



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Llun, 26 Mawrth 2012
Monday, 26 March 2012**

Cynnwys Contents

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

Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reolau Sefydlog Rhif
21.2 neu 21.3

Instruments that Raise No Reporting Issues under Standing Order Nos. 21.2 or 21.3

Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad o dan Reolau
Sefydlog Rhif 21.2 neu 21.3

Instruments that Raise Issues to be Reported to the Assembly under Standing Order Nos. 21.2
or 21.3

Gorchmynion a Wnaed o dan Fil Cyrff Cyhoeddus 2011
Orders Made under the Public Bodies Bill 2011

Ymchwiliadau'r Pwyllgor: Ymchwiliad i Sefydlu Awdurdodaeth ar wahân i Gymru
Committee Inquiries: Inquiry into the Establishment of a Separate Welsh Jurisdiction

Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting

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

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

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

Aelodau'r pwyllgor yn bresennol

Committee members in attendance

Mick Antoniw	Llafur (yn dirprwyo dros Julie James) Labour (substitute for Julie James)
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

Eraill yn bresennol

Others in attendance

Dr Alison Mawhinney	Darlithydd yn y Gyfraith, Ysgol y Gyfraith Bangor Lecturer in Law, Bangor Law School
Sarah Nason	Darlithydd yn y Gyfraith, Ysgol y Gyfraith Bangor Lecturer in Law, Bangor Law School
Huw Pritchard	Ymgeisydd Doethurol, Ysgol y Gyfraith Bangor Doctoral Candidate, Bangor Law School

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol

National Assembly for Wales officials in attendance

Steve George	Clerc Clerc
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil The Research Service

Dechreuodd y cyfarfod am 2.29 p.m.

The meeting began at 2.29 p.m.

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

[1] **David Melding:** Good afternoon. I welcome everyone to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. We are not expecting a fire drill, so, if you hear the fire alarm, please follow the instructions of the ushers, who will help us to leave the building safely. These proceedings will be conducted in Welsh and English. When Welsh is spoken, translation is available on channel 1; should you need to amplify proceedings, you can do so on channel 0. Please switch off all mobile phones and other electronic equipment completely; even if left on silent they can interfere with our broadcasting equipment. I have received an apology from Julie James, and I am pleased to welcome Mick Antoniw as a substitute. I know that you have participated in these meetings in the past, Mick, so we are delighted to welcome you this afternoon.

2.30 p.m.

**Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reolau
Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order Nos. 21.2 or
21.3**

[2] **David Melding:** Do Members have any queries regarding the instruments listed? I see that we are all content.

**Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad
o dan Reolau Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing
Order Nos. 21.2 or 21.3**

[3] **David Melding:** There is nothing to note under this item this afternoon.

**Gorchmynion a Wnaed o dan Fil Cyrff Cyhoeddus 2011
Orders Made under the Public Bodies Bill 2011**

[4] **David Melding:** We now move to item 4, which are Orders made under the Public Bodies Bill. Sorry, that should be the Public Bodies Act 2011. We have received advice that there is nothing in particular to note. However, Gwyn, do you want to elaborate on any of that?

[5] **Mr Griffiths:** Tynnaf sylw'r pwyllgor at y gwahaniaeth rhwng y ddau offeryn. Maent wedi cael eu gwneud o dan yr un pwerau. O ran y pwyllgor sy'n rhoi cyngor ar sylweddau peryglus, mae'r nodyn esboniadol a gafwyd gan y Llywodraeth yn glir ac yn syml, ac nid oes problem o gwbl gyda hynny. Fodd bynnag, mae'r un sy'n ymwneud â dŵr a chamlesi ac yn y blaen dipyn yn fwy cymhleth. Yn anffodus, nid yw'r nodyn esboniadol yn adlewyrchu hynny. Mae'n tynnu sylw at ddwy agwedd yn unig o gymhwysedd deddfwriaethol y Cynulliad sy'n berthnasol i'r Gorchymyn, sef cynlluniau iaith o dan Ddeddf yr Iaith Gymraeg 1993 a pherchnogaeth tir. Fel y gwyddoch, mae gan y Cynulliad gymhwysedd deddfwriaethol yn ymwneud â thrafnidiaeth, twristiaeth, henebion ac yn y blaen, sydd hefyd yn berthnasol i waith y corff hwn, ond nid yw memorandwm esboniadol y Llywodraeth yn adlewyrchu hynny o gwbl. Mae'r mater hwn eisoes wedi'i gyfeirio at ddau bwyllgor craffu, ond hyd yma nid ydynt wedi gallu craffu oherwydd diffyg gwybodaeth. Eu swyddogaeth hwy yw craffu ar y polisi tu cefn i hyn, ond swyddogaeth y pwyllgor hwn

Mr Griffiths: I draw the committee's attention to the difference between the two instruments. They have been made under the same powers. Regarding the advisory committee on hazardous substances, the explanatory note provided by the Government is clear and simple, and there is no problem with that. However, the one relating to water and canals and so on is much more complex. Unfortunately, the explanatory note does not reflect that. It only highlights two aspects of the legislative competence of the Assembly relating to the Order, namely language schemes under the Welsh Language Act 1993 and land ownership. As you know, the Assembly has legislative competence in relation to transport, tourism, monuments and so on, which are also relevant to the work of this body, but the Government's explanatory note does not reflect that at all. This issue has already been referred to two scrutiny committees, but as yet they have been unable to scrutinise because of a lack of information. Their function is to scrutinise the underlying policy, but the function of this committee is to ensure consistency and balance in the information that is available. That is why I

yw sicrhau bod cysondeb a chydbwysedd yn draw the committee's attention to these two
y wybodaeth sydd ar gael. Dyna pam rwy'n instruments.
tynnu'r ddau offeryn hyn i sylw'r pwyllgor.

[6] **David Melding:** I apologise to Members; my remarks referred to item 4.1 specifically, but they are to be considered together and item 4.2 raises some issues. As Gwyn said, two committees are looking at the policy issues—they are not our concern. However, the point that Gwyn raised, about the explanatory memorandum not being of sufficient depth to allow a full consideration of these issues, is confusing. We may want to comment on that, although I suspect that those committees could still proceed and ask the policy questions that they need to ask. I cannot think that it would be beyond the wit of those committees to do that, but it is clearly not helped by the type of material that has been provided to accompany this Order by the Government. Do you have any views, Simon?

[7] **Simon Thomas:** Cwestiwn sydd gennyf, gyntaf oll. Gwyn, a allwch atgoffa'r pwyllgor sut y byddai'r Cynulliad fel corff yn delio â'r Gorchmynion hyn? Maent yn wahanol i'r cydsyniad; maent o natur wahanol. A allwch ein hatgoffa sut byddent yn mynd drwy'r broses, a ydynt yn mynd at bwyllgor pwnc ac yna i'r Siambr lawn? Nid wyf yn cofio beth sy'n digwydd yn y cyd-destun hwn.

Simon Thomas: I have a question, first of all. Gwyn, can you remind the committee how the Assembly as a body would deal with these Orders? They differ from consent; they are of different nature. Can you remind us how they would go through the process, do they go to a subject committee and then to the full Chamber? I do not remember what happens in this context.

[8] **David Melding:** It would depend on those committees; if they thought that it was of sufficient importance on policy grounds for discussion and debate then I am sure that it would go to Plenary.

[9] **Mr Griffiths:** Mae'n ddrwg gennyf, ond mae'r rhain yn gorfod mynd i'r Cyfarfod Llawn oherwydd mae angen cydsyniad y Cynulliad cyn bod modd mynd ymlaen â'r Gorchmynion.

Mr Griffiths: I apologise, but these will have to go to Plenary because the Assembly's consent is required before it will be possible to proceed with the Orders.

[10] **David Melding:** So, they will go through Plenary anyway, even if no objections are identified on the grounds of policy.

[11] **Simon Thomas:** Will they go through with a report from the relevant policy committee?

[12] **Mr Griffiths:** Os bydd pwyllgor yn paratoi adroddiad, bydd ar gael i'r Cyfarfod Llawn. Ond, nid oes rhaid i'r pwyllgor llunio adroddiad os yw'n gwbl hapus gyda'r cynnwys.

Mr Griffiths: If a committee prepares a report, it will be available to Plenary. However, the committee is not required to produce a report if it is satisfied with the content.

[13] **Simon Thomas:** Rwy'n dweud hynny oherwydd mae'n ein harwain i feddwl felly ei fod yn hynod bwysig ein bod yn tynnu sylw at hyn. Er ichi ddweud, Gadeirydd, y byddai pwyllgorau, yn eu doethineb, yn edrych ar y materion hyn, mae'n bwysig hefyd ein bod yn mynegi'r ffaith bod nifer o feysydd lle mae gan y

Simon Thomas: I say that because it leads us to think therefore that it is extremely important that we draw attention to this. Although you said, Chair, that committees, in their wisdom, would look at these issues, it is also important for us to express the fact that there are a number of fields where the Assembly has powers, including some very

Cynulliad rymoedd, gan gynnwys rhai pwysig iawn, o ran y Gorchymyn hwn. Mae trafniadaeth yn un ohonynt, ac mae mynediad at ddŵr a threftadaeth yn rhai eraill. Mae'r pethau hyn yn faterion pwysig yn yr ardaloedd lle ceir y camlesi hyn. Felly, mae'n hynod bwysig ein bod yn trio gwneud y gwaith mwyaf cymen posibl. Nid wyf am roi geiriau yng ngheg Gwyn, ond credaf ei fod yn awgrymu bod y sefyllfa hon ychydig yn anhrefnus, o ran y modd y mae'r Llywodraeth wedi gweithredu hyd yma.

important ones, in terms of this Order. Transport is one of them, and access to water and heritage are others. These are important issues in the areas where these canals are located. Therefore, it is extremely important that we try to do the neatest work possible. I do not want to put words in Gwyn's mouth, but I believe that he is suggesting that this situation is a bit disorganised, in terms of how the Government has gone about things so far.

[14] **David Melding:** Yes, I think that the proposal is that the committee reports on those technical grounds that the explanatory memorandum was not of the standard that we would have expected, and that this has obviously had some impact. However, in respect of policy issues, the committees can get officials in and scrutinise them, although I do not know whether they are doing so. They are not completely reliant on the information in the explanatory memorandum. However, they are not helped by the fact that it is not really an adequate document.

[15] **Eluned Parrott:** No, they are not. For one thing, I think that there is a bit of confusion regarding the names: Canal and River Trust and Glandwr Cymru. There is confusion as to whether they are talking about a separate entity, or whether this is just a name that will be adopted for the same entity within Wales. The terms are used interchangeably and additionally, so I am not entirely clear in my own mind that the consent memorandum gives us a clear idea of what is being created.

[16] **David Melding:** Would you like to comment on that, Gwyn?

[17] **Mr Griffiths:** Yes. The answer is that it is the alternative name for use in Wales, rather than being a separate organisation. However, as has been stated, it is not clear from the documentation.

[18] **Mick Antoniw:** The point is that it is incomplete. We have to note that if it goes through.

[19] **Suzy Davies:** I am not sure whether this is a question for this committee. I want some clarification on points 10 and 11 of the consent memorandum. This is an issue relating to the Welsh Language Act 1993. If I understand this correctly, a new charitable trust is being created here, to be distinct and separate from an existing public body in Scotland. If that Scottish equivalent were to be in Wales, it would be subject to the necessity for language schemes and so forth. Are we 100% certain that the status of this new charitable trust will fall within the scope of the Welsh Language Act? It is not a public body in the sense that the remaining body in Scotland is still a public body. I am not sure whether this is a matter for us or not.

[20] **David Melding:** Yes, it is a matter for us.

[21] **Mr Griffiths:** Ydy. Credaf fod y mater hwn yn glir yn y memorandwm. Mae'r dyletswyddau o dan Ddeddf yr Iaith yn cael eu trosglwyddo i'r corff newydd hwn. Maes o law, wrth gwrs, bydd y dyletswyddau hynny'n diflannu pan fydd Comisiynydd y

Mr Griffiths: Yes, it is. I believe that this issue is clear in the memorandum. The duties under the Welsh Language Act are transferred to this new body. In due course, those duties will disappear, of course, as the Welsh Language Commissioner starts doing

Gymraeg yn dechrau ar ei gwaith a bydd her work and standards are introduced. safonau'n cael eu cyflwyno. Fodd bynnag, tra However, while the language schemes system bod y drefn cynlluniau iaith yn parhau, bydd remains in place, this new body will be y corff newydd hwn yn ddarostyngedig iddi. subject to it.

[22] **Suzy Davies:** So, will that obligation be transferred to this new body, even though this is a brand new type of body that has never been tested before? I see that it will. That will be interesting.

[23] **Simon Thomas:** Rwy'n meddwl bod Suzy Davies wedi codi pwynt diddorol. Nid oedd cyrff gwirfoddol, o reidrwydd, yn dod o dan y Ddeddf flaenorol, ond maent yn dod o dan Mesur y Gymraeg (Cymru) 2011 os maent yn gweithredu swyddogaethau cyrff cyhoeddus, sydd wedi'u hariannu gan gyrff cyhoeddus, er enghraifft. Fodd bynnag, nid oes modd datrys y mater hwn yma. Mae'r comisiynydd ar y ffordd beth bynnag, yn ogystal â Bil cwbl newydd. Serch hynny, mae hwn yn bwynt diddorol.

Simon Thomas: I believe that Suzy Davies has raised an interesting point. Voluntary bodies did not necessarily come under the previous Act, but they do come under the Welsh Language (Wales) Measure 2011 if they undertake the functions of public bodies, which are funded by public bodies, for example. However, there is no way to resolve that here. The commissioner is on her way anyway, as well as an entirely new Bill. Nevertheless, this is an interesting point.

[24] **Mr Griffiths:** Credaf mai'r geiriau perthnasol yn Neddf yr Iaith yw 'arfer swyddogaethau o natur gyhoeddus'. Dyna'r geiriau sy'n dod a'r corff newydd o dan y Ddeddf.

Mr Griffiths: I believe that the relevant words in the Welsh Language Act are 'exercising functions of a public nature'. Those are the words that bring the new body under the Act.

[25] **David Melding:** Okay, I think that we agree to report on those issues, which we term 'technical issues', although they have quite an impact on how this matter is scrutinised. Just to clarify: we see no reason to withhold consent, but we will say that the memorandum was not adequate, on the grounds on which we are looking at it. The policy matters are now being discussed elsewhere.

2.39 p.m.

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i Sefydlu Awdurdodaeth ar wahân i
Gymru**
**Committee Inquiries: Inquiry into the Establishment of a Separate Welsh
Jurisdiction**

[26] **David Melding:** We now move on to our next item, which is our inquiry into the establishment of a separate Welsh jurisdiction. We will be joined by witnesses from Bangor University Law School.

[27] Good afternoon and welcome. We are joined by the devolution studies research group from Bangor University Law School, and it is my particular pleasure to welcome you all this afternoon: Dr Alison Mawhinney, a lecturer in law at the Bangor Law School, Sarah Nason, lecturer in law at the Bangor Law School, and Huw Pritchard, who is a doctoral candidate at Bangor Law School. I will just explain the procedures to you. First, these proceedings are conducted in Welsh and English, and when Welsh is spoken there is a translation available on channel 1. If any of you need to use it, we will pause while we do a check for you as you switch on the headset. We have a set of questions that we are going to put to you, and I will ask my fellow committee members to put those questions to you, and there may then be

supplementary questions. I am not sure who is going to answer the questions; I hope that it will evolve naturally. As you have something to say, please attract my eye and join the discussion. We like a certain level of informality about how we conduct these sessions because we just want to hear your experiences and we are delighted that you are here to help us. At the end, should there be anything pertinent to our inquiry that we have not covered and you feel you want to tell us, I will give you an opportunity to raise any issues you want. I will start.

[28] I found your evidence very interesting; it was clearly expressed and quite philosophical in its approach, which I welcome. You start with the assertion that we already have a separate Welsh jurisdiction and the confusion is perhaps about the competence and formal structuring in the institutional sense. Do you want to develop that point by way of introduction?

[29] **Ms Nason:** The view of our research group is, essentially, that the concept of jurisdiction in law can take many different meanings and, in a sense, it is an interpretative concept depending upon the practical context and usage. So, we feel that this reference to introducing or creating a separate jurisdiction for Wales, as if this would be something that could take place overnight like the analogue-to-digital switchover, is something that does not work with our understanding of what it means to have a separate jurisdiction.

[30] We feel that, essentially, there is nothing in the nature of law or language that requires us to treat the concept of a separate jurisdiction as requiring a full suite of separate legal institutions—courts, tribunals and other bodies like a law commission—but rather an interpretation of the concept of jurisdiction can exist as a matter of degree, and if you have a developing separate body of law that applies within a particular territory, then you have a jurisdiction in accordance with one interpretation of the meaning of that word. A jurisdiction is something that can exist as a matter of degree.

2.45 p.m.

[31] Whereas, in our view, what the committee is really interested in are the benefits, barriers, cost-implications and what have you of setting up the full suite or a certain part of separate institutions that have exclusive competence over the law of Wales or the law of England and Wales as it pertains to particularly Welsh issues. That is where the rest of our submission focuses, accepting that a jurisdiction is something that can exist to a matter of degree depending on how much the law differs. We are more interested in talking about courts that have an exclusive competence over the body of law that applies to Wales only. That is our view.

[32] **David Melding:** That is a very interesting view, and very clearly expressed, if I may say so. To take this issue of degree, presumably, if one compares other legal systems and their evolution, if this has been observed elsewhere, there comes a time when there is a sufficient body of law that it is imperative to have formal structures—because so much law is being generated or such a body of law is emerging. Where is that tipping point? How close are we to that point in Wales? Let us accept that there is jurisdiction to some degree, but how close are we to a tipping point—if one exists—of requiring a range of more formal institutions? I am not talking about all of them necessarily, but how close are we to that formal institutional structure?

[33] **Ms Nason:** The difficulty of having some sort of tipping point, as you will recognise, is that it is not something that one can determine in an abstract, metaphysical way. It depends on the particular areas of law and the institution that you are looking at. For example, my expertise is in administrative law. We now have the administrative court. To have further institutions in different areas of law would depend on the practical context in each area. You

would need to look at the particular specialisms in the particular areas. However, with regard to some sort of de minimis level, we have probably already reached that point. What we need to explore further are the implications for particular areas of law and particular institutions.

[34] Where we are at now in relation to the benefits, barriers and cost-implications of having those within particular areas—whether that be particular courts, a law commission or professional bodies—is that the crux of the issue is the balance between the benefits of centralisation in terms of efficiency savings and economies of scale on one side and the important benefits of access to justice, localisation and having legal issues dealt with as close as possible to the people that they affect the most on the other side. That balance is probably found in different places in relation to the different institutions.

[35] **David Melding:** Okay. Before I move on, do you want to raise a question on this specific point, Mick?

[36] **Mick Antoniw:** The point that you raise is a fundamental one with regard to what we are considering, but is the problem not that we are confusing jurisdiction with jurisprudence and then confusing jurisprudence with the administration of the law? Is that not the correct sequence that we must work within the confines of?

[37] **Ms Nason:** Yes, I agree. You can have similar jurisprudence within separate courts and separate administrations. The big question for us as a research group seems to be about what the practical benefits are of having this devolved administration of justice. To an extent, the separate jurisprudence is already there—it is already developing. The question, as you say, is about when you reach the tipping point when it has become so significant that you really require separate institutions with the competence to administer that.

[38] **David Melding:** Other Members want to come in on this, and we have not even begun the more practical questions yet. I do not want to stop people, but we should be aware of that.

[39] **Simon Thomas:** I want to ask specifically about this tipping point, but also how you match that with the public's sense of how they access justice, and how they feel that justice is there to serve them. Your evidence shows how the England and Wales system has cases starting in one place and ending up in another. How much consideration should be given to the sense that, if you build this court, they will come? We need to have some institutions in Wales that both reinforce the progress that is already there—or the journey that has already started, in terms of devolution—and meet an anticipated need as things move on.

[40] **Ms Nason:** The administrative court is probably a good example. At Bangor University, in association with the University of Essex, we have done quite a major research project on the impact of the first few years of the administrative court in Wales and the English regions. Our hypothesis, when we looked at earlier research and statistics, was that the big problem was that specialised areas like administrative, mercantile and commercial law have historically been centralised in London. Cases have had to be brought in the High Court in London for such a long time that the legal service providers have clustered around London and in the south-east of England, and that has led to a great degree of awareness there. We found that something like 65% of administrative court cases were being brought by people from Greater London—at the time, that area had about 14% of the population—and that was because the legal services providers were clustered around the court. Our hypothesis with respect to Cardiff and the administrative court was that, as you say, if you build it, it is not so much that the citizens will come, but the lawyers will come, along with the properly funded legal services that will generate this caseload over time. At least, that is what we would expect. There is definitely a case, as you say, for establishing the institutions. While appreciating that there will not be an instant bonanza of cases coming in, they will eventually

build up.

[41] The access to justice point is interesting. As a lawyer, you do not really want to specifically encourage litigation; you are always saying that having more cases is a good thing, but it is not necessarily a good thing—it depends on the context.

[42] **Mick Antoniw:** I have one question. Is it not the case that all that has happened is that the administrative court sits in Cardiff as a convenience? Lawyers and cases follow wherever they get the time slot; it does not have anything specifically to do with Welsh jurisdiction, or whatever. This is an organisational convenience of the courts.

[43] **Ms Nason:** It is a complicating factor with respect to Wales. The judicial working group that mooted the idea of having these separate administrative courts was clear that it thought that there were strong constitutional reasons for situating the administrative court in Cardiff. Previously, your case was effectively administered in London although there was what was called a postbox facility in Cardiff, to an extent. Cases were administered out of London, although they could still be heard in Cardiff. The administrative court idea was based on the fact that this postbox facility with administration out of London, but with the possibility of more convenient hearings in Wales, did not seem to work. The idea is that you need the institution itself in Wales. The working group argued for constitutional reasons for having the court in Cardiff, but certainly one of the complexities that we found from our research is, as you say, an administrative measure for convenience for the solicitors and for the clients. So, we find a certain amount of interaction between the Royal Courts of Justice in London and the four administrative courts outside London.

[44] For us, there are two poignant examples. In one, we found that roughly 42% of the cases issued in the Cardiff administrative court pertained to legal issues originating in the south-west of England. Again, it was a case of convenience for lawyers and their clients—if you live in Bristol, it is easier to go to Cardiff than it is to go to London, perhaps. We found that the position in north Wales is that we are talking about very few cases. It is, therefore, quite difficult to draw particularly reliable conclusions—you see about four or five cases a year from north Wales making it as far as the administrative court, though there may be more where advice is given. We tend to find these cases issued in Manchester and administered from there but heard anywhere in north Wales. The question then is whether this is a matter of convenience rather than a matter of constitutional importance.

[45] **Eluned Parrot:** I would like to skip on to my second question. We talked a little about the establishment of the administrative court in Cardiff being about access to justice for people. However, you state in paragraph 14 of your paper that 50% of all claims against Welsh public authorities and the Welsh Government are filed in London. You have suggested some reasons for this—you have talked about such things as the gravitas associated with the London courts and the possibility of access to professional services in London. What kind of evidence do you have to support those ideas?

[46] **Ms Nason:** On the matter of gravitas, in a sense, those conclusions are probably fairly speculative at this stage of the research. In our research project, we interviewed about 80 solicitors and 70 barristers, but that included those based in the English regions. For Wales, I would say that we probably interviewed about 15 solicitors and 10 barristers, and although there is clearly a certain amount of self-interest on the part of the professions, essentially, we found in our research that one of the only ways of canvassing opinion is to ask the people involved. Similarly, the barristers and solicitors from England that we interviewed felt that there is a sense of this gravitas issue and the idea that ‘I need to go to London to appropriately experience an expert judge’. That was part of the issue.

[47] There are approximately 45 administrative court nominated judges, and if you go to

London, you are more likely to get the judge who is most expert in your case. So, although we are talking about public law cases, you could have a community care public law case, a housing public law case or an education public law case and there is a fear among some barristers and solicitors that, if you were to go to Cardiff, or even to Birmingham or Leeds, you would have whichever judge was prepared to travel out to hear your case. The fear is that you would not necessarily get the best judge for your case.

[48] On access to the professions, we have some data from the Law Society and some research of our own showing that there was a limited degree of specialisation in public law in Wales. It is more anecdotal, but we organised a couple of conferences on the administrative court in Wales—our telemarketers were calling various law firms to tell them that we were doing these conferences—and we found that many firms were aware of public law claims, but they would say that it was not relevant to their practice or not something that they would do.

3.00 p.m.

[49] There is some evidence. Granted, it is not massively systematic analysis, but there is some evidence of a lack of numbers in terms of public law specialists in Wales. We would not want to comment on the expertise of particular practitioners, but in terms of numbers, it seems that this is an area that could be developed. There are some excellent chambers—Park Place and Civitas Law are doing a great job—and it seems that public law provision is increasing nicely, but there still is a limited capacity.

[50] One of the reasons that we might have for saying that is that many of these public law cases are brought by claimants receiving legal aid. It appears that the legal aid policy has been to award contracts based on a high volume of work in a particular specialisation. So, if you are a solicitor based in Wales and you happen to be doing just a couple of judicial review cases a year, it is not likely that you would be awarded legal aid funding. That may also be an issue.

[51] **Eluned Parrott:** So, in effect, it is self-fulfilling, in that you do not get very many of these cases, so you do not get given any more of them.

[52] **Ms Nason:** Yes, exactly.

[53] **Eluned Parrott:** I want to return to some of the questions that you raised in a second, but is there any evidence that clients and the profession in Wales are moving more towards beginning their cases in Wales in areas that are devolved? Are people concerned about the fact that London courts will not understand the nuances of devolved administrations?

[54] **Ms Nason:** If you look at the areas of public law, where cases are coming from Welsh claimants and Welsh solicitors, they are more likely to be in the devolved areas. Some of the prominent subjects of claim that were appearing in Cardiff were to do with town and country planning. Housing is quite a prominent issue well. So, you can definitely say that.

[55] A surprising statistic with regard to public law claims in general is that about 85% to 90%—the percentage is decreasing—of public law claims involve a central Government body or a central public authority. We have found the same in respect of the English regions, in that a huge majority of public law claims are brought against central Government institutions. It makes us wonder to what extent the localism agenda in the UK more broadly is being achieved when you find so much litigation against the central authorities. However, there is evidence to suggest that it is in the devolved areas that claims are being issued in Cardiff rather than London.

[56] **Eluned Parrott:** Okay, thank you. You suggest in your paper the idea of giving

Cardiff exclusive competence in some areas. Do you think that the legal profession in Wales is developed enough and large enough to cope with that? If not, what steps do you need to put in place to make that a viable alternative?

[57] **Ms Nason:** There are some prominent specialists. It is difficult. It is a chicken-and-egg issue, because solicitors need cases to cut their teeth on before Cardiff can be given exclusive competence. The matter of exclusive competence is often one of choice, because if you are a client or a claimant based in Wales with a particular legal issue and you find that, for whatever reason, you are unable to find a specialist to help you in Wales, and you instruct someone from across the border, it does not stop you from saying that the case must be heard in Wales, even though your adviser is from somewhere else. However, you may find with exclusive competence that awareness may start to increase among solicitors and barristers in Wales. A lot is being done by the administrative court itself and law schools too. I know there has been a lot of publicity and training.

[58] The interesting point regarding exclusive competence is that, as a research group, we felt that in this field of public law it would be feasible and acceptable to give the Cardiff court exclusive competence over cases that occur under the separate law of Wales and cases that occur under the law of England and Wales that pertain mainly to Wales. However, our point of interest was the fact that such a high proportion of cases that are dealt with through Cardiff come from England, and how we would then deal with the issue of saying that that court had exclusive competence over Welsh issues. Would we then retain the competence over the English law issues as well, given that, at the moment, you have a high proportion of cases coming from England? If you were to ensure that every case under the law of Wales, or under the law of England and Wales that pertains mainly to Wales, is heard in Cardiff, or issued in Cardiff by way of a new practice direction, you would increase the number of Welsh cases and then be less concerned about having the additional English cases that, in a sense, subsidise access to justice in Wales, meaning that the resources are devoted to Cardiff.

[59] **Eluned Parrot:** Where do you think the balance lies in moving towards the idea of an exclusive competence in terms of developing the administrative courts in Cardiff? Is that more important than, for example, Welsh litigants having access to the widest range of potential and specialist counsel?

[60] **Ms Nason:** I do not think that the connection is that concerning. I do not think that dealing with a Cardiff court with exclusive competence would in any way limit the range of specialist advisers that people have access to at all, because you can still use an adviser based in England.

[61] The bigger concern, and it is something that we raised in our paper, in terms of devolving the administration of justice is legal aid. There were two big issues that came out of our research studies in terms of access to justice. One was awareness that this is even a legal issue. There are a lot of public law claims and one aspect of public legal education is people being aware that they can go and challenge the government in this particular way. This is something that people are not necessarily aware of. Secondly, they may be aware of it, but they may not have the funding themselves. It is about making legal aid funding available. The current consultation on legal aid has specifically said that public law judicial review claims is one area where legal aid must remain. It is not an area, such as family law, where there is talk of cutting it. Given that public law is so closely related to the rule of law and democracy, it is an area where legal aid must remain. If we are going to be talking about legal aid being a specific responsibility for Wales, rather than England and Wales, that is something that is an important point to consider.

[62] **Suzy Davies:** I have two questions, if that is all right, Chair. The first one takes you back to your comments on specialism. I wondered, when you were taking your anecdotal

evidence, whether there was any evidence that the area immediately around Cardiff has benefitted from specialism because of the administrative court, as opposed to across Wales as a whole. You can give me a quick ‘yes’ or ‘no’ on that and I will ask you the complicated question in a minute.

[63] **Ms Nason:** Yes. Anecdotally, it appears that the degree of specialisation in Cardiff has increased. New chambers have been established and others are increasing in size, for example, Civitas Law chambers is growing bigger.

[64] **Suzy Davies:** You mentioned the words ‘de minimis’ earlier with regard to the level of work for a Wales-only court. You mentioned in your evidence that the majority of cases going to the administrative court are for judicial review—about 80% of them—but even that is only about 2% or 3% of the work of the courts in Wales at the moment. So, do you think that there might be a risk in us trying to determine this question of whether we need a different jurisdiction, in terms of institutions and so forth, based on your experience of the administrative court, when the rest of Wales just experiences law through the usual criminal and civil procedures?

[65] **Ms Nason:** It is intended to be only one study of a particular area and the experience that we have had from this research. It is a specialised jurisdiction as is that of the mercantile court. It points in a particular direction. Perhaps we could say that it is the area in which the case for having a separate institution might be the least compelling, given the number of cases, and that the case would be more compelling in other areas of law because there would be more cases.

[66] **Suzy Davies:** Would you accept that there is very little law being made in those areas that we normally associate with our courts, and that the majority of work is something that assists the administrative courts in terms of capacity? That is where most of the new law is likely to be dealt with, is it not, if there is a problem? If you challenge the Government, it will be dealt with in the administrative courts.

[67] **Ms Nason:** Yes.

[68] **Suzy Davies:** Given that we are dealing with new laws for Wales, where there might be confusion between England and Wales, and Wales, it will be dealt with in the administrative court. So, this is the growth area. There may not be growth in the other two.

[69] **Ms Nason:** Yes, I think that is true. We have given you the statistics for the first two years post regionalisation, and we are coming to the end of the third year. It looks like there has been another small increase in the number of cases issued at Cardiff. The key points are the democratic issues and the working out of the competencies. That is something that needs to be done in Wales. It seems bizarre that it is something that could be done in England. We might find that the proportion of cases from Welsh litigants that are being issued and possibly even heard in England are predominantly those that still pertain to central Government and issues where there is not even a question of competence.

[70] **Suzy Davies:** Okay, thank you.

[71] **Ms Nason:** Did that help?

[72] **Suzy Davies:** Yes.

[73] **Simon Thomas:** Wrth ymdrin â rhai **Simon Thomas:** In dealing with some of the o’r cwestiynau blaenorol, rydych wedi sôn previous questions, you mentioned two am ddau beth, sef y posibiliad o greu things, namely the possibility of creating a

cymhwysedd *exclusive* i Gymru y tu fewn, er enghraifft, i'r llys gweinyddol, ond rydych hefyd yn crybwyll y syniad y gellir rhoi cyfarwyddyd i lysoedd drwy reolau'r weithdrefn sifil bod unrhyw fater sy'n cael ei gychwyn yng Nghymru yn cael ei ddelio ag ef yng Nghymru hefyd. A oes gwahaniaeth rhwng y ddau beth? Pa un fyddai'n fwy effeithiol o ran cryfhau'r modd rydym yn delio â chyfraith Cymru yng Nghymru?

competence that is exclusive to Wales within, for example, the administrative court, but you also mentioned the idea that instructions could be given to courts through the civil procedure rules that any matters that originate in Wales should also be dealt with in Wales. Is there a difference between the two? Which would be more effective in strengthening the way that we deal with the law of Wales in Wales?

[74] **Ms Nason:** I suppose that the most efficient way would be to begin with the practice directions—something within the civil procedure rules that has that form of direction. Perhaps the difficulty would be dependent on the way in which civil procedure rules are created, because that makes it, in a sense, more of an administrative-type measure than a very clear legal role or competence. However, my opinion is that, at this stage, certainly as far as the administrative court is concerned, it would be appropriate to begin with a practice direction.

[75] **Simon Thomas:** So, the profession in Wales—and we talked about this a little earlier—is strong enough, experienced enough and has wide enough expertise to deal with such a practice direction now.

3.15 p.m.

[76] **Ms Nason:** Yes, I would say so. It is certainly reaching that stage. The current practice direction is quite interesting in the sense that Practice Direction 54D Administrative Court (Venue) says that there is a general presumption that cases will be issued and determined in the location with which the claimant has the closest connection. However, there is a whole other range of factors that could displace that, such as where the legal advisers or the defendant are based or, interestingly, the volume of cases within a particular court. So, it is designed to prevent things like forum shopping. If you want a delay, you go to London, because there are lots more cases, but if you want things to be dealt with quickly, you may try to go somewhere else.

[77] **Simon Thomas:** If you wanted your case heard through the medium of Welsh, it will have to be dealt with in Wales.

[78] **Ms Nason:** Yes, exactly. At the very end of the practice direction, it also says that consideration should also be given as to whether cases raising a devolution issue should be determined in Cardiff or London. It is interesting that it says 'devolution issue' in the sense of where there is disagreement over the competence of Cardiff and Westminster; it does not say 'devolved issue'.

[79] **Simon Thomas:** That sounds like a pre-referendum type of reference. Now, it is very clear that the 20 fields are devolved and we make legislation here. That does not sound to me, on the face of it, like a useful direction.

[80] **Ms Nason:** The fact that the practice direction already states that there is a general presumption that a case should be determined in a location where the claimant has the closest connection is already pushing us towards that direction. We have interviewed and spoken to administrative court lawyers and judges, and they tend to deal with this by trying to push an interpretation of that practice direction, and that means that cases that originate from Wales are issued and determined in Wales. So, it is already weakly heading in that direction.

[81] **Simon Thomas:** It would not be such a major step to make it almost the rule, as it

were.

[82] **Ms Nason:** Yes, exactly.

[83] **Simon Thomas:** I want to move on, but I am not sure whether there is time.

[84] **David Melding:** We will run out of time if we are not careful. We still have some substantial issues to cover. However, I will take a question from Mick Antoniw.

[85] **Mick Antoniw:** The crux of it is that people with particular types of cases want to ensure that they have a judge who will be competent in that particular field. The issue for us is identifying where Welsh law is involved, which, of course, will increase over a period of time. When the Human Rights Act 1998 came in, all that happened, simply, was that a tick box was put in that asked 'does this involve a human rights issue?'. Surely, the crux of the issue is to identify it so that anyone pursuing a claim would have to tick a box, perhaps, to say 'does this involve a matter of Welsh law?' and if that is the case, it is immediately identified as needing to go to a judge who has specific knowledge of Welsh law. So, it is a fairly simple administrative way of doing it.

[86] **Ms Nason:** Yes. It sounds like a good idea.

[87] **David Melding:** Suzy, do you want to ask a question?

[88] **Suzy Davies:** That was my question.

[89] **David Melding:** That saved a little time. Back with you, Simon.

[90] **Simon Thomas:** Rwyf am ofyn cwestiwn ar bwnc gwahanol. Wrth gyflwyno'r dystiolaeth ar ddechrau'r cyfarfod hwn, gwnaethoch yn glir eich bod yn gweld hyn fel proses a bod nifer o bethau eisoes yn digwydd. Y geiriau a ddefnyddioch oedd nad oes angen *'the full suite'* o sefydliadau a chomisiynau ac ati. Un peth sydd wedi'i gynnig mewn tystiolaeth i'r pwyllgor hwn yw, beth bynnag sy'n digwydd o safbwynt symud tuag at awdurdodaeth gyfreithiol i Gymru, mae angen comisiwn diwygio'r gyfraith ar Gymru beth bynnag. Mae gwaith i'w wneud yn dod â chyfreithiau at ei gilydd gan edrych ar gysoni a safoni'r cyfreithiau. Dywedwyd hynny'n glir iawn gan yr Athro John Williams o Brifysgol Aberystwyth. A oes gennych farn ar y cysyniad hwnnw a sut mae hynny'n perthyn i ddatblygiad awdurdodaeth gyfreithiol?

Simon Thomas: I want to ask a question on a different subject. In submitting evidence at the beginning of this meeting, you made it clear that you see this as a process and that many things are already happening. The words that you used were that 'the full suite' of institutions and commissions and so on were not needed. One thing that has been proposed in evidence to this committee is that, whatever happens in terms of moving towards a legal jurisdiction in Wales, we need a law reform commission in Wales anyway. There is work to be done in bringing laws together, looking to reconcile and standardise them. That was stated clearly by Professor John Williams from Aberystwyth University. Do you have an opinion on that concept and how that relates to the development of a legal jurisdiction?

[91] **Dr Mawhinney:** We are in agreement that a law reform commission would certainly be required in due course. We have no firm view as to when it should be set up and what kind of form it should take. I note that, in Northern Ireland, the Northern Ireland Law Commission was set up in 2007, which is just five years ago. It was not seen as a necessary and integral part of the successful functioning of that jurisdiction. It came on the foot of a recommendation coming out of a criminal justice review. It would be interesting to learn why, in around 2007, it was considered necessary to set up that commission, what triggered that

move and why it chose that particular structure and remit.

[92] **Simon Thomas:** Given that you are from Northern Ireland, or at least have contacts there, do you think that the Northern Ireland Law Commission is different to the Law Commission of England and Wales in its structure and in the work that it does?

[93] **Dr Mawhinney:** I can tell you about the Northern Ireland commission, and perhaps one of my colleagues can tell you about the England and Wales one. The Northern Ireland Law Commission is a small body: it has four part-time commissioners—there is a solicitor, a barrister, a layperson and an academic—a small staff and a chief executive. It works principally on about two to three law reform projects a year.

[94] **Simon Thomas:** So, it looks at themes across the law, rather than at specific laws. It looks at, say, the administration of juvenile justice and things like that.

[95] **Dr Mawhinney:** Yes, it tends to take a thematic approach.

[96] **Simon Thomas:** Does it involve academics and law schools—the people who experience the law—and are there lessons there for what we might do in Wales?

[97] **Dr Mawhinney:** It initially drew quite heavily on legal academics. There were secondments, for example, from the School of Law in Queen's University Belfast. That happens to a lesser degree now; that was part of the set-up process.

[98] **David Melding:** Do you want to ask your other question?

[99] **Simon Thomas:** I did not know that I had another question.

[100] **David Melding:** It was a question on the statute book.

[101] **Simon Thomas:** Yes, thank you for reminding me. I want to follow up with a rather different question, which is not covered in your evidence, but is something that has been brought to my attention recently. Several voluntary organisations have contacted me, particularly those involved with the environment, stating that it is now difficult to find out what Welsh law is and what is being processed in this place—on an England and Wales basis, but delivered in Wales—and what we do as Welsh law here. As academic lawyers and as people who observe this process, do you have a view on how we might be building a Welsh statute book and the access that people have, or do not have, currently? Indeed, you spoke about a particular project having folded, did you not?

[102] **Mr Pritchard:** Yn anffodus, mae Deddfwriaeth Cymru Ar-lein wedi dod i ben, sy'n gadael gofod yn y farchnad am ffordd i bobl allu ffeindio allan beth yw'r gyfraith mewn meysydd penodol. Mae'n bosibl edrych ar rywbeth fel legislation.gov.uk, ond os nad ydych wedi cael hyfforddiant cyfreithiol, mae'n eithaf anodd ffeindio'r hyn rydych yn edrych amdano ac i wybod pa ran o ddeddfwriaeth sy'n berthnasol. Mae pawb yn gytûn fod angen rhyw fath o strwythur neu ffynhonnell, lle mae'n bosibl ffeindio cyfraith sy'n berthnasol i Gymru ac sy'n dod o Gymru'n benodol.

Mr Pritchard: Unfortunately, Wales Legislation Online has ceased to operate, which leaves a gap in the market for a means for people to be able to find out what the law is in specific areas. It is possible to look at something like legislation.gov.uk, but unless you have had legal training, it is quite difficult to find what you are looking for and to know which parts of legislation are relevant. Everyone is agreed that there needs to be some sort of structure or source, where it is possible to access legislation that is relevant to Wales and is made in Wales specifically.

[103] **Simon Thomas:** Onid yw'n wir fod y fath yna o ffynhonnell yn hanfodol os ydym i drafod rhywbeth tebyg i awdurdodaeth gyfreithiol i Gymru? Mae modd i'r peth fodoli, ond, o safbwynt y dinesydd, nid oes modd i hynny fod yn rhywbeth hygyrch y gall pobl ei ddefnyddio, oni bai fod ffynhonnell sy'n esbonio iddynt beth yw cyfreithiau Cymru.

Simon Thomas: Is it not true that that type of source is vital if we are to discuss something similar to a Welsh jurisdiction? It is possible for it to exist, but, from the point of view of the citizen, there is no way for that to be something that is accessible that people can use, unless there is a source that explains to them what the laws of Wales are.

[104] **Mr Pritchard:** Nid wy'n siŵr a yw hynny'n hanfodol o ran cael yr awdurdodaeth yn y ffurf rydym wedi'i thrafod heddiw. Fodd bynnag, o ran hygyrchedd i'r cyhoedd, cyfreithwyr a myfyrwyr, mae'n rhywbeth sy'n bendant yn hanfodol.

Mr Pritchard: I am not sure whether it is crucial in terms of getting the jurisdiction that we have been talking about today. However, in terms of access to the public, solicitors and students, then, yes, it is something that is certainly crucial.

[105] **David Melding:** Suzy, would you take us through the next set of questions?

[106] **Suzy Davies:** We started talking about the expertise of the next generation of lawyers in legal education. Given that the question of either a specialism or a separate jurisdiction for Wales has come up, are you aware of any interest among students in the various legal courses in Wales?

[107] **Mr Pritchard:** Mae amryw o gyrsiau sy'n ymwneud â datganoli'n benodol. Ym Mangor, mae gennym gwrs cyfraith datganoli sy'n edrych ar y gyfraith ddatganoli yng Nghymru a'r datblygiadau ar ôl 1998 a 2006. Rydym wedyn yn edrych ar y berthynas rynglywodraethol, ac yn cymharu â'r Alban a Gogledd Iwerddon, ac yn edrych ar systemau eraill yn Ewrop, megis yn Ffrainc a'r Almaen. Mae gennym hefyd gwrs Meistr ar ddatganoli sy'n edrych yn fwy penodol ar gyfraith gyhoeddus yng Nghymru, ar agweddau o ddatganoli mewn meysydd eraill, ac ar y pethau mwy ymarferol nad ydynt yn cael eu trafod yn y cwrs israddedig.

Mr Pritchard: There are a numerous courses related specifically to devolution. In Bangor, we have a course on devolved law that looks at devolved law in Wales and developments after 1998 and 2006. We then look at intergovernmental relationships, comparing with Scotland and Northern Ireland, and look at other European systems, such as in France and Germany. We also have a Masters course on devolution that is more specifically concentrated on public law in Wales, on aspects of devolution in other areas, and on the more practical things that are not covered in the undergraduate course.

[108] **Suzy Davies:** Do you have students on those courses who are not from Wales?

[109] **Mr Pritchard:** Mae'r cwrs israddedig drwy gyfrwng y Gymraeg, ond mae myfyriwr o Gatalonia wedi bod ar y cwrs Meistr yn y gorffennol, felly mae'n eithaf rhyngwladol.

Mr Pritchard: The undergraduate course is through the medium of Welsh, but a student from Catalonia has been on the Master's course in the past, so it is quite international.

[110] **Suzy Davies:** Do you know whether there is something similar in the other Welsh schools?

[111] **Mr Pritchard:** Oes. Roedd cwrs cyfraith a datganoli yng Nghaerdydd ac os nad yw'n dal i fynd, bydd yn aildechrau yn ôl y sôn. Mae cyrsiau Meistr wedi bod mewn

Mr Pritchard: Yes. There was a course on law and devolution in Cardiff and if it is not still going, it is about to recommence according to what I have heard. There have

prifysgolion eraill hefyd.

also been Master's courses at other universities.

[112] **Suzy Davies:** Are they on things like the legal practice course as well as on the Master's courses?

[113] **Mr Pritchard:** Nid wyf yn gwybod am y cwrs ymarfer cyfreithiol, dim ond yr ochr academiaidd. **Mr Pritchard:** I do not know about the legal practice course, only the academic side of things.

[114] **Suzy Davies:** Are you aware of similar courses in universities outside Wales? Does recognition of devolution in any of the four countries appear on other UK courses?

[115] **Dr Mawhinney:** It is certainly a feature of the courses in Northern Ireland, at both the University of Ulster and Queen's University Belfast. We would have specific modules on devolution and that forms a major part of our public law constitutional law module.

[116] **Suzy Davies:** That is good to hear. Do you know about England, because, as we heard earlier, particularly with administrative law, the centre of excellence until now has been London? Are you hearing of London universities picking this up?

[117] **Dr Mawhinney:** I am not familiar with the English law schools.

[118] **Mr Pritchard:** Rwy'n siŵr byddai datganoli'n dod i mewn fel rhan o'r cwrs cyfraith gyhoeddus. O ran y gyfraith yn y meysydd wedi eu datganoli, modiwlau dewisol y buasai'r rheini a buasai'n dibynnu llawer ar bwy fuasai yn eu dysgu a maint eu diddordeb mewn gwneud cymhariaeth gydag agweddau yng Nghymru yn strwythur y cwrs. **Mr Pritchard:** I am sure that devolution would be covered as part of the course on public law. In terms of law in the devolved areas, those would be optional modules and a lot would depend on who was taking them and how much interest they would take in drawing a comparison with the Welsh aspects in the structure of the course.

[119] **Suzy Davies:** So, it is not a standard part of the history of the legal system or legal system courses—whatever they are on the undergraduate courses now.

[120] **Mr Pritchard:** Nac ydy.

Mr Pritchard: No.

[121] **Suzy Davies:** That is interesting, too. Presumably, you would agree that the course content across Britain, not including Scotland, would need to change if we were talking about separate jurisdictions.

[122] **Mr Pritchard:** Buaswn. Buasai angen cydnabod datganoli yng Nghymru a'r agweddau a fuasent yn wahanol yn Lloegr yn sgîl hynny. **Mr Pritchard:** Yes. There would be a need to acknowledge devolution in Wales and the aspects that would be different in England as a result of that.

[123] **Mick Antoniw:** I will combine a couple of questions, because they tie into the same issue. They are to do with jurisdictional issues and where students and, in fact, lawyers come from. What is your experience of any issues that arise with regard to being able to recruit students and have lawyers practice in the various jurisdictions where there may be restrictions on their ability to practise? We are really talking about Northern Ireland and Scotland, are we not?

[124] **Ms Nason:** I have some general statistics. We know the domicile of the students whom we teach at Bangor, but we do not know about the students at the other Welsh

universities. However, we found that, on average, about 38% of our undergraduate student body in the law school comes from Wales, around 45% comes from England and, every year, we tend to get 1%, which equates to two or three students, from Scotland and Northern Ireland. In our undergraduate programme, our biggest growth area, which may be a point of relevance, although not so much for the UK, has been international students coming from beyond the European Union. So, we have students from Canada, India and Nigeria and—we had a discussion about this among ourselves—the nature of the academic law degree is very much to grasp central legal concepts, which means that, having done your law degree in Wales, you can go on to your professional training in places such as India and Canada, so, especially in Commonwealth countries that have a similar common law system, and it is at that professional qualification and on-the-job training stage that the major differences become evident. So, I do not think that we have found it particularly difficult to recruit students from other countries as well as from Northern Ireland and Scotland, although it has not been an area on which we have particularly focused our recruitment.

3.30 p.m.

[125] **Mick Antoniw:** Is there anything in your evidence that might be relevant to us in terms of barriers or restrictions? For example, if you have students coming from Scotland to study in Bangor, they will not be able to practise in Scotland. I imagine that the same is true in Northern Ireland and so on. Do those sorts of problems arise?

[126] **Dr Mawhinney:** Not really. For example, with regard to the situation of a student having done a law degree here and going back to Northern Ireland, any law degree in England and Wales is recognised as a qualifying law degree in Northern Ireland, and now vice versa. Land law used to be a sticking point and used to cause a problem, but Queen's University, about three or four years ago, reformulated its property law module and got it validated by the appropriate professional body; it is now recognised for qualifying purposes by the English and Welsh bodies. So, a law degree from Queen's is recognised by bodies here.

[127] **Mick Antoniw:** Are you able to say anything about the qualified lawyers transfer scheme? I had not heard of it before, but does it impact in any way or have any relevance to us?

[128] **Dr Mawhinney:** As far as I understand it, that is the recently formulated way in which England and Wales choose to recognise solicitors who wish to practise here. A qualified solicitor coming from Northern Ireland, for example, would have to do the first stage of that process, but would then, typically, be exempt from any further stages of that process. Solicitors or barristers going to Northern Ireland have an even more straightforward process to get recognised—it is just a paperwork procedure that takes four or five weeks.

[129] **Mick Antoniw:** Is there an EU element as well?

[130] **Simon Thomas:** Or is there a commonwealth element?

[131] **Dr Mawhinney:** I am not aware of the commonwealth angle.

[132] **Mick Antoniw:** What about an EU angle? There is increasing cross-practice with European lawyers seeking to work here and vice versa. Is that covered by this?

[133] **Dr Mawhinney:** I suspect that each jurisdiction will have its own process and criteria.

[134] **Mick Antoniw:** My final question is on whether there are any specific lessons that we can learn from Northern Ireland. In some ways, that is an area that has greater

compatibility with legal development in jurisdiction. Are there any issues that arise that would be of relevance to us here in Wales?

[135] **Dr Mawhinney:** This is an area that we are researching at the moment. We have a sense that looking at Northern Ireland, as an experience, is very relevant, not only in informing us as to which institutions would be necessary to introduce here, and when, but the process by which Northern Ireland established itself as a jurisdiction. It reinforces the notion that you do not need to have all the pieces in place in order to declare a jurisdiction. It is not about introducing a jurisdiction, but about which institutions to introduce to support what may be an existing and emerging jurisdiction. The Northern Ireland experience can be of interest in showing that it does not all have to happen at once. For example, two years ago, Northern Ireland received the devolution of policing and justice. It was a jurisdiction before 2010 and now it is still a jurisdiction, but of a different nature. Our law reform commission only came along five years ago, in 2007, so it is interesting to study Northern Ireland to understand what institutions are useful to have, and which are critical to introduce at which phases of the process.

[136] **Mick Antoniw:** Are there any lessons to learn in terms of the cross-border jurisdictional issues between Northern Ireland and the Republic of Ireland?

[137] **Dr Mawhinney:** If you look at that issue, you just get more examples of how degrees are mutually recognised—how professional qualifications may come to be mutually recognised. It is much more stringent between Northern Ireland and the Republic of Ireland than it is between here and Northern Ireland. I suppose that it demonstrates a mindset. In Ireland, you can have solicitors and barristers working north and south and they do not perceive it as a particular onus that they have to qualify north and south and that they might have to be familiar with different bodies of law, north and south, to operate. They see that as a natural burden of their chosen profession.

[138] **Simon Thomas:** You said that you are doing research into this. I take it that that is the research mentioned in your paper on small jurisdictions in the UK. Just out of interest, what is the timescale for that research and how do you expect to use it in order to influence the debate that we are having in Wales at the moment? The Counsel General is making a statement on this to the Assembly tomorrow.

[139] **Dr Mawhinney:** We are aware that it needs to be done in a timely fashion. We are somewhat dependent on further funding to complete it, but we hope that that will come along quite rapidly. We would like to have it done before the summer. It would be a fact-finding mission with a straightforward report at the end, establishing what exists in Northern Ireland and the pros and cons of that.

[140] **Suzy Davies:** You are talking about researching the institutions, so will you be looking at courts of appeal and further appeal or are you restricting it to courts of first instance and governance?

[141] **Dr Mawhinney:** Initially we were not so much going to look at those sort of institutions—unless the research pointed in that direction. We were, for example, going to study a particular programme called Servicing the Legal System in Northern Ireland. Its sole objective is to ensure that the public and the legal professions are aware of the legal system and the legal functioning of that system in Northern Ireland. It is a small body of just four people, but its job is to co-ordinate the efforts of the professionals and legal academics. It produces bulletins every five weeks, summarising all of the laws applicable in Northern Ireland, all written judgments that are applicable, practice directions, selected decisions of tribunals and relevant developments in EC law and the law in England and Wales. It is also available online with a search engine. The same people who do that also run conferences and

professional training and are the main publishers of Northern Ireland law. They produce the books on education law in Northern Ireland, land law in Northern Ireland and so forth.

[142] So, the SLS will be interesting to look at, as will another institution called the Council of Legal Education, which is responsible for ensuring that the bodies that train lawyers, solicitors and barristers in Northern Ireland are aware of the needs of the Northern Ireland professions. It is a body made up of representatives from the universities, the Inn of Court and the Law Society of Northern Ireland. It is chaired by a judge and its sole aim is to ensure that the trainers realise the needs of their members.

[143] **Suzy Davies:** We could do with that here then.

[144] **Dr Mawhinney:** Potentially, yes.

[145] **David Melding:** In your references to Northern Ireland, you concentrated on the legal situation as it has evolved since the Good Friday agreement. We could go back to the Government of Ireland Act 1920, which created a Northern Ireland jurisdiction overnight where, hitherto, the legal institutions were centred on Dublin and there was not a particularly strong legal culture in the north other than you would have found at a provincial level in any particular jurisdiction. Does that have anything to teach us, or do you think that the experience there was one of considerable dislocation in terms of access to and provision of efficient justice, given that, with the Government of Ireland Act, they did not have much choice about whether they were going to be part of what was then the Free State—they were going to have to go it alone as a separate jurisdiction or join England and Wales?

[146] **Dr Mawhinney:** The origin of the Northern Ireland situation is clearly so distinct from Wales that I do not think that there are many lessons to learn from that angle. There was a court service there; it continued to function. There was a strong legal profession there; it continued to function. The process of the training and recognition of professional qualifications continued to function. Therefore, it was established from a basis that simply continued. The challenge for Northern Ireland, post 1920, was to decide what additional institutions it needed after finding itself to be a small legal jurisdiction within the United Kingdom, without the Republic of Ireland in tow. Even the Servicing the Legal System programme that I talked about, which is clearly so instrumental to the successful functioning of the system now, was only set up in 1980. It took people in Northern Ireland a while to realise that there was a gap there and that they needed to fill it, because something was not functioning correctly.

[147] **David Melding:** There were no higher courts in Belfast before 1920, were there?

[148] **Dr Mawhinney:** They had to set up the court of appeal.

[149] **David Melding:** Presumably, whatever administrative structures that existed then were also in Dublin.

[150] **Dr Mawhinney:** Yes.

[151] **David Melding:** It seems to me that the situation is rather analogous, is it not?

[152] **Dr Mawhinney:** Perhaps in those institutional terms, yes.

[153] **David Melding:** Would you say that legal culture was severely disrupted by that experience? If you do not know, that is fine, as this is, perhaps, a deeply historical question. A lot of people would say that we should go slowly with a Welsh jurisdiction, because it is a big jump. We often hear the issues of competence being raised and I suppose that there is a

suspicion that the capacity is not there, either in what the people would demand or what the legal profession could provide. It seems to me that Northern Ireland in the 1920s and 1930s made a pretty good fist of being a jurisdiction.

[154] **Dr Mawhinney:** I do not have specific knowledge in that area, but it would be interesting to delve into it a bit more. We might do so in our future research; it sounds interesting to me.

[155] **David Melding:** I feel inspired. I am glad that I have left you with something to take away from this evidence session, as you have given us a lot to think about.

[156] **Mick Antoniw:** The question that follows on from that is whether we are again confusing jurisdiction, jurisprudence and administration. We need to be clear about how we see the development of Welsh law.

[157] **David Melding:** One witness was in some agreement with what you have been saying, namely that a jurisdiction is in existence, but that it is a question of the degree of that jurisdiction. His advice was that, if we move in a more formal direction fairly quickly, it would be better to devolve criminal justice and have a wholly distinct jurisdiction over criminal matters as well. Again, that is analogous to what happened in Northern Ireland. The administration of criminal law is nearly always done at the local level, so those accused of criminal offences that occur in Wales are tried in Wales. However, we would be creating a court of appeal, as they did in Northern Ireland. Do you have any views on that? Would it be easier for the public? Would it be a more robust way for a jurisdiction to develop to have it covering criminal law as well as administrative and public law? The previous witness thought that there were problems with having jurisdiction over one matter but not another when a much stronger degree of jurisdiction exists than there was before.

[158] **Simon Thomas:** Dylwn ychwanegu ein bod bellach yn pasio cyfreithiau yma sy'n creu troseddau. **Simon Thomas:** I should add that we are now passing laws here that create offences.

[159] **Mr Pritchard:** Byddai hynny'n creu awdurdodaeth llawer mwy cyflawn. Mae'n gwneud synnwyr cyffredin, felly, i gael awdurdodaeth sydd hefyd yn cynnwys materion troseddol. O'r hyn rydym wedi ei glywed heddiw, nid yw hynny'n angenrheidiol, ond byddai'n creu system sydd llawer haws i'w gweinyddu, yn haws i'w cyhoedd ei deall ac yn haws i'w datblygu. **Mr Pritchard:** It would create a far more comprehensive jurisdiction. It is a matter of common sense, therefore, to have a jurisdiction that would also include criminal matters. From what we have heard today, that is not essential, but it would create a system that was far easier to administer, one that is better understood by the public and one that is more easily developed.

[160] **David Melding:** Would you say that it would be a better fit, to use a common idiom?

[161] **Mr Pritchard:** Byddwn; mae'n dod â'r cyfan at ei gilydd fel jig-so—nid y cyfan, efallai, ond y pethau hynny sy'n gweddu orau i ddatganoli ac a fyddai orau i'w gweinyddu yng Nghymru. **Mr Pritchard:** Yes; it brings everything together like a jigsaw—well, not everything, perhaps, but those things that fit with devolution best and those that would best be administered in Wales.

3.45 p.m.

[162] **Mick Antoniw:** On that point, I can see how we might get to that stage over a period of time, with a growing band of Welsh decisions, legislation and so on. However, with the current situation, there are two particular areas that concern me. First, would creating a

separate administration, which is essentially what we are talking about, actually create any real improvement? Secondly, at what stage do you start looking at a separate administration potentially being advantageous, because the jurisprudence and the legal changes are there? If we are honest about it, what we are really talking about is organising which judges go where and handling court buildings and so on. That raises another issue: if that were to become a specific additional responsibility of the Assembly, what is involved in the scrutiny of that? That raises other constitutional questions with regard to the size of the Assembly.

[163] **Simon Thomas:** Paid â mynd i'r fan **Simon Thomas:** Do not go there. [*Laughter.*] honno. [*Chwerthin.*]

[164] **Mick Antoniw:** Sorry to throw those in.

[165] **Ms Nason:** That is something that we would hope to look at more in this research that we doing—the extent of those issues. From the experience of the administrative courts, a memorandum from the lead judge prior to regionalisation and a number of court officials essentially said that this will be a deployment nightmare, in terms of what do we do with judges. One of the big issues for them was having the appropriate computer systems in place. There is a system called COIN, which is the Crown office information network, and the difficulty there was having the different courts talking to each other about their cases, and things like that. To be honest, having read some of the other submissions to this committee, the biggest question in practice is what kind of resources you are going to need to do this, and whether they are comparable to the benefits that you would obtain.

[166] **David Melding:** One witness had similar thoughts, incidentally—that, in essence, forming a jurisdiction in the sense that we have been talking about it, that is, greater institutional personality, with, possibly, the inclusion of criminal law, is a political act. Would you agree with that, or would you say that, if you go too early in this direction, then you could have real problems beyond the practical ones of resources, in that, somehow the legal culture would not be ready? I suppose that that would be a more worrying problem, if you saw that existing if things developed too quickly.

[167] **Ms Nason:** Again, I do not want to draw too much on the administrative corpus, where my expertise is, but there certainly was that concern. There is a legal culture in London, as far as the administrative law is concerned, and the fact that you do not have that developed in the regions or in Wales was a problem. It is something that the Law Commission has mentioned. There was the Bowman review in 2000, which was also about the administrative court and the impact of the Human Rights Act 1998. Essentially, plans were afoot to do this long before it happened in the way that it did, and, in that sense, we started doing our research before the administrative court in Cardiff opened. We found increasing awareness, a developing public legal culture, and an increased specialisation among barristers and solicitors before it actually happened, because there were measures in place to improve public awareness—for example, Her Majesty's Courts and Tribunals Service held a significant number of roadshows where it went out and talked about these things, and the culture started growing from the ground up before the institution was open. I suppose that there is a lesson to be learned there in terms of raising awareness before you get to the point where you say, 'Right, now this jurisdiction or institution has exclusive competence'.

[168] **David Melding:** That concludes the questions that we want to put to you. Are there any issues that you would like to draw to our attention that might help us in our deliberations?

[169] **Dr Mawhinney:** No, I do not think so.

[170] **David Melding:** We have put quite a range of questions to you, so do not feel as though you need to manufacture anything.

[171] That just leaves me to thank you very much for your time this afternoon in helping us with our inquiry. We are grateful for your written evidence and for this interesting oral session. We wish all three of you a safe journey back to Bangor.

3.50 p.m.

**Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting**

[172] **David Melding:** The Easter recess starts at the end of this week, so the next meeting will be held on 23 April.

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

[173] **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).

[174] I see that the committee is in agreement.

Derbyniwyd y cynnig.

Motion agreed.

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.51 p.m.
The public part of the meeting ended at 3.51 p.m.*