



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

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Deddfwriaethol](#)

[Constitutional and Legislative Affairs
Committee](#)

4/7/2016

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

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. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Michelle Brown Bywgraffiad Biography	UKIP Cymru UKIP Wales
Yr Arglwydd / Lord Dafydd Elis-Thomas Bywgraffiad Biography	Plaid Cymru The Party of Wales
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Carwyn Jones Bywgraffiad Biography	Aelod Cynulliad, Llafur (y Prif Weinidog) Assembly Member, Labour (the First Minister)
Hugh Rawlings	Llywodraeth Cymru Welsh Government

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Naomi Stocks	Ail Glerc Second Clerk
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 Datgan Buddiannau Introduction, Apologies, Substitutions and Declarations of Interest

[1] **Huw Irranca-Davies:** Good afternoon and welcome to this session of the Constitutional and Legislative Affairs Committee. First Minister, you are very welcome, and your colleague, Hugh Rawlings, is very welcome to the proceedings this afternoon. As you're aware, we've already been taking evidence on this iteration of the Wales Bill and we've heard some very interesting thoughts and analysis of the draft Bill, or the Bill, already. You won't be surprised, I suspect, this afternoon by the themes that we're going to aim at. Certainly, it's helpful that you've already put on record some of your thoughts and the Welsh Government's thoughts on this as it goes forward.

[2] Before we get into full proceedings, could I briefly do some housekeeping remarks? If there is a fire alarm this afternoon—and we're not expecting a fire alarm—you're aware of where the exits are. Could you make sure everybody, including those who are sitting within the chamber, that your mobile devices are switched to 'silent' mode? There is, of course, a translation service available for anybody. And, finally, we will proceed.

14:31

Papurau i'w Nodi Papers to Note

[3] **Huw Irranca-Davies:** I draw to committee members' attention to item 2, where we have paper 1, which is the letter from the First Minister to the Secretary of State for Wales regarding the Wales Bill. That has been circulated to us all. So, we just note that. We also have, in paper 2, under item No. 2, the letter from Nicholas Paines QC, commissioner of the Law Commission, which has also been circulated. Just to note that the former committee's 'Making Laws in Wales' report made similar calls to those that we can see within those letters for the law in Wales to be consolidated and made more accessible. However, it did not consider the issue of codification. The former committee agreed in the last Assembly that the commission could appear before it every six months to provide an update of its work. So, this may be something that we want to consider for early in the new term, either as a one-off or as part of a new inquiry. So, I just flag that up for fellow

committee members.

14:32

Tystiolaeth mewn perthynas â Bil Cymru
Evidence in relation to the Wales Bill

[4] **Huw Irranca-Davies:** We can now pass—if you're content with that—to the substantive part of this afternoon's proceedings, which is evidence in relation to the Wales Bill. Once again, First Minister and Mr Rawlings, you're very welcome here today. We're going to go straight into it, if you don't mind. If I can begin by asking you, First Minister, for your thoughts overall on the Bill that we now have in front of us, which has changed. You mentioned in Plenary on 15 June—your words were:

[5] 'Now we have before us a Bill that has potential but needs a lot of work. There's a great deal of detail in the Bill that needs to be examined.'

[6] So, can I ask you: is this Bill we have in front of us an improvement on the draft Bill we saw before, and if so, in what ways?

[7] **The First Minister (Carwyn Jones):** It is an improvement. The problem with the previous Bill is that its structure was such that it was fundamentally unworkable. That was evidenced in the fact that there were few, if any, people who were willing to support it in its then current form. This is an improvement. It removes, for example, by and large, the Minister of the Crown consents issue, although not completely. It removes the necessity tests, which were wholly unnecessary. But, nevertheless, there are areas where there is still a need for improvement—areas of detail, which we're going through at the moment. It doesn't address the issue of the jurisdiction, for example. There are areas where the Welsh Government will be supportive of devolution, such as policing, that are not addressed, and other areas where I think there is potential for issues to be addressed, like the community infrastructure levy. There are other areas where the amount of devolution has gone further than perhaps was originally thought, such as the devolution of most of the criminal law.

[8] So, it's a mixed bag. What is clear, though, is that it can't be a lasting settlement. There are a number of reasons for that. Firstly, there are areas that will need to be addressed if they're not addressed now, like the jurisdiction; and, secondly, of course, we know that the nature of the

relationship between the nations of the UK is bound to be revisited in the light of the referendum result a week last Thursday.

[9] **Huw Irranca-Davies:** Could I then ask you, in light of the quite speedy process this is going to have through the other place, particularly in the Commons, where it's going to be in and out of committee very rapidly now, and I know you've made clear that you want certain parts of the Bill to be considered early, if that was possible—is that because you see that those are the areas that need to be bolted down? Why is that? Why have you highlighted certain areas that really need consideration in this concertina timetable?

[10] **The First Minister:** Well, there are a number of areas that need full consideration. We are concerned—I'm concerned—about the timetable. The Secretary of State has assured me that the timetable will be sufficient for full scrutiny of the Bill in the House of Commons. We'll have to wait and see whether that is the case or not. There are areas, as I say, where there needs to be re-examination. For example, why would it be that public order legislation is, by and large, devolved, and yet the sale and supply of alcohol isn't devolved when the two, we were told, were inextricably linked when the issue was raised in the previous Bill? What I do hope is that the time that's been allotted to the Committee Stage in Westminster is enough for the Bill to be properly scrutinised and for all these issues to be examined.

[11] **Huw Irranca-Davies:** Okay. There we are. Thank you. We're going to return to quite a few of these areas in some detail, but if I could pass across to my colleague David Melding now.

[12] **David Melding:** I just wonder what you think about the declaratory statement that the Assembly is permanent. Do you think that's helpful? I know we don't have fundamental law in the UK and, you know, nothing really can be permanent, constitutionally, if you hold to the doctrine of the sovereignty of Parliament, but these mechanisms are used in other substantial legislation, and I just wondered whether you think that's not bad insofar as how far you can go in the constitutional climate that we live in.

[13] **The First Minister:** I welcome it. I know it's the case in Scotland as well, but it's an important declaration. It's right to say, of course, that it's not binding, but in terms of it being morally binding, it's a hugely useful statement as far as Wales is concerned. Whether parliamentary sovereignty will remain, of course, as the fundamental base of the constitution in the

future, we'll wait and see, but that declaration is hugely important. It's for the people of Wales to decide how they wish to be governed, and this statement recognises that fact.

[14] **David Melding:** Similarly, by way, perhaps, of a sideways recognition of something that's there, if not fully coherently encapsulated yet—and I did hear your comments about how disappointed you are about the jurisdiction issue, but we do have this phrase 'a distinct body of Welsh law'. I mean, that's saying something, isn't it, even if it's not terribly easy to understand what is meant by it?

[15] **The First Minister:** Well, it states the obvious, really. It doesn't take us any further one way or the other; we still have a situation where there will be, increasingly, divergence between Welsh law and English law. That's not the way it's described, of course—it's the law of England and Wales as it applies in Wales and as it applies in England. It is still the only jurisdiction anywhere in the common-law world where there will be significantly different—and it's already the case—laws in the same area of policy. It's not workable in the longer term.

[16] Now, you'll have heard me argue not necessarily for a separate jurisdiction, because that would entail a separate court system; I think, with that, comes a great deal of preparation and some cost—I think that could be avoided where we have, effectively, a shared distinct jurisdiction where Wales is recognised as a distinct jurisdiction, but where we share the court system. That proposal, of course, was first aired, not advocated—I'll be careful what I say here—but aired by the Lord Chief Justice. I think it's an elegant solution to the situation we find ourselves in.

[17] **David Melding:** Okay. I'd like to probe a bit more on the jurisdiction point, but perhaps I'll do that later when my colleague puts a more distinct question on that area to you.

[18] **Huw Irranca-Davies:** Thanks, David. Lord Dafydd Elis-Thomas.

[19] **Yr Arglwydd Elis-Thomas:** Wel, **Lord Dafydd Elis-Thomas:** Well, First Brif Weinidog, mae rhywun yn teimlo, Minister, one feels, with what has gyda'r hyn sydd wedi digwydd i Fil happened to the Wales Bill, that we're Cymru, ein bod ni nôl, bron, yn y back, nearly, to the place we were, as man yr oeddem ni, cyn belled ag y far as one way of operating is mae un ffordd o weithredu yn y concerned, namely the number of

cwestiwn, sef nifer y cymalau cadw, ac yn arbennig y rhestr o eithriadau. reservations, and in particular the list of exceptions.

[20] Fe ddywedodd yr Athro Thomas Watkin wrthym ni ei fod o'n poeni nad oedd y Bil newydd fel yr oedd o'n ymddangos wedi gwneud llawer o gynnydd er mwyn creu gofod i'r Cynulliad ddeddfu. A fyddech chi'n cytuno â hynny? Professor Thomas Watkin told us that he was concerned that the new Bill as it appeared had not made much progress in creating space for the Assembly to legislate. Would you agree with that?

[21] **Y Prif Weinidog:** Mae'n rhwyddach i'r Cynulliad ddeddfu yn ôl y Bil newydd—mae yna lai o rwystradau, ac nid yw mor rhwystredig o ran beth oedd yn y Bil ynghynt, o achos y ffaith, wrth gwrs, yr oedd, mwy neu lai, feto ar ddeddfwriaeth o Gymru gan Weinidogion yn Whitehall, felly mae hynny wedi newid. Mae rhai rhannau o'r Bil lle nad wyf yn gweld beth yw'r synnwyr y tu ôl i'w cadw nhw, oherwydd, wrth gwrs, mae'n bwysig dros ben bod rhyddid gan y Cynulliad i sicrhau bod deddfwriaeth yn cael ei chymryd trwy'r Cynulliad yn yr ardaloedd sydd wedi cael eu datganoli heb i unrhyw rwystrau gael eu doddi o flaen y Cynulliad. **The First Minister:** It's easier for the Assembly to legislate under the new Bill—there are fewer hurdles and there aren't the same number of frustrations in terms of what appeared in the Bill previously, because there was more or less a veto on Welsh legislation, which would've been held by Whitehall Ministers, so that's changed. There are some sections of the Bill that I can't see the sense in keeping, because it is, of course, very important that the Assembly has that freedom to ensure that legislation is taken through the Assembly in those areas that are devolved without any restrictions being placed upon the Assembly.

[22] **Yr Arglwydd Elis-Thomas:** Ond oni fyddech chi'n cytuno bod Atodlen 7A, er yn haws i'w deall na rhai cyfeiriadau, yn ein cadw ni yn yr un math o setliad ag oedd gyda ni yn yr hen Atodlen 7 i Ddeddf 2006? **Lord Elis-Thomas:** But would you not agree that Schedule 7A, even if it's easier to understand than some of the directions, keeps us in the same sort of settlement as we had in the old Schedule 7 to the 2006 Act?

[23] **Y Prif Weinidog:** Rwy'n meddwl bod hynny'n iawn, ond mae'n rhaid inni gofio, wrth gwrs, fod yna lai o **The First Minister:** I think that is accurate, but we must bear in mind that there are fewer problems in this

broblemau yn y Bil hwn. Nid yw'n berffaith o bell, ac nid wy'n dadlau bod y Bil hwn yn berffaith ynglŷn â sicrhau bod hawliau pobl Cymru yn cael eu hadnabod, ond, i fi, beth sydd wedi newid yw: er nad yw'r Bil ei hunan yn berffaith o bell, mae'r strwythur wedi newid o'i gymharu â strwythur anobeithiol y Bil cynharaf.

Bill. It's not perfect, by a long way, and I'm not arguing that this Bill is perfect in ensuring that the rights of the people of Wales are recognised, but, for me, what's changed is, although the Bill itself is far from being perfect, the structure has changed, if you compare it with the hopeless structure that was proposed by the earlier Bill.

[24] **Yr Arglwyd Elis-Thomas:** Ond mae'r pwyllgor yma—y pwyllgor blaenorol yn y Cynulliad diwethaf—wedi bod yn ceisio gosod gerbron egwyddorion ynglŷn â deddfu, gan bwysleisio bod angen i deddfu fod yn hygyrch, yn gydlyn ag yn gydgysylltiedig, i ailadrodd beth mae'r pwyllgor yma wedi ei ddweud sawl gwaith. Ni wn a ydych chi'n credu bod yr egwyddorion hynny'n gliriach yn y Bil yma nag oeddent yn y Bil blaenorol, ac efallai yr hoffech chi gymharu hefyd y Bil yma sydd wedi ymddangos yn ddiweddar o'r Deyrnas Unedig â'r Bil drafft blaenorol, ac yn enwedig â'r Bil drafft ardderchog, os caf ddweud, a gyhoeddwyd gan Lywodraeth Cymru.

Lord Elis-Thomas: However, this committee—the previous committee in the last Assembly—has attempted to bring forward principles in relation to legislating, by emphasising that legislation needs to be accessible, coherent and joined up, to repeat what this committee has said on many an occasion. I wonder whether you think those principles are clearer in this Bill than they were in the previous Bill, and perhaps you would like to compare this Bill that has appeared recently from the UK with the previous draft Bill, and in particular with the excellent draft Bill that was published by the Welsh Government.

[25] **Y Prif Weinidog:** Wel, dyna'r Bil, wrth gwrs, y byddem ni'n moyn ei weld. Roedd y Bil yna'n rhoi mwy o eglurder, ac roedd y Bil yna'n rhoi sylfaen cynaliadwy, yn fy marn i, ond nid felly y mae'r Bil rydym wedi ei gael. A gaf i ofyn i Hugh Rawlings i ddod yn ôl ar y manylion am hynny?

The First Minister: Well, that's the Bill that we would have like to have seen implemented, of course. That provided greater clarity, and that Bill provided a sustainable foundation, in my view, but that's not the case with the Bill that we've received. I'm going to ask Hugh Rawlings to fill us in on the detail of that.

[26] **Mr Rawlings:** Thank you, First Minister. Well, of course, the Bill that we produced was different and, in several respects, more ambitious than the current one, because it represented an attempt to consolidate all the relevant legislation in a single document. But on the specific point about what is now Schedule 7A, or what will become Schedule 7A to the 2006 Act—and in itself, the fact that Schedule 1 to this Bill will become Schedule 7A to the 2006 Act, and so you will have to read the 2006 Act, which is very heavily modified and amended by this Bill and also by the 2014 Act, means it's a real towel-around-the-head job to work out what the law is, or will be when this receives Royal Assent.

[27] But on the specific point about the way that Schedule 1, which will become Schedule 7A, is drafted, as you will know, we argued from the outset that one particular drafting technique of the draft Bill, referring to 'the subject-matter of' other pieces of legislation as the way of expressing the reservation, was deeply unhelpful to the earnest seeker after truth, because they would then have to be referred on to very many other pieces of legislation. And you can see that classically if you look at reservation 139, which is the reservation about employment and industrial relations, where you have a proposition that employment rights and industrial relations are reserved; that is then said to include a list of legislation (a) to (q), but it only includes that list. So, there will, perhaps, be others that should be included in the list and, of course, the list will become out of date and so on.

[28] So we, in our discussions with the Wales Office, tried very hard to persuade them to get away from this reference in the reservations to existing legislation as defining the reservation, and in our draft Bill, our alternative, we provided alternative drafting. We've not, on the whole, been able to persuade them that that is the right way forward, although some of the 'subject-matter of' reservations have gone.

14:45

[29] **Lord Elis-Thomas:** I'm tempted to ask you to take this a bit further. One could argue that the constitutional situation we are in is entirely to do with an attempt by the UK Government to respond to the Supreme Court's various judgments. Now, I'm not going to ask you to comment on what the justice in the Supreme Court said, but I would like you to comment on whether you think that legislating in such a way provides for clarity and consolidation in the constitution of Wales, which is what this Bill is supposed to be about.

[30] **The First Minister:** Consolidation, no. The draft Bill that we produced was designed to achieve that consolidation. But, no, as Hugh has already said, there will be a need to read parts of the Schedules to this Bill in conjunction with those to the 2006 Act. That's part of the issue that we face here; a consolidated Bill would have been far easier to—a Bill that outlined and described the constitution of Wales as a consolidating Bill would have been, by far, the easiest way forward. I think the initial Bill was a reaction to the Supreme Court decision, and we see that in the way that it tried to roll back many of the areas that were thought by Whitehall not to be devolved, to a point before 1999 in some areas. Sense has prevailed and the complete lack of support for that approach anyway has prevailed.

[31] Now we have something that has moved away from that position. There's still work to do in terms of the detail, but it doesn't leave us in a position where, in effect, there was a ministerial veto in London over Welsh legislation. That has, by and large, gone. It's not quite where we'd want it to be, but it doesn't take us to a position where we'd have been far more restricted than even we were, in some cases, before 2011.

[32] **Yr Arglwydd Elis-Thomas:** Y cwestiwn olaf gen i ar hyn: a oes yna bryderon penodol gennych chi fel Prif Weinidog, a gan Hugh Rawlings fel prif swyddog, ynglŷn â chymalau cadw penodol? A fydddech chi'n dymuno, efallai, i dynnu sylw'r pwyllgor at y rhain yn ysgrifenedig inni gael dealltwriaeth bellach?

Lord Elis-Thomas: My final question on this: do you have any specific concerns as First Minister, and Hugh Rawlings as the chief officer, about any specific reservations? Would you wish, perhaps, to draw the committee's attention to these in written form so that we can go further?

[33] **Y Prif Weinidog:** Gallaf i wneud hynny. Mae yna sawl un. Wrth gwrs, rwyf i wedi sôn yn barod am y CIL a'r trwyddedu alcohol. Mae sawl lle arall lle nid yw'n gwneud lot fawr o synnwyr, er enghraifft, gyda CPOs, gyda phrynu gorfodol. Nid yw'n gwneud synnwyr bod hwnnw wedi cael ei gadw hefyd. Fe wnawn ni hynny, wrth gwrs—sicrhau bod yna rhestr gyflawn ynglŷn â'r rhannau o'r

The First Minister: I can do that. There are a number. Of course, I've already talked about the CIL and alcohol licensing. There are a number of other examples where it doesn't make sense, for example, with compulsory purchase orders. It makes no sense that that is reserved. But, of course, we will do that—ensure that there is a complete list of those parts of the Bill that we don't

Bil rydym ni'n credu sydd ddim yn think are intentional.
fwriadol.

[34] **Yr Arglwydd Elis–Thomas:** **Lord Elis–Thomas:** Thank you.
Diolch.

[35] **Huw Irranca–Davies:** Thank you, and before we progress to a slightly different line of questioning from my colleague Michelle Brown, could I ask you, on that issue of the subject matter as defined in this Bill and your alternative proposal, why do you think your alternative proposal, which I've got here in front of me as well—? I'm looking at it; it's quite a stark contrast in approach. Is there a constitutional reason or a legalistic, statute, definitional reason why the alternative wasn't accepted? I know it's difficult because I'm asking you to speculate on the reasons.

[36] **Mr Rawlings:** Perhaps I could answer that. In a way, 'We don't know,' is the short answer, but it's illustrative of a real problem that we have with the way the Bill is being prepared, in the sense that this is a Wales Office Bill, it's a UK Government Bill, and we do not have access to Parliamentary Counsel. We don't know the thinking. We don't see the instructions that go from the Wales Office to Parliamentary Counsel. We are not able, generally speaking, to talk to Parliamentary Counsel about what he has produced and why—what is the thinking behind it. So, we're always in a, sort of, reactive mode here. We asked whether there was any interest or enthusiasm in the Wales Office for our alternative approach to drafting the reservations, and we were told, 'No, not really'.

[37] **David Melding:** Do we know if the Scotland Bill was drafted under that discipline where the Governments didn't co-operate, at the drafting stage anyway, strictly speaking?

[38] **Mr Rawlings:** I would think it probably was the case, but I don't know. If you go back to the 1998 Act, I was then working in the Welsh Office and we were the instructing department. In 2006, by that time, the Wales Office had been established, but the then Secretary of State agreed with the then First Minister that, in effect, the Bill would be led from here, although of course the Secretary of State would have a veto. And therefore we drafted the instructions, so we knew exactly what Parliamentary Counsel was responding to. Now, in both the 2014 Act, which was the one that largely introduced the taxation powers, and in respect of this Bill, we're in a different place because we're in a responsive position and we try to understand what counsel has

done. And there has been a very limited amount of direct engagement with Parliamentary Counsel, but as a general proposition, Parliamentary Counsel will only deal with the instructing department, and so we make our points to the instructing department and the instructing department duly decides what to do with them.

[39] **Huw Irranca-Davies:** Okay, thank you. Michelle.

[40] **Michelle Brown:** Thank you. First Minister, they seem to have removed some of the necessity tests. Do you think this goes far enough and do you think it resolves the problems that were potentially going to be caused by the necessity test?

[41] **The First Minister:** I welcome the fact that the necessity tests have been removed; we're not proposing any amendments to the Bill with regard to that, and the enhanced powers that the Assembly will have to modify criminal and private law are certainly welcome. The difficulty with the previous Bill was it actually removed the powers the Assembly already had in some areas to create criminal offences, and the fact that those tests have now been removed is hugely important. They were only there—. I mean, we have to remember that the original Bill was predicated on the basis that there had to be a single jurisdiction and there had to be a minimal amount of divergence in the law within the jurisdiction. That's why the tests were put there—to make it, basically, as difficult as possible for the Assembly to create law. That now has been acknowledged as unworkable, and I welcome the fact that those tests have gone.

[42] **Michelle Brown:** Okay. Do you think though that the drafting of some of the provisions such as Schedule 2(7B) might lend itself to confusion, and possibly to Westminster coming along and undermining your legislative decisions?

[43] **The First Minister:** Which particular areas are you concerned about?

[44] **Michelle Brown:** Well, wherever the necessity test applies.

[45] **The First Minister:** I think it's clearer now that the necessity tests have disappeared. There'll never be a hard boundary between what is devolved and what isn't devolved, but this goes some way towards achieving that. Certainly, apart from areas of detail where I think, in principle, certain areas should be devolved, it certainly makes it easier for legislation to be passed

without any restrictions being imposed from Westminster.

[46] **Michelle Brown:** Do you think that—. I mean, to what extent do you agree with the Secretary of State's assertion that the removal of these necessity tests has removed any argument for a separate legal jurisdiction?

[47] **The First Minister:** If anything, they've enhanced it because this will mean—. Just to inform Michelle, the difference to me between a separate jurisdiction and a distinct jurisdiction is that a separate jurisdiction would look like Northern Ireland with a wholly separate courts system; I don't think we need to do that. We can have a formally distinct jurisdiction that shares a courts system, and I think that's a useful way of dealing with it. But, in fact, we're going to see further divergence of the law in many areas between England on the one hand and Wales on the other, and that actually enhances the case for there to be a formally distinct jurisdiction in Wales. I don't see that creates a problem in terms of working cross-border, which I know is an issue for my former colleagues; that's not a problem in Northern Ireland. But, a single jurisdiction will create problems; for example, it's the case now that judges who want to sit on cases in Wales that involve Welsh law need to be trained. That's increasingly going to be the case in the future. In a single jurisdiction, it's assumed that any judge can sit anywhere; that's just not going to be correct. That would need to be dealt with. We already have examples, and I've heard examples being given to me by the Lord Chief Justice, of counsel from London particularly coming to Wales and arguing the wrong law before the courts. The establishment of a formally distinct jurisdiction would actually help to get the message across, if I can put it that way, and make it easier for all to understand.

[48] **Michelle Brown** Okay; thank you.

[49] **Huw Irranca-Davies:** Can I ask, First Minister—? I understand that one line of thinking you have to deal with the slightly fluid situation that is now in front of us with the jurisdictions—and as you rightly identified the difference between a distinct and a separate jurisdiction—is your proposal that we have a form of commission that could look at this on an ongoing basis. Is this something that you can touch upon, and is it something that—? Can you reveal whether this is something that is having a positive response from the other end of the M4?

[50] **The First Minister:** It's been ruled out of order, so we can't proceed with that in Westminster.

[51] **Lord Elis–Thomas:** It wasn't in the long title, was it?

[52] **The First Minister:** No, it's to do with imposing financial requirements on UK Ministers. Hugh, do you want to come in?

[53] **Mr Rawlings:** Yes. This, again, is illustrative of a learning process for us all, because civil servants are well used to promoting Government legislation, but this is the first time in my experience that we've actually been trying to develop amendments to a Government's legislation. We've never done this before as civil servants, and what we came up against was the fact that our proposals for a commission infringed the rule that no backbench amendments are allowed to incur a financial burden on Government. Those provisions can only ever be moved by Ministers. And, so, it was ruled out of order, but the substance of it has effectively been restored, in that the amendment to be discussed tomorrow will place a duty jointly on the Lord Chancellor and the Welsh Ministers to keep the operation of the justice system in Wales under review, and in particular to keep under review the question of whether there is a need for the continuation of a single jurisdiction, or whether there should be two distinct jurisdictions. And the Lord Chancellor and the Welsh Ministers will be invited to report, from time to time, on that continuing question.

[54] **Huw Irranca–Davies:** So, you seem content if that were to happen that, by hook or by crook, you are going to end up with the outcome you desire.

[55] **Mr Rawlings:** It keeps the ball in play rather than moving directly to a distinct jurisdiction, which is what other amendments that have been put down would seek to do tomorrow.

[56] **Huw Irranca–Davies:** Very good. Keeping the ball in play is a very apposite term at the moment, as we head into—

[57] **Lord Elis–Thomas:** Can I just add one point?

[58] **Huw Irranca–Davies:** Indeed. Lord Dafydd–Elis Thomas.

[59] **Lord Elis–Thomas:** But, presumably, the justice commission that you propose could be established without primary legislation, because if it's a commission, it's a commission, isn't it?

[60] **The First Minister:** Yes. We wanted the amendment on the face of the Bill to make the point that what we believe is on the face of the Bill at the moment is not sufficient to address the question of the jurisdiction in the future.

[61] **David Melding:** Elements of the jurisdiction argument resemble a medieval discussion on the hypostatic union, don't they, and the trinity. We have heard over the years, both in formal evidence and then in various meetings and discussions we've had less formally with senior judiciary, that, functionally, they are now behaving as if Wales is a separate jurisdiction or a distinct jurisdiction, however clearly one wants to state it. And judges have to have experience and knowledge of the devolution settlement and understanding of Welsh Government and the law that applies here. You occasionally hear about barristers being poorly instructed and then quoting the wrong law; well, it only takes one or two excoriating comments from the bench to put a stop to that, frankly, doesn't it? So, isn't this going to naturally proceed and, in five or 10 years, we'll all wake up and someone will say, 'Well, of course, we're in a distinct jurisdiction, and now we're going to formally call it that'.

15:00

[62] **The First Minister:** It's a question of whether we want be ahead of the curve or following it. For me, it's a question of being ahead of the curve, and that means establishing the distinct jurisdiction now. There has never been an example anywhere, to my knowledge, in history of a common-law jurisdiction where there are two Parliaments within it that are passing laws in the same areas of policy, if I can put it that way. It naturally follows: when the Northern Ireland Parliament was established in 1920, the jurisdiction followed it. The Isle of Man is a jurisdiction, Jersey's a jurisdiction, Guernsey's a jurisdiction. The United States has at least 50—well, at least 51—jurisdictions within it. This is not the radical step that people think it is. It's the normal development that occurs when a law-making parliament is established.

[63] **David Melding:** My general position on constitutional matters is that we should be as clear as possible and state the current case. But, you know, reason doesn't always drive things, does it, and cultural and historical issues come into play. And I just wonder if, you know, the main block here is, frankly, powers over the police, and that is what is driving those who want to maintain this belief that we still have a unified jurisdiction, when we clearly

don't. You've attempted here to get some space, by saying, 'Well, perhaps it could be a permitted power under certain circumstances, to be drawn down later if there's a clear demand for it in Wales'. And I just wonder how you feel you advance those arguments. I mean, was there always a closed door, that it was just no way you can go there, and no possible accommodation or compromise in that area?

[64] **The First Minister:** What lies behind it is a reluctance to devolve policing and the justice system. And, on top of that, then a reluctance to consider the establishment of a distinct or separate jurisdiction. Because the odd thing is that, as the UK Government still dug their heels in in terms of demanding that there should still be a single jurisdiction, they're prepared to devolve most of the criminal law, which would look strange. I mean, those offences that would be reserved are quite small in number compared to the totality of the criminal law. I've asked this question many times—what the objection is to a single jurisdiction. I've not really had an answer beyond, 'Well, this is the way it's been'. Well, yes, but that was in the days before we had a law-making parliament. If you ask the question about Northern Ireland, the answer is, 'Well, that's the way it is there'. There's never a logical argument—I've not heard a logical argument that says we must preserve the single jurisdiction for a particular reason. I have heard the argument, and listened to it, where some have said, 'Would that create a barrier for Welsh lawyers to operate in England?' To my mind, it wouldn't, because they're both—no-one's suggesting that Wales shouldn't be a common-law jurisdiction. Wales would remain a common-law jurisdiction. When I was in practice, I could practice in Northern Ireland merely by joining the Northern Ireland bar and paying for it. There were no difficulties in terms of obtaining further qualifications.

[65] **David Melding:** And Welsh law's diverging anyway, so—

[66] **The First Minister:** Common lawyers are used to applying a common set of principles, even to laws that are different. High Court justices would be quite used to doing that. That's not unusual. The functions of what was the Judicial Committee of the Privy Council, they dealt with the laws of countries outside the UK as a final court of appeal. So, that's nothing unusual. What would make us very different is if we decided not to be a common-law-based jurisdiction—that would be a significant change—and became like Scotland. That would mean that lawyers from Wales would not be able to practice in England, and that, to my mind, would not be an advantage to them, or indeed the Welsh legal system or the Welsh economy. So, what

we're looking at here is the establishment of another common-law jurisdiction, as is normal throughout the rest of the UK—apart from Scotland—and then have a law-making parliament operating in that jurisdiction. It can't make sense for somebody technically to be able to be tried for an offence in England that isn't an offence in England but under Welsh law. We talk about the law of England and Wales as it applies in Wales—just call it Welsh law. English law, Welsh law, but both common-law systems.

[67] **David Melding:** Can I move on, and just ask: can you see any actual purpose, and therefore possible danger, to the justice impact assessments?

[68] **The First Minister:** There's no purpose at all to them. The reason why they are there is—. Let's look at how they would operate. An assessment would need to be produced, and that's it. There is no recourse with regard to that assessment. It would be, ultimately, for the Assembly to decide whether the assessment was robust or not, but there's no way that the assessment could be used by UK Ministers to veto Assembly legislation. On what grounds could that be? All that's required is that there is an assessment, not what's in the assessment or how robust the assessment is.

[69] It's there because there is not yet an agreement between ourselves and the Ministry of Justice as to the costs of the creation of new Welsh law. The difficulty is that the Ministry of Justice has agreements with other UK Government departments that, where they create new offences, for example, they provide the money to the justice system for the administration of those offences. There is no agreement with Welsh Government, and we have said—. Their argument with us is, 'Well, other Government departments'—and I quote—'have come to an agreement with us'. Well, we're not another Government department. For me, what they're trying to do is, in some roundabout way, to understand what the costs of the creation of new laws will actually be without anything actually happening as a result of it. Now, I've said, if we had a distinct jurisdiction and we shared the courts system, we would make that contribution. It would then be a system that'd be jointly owned, if I can put it that way. And I've said, 'Well, if we're going to have a shared courts system, of course the Welsh Government would be required to make a contribution towards it'. How could we not do it? But that's at the heart of the justice impact assessments, because there is not yet an agreement between the two Governments as to how laws that are created in Wales will be dealt with in terms of the cost of their enforcement in the courts system.

[70] **David Melding:** So, at the moment, it's just redundant, but it could become more important if—. Or it would be replaced, presumably, if there was a contribution because the jurisdictions were distinct but sharing an apparatus.

[71] **The First Minister:** The easy way of doing this is not to have justice impact assessments, to have the jurisdiction shared, and for the Welsh Government to contribute towards the administration of the jurisdiction.

[72] **David Melding:** That's a very clear answer that I'm sure will help the committee.

[73] Finally, the definition of 'Wales public authority' in the Bill. Are you happy to see that?

[74] **The First Minister:** In principle; it's—. I can understand the need to define 'Wales public authority'. What will be needed as the Bill proceeds is to ensure that that list is as comprehensive as possible.

[75] **David Melding:** Thank you.

[76] **Huw Irranca-Davies:** Very good. Thank you, David. Michelle, did you want us on to the area of ministerial consents, please?

[77] **Michelle Brown:** Just one question: do you think that the—. To what extent do believe that the changes regarding the ministerial consents have improved matters, and how do they compare and contrast with those applicable in Scotland?

[78] **The First Minister:** They're very different in Scotland. It's better—the Bill—than it was. In Scotland, there is a different structure whereby Scottish Ministers have greater powers over UK authorities than we do in Wales. Perhaps I'll ask Hugh just to explain the way that works in a moment. We've had problems in the past, as we know, where, under the previous Bill, a number of Acts and Measures would not have been able to proceed to become law without the agreement of a Secretary of State, which is something we objected to. I don't think that's the case to the same extent, although it's not completely removed with this Bill. But, as the Bill proceeds, we are making a full assessment of where the restrictions still lie, even with a new Bill.

[79] **Mr Rawlings:** The way that the Bill works in this area is that the starting point—and this is in Schedule 7B—is that the Assembly cannot legislate with respect to public authorities without the consent of the relevant UK Minister. But that is immediately disappplied in respect of ‘Wales public authorities’, and that is why, as the First Minister has said, we want as comprehensive a list of Wales public authorities, and so the consent operation doesn’t apply. But the reason why you start—at least, the reason why the UK Government start—from a position of ‘you cannot legislate with respect to public authorities’, is that, unlike the position in Scotland, so many of the public bodies that we have operate on an England–and–Wales basis.

[80] So, once you have cross-border bodies—take the Electoral Commission or something like that—they would not want us to be able to have general legislative powers with respect to the Electoral Commission because its operation is not only in relation to Wales. The position in Scotland is rather different in that they have a greater degree of autonomy in this respect and so, therefore, the question of legislating in respect of very many public authorities simply doesn’t arise—they’ve already got the power; it’s inherent. So, the comparison with Scotland is perhaps not a particularly helpful one here, but where we have got to with the Bill is a better place, I think, because we have the idea of Wales public authorities, which enables us to have very broad legislative powers in respect of those bodies.

[81] **Michelle Brown:** Okay. Thank you.

[82] **Huw Irranca-Davies:** Okay. Lord Dafydd Elis-Thomas—recent events.

[83] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Thank you very Diolch yn fawr, Gadeirydd. Fe hoffwn much, Chair. I’d like to ask where the i ofyn ble mae’r Prif Weinidog a First Minister and the Welsh Llywodraeth Cymru arni yn ystyried Government are in considering the effaith y refferendwm diweddar ar yr impact of the recent referendum on holl faterion cyfansoddiadol yma. all these constitutional matters. I Rwy’n cyfeirio’n arbennig, wrth refer specifically, of course, to the reswm, at y ffaith bod deddfwriaeth y fact that the Assembly’s legislation Cynulliad yn wastad wedi gorfod bod always had to be within the o fewn deddfwriaeth yr Undeb legislation of the European Union in Ewropeaidd yn y gorffennol. Felly, a the past. So, is there a need for a oes angen adolygiad mwy cyffredinol more general review of all the o’r holl gyfeiriadau Ewropeaidd mewn European references in devolved

deddfwriaeth datganoli os ydym ni yn mynd i weld ein ffordd drwy'r sefyllfa bresennol?

[84] **Y Prif Weinidog:** Mae'r Bil ei hun wedi cael ei adeiladu ar y sylfaen y bydd y Deyrnas Unedig yn rhan o'r Undeb Ewropeaidd. Cyn bod rhywun yn meddwl bod rhyw fath o gynllwyn fan hyn, cafodd hwn ei ddrafftio cyn y refferendwm ei hun, ac fe fydd yn rhaid i Lywodraeth y Deyrnas Unedig ailystyried beth yn gwmws fydd y Bil yn ei ddweud. Er enghraifft, mae yna bwerau i Weinidogion Cymru sicrhau bod cyfarwyddbau Ewropeaidd yn cael eu tynnu mewn i gyfraith Cymru. Felly, bydd yn rhaid i hynny gael ei ystyried. Yn amlwg, os na fydd y Deyrnas Unedig yn rhan o'r Undeb Ewropeaidd, bydd cyfyngiadau ynglŷn â sicrhau bod deddfwriaeth yn gorfod bod y tu mewn i gyfraith yr Undeb Ewropeaidd yn mynd. Byddwn i'n meddwl y byddai hynny'n amlwg yn y pen draw.

[85] Ynglŷn â'r corff cyfreithiol sydd gyda ni yng Nghymru a'r cyfarwyddbau ynglŷn â'r Undeb Ewropeaidd sydd wedi cael eu tynnu i mewn neu eu trosglwyddo i gyfraith Cymru, byddwn i'n meddwl y byddai'r rheini yn aros am nawr a bydd yn rhaid i ni, fel Llywodraeth, ystyried wedyn pa rai fyddai eisiau i ni eu cadw a pha rhai na fydd yn cael eu cadw. Beth na fydd yn digwydd, yn fy marn i, yw y byddai pob un ohonyn nhw'n cwmpo ac y byddai'n rhaid inni ailadeiladu'r holl beth. I mi,

legislation if we're going to see our way through this current situation?

The First Minister: The Bill itself is built on the foundation that the UK will be part of the European Union. In case anyone thinks there's any sort of plot in place here, this was drafted before the referendum itself, and the UK Government will have to reconsider what exactly the Bill has to say. For example, there are powers for Welsh Ministers to ensure that European directives are brought into Welsh law. So, that will have to be taken into account. Clearly, if the UK ceases to be a member of the European Union, then restrictions in terms of having to ensure that legislation does fall within the remit of European Union will disappear. I would have thought that that would be obvious, ultimately.

In terms of the body of law that we have in Wales and the EU directives that have been transposed into Welsh law, then I would assume that they would remain in place for the time being and we, as a Government, would then have to consider which of these we'd need to retain and which we wouldn't. But what wouldn't happen, in my view, is that all of them would fall immediately and we would have to rebuild everything entirely. For me, the directives that have been transposed into Welsh law

byddai'r cyfarwydddebau sydd wedi cael eu tynnu i mewn i gyfraith Cymru yn sefyll, ac wedyn asesiad ar ôl hynny i weld pa rai fyddai'n berthnasol i'w cadw yn y pen draw.

[86] **Yr Arglwydd Elis-Thomas:** Un cwestiwn arall: nid oes fawr o sôn ym Mil Cymru—a ni fyddai rhywun yn disgwyl hynny am y rhesymau y gwnaethoch eu hesbonio—at faterion sy'n berthnasol i'r amgylchedd, amaethyddiaeth a physgodfeydd. Ond rydym yn gwybod, wrth gwrs, nad oes, mewn gwirionedd, ddeddfwriaeth sy'n unigol Brydeinig bellach yn y rhan fwyaf o'r meysydd yma. Felly, a oes yna oblygiadau fan hyn ynglŷn â beth all ddigwydd os bydd y Deyrnas Unedig yn symud allan o'r Undeb Ewropeaidd? Rwy'n dweud 'os' oherwydd nid ydy hi'n glir eto beth fydd y math o ganiatâd fydd yn rhaid ei roi—caniatâd efallai ynglŷn â'r confensiwn ynglŷn â'r cytuniad deddfwriaethol gan y Cynulliad hwn i rai pethau ac, yn sicr, yn amlwg, cytuniad y ddau dŷ Senedd yn San Steffan. Nid ydym yn gwybod yn union sut bydd hyn yndigwydd. Ond, os bydd yna newid sylweddol yn digwydd, fel sy'n debygol, yn y cyfeiriad yna, yna mi fydd hynny yn bwysau ychwanegol difrifol, fuaswn i'n meddwl, ar y modd y mae Llywodraeth Cymru yn gweithredu mewn meysydd sydd, ar hyn o bryd, yn feysydd Ewropeaidd.

[87] **Y Prif Weinidog:** Yn union. Mae'r gwaith wedi dechrau ynglŷn â

would remain in place and then there would be an assessment to decide which would be relevant and should be retained ultimately.

Lord Elis-Thomas: One other question: there's not much mention in the Wales Bill—and one wouldn't expect that from what you've said—to issues related to the environment, agriculture and fisheries. But we know, of course, that there isn't, in truth, legislation that is individually British in most of these areas now. Therefore, are there any implications here regarding what could happen if the United Kingdom leaves the European Union? I say 'if' because it's not clear yet what sort of consent would have to be given—legislative consent, perhaps, regarding the convention relating to the agreement of this Assembly to some things, and, certainly, the consent of the two Houses of Parliament in Westminster. We don't know exactly how this is going to happen. But, if a significant change isn't going to happen, as is likely, in that direction, then that would be serious additional pressure on the way the Welsh Government operates in areas that, at the moment, are European areas.

The First Minister: Exactly. The work has commenced in terms of

sicrhau ein bod yn cryfhau'r adrannau hyn y tu mewn i'r Llywodraeth, sef pysgodfeydd, wrth gwrs, ac amaeth achos, wrth gwrs, bydd y rhain yn feysydd sydd wedi cael eu datganoli yn llwyr. Felly, polisi amaeth Cymreig fydd a pholisi pysgodfeydd Cymreig fydd. Ni fydd hawl i gychod o Gymru fynd i Loegr i bysgota, er enghraifft, heb fod unrhyw fath o gytundeb rhwng y ddau awdurdodaeth.

15:15

[88] **Yr Arglwydd Elis-Thomas:** Bach yn anodd ar afon Dyfrdwy, buaswn i'n ei feddwl.

Lord Elis-Thomas: Well, it would be difficult on the Dee, I would have thought.

[89] **Y Prif Weinidog:** Wel, mae hynny'n iawn, achos nid oes ardal Brydeinig ynglŷn â physgodfeydd. Mae hynny wedi cael ei ddatganoli'n llwyr.

The First Minister: Well, yes, but there is no British area in terms of fisheries. It has been devolved entirely.

[90] Ynglŷn â'r amgylchedd, byddwn i'n erfyn i bethau—. Wel, byddwn i'n moyn sicrhau bod pethau yn aros yn gwmws fel y maen nhw ar hyn o bryd. Nid wyf yn moyn i bobl feddwl y bydd pob cyfraith ynglŷn â'r amgylchedd sydd wedi dod o Ewrop yn cwmpo unwaith y byddwn ni'n gadael. Byddant yn aros ac, wrth gwrs, byddai'n fater wedyn i'r Cynulliad i benderfynu pa rai a ddylai aros yn y pen draw, a pha rai na fyddai'r Cynulliad am eu gweld yn aros yn y pen draw.

In terms of the environment, I would want to ensure that things would remain exactly as they are at present. I wouldn't want people to think that every environmental law that's come from Europe would actually fall once we've left the union. They would remain in place and then it would be a matter for the Assembly to decide which should be kept in legislation ultimately and which should not.

[91] **Yr Arglwydd Elis-Thomas:** Ond

Lord Elis-Thomas: But is it clear, as it

a yw hi'n glir, fel y mae'n debygol yn achos yr Alban, y byddai'r confensiwn cydsyniad deddfwriaethol cyfredol yn y nodiadau cyfarwyddyd ar ddatganoli yn weithredol—a fyddai hynny yn digwydd yn achos Cymru?

[92] **Y Prif Weinidog:** Wel, byddwn yn erfyn i hynny ddigwydd yng Nghymru hefyd. Nid wyf yn gweld unrhyw reswm—rwyf wedi dweud hyn sawl gwaith o'r blaen—y dylai Cymru gael ei thrin mewn ffordd wahanol i'r Alban.

is likely to be the case of Scotland, that the current legislative consent convention would be operational—would that happen in the case of Wales?

The First Minister: Well, I would hope that that would happen in Wales also. I don't see any reason, as I've said in the past, why Wales should be treated any differently to Scotland.

[93] **Yr Arglwydd Elis-Thomas:** Diolch.

Lord Elis-Thomas: Thank you.

[94] **Huw Irranca-Davies:** Thank you, First Minister. As I listened to your response there, it seems that, at the moment, in respect of the outcomes of the Brexit, whatever shape that Brexit might take—or as Lord Dafydd Elis-Thomas says, the 'if' around it at the moment—in some ways, at the moment, all we can do is prepare, but it's something of a holding pattern, because the nature of the Brexit might have a material impact on exactly what we're discussing today.

[95] **The First Minister:** Well, the deal that's obtained upon exit is important as far as the economy is concerned. That's correct. In terms of the environment, agriculture and fisheries, if we take agriculture, the issue is the money. At the moment Welsh farmers get £260 million a year in subsidy from the EU. That money will have to come from somewhere. We can't find it. Therefore, there is a negotiation that will have to take place at the UK level as to how that money is distributed to the four administrations. Historically, we've not been funded on the basis of Barnett, because we've got, I think, a quarter of the animals, as opposed to 5 per cent of the people. If we receive a Barnett share of that £260 million it will be a severe cut to agricultural subsidies. Those discussions will have to take place, clearly, in the future. We know that we will have to develop a distinct and autonomous Welsh agricultural policy. It's not entirely divorced from what happens in the UK because we will need to make sure that any trade deals that the UK negotiates with other countries don't just take into account agriculture in

England, which will be the temptation if the voice from the devolved administrations is not strong. We intend to avoid that. It's the same with fisheries. There'll now have to be intra-administration discussions on fisheries access. That's something that we know, and that's why we're looking to beef up the fisheries division as well, to make sure that we have the policy people that, hitherto, really, we haven't needed in the same way as we will in the future.

[96] **Huw Irranca-Davies:** Thank you. Could I ask you as well—? I don't know whether you want to answer this, First Minister, or whether Mr Rawlings does, but are you satisfied with the use of a transfer of functions Order to align executive and legislative devolution, rather than doing this via the Bill?

[97] **The First Minister:** I'd rather do it via the Bill. I think it's clearer that way. Transfer of functions Orders do provide flexibility, especially where there are some areas that need further clarification in the future. Ideally, a Bill would align the two.

[98] **Huw Irranca-Davies:** Thank you. Right at the beginning of our session today, Lord Dafydd Elis-Thomas mentioned the issues around a coherent and an accessible and a legible Bill. The other extension of that is whether this is durable or not. What are your thoughts? As we go through the summer, as this will head through the Commons and the Lords and you'll be in discussions behind the scenes, is what we see in front of us, even with the adjustments and the modifications that you would want to see—is it durable?

[99] **The First Minister:** No, because there are some areas, clearly, where there's disagreement between the Governments. Policing, we believe, should be devolved. That's not the view of the UK Government. There is the issue of the jurisdiction as well, which has been explored in some detail this afternoon. We also don't know what's going to happen to the UK itself and the nature of the relationship between the nations of the UK. So, my assessment of the Bill will be that this takes us forward; there are areas that need to be improved, but this could never be a lasting settlement, nor can it provide the basis for a constitution for Wales. The draft Bill that we produced would've done that in the main, but notwithstanding what will happen over the next two or three years to the UK itself and which nations are members of the UK in the future.

[100] **Huw Irranca-Davies:** Could I just get your thoughts? A witness who appeared in front of us last week suggested that any constitutional

settlement really needs to be aspirational; that it shouldn't simply be—when I challenged the witness—a statement of exactly where we are now, because it's almost inevitable that you will then be behind the curve. What are your thoughts on that?

[101] **The First Minister:** I think the UK has lagged behind for a while. If the UK is to survive intact, there needs to be a far more radical approach. Now, Members will have heard me advocating, months gone by, the need for a constitutional convention and the need to look carefully at the way that the UK operates. This needn't be as frightening as some people think it is. If we look at Canada, for example, parliamentary sovereignty doesn't exist there as it does here; there's pooled sovereignty between the provinces and the federal Government and Canada's a stable country. There's no reason why we have to stick to something that has existed for some years, but is beginning to fray badly at the edges. For me, who would want to see the UK remain together, there's a need to examine a number of options in terms of what the future relationship between the nations will look like.

[102] **Huw Irranca-Davies:** So, the outcome of the Brexit vote, come what may in terms of the technicalities—does that make this more or less durable?

[103] **The First Minister:** It's less durable; it's bound to be, because we don't know what the Brexit vote—. Nobody can know what the effect on the UK in the longer term will be of the Brexit vote. Nobody knows what will happen with the border with the republic; nobody knows what will happen in Scotland, and until that becomes clearer, it's very difficult to understand what a durable settlement might look like.

[104] **Huw Irranca-Davies:** Thank you. David.

[105] **David Melding:** I want to follow this point on the consequences of Brexit. I apologise if you've made any of this clear already, but will there be a Welsh Minister on the ministerial team in London that will be looking at a trading relationship? Will there be a senior civil servant from the Welsh Government involved as well? I know the Scottish Government have asked for this and you made a similar request.

[106] **The First Minister:** Nothing's been made clear, mainly because everything's on hold until there's a new Prime Minister. We would expect to be part of the UK team; we will also have our own capacity operating out of Brussels in terms of representing Wales's position. It doesn't have to be

exclusive, but we have to make sure that Wales's position is protected. There would have to be, to my mind, ministerial representation from here on any negotiating team, and the appropriate senior civil service presence, as well.

[107] **David Melding:** The previous committee in the fourth Assembly did a lot of work on Wales's voice in the EU and we found the way the Foreign Office worked was really quite good in terms of how they worked with administrations, particularly behind the scenes, which is something we didn't, perhaps, as politicians, quite appreciate—how the civil servants got on and talked about the speaking note and preparations for the Council of Ministers meetings. So, you would expect it's whatever framework comes that's really going to determine our trading relationship. And it's not just with the EU, it's all these fabled links we're going to have with all those countries we don't currently trade with, apparently—but that we would see similar arrangements that ensure that the Welsh voice is heard strongly.

[108] **The First Minister:** Yes, and I would go further than that; I think that any settlement should be ratified by all four Parliaments. There are good reasons for that. If we look, for example, at agriculture and fisheries, they are wholly autonomous and it wouldn't be right for the UK Parliament to approve something for Wales or for Scotland or for Northern Ireland. I think these are matters for the Parliaments of the three nations as well.

[109] **David Melding:** And it wouldn't be right for the Scottish Government to have preferential treatment to the Welsh Government or the Northern Ireland Executive. Presumably—there are differences in the settlements—but on the critical areas of trade and of environmental policy, which are the main functions, really, that are done at the EU level, we would have to be treated equally with the other devolved administrations.

[110] **The First Minister:** I would never advocate Scotland or Northern Ireland getting preferential treatment over Wales.

[111] **David Melding:** No, well, perhaps it wasn't a terribly difficult question to answer, First Minister. Returning to the Bill, it is, in your view, silent, then, on, say, the power to have a Welsh income support system for agriculture. We would at the moment be able to do that under—. There are no reservations lurking, no relations to other Acts of Parliament that could suddenly come and bite us.

[112] **Mr Rawlings:** No. I think if the powers returning from Brussels are

allowed to lie where they fall, on the assumption that this Bill is on the statute book by the time that the powers come into land, there is no reason to think that there would be any held in London. They would come to us. But, of course, there will be, presumably, all sorts of negotiations in the meantime, over the next year or 18 months about exactly that. It's an interesting question, as to whether the UK Government would be happy for the powers to lie where they land, or if consideration of that might stimulate them to a broader reflection and conversation with all the devolved administrations about how the UK should be governed post Brexit.

[113] **David Melding:** I have seen one or two references to—. And, of course, we don't have a Government—well, not with full vitality then—. I'd better be careful. [*Laughter.*] There'll be a new administration, let me put it that way, shortly, when a new Prime Minister is appointed, and I have seen some references that it is then very likely there'll be a comprehensive European Act that will look at a lot of these things. That could end up stripping us of very significant powers, couldn't it?

[114] **Mr Rawlings:** But only if we give legislative consent to it, because, at the end of the day, legislative consent will continue to be required for any Act of Parliament that impacts on the competence of the Assembly, just as the Wales Bill at the moment requires the Assembly's legislative consent. So, if there is anything in a comprehensive piece of European legislation of the type you're talking about that impacts on the Assembly's competence, then the Assembly's consent would be required under the Sewel convention.

[115] **David Melding:** Yes, there's a convention, but a Government could argue that Parliament is sovereign and this is a—

[116] **The First Minister:** That undermines the entire Bill.

[117] **David Melding:** Yes, okay. It's just the political cost would be so high. You don't think that's in the realms of practical—. We'd be overanxious if—

[118] **The First Minister:** I think what we have to understand as well is that agriculture, for many years, has been autonomous. Our payments system is wholly different; the basis of it is different; we have an agency that pays more efficiently, i.e. the Welsh Government. It would be incredibly difficult to do this, bearing in mind that the four nations all have different interests in farming. Having dealt with DEFRA for many years, they're interest is in large farming—arable and large dairy; they are not well disposed towards Welsh

hill farmers. So, we have always tailored our agricultural support to the family farm in a way that really hasn't been understood in Whitehall. So, as things stand, any—. There's one issue and I'll return to it in a second, which is the more difficult issue, but as things stand, any powers that currently reside in Brussels would simply bypass London and come straight here.

[119] **David Melding:** It's not the powers that worry you; it's the financial wherewithal, isn't it?

[120] **The First Minister:** The money, which is what this has come to. That's the problem; the problem is the money wouldn't come to us. The problem is the money would go to the Treasury, and then the discussions would start on who gets what. That's the issue. Yes, we would have autonomy in terms of farming, but that autonomy is obviously not worth very much if we have no money.

[121] **David Melding:** I understand.

[122] **The First Minister:** So, for me, the point we've been making is, on the basis of Wales doesn't lose out at all from leaving the EU, then all the money that is currently paid into Welsh farming remains available for the Welsh Government to pay to Welsh farmers as well.

[123] **David Melding:** It's a very clear line, and I think you'll find it enthusiastically supported.

[124] **Huw Irranca-Davies:** Thank you, David. I don't want to detain you much longer, but I just wonder if I could skip back very briefly. On the issue of reserved areas, some of the witnesses who have appeared before us in previous sessions have expressed their concern that, as the Bill is currently drafted, if it didn't have the improvements, we could actually see, to some extent, a rolling back of devolution; a rolling back of the settlement as it currently is. Do you share those concerns?

[125] **The First Minister:** I've not seen any examples of where that might be a difficulty. Do they give any examples themselves?

[126] **Huw Irranca-Davies:** It's in the breadth of the definition of the reserved areas; that unless they're more narrowly prescribed, that this could indeed trespass on areas that you have, under the current settlement, accepted are in the gift of the Welsh Government.

15:30

[127] **The First Minister:** We are still looking at this to make sure that that is not done. There are some areas that still are areas of concern to us. For example, currently, it would appear that we would lose control over devolved public services, and so the trade union Bill, which will soon be presented to the Assembly, would be out of competence. Of course, now it is within competence, because we argued, and the Supreme Court has given us that competence, and we know, through an unfortunate leak, that the UK Government's legal advice is the same. So, yes, I think it's right to say there are some areas where there may be a removal of what we think is current competence, which we will need to examine as the Bill proceeds.

[128] **Huw Irranca-Davies:** Okay. It would be helpful, as this progresses over the summer, if perhaps we could continue that dialogue. And the one final thing I wanted to ask you is, with the concertina timescale that we now know is in front of us—and you've expressed on the floor of the Senedd a cautious welcome for this, and you've been similarly quite moderate in your views, and saying there's potential within this Bill, but there are some concerns—within the timetable, are you confident that the Bill, and the outcomes of this Bill that you want, can be achieved? It seems to me that there's a lot of responsibility on the House of Lords now as we go forward.

[129] **The First Minister:** Am I confident? No, I can't be confident given the timescale that's been produced. I've received assurances from the Secretary of State that there'll be proper scrutiny of the Bill. I take those assurances at face value. I balance that against the need to make sure that the Bill proceeds. Nobody knows whether there'll be a general election in October, and, if there is, then the Bill will go flying out the window anyway. But, from my perspective, it's a question of getting the balance right between having a Bill that is workable but not ideal, or running the risk of the Bill being lost for other reasons. That doesn't mean the Bill should be rushed and it doesn't mean the Bill shouldn't be scrutinised properly. The Secretary of State has given his assurances. What I would not want to see is a guillotine being applied as the Bill is being scrutinised. I think that would be hugely difficult, and the Lords might take a dim view—I don't know whether there's a view around the table—but the Lords might take a dim view of that as well.

[130] **Huw Irranca-Davies:** Thank you, First Minister. Thank you, Mr Rawlings, as well. Thanks for sharing the time with us. If there are any

thoughts that you have that you want to share with us subsequently, please send them to us. We'll send the transcript to you so that you can check for accuracy as well. Thank you very much—diolch yn fawr iawn.

15:32

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod**
**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[131] **Huw Irranca-Davies:** Under Standing Orders, we can now move into private session, briefly. So, if we could turn off microphones, please.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 15:33.

The public part of the meeting ended at 15:33.