



Cynulliad Cenedlaethol Cymru

The National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

Dydd Llun, 30 Medi 2013
Monday, 30 September 2013

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynndi 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
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
Joyce Watson	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)

Eraill yn bresennol
Others in attendance

Tom Jones	Aelod Cymru o Bwyllgor Economaidd a Chymdeithasol Ewrop Welsh Member of the European Economic and Social Committee
Huw Lewis	Aelod Cynulliad, Llafur (y Gweinidog Addysg a Sgiliau) Assembly Member, Labour (the Minister for Education and Skills)
Grace Martins	Y Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Gemma Nye	Prif Swyddog Polisi Cyngor y Gweithlu, Llywodraeth Cymru Lead Policy Official, Workforce Council, Welsh Government
Ceri Planchant	Y Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Iwan Roberts	Y Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Emma Williams	Pennaeth Cymorth i Ddysgwyr, Llywodraeth Cymru Head of Support for Learner, 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 Glerc Deputy Clerk
Siân Richards	Y Gwasanaeth Ymchwil Research Service
Owain Roberts	Y Gwasanaeth Ymchwil Research Service
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 14:30.
The meeting began at 14:30.

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 have apologies from Julie James, but I am pleased, once again, to welcome Joyce Watson as a substitute. I will just make the usual housekeeping announcements: we do not expect a routine fire drill, so, if we hear the alarm, please follow the instructions of the ushers, who will help us to leave safely; please switch off all mobile phones completely, as even on silent, they will interfere with our broadcasting equipment; and these proceedings will be conducted in Welsh and in English, and when Welsh is spoken, there is a translation on channel 1, and channel 0 will amplify our proceedings for those who are hard of hearing.

14:31

Adroddiad Monitro Sybsidiaredd Mai i Awst 2013 Subsidiarity Monitoring Report May to August 2013

[2] **David Melding:** Item 2 is on the subsidiarity monitoring report, which covers the period from May to August 2013. Do Members have any comments?

[3] **Simon Thomas:** Diolch am yr adroddiad; fe wnes i ei ddarllen. Roeddwn yn edrych drwy'r camau gwahanol, ac mae degau o bethau wedi dod gerbron, gyda dim ond rhyw 16 wedi eu hadnabod fel pethau a oedd â rhyw fath o ymwneud â sybsidiaredd ac yn cael eu cyflwyno i ni wedyn fel adroddiad. Felly, ar wahân i'r cyflwyniad i'r pwyllgor hwn, sut byddai Aelod Cynulliad yn gwybod o gwbl am y gwahanol Orchmynion a'r cyfarwyddiadau hyn? Mae'n ymddangos ein bod yn dibynnu llawer ar y Gwasanaeth Ymchwil i ddweud wrthym beth yw beth. Mae'n amhosibl i ni i gyd ei ddarllen; rwy'n derbyn hynny. Fodd bynnag, o ystyried y ffaith ein bod yn cynnal yr ymchwiliad, Gadeirydd, mae'n ffaith bod hon yn fan eto lle nad oes ymwneud uniongyrchol rhwng y Cynulliad fel corff, sef yr Aelodau etholedig, â rhai o'r penderfyniadau ar lefel Ewropeaidd. Nid oes gen i ateb i hynny; rwyf ond yn gofyn y cwestiwn.

Simon Thomas: Thank you for the report; I did read it. I was looking through the different steps, and there tens of things that have come before us, with only some 16 acknowledged as having some kind of involvement with subsidiarity, which are then presented to us as a report. Therefore, apart from their presentation to this committee, how would an Assembly Member know at all about the different Orders and directions? It appears that we are very dependent on the Research Service to tell us what is what. It is impossible for us all to read it; I accept that. However, given the fact that we are holding this inquiry, Chair, it is a fact that this is again something on which there is no direct involvement between the Assembly as a body, namely the elected Members, and some of the decisions on a European level. I do not have an answer to that; I am just raising the question.

[4] **David Melding:** Well, it is a good question. I suppose that unless Members come across this paper, they would not know. However, our job actively is to forward pieces that we think are significant to relevant committees. That said, we could circulate the paper to all AMs, as I do not think that that is a problem. As you say, people gets lots of material and their staff may look at it. That would increase the chances of relevant material being picked up.

[5] **Simon Thomas:** I do not think many Assembly Members know that this is being done and picked up on.

[6] **David Melding:** The quality of the work is excellent. Owain has something to add.

[7] **Mr O. Roberts:** It is just worth emphasising that this is just a report looking at the subsidiarity elements of proposals. The Research Service also monitors proposals in relation to policy fields as well, so if any particular proposal does raise concern, then it will be forwarded on to the relevant committee. So, there is a kind of dual way of looking at it.

[8] **David Melding:** I take the point, and I do not see any harm in having this circulated widely. Are there any other comments on the report? I see that there are not, so we note the report.

14:33

Papurau i'w Nodi Papers to Note

[9] **David Melding:** We have a couple of papers to note, the first of which is a letter from Mick Antoniw, the Assembly's representative on the Committee of the Regions, and a report on EU public employment service draft legislation. You will see that not much of this is devolved, but it is excellent practice for the Member to write to us. So, I think we should at least exchange correspondence, and I should commend him on his initiative in writing to us and encourage that to be a regular thing, and thank him for taking the trouble to do so on this occasion. Do you have any further comments? I see that you do not.

[10] The second paper to note is a response from Gwenda Thomas to our report. The general principles are being discussed next week. You will note that she has responded to quite a lot of our recommendations but by no means all. So, I am happy to take views. If we want the Assembly's attention drawn to our report next week, I would ask for a volunteer, because I am likely to be in the chair for that debate as we might not have the Presiding Officer back by then. If you feel that it warrants a contribution to say that some, but not all, of our concerns have been addressed, then perhaps you can guide me as to whether someone else would be happy to do that. Obviously, speaking notes would be prepared for you. What are your views?

[11] **Suzy Davies:** Could you give us a rough idea of how many recommendations were not met?

[12] **David Melding:** I think that a couple of significant ones have not been implemented. At least, it is not clear from the letter—

[13] **Suzy Davies:** I had this last night, but I did not have anything to compare it with.

[14] **David Melding:** Yes. I should say that I met with the Deputy Minister this morning to discuss a couple of areas. So, she might intend to reply further in the debate, but there are one or two areas that even then will not have been responded to in the way that we would have liked.

[15] **Simon Thomas:** Heb wirfoddoli, **Simon Thomas:** Without wishing to
 buaswn i'n dweud oherwydd bod hwn yn un volunteer, I would say that because this is
 o'r Biliau hynny lle mae gennym lot o one of those Bills where we have had several
 gwestiynau ynglŷn â'r hyn sydd ar wyneb y questions about what was on the face of the
 Bil a'r hyn sy'n dod yn yr is-ddeddfwriaeth, Bill and what will be provided through
 mae'n briodol i dynnu sylw'r Siambr at subordinate legislation, it is appropriate to
 adroddiad y pwyllgor, ac, fel y dywedodd draw the Chamber's attention to the
 Suzy, yr hyn sydd wedi'i gyflawni a'r hyn committee's report, and, as Suzy said, what
 sydd heb ei wneud. Rwy'n derbyn nad yw'r has actually been achieved and what has not

Cadeirydd efallai mewn sefyllfa i wneud hynny, ond rwy'n meddwl y byddai'n fuddiol, achos mae llawer o'r Aelodau yr wyf i wedi siarad â hwy yn ansicr am y Bil a'r hyn y mae'r Dirprwy Weinidog yn gafael arno ar ffurf is-ddeddfwriaeth a'r hyn sydd ar wyneb y Bil. Felly, bydd gan y pwyllgor hwn rywbeth i'w gyfrannu at y drafodaeth honno.

been done as yet. I accept that the Chair is perhaps not in a position to do that, but it would be beneficial, because many Members whom I have spoken to are uncertain about this Bill in terms of what is being held by the Deputy Minister in the form of subordinate legislation and what is on the face of the Bill. So, the committee would have something to contribute to that debate.

[16] **David Melding:** I do not think that it would be a problem; we could prepare a quick note—obviously, we have it before us—of what has been accepted, what has not been accepted and what might be accepted following this morning's meeting. If people are then minded to contribute, or one of you, that would be ideal. I think that it is worth it.

[17] **Suzy Davies:** Go on then. I do not really know what is in the business for next week, but I hope that there is not too much on my portfolio.

[18] **David Melding:** We will liaise with you. I think that it is useful, even if it is just to put on record that we are content with the broad response, but there are one or two issues that we feel could have been responded to and perhaps the Assembly will want to bear in mind as the Bill navigates the legislative timetable. So, we will note that letter and move to item 4.

14:38

**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**

[19] **David Melding:** I am delighted that Tom Jones is here, and I ask him now to come to the table.

[20] I am not sure that I need to introduce you, Tom, as you are very well known to many of us, given your distinguished record in public service, in the farming industry and particularly, with the Wales Council for Voluntary Action for many years, along with a lot of things, including the lottery, as I recall, in between. Now, you are a member of the European Economic and Social Committee. You prepared a very helpful note on that, and I am sure that it was very illuminating to a lot of us to read about what that committee is charged with doing. I am very pleased to welcome you this afternoon.

[21] I will start with a very general question, Tom, about how Welsh interests have been taken up and reflected in the work of the European Economic and Social Committee, how the three members currently work together, and whether you have a co-ordinated approach, so that you can provide any short background information that you want to start with.

[22] **Mr Jones:** Diolch yn fawr iawn, **Mr Jones:** Thank you very much, Chair. Gadeirydd. Prynhawn da i chi i gyd. Fel Good afternoon to you all. As you can see, rydych yn gweld, nid yw fy *advisers* hefo fi my advisers are not with me today. heddiw.

[23] Thank you very much indeed for the invitation to come and present evidence to you today. I heard about your inquiry by accident in a casual conversation with a Welsh Government official in Brussels, and I thought, 'Well, do they know about the economic and

social committee? That is a test in itself'. I thought that perhaps somebody should give some evidence about the work of the committee.

[24] My membership of it arose from my days as chair of the WCVA, when we would go periodically to Brussels and engage with Commission officials and others, and come back home again. Obviously, before the internet went full swing, it was difficult to have continuity, therefore, of meeting of minds and building relationships. We looked to see where it was possible for the organised voluntary sector in Wales to have a fairly continuous presence, and it was the economic and social committee that seemed to be the right place at the time. There is a platform of voluntary organisations at a European level—the social platform, for example—but it tends to be made up of thematic voluntary organisations: health, children and the environment. There did not seem to be anything that discussed democracy in its general sense and the governance of the voluntary sector, as they did not seem to fit into any particular niche. So, we asked the then First Minister, Rhodri Morgan, whether it would be possible to have a nomination from the voluntary sector, and I think that that probably involved having to wheel and deal to get one fewer from England and one more from Wales.

[25] So, the structure of the appointment process is perhaps worth looking at. It is fairly transparent but, as you have already heard, it can be quite a long process. In our case, the three of us from Wales were reappointed on Rhodri Morgan's last day as First Minister; it was one of the last things that he signed off, I think. That gave us some element of continuity, even though we would have to wait several months after that to find out from the UK Prime Minister that we actually had been renominated, but at least we felt hopeful that the UK Prime Minister would not overrule recommendations from Scotland, Northern Ireland and Wales. You need to be able to plan ahead, because you are making a commitment to go to Brussels—I am going there tonight for tomorrow's meeting. It involves a lot of time and planning. Also, you are in a chamber with nearly 350 members from all the various member states, and now with Croatia as well. So, making alliances and friends and establishing working groups and so on cannot be done overnight. It takes time to see whether the Estonians, the Latvians or the Hungarians have a view that is similar to yours.

[26] We felt, back in 2005, when we made our application, that the organised voluntary sector in Wales had something to offer. It was not just about receiving European grants and managing those grants through the voluntary sector networks and so on. It is in the constitution of the Assembly that we have a partnership with Government in Wales that could be a template for voluntary sectors from behind the old iron curtain that were looking to create institutions and patterns of governance that would be able to draw down European funds and to equate across the European Union. So, it has been a pleasure to be involved and, from time to time, to be able to say, 'In Wales, we've done this. We use voluntary time for match funding and we have a commissioner for older people and a commissioner for children.' You are able to make some bridges and some linkages, and they then want to know more. On my last visit to the Assembly, I brought a group of people over from Brussels to look at the effectiveness of cohesion policies and European funds in Wales. We were just next door in this building, and we met the First Minister at the end of it. There are many things that you can do.

[27] However, coming back to your question of how we work, in one sense, it is a match of individuals and representatives. From the briefing that I have given, you will know that we come from three categories. So, you have an employers group, a trade union group and an 'everybody else' group, which is where I and my colleague Rose D'Sa sit. Brian Curtis is in the trade union group. So, Wales now has three members, having had two previously, so the voluntary sector has that third presence. The Welsh interest, as you hinted—and as you know as politicians anyway—is not always easy to define.

14:45

[28] Tomorrow, I am at the agricultural, rural and environmental committee. The environmental perspective on a piece of policy might be different to a farming perspective, so the Welsh interest is not always a unified simple thing to have. When I joined the committee, I depended a lot on the policy capacity of WCVA. If I had been working on my own, it would have been extremely difficult to find and gather views from organised civil society, because so much of the work is done at the very last minute: you have your draft policy and I am able to circulate that through the WCVA to interested organisations. So, for example, WCVA sent something on my behalf to Chwarae Teg last week; I have sent things to the Council for Wales of Voluntary Youth Services and farming organisations, obviously, asking, ‘Can you come back to me within a week with a view?’ Of course, by the time that that week has gone, which is too tight in itself, really, there will be lots and lots of amendments—the French will want this and the Italians will want that. So, as you do, I will still have to make a judgment on the day of voting and look at the amendments and so on. So, it is very difficult to be scientific about consultation. However, I wanted, from the beginning, to be a voice for the voluntary sector, not just a voice from the sector in Brussels. Where I can, I try to do that. As I say, WCVA helps me by cascading bits of information. However, it is an imperfect system and, as I say, I sit alongside individuals who do not actually have representation—they just bring their own expertise to the table.

[29] **David Melding:** We will tease some of those issues now, Tom, but that was a very interesting introduction to set the scene. I will ask Joyce to take us through the first couple of questions.

[30] **Joyce Watson:** Good afternoon, Tom. You have outlined how it works reasonably well. How do you think that Wales is perceived in Brussels? To what extent do you think that Welsh interests are able to be represented in the European institutions?

[31] **Mr Jones:** Are you asking about all of the institutions now, not just the committee?

[32] **Joyce Watson:** Yes, European institutions.

[33] **David Melding:** From your perspective.

[34] **Mr Jones:** My perspective and my expertise would be with the European Economic and Social Committee primarily. It is a small number, to begin with; there are just three members in a chamber of 350 members. So, having your voice heard on a regular basis is difficult. One of the issues is that, because it is a state nomination—because it is the UK—whenever there are working groups being set up, the people who make the decision on who sits on the working group have to balance gender and geography. So, it is difficult therefore for a Welsh member and an English member to be on the same working group, because that would be two from the UK, and then someone else would complain very quickly that Malta or somewhere else has not been represented. So, there is always that tussle about whether the region should have direct membership or whether it should be part of the state in practical decision time. Obviously, it is the abilities of the members that provide the greatest influence. I am not going to speak about myself because I do not have any, but my colleagues do, in their own way. Rose D’Sa, I think, is one of the top lawyers on European governance and constitutional affairs, so we have, from Wales, a very good legal mind who is listened to by colleagues from across the union. She has been there for some time, so she carries a lot of weight. Brian, in the same way, in the trade union group, again has a lot of authority. So, that is one thing.

[35] On connectivity and to come back to your original question about whether we work together, we do and we do not. As I said, I cannot know for certain which way Brian would vote on something. We might not vote on the same thing. As I said, the Welsh interest can be

divided. However, if she is unable to be at a meeting, Rose will ask me to vote on her behalf. So, there is some connectivity. We try not to go without a vote at all, but equally so, my colleague from Ireland who has an interest in rural development will also ask me to vote on his behalf if he is not there. So, it is not confined specifically to a Wales perspective. One of the measurements is that I won the right, with the help of the Welsh Government, a couple of years ago, to speak in Welsh at the plenaries. It is not easy; it is a rather convoluted process. I do indicate perhaps three months in advance whether I intend to speak Welsh. That is not easy if you want to intervene, but I can do some grand-standing. The minute that I spoke in Welsh, everybody came to speak to me afterwards, saying, 'Oh, we thought you were English'. Suddenly, they realised that, actually, Wales was on the map, and that made a big difference. I made lots of new friends who then realised that my perspective might not be the same. Sadly, they confess to me that they do not actually listen to the translation; they just like to hear the lilt of the Welsh language, so what I say counts for less than actually hearing the language being spoken. We do try to work across, and I am sure that you will explore this in more detail, but I think that it could be done a lot better. However, it does depend on the subject matter.

[36] **Joyce Watson:** You touched on the process of being appointed being somewhat lengthy, and I was going to ask about that. You have touched on that, and Rhodri Glyn has stated that experience as well. So, you talked about being appointed on the last day that Rhodri Morgan was First Minister, and that that would give some form of continuity. Are you saying—and this is what I was not clear on—that, because the process is lengthy, and you do not know for some considerable time whether you have been nominated, re-nominated, accepted or not, there is a real risk of losing that continuity?

[37] **Mr Jones:** Yes, I would expect so, but it is certainly frustrating for the individuals. It is the same with applying for any public position, but worse, because you have to go through the various hoops of the process. It means that you would not apply for anything else while you were waiting, because this is a big commitment. This is something like 50 days a year. You are working on your own—

[38] **David Melding:** Fifty? Five-zero?

[39] **Mr Jones:** Yes, I am out there, and from where I live in mid Wales it makes it much more difficult, although I can fly from Birmingham fairly easily. I will not be home tomorrow night until 11.30 p.m. because of flights and everything else, and then, as I say, I should be back there this Thursday, but I am speaking in Llandudno at the European event that the Welsh Local Government Association is arranging. I have been there, as I say, virtually every 10 days, and it is demanding. It is a young person's role, really, and you would have to set up a lot of time, so having a quick resolution to your application would be extremely welcome.

[40] I do not know why it takes a long time. I suspect that the employer and trade union categories might be more straightforward, but I am only guessing at this. In other words, the Foreign and Commonwealth Office would invite the Trades Union Congress or the Confederation of British Industry for a nomination, and then it may not challenge much of that nomination process. The various interests sector means that you have to lump in organised civil society, and you would have the crafts, the farmers, the educationalists and so on, all vying for a place, in which case the foreign office would then look to have an overall balance for the UK nomination including gender and everything else, and interests. We have just lost one member now, actually, to the House of Lords. He joined us only about three months ago because it took all that time for him to be appointed, and now he has been made a peer, so I suspect that the UK delegation will be one short for some time. When you have a delegation of 24 members, it does not matter that much, but if you have only three members, which Wales has, and one of those had to retire suddenly, and you went without, then obviously managing the portfolios and taking an interest in that wider range of subjects would

be quite difficult.

[41] **David Melding:** How long are you appointed for?

[42] **Mr Jones:** This time, I think that it is for five years—starting some two years ago. I started in 2006, so I have done one and a half terms. The first year is a big learning curve, trying to get some linkages with voluntary organisations in Wales, trying to get them interested, and seeking to have an influence. As I say, I was elected to the bureau of the agri-environment committee back in March, and it has taken some time to build enough credibility, I suppose, among my colleagues for them to vote for me.

[43] **David Melding:** Eluned is next—and I should say that Eluned is suffering with laryngitis, but we are very grateful that she has soldiered on.

[44] **Eluned Parrott:** Thank you, Chair. The work of the committee obviously is to produce reasoned opinions. What happens to those opinions once they have been published?

[45] **Mr Jones:** The impact of the opinions works in different ways. We get a referral, to begin with, from the Commission, from the Parliament, from the Council of Ministers, and from the incoming country that will host the presidency. Currently, Lithuania will have sent us a list of things that it would like us to have a look at at the beginning. The six months of a presidency are not very long, and by the time we have gone through the whole discussion process, it is coming to the end of their presidency. However, they are working in a tripartite way now: the current presidency, the next one and the one after that will work together to try to draw up a programme, which is a good sign.

[46] In the case of the Commission, if it sends us a referral, the Commission officials will sit in with us from day one. So, in terms of the ability to influence, you have the Commission official who will be responsible for drafting that policy sitting next to you. They do not participate in the debate unless asked to by the chair, either at the end or when we have got to a complication over whether something is legal or not. They will then come to the section meeting, and then they will come to the plenary. So, they will have followed the process and will have watched what has happened to the opinion. If the opinion is divided 50:50, as it can be on certain issues, or if we make a mess of it, because, as I say, we just cannot agree across 28 member states and across the various interests, then I suspect that the Commission is not that excited by the opinion. However, if the opinion is very strong, and it shows that the employers, the trade unionists and others in civil society have come to a strong view about something, then it will obviously build that opinion in. Again, it depends on the level of expertise of the Commission officials—you sometimes have a fairly inexperienced official who is looking for ideas and for connectivity. They come to us at the fringe of the meetings and say, ‘Tell me more about this WCVA that you have mentioned and this compact with the Assembly; how does it work?’ So, they learn in the margins. The rapporteur of an opinion is able to go to the Commission offices and discuss with them.

[47] What we do not do enough of and are trying to do it better is working at the same time with the Parliament, because the Parliament produces its own views and policies on all these documents. Where it works well is if there is a parliamentarian who is interested and wants to share information; he or she will come to our meetings, make a presentation and say, ‘This is the European Parliament’s position as of now; we have a vote next week or the week after, and I am here to listen to your views’, and our rapporteurs will go to the Parliament and make presentations as well.

[48] The Commission has to report back. I do not know if I mentioned that in my presentation. Every six months, we get a dossier from the Commission. So, some poor Commission official will have gone through all those opinions and will have been to each of

the relevant departments, and they will say, 'We took this on board', or, 'We have rejected that', but it is all transparent. Every bit of our opinions has to have a reported back on.

[49] We use the opinions as campaigning tools as well. So, if we want to promote a particular initiative, we set aside a small amount of money and we take that opinion, sometimes to member states, because the economic and social committee has economic and social committees in many member states, but not in the UK. So, there is not a relevant link. The president of the French economic and social committee will come along to our meetings from time to time and will invite our president and colleagues to speak about a particular opinion. Here, we have to try to make do with what we can access, in that sense, and create fora for ourselves. That is one difference.

[50] **Eluned Parrott:** May we just drill into that a little bit? You say that some member states have their own, kind of parallel, committee. Are they drawn from the third sector and other bodies such as yours, or are they made up of parliamentarians?

[51] **Mr Jones:** I am not sure. I think that their constitution and make-up would be fairly similar to our committee, but I am not sure. I have seen representatives at our meetings, but because we do not have one in the UK, I have not really looked into how they are formed. However, they are quite important in some countries. As I say, it is not a UK thing to have. I suppose that, in my particular interest, the WCVA is as close as you can get, in the sense that you have a forum of interested bodies that can respond to, and look at, some of these things.

[52] **Eluned Parrott:** We have asked a little bit about how you influence Europe. To what extent do people try to influence you in terms of the opinions that you are developing for yourself, and how does that then feed into the system?

15:00

[53] **Mr Jones:** Sometimes we are lobbied by organisations. We had a big debate about tobacco recently, during which I suddenly became aware of e-mails coming from all directions. I thought that nobody knew who I was or where I was from, but suddenly some companies became worried that we and the Parliament were going to pronounce that labelling had to be restricted or cut back even further. So, there is that sense of influencing, if that is what you meant.

[54] In other areas, the European Anti-Poverty Network is an organisation that I look in on. I take an interest in its work because of my WCVA interest. The agricultural networks on a European level send briefings and invitations from time to time as well. They value the importance of the committee. We had a presentation only last week from the anti-poverty network about a citizens' petition. You are quite used to petitions here in this building; as you know, since the Treaty of Lisbon, it is possible now to have a petition at a European level. You need x million signatures from seven or eight different member states. There is one now up and running on water poverty, and there is a campaign on that. That would be of interest to Wales. It is something that I am sure we would want to be briefed about and would want to hear about.

[55] Part of our responsibility is to try to encourage more citizen participation in decision making. The petition system is still not tried and tested because what they have done is to get the signatures together; they are now campaigning and the Commission is bound to look at it. I have a paper here for you to look at, which is called 'Your Guide to the European Citizens' Initiative', which I will leave for you. This sets out the steps that Commission officials have to go through and what you have to go through if you suddenly decide to start a petition on any particular subject. One has been planned for women entrepreneurs to try to raise their profile. I have circulated this to Chwarae Teg, for example. So, you try to pass these things

through to the relevant bodies.

[56] **Simon Thomas:** Do not tell Bill about that petition committee. [*Laughter.*]

[57] Prynawn da, Mr Jones. Hoffwn ofyn cwpwl o gwestiynau i chi. Yn gyntaf, dywedoch mewn ateb i Eluned Parrott eich bod yn derbyn cyfarwyddbau gan y Comisiwn, y Senedd, neu Lithuania, gan mai hi sy'n llywyddu ar hyn o bryd. A oes hawl gan y pwyllgor ei hunan i benderfynu mentro ar ei liwt ei hunan?

Good afternoon, Mr Jones. I would like to ask you a couple of questions. First, you said in response to Eluned Parrott that you accept directives from the Commission, the Parliament, or Lithuania, given that it holds the presidency at the moment. Does the committee have the right to decide to pursue its own agenda?

[58] **Mr Jones:** Oes. Dyna'r ail bŵer sydd gennym. Mae'n dda, mewn ffordd, oherwydd mae'n hybu creadigrwydd ymhlith yr aelodau ac mae'n gyfle, efallai, i ddod i mewn cyn i swyddogion polisi'r Comisiwn ddechrau meddwl am rywbeth. Mae gennyf enghraifft yn rhywle, a gallaf ei ffeindio mewn munud, lle mae un o'n haelodau wedi codi pwnc. Byddwn yn licio gwneud un yn weddol fuan—nid wyf wedi gwneud yr un eto—ar y cynllun datblygu gwledig a'r polisiau amaethyddol a fydd yn deillio o fewn blwyddyn, a gwneud cymhariaeth rhwng y gwahanol wledydd ac ystyried sut yr ydynt yn mynd i weithio. Rydym yn neilltuo rhywfaint o arian ar gyfer y gwaith ymchwil. Pe bai hynny'n cael ei gefnogi, byddwn yn dod yn ôl i Gymru, chwilio am arbenigwr a chyflogi'r arbenigwr hwnnw neu honno i'm helpu i ddrafftio ac yna gallem wneud ymholiadau. Byddai hynny'n hwb i'r swyddogion i gymryd y peth ymlaen, felly. Fodd bynnag, nid yw'r arian yn caniatáu i ni wneud llawer ohono. Po fwyaf o bapurau sy'n dod allan o'r Comisiwn neu'r Senedd, lleiaf i gyd o arian sydd gennym i wneud y gwaith *own initiative*. Bydd etholiad yn y Senedd flwyddyn nesaf, felly efallai bydd llai o waith yn dod oddi wrth y Senedd yn y cyfnod cyn-etholiadol ac yn syth ar ôl yr etholiad. Felly, mae cyfle i ni ar yr adeg honno i gymryd mantais o hynny.

Mr Jones: Yes, it does. That is the second power that we have. It is positive, in a way, because it promotes creativity among members and it is an opportunity, perhaps, to consider things before the Commission's policy officers start to consider them. I have an example somewhere, which I will dig out for you in just a second, where one of our members has raised an issue. I would like to do that relatively soon—I have not done so yet—perhaps on the rural development plan and the rural policies that will emerge within a year, and make comparisons between the various countries in terms of how they will work. We allocate a certain amount of funds for research. Then, if that opinion were supported, I would come back to Wales, look for a specialist and I would then be able to employ that expert adviser to help me to draft and we could then make some inquiries. That would provide encouragement to officials to take it forward. However, the funding does not allow us to do too much of this. The more papers that come from the Commission or the Parliament, the less money we have for our own initiative opinions. The Parliament will be up for election next year, so there may be a reduction in the work coming from the Parliament in the period immediately prior to the election and straight afterwards. So, there will be an opportunity for us to take advantage of that then.

[59] **Simon Thomas:** Er mwyn gwneud hynny—er enghraifft, dywedwch eich bod am wneud y peth RDP—a fyddai'n rhaid ichi ennill pleidlais o 350 o bobl? Ai dyna'r drefn?

Simon Thomas: In order to do that—for example, say that you did want to pursue the RDP subject—would you have to win a vote of 350 people? Is that the arrangement?

[60] **Mr Jones:** Mae yna bwyllgorau, a byddai'n rhaid i mi berswadio'r pwyllgor—

Mr Jones: There are committees, and I would have to persuade the committee—

[61] **Simon Thomas:** Oes rhaid i bwyllgorau argymhell, felly?

Simon Thomas: So, do committees have to make recommendations?

[62] **Mr Jones:** Y cam cyntaf yw fy mod wedi cael fy ethol bellach ar y pwyllgor gwaith amaethyddol. Rydym eisoes wedi cefnogi un cais i fonitro pa mor effeithiol yw rhai o'r mesurau atal cynhesu byd-eang, ac rydym wedi bod yn casglu'r wybodaeth ar gyfer hwnnw. Felly, mae hwnnw eisoes wedi cael ei gefnogi. Mae'n rhywbeth rwyf eisiau ei wneud, achos mae gennyf ddi-ddordeb yn y pwnc, ond mae'n golygu lot o waith ychwanegol achos nid oes gennym gefnogaeth swyddfa na dim byd felly.

Mr Jones: The first steep is that I have now been appointed to the agricultural working group. We have already supported one bid to monitor how effective some of the anti-global warming initiatives are, and we have been gathering information on that. So, that has already been supported. It is something that I want to do, because I am interested in the subject, but it does mean a great deal of additional work, because we do not have office support or anything of that sort.

[63] **Simon Thomas:** Sut ydych chi'n ymwneud â'r sefydliadau eraill? Rydych chi yn bwyllgor a sefydlwyd yng Nghytundeb Rhufain, ac mae gennych gyrff newydd fel Pwyllgor y Rhanbarthau ac mae'r Senedd Ewropeaidd wedi cryfhau dros y blynyddoedd hefyd. I mi, mae'r pwyllgor rydych chi arno wedi cwmpo oddi ar y radar, i raddau, achos mae'r cyrff newydd democrataidd hyn wedi hawlio mwy o sylw, ac mae'r aelodau sydd ar y pwyllgorau hynny yn dweud eu bod wedi eu hethol mewn rhyw ffordd, ond rydych chi wedi cael eich penodi. Maent hwy wedi eu penodi hefyd, ond rydych yn gweld y pwynt rwyf yn trio ei wneud: mae'r cyrff hynny yn mynnu mwy o sylw, yn enw democratiaeth. Sut ydych chi felly yn ymwneud â'r cyrff hynny, a sut ydych yn lledaenu gwybodaeth ar y pwyllgor ymysg y sefydliadau Ewropeaidd wedyn?

Simon Thomas: How do you interact with the other institutions? You are a committee that was established by the Treaty of Rome, and you have new bodies such as the Committee of the Regions, and the European Parliament has strengthened over the years as well. For me, the committee that you are on has fallen off the radar to some extent, because these new democratic bodies have garnered more attention, and the members of those committees say that they have been elected in some way, whereas you have been appointed. They have been appointed too, but you know the point that I am trying to make: those bodies demand more attention, in the name of democracy. How do you then interact with those bodies, and how do you then disseminate information on the committee among those European institutions?

[64] **Mr Jones:** Mae hwnnw'n gwestiwn mawr a phwysig iawn. Fel rydych yn egluro, mae'n anodd i gorff apwyntiedig—er fy mod yn cael fy ethol gan y WCVA bob blwyddyn, wrth gwrs—gael sylw gwleidyddion a gweision sifil, achos nid yw'r *interests* bob amser yn cyd-fynd. Y ffordd yr ydym yn cael sylw yw drwy helpu'r aelodau etholedig i gynnal sesiynau, gwrandawladau, cyfarfodydd a gwneud y gwaith ymchwil hwn ar eu rhan ac efo nhw. Mae rhai Aelodau o'r Senedd Ewropeaidd yn falch iawn o gydweithio, ac maent yn derbyn *participative democracy*. Maent yn derbyn bod mudiadau gwirfoddol yn hoffi gweithio, ddim jest unwaith bob pum mlynedd, ond yn rheolaidd ar bob math o bolisiau. Mae tensiynau, wrth gwrs, ac mae'n llywydd presennol ag agenda

Mr Jones: That is a broad and very important question. As you explain, it is difficult for an appointed body—although I am annually elected by the WCVA, of course—to grab the attention of politicians and civil servants, because there are always conflicts of interests. The way in which we get noticed is through helping elected members to hold sessions, hearings, meetings and through undertaking research on their behalf and with them. Some Members of the European Parliament are very happy to collaborate, and they accept participative democracy. They accept that voluntary organisations like to work, not just once every five years, but regularly on all sorts of policies. There are tensions, of course, and our current president has a new agenda—he

newydd—mae ganddo ddogfen newydd o'r enw 'Wind of Change at the European Economic and Social Committee'—i geisio cael mwy o hygredded i'r corff. Mae Cytundeb Lisbon wedi rhoi mwy o oblygiadau arnom nag oedd cynt, ac mae'r Comisiwn a'r Aelodau Ewropeaidd yn falch o unrhyw gorff sy'n ceisio cynyddu ymwybyddiaeth o beth sy'n digwydd ar lefel Ewropeaidd. Felly, mae ef, fel llywydd, yn cael cyfarfodydd rheolaidd iawn efo Barroso, arweinydd y Senedd ac yn y blaen. Fel aelodau bob dydd, nid ydym yn cael yr un cysylltiad. Byddwn yn hoffi gweld mwy o gysylltiad, hyd yn oed o fewn Cymru. Pan oedd Rhodri Morgan yn llywydd, roedd yn ceisio cael cyfarfod o *Wales plc* ym Mrwsel yn weddol reolaidd. Nid yw hynny wedi digwydd yn ddiweddar; gallaf weld pam—y broblem o ran dyddiaduron pawb—ond o bryd i'w gilydd, rwy'n ceisio gofyn i'r rheini yn swyddfa Cymru ym Mrwsel, 'A wnewch chi—'

[65] **Simon Thomas:** Pan ydych yn sôn am hynny, rydych yn sôn am aelodau Pwyllgor y Rhanbarthau, chithau, Aelodau Seneddol, Llywodraeth Cymru—pawb gyda'i gilydd.

[66] **Mr Jones:** Dyna chi. Pur anaml, os cofiaf yn iawn, y mae unrhyw bwnc arbennig wedi codi lle byddai gennym *Welsh interest* efo'n gilydd. Fodd bynnag, o bryd i'w gilydd, pe bai arian yn cael ei dorri'n sydyn iawn o'r cyllidebau sy'n dod i Gymru, byddem i gyd, mae'n siŵr, yn falch o wneud beth bynnag y gallem o ran hynny. Mae'r Alban, rwyf yn ei ddeall, ychydig yn fwy llwyddiannus na ni o ran cael pawb at ei gilydd. Rydym wedi cyfarfod, ond ddim yn ddigon aml. Rwy'n gweld y swyddfa sydd gan Gymru ym Mrwsel, fel y corff o dan arweiniad y Prif Weinidog, yn ein galw at ein gilydd, ond dyddiaduron yw'r broblem.

[67] **Simon Thomas:** Mae'r cronfeydd strwythurol, er enghraifft, yn rhywbeth pwysig.

[68] **Mr Jones:** Rwyf yn gweithio ar lefel unigol, wrth gwrs—byddaf yn rhannu plattform efo Derek Vaughan ddydd Gwener yn Llandudno. Mae Jill Evans bob amser wedi bod yn barod i mi ddod â phobl i

has a new document called 'Wind of Change at the European Economic and Social Committee'—to try to get greater credibility for the body. The Treaty of Lisbon has placed more responsibilities on us than before, and the Commission and MEPs are glad of the input of any body that tries to increase awareness of what happens at a European level. So, he as president has very regular meetings with Barroso, the leader of the Parliament and so on. As ordinary members, we do not have that same level of contact. I would like to see greater linkages, even within Wales. When Rhodri Morgan was a president, he tried to have a meeting of *Wales plc* quite regularly in Brussels. It has not happened recently; I can understand why—the problem with everyone's diaries—but, from time to time, I try to ask those in the Wales office in Brussels, 'Will you—'

Simon Thomas: When you talk about that, you are talking about members of the Committee of the Regions, you, MPs, the Welsh Government—everyone together.

Mr Jones: Yes, that is it. It is very seldom, if I remember correctly, that any single subject has been raised where we would have this joint Welsh interest. However, from time to time, if funding were to be cut very abruptly from Welsh budgets, we would all probably be pleased to do what we could in that situation. I understand that Scotland is a little more successful than us in bringing everyone together. We have met, but not often enough. I see the office that Wales has in Brussels, led by the First Minister, calling us together, but it is a problem with diaries.

Simon Thomas: Structural funds, for example, are another important issue.

Mr Jones: I work at the individual level, of course—I will be sharing a platform with Derek Vaughan on Friday in Llandudno. Jill Evans has always been eager for me to bring people to visit the Parliament when people

ymweld â'r Senedd pan fydd pobl allan yno—mae clybiau ffermwyr ifanc wedi bod, er enghraifft, ac eraill. Rwyf jyst yn ffonio'r swyddfa, ac maent yn barod iawn yno i agor eu drysau inni.

are out there—the young farmers' clubs have been, for example, and others. All I do is phone the office, and they are more than happy to open their doors for us.

[69] **Simon Thomas:** Roeddech yn sôn am gryfhau ymwybyddiaeth o'r pwyllgor y tu mewn i Gymru. Roeddech yn sôn fod pwyllgorau tebyg mewn rhai gwledydd, megis pwyllgorau cymdeithasol ac economaidd. Mae dyn yn gallu meddwl am Iwerddon, lle mae partneriaeth felly yn bod. Ar lefel Cymru, nid ar lefel Brydeinig, wrth gwrs, mae partneriaeth rhwng Llywodraeth Cymru a'r sector gwirfoddol, ac mae yna bartneriaeth hefyd gyda busnes. A oes ffordd ffurfiol o fwydo i mewn i'r trafodaethau hynny, neu a ydych yn mynd trwy'r WCVA?

Simon Thomas: You mentioned strengthening awareness of the committee within Wales. You mentioned that some countries have similar committees, such as social and economic committees. One thinks of Ireland, where there are partnerships of this type. Not on a British level, but on a Welsh level, there is a partnership between the Welsh Government and the voluntary sector, and there is also a partnership with business. Is there a formal way of feeding in to those discussions, or do you go through the WCVA?

[70] **Mr Jones:** Trwy'r WCVA y byddaf yn mynd rhan fwyaf, achos bod ganddo rwydwaith sydd yn gweithio mewn modd effeithiol i'r sector gwirfoddol. Byddwn yn gobeithio, ar ôl eich ymchwiliad, y byddech efallai yn meddwl bod eisiau rhyw fath o *co-ordination*, a dyna pam yr oeddwn i mor falch o gael y cyfle i ddod yma heddiw. Rwy'n ceisio defnyddio cylchlythyr WCVA, *Network Wales*, gan roi rhywbeth i mewn ynddo—ddim yn aml, ond o bryd i'w gilydd. Rwy'n ysgrifennu adroddiad blynyddol i Graham Benfield, y prif weithredwr, yn sôn am yr hyn rwyf wedi'i wneud yn ystod y flwyddyn. Mae'r cylchlythyr ar gael ac rwyf yn hapus iddo gael ei ledaenu'n ehangach. Rwy'n ceisio rhannu plattform gyda'r Comisiwn Ewropeaidd weithiau. Pan fydd Diwrnod Ewrop, er enghraifft, yn digwydd, byddaf yn gofyn i gael mynd. Fel yr oeddech chi a'r Cadeirydd yn awgrymu, nid ydym ar y radar bob amser, o ran pobl yn gwybod amdanom ni. Rwyf felly'n ceisio atgoffa pobl ein bod ni yma i helpu, a phan fydd *delegations* yn dod i Frwsel, rwyf yn dweud wrth swyddfa Cymru, 'Rwyf yma os ydych fy eisiau. Os yw'r dyddiaduron yn cyd-fynd, dewch i'n hadeilad ni. Gallwch gyfarfod â'n swyddogion ni.' Dylai bethau weithio'n llawer gwell, a dweud y gwir.

Mr Jones: I mostly go through the WCVA, because it has its own network that works relatively effectively for the voluntary sector at least. I would hope that, following your inquiry, that you may come to the conclusion that there needs to be some sort of co-ordination, and that is why I was so pleased to have an opportunity to come here today. I try to use the WCVA circular, *Network Wales*, and I include something in there—I do not do it too often, but from time to time. I write an annual report for Graham Benfield, the chief executive, describing my activities over the year. That circular is available and I would be more than happy for that to be circulated more widely. I try to share platforms with the European Commission from time to time. When there is a Europe Day, for example, I ask whether I can attend. As you and the Chair suggested, we are not always on the radar, in terms of people knowing about us. I therefore try to remind people that we are here, that we are here to help and when delegations come to Brussels, I say to the Wales office, 'I'm here if you need me. If our diaries agree, come to our building. You can meet our officials.' Things should work more effectively, if truth be told.

[71] **David Melding:** May I just ask about the rural and environmental affairs working group—I do not remember the exact title—of which you are a member. How many members are there roughly?

[72] **Mr Jones:** There are roughly between 80 and 100. We devise—

[73] **David Melding:** Nearly a third—

[74] **Mr Jones:** Nearly a third, yes. It is not the biggest, the social policy one is the biggest, but it reflects the interests of Europeans more widely. Beyond these shores, of course, the rural dimension is still extremely important and people put a lot of effort and interest into it. I sit now on the executive of it, which is a 10-person executive, I think. My chair is from Bulgaria. I have found out that I am the only working farmer on that group. My colleagues would be either officials of farming, fishing or forestry organisations, or environmental researchers or those with an interest. That gives me a little credibility every now and then, when I say, ‘Actually, I don’t think that this will work, because it certainly wouldn’t work in Wales, certainly not on Welsh farms.’ It is fascinating, in that sense.

[75] **David Melding:** Had you been trying to get on that working group for a long time?

[76] **Mr Jones:** Not really. I am a farmer and until last March I was a legal aid commissioner for England and Wales. I had a lot of commitments in London and elsewhere. I could not really put my head above the parapet. As soon as I finished my legal aid work, I put my name forward and was successful. That is the problem; you cannot be there all of the time. Some of my colleagues live in Brussels, of course. They may be trade union representatives, and they may be, I do not know, the UK firemen’s union officer in Brussels. They are on the committee, and, in their case, they are back and forth all of the time. Part of the challenge—both for the organisation and for me personally—is to make certain that there is a balance of availability. In other words, coming from Wales to a meeting in Brussels and not being able to stay overnight, as happens sometimes, might put you or your opinions at a disadvantage, because somebody else can stay a little longer and does not have to rush off to catch the plane and so on. There is a mix there that has to be managed carefully, because if everybody lived and worked in Brussels, they would lose touch and connectivity. It is rather nice for me to be able to say, ‘Well, I was in Welshpool market yesterday morning and the trade in lambs has dropped’ or ‘The pound has strengthened and our exports have suffered’. Obviously, I can see advantage in being close to the centre as well.

[77] **David Melding:** It is not remunerated, but expenses are paid, presumably?

[78] **Mr Jones:** You get a daily allowance. From that you have to pay your food bills and some of your extra transport bills. The difficulty is that you cannot get any money for spending back in Wales. I might be able to get something for being here today, because we are suddenly trying to go local with our campaign to try to promote interest in the work of the committee.

15:15

[79] However, generally speaking, I spoke, for example, about my work in Brussels at a farmers’ dinner on Friday, and I will be going to Llandudno next Friday, and that is off my own bat. Sometimes, the WCVA will allow me to claim travel from the WCVA if I am linking the two, or if I am presented as representing both WCVA and EESC. So, that is a failure, in a sense, in that I cannot develop continuity and my information provision because, as I say, I can only get paid for going to Brussels to attend meetings in Brussels.

[80] **David Melding:** Suzy Davies is next.

[81] **Suzy Davies:** Thank you. I wonder whether I could take you back to this idea of a Welsh voice and Welsh interest for a minute. The question arises from what you were just saying about your farming experience. You note in your paper that:

[82] ‘All Members act, once appointed, as individuals developing views based on their experiences and observations during debates and amendments’.

[83] When you are contributing to these debates and arguments—and you obviously have a very wide range of experience—do you speak purely from your experiences of living and working in Wales, or do you incorporate experiences that you have had throughout life and in other walks of life?

[84] **Mr Jones:** Well, yes; I think that you have to strive and struggle to get everything that you can. You have to listen to your colleagues from other countries, obviously, because you have to have a meeting of minds at the end of it. So, if I have not listened to what the French were concerned with, or what the Estonians or the Latvians—and, obviously, a small country like Wales has many issues in common with other smaller countries. We work in alphabetical order, so I have a person from the Czech Republic on my right-hand side, and I have an Estonian disability worker on my left-hand side, because our surnames all start with the letter ‘J’. So, in that sense, in the margins, you are always sharing information.

[85] I also try to bring people over to Wales when I can. So, as I said, I brought a group of researchers to this building to look at how cohesion policy works in Wales. We had another group that did a tour of Wales in 24 hours. They landed in Manchester, and we took them to the WCVA offices in Rhyl, where they had a briefing about one of the flagship projects, which trains young people to play football. They went over to Portmeirion, where they had a presentation on Portmeirion’s contribution to the Gwynedd economy. They went down to the Centre for Alternative Technology in Machynlleth, and then they came down here to the Commission office, and they had a briefing from the Wales Co-operative Centre, the WCVA, and Coed Cymru. These were all things that I arranged, with the help of the WCVA. They then went back and put what they saw in their documents. So, Wales got a mention following that visit.

[86] It is vice versa when we have a hearing—for example, we had a hearing on the future of young farmers two or three years ago, and I had been president of the Wales Young Farmers Clubs many years ago, so I phoned up the Wales YFC office, and asked whether someone would like to come out with me. So, again partly funded by me, the YFC sent the chair of its rural policy committee out with me. I got him a seat on the platform, so he was able to speak about the Welsh young farmers’ perspective on the future of young people in Europe. I could do a lot more of that if I had the funds, or, perhaps, the extra energy and support. However, I did that.

[87] Two years ago, it was the European Year of Volunteering. Again, I went to GwirVol, which you fund, and it gave me a young person from Cwmbran, who came out with me. With my colleagues from England, Scotland and Northern Ireland, we decided to share some of their costs between us, so they were able to sit in on our meetings about volunteering. We looked after them in the evening, and we took them to the European Parliament, where we met Jill Evans’s officer, and they took part in a debate. The young person whom I took out with me was fantastic; she had never voted in her life, and she had never been employed, but she was a fantastic voluntary worker. So, I think that the experience that I gave her of going to the European Parliament, of going to our committee and of taking part in a debate was, hopefully, a big game changer for her. So, we can do things of that sort, which will, hopefully, trickle down in terms of influence from time to time.

[88] **Suzy Davies:** That has answered my question in part, but may I flip that around, and ask: when you are in Brussels, how often do you find yourself using evidence from outside Wales in proving a point that you want to make? I will come to my main question after this, Chair. If it helps, what I am trying to establish is, when we talk about a Welsh voice on this

committee, you mentioned earlier that it is the ability of the specific members that affects the level of influence that they have, so, I am just trying to find out whether we are lucky that we have three very influential individuals who happen to come from Wales, or whether it is what they are saying that is actually making the difference.

[89] **Mr Jones:** My UK colleagues are extremely able—all of them—so I learn a lot from them on different subjects, and I have lots of links with Scottish and Northern Ireland members. The England team does not reflect the geography very well, I think, but there is a very good person from the north-east of England who has lots of interest in the environment, for example. My colleague from Ireland is interested in rural development. He has only just joined the committee, so he came to me for lots of advice; I helped him and he is now helping me. We do share knowledge and information.

[90] **Suzy Davies:** However, if you had less able representatives—if I can put it like that—would the knowledge about how Wales works be less well represented? I am trying to work out how much of it is down to you lot and how much is down to what Wales is trying to say.

[91] **Mr Jones:** Well, I am happy to talk about the other two in terms of their ability; I have no ability—I am well past my sell-by date, as many of you will know.

[92] **Suzy Davies:** I do not think that that is true. [*Laughter.*]

[93] **Mr Jones:** It is important to be able to engage. There is no point sending somebody to Brussels to just sit with people who sometimes have a common interest but who very often have totally different interests. I have had lots of debates these last six months with my colleagues from eastern Europe, who want a bigger slice of the common agricultural policy cake. The cake is going to be smaller, but they want a bigger slice of it because they have joined as new member states and they do not think that they have had their fair share. Again, on the one hand, I have to defend the Welsh interest—certainly the Welsh farming interest, although, obviously, the rural development plan is not just for farmers but is about rural areas generally. Those colleagues will sometimes form alliances, and you have to be quite alert and have the political nous to think, ‘Where have they been over lunch?’ and find out that seven or eight of them got together and had a meeting. That is why, sometimes, you need to put your name forward to be on these groups. Otherwise, there is a tendency for the north-eastern Europeans to vote for each other; then, the Mediterranean states will vote for each other.

[94] **Simon Thomas:** It sounds like Eurovision. [*Laughter.*]

[95] **Suzy Davies:** I was just going to say that.

[96] **Mr Jones:** Yes, absolutely. That is why, to give you another example, there is now what we call the Atlantic macro-regional strategy, on which the Welsh Government hosted a conference in Cardiff. I got on to the working party for that because I could see that it was important. It works in two ways. It started in the Baltic, and now there is a Danube strategy and a Mediterranean strategy. So, that raises the question: if we do not have a strategy, who is going to look after Portugal and the western French and Spanish coasts up to Ireland and Wales? So, you learn from what has happened in the Baltic, for example. We had an opinion on that last week as a sort of follow-up.

[97] The problem with these strategies is that there is no money to go with them, because the Council of Ministers decided that they may be a waste of time. However, actually, there is a place for an Atlantic macro-regional strategy, because you can then pool your research facilities. So, the universities of Cardiff or Swansea could work with those in Brest or other places on wind energy or whatever else might be of common interest. Having a focus is good.

[98] To be fair to the Welsh Government, when I heard that there was talk of a possible Atlantic strategy, I went straight to the Welsh office in Brussels and asked, ‘Do you know about this?’ and Steven McGregor there said, ‘Yes, we’re on the case; we will pitch in’, because there was only one conference to be held in the UK. Again, it goes back to the state versus region thing. In that case, the Welsh Government won the day and the conference was held here in Cardiff in Sophia Gardens back in the summer. So, that is a case for some element of continuity. I am not arguing for long-termism in terms of membership, but you need to be there for at least two terms to be able to be wise enough to understand how these things work, because, as I say, you are talking about a very large tapestry.

[99] **Suzy Davies:** That gives me a very nice segue into my main question. You mentioned in your submission to us that, with new accession countries coming into the picture, there is a chance that, even with three members, Wales’s voice and interests will be diluted even further. Can you tell us about the difficulties that you see there, and whether you think that the current set-up means that Wales will retain the strength of its voice in the state’s contribution to the committee?

[100] **Mr Jones:** This is the Constitutional and Legislative Affairs Committee, so you may wish to think about whether we can embed the practice of having three members in the UK team, because there were only two until we intervened back in 2005. As I said, Rhodri Morgan, because of his commitment to European issues, got on the ball very quickly. England lost a seat as a result—

[101] **Suzy Davies:** Will that happen again? That is what I am after.

[102] **Mr Jones:** The case was made because there had been devolution since the previous rounds. You now have legislative powers, which has also helped. When the referendum was held, I went down and did a bit of canvassing, which I do not normally do, because I am non-political, but I felt it important to be able to say in Brussels that funds must come through Cardiff because you have the ability and the powers. That gives an indication and identification. Civil servants then take note of your existence, because you have that power and are able to manage funds. However, somebody needs to keep a careful eye on that three within the 24, because I am sure that there will be pressure. We have just had Croatia in—I think that it has brought in eight new members—Serbia might be along, Iceland might come along, and there might be other countries that will want to join. Well, there is the issue of the building and the sheer size—the same will apply to the European Parliament, of course—and I suspect that what is going to happen is that the whole thing will be swept along in a change of some sort. So, we need to be vigilant. It might be after my time—it might not happen straight away—but at some stage you just cannot put anything more into a pint pot in terms of resources and seats at the table. I do not think that it would be fair on Wales to go back down to two seats, because, as I have tried to describe, the portfolios are so wide that you have to be able to speak on the environment, consumer rights and protection, rights of children and legal issues. So, it is good to be able to share that range of interests.

[103] **Suzy Davies:** Bearing in mind what you have just said about a potential pressure on the UK’s numbers, let alone Wales’s numbers within that, what is the one thing that you can think of that would help maintain not just Wales’s number of advocates and professionalism of advocacy, but their influence?

[104] **Mr Jones:** There is more than one thing. I think it would be good if, constitutionally, there was an agreement that the countries of the UK have fixed membership on the UK team. We also have some overlap, which then confuses the issue in a sense. I have a colleague, Peter Morgan, who used to be chief executive of the Institute of Directors. He served initially as a Wales member and then decided, because he lived in England, that that did not make an

awful lot of sense. He still serves as an individual, and a very able individual. So, perhaps restricting it might have one weakness, but I think it should be protected in some sort of unwritten constitution that the Wales, Scotland and Northern Ireland numbers would not be diminished in any reshuffle; I suspect that Germany, France, Italy and the UK may well have to take fewer members in some reorganisation. That is only my guess; there is no current discussion about it, but it is just simple mathematics. We have now gone up to 350 members and the Parliament has around 600 or 700 members or so. Again, it is just the sheer scale of the thing. We want more countries to join, because, obviously, that is a good thing: the bigger and wider the European Union is the better. However, you will need to make sure that there are still more links between ordinary people and the centres of decision-making. That is why we have this problem in the UK that people just do not feel connected. That is why I would hate for our committee to disappear, because we have a role to play to increase connection. I wish I could do it a lot better. When I started, I certainly had this vision that, on every opinion, each charity in Wales would be able to tell me what its view was, but, in practice, that is not possible. So, there has to be delegated authority to a certain extent, but I do try as much as I can to involve organisations.

[105] **David Melding:** I think that that concludes our questions. It has been a fascinating session. Do you have anything to add that you feel we have not quite captured yet in our range of questions to you, Tom?

[106] **Mr Jones:** Could I just—in that sort of—the A and B and C of that answer is that there is really not much of a resource here in Wales. I have been lucky that the European policy officer of the WCVA has had some resource to help me with my work. Without that, I would be in trouble. My other colleagues do not have the same thing. So, if there were any small pots of money that could be used for helping resource for working both ways, to enable us to do the work back in Wales, that would be helpful. A library of some sort would be beneficial.

15:30

[107] On a very local scale, for example, I drop these leaflets off at my doctor's surgery—we have a magazine. I do not know what my fellow people in Llanfair Caereinion think of them, but I drop them off there, and we could do more of that. The Commission office here could be encouraged to distribute some of these leaflets, and it would be good if the First Minister's office could, from time to time, have an annual meeting. Perhaps your committee or the Assembly could call us together to ask 'What have you done in the last year?' or 'What are the plans of the European economic and social committee?' It would be good to formalise the interaction a little, because people should be more aware of the work of the committee and feel happier to join in, to give advice and to participate in the work.

[108] If anybody has not seen our opinions, I can leave these with you. Examples of what we look at include better regulation, implementing Acts and delegated Acts. That is an opinion. Another example is a blueprint to safeguard Europe's water resources. Again, that is a pan-European issue, but would be of relevance to Wales. Rethinking education is another example. One of the issues is understanding the competencies. It is too easy for the centre to take on board lots of issues that actually belong here or in London. Another example is the opinion on the role of civil society in EU-Serbia relations. We play a big part in helping countries that want to join to have a civil society network in place, so that they can begin to understand how these things work and begin to send members to sit as observers. Croatian would-be members sat in with us for the last six to nine months, seeing how we work, so they hit the ground running. Other opinions are on the regulation of reducing broadband costs, smart regulation responding to the small and medium-sized enterprises, trade arrangements, processing of agricultural products and free movement for public documents. We have a magazine called *Europe III*, which we publish from time to time. I might have my picture in

it, saying what I have been up to and so on. You might not be interested but, there again, you might be.

[109] **David Melding:** If you could leave all that literature that would be great. Thank you very much, that was a very interesting session, and I appreciate some of the concrete suggestions that you made during the course of your evidence about how the system could be honed and made more effective, in terms of getting the Welsh voice amplified.

[110] **Mr Jones:** Diolch yn fawr, David.

15:35

Tystiolaeth mewn Perthynas â'r Bil Addysg (Cymru) Evidence in Relation to the Education (Wales) Bill

[111] **David Melding:** The witness this afternoon is Huw Lewis, the Minister for Education and Skills. Minister, would you like to make a few brief opening remarks and introduce your officials?

[112] **The Minister for Education and Skills (Huw Lewis):** I am joined at the moment by Gemma Nye, Iwan Roberts and Ceri Planchant. Thank you for your time, by the way, Chair and committee members. My thanks for inviting me to talk about the Education (Wales) Bill.

[113] I know that you will have received papers for your consideration. I believe that there is a very real opportunity to make progress within the educational sector by recognising the status and professionalism of all educational practitioners working in Wales and making a difference to our young people. In turn, we would anticipate that that would make a very real contribution to raising school standards. The Bill also gives local authorities the responsibility for managing the transition and assessment for the process for learners aged up to 25. This is in line with our ambition for a more learner-centred approach to planning for and meeting the needs of learners with special educational needs. We hope that it will lead, particularly, to better transition, post 16.

[114] The Bill introduces a single registration process for independent schools wishing to admit learners with a statement of SEN, which very practically we hope will increase clarity around exactly what a given independent school is capable of offering in terms of SEN support. There is a duty in the Bill on local authorities and governing bodies of voluntary aided and foundation schools to co-operate and co-ordinate with each other in terms of setting school term dates. Finally, the Bill enables the First Minister to advise Her Majesty on Privy Council matters directly, insofar as they relate to Estyn.

[115] If I may, Chair, I would also like to draw Members' attention to an administrative numbering error. It is very small error, in relation to the post-16 provision in chapter 5 of the explanatory memorandum. I assure Members that this will be corrected at the most appropriate opportunity, which will be during Stage 2. So, thank you for your welcome, Chair, and I am happy to answer questions.

[116] **David Melding:** Thank you for that introduction to the Bill's intent. I will start. Are there any issues of competence that have been discussed with the UK Government? Are there any grey areas at the moment? Are you in any contact with UK departments about certain areas that may require their consent or if there may be some dispute about competence?

[117] **Huw Lewis:** There is certainly no dispute and, as far as I am aware, no grey areas either. Contact with UK Government officials has been quite extensive already, as Members would no doubt expect. We have had outright acknowledgment in some areas by the Ministry

of Justice and the Wales Office in terms of areas of competence relating to those parts of the Bill that impact upon them. All areas of the Bill have been discussed with relevant officials in the UK Government. No concerns around competence have been reported to me.

[118] **David Melding:** Thank you for that very clear answer. You have described the Bill's intentions; how much of the legislation will be new and how much re-enacts or consolidates existing legislation? Can you give us a rough idea of what is being created and what is being re-enacted or consolidated to tidy things up?

[119] **Huw Lewis:** As I say, it is as well to be aware that the Teaching and Higher Education Act 1998 has been used as a template, particularly for the education workforce council provisions of the Bill. The 1998 Act has also been used as a template for the induction provisions. So, we are building on precedent in terms of the form of the Bill, in some aspects. The Education Act 2002 has also provided a template for the appraisal and requirements to be qualified provisions as part of this Bill. Of course, there are some interesting aspects of the Bill that are—although we are looking at former templates—novel, such as the duty to co-operate around school term dates for instance, which is an example of Wales really going in the diametrically opposite direction to that which is happening now in England, with the deregulation of school term dates. Essentially, the template provides for us to head off in completely the opposite policy direction.

[120] I suppose, Chair, that if I was to summarise, particularly around the education workforce council element of the Bill, which is the bulky part of the Bill, we are taking an existing principle and making a policy decision to expand that principle of registration, regulation and support around teachers, as it exists at the moment, and expanding that across the range of professions that now support our young people in education. There is recognition that education is changing and that there are professions of various kinds now involved with our schools and young people that need recognition. We also have a mind that, if we are to be engaged in raising standards, we have to register and understand what the workforce is out there. We can only do that through this expanded provision.

[121] **David Melding:** Thank you for that answer. I note that a lot of sections—sections 12, 13, 14, 15, 16, 17, 23, 25, 28 and 33—start with the slightly ominous phrase, from our point of view that

[122] ‘Welsh Ministers may by regulations...’

[123] Why is there relatively little on the face of the Bill, and why does so much of it constitute giving you regulation-making powers?

[124] **Huw Lewis:** You may wish to get into greater detail as regards the instances there. You are quite right; the Bill, in some ways, is perhaps a little anomalous in the breadth of the allowance that is there for Ministers to make regulations. However, that is, in almost every instance, connected to the need for flexibility—surrounding the education workforce council, for instance—and the perceived future need to expand the list of recognised professions. So, although we might now be talking about learning assistants in FE or in schools, there could conceivably be, in the very near future, an expansion to include other professions that are not currently listed on the face of the Bill. So, there would be a need for Welsh Ministers to add to the nominated workforce, if you like. That also means that we have to be flexible in terms of how the Bill treats each of those nominated professions. As regards fees, for instance, we would not expect someone who is working as a classroom assistant to be on the same kind of fees regime as a full-time teacher, who would be on a different salary. Also, in terms of continuing professional development and what we expect from those professionals, that might be very different as we range across schools, FE, youth work settings conceivably as well, or our work-based learning environments, where very different things might be expected and

demanded of the professional concerned, with different types of support being offered.

[125] **David Melding:** Is it fair to say that, if you look at the novel bits, as you described those bits that extend beyond what consolidates existing law, the Bill is pretty much a framework Bill, which does not actually state policy, but gives you the regulation-making power to develop policy? Is that a fair description?

15:45

[126] **Huw Lewis:** I do not think that that is quite fair, no. I would not describe this as a framework Bill, as such. The principles are very clearly drawn. The face of the Bill does contain an appropriate level of detail. Clearly, there are quite a number of regulatory powers, but that is because of the very variable landscape that we will be talking about and having to deal with in the future as regards different professions, different levels of expectation and different fee regimes. It would be impossible to move forward with a one-size-fits-all approach by attempting to get all of this stuff described on the face of the Bill. None of us is in a position, given the way that education is advancing and evolving, particularly, for instance, in relation to information technology, where we could confidently predict what classroom support might be appropriate in a decade's time. We could be talking about professions that none of us has yet heard of, or that do not exist at the moment, becoming indispensable at some point in the future.

[127] **David Melding:** Thank you, Minister. As you anticipated, we will now go into some of the specifics of what is left to regulation power, and, particularly, the procedure within regulation-making powers that you intend to employ. I will ask Suzy Davies to take us through the first set of questions.

[128] **Suzy Davies:** Thank you, Chair. Minister, I think that in your reply to the Chairman, you used the word 'anomalous'—

[129] **Huw Lewis:** I should not have said that.

[130] **Suzy Davies:** I think that one of the concerns of this committee is that some of the legislation that we are seeing in draft at the moment is primarily, 'The future will come via regulation', rather than our getting certainty on the face of the Bill. However, I take your point about flexibility. May I ask you, first of all, whether you are as certain as you can be at the moment about what you want to go into this Bill? I am just wondering whether you are bringing this forward a little early and perhaps have not had the chance to consider some of the functions that you might want this new council to undertake. Is that why you have retained the need for flexibility contained within section 5? I am happy to read it out to you, if you want.

[131] **Huw Lewis:** No, that is fine. Section 5 involves the powers to add functions.

[132] **Suzy Davies:** Yes. I am trying to get a rough idea of what kind of functions you might anticipate adding.

[133] **Huw Lewis:** Well, again, not all could be anticipated, in my view. To be very honest about this, I think it would be beyond the powers of any mere politician to be able to predict exactly what the educational workforce landscape might look like in future. What we do know—well, in my view—as regards Government policy is that we have something that is currently unfit for purpose in that we have a very narrow focus upon the teaching profession. We already know that the classroom environment, the school environment, and, certainly, the FE environment, is now a much broader experience for young people. When you get into issues like workplace learning, it is enormously varied.

[134] We know that, as it stands, we have an institution that, through no fault of its own, is not fit for purpose, because things have evolved around it. So, I think that we do need that flexibility set out in section 5. The power might not be used, of course, and it would only be used after proper consultation and so on, but we absolutely need that flexibility in there in order to deal with what is a constantly evolving arena. In fact, this would be one of the strengths in terms of where Wales could get to through this piece of legislation, in that we would have an instrument to address workforce needs—apart from anything else—that would be unprecedented in the United Kingdom. We would be fleeter of foot than would be the case across the border in England, that is for sure.

[135] **Suzy Davies:** If we accept what you say about the need for flexibility, there is an in-built vagueness there about what these functions could look like, or even what might be desirable in the future. In which case, are you satisfied that it is satisfactory to leave these potential functions to the negative procedure, where consultation is limited and certainly scrutiny is very limited? There might be some very serious things in here that, really, the wider Assembly should have a good look at.

[136] **Huw Lewis:** Do you mean specifically in relation to section 5?

[137] **Suzy Davies:** Yes. Do you not think that the affirmative procedure might satisfy more people?

[138] **Huw Lewis:** Well, we always have to remember that the negative procedure does allow scrutiny. It certainly maximises flexibility. Any changes made by regulation, as I said, would have to go through a period of consultation. I would say, however, Chair, that, if section 5 is of real concern to Members, that is something that I would need to consider very seriously.

[139] **Suzy Davies:** Thank you for that, Minister, because I think that it would be an area of concern that an unelected body may either be given powers or duties over which this Assembly would have no say. I would like to draw your attention to section 10 and two subsections in particular. Both are regarding regulation-making powers of the Welsh Ministers. Section 10(2)(b) relates to Ministers having the power to make regulations relating to provisional registration, which is subject to the negative procedure, whereas a couple of subsections down, subsection 10(6) states that Welsh Ministers would acquire the power to specify grounds of ineligibility to be registered but using the affirmative procedure. Can you explain why you think that you would use the affirmative procedure in one case and the negative in another? Is one less important than the other?

[140] **Huw Lewis:** No. There is a technical difference between the two. Section 10(2)(b) is about provisional registration. At the moment, we have only one level of registration. You are either registered as a teacher or you are not. Here, the Bill would introduce, for instance, the idea of minimum entry requirements for learning support workers and have a system of provisional registration so that you could register members of the education workforce while they work towards achieving qualifications. This would be very important, obviously, for continuing professional development and opening up avenues for the workforce to skill up, which is absolutely critical and central to the intention behind what we are doing here. You also mentioned section 10(6). That deals with something that is technically a little different, because that would add to the grounds of ineligibility that are described back in section 10(3). So, effectively, section 10(6) would amend the Bill, hence the difference between section 10(2)(b) having the negative procedure and section 10(6) being subject to the affirmative procedure. Section 10(6) is about amending the Bill.

[141] **Suzy Davies:** Is it also because the grounds for someone being ineligible to be

registered are actually quite serious, whereas more or less anyone could register provisionally? I think that that is what I am asking.

[142] **Huw Lewis:** Yes, I suppose so. Section 10(6) affects the person. It affects—

[143] **Suzy Davies:** You are in or out.

[144] **Huw Lewis:** You are using a piece of legislation to, effectively, alter the course of someone's life. Section 10(2)(b) is really about opening up options for the workforce and making workforce development more structured. I hope that it would be a much more encouraging regime for people to work in and aid recruitment and so on. As you say, section 10(6) is about a much more serious issue. I think that Iwan is dying to come in here.

[145] **Mr I. Roberts:** Hopefully, I can usefully add to the Minister's answer. Our view is that, with regard to section 10(2)(b), the principle of provisional registration is on the face of the Bill, and therefore that is why, for any regulations relating to that, a negative procedure would be appropriate, whereas section 10(6) enables subordinate legislation to actually change the Bill itself, which is why we recognise that an affirmative procedure would be more appropriate in that case.

[146] **Suzy Davies:** That is very helpful. Just bearing in mind what the Minister said, that a decision made under subsection 10(6) could affect the course of someone's career, is there an argument for a superaffirmative procedure for that?

[147] **Mr I. Roberts:** Our view would be that that would not be appropriate because, as you know, there is a hierarchy in terms of scrutiny and we think that it being pitched at the affirmative level is appropriate, because, as you will know, that gives Members a high degree of scrutiny. Clearly, Members would have to vote through that particular provision. We do not think that this can be characterised as something where the superaffirmative would be appropriate.

[148] **David Melding:** We do not often get officials explaining why they use the affirmative or the negative procedure. We have put this question quite often, and I think that we have had the nearest thing to an answer here. If you have a regulation-making power that fills in detail, why would you sometimes apply the negative to that, because it is creating in the first instance, is it not? It is doing what you would do in an amendment through regulations. So, why would you not just say, 'Well, it is not on the face of the Bill, in the first instance, at least, therefore any significant detail that is provided should be done through the affirmative route'?

[149] **Mr I. Roberts:** Our view, to use provisional registration as an example, is that, when considering the Bill, you would be voting in terms of whether you think that the principle of provisional registration is right or wrong. Therefore, in terms of the actual details and mechanics of how that would work, we would say that we would need flexibility and that therefore the negative procedure would be appropriate. Where we are changing something, adding something or removing something in the Bill, we recognise that that is going somewhat further than what we are doing with the provisional regime and, therefore, an affirmative procedure would be more appropriate—for example, the provisions in Schedule 2 about adding or removing categories. We recognise that that, to an extent, will change what is in the Bill and that is why we think that it is appropriate that the affirmative procedure is attached to that.

[150] **David Melding:** Previously, we have discussed the education workforce council. The fact that there is a council and that that is on the face of the Bill—although I think that that is through other legislation—justifies the negative procedure, and adding functions to that

council, which could be quite wide in scope, would come under the same reasoning of ‘you have voted on the principle of the thing, because we mention it in the primary legislation,’ would it?

[151] **Mr I. Roberts:** Yes. In terms of the functions of the council, we would say that section 4 flags up—

[152] **David Melding:** That you may change the functions—

[153] **Mr I. Roberts:** Well, that is section 5. Section 5 is about giving executive power to add to the functions. Section 4 essentially lists the functions. We would say that the Bill itself does set out, in quite some detail, what the purpose of the council is and what it can do. As the Minister was saying, what we are looking for is, to an extent, to futureproof this body so that we can deal with what might eventually happen in the future.

[154] **Suzy Davies:** However, we have also discussed that the potential future functions could be so wide-ranging and so different from what is currently in there that perhaps the affirmative procedure is worth considering.

[155] **Huw Lewis:** As it relates to section 5.

[156] **Suzy Davies:** Just as it relates to section 5?

[157] **Huw Lewis:** Yes.

[158] **Suzy Davies:** Not section 10. Thank you.

[159] **David Melding:** Okay, I thought that I had grasped a real principle there, but it was a will-o’-the-wisp, I fear. Joyce is next.

[160] **Joyce Watson:** Thank you. Good afternoon, Minister. I am going to talk about sections 12(1) and 13(1), to do with registration fees and making regulations, and ask why you consider that the negative procedure is appropriate for those two sections, Minister.

[161] **Huw Lewis:** Section 12 deals with the different fees, if you like. This is based, essentially, on the Teaching and Higher Education Act 1998, which currently provides a regulation-making power in relation to fees. It is a negative procedure, but we also have to be careful to provide here, in terms of this Bill, for a regime of fees in which we would have the flexibility to charge different fees for different groups of workers and, indeed, to add further groups of workers over time, which would necessitate that we would, pretty much, regularly have to revisit the fee regime. Of course, there would be consultation each time, leading up to any changes that were made by the regulations, but essentially this takes the precedent of the 1998 Act and rolls it forward, with the negative procedure being the correct way forward for section 12.

16:00

[162] Section 13 is about the administration of the registration process and, again, what we are talking about here is allowing flexibility for further changes to be made to the register and the process of registration. Again, the precedent is there in the 1998 Act, in section 4, which provides a similar regulation power relating to teachers’ registration. So, again, the precedent has been taken from the 1998 Act.

[163] **Joyce Watson:** I will go on with the same question, about why the requirements to be satisfied by educational practitioners in sections 14(1), 15(1) and 16(1) are subject to the

negative procedure.

[164] **Huw Lewis:** Again, section 14 is about adding new categories, essentially. What we are talking about here is that it is necessary that we have the capacity to update each category of worker as they will have different requirements, so we need the flexibility around the negative procedure there. It is simply a function, if you like, of the kind of job we want the legislation to do. On section 15, again, what I would say is that the detail is technical, as it is specific to the education worker in question, and the regulations will deal with the details of requirements for FE teachers. The subject matter of those regulations would be relatively minor in terms of the overall legislation. In terms of section 16, which is about FE learning support workers, again, the same logic applies—these are regulations dealing with the finer detail for those FE learning support workers. So, all this is relatively minor in terms of the overall legislation that we are considering. I think I have dealt with the three sections that you mentioned—14, 15 and 16.

[165] **Joyce Watson:** You have, and I thank you. I am going to go on now and ask why sections 17(1) and 19(3) relating to induction of the wider education workforce and appeals against induction decisions are both subject to the negative procedure.

[166] **Huw Lewis:** Again, it is precedent. The 1998 Act, section 19, provides a power as it is to make regulations in relation to teachers' induction. Of course, we are talking about a wider regime of induction now, but the principle is there in terms of the negative procedure in the 1998 Act. Similarly, with section 19(3), which is about appeals against induction decisions, we have section 19(4) of the 1998 Act, currently providing regulations for teachers' rights of appeal. Those rights of appeal need to go across the board for the educational workforce in terms of induction decisions. Again, the 1998 Act uses a negative procedure.

[167] **Mr I. Roberts:** In terms of the more general point that you raise on the relationship between having things on the face of the Bill and in regulations, you will see from the 1998 Act that that actually provides that, in terms of a right of appeal, the actual right would be prescribed in regulations, whereas you will see that, in terms of this Bill, we have actually set out that right on the face of the Bill. That goes to where we were at the beginning in terms of considering the 1998 Act as a template, and then working through that and looking at whether we have the right balance, or whether the 1998 Act has the right balance between having principles on the face of the Bill and, as the Minister was saying, giving sufficient flexibility to deal with the future.

[168] **David Melding:** Suzy, do you want to follow up on that?

[169] **Suzy Davies:** You just about pre-empted my question there, because the point that I was going to make is that, obviously, this is a legislature now, and if you are going to be citing precedent from pre-devolution Bills, I would like you to say that you are satisfied with those precedents as being acceptable, rather than just cutting and pasting, which I do not think is acceptable for primary legislation in Wales.

[170] **Huw Lewis:** As Iwan has very ably described, we are very far from a cut-and-paste job here; he has just pointed out a quite significant instance of the Welsh Government thinking for itself in that regard. I only relate to precedent because it is commonsensical if you are going to take an existing Act as a template to understand it. Of course, it has been through a critical filter here, for sure.

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

[172] **Joyce Watson:** Finally, Minister, from me, why is section 23(1), relating to the system of appraisals of performance, subject to the negative procedure?

[173] **Huw Lewis:** Duties under the system of appraisal are duties that might be imposed on people listed in the Bill. Again, I am going to use the ‘flexibility’ word. We must have that there because of the changing workforce landscape that we are trying to deal with, both now and in the future—always in response to evidence, and always in response to consultation. If Suzy will forgive me, we can look back now to the Education Act 2002, in which there is a similar regulation-making power in respect of teachers’ appraisal. Thinking for myself, I cannot see any reason we cannot take that as a valid precedent in terms of negative appraisal. If it has been good enough for teachers since 2002 and we have had no problems with it, then I cannot see why the wider workforce could not be a part of it as well.

[174] **Eluned Parrott:** Minister, I would like to ask you about section 25, on the code of conduct and practice. You say in your explanatory memorandum that it is appropriate that details about the form and content of the code are set out in subordinate legislation. Can you explain to me why?

[175] **Huw Lewis:** Again, we need the flexibility there in the form and content of the code. We will need to consider the form of the code and the content of the code if we intend to take on, as part of registration, professions beyond the teaching profession. We might get to a situation in the medium to long term where there are very disparate groups of professionals who have particular relationships with the learner and who may be attached to schools or further education bodies, or, indeed, who may be out there working with private sector partners in the workplace. The relationship between that professional and the learner could be variable, so what we are saying is that a code of conduct would have to have inbuilt flexibility as we go forward. Again, there would be no changes without consultation, and no changes that would be imposed from above without taking account of evidence.

[176] **Eluned Parrott:** Thank you, Minister. Let me take you back to what you said to Suzy Davies about section 10(6), which is on the grounds for ineligibility. You said that this affects the person and changes the course of people’s lives. Surely, a breach of the code of conduct is also likely to affect someone’s eligibility to teach and therefore be as significant as that particular provision that is affirmative by procedure, whereas the code of conduct and its provisions and so forth are to follow the negative procedure. Do you think that that is appropriate?

[177] **Simon Thomas:** May I just add to Eluned’s comments, Minister, a further point for your consideration here? It is this: three years down the line, your new education workforce council will be preparing its own code—it will be allowed to prepare its own code—under the same provisions. It has an obligation to consult the profession or professions when it does that. It seems to me that this is a part where you are clearly asking for a very set-out sort of affirmative procedure, if you like, further down the line, with the education council—a sort of open procedure. This is one bit, surely—to reinforce Eluned’s point—where a code of conduct should come in an affirmative way before the Assembly to give that full scrutiny, because it does affect people’s professions and the way in which the profession is perceived and viewed in Wales.

[178] **Huw Lewis:** I do not know whether I agree, really. A breach of the code and what happens after that would certainly be something that would speak to the worries that you are articulating there, but in terms of drawing up the code, and the form and content of the code, as you said, that would, in time, be a matter for the education workforce council, which is an arm’s-length set-up. So, I do not think that I agree that this is something that needs to go through the affirmative procedure and end up on the floor of the Chamber in Plenary. I do not know whether my officials would like to add anything. I see that Gemma is gesticulating.

[179] **Ms Nye:** I was just going to add that, as you both pointed out, the code of conduct is

a very real, living document. It presents to the general public as well as pupils and parents what is expected of somebody working in those professions. Of course, the code of conduct that we have for teachers is the code against which they are held in terms of their practice and their performance and the basis for any disciplinary procedures against them. So, the code of conduct will be, in the first instance, for Welsh Ministers to establish, because we have to ensure that that code is representative of all of the registered professions. Obviously, the General Teaching Council for Wales would work with us in preparing that code, and we will be building on the code that already exists and is in operation for teachers. The regulations deal with the form and the content—what the code might need to look like, not necessarily the substance of the code, which will be for the council. We have set on the face of the Bill that, as a minimum, that will be revised every three years. However, the code will be something that the education workforce council will be responsible for keeping constantly under review and revising as appropriate.

[180] **Huw Lewis:** It is essentially a matter for the profession.

[181] **Eluned Parrott:** However, section 25 provides Welsh Ministers with the power to make regulations in this regard. If Welsh Ministers are to be making regulations in this area, surely it is also important to involve the consultation of the professions that are most intimately concerned here. I refer back to what you said with regard to ineligibility criteria. This is a case in point, where this is affecting the way in which people perform their daily duties and the way in which their profession is judged and assessed.

[182] **Huw Lewis:** I think that we have answered the point. Do you have anything to add, Gemma?

[183] **Ms Nye:** The code of conduct is a code that is in everyday use, and it is against this that the education workforce is held to account. So, as is stated in the Bill, while Welsh Ministers will develop the first code, it will be for the education workforce council to revise the code. However, the regulations will enable the setting of the form of that code and, if necessary, any consequences of failure to comply with the code.

[184] **Simon Thomas:** Minister, do you intend to introduce a draft code before the Bill goes through the Assembly?

[185] **Huw Lewis:** We have to begin somewhere, do we not? I cannot see that there is any other mechanism that could be employed other than the Welsh Ministers producing the initial code.

[186] **David Melding:** Why is that not subject to the affirmative procedure? We heard an eloquent description of how this is important to give the public confidence and that you needed a firm starting point, and yet—

[187] **Huw Lewis:** Maybe I am getting this wrong, but would that not lead to a situation where we have a body of professional oversight having to come to a Plenary meeting of the Assembly every time it wants to amend its code of conduct?

16:15

[188] **David Melding:** That would be the case if it were always affirmative, but you often have, or you can have, regulations that are affirmative in the first case to establish the bedrock principle, and can then be altered by negative procedure thereafter. In fact, we often make that recommendation. Earlier, you did also say that there is a distinction between what is in the code and what the consequences of breaking the code would be in disciplinary issues. The disciplinary functions are still going to be negative procedure, according to what you have

said in the Bill. There is a bit of confusion at your end, I think.

[189] **Huw Lewis:** No, I do not think that there is confusion at all. There will obviously be duties set out for the education workforce council in terms of the procedures that it would have to follow if someone breached the code, for instance. This is its code, for it to police.

[190] **David Melding:** An intelligent layman out there is going to think, ‘Oh, the code, that must be really important; that is central to this whole idea’, but it is not going to come before the Assembly, unless a Member drags it in by the negative procedure.

[191] **Huw Lewis:** As I say, I cannot see that there is any great threat to civilisation here. If Welsh Ministers begin the process, obviously there would be proper consultation and proper dialogue with the professionals involved.

[192] **David Melding:** That is all to the good, but there is a proper legislative body here as well, which needs to be—

[193] **Huw Lewis:** I would never seek to describe the Assembly as improper in any way.

[194] **David Melding:** We will be reflecting on that, and I have rather taken over the questioning, which was not my intention, especially as Eluned is battling with laryngitis and doing so admirably. Eluned?

[195] **Eluned Parrott:** To return to what you said about the difference between there being a code of conduct and the consequences of a breach, sections 26(6) and 28(1), as David alluded to, are there, are breaches dealt with, but these are negative. Will you change them to affirmative, given that you have told us that a breach is something that would require the affirmative?

[196] **Huw Lewis:** I think that you are stretching what I said here a little—

[197] **Eluned Parrott:** No, I think that I am quite in tune with what you said, Minister.

[198] **Huw Lewis:** Sorry, Eluned, you are—

[199] **Eluned Parrott:** I am quoting to you what you have said in response to Suzy Davies and me about the consequences of a breach in the code, or some disciplinary problem.

[200] **Huw Lewis:** If I give you an illustrative example about affecting the course of someone’s career directly and so on, it would be for the council to deal with breaches of the code. That is partly what it is there for. Section 26—

[201] **Eluned Parrott:** Sections 26(6) and 28(1) allow Welsh Ministers to make provision in respect of disciplinary functions. Why is it negative?

[202] **Huw Lewis:** This is not Welsh Ministers getting involved with the disciplinary procedures of the council; this is Welsh Ministers being enabled to exclude or restrict any of the council’s disciplinary functions in section 26. That does give Welsh Ministers the power to tailor the disciplinary powers of the council, if you like.

[203] **Eluned Parrott:** It also gives powers to expand the disciplinary powers of the council, which is section 28(1).

[204] **Huw Lewis:** I am sorry, but I did not hear that.

[205] **Eluned Parrott:** There is also the power to expand the disciplinary powers of the council in section 28(1).

[206] **Huw Lewis:** Yes. You have to have that kind of provision. For instance, in terms of the Disclosure and Barring Service, it is there under the Safeguarding Vulnerable Groups Act 2006. So, you have to have that ability to take account of what might be happening elsewhere, to make sure that the disciplinary functions of the council can keep pace with changes elsewhere.

[207] Section 28 gives the council disciplinary functions, essentially. That is a technical piece of law making. It is not about Welsh Ministers getting involved with the nuts and bolts of a disciplinary procedure.

[208] **Eluned Parrott:** No, but it gives Welsh Ministers the power to make regulations outlining what the disciplinary functions of the council should be—expanding them as well as curtailing them, presumably. Surely that should be by the affirmative procedure, given the importance that you have put on those issues.

[209] **Huw Lewis:** I do not know that that would lead to good law, really. To go back to the Disclosure and Barring Service, I do not see that that should happen on each and every occasion that a technical change needed to be made in terms of a barring from a particular profession, for instance. Again, we have to bear in mind that we are dealing with a landscape that we cannot, confidently, in every respect, predict. We are also dealing with professions that have a different degree of professional contact with, for instance, young people in very different contexts. So, I do not see that coming back to a Plenary session of the Assembly every time the form and the content of the procedure for disciplinary proceedings, for instance, needs to be addressed leads us to a very good place in terms of the day-to-day working of the new council.

[210] **David Melding:** Do you hold that view even if the changes are quite significant, not technical?

[211] **Mr I. Roberts:** May I interject there again, perhaps in terms of how we have considered whether the negative or affirmative is appropriate? Section 28(4) illustrates where we recognise that there is potential in that section for us to change the Bill. In those circumstances, we recognise that the affirmative procedure would be appropriate, and hence why there is provision for that in this particular Bill. However, if there are section 28(4) regulations that do not amend the Bill, then, in our view, that would be appropriate for the negative procedure because, in the Bill itself, you are determining principles in terms of the disciplinary functions, and we would say that there is sufficient detail on the face of the Bill, in terms of what the council can and will do in terms of discipline, for you to have an idea as to what it will actually do. The mechanics and the details of how that will be administered are more appropriate for regulations, and the technical nature of those regulations, and the need for them, potentially, to be changed, possibly regularly, to meet evolving needs, leads to our conclusion that it would be negative.

[212] **David Melding:** You talk about futureproofing as if major stuff that cannot be anticipated has to be managed through this process. If futureproofing is just technical adjustment—this is what has always gone on since we have had regulatory powers—I am very confused about what you are referring to here. This seems to us, in the novel bits, to be pretty framework legislation—it gives the Ministers regulatory powers. However, you are saying, ‘Well, these regulatory powers are not really very significant—we will only have them as affirmative’, when they might change something that is already written on the face of the Bill. However, that would imply that this Bill is heavily weighted to what is on the face of the Bill, whereas that is not our assessment initially—I must be very frank with you.

[213] **Huw Lewis:** By its very nature, this Bill is very particular. What the Bill is attempting to do is to respond to a changing landscape. If you look, for instance—just by way of illustration—at how technical support in schools for information technology might evolve, we could be fast approaching a situation where our current ideas about IT teaching and IT technical support would be—and I think that they may already be—very outdated in terms of what children actually need. We could be talking about the growth of a new sort of hybrid profession here that does not actually exist. There is no-one with that kind of professional background—well, there might be fortunate individuals with that kind of professional background who do exist, but, essentially, we are not making provision for that kind of thing in schools. Now, we have to have a piece of legislation that enables us to recognise that kind of evolution inside a—I was going to say ‘framework’, but I had better not—[*Laughter.*]

[214] **David Melding:** I do not know if it helps you—we are going around in circles a bit—but we will be able to report with further consideration on these sorts of issues. However, I find it difficult to reconcile the fact that you need to futureproof stuff, and that there could be major changes that cannot be anticipated, with the fact that there is very little that is left to affirmative resolutions in your suggestions—the vast bulk of regulatory powers are by the negative procedure. That is what we mean by ‘the balance’. We need to make progress, and, as I said, it will be for us to address these issues in our report. Are we still with you, Eluned? I see that you have finished, so we will turn to Simon.

[215] **Simon Thomas:** I am tempted to ask how much of this is down to the fact that you have not decided what to do with youth workers yet, in the context of this Bill, and whether that is why you are leaving so much room to be able to expand this council later.

[216] **Huw Lewis:** That is a policy question, Simon, for another time and place.

[217] **Simon Thomas:** It might have some bearing on the workings of the Bill.

[218] Let us look at some of the further instances of your regulatory powers. Sections 33, 35, 36 and 37 really relate to the supply of information. Again, these all come under the negative procedure. Could you say why you have decided that the negative procedure is appropriate in that matter?

[219] **Huw Lewis:** Again, I think that it is fair to say that all of these—sections 33, 35, 36 and 37—are about holding and supplying information, unprofessional conduct and, in section 37, dealing with agents and contractors. We are talking about relatively minor detail here in relation to the overall legislation. In terms of holding information, for instance, it is about requiring updates and for the updating to be done very regularly over time, and, again, it is about reflecting changes in the education workforce. It is about empowering this professional grouping to get on with the job. Section 35 is technical; it is procedural stuff, really, in terms of the supply of information. There is a similar section in the Teaching and Higher Education Act 1998 in relation to teachers. Section 36 covers unprofessional conduct. Again, I could refer you to the 1998 Act, with similar provision in section 15. On agents and contractors, section 15(a) of the 1998 Act contains similar provision. None of these things is an earth-shattering innovation, but they are necessary.

[220] **Simon Thomas:** Thank you for that. I will now turn to something that is, perhaps, a little less clear. In Schedule 1, you have an Order that provides for the number of members on this proposed new council to be subject to the affirmative procedure. However, the other regulation powers there, which relate to the eligibility and staffing of the council, are subject to the negative procedure. Why have you chosen, in that instance, to go for the affirmative procedure, just in terms of the numbers? Again, is that something to do with the size of the potential workforce that we might be dealing with here?

[221] **Huw Lewis:** Yes, it is. It is to do with the size of the council, because that is intimately tied up with public expenditure, simply put. We cannot unleash a cast of thousands, in terms of a workforce council, on the public. The Assembly as a whole needs to scrutinise how much all of this stuff is going to cost.

[222] **Simon Thomas:** I will ask the question in a different way than you have had in your questions so far, Minister. Why the affirmative here? After all, the negative procedure can be called in if the Assembly is not happy. Why have you chosen for the numbers to be subject to the affirmative procedure? It does not quite seem to fit in with the other things that you have said about the affirmative procedure, including what Mr Roberts has said so far in this session.

[223] **Huw Lewis:** It is because of that wider budgetary impact, primarily.

[224] **Simon Thomas:** Okay, so it is a specific thing to do with your belief that the size of the council is something in which the wider public would have an interest.

[225] **Huw Lewis:** Of course they would—they are paying for it. A council of three has very different implications to a council of 33. Those are not numbers that mean anything, by the way—they are just illustrative examples.

[226] **Simon Thomas:** Thank you for that. I have Schedule 2 written down here, but I think that Mr Roberts answered that point earlier, so I will leave that and move on to a final look at sections 44, 45 and 46, which relate to persons with learning difficulties. Basically, it is inserting new sections into the Learning and Skills Act. There is also section 49, relating to the dates and times of holidays and sessions. You said at the outset that you are using this Bill to insert new parts into existing Acts. I will not go down a policy change line, but you did say that it was a significant divergence from what was happening in England. What is your intention in terms of regulatory powers around this? What new powers do you feel that you need by amending the Acts in this way?

16:30

[227] **Huw Lewis:** Around which Act, specifically?

[228] **Simon Thomas:** Let us start with the Learning and Skills Act and the issue of post-16 special educational needs.

[229] **Huw Lewis:** I think that it is relatively clear. What we are talking about here is divesting the Welsh Ministers of powers and, essentially, shifting the power to local authorities. So, credit where credit is due, we are actually stripping Welsh Ministers of powers here. What we have is a proportionate and appropriate means of doing that.

[230] **Simon Thomas:** You do retain some regulation powers within this, though, do you not? I am not looking at the policy too much, but is that still designed to ensure that you have a relationship with what is happening on the ground? You are not completely divesting yourself of powers here, I do not think.

[231] **Huw Lewis:** Of course, and neither should we.

[232] **Ms Williams:** The 11 regulation-making powers within that part of the Bill will probably come down to two broad sets of regulations that will set out the detail to ensure that, when we move the responsibilities to the local authorities, we can ensure consistency of approach, so that learners can expect to receive a single approach to assessment and to

establish a level of detail consistently across Wales. That will, in effect, protect learners and ensure that the way that the special educational needs tribunal looks at the cases is consistent and has structure. So, the regulations are about the detail underneath the principles.

[233] **Simon Thomas:** Is that a kind of consolidation of regulation, then? You have several different powers, but you talked about using them in two specific ways. Am I right in saying that?

[234] **Ms Williams:** At the moment, we have no regulation-making powers in the relevant provisions of the 2000 Act, because the responsibilities and the duties sit with Welsh Ministers. So the regulation-making powers are there to ensure that, when we put responsibilities on local authorities, they deliver consistently and to a minimum standard.

[235] **Simon Thomas:** Thank you for that. I have a final question, which is separate again. You mentioned in your opening comments about dates of terms and session times. Are you taking new powers there? Is this something that is specifically new or is it something that you are simply taking across from earlier legislation? I was not quite clear.

[236] **Huw Lewis:** We are using a piece of earlier legislation. We are using the Education Act 2002.

[237] **Mr Planchant:** It is actually doing both those things. The provisions around setting of term dates are new powers, to an extent. The new element is where Welsh Ministers may issue directions. That said, the principle about local authorities and governing bodies of voluntary-aided and foundation schools in the first instance setting dates is the same. The second part of it is that we have taken the opportunity to re-enact the provisions on school session times, so that it is in the same place, but that is just a straight re-enactment and there is no change to the law.

[238] **Simon Thomas:** Thank you for that.

[239] **David Melding:** Finally, Minister, I have a question on section 52. I am sure that your intent in the use, or the possible use, of this is wholly constructive, but it is very widely phrased. I think that we ought to have some indication of why you need these apparently sweeping powers to ensure effective enactment.

[240] **Huw Lewis:** In section 52, we are dealing with Henry VIII powers, essentially. As Members will be aware, this is about primary legislation being amended without having to present another Bill. There are two aspects to this in the Bill. One is section 52 and there is another paragraph in Schedule 2. They are both subject to the affirmative procedure. Section 52 is in relation to school term dates. We might not require that power at all, but we have to remember that the UK Government is up to stuff in this area. It is bringing forward primary legislation to amend section 32 of the Education Act 2002, and it is amending the Act. This is all happening at around the same time, so we may need to use the power to amend section 32 to ensure that our changes still work. In other words, the UK Government could be mucking around with the Education Act 2002 to the detriment of our legislation. So, section 52 is specifically there to ensure that we can carry on making legislation in Wales, regardless of what happens in Westminster.

[241] The other instance is paragraph 2, Schedule 2, and that deals with the education workforce and the addition of new categories of workers to the registration regime. So, that is much more technical, but is a necessary thing that we have to do. If we are going to add youth workers, we would not have to introduce another Bill to do it. Essentially, that is why that is there.

[242] **David Melding:** Okay, but some would argue that adding a section, such as on youth workers, is not very technical.

[243] **Suzy Davies:** You mention the Henry VIII clause, and in section 56 we also have—and I have not spotted a mention of it in the explanatory memorandum—once again, the possibility under the commencement section of introducing

[244] ‘transitional, transitory or saving provision as the Welsh Ministers consider necessary or expedient’.

[245] We have had concerns about that sort of wording before on this committee. I wonder whether you could reassure us that those words will not be used to allow Welsh Ministers to introduce anything major at the commencement stage.

[246] **Mr Planchant:** That is common wording that you would get in every piece of primary legislation. It is designed to cater for the situation of moving from an existing regime to a new regime, where there is a transitional period. You need to make provision to make that seamless. So, it is not about making new principles; it is just about the mechanics of moving in one instance from one regime to a new regime.

[247] **Suzy Davies:** I wanted that on record, thank you.

[248] **David Melding:** That concludes our questioning session. Thank you, Minister, and your team of officials, for your attendance this afternoon and for helping us with the evidence.

16:38

**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**

[249] **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).

[250] I see that the committee is in agreement. Clear the public gallery and switch off the broadcasting equipment.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 16:38.
The public part of the meeting ended at 16:38.*