I will ask Simon Thomas to start.

[7] **Simon Thomas:** Thank you, Chair. If I can, I will ask questions in Welsh, Minister.

[8] Croeso i Gymru. Diolch yn fawr am y cyfle i ofyn cwestiynau, Weinidog. Welcome to Wales. Thank you for taking our questions, Minister.

[9] Sut mae'r ymwneud â Llywodraeth Cymru yn cymharu â'r gwaith tebyg rydych How does your involvement with the Welsh Government compare with similar work that

yn ei wneud â Llywodraeth yr Alban a'r weinyddiaeth yng Ngogledd Iwerddon? A oes cymhariaeth i'w gwneud yno? A yw pethau'n gweithio'n debyg?

you undertake with the Scottish Government and the administration in Northern Ireland? Can a direct comparison be drawn? Do things work in a similar way?

[10] **Mr Lidington:** As far as I am concerned, the work happens in a very similar way. What I find is that a great deal depends on where the particular interests and priorities of the three devolved administrations lie. So, to give one example, when negotiations over the multi-annual financial framework were at their peak at Council level in the latter part of 2012, Alun Davies, who was then the Minister with responsibility here in Cardiff bay, was in regular contact with me. He came out to Brussels for a couple of general affairs Council meetings, so that he could make sure that I was completely up to date on where the Welsh Government was, in terms of its position. The Scottish Government has well-known particular interests in the EU's mackerel fisheries dispute with Iceland and Norway. There have been issues there that its Ministers have raised with me on that dossier. So, it varies issue by issue, but I certainly try to treat the three equally, and I can say that, after today, I will have visited all three devolved capitals and will have given evidence in this kind of committee session in all three during the course of 2013.

[11] **Simon Thomas:** O'r hyn rydych wedi ei ddweud, efallai na fyddwch yn cytuno â'r dystiolaeth rydym wedi ei derbyn gan yr Athro Michael Keating, a ddywedodd fod gweinyddiaethau datganoledig yn cael eu trin yn yr un ffordd ag adrannau o Lywodraeth San Steffan.

Simon Thomas: From what you have told us, you would perhaps disagree with the evidence that we received from Professor Michael Keating, who said that the devolved administrations are treated in the same way as departments of the Westminster Government.

[12] **Mr Lidington:** I am not sure whether he meant that as a compliment or a criticism. [*Laughter.*]

[13] **Simon Thomas:** I did not interpret it as a compliment. [*Laughter.*]

[14] **Mr Lidington:** It is not a situation that I recognise. Clearly, they are different political entities. They are accountable to directly elected parliaments or assemblies in the three devolved countries of the UK, and Ministers of the devolved administrations are not collectively responsible for UK Government decisions in the way that the heads of the different UK Government departments clearly are. However, there is one sense in which I would certainly hope to see the relationship between the devolved administrations and Whitehall resemble that of a well-functioning inter-departmental relationship, and it is simply in the frequency and intensity of contact and engagement. I am very strongly of the view that it is simply not enough to wait for a quarterly joint ministerial committee meeting. For the relationships to work effectively, and to serve the mutual interests of us all, they need to be ongoing, day by day, week by week, and I am increasingly encouraged that this is the working culture that is developing.

[15] **Simon Thomas:** I just want to follow up on this. An example today is that our Deputy Minister for Skills and Technology is, I believe, representing the UK Government's position on a higher education discussion in Brussels—I do not know the details, but I follow him on Twitter and I saw that he was speaking up for the UK there. How does it work, therefore, in the light of what you have just said about the lead role that Whitehall departments usually play to ensure that, when devolved administrations do that, Whitehall understands what is being done and that, vice versa, there is a read-across across Whitehall of the positions of the devolved Governments and that they are sometimes empowered properly to speak on behalf of the UK as a whole?

[16] **Mr Lidington:** I do not know the precise circumstances—

[17] **Simon Thomas:** No, it was just an example.

[18] **Mr Lidington:** It is a telling illustration, because the way in which we operate in terms of representation and taking the UK seat in Brussels is this: clearly, as the UK is the member state of the European Union, it is for Ministers in the UK Government to take responsibility for what is said on behalf of the UK there. However, when the current coalition came into office in London, we took a very deliberate decision—this was something that the Prime Minister felt strongly about—that we wanted to try to show that we were very serious about making the devolved settlements work, and work more effectively, on the basis of greater mutual trust than had sometimes been the case in the past, and that one element of this would be that we would seek always to make it possible for devolved administrations to attend Brussels when business relevant to them was being discussed. As far as taking the chair at the formal council session is concerned, the arrangement that we have is that it is the decision of the relevant UK Minister at the time but that, where one of the devolved administrations wishes to take the chair and there is good reason to do so—perhaps for a particular item, because that item is of unique importance to that devolved administration and not so much to the rest of the UK—we should agree to that happening. However, because it is a UK seat, the line to be taken is agreed in advance, and that is the UK's line, and the devolved Minister taking that seat and speaking on behalf of the UK as a whole to the rest of the EU is expressing that agreed UK position, and sticks to that.

[19] **Simon Thomas:** I do not expect you to name and shame in any way, but, since you have talked about the change of emphasis with the coalition Government, do you think that the devolved Governments have taken full advantage of that opportunity?

[20] **Mr Lidington:** For the most part, they have. It has been a learning process for all of us—the Westminster Government and devolved Governments alike—because we have all been getting used to the devolved administrations' settlements and the way in which they work at a European level and how we apply those at a European level. I am sure that there are further improvements that we can still make. It seems to me that it is of common interest that we work on the basis of mutual trust wherever possible.

[21] **David Melding:** Julie James will take us on.

[22] **Julie James:** Thank you, Chair. Good afternoon, it is nice to see you here.

[23] Looking at some of the more structured ways in which we interact, we have had a lot of evidence about informal arrangements and so on; you have said a little bit about that. However, looking at the structure of the European Affairs Committee and the European Affairs Sub-committee—the committee is chaired but the Foreign Secretary, while you chair the sub-committee—can you tell us a little more about how those work in that formal setting, how the agendas are compiled, and that sort of thing?

[24] **Mr Lidington:** Like all Cabinet committees, their staffing, agendas and paperwork are prepared by the Cabinet Office. The membership of both committees consists of roughly two-thirds Conservative and one-third Liberal Democrat Ministers, in line with the formula agreed when the coalition was created. The work of the European Affairs Committee is to agree the collective UK negotiating position on all EU dossiers.

15:15

[25] For the majority of such dossiers, that agreement takes place on the basis of going around the table; there is no need for a formal discussion. I think that it would be completely

unworkable to have oral discussions about every such item. However, the committee will have discussions about some of the most contentious or more important issues; for example, the committee had a long meeting a couple of years ago to discuss the overall UK negotiating framework for the multi-annual financial framework negotiations, and agreed that on behalf of the Government as a whole.

[26] The sub-committee that I chair will carry out any work that the EAC asks us to do, but we have also tried to develop particular responsibility for two items. One is key bilateral relationships; so, for example, we will always have a forward look at the forthcoming presidencies of the EU and consider what the priorities of that presidency are likely to be, which UK interests are at stake there and what opportunities there are for the UK. The sub-committee will also look at some of the ongoing thematic issues and ask where we are in terms of, for the sake of argument, the digital single market, what the state of play is, and what more the UK needs to do to see its development in a way that we think would secure the best outcomes.

[27] **Julie James:** Thank you very much for that. I think that I understand how that works. Do you have any sort of conflict resolution process? Quite often we have an item—for example, fishing policy—where Scotland and Wales do not agree with each other in any way. What is the mechanism for discussing issues where you have disagreement?

[28] **Mr Lidington:** Ultimately, this is a UK Government decision that the UK Government takes, having consulted the devolved administrations. It will be for the UK Government Ministers, if necessary, after collective discussion in Whitehall, to work out the best way to try to reconcile those interests. Looking at the least contentious issue, which was the allocation of structural funds within the UK, as the committee will know, the plans presented by the Commission would have resulted in some very drastic cuts of over 20% to allocations within Wales. The decision, which my colleagues in the Department for Business, Innovation and Skills and the Department for Communities and Local Government finally took with collective support, was that a 5% cut should be applied to each country within the UK as a form of rough justice, given all of the circumstances.

[29] **Julie James:** That is very helpful. We are just slightly concerned because, on the face of it, we have representation from Scotland on that committee and not from Wales. I believe that the Secretary of State for Scotland is a member, while the Secretary of State for Wales is not a member, for example.

[30] **Mr Lidington:** The Secretary of State for Wales would always have the right to be consulted if there was something that involved Welsh interests directly. We occasionally have meetings of the European Affairs Committee where Ministers are invited to attend, perhaps for particular items of relevance to them although they are not full or regular members of that committee. However, I will come back to the point that I made earlier, which is that, at the stage when a negotiating position is being prepared, it is the duty of the lead department in all cases to consider whether devolved interests are at stake and, if so, to ensure that they fairly assess and present the views and interests of the three devolved administrations. So, that is then in the paper that goes to Ministers around the Cabinet committee table.

[31] **Julie James:** Thank you for that. Is that the memorandum of understanding that we have been told about—the concordat for how you reach the UK line—or is that a slightly different parallel process?

[32] **Mr Lidington:** I think that that is an example of good practice. My memory of the wording of the concordat—I do not have it in front of me—is that that is more about representation at councils than about the internal workings of how we take decisions within the UK Government. Andy, did you want to add anything to that?

[33] **Mr Hood:** Just briefly, the Minister is absolutely right; it covers both. In fact, what it says at the beginning is that it effectively describes a process that the Minister has talked about already, which is that departments should be engaging with devolved administrations in the formulation of the policy, of the objectives and of the criteria that we want to take a particular policy forward. So, it should be there throughout the entire policy-making and delivery process. It also, of course, engages on the representation and delivery of these things, which was mentioned earlier. So, it covers the whole range of the policy process.

[34] **Julie James:** Our Minister, Alun Davies, was very complimentary about the way that the UK line was developed and his ability to play a role in that, in much the same way as has been described by both of you. I suppose that we are just asking whether that is down to personal relationships, or whether it is enshrined in some more formal arrangements, so that, if you had bad personal chemistry between two people, you would still have some mechanism for making it work.

[35] **Mr Lidington:** We are all elected politicians. Everything in politics depends, to some extent, on personal relationships. A poisonous personal relationship can make life difficult, however good your institutional structures. All of us, in our different political parties, have probably seen evidence of both the good and the bad in terms of political relationships. I am always pleased when the personal relationships work out well; that is, inevitably, of importance. However, the more we can entrench this habit of working together and consulting—I am not saying that we are going to agree 100% every single time, but it is about the habit of working together—and if that becomes second nature, both to the devolved administrations and to all Whitehall departments, that is, I think, the best safeguard for the future.

[36] **Julie James:** Thank you very much for that.

[37] **David Melding:** Eluned Parrott will now take us forward.

[38] **Eluned Parrott:** Thank you, Chair. Minister, I would like to ask a few questions about the review of the balance of competencies between the UK and the EU, which, I assume, must be in your hands, largely if not entirely. In launching that review, the accompanying command paper did say that the devolved administrations will be closely involved in that process. I wonder whether you can explain to us how that has been achieved and to what extent you think it has been equally successful between the devolved administrations.

[39] **Mr Lidington:** Thank you. When we first launched the balance of competencies review in July 2012, William Hague wrote to Alun Davies to formally tell him about the scope of the review and its timetable, and to invite engagement. The system that we have in place—this is required by the terms agreed by the European Affairs Committee as to how the review should be conducted—is that the Minister at the lead department for each individual report has a responsibility to write to his or her counterparts in the devolved administrations to tell them about the launch of each call for evidence and to invite views. Not all of the reports, of course, cover devolved responsibilities. In the first semester, for example, we had one on foreign affairs. However, with any report that touches on a responsibility that is devolved to Wales, the relevant Minister in London should write to his or her Welsh counterpart to tell them about the launch of the call for evidence and to invite them to provide evidence. After the first lot of reports was published in July, I wrote to Jane Hutt to draw her attention to the publication. The Welsh Government in particular submitted some very telling evidence to the report on animal health and welfare and food safety, and also to the report on health policy. So, there was an active contribution from the Welsh Government.

[40] **Eluned Parrott:** If the responsibility is down to the individual departments—you have already said that that is variable to a certain extent in terms of the relationships that they have built up over a period of time—have you been content with the level of engagement across the board and across the subjects that are devolved, or have you not specifically made an assessment of that?

[41] **Mr Lidington:** I have not made a specific assessment. I have had, so far, no Minister from any of the devolved administrations on the phone to me, or at the last meeting of the JMCE, complaining about the way in which this had been handled. Clearly, if there were a problem, then we would want to look into that urgently. This is a matter of alerting the devolved administrations, making sure they know that a particular subject is being considered, and inviting them to submit evidence.

[42] **Eluned Parrott:** So, is it an invitation to engage, rather than necessarily a proactive conversation, would you say?

[43] **Mr Lidington:** I would dispute that those are alternatives. It is for the Welsh Government and the other devolved administrations to decide how detailed and thorough they want a particular representation to be in any one case. Of course, there are reports that do not lead to new policy conclusions beyond those that the coalition Government has already decided upon. They are expressly reports that aim to summarise the current balance of competence as set out in the treaties and developed by the jurisprudence of the Court of Justice of the European Union, and to assess the experience, both good and ill, of business organisations, individual companies, non-governmental organisations, political parties, devolved administrations and environmental and other pressure groups about how the current balance has worked out in practice. We invite, in each report, contributors to say where they feel that European action has been beneficial, where they think it has been harmful, where they might like to see more done at European level and where they might like to see yet less done at European level. The reports aim to provide an informed basis on which political parties and others can draw future policy conclusions and go out to put them to the electorate.

[44] **Mr Hood:** We have had very good and co-operative engagement with the devolved administrations across the board, in particular from colleagues in Cardiff. I was with two or three of them this morning, talking about the agriculture reports and the upcoming cohesion report, and drawing in evidence. They are looking at engaging, both in providing evidence from the Welsh Government and in talking with departments directly around what the contribution would be around the stakeholders that they see regularly. The key part, as the Minister said, is about getting a view and a voice from across the board. It seems that, on many of these issues, the direct engagement is with Welsh Government officials and stakeholders here in Wales. They are working very well with colleagues in London, who they are on the phone to on a daily basis on a number of issues. They have worked, from what I have seen, very well so far.

[45] **Eluned Parrott:** Thank you; that is very helpful. I wonder if I might move forward a little to May this year, when you, Minister, gave a speech in Berlin on Europe's new balance. One of the things that you suggested in terms of achieving a more significant role for national parliaments in EU business was through more effective parliamentary scrutiny arrangements, to ensure that legislatures hold executives to account on EU business in the same way as they do for domestic business. Can you explore how you think those enhanced arrangements might be achieved in practice?

15:30

[46] **Mr Lidington:** I am going to be slightly cautious in this, as we are awaiting the imminent publication by the European Scrutiny Committee at Westminster of a report on the

process of scrutiny, which it has been compiling and on which it has been taking evidence for quite a long time. Clearly, changes to parliamentary scrutiny are ultimately something of which Parliament has ownership, rather than the Government. Subject to those caveats, let me suggest two things, which I have raised myself in the evidence that I gave to the European Scrutiny Committee.

[47] The first is that I think that a greater role could be played in London by the departmental select committees at Westminster. The European Scrutiny Committee does a fine job with the remit given to it, which is to look at documents—draft directives and draft regulations—coming out of Brussels. The departmental select committees also already have within their remit a duty to look at the work of the Government department for which they are responsible, including the European dimension of that Government department's work. I welcome more of the select committees—some do this already—looking strategically at, for example, a future Commission work programme and where that might lead to over not just the next 12 months, but five or 10-year periods. Alternatively, they could look in retrospect at how a particular directive or regulation has worked out in practice a few years on, taking evidence and making recommendations to the Government about whether or not to seek its reform or repeal.

[48] Secondly, I said to the scrutiny committee that I thought that there was a strong case for trying to find ways to provide a fast-track scrutiny process for a considerable volume of their work, which, to be honest, is pretty uncontroversial, either in party political or in UK/EU terms. This is routine business, sometimes involving quite minor amendments to existing EU legislation, in order to give them more time to focus upon those things that are of real political or legal significance. Ultimately, as I said, it is for Parliament to decide what it wants to do, and I will wait with interest to see what Bill Cash and his colleagues recommend.

[49] **Eluned Parrott:** Thank you, Minister. Have you consulted either the devolved Governments or, indeed, the devolved legislatures over this proposal to improve the scrutiny processes?

[50] **Mr Lidington:** No, because this is essentially a matter of how the scrutiny process is exercised by Parliament in Westminster on behalf of the United Kingdom as a whole. Clearly, it is for each of the devolved parliaments and assemblies to decide what arrangement of its own it wants to have in place to look in particular at how devolved interests in Europe are being managed, and how European legislation is being implemented by a devolved administration at home.

[51] **Eluned Parrott:** In that same speech, you also discussed the subsidiarity issues. You said that there are things that we can do at EU level to ensure greater respect for the principles of subsidiarity and proportionality and that national parliaments have a key role to play here. How do you feel that—again, looking at subsidiarity in particular—the devolved legislatures can be more involved and more effectively engaged in that process as well?

[52] **Mr Lidington:** I think that there are a couple of dimensions to this. Obviously, it is a matter for you here in the Assembly and for the Welsh people to decide whether there are improvements that you want to make. There is a linked debate about the scope of devolution itself, which the Secretary of State's announcement on the Silk reforms last week took a significant step further. In terms of Brussels, I would encourage the devolved administrations to make sure that their links with the UK representation in Brussels are as strong as they possibly can be. The Welsh Government does have a pretty good team out in Brussels and it does link in to the UK Representation to the EU. It seems to me that it is that relationship at the Brussels level that is one of the key elements in making sure that the devolved voice is properly taken into account.

[53] **David Melding:** Suzy Davies will take us forward now.

[54] **Suzy Davies:** Minister, I would like to start by asking a question on subsidiarity. Do you, as a matter of course, raise issues of subsidiarity with the devolved administrations? If so, how do you do that? I am conscious that we have an eight-week warning system; does anything get missed?

[55] **Mr Lidington:** No, because on the fiche for each dossier, there is a paragraph on subsidiarity as well as a paragraph for devolved responsibilities. So, if any element of a particular EU proposal touches upon devolved interests in any way, if our system is working as it is designed to do, that will be identified immediately, and Wales, Scotland or Northern Ireland, as appropriate, will be properly consulted and their views will be fed into the decision-making process at Whitehall.

[56] The macro-level debate about subsidiarity within the EU at the moment is about developing the principle of the right level at which action should be taken—EU, national, regional and local. The key debate to which my speech in Berlin was a contribution is about whether the current democratic deficit in the European Union and the degree of public discontent that we see in so many countries about the remoteness and unaccountability of EU-level decisions is best addressed by additional powers for the European Parliament, which is what some politicians quite openly and honourably argue. Others, like me, believe that the answer lies more in providing a stronger voice for national parliaments in holding European decisions to account.

[57] **Suzy Davies:** Thank you for that answer. I would like to take you back to formal and informal processes and draft European legislation. You have explained that the specific UK department will take the lead on taking a piece of legislation through as far as Cabinet; it consults duly with the devolved administrations and, perhaps, takes evidence from a select committee. However, by the time it gets to Cabinet as an agreed position, we have an explanatory memorandum; how is that put together? What level of influence do the devolved Governments have on that?

[58] **Mr Lidington:** May I ask Tim Hemmings, who is the head of the EU-Internal department in the FCO, to respond as to how the technical process works and how our EMs are put together?

[59] **Suzy Davies:** By all means; as simply as possible, please.

[60] **Mr Hemmings:** The honest answer is that it is not exactly the same with every piece of legislation, but what we require in the explanatory memorandum, by having that section for people to complete, is that people have thought about it and consulted. So, the smoothest way for an EM to go through would be to say, 'We have this issue that touches on devolved matters, we have consulted with the three devolved administrations, and they are content with the above approach'. That is the best way for a department to be able to, if you like, pass that hurdle in the simplest way. Sometimes, it will be more complex than that, but the guidance that we have given them is much more about early consultation. Usually, you have some sort of warning and advance knowledge before a Commission proposal comes out. So, before that process, you should be talking to the devolved administrations about what the likely impact would be. As the Minister hinted earlier, there are examples of good practice on this and there are areas where we could do better. However, our job in the centre is to encourage that to happen as much as possible.

[61] **Suzy Davies:** Could I take you back to a question that Julie asked earlier about occasions where there is, perhaps, disagreement? Is it reflected in the explanatory memorandum at all if there is not a genuinely agreed position?

[62] **Mr Hemmings:** Yes, it can be. It would say, for example on an issue where there are different views, such as fisheries, 'A consultation has happened and the view of x devolved administration is as follows'.

[63] **Mr Lidington:** I need to make clear that there are two different bits of paper here that involve reference to devolved interests. I said at the start that the formal process of notifying or consulting devolved administrations is triggered by the need to commission an explanatory memorandum because a draft document is issued from the Commission. That is true. As Tim rightly says, we would hope that we would have been aware of that draft measure while it was in gestation, and good working practices would mean that we had already been talking to the devolved administrations and that the devolved administrations were themselves alert to this and had been talking to us. After all, that is why both UK and Welsh Governments have officials in Brussels, to be watching out for these things.

[64] That need to commission an explanatory memorandum triggers two things. It triggers a letter or paper from the relevant lead Minister in Whitehall to colleagues on the European Affairs Committee of Cabinet saying, 'This proposal has come out of Brussels. This is my proposed negotiating position, for these reasons'. The second document is the formal explanatory memorandum from the Government collectively to Parliament. Both of those documents have a section that is required on the template for devolved interests. So, it should be clear to Ministers, when they consider the UK's position, that the devolved administrations have been consulted, that we are aware of any interests that the devolved administrations have, and indeed of any clashes of interest and opinion between any of the three devolved administrations. When we get to the explanatory memoranda going to Parliament stage, again these tend to be more formal and factual because they set out the legal position. So, they say whether the Government lawyers believe that the draft measure contravenes subsidiarity or not. They also say whether or not interests of the devolved administrations are at stake; they will say whether or not the measure will apply to Gibraltar. So, they will describe briefly a number of legal situations.

[65] **Mr Hemmings:** If I may, I have just one additional point to make. It is good practice at the time, as the Minister says, when you have launched that European Affairs Committee, which may be before the explanatory memorandum because it is about a proposal and it is early on in the process, to write in similar terms to the devolved administrations. So, actually, people are getting the information at the same time. So, I will often write in similar terms to the devolved administrations so that they can feed into the policy-making process early on.

[66] **Suzy Davies:** Right. I might also have a question to finish on that. Do you recognise the House of Lords comments on the quality of the explanatory memoranda over this past year, stating that there had been a decline in quality? Do you have any plans on how to improve them?

[67] **Mr Lidington:** It is rather nice about the Foreign and Commonwealth Office. I am reluctant to point the finger at anyone else. I think that the truth is that when it comes to explanatory memoranda, as anything else, there are some things that we get right, and there are some things where we could do better. The good thing about having a pretty lively Parliament and lively determined select committees is that they do hold us to account. They do criticise what they believe are our shortcomings, and then the Government needs to respond to those.

[68] **Suzy Davies:** I hope that they do. I am sorry; my voice is going a little bit. For my final question I will just take you back to what you alluded to earlier. We have the formal notification process, and the informal 'Let's have a few letters exchanged between us' process, but there will be a step before that, will there not, with the horizon-scanning

moment? We have had evidence from one of the Ministers in Scotland saying that they found that to be a very helpful part of the process about spotting what is coming—it is like spotting exam questions.

[69] **Mr Lidington:** A horizon scan is a regular part of the agenda at the joint ministerial committees on Europe. As a matter of course we would also have a forward look at a forthcoming presidency. Also, as a matter of course, we would have an item on a new Commission work programme, and those would primarily be opportunities for devolved administration Ministers to flag up any particular concerns that they had. So, if their concerns, for whatever reason, had been overlooked or misunderstood previously, I and other Ministers sitting around the table, and Andy and Tim and their official colleagues, would make sure that that message was disseminated on the official network or around Whitehall, so that it was known that that was something that was important for the relevant devolved administration.

15:45

[70] **Suzy Davies:** Would you say that Welsh representation, at ministerial and civil service level, is good on picking up on the opportunities that you are talking up about?

[71] **Mr Lidington:** In my experience, yes.

[72] **Mr Hemmings:** On issues that are of great importance to departments here, we certainly know about it. It is difficult to generalise and to provide an overall figure, but, certainly, I would say that, in general terms, the relationships are good, and the level of understanding and impact is good.

[73] **Suzy Davies:** So, they give you pretty early warnings that they intend to try to influence, if it is important.

[74] **Mr Lidington:** Yes, and I have always said to my interlocutors in the devolved administrations, ‘Don’t wait for the committee; if something is going wrong, get on the phone to me and tell me about it. If you have a problem somewhere in Whitehall that you cannot resolve, please tell me about that and we will try to sort it out.’ However, normally, I would hope that any difficulties would be sorted out by departments speaking to departments—the portfolio holders, for the sake of argument, in agriculture or environment or whatever, talking to each other directly.

[75] **Mr Hemmings:** That is important; you need to have both, because, for example, while on some elements of legislation you will know about proposals in advance, a European Parliament amendment, for example, has a tendency to come out of the blue. Having the relationships and the conversation there at official and ministerial level is helpful to respond to the rapid pace, sometimes, of European legislation.

[76] **Suzy Davies:** That is very helpful. Thank you very much.

[77] **David Melding:** Before we have a last gallop through the remaining questions—and we will have to speed up—I would like to clarify how the JMC interacts with the relevant Cabinet committees, particularly the sub-committee that you chair, Minister. How equal is all of that? Presumably, whatever goes to the JMC that has been identified by one of the administrations as requiring discussion is likely to have gone through the Cabinet committee process. Do you then think that you have not put enough weight on this and that you need to rethink a decision, or is it preclosed, and the JMC is just an explanatory body, or does it make decisions, in terms of changing a UK line on something?

[78] **Mr Lidington:** It is looking at different things. If a UK Government position had

been agreed by the EAC, that would be a decision on behalf of Cabinet. So, that could only be altered by going back through that same process again. The joint ministerial committee on the EU serves a different role: it is there to provide the opportunity for that direct conversation, face to face, between Westminster and devolved Ministers. It is there to provide devolved Ministers and Westminster Ministers with the opportunity to get it off their chest if something has gone wrong and to ask for it to be handled better in the future. It provides the opportunity for the horizon scan that I referred to a moment ago, which will include a lot of things that will not, at that stage, have got to a formal cross-Whitehall mandate from EAC being agreed. At the same time, the EAC process will continue with its requirement for the devolved administrations to be consulted dossier by dossier, as appropriate. If I were to offer you a model, it would be a matrix model. In trying to make the devolution settlement work as effectively and harmoniously as possible, you have vertical and horizontal lines.

[79] **David Melding:** We have heard from some witnesses who have given us some impressive evidence that the JMC approach is a very helpful one for co-ordinating, and some witnesses have suggested that because it has been successful, it should be used even more extensively. From what you said towards the end of your remarks in reply to that question, I gather that some issues can go to the JMC to first scope out what may then become a UK Government line, and that the JMC is used, although it does not formally take decisions that will become the UK line. I understand that, but it is part of a process that very much deeply informs what may be coming.

[80] **Mr Lidington:** Yes. If a UK Government Minister is sitting at the table, and his Welsh counterpart is—not banging the table, perhaps, but making the point very forcefully and clearly that there is a significant Welsh interest at stake in item A, and that it is really important that the UK Government takes this seriously, then that UK Minister will be very well aware of that point from that moment on. He will not be waiting for officials in his department to come up with a report telling him so.

[81] **David Melding:** Right. We need to race through the rest of the questions. The Minister has very kindly said that, if there is anything that we do not get to, we can submit that in writing; we will decide that later, if there is anything else on our list. I believe that you have a few more questions, Simon, although I think that we covered some of the ground that you wanted to cover.

[82] **Simon Thomas:** Hoffwn fod yn glir ynglŷn â rhywbeth yr ydym eisoes wedi cyffwrdd ag ef. O ran cynrychiolaeth a phresenoldeb Gweinidogion o Gymru ar Gyngor y Gweinidogion, rydym wedi drafod o'r blaen y ffaith y gall Gweinidogion o Lywodraethau datganoledig gynrychioli safbwynt y Deyrnas Gyfunol o bryd i'w gilydd yn y cyngor. Fodd bynnag, gwelaf fod concordat newydd wedi cyfarfod diwethaf y cyngor ym mis Hydref—ac yn Saesneg yn unig y mae'r concordat, wrth gwrw—a oedd yn nodi'n benodol:

Simon Thomas: I wish to be clear about something that we have already touched upon. In terms of the representation and the presence of Ministers from Wales on the Council of Ministers, we have discussed previously the fact that Ministers from the devolved Governments can represent the point of view of the UK from time to time in the council. However, I see that there is a new concordat following the last meeting of the council in October—and the concordat is available only in English, of course—which noted specifically that:

[83] 'Requests by the Ministers of devolved administrations to attend Council of Ministers meetings should be welcomed, unless there is a compelling reason not to do so'.

[84] Gan bod ein Gweinidog ni, sef Alun Davies, wedi dweud wrthym ni fel pwyllgor yn yr haf ei fod yn credu y dylai fod hawl
Given that our Minister, Alun Davies, told us as a committee in the summer that he believes that there should be an absolute right

absoliwt i Weinidogion o'r Llywodraethau datganoledig fynd i'r cyngor—nid o reidrwydd i gynrychioli Llywodraeth y Deyrnas Gyfunol, ond o leiaf i fod yn bresennol yn y cyngor—hoffwn glywed gennyh chi sut ydych chi'n meddwl y byddai hwn yn gweithio, ac ym mha gyddestun. Hynny yw, pa fath o reswm cryf fyddai i rwystro aelod o'r Llywodraethau datganoledig rhag mynd i Gyngor y Gweinidogion?

of attendance for the Ministers of the devolved Governments—not necessarily to represent the UK Government, but to at least be present in the council—I would like to hear from you how you think that this would work, and in what context. That is, what strong reason would there be to prevent a member of the devolved Governments from going to the Council of Ministers?

[85] **Mr Lidington:** I first draw a distinction between attendance and taking the UK chair.

[86] **Simon Thomas:** Yes, indeed.

[87] **Mr Lidington:** If we are looking at attendance, the purpose of the revised wording was to make it clear that—and it is a fact that it is the United Kingdom that is the member state of the EU, and, therefore, it alone has formal rights to attend council—while each of the statutes providing for devolution keeps international relations, including the membership of international organisations, such as the EU, as a reserved matter, it is nevertheless the declared policy of the UK Government that attendance by devolved Ministers at councils, where their interests are involved, should be the law. Now, we have the line, 'unless there is a compelling reason not to do so', because there may be in the future some circumstances, which I cannot predict at the moment, that would cause the UK Government to think that it was not appropriate, and so that is simply to safeguard the formal constitutional position. I suppose that, if I am speculating, I could not, for example, find it easy to see why a devolved administration would be interested, or have a legitimate interest, in attending the foreign affairs council meeting, given that that is expressly a reserved matter.

[88] When it comes to going into the room, and taking the chair, there are both practical and constitutional issues involved. In practical terms, there is often only one chair, and there are always just a very limited number of seats in the room for the representing Minister and the supporting team. So, for example, in the fisheries council, there are normally significant numbers of officials, plus Ministers from, I think, all three of the devolved administrations, as well as the UK team, and there is no way that all of them can get into the room. Also, as was said earlier in proceedings, there are sometimes differences of interest and opinion between the different devolved administrations on fisheries quotas. In constitutional terms, in most cases, the lead UK Minister concerned will, quite properly, want to be there and personally represent the UK position collectively, but we, as a matter of policy, have said that we will always look properly and sympathetically at requests by devolved Ministers to take the chair, where there is a genuinely good reason to do so. However, ultimately, that is a matter for the lead UK Minister to determine on the spot.

[89] **Simon Thomas:** Whether it is taking the chair or just being present, do you see that step forward in the JMCE and the clarification around that as being a small part of the overall aim of your Government, certainly at the moment, to look at how citizens can be more aware of decisions being taken at the EU level? The presence of a Welsh Minister, say, when a decision is made enriches the ability of that Welsh Minister to explain that decision-making process when he or she comes back.

[90] **Mr Lidington:** Yes, I agree with that.

[91] **David Melding:** We have a final question on the interaction with the European Commission, which I will ask Suzy Davies to put, and that will be all that we have time for.

[92] **Suzy Davies:** I have one, slightly cheeky last question, if that is okay, Minister. We heard during our rapporteur visit that the Commission door is open to anyone from sub-state level to go to speak informally to it. Does that complicate matters for your Government when it goes to speak to the Commission, when it is speaking in council, or, indeed, under the new trilogue system, trying to negotiate?

[93] **Mr Lidington:** It does depend on what is being discussed in such a conversation. The UK is not alone in this situation. I think that all the German Länder have representative offices in Brussels, because there are many issues that are devolved to the Länder in Germany. So, I think that, if Welsh Government representatives go in to talk to the Commission about something that is a devolved matter and about how a policy is being implemented in Wales, I cannot normally see any problem over that at all. I think that it would be a matter of good practice for the Welsh Government, through its office in Brussels, to make sure that UKRep knows about it and that that approach is being co-ordinated so that we can try to be helpful from a UK perspective there. I think that when the Commission would start to raise its eyebrows would be if any devolved administration in any member state were to come in and to try to argue the toss and to challenge what the member state concerned had said was its collective position. I think that it would say, 'Who on earth are you speaking for, at the end of the day?', and that actually does not help.

[94] **David Melding:** I have heard a few witnesses express a similar opinion. [*Laughter.*]

[95] Minister, I thank you once again and your officials for what was a most illuminating session of evidence, very clearly expressed. I think that we have all benefited from the opportunity of taking forward some of the key points of evidence that have been raised with us previously, but getting your direct experience, which is at the very heart of the machinery, has allowed us to understand it a bit more fully. Again, a safe journey back and particular thanks for taking the trouble to visit us in Cardiff.

15:59

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

[96] **David Melding:** I will now move a motion under the relevant Standing Order for us to conduct the rest of our business in private session. I move that

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

[97] I see that no Member objects.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 15:59.
The public part of the meeting ended at 15:59.*