



**Cynulliad Cenedlaethol Cymru
Y Pwyllgor ar Fesur Llywodraeth Cymru**

**The National Assembly for Wales
The Committee on the Government of Wales Bill**

**Dydd Llun, 30 Ionawr 2006
Monday, 30 January 2006**

Cynnwys
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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 o'r Cynulliad yn bresennol: Dafydd Elis-Thomas (Cadeirydd), Leighton Andrews, Nick Bourne, Jocelyn Davies, Michael German, Christine Gwyther, Jane Hutt (y Trefnydd), Ann Jones, Ieuan Wyn Jones, Val Lloyd, David Melding.

Swyddogion yn bresennol: Peter Jones, Cwnsel i Wasanaeth Seneddol y Cynulliad; Hugh Rawlings, yr Uned Materion Cyfansoddiadol; Paul Silk, Clerc y Cynulliad.

Gwasanaeth Pwyllgor: Siân Wilkins, Clerc; Gareth Williams, Clerc; Sarah Beasley, Dirprwy Glerc.

Assembly Members in attendance: Dafydd Elis-Thomas (Chair), Leighton Andrews, Nick Bourne, Jocelyn Davies, Michael German, Christine Gwyther, Jane Hutt (the Business Minister), Ann Jones, Ieuan Wyn Jones, Val Lloyd, David Melding.

Officials in attendance: Peter Jones, Counsel to the Assembly Parliamentary Service; Hugh Rawlings, the Constitutional Affairs Unit; Paul Silk, Clerk to the Assembly.

Committee Service: Siân Wilkins, Clerk; Gareth Williams, Clerk; Sarah Beasley, Deputy Clerk.

*Dechreuodd y cyfarfod am 4.02 p.m.
The meeting began at 4.02 p.m.*

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau Introduction, Apologies, Substitutions and Declarations of Interest

[416] **Y Llywydd:** Croeso i'r cyfarfod. Cafwyd ymddiheuriad gan Gwenda Thomas, a bydd Christine Gwyther yn cymryd ei lle, pan ddaw hi. **The Presiding Officer:** Welcome to the meeting. Apologies have been received from Gwenda Thomas, and Christine Gwyther, when she arrives, will be her substitute today.

[417] Awgrymwyd y byddai'n haws inni brosesu'r gwelliannau pe bai modd eu cyflwyno erbyn 3 p.m. ar ddiwrnod cyfarfod. A oes sylwadau am hynny? It has been suggested that it would be easier for us to process amendments if they could be tabled by 3 p.m. on the day of the meeting. Are there any comments on that?

[418] **Ann Jones:** I welcome that, Presiding Officer, because, on Friday, I was concerned about getting the papers to look over while travelling down from my constituency. I am grateful to Gareth and to Siân for assisting me in that. I think that 3 p.m. is a sensible time to be able to turn amendments around, given that you will need to do some work on them. I think that 3 p.m. is suitable. That brings me onto another issue, which is the amendment that was tabled at 3.06 p.m. today. I do not think that we should allow it, given that I have only now picked it up as it has been passed around the table. I would move that we do not accept it.

[419] **Ieuan Wyn Jones:** Os edrychych ar welliant 66 yn ein papurau, fe welwch ein bod wedi dweud y dylem ddarllen ein gwelliant i gymal 64 wrth inni drafod cymalau 102 a 103. Cefais wybod gan eich swyddfa, Lywydd, nad oedd staff wedi cael y gwelliant i gymal 64, a hynny ar ôl imi gyrraedd y Cynulliad heddiw. **Ieuan Wyn Jones:** If you look at amendment 66 in our papers, you will see that we have stated that our amendment to clause 64 should be read in conjunction with the amendment to clauses 102 and 103. After I arrived at the Assembly today, I was contacted by

Nid oeddwn wedi cyflwyno'r gwelliant hwnnw, oherwydd nid oeddwn yn disgwyl inni gyrraedd Rhan 2 y Mesur yn ein trafodaethau heno. Er mwyn hwylustod y pwyllgor, gofynnwyd imi gyflwyno'r gwelliant i gymal 64 fel bod y pwyllgor yn deall y rheswm y tu ôl i'r gwelliant i gymalau 102 a 103. Felly, gwneuthum hynny er mwyn hwyluso gwaith y pwyllgor yn hytrach na sicrhau bod Ann Jones o dan unrhyw anfantais.

your office, Presiding Officer, and told that staff had not received the amendment to clause 64. I had not tabled that amendment, as I had not expected us to reach Part 2 of the Bill in our deliberations this evening. For the sake of the committee's expediency, I was asked to table the amendment to clause 64 so that the committee would understand the rationale behind the amendment to clauses 102 and 103. I did that for the convenience of the committee rather than to place Ann Jones under any disadvantage.

[420] **The Presiding Officer:** Are you happy with that explanation, Ann?

[421] **Ann Jones:** Well, it is still an amendment tabled after the time.

[422] **The Presiding Officer:** It is not on my list for today.

[423] **Ann Jones:** Okay.

[424] **The Presiding Officer:** It is quite in order for any other issues to be referred to in the process of a debate on another amendment, if there are consequences, even when there is no grouping.

4.05 p.m.

Mesur Llywodraeth Cymru The Government of Wales Bill

[425] **Y Llywydd:** Awn ymlaen at Ran 4 y Mesur ac yna, fel y cytunwyd mewn cyfarfod blaenorol, awn drwy weddill y Mesur mewn trefn olynol. Mae gan Ieuan Wyn Jones sylw ar gymal 102.

The Presiding Officer: We will go on to Part 4 of the Bill and then, as agreed in a previous meeting, we will go through the remainder of the Bill sequentially. Ieuan Wyn Jones has a comment on clause 102.

[426] **Ieuan Wyn Jones:** Mae gennyf awgrym. Gan fy mod wedi cyfeirio at welliant 66 eisoes, sydd yn welliant mwy radical na'r gwelliannau eraill i gymal 102, er mwyn hwylustod y pwyllgor, a allwn gael y drafodaeth ar hwnnw yn gyntaf? Os yw'r gwelliant hwnnw'n methu, bydd trafodaeth ar y gwelliannau eraill i gymal 102. Mae gwelliant 66 yn diddymu cymalau 102 a 103 ac, os ydynt yn methu, yn naturiol, ni fyddwn yn trafod y gwelliannau i gymalau 102 a 103. Byddai'n anhwylyd pe baem yn dechrau trafod gwelliannau i gymal 102 ac yna yn symud i welliant sydd yn ei ddileu.

Ieuan Wyn Jones: I have a suggestion. As I have already referred to amendment 66, which is a more radical amendment than the other amendments to clause 102, for the committee's convenience, could we have the discussion on that first? If that amendment falls, there will be a discussion on the other amendments to clause 102. Amendment 66 deletes clauses 102 and 103 and, if they fall, then, naturally, we will not be discussing the amendments to clauses 102 and 103. It would not make sense for us to discuss amendments to clause 102 and then to move on to an amendment that deletes it.

[427] **Y Llywydd:** Bu imi esbonio yn gynharach nad wyf yn bwriadu galw—na, mae'n ddrwg gennyf, yr ydych yn sôn am welliant 66, ydych?

The Presiding Officer: I explained earlier that I do not intend to call—sorry, you are talking about amendment 66, are you?

[428] **Ieuan Wyn Jones:** Ydw.

Ieuan Wyn Jones: Yes.

[429] **Y Llywydd:** Credaf mai'r ffordd hwylusaf fyddai inni drafod y bloc hwn gyda'i gilydd ond yr wyf yn fodlon cynnal pleidlais ar welliant 66 cyn gwlliant 67.

The Presiding Officer: I believe that the best way forward would be for us to discuss this block together, but I am happy to call for a vote on amendment 66 before amendment 67.

[430] **Jocelyn Davies:** We tabled amendment 67 to clause 102, the first amendment on our list, because we feel that it is important that the Assembly has the opportunity to word the question. That is the sole purpose of this amendment.

[431] **Leighton Andrews:** I have no major issue in principle with the Assembly's having an input into the wording of any referendum question, but there is a process laid down under the Political Parties, Elections and Referendums Act 2000 in relation to the wording of referendum questions. That requires the Secretary of State to consult the Electoral Commission on the proposed referendum question. My main concern about this amendment is that it does not deal with the obligation under that Act, and we could be binding ourselves in the future to the Assembly's creating its own wording, which may turn out to be wording that the Electoral Commission might not approve of technically and which might be technically out of order. We have a process laid down here, and I do not think that this advances us much. If we get into a position in which the Assembly has voted by a two-thirds majority in favour of a referendum, I cannot believe that it will not have given some consideration in that discussion to the kind of wording that it would like to see and would therefore be making its own recommendation at that time to the Secretary of State. The Secretary of State can then legitimately bring into play his or her own role in ensuring that that wording is put into effect after consultation, as appropriate, with the Electoral Commission.

[432] **Ieuan Wyn Jones:** Deallaf y pwynt y mae Leighton yn ceisio'i wneud ond y cwestiwn yw: pwy ddylai fod yn rheoli'r drefn? Mae'r Mesur hwn yn dweud nad oes modd cael refferendwm oni bai bod y peth yn dechrau yn y Cynulliad a bod pleidlais o ddwy ran o dair o'i blaid. Caiff y broses wedyn ei sbarduno. Fodd bynnag, y realiti yw, er bod hyn yn nwylo'r Cynulliad, mae'r cwestiwn ei hun y tu allan i ddwylo'r Cynulliad, ac ni allaf ddychmygu sefyllfa lle y byddai'r Cynulliad yn llunio cwestiwn heb ofyn barn y Comisiwn Etholiadol. Ni allwn ddychmygu'r Cynulliad yn dymuno gwneud hynny.

Ieuan Wyn Jones: I understand the point that Leighton is trying to make but the question is: who should control the process? This Bill states that a referendum cannot be held unless it begins in the Assembly and there is a two-thirds majority in its favour. The process is then triggered. However, the reality is that, although this is in the hands of the Assembly, the question itself is out of the Assembly's hands, and I cannot imagine a situation in which the Assembly would draft a question without asking the opinion of the Electoral Commission. The Assembly would not conceive of doing that.

4.10 p.m.

[433] Mae hwn yn fater sylfaenol. Os yw Llywodraeth y Cynulliad, o ba liw bynnag, yn gwneud cais am refferendwm yn ei manifesto, ac mae'r cwestiwn o ddwy ran o dair yn codi

This is a fundamental issue. If the Assembly Government, of whatever colour, requests a referendum in its manifesto, and the two-thirds issue arises in an amendment

mewn gwelliant sy'n dilyn, ni fyddai'n iawn i'r Cynulliad beidio â chael llais yn unol â'r Ddeddf ynghylch geiriad y cwestiwn. Gan mai mater i bobl Cymru yw refferendwm, oherwydd dim ond pobl Cymru fyddai'n pleidleisio, mae'n berffaith iawn fod geiriad y refferendwm yn cael ei lunio gan y corff a etholwyd, sef y Cynulliad, mewn cydweithrediad â'r Comisiwn Etholiadol. Os mai dyna yw unig wrthwynebiad Leighton, yr unig beth y mae'n rhaid i'r Llywodraeth ei wneud yw derbyn y gwelliant a'i aileirio mewn ffordd sy'n golygu y byddai'n rhaid i'r Cynulliad gael barn y Comisiwn Etholiadol. Mae hwn yn fater o egwyddor. Gallwn drafod yr union broses yn y ddatl sy'n dilyn ar lawr y Cynulliad.

following that, it would not be right for the Assembly not to have a voice under the Act regarding the wording of the question. As a referendum would be a matter for the people of Wales, given that only the people of Wales would vote, it is right and proper that the wording of the referendum be formulated by the elected body, namely the Assembly, in collaboration with the Electoral Commission. If that is Leighton's only objection, all that the Government has to do is accept the amendment and reword it in a way that means that the Assembly would have to seek the opinion of the Electoral Commission. This is a matter of principle. We can discuss the exact process in the debate that would follow in the Chamber.

[434] **Jocelyn Davies:** I see Leighton's point, but we could easily incorporate something in our Standing Orders to cover his point, such as that the Assembly should consult the Electoral Commission in the event of tabling a resolution under this clause. Our own rules can take care of your point.

[435] **Leighton Andrews:** With respect, our rules cannot do that. There is an Act of Parliament, the Political Parties, Elections and Referendums Act 2000, which requires the Secretary of State to consult the Electoral Commission on any proposed referendum question. This amendment does not take account of that Act.

[436] **Jane Hutt:** The important thing is that the Secretary of State has to consult the Assembly before laying any draft Order in Council before Parliament. The Secretary of State would have to consult the Assembly, and that gives Assembly Members a voice and plenty of opportunity to make representations, even before, as Leighton said, we got to the point of securing the two-thirds majority. There is an obligation on the Secretary of State to consult the Assembly.

[437] **Y Llywydd:** Ieuan Wyn Jones, wyt ti'n dymuno cynnal pleidlais ar hwn?

The Presiding Officer: Ieuan Wyn Jones, would you like this to be put to a vote?

[438] **Ieuan Wyn Jones:** Gwelliant 66 yw'r un y byddwn yn dymuno cynnal pleidlais arno.

Ieuan Wyn Jones: It is amendment 66 that we would want to put to the vote.

[439] **Y Llywydd:** A yw gwelliant 67 yn cael ei dynnu yn ôl?

The Presiding Officer: Is amendment 67 being withdrawn?

[440] **Ieuan Wyn Jones:** Ydy.

Ieuan Wyn Jones: Yes.

[441] **Y Llywydd:** Yr wyf wedi grwpio gwelliannau 52 a 69 gyda'i gilydd.

The Presiding Officer: I have grouped amendments 52 and 69 together.

[442] **Michael German:** I propose that

In clause 102(5), page 56, line 32, leave out from 'Assembly' and insert 'Senedd Members voting'.

[443] We have no objection to having a higher threshold for carrying motions that have a role in the governance of our Assembly. However, it is rather silly to specify a number when there could be abstainers, people who are unwell, or even dead, whose voice would be counted on one side or the other. Amendment 52 requires the insertion of the words ‘Senedd Members voting’, which relates to the 40-seat rule, which means that you have to have 40 Members as opposed to a two-thirds majority in favour. The normal process is two thirds of those voting and not two thirds of all Members of the National Assembly, because those who wish to abstain and those who were not present would be counted as voting against. This amendment, and the subsequent amendment, seek to put in a two-thirds majority of Assembly Members present and voting, which strikes me as being the fairly standard practice that you would expect to see in any resolution of this sort. In my view, the reason for putting ‘two thirds of...Assembly seats’ in place is to raise a higher hurdle than that which would normally be demanded in this case. We are not actually satisfied that we are required to have a two-thirds majority in favour of the referendum, but to put in ‘two thirds of the total number of Assembly seats’ seems to be setting a threshold that is beyond even what those who argue in favour of having a two-thirds majority would want.

[444] **Jocelyn Davies:** I propose amendment 69 in my name and in the name of Ieuan Wyn Jones.

In clause 102, page 56, line 32, delete the words ‘is not less...Assembly seats’ and replace with the words ‘represents a majority of Assembly Members present and voting in favour’.

[445] In our amendment 69, we say that it should not be a two-thirds majority but a simple majority, which we feel is more democratic. You could have a manifesto commitment to undertake this, and it could be blocked by just one party, so we feel that it should be a simple majority.

[446] **Nick Bourne:** I would go along with that. I have been unconvinced by this argument that it has to be two thirds of Assembly Members, and even two thirds of Assembly Members present. I agree that the Liberal Democrat amendment is an improvement, but I do not follow the argument. I think that Jocelyn has made a very fair point that a majority party or parties could have put it in their manifestos but would be unable to carry it out because it is blocked by a minority. We have a two-thirds requirement to amend our Standing Orders; that is customary practice. However, I have been unable to find anything in any legislation from Westminster that has any clause such as this that entrenches something in this way. I cannot for the life of me understand why it is there.

[447] **Leighton Andrews:** I am perfectly happy to support what is currently in the Bill. I do so because, like many other people around this table, I was very involved in a previous referendum. It seems to me that the reason for having this clause is to build the necessary consensus for our progression to primary powers and to ensure that we have some means of testing that consensus before a referendum is put to the people of Wales that might, dare I say it, try their patience if it were put a degree too early. I think that it is sensible politically that we have some kind of check in legislation, so that we do not have frivolous attempts to hold referenda year on year until a particular result is obtained.

[448] I speak as a supporter of primary powers and as someone who believes that a referendum could be won at the current time. I am on record as having said that. However, I do not believe that it is the consensus, within or outside the Assembly, that a referendum would necessarily be won at the present time. I think that it would be sensible to go into any referendum on a decision as major as a transition to primary powers in the constant certainty that you have a substantial consensus in support of that, and a substantial consensus within the National Assembly. This clause provides a trigger to enable us to measure that.

[449] **Michael German:** Does Leighton think that having two thirds of the Assembly voting in favour of a referendum would be a substantial consensus?

[450] **Leighton Andrews:** Is this in respect of your specific amendment?

[451] **Michael German:** No. The simple question is this: do you think that having two thirds of Assembly Members voting in favour of a referendum in the National Assembly would be a substantial consensus?

[452] **Leighton Andrews:** I think that it would represent a substantial consensus.

[453] **Michael German:** In which case, why are you asking for people who are not counted if they abstain or are not present to be counted as extra votes on the opposite side? If you abstain, your vote is essentially a counsel against moving forwards. If you are not present, for whatever reason—because clause 102(5) talks about the total number of seats—or if a number of seats is vacant, that counts against it. I am sure that you will remember the ill-fated 40 per cent threshold that was put in the Scotland Bill, which was designed to ensure that it had an even greater threshold than a simple majority. This is not the same threshold; this is a threshold that is beyond two thirds. I take your words to mean two thirds of those voting and that that is an acceptance of our amendment.

4.20 p.m.

[454] **Leighton Andrews:** I do not feel strongly about your amendment. As far as I am concerned, I would regard two thirds of those voting as a substantial demonstration of consensus; I do not have an issue with that. I have an issue with your amendment in relation to the wording ‘Senedd Members voting’. The amendment, tabled by the Liberal Democrats in the House of Commons, to change the name of this body to Senedd was, of course, defeated when it came to a vote—I do not mean a vote here; I am talking about a vote in Parliament. I have a visceral opposition to monolingual titles for any kind of body in Wales.

[455] **Michael German:** The issue here is that we have not debated that—

[456] **The Presiding Officer:** Order. We are coming to a series of amendments and we cannot anticipate the outcome, although we may suspect what the outcome will be.

[457] **Michael German:** When we decided, Leighton, to discuss these amendments in this order, we knew that consequential amendments would make a difference. When voting on the amendments that we are about to debate, if we were not to accept the word ‘Senedd’, ‘Assembly Members’ would obviously be the provision in our amendment because that would have been the change that would have been brought about. If you are saying that your only reason for rejecting this amendment is that we have not yet debated a clause that is included, then I am quite happy for an amendment to be brought forward that says, ‘in favour of not less than two thirds of the total number of Assembly Members voting’.

[458] **Nick Bourne:** I think that I can assure Leighton that that is not going to pass because I too have a visceral dislike of the title. I know that, intellectually, he will be able to vote for this, and I suspect that he was not just using that as an excuse to wriggle out of voting for something in which he really believes. I do not like the title ‘Senedd’ either, but we will support the provision because it seems to me that it makes sense. It is surely not to be suggested that, every time something of importance that has been in a party’s manifesto comes up, you have to build a consensus until you have a two-thirds majority in favour. That seems to me to be a most extraordinary proposition.

[459] I repeat the question that I asked earlier: is there any legislation in Westminster

concerning which you have to have a two-thirds majority before you can get something through the Houses of Parliament? I would be very surprised if there is. If there is no such legislation—I have challenged the First Minister on this and no-one has yet brought forward a provision and said, ‘Yes, here it is’—why is this clause here, other than as an attempt to block other parties from calling a referendum, leaving the Labour Party with the ability to block it if it is not in power? That is what this is really about and nothing that anyone has said so far has been able to convince me otherwise. If there is such a piece of legislation, let us hear about it.

[460] **Jane Hutt:** I am advised that there are no special voting measures of this kind in Westminster. You are nodding your head, Nick, so that obviously answers part of your question. However, it goes back to the importance of creating consensus and not allowing a referendum to be called on a political whim or in a minority situation. In fact, as you said earlier, Nick, we have established the two-thirds requirement through custom and practice in relation to Standing Orders. I will not repeat what Leighton has said regarding all of us who were involved in the ‘Yes for Wales’ campaign to promote devolution, recognising the importance of building public confidence in order to reach consensus. I think that we should move to a vote on this amendment regarding the two-thirds majority.

[461] **Michael German:** Before you take a vote—

[462] **The Presiding Officer:** Order. I have to take Ieuan Wyn Jones.

[463] **Ieuan Wyn Jones:** I am totally bemused by the Government’s position. It is being defended valiantly by Leighton, but, frankly, I regard this as constitutional nonsense. I say that because you could have an Assembly Government, next time, elected by the Welsh people on a mandate to move to a referendum to go to Part 4 quickly. Leighton may regard that as being politically naive or frivolous, or he may say that it is stupid for any Government to seek a referendum every year, although I do not suppose that any Government once it had lost a referendum, would want to bring it back in 12 months.

[464] However, what is the value of an Assembly Government’s mandate if the party that has lost the election can block the request for a referendum? I find that, constitutionally, to be absolute nonsense. Let us assume, for the sake of argument, that the party, or parties, forming the next Government have that in their manifesto or manifestos; the Government elected by the people of Wales makes that request but, when it comes to a vote in the Assembly, it is blocked, because the party that has lost the election happens to think that it is the wrong time to have a referendum.

[465] Leighton is saying that we want to move to a consensus, but I cannot imagine that any Government would want to go into a referendum thinking that it would lose—it would want to go into the referendum thinking that it would win. Therefore, the Government would be unlikely to schedule the referendum at a time when it was destined to lose. I happen to agree with Leighton that we could probably go to a referendum and win it quickly, but my point, essentially, is that the value of an Assembly mandate for its Government is less than the value of a mandate at Westminster, which is something to which I cannot subscribe.

[466] **Leighton Andrews:** I am interested in the argument that is being developed. If, for argument’s sake—and it would have to be so to take your argument forward—after the next Assembly elections, there was a different Government in Cardiff bay, it would be the defeated party, as you put it, which would be the blocking party. Unless you are suggesting that Plaid Cymru will win 31 seats, you seem to be talking about a coalition party, and the outcome in that situation would be that no one party would have won a majority of the Welsh electorate. So, it would not be a question of resisting a specific mandate or of one defeated party being able to block. It would be a question of a number of parties not having

commanded a majority of the Welsh electorate—unless you are going to tell me something very interesting about the opposition parties’ election strategy for 2007, namely that they will come together on a mandate of pressing for a quick referendum on primary powers between 2007 and 2011. If that is the case, then please come clean now. We would all be delighted to know that.

[467] **Nick Bourne:** It is a possibility.

[468] **Leighton Andrews:** I am fascinated—develop it.

[469] **Jocelyn Davies:** A simple majority is the most democratic option. I do not know why you keep talking about a quick referendum—a referendum at any point would have to pass this test. You, as the largest party now, could not do this unless you invited someone else to join you. You cannot change the Standing Orders, and you could not go for this referendum. But, how you can sit there and be taken seriously when you compare changing the Standing Orders of the National Assembly, which does not affect one single person outside this building, with a referendum on the constitutional future of Wales, beggars belief.

[470] **Ieuan Wyn Jones:** I want to respond to Leighton. I think that he is trying to suggest that there are political reasons why this provision is in the Act. However, I am trying to argue from the point of principle. Let us assume, for the sake of argument, that there is a Labour majority—he has used one example, so let me use another. He has told me that he thinks we would win a referendum, so, in the wonderful post-2007 world where Leighton Andrews is First Minister of a Labour Government, he might want a referendum. But, he could not have one unless he has the support of parties that have lost the election. So, Leighton is arguing against himself—he could find himself in a position where he has won the election, and assuming that his manifesto said that we should move to a referendum, he would not be able to do that because the parties that lost the election could block him. Is that fair?

4.30 p.m.

[471] **Leighton Andrews:** At the end of the day, this is about consensus. I do not think that, in 1997, we would have won a referendum had three of the parties around this table not been in support of a ‘yes’ vote. The tightness of the majority demonstrates that that is absolutely the case, frankly. At the end of the day, these things are about consensus building; that is, essentially, my point. So, it would be wise for any governing party which was keen to press the case for a referendum, to seek to build consensus among other parties. It would be very foolish not to do that, because I do not think that you would carry the Welsh people.

[472] **Michael German:** On a matter of order, on amendment 52, he is right that the words are ‘Senedd Members voting’, in the sense that we tabled an earlier amendment to clause 1, which would change the name from ‘Assembly’ to ‘Senedd’, which we have not yet debated. If we vote on this now, and our amendment to clause 1 then fails, would you interpret that as meaning that this amendment, in substantive terms, would read ‘Assembly Members voting’?

[473] **The Presiding Officer:** I would interpret the consequence of any votes on these amendments; I can do no other. However, I take a very liberal interpretation in terms of the process that we adopt here. I am not being too tightly bound by the wording of amendments when we are, in fact, debating recommendations for amendments that will be worded in a different form at a later stage.

[474] **Michael German:** So, on that basis, could I encourage Labour Members, if they felt that having a two-thirds majority was the correct method, to vote for this amendment—and obviously to vote against the later amendment—as that interpretation, and the carrying through of this, would not have an effect on the motion later?

[475] **The Presiding Officer:** Yes, that is right. Do you, therefore, wish to move to a vote on amendment 52?

[476] **Michael German:** I would like to move to a vote on amendment 52 with that understanding in mind.

Gwelliant 52: O blaid 5, Ymatal 0, Yn erbyn 5.

Amendment 52: For 5, Abstain 0, Against 5.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrew, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.

As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[477] **Y Llywydd:** A hoffech bleidleisio ar welliant 69, Ieuan Wyn Jones?

The Presiding Officer: Would you like to vote on amendment 69, Ieuan Wyn Jones?

[478] **Ieuan Wyn Jones:** Hoffwn.

Ieuan Wyn Jones: Yes.

Gwelliant 69: O blaid 5, Ymatal 0, Yn erbyn 5.

Amendment 69: For 5, Abstain 0, Against 5.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.

As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[479] **Y Llywydd:** Symudwn at welliant 68.

The Presiding Officer: We will move to amendment 68.

[480] **Jocelyn Davies:** We will withdraw amendment 68 because we withdrew the one that it was connected to.

[481] **Y Llywydd:** Tynnwyd gwelliant 66 yn ôl eisoes. **The Presiding Officer:** Amendment 66 has already been withdrawn.

[482] **Ieuan Wyn Jones:** Naddo. Cynigiau welliant 66 yn awr. **Ieuan Wyn Jones:** No, it has not. I propose amendment 66 now.

Delete clauses 102 and 103 (to be read in conjunction with the amendment to clause 64).

[483] Gwn ein bod wedi bod yn trafod newidiadau i gymal 102, ond cynigiwn y gwelliant hwn gan mai'r realiti yw bod trafodaeth i'w chynnal ynghylch pwy ddylai fod yn rheoli'r refferendwm. Nid oes amheuaeth, yn fy marn i, mai mater i'r Cynulliad, a'r Cynulliad yn unig, yw hwnnw—yn y lle cyntaf, o ran y penderfyniad i gynnal refferendwm, yn ail, o ran y bleidlais i benderfynu ar y refferendwm, yn drydydd, o ran penderfynu ar y geiriad, mewn cydweithrediad â'r Comisiwn Etholiadol, ac yna, wrth gwrs, i redeg y refferendwm.

I know that we have been discussing amendments to clause 102, so we propose this amendment because the reality is that there is a debate to be had on who should control the referendum. There is no doubt, in my opinion, that it should be a matter for the Assembly and the Assembly alone—first, in terms of the decision to hold a referendum, secondly, in terms of the vote to decide on the referendum, thirdly, in terms of deciding on the wording, in collaboration with the Electoral Commission, and finally, of course, on running the referendum.

[484] O ddileu cymalau 102 a 103—a'r rheswm pam yr ydym yn credu y dylid darllen y gwelliant hwn yn gyfochrog â'r gwelliant i gymal 64—byddai angen cyflwyno gwelliant i gymal 64; cymal 64 yw'r cymal hwnnw sy'n caniatáu i'r Cynulliad gynnal pŵl i ganfod beth mae'r cyhoedd yn ei feddwl o bwnc arbennig.

If we deleted clauses 102 and 103—and the reason we say that this amendment needs to be read in conjunction with the amendment to clause 64—there would be a need to amend clause 64; clause 64 is the one that allows the Assembly to hold a poll to discover what the public thinks about any particular issue.

[485] Mae cymal 64 yn gyfyng iawn yn yr ystyr mai dim ond y geiriad canlynol a geir: Clause 64 is very limited in the sense that we only have the following:

'about whether or how any of the functions of the Welsh Ministers should be exercised'.

[486] Mae hynny'n eithaf cyfyng oherwydd nid yw'n caniatáu, ac eithrio mewn amgylchiadau arbennig, ichi gynnal pŵl ar a ddylid gweithredu Adran 4 o'r Mesur, er enghraifft.

That is relatively limited because it does not allow you, apart from in special circumstances, to conduct a poll on whether Part 4 of the Bill should be implemented, for example.

[487] Gan mai mater i bobl Cymru drwy Aelodau'r Cynulliad yn pleidleisio o blaid neu yn erbyn cynnal refferendwm ydyw, teimlaf mai mater i'r Cynulliad yn unig ddylai fod. Ni welaf yr angen yn y cyd-destun hwn iddo fod yn fater i'r Senedd yn Llundain. Ar ddiwedd y dydd, wedi i'r Mesur ddod yn Ddeddf, mater i bobl Cymru fyddai wedyn.

Given that it is a matter for the people of Wales through Assembly Members voting in favour or against holding a referendum, it should be a matter for the Assembly alone. I cannot see the need in this context for this to be a matter for Westminster. At the end of the day, once this Bill has become an Act, it would then be a matter for the people of Wales.

[488] Nid wyf yn gwrthwynebu'r dadleuon a ddefnyddiodd Leighton Andrews yng nghyswllt priodoldeb amseru refferendwm. Credaf fy mod i a Leighton yn gwbl gytûn y

I do not oppose the arguments put forward by Leighton Andrews on the appropriateness of the timing of a referendum. I think that we are both agreed

byddem am adeiladu consensws. Os ydych o blaid mynd i refferendwm, fe fyddech am wneud hynny ar adeg pan deimlech fod y farn gyhoeddus y tu ôl ichi. Ni allaf ddychmygu y byddai Llywodraeth am fynd i refferendwm gan ddisgwyl ei gollu. Ar sail egwyddor, teimlaf mai mater i bobl Cymru ydyw ac y byddai'n fwy priodol cael gwelliant i gymal 64 yn hytrach na'r syniad bod rhaid cael dwy ran o dair o blaid yn y Cynulliad a phleidlais yn y Senedd hefyd.

that we would want to build a consensus. If you are in favour of moving towards a referendum, you would want to do that at a time when you feel that public opinion is behind you. I cannot imagine a Government that would want to hold a referendum when it expected to lose it. As a principle, I think that it is a matter for the people of Wales and therefore it would be more appropriate to have the amendment to clause 64 rather than the idea that we need a two-thirds majority in favour in the Assembly and also a vote in Parliament.

[489] **Jane Hutt:** If you look at clause 64, you will see that it does not allow the Assembly to call for a consultative poll but allows Welsh Ministers to call such a poll. That does not accord with the points in relation to your amendment. Clearly, it will be Welsh Ministers who will be ascertaining the views of the public, not the Assembly. It is important that we recognise a continuing role for Parliament up to the point where the people of Wales have endorsed proposals in a referendum. Therefore, I can see how you want to link the two together, but I think that it is a misunderstanding. It is not the Assembly but Welsh Ministers who can hold such a poll under clause 64.

[490] **Ieuan Wyn Jones:** I am sorry, Minister, but the reality is that Welsh Ministers are the Government. Welsh Ministers are the Government of Wales or the Welsh Assembly Government, as you describe it. Can you imagine a situation in which anyone else would want to hold a referendum? It is pretty obvious that it is the Government that would want to hold a referendum.

[491] Also, the Government would have to vote through the money that is necessary to run the referendum and it could not do that without the support of the Assembly, surely.

[492] **Jane Hutt:** Clearly, that is part of the machinery that is laid down in the Bill for holding a referendum for Assembly Act provisions. The amendment would delete those clauses that provide for that machinery, which would require a consultation, and which enable us to take through the competence of the Assembly in terms of the point where the people of Wales can endorse that proposal in a referendum.

[493] **Ieuan Wyn Jones:** You are arguing against my amendments. You are not arguing in favour of your provision, which is quite interesting. We need to hear from the Government, on the record, why it is necessary to have a two-thirds majority in the Assembly and a vote in Parliament.

[494] **Jane Hutt:** As I said, it is important that Parliament has a continuing role up to the point where the people of Wales endorse the call for primary powers in a referendum. This is a Bill from the UK Government, which is now being debated at the Committee Stage in Westminster, and here in the Assembly in Cardiff bay. It is vital that Parliament has that continuing role up to that point. We have a Bill in front of us, because it is the UK Government that is enabling us. We want the two thirds again, because that is about ensuring that we have the public confidence, as well as the political consensus in the Assembly, to enable us to take this forward.

4.40 p.m.

[495] **Ieuan Wyn Jones:** Minister, are you saying that although the Assembly would have

voted in favour of a referendum by a two-thirds majority, Parliament could reject that?

[496] **Jane Hutt:** As we said in relation to earlier amendments, the Secretary of State has to consult the Assembly before a draft Order in Council is laid in relation to holding a referendum. There is a process at each step for full consultation with the Secretary of State, involving roles for Parliament, Welsh Ministers, and the whole Assembly through the two-thirds majority vote. We have gone through this, and I am opposing your amendment because it deletes the machinery that is necessary for delivering what we might want at that point: primary powers. We cannot delete the machinery for delivering that and delete Parliament from the process.

[497] **Ieuan Wyn Jones:** Yes, you can; you could vote for my amendment.

[498] **Jane Hutt:** I think that you have missed the point.

[499] **Ieuan Wyn Jones:** I want to make it clear to the committee that the purpose of amendments is not only to move to a vote, as we sometimes do, but to probe the intention behind the Government's measures. We are entitled to scrutinise the reasons for the Government's including a particular measure in the Bill. Can you explain why the Government thinks that it is necessary for there to be two votes for a referendum? Why is it necessary to have a vote in the Assembly and another in Parliament?

[500] **Jane Hutt:** This is the basis of the constitutional settlement and the enhancement of powers that we are seeking through the Government of Wales Bill, so it is fundamental. I appreciate the point that you make, Ieuan; this is about probing intentions. However, the intention of the Bill is to deliver enhanced powers for the National Assembly for Wales, through the machinery that is laid out, ensuring that, at each step of the way, we build the consensus here and the support in Parliament. We will not achieve this without that debate and support, and the continuing confidence that will result in the Government in Westminster and the Government in Wales taking the lead in moving the machinery forward. However, I think that we have now had sufficient debate on the matter.

[501] **Nick Bourne:** If Jane would allow me—

[502] **The Presiding Officer:** Order. It was merely a helpful suggestion on the part of the Minister. It was quite orderly.

[503] **Nick Bourne:** It was intended as a helpful response to a helpful suggestion. There is a number of blocks. The Bill has to go through the Commons and the Lords—there are two blocks. Then there has to be a two-thirds majority of Assembly Members in favour, counting those who are not here, those who abstain, those who have resigned or are sadly no longer with us—

[504] **The Presiding Officer:** And the Presiding Officer.

[505] **Nick Bourne:** And the Presiding Officer.

[506] **The Presiding Officer:** Not to be counted among the dead, I presume. [*Laughter.*]

[507] **Nick Bourne:** Far from it—very much among the quick. Even when we have got past those blocks, under clause 102(4), it has to go through both Houses of Parliament again. There is a number of hurdles. We keep coming back to the issue of building consensus. Of course, any political party proposing a referendum would want to build a consensus. That is what political parties do. They would scarcely propose a referendum and hope to lose it, so they would obviously find it to be in their best interests and the interest of Wales to seek to

build a consensus. It seems that we have far too many roadblocks, and the more I hear about it, the less convinced I become of the need for them.

[508] **Jane Hutt:** Why do you see these as blocks and hurdles?

[509] **Nick Bourne:** Because they are.

[510] **Jane Hutt:** Why do you not see them as legitimate ways to pave the way to enhancing legislation? Nick, you have got colleagues in Westminster, have you not, in both Houses of Parliament, who will have a view on this? They will be engaged and will want to know that there is a political consensus in Wales in order to deliver that next step in terms of securing primary powers. So I think that you, and, I am sure, your party in Westminster, would welcome the opportunity to see these as the stones that are paving the way for us to have those further powers that we would wish to secure. They are not blocks or hurdles, they are opportunities, in fact, to ensure that we get that political and public confidence. We have to recognise where we have come from in terms of the marginal support that we got in 1997 and the failure of 1979. We are confident, but let us look at these as paving stones not blocks or hurdles.

[511] **Nick Bourne:** I hear the Minister, and it is Rumpelstiltskin making gold from straw, trying to pretend that having to have a two-thirds majority of Assembly Members in favour is somehow paving the way to getting something through. Of course it is not; it is a hurdle. You already said—I heard you, about 10 minutes ago—that no other provision at Westminster has ever had such a requirement. Of course it is a hurdle, and I cannot see how it can be presented otherwise. I have said that you need to build a consensus; clearly you do. However, that is part of the lifeblood of politics—that is what political parties do, and they will not put forward a case that they do not think will be supported. That would be a nonsense. So, I cannot see how the Minister, in particular in relation to the two-thirds majority, can present this as some way of facilitating the holding of this referendum; it is clearly the reverse. A bit of honesty on that would not go amiss.

[512] **Michael German:** In addition to my supporting that, there is a third hurdle in this Bill that the Minister says is a way of getting democratically supported measures through our process, and that is, of course, the House of Lords. Clause 102(4) talks about a positive resolution of the House of Lords; there is no recourse from the House of Lords on an Order in Council back to the House of Commons. Can you imagine it? We have probably something like 80 per cent of the Members of the National Assembly being required to vote in favour of a referendum, if you take out the people who cannot vote, the people who are unable to be here and the abstainers; it then goes through the House of Commons, a democratically elected body—some of us do not like the system that is used, but it is a democratically elected body—then it goes to the House of Lords. The House of Lords takes the decision—I mean, you, Chair, with all due respect, referred to the quick and the dead—*[Laughter.]*

[513] Can you imagine a decision being taken by this august unelected body—the House of Lords—to turn down, and this is what the Bill says, an Order in Council that was passed by nearly 80 per cent of the Members of the National Assembly, in terms of who were present and voting, and was passed by the democratically elected House of Commons? Is that somehow building consensus? I think that that would be a resolution for absolutely the opposite. Can the Minister assure me that there is some other measure being put forward by the Westminster Government to ensure that Orders in Council, when turned down by the House of Lords, can come back to the House of Commons in some form and that we do not have to go through the whole process again of gaining the support of 80 per cent of the Members of the National Assembly and another positive resolution before they can be reintroduced? I think that it is a hurdle too far, and I would hope that Members on the

Government side would give us some view as to how we can overcome this matter.

[514] **Ann Jones:** This would be resolved by having a democratically elected second chamber.

[515] **Michael German:** I agree with that. Can I take it that that is a resolution from Ann Jones?

[516] **Jane Hutt:** I can only say that that is a synthetic expression of fury and horror from Mike German. If we get this two thirds and the House of Commons backs this as well, are you seriously telling me, Mike, that the House of Lords is not going to back this? That is absolutely synthetic.

[517] **Michael German:** It could do.

[518] **Jane Hutt:** Then I think that abolition would swiftly follow as a result of that. I suspect that we will have full support as a result of the democratic process.

[519] **The Presiding Officer:** I call on Leighton Andrews and then I can feel a vote coming on.

4.50 p.m.

[520] **Leighton Andrews:** I go back to the amendment, because I have some concerns about it that are beyond those that have been expressed. As I read this amendment, it would delete clauses 102 and 103, and even if I am generous and read it in conjunction with the amendment that Ieuan and Jocelyn wish to table to clause 64, it would, essentially, leave out the core provisions in relation to the calling of a referendum because, as far as I can see, only clauses 102 and 103 relate to Schedule 6, which deals with the whole process for calling a referendum. So, if we were to pass these amendments, or even pass the additional amendment that Ieuan and Jocelyn wish to see passed on clause 64, we would, in essence, have a situation in which, rather than having some kind of constitutional process to call referenda, we would simply be left with a process by which the Assembly would call polls, as they are called in clause 64. It seems to be defective in any case, because clause 104(1) relates to clause 102(1), which these amendments wish to delete. However, I would be quite concerned were we to pass an amendment to delete two clauses, as that would have the effect, as far as I can see, of leaving us with no rules at all for the conduct of referenda.

[521] **Ieuan Wyn Jones:** I am sure that Leighton knows the Government of Wales Act 1998 by heart and is aware that it contains a provision that allows for the holding of polls, and this just replicates that provision. Given the current provision to hold a poll, what is the difference between holding a poll on, say, the functions of Welsh Ministers in a particular way and a referendum? You would be ascertaining the views of the public in Wales in both regards. What would happen is that the Assembly—or the Welsh Ministers under section 64, as it would be if the Bill is passed—would need to set out its own rules for holding such a poll. It is pretty obvious. You will not conduct a poll unless there is a resolution to allow the Assembly or the Government to spend money on such a referendum and to determine how the question will be put and how the poll is to be conducted. It is obvious, however, that the Assembly would have to do that for any poll under a section 64 provision.

[522] **Leighton Andrews:** I think that your questions answer themselves, to be honest. It is very clear that a referendum on primary powers for the Assembly is a very different thing to asking about the exercise of functions by Ministers—it is a major constitutional

step. That takes me back to the core argument. I am unashamedly a political unionist, and I happen to be a strong devolutionist, but I believe in strong powers for the National Assembly in the context of the United Kingdom and, therefore, frankly, I have no problem at all in endorsing a proposal here that results in a process whereby a referendum is approved constitutionally by Parliament as well. I may not like the make-up of the current House of Lords, and I may favour an elected House of Lords and prefer that that were the body to have the final say on that, but I am not in a position to give you the guarantee that you seek on that point. However, that is the process that we currently have, and I very much endorse the Minister's remarks. Frankly, I cannot believe that if something has achieved the heights of being endorsed by the National Assembly and then by the House of Commons, that the House of Lords, certainly in its current format, would have the temerity to throw it out.

[523] **Michael German:** To return to the point about the convention that governs the House of Lords—which is a convention, and not a written rule, of course, as we do not have written rules in this country—with regard to manifestos, the key issue is that of whose manifesto that means. Let us assume that a party's political manifesto in Wales forms the basis on which a referendum would be pursued, the matter would go to Parliament and may well be passed there. However, under the current convention, the House of Lords, as I understand the matter, would not look back to the manifestos of the parties in Wales that had supported such a referendum; it would look to the manifestos of the Westminster parties for the previous general election. I suspect that those manifestos will not have said anything on the matter—we do not know that. It is a constitutional difficulty, however, as to whose manifesto the House of Lords would consult and whether the Lords should apply the convention to Orders in Council, which is also under a question mark, should that happen. It is a very big proposal that the Government side is trying to make us swallow in constitutional terms. I would certainly favour having an elected House of Lords, and if such a resolution were to emerge from this meeting, then I would be prepared to support it.

[524] **The Presiding Officer:** I have not selected an amendment on that, as it would be out of order. May I have an indication that you are prepared to vote on this matter?

[525] **Ieuan Wyn Jones:** Yes, let us have a vote.

*Gwelliant 66: O blaid 3, Ymatal 2, Yn erbyn 5.
Amendment 66: For 3, Abstain 2, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Melding, David
Bourne, Nick

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[526] **Nick Bourne:** I propose amendment 11.

In clause 103(1)(a), delete ‘moved by the First Minister or a Welsh Minister appointed under section 48’, and delete clause 103(1)(b).

[527] This is in relation to clause 103, ‘Proposal for referendum by Assembly’, which, we have established, has to be passed on a vote of two thirds of Assembly Members. This amendment seeks to say that the resolution to implement that two-thirds vote does not have to be put forward by the First Minister or a Welsh Minister, which, to us, seems to be unnecessarily restrictive. You already have the two-thirds cushion, as it were; this is just an additional restriction to require the resolution to be moved by the First Minister or a Welsh Minister. It is most likely that it would be moved by the First Minister or a Welsh Minister but it seems unnecessary to put that provision in. It could be moved by somebody else, who, clearly would have to be an Assembly Member, but that does not have to be a Minister in our opinion unless you are just seeking to throw in an additional restriction. So, we propose to remove that and simply say ‘a resolution’.

[528] **Jane Hutt:** I oppose that. This goes back to a point that you made earlier, Nick, as did Ieuan—I am not sure where you would stand on this—namely that you recognise that it would be Welsh Ministers, the Government, who are likely to move forward in terms of getting to this point. As you said, it may have come in on a manifesto commitment to move towards holding a referendum, so it would have to be Welsh Ministers, the Welsh Assembly Government, who would make those moves in order to deliver on that and certainly to deliver what we have just discussed, which is the support of Parliament and securing the two-thirds majority, if it is the majority Government and it is the Welsh Assembly Government.

[529] **David Melding:** I think that our objection is that, currently worded, this amounts to a pocket veto. You could imagine circumstances in which the Government was rather timid on this issue but which, if flushed out, would then back the call for a referendum but, of course, until a motion is laid, that would not be possible and, therefore, by changing this so that, in effect, any Assembly Member could move a resolution, it is still then for the Assembly to say ‘yea’ or ‘nay’. That is more appropriate. At the moment, we would just be waiting until the First Minister is minded to move a resolution. That is a pocket veto because he can just do nothing.

[530] **Jane Hutt:** Does that not also go back to the fact that we need to be at a point where the First Minister, a Welsh Minister, or the Welsh Assembly Government, feels that it is appropriate and that we will be able to move this forward for a realistic proposition whereby we will secure the two-thirds majority in order to secure the backing of the Secretary of State and Parliament and win a referendum? It would be dangerous if it were left up to the Assembly, or minority or opposition parties, to decide that it was time to hold a referendum. We had a useful discussion last week about Orders in Council and at which point moving to Part 4 would be triggered. It would be when there was a view that we were failing to get the Orders in Council to deliver because Secretaries of State in Westminster were being negative about the approach in Orders in Council. There has to be some confidence behind the Government in Wales and the First Minister’s opportunities to take this forward. You would not have that if this was removed and if making such a resolution was left in the hands of the Assembly.

[531] **Nick Bourne:** It seems to me to be just an added restriction. Jane’s response was a little convoluted. Initially, I thought that she had perhaps not realised what we were seeking to do. The two-thirds majority is still there; what we are taking out is that the resolution must be put forward by the First Minister or a Welsh Minister, as has been indicated. It is extremely timid to suggest that that has to be the case. If you have this two-thirds cushion, which you have argued for—and I think that it is more of a cushion

than you need—you have already built your consensus, so why, in addition, do you need to have the resolution moved by a Minister? Granted, it would generally be the case, but you are making it obligatory, and you have not said anything that indicates that it has to be done in that way.

5.00 p.m.

[532] **Jane Hutt:** Perhaps I could simply say that it is political reality.

[533] **Nick Bourne:** If it is political reality, then it does not need to be in there.

[534] **Ieuan Wyn Jones:** I find the Minister's response surprising, because, if you go to the earlier provision in clause 102, you do not need the First Minister or a Minister to put a resolution to the Assembly relating to whether the two thirds should be triggered. According to sub-clauses (4) and (5), the resolution must be approved by the Assembly, but it does not say that the First Minister or a Welsh Minister needs to put that to the Assembly; the Assembly may resolve. You are saying that once the Assembly has resolved, it then needs a Minister. I find that a rather strange argument, because, on the one hand, you are allowing the Assembly to resolve, and, on the other hand, you want a Minister to recommend an Order in Council. Why the contradiction?

[535] **Jane Hutt:** Perhaps I could ask Hugh to advise.

[536] **Mr Rawlings:** The difference between clauses 102 and 103 is that clause 103 lays down a specific requirement on the Secretary of State if this is a resolution that has been moved by the First Minister. The obligation placed on the Secretary of State is to give reasons, in the event that the Secretary of State declines to put the Order in Council before Parliament.

[537] **Ieuan Wyn Jones:** Why is it not stated that the Government has to propose the motion in sub-clauses (4) and (5) of clause 102?

[538] **Mr Rawlings:** Why is it not?

[539] **Ieuan Wyn Jones:** In other words, why is it obligatory for the First Minister to only become involved once there is a resolution? Although this is unlikely, you may not get the Assembly vote under clause 102, unless this is moved by the First Minister on behalf of the Government, but there is no legal requirement on him to do that.

[540] **Mr Rawlings:** To be moved by the First Minister?

[541] **Ieuan Wyn Jones:** Yes, by the First Minister.

[542] **Mr Rawlings:** No. One could have packed clauses 102 and 103 together; that is just not the way that the Parliamentary Counsel has chosen to draft it.

[543] **Leighton Andrews:** It is the effect of the amendment that is important. I think that the effect of the amendment is to seek to create a situation where a motion for referendum is moved without the support of the Welsh Assembly Government. That is probably unwise. That might indeed trigger a situation where a Secretary of State might have questions regarding whether the motion was one that that Secretary of State would want to pursue. I would hope that we would not be in that situation. If we were in a situation where a motion is tabled by a representative of the Welsh Assembly Government—of whatever party; I am not making a party point—then that would be one that would be likely to command the support of the Assembly and would be likely to

command full support subsequently and, indeed, outside.

[544] **Christine Gwyther:** The drafting might not be as simple as it could have been, but I think that the intention is quite clear, which is that any resolution has to be moved by the First Minister or a Welsh Minister. We should, maybe, have conflated 102 and 103, but I am quite happy to vote for them as they are if we are not going to do a complete redrafting job.

[545] **The Presiding Officer:** Nick, do you wish to press this amendment to a vote?

[546] **Nick Bourne:** I do not, though I have not been convinced.

[547] **The Presiding Officer:** Amendment 11 is therefore withdrawn.

[548] **David Melding:** There are two parts to amendment 11.

[549] **The Presiding Officer:** I am assuming that both have been withdrawn.

[550] **David Melding:** The second part aimed to establish the need for a majority vote rather than a two-thirds majority vote.

[551] **Y Llywydd:** Symudwn at welliant 70. **The Presiding Officer:** We will move to amendment 70.

[552] **Ieuan Wyn Jones:** Tynnaf welliant 70 yn ôl. **Ieuan Wyn Jones:** I withdraw amendment 70.

[553] **Y Llywydd:** Symudwn at welliant 71. **The Presiding Officer:** We will move to amendment 71.

[554] **Ieuan Wyn Jones:** Tynnaf welliant 71 yn ôl. **Ieuan Wyn Jones:** I withdraw amendment 71.

[555] **Y Llywydd:** Symudwn at welliant 12 i gymal 107, Atodlen 7. **The Presiding Officer:** We will move to amendment 12 to clause 107, Schedule 7.

[556] **David Melding:** I propose amendment 12.

Part 1(15)—remove: ‘The Children’s Commissioner (established under the Children Act 2004 (c.31))’ from the list of exemptions.

[557] We are a bit surprised that, should the Assembly have powers to pass Acts, it would not have this power over the children’s commissioner. We think that it is inappropriate to exempt the children’s commissioner from Acts of the Assembly.

[558] **Ann Jones:** My understanding in terms of the Children’s Commissioner for Wales is that the post was not established under the Children Act 2004; it was the post of the English children’s commissioner that was created under that Act. Therefore, the post of Children’s Commissioner for Wales can fall under other legislation. I think that you have confused your commissioners.

[559] **David Melding:** If that is the legal advice and the Government is happy to clarify that the Children’s Commissioner for Wales would fall within Assembly Acts, I will withdraw the amendment.

[560] **Jane Hutt:** We can clarify that.

[561] **The Presiding Officer:** Amendment 12 is therefore withdrawn.

[562] Symudwn at welliant 72 i Atodlen 7. We will move to amendment 72 to Schedule 7.

[563] **Jocelyn Davies:** Could we look at amendments 72, 73, 74, 75, 76, 77, 78, 79 and 80 together, because it is the same argument for each but with different subjects?

[564] **The Presiding Officer:** Yes.

[565] **Jocelyn Davies:** I propose amendment 72.

Schedule 7, page 115. Leave out line 17.

[566] I propose amendment 73.

Schedule 7, page 116, line 19. Leave out from 'Regulation of' to 'dominant position and'.

[567] I propose amendment 74.

Schedule 7, page 116. Leave out lines 44 to 47.

[568] I propose amendment 75.

Schedule 7, page 117. Leave out lines 1 to 7.

[569] I propose amendment 76.

Schedule 7, page 119. Leave out line 2.

[570] I propose amendment 77.

Schedule 7, page 119: Leave out lines 38 and 39.

[571] I propose amendment 78.

Schedule 7, page 119. Leave out line 42.

[572] I propose amendment 79.

Schedule 7, page 121, line 41. At end, insert:

'Field 21: police, probation and prison service.'

[573] I propose amendment 80.

Schedule 7, page 121, line 41. At end, insert:

'Field 22: energy.'

[574] This is about the appropriate test of whether the Assembly should hold these particular powers. It does not matter on which side of any one of the arguments in terms

of policy you would come down on; it just depends on whether you think it appropriate for the Assembly to hold these powers. So, amendment 72 is on hunting with dogs, amendment 73 is on unfair competition policy, amendment 74 is on post offices, amendment 75 is on energy, amendment 76 is on railway heritage, amendment 77 is on licensing, and amendment 78 is on Sunday trading. We took a good bit of evidence on this in the Committee on the Better Governance for Wales White Paper, and I think that it was the view, even of the First Minister, that the No. 1 question is whether it is appropriate for the Assembly to hold these powers, and not what the outcome of policies that might happen here would be, if that were the case.

[575] **Val Lloyd:** I am not going to speak to the specifics of the issues set out, Jocelyn, because I might very well have a different view on many of these points. However, I think that I made the point in our first meeting that, ignoring the merits of the case, I see this as a widening issue, when we should be looking at deepening the whole settlement and at the way in which we are moving. Perhaps, personally, I would speak differently about many of those issues, but I do not think that we should be looking at this stage for any further areas over which the Assembly could get responsibility because, in the future, it could be changed. I would like to let things deepen before we widen them.

[576] **Jocelyn Davies:** Val has mentioned this argument before. I just see that the opportunity that this Bill presents will be missed if we do not allow ourselves to widen our horizons a little. The things that I have mentioned here would not widen the Assembly's position hugely. In terms of something such as unfair competition policy, you can consider the issue relating to the Trinity Mirror Group, which is not a huge issue UK wide, but is very significant in Wales. I think that we should look on the passing of this Bill as an opportunity to tinker around the edges a bit, Val.

5.10 p.m.

[577] **Val Lloyd:** I am just going to repeat what I said before. I am sure that, in terms of many of the issues that you raised there, we would share the basic premise. I am sure that you would accept that it is not impossible that Schedules 5 and 7 might be changed under a transfer of functions Order, as currently happens. I reiterate that I think that this is a time for retrenchment, to get this Bill to a satisfactory position, and for us to look at the wider issues then.

[578] **Leighton Andrews:** Jocelyn specifically referred to the issues of regulation or anti-competitive practice and agreements, and amendment 73 covers a huge area of UK Government policy, a lot of it deriving from EU policy, which means that a whole series of different competition and regulatory bodies are involved. It is quite wrong to say that the Trinity Mirror Group is a big Welsh issue that does not affect elsewhere in the UK. When the Trinity Mirror Group went into Northern Ireland, for example, it was forced to sell a publication, as I recall, and there is a big debate going on currently at the Scottish Parliament regarding its concerns about Trinity Mirror. Once you start to unpick competition regulatory policy, you move through a series of different policy areas. You would be massively expanding the remit of the National Assembly in areas that are, frankly, cross-border issues, and which were always treated as such in the original devolution settlement. To try to unpick them on the back of an amendment to a Schedule seems to me to be foolish.

[579] **Michael German:** That points out some of the difficulties in having a Schedule that says what you can do rather than what you cannot do, and the Scottish settlement, of course, says what you cannot do. This method of saying what you can do will continually produce boundary disputes between Westminster and us from here on in. In that way, we will support some of the amendments, and we will not support others, because we

believe, for reasons about the global market and where the UK's macro-economics stand, that some things are better handled at the UK level and others are better handled in Wales. We are going to be in the position of having this sort of boundary dispute throughout.

[580] At the last meeting, the Minister agreed to take back Schedule 5 to look at it to see whether such an approach might be a possibility. We will come back to that matter, but I reiterate the point about Schedule 7 in the same light. Perhaps the Minister could tell me, when she comes back with comments on Schedule 5, why the Scotland Act 1998 has not been followed in Schedule 7. In that light, for the reasons that I have outlined, there are some things that are obviously UK matters that I cannot vote for, but there are plenty of things that I can. Energy was one of the fields where we were seeking some powers for the Assembly.

[581] **Nick Bourne:** It is entirely appropriate that these are brought forward and I do not go along with Val's suggestion that we should not consider them. I happen to agree with Leighton on the competition angle; I think that this is largely European driven, under articles 85 and 86 of the Treaty of Rome, and so the suggestion that we have another monopolies commission is almost certainly not wise. Why do we have only one monopolies commission? [*Laughter.*] I think that there are good reasons for that.

[582] On other matters, for example hunting with dogs, we have had the arguments, and the parties know their positions, so it does not seem to me to be unfair to put some of them forwards. Some we would support; some we would not. However, I do not follow the argument that we can only deepen, and cannot broaden at the same time. It is in the Bill that we could, but there are arguments for and against, as Mike has said. We all know our positions on those matters.

[583] **Jane Hutt:** Perhaps I could deal with both of those issues, including the point that Mike made that relates to the Scotland Act 1998. We will obviously discuss this again, and I agreed to take back Schedule 5. However, I would like to clarify the point in relation to the Schedules. To start on the use of Schedule 7, as Val has said, this is about deepening not widening. Schedule 7 is also there to reflect the pattern of our executive powers as they stand now. We have other provisions in the Bill, under clause 58, which would allow us to add executive powers, and we could do that by making Orders in Council under clause 108 and Acts of Parliament. Therefore, we have that process laid out under clause 58.

[584] The point that Mike raised takes us back to defining the scope of the Assembly's primary legislative powers after a referendum. Unlike the Scotland Act 1998, our Bill does define the scope by listing the subjects in relation to which the Assembly would be able to make law, rather than listing those areas outside its legislative competence. I do not want to say any more, except that this is referred to in the guide to the Government of Wales Bill, because the Secretary of State for Wales and the First Minister laid this out in a joint memorandum to the Select Committee on Welsh Affairs. That memorandum is laid out, and relates to the fact that Scotland is different; it has its own distinct legal jurisdiction and its own system of courts and judges, and its own legal professions. Wales is different. We have a single unified England-and-Wales jurisdiction, and the situation is such that we could not disentangle ourselves from that. In terms of the practical consequences, we would have to have different systems of legal educations, different sets of judges and lawyers and different courts, and we would have to become a separate legal jurisdiction. That is laid out in the joint memorandum by the Secretary of State and the First Minister to the Select Committee on Welsh Affairs, and I presume that you have seen that, Mike.

[585] **Michael German:** Indeed I have, and I have also taken advice from prominent legal advisers to Her Majesty's Government on this matter. I am told that it does not mean the division in the way in which you describe. Perhaps when we come back to look at Schedule 5, I could produce some notes on the matter to help it.

[586] **The Presiding Officer:** Indeed, that would be very much in order, and for our assistance.

[587] **Michael German:** It is very expensive advice. [*Laughter.*]

[588] **The Presiding Officer:** Any free advice to this committee is very gratefully received.

[589] **Jane Hutt:** Maybe I could ask Hugh Rawlings to come in at this point to help us, rather than put Mike to a lot of work, which could be stopped at this point by what Hugh Rawlings has to say.

[590] **The Presiding Officer:** I would have thought that the more lawyers, the better on this one.

[591] **Michael German:** If the Minister wants to talk about this matter, I would be happy to come to a discussion on it, because it is very important. The only argument that I heard from the Minister for not moving down the route of the exclude and include versions of Schedule 7 was that it would mean dealing with the High Court of Justice. That is the argument that we need to have in relation to that particular item. I am happy to have that debate, but it may well be better kept for another time. Perhaps the Minister wants to have it now.

[592] **The Presiding Officer:** The Minister has indicated that she would like to call in the cavalry, if I may put it that way. I withdraw that—it is not fair. [*Laughter.*] By the conventions that we have established in this committee, I now call Hugh Rawlings.

[593] **Mr Rawlings:** The decision to draft the Bill in this way—in the defined-functions model of Schedule 7, rather than the excluded-areas model—was not taken lightly, and was taken after considerable thought. It was the proposed way forward that was very strongly urged—indeed, he could not, he said, have done it in any other way—by Parliamentary Counsel, who, as the committee will understand, is a very considerable expert in this matter. The problem really is that—

[594] **Michael German:** Are Parliamentary Counsel employed by Parliament or by Government?

5.20 p.m.

[595] **Mr Rawlings:** They are employed by Government. They provide professional expertise to deliver Government policy in legal form. What that means in practice is that Government does not say, in this case, 'We want to adopt the specified-subject-matter model'; it is for Parliamentary Counsel to deliver the Government's policy in the form that best meets legal requirements. Parliamentary Counsel's very strong advice was that he could not do it any other way. One of the reasons for that was because, unlike the Scots, we do not have underpinning independent authority for the general principles of English law in relation to Wales, by which I mean that, if you were in the Scottish position, the Scottish Parliament has control of the general principles of Scottish law and there is a separate legal jurisdiction. We would have had to rule out reams of stuff. You tabled an amendment at the last meeting, which ran to around 15 pages, which is what the

Scots would rule out. However, we would not have been stopping there. For example, had we adopted your approach to the exclusion of matters, we would suddenly have acquired responsibility for criminal law, tort, contract, company law, family law and so on, all of which are within the remit of the Scottish Parliament at the moment.

[596] Basically, the conclusion that we came to, or that Parliamentary Counsel, more accurately, came to, was that it could not be done by way of the exclusory approach. So, what we have, therefore, is the specified-functions model. That enables us to identify what the subject matter of primary powers would be if we were to have a referendum and it were to be adopted. However, the approach that we have taken in clause 108 enables us to adjust the list of specified functions to take account of changes in the devolution settlement. So, this is, as it were, not a policy decision of Government; it is a technical, professional assessment by Parliamentary Counsel with whom we are not qualified to disagree.

[597] **Michael German:** For the same reasons, Chair, I would say that I am not qualified to argue with those interpretations, so I will seek to replay the words that I have just heard. I would value an opportunity at some stage, later in this discussion, to come back to this matter.

[598] **Jane Hutt:** That has been very valuable and I hope that it has been valuable to all members of this committee in terms of assisting us in answering those points that Mike has raised today and in relation to Schedule 5. Perhaps I could suggest that we move on.

[599] **The Presiding Officer:** We have, for convenience, debated all the amendments to Schedule 7 together—72 through to 80—so I would like some indication of whether you intend to go to a vote on any or all of these.

[600] **Ieuan Wyn Jones:** Although there are disagreements about individual items that are included here that aim to, in Val's words, widen the scope of the Assembly's functions, there is an issue of principle here that the Government does not see the Bill as the way to include these items as a matter of principle. We could argue about whether those items should be hunting, competition, post office or energy—we could probably argue until the cows came home—but the Government's principal objection is to anything being included which is not currently within the competence of the Assembly. So, on that basis, the only thing left to us is to ask the committee to vote on those areas where we think that there is at least an opportunity for us to put on record the fact that, as a matter of principle, we think that the Bill should include extra items.

[601] **Jocelyn Davies:** I think that we could withdraw amendments 73 and 74, having listened to the debate, but I think that we could vote individually on the others.

*Gwelliant 72: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 72: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.

As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[602] **Y Llywydd:** Tynnwyd gwelliannau 73 a 74 yn ôl. **The Presiding Officer:** Amendments 73 and 74 have been withdrawn.

*Gwelliant 75: O blaid 3, Ymatal 2, Yn erbyn 5.
Amendment 75: For 3, Abstain 2, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Bourne, Nick
Melding, David

*Gwrthodwyd y gwelliant.
Amendment defeated.*

*Gwelliant 76: O blaid 3, Ymatal 2, Yn erbyn 5.
Amendment 76: For 3, Abstain 2, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Bourne, Nick
Melding, David

*Gwrthodwyd y gwelliant.
Amendment defeated.*

*Gwelliant 77: O blaid 3, Ymatal 2, Yn erbyn 5.
Amendment 77: For 3, Abstain 2, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann

Lloyd, Val

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Bourne, Nick
Melding, David

*Gwrthodwyd y gwelliant.
Amendment defeated.*

*Gwelliant 78: O blaid 3, Ymatal 2, Yn erbyn 5.
Amendment 78: For 3, Abstain 2, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Bourne, Nick
Melding, David

*Gwrthodwyd y gwelliant.
Amendment defeated.*

*Gwelliant 79: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 79: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.
As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.*

*Gwrthodwyd y gwelliant.
Amendment defeated.*

*Gwelliant 80: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 80: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane

Jones, Ieuan Wyn
Melding, David

Jones, Ann
Lloyd, Val

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.

As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[603] **Y Llywydd:** Yr ydym wedi cwblhau Rhan 4. Gan ein bod yn gwneud amser eithaf da, symudwn ymlaen at Ran 1. Os byddwn yn dal i wneud cystal o ran amser, bwriadaf ofyn a hoffech ohirio ymhen awr. Mater i chi fydd hynny; cawn weld sut mae pethau o ran amser erbyn hynny.

The Presiding Officer: We have completed Part 4. As we are making quite good time, we will move on to Part 1. If we are still making good progress, I will ask you whether you would wish to adjourn in an hour's time. It will be up to you; we will see where we are at that point.

[604] Awn ymlaen felly at Ran 1 y Mesur, cymal 1, a gwelliant 19 a gynigiwyd gan y Democratiaid Rhyddfrydol.

We will, therefore, move to Part 1 of the Bill, clause 1, and amendment 19 proposed by the Liberal Democrats.

[605] **Michael German:** I propose amendment 19.

Clause 1(1), page 1, line 5. Leave out from 'an' and insert:

'there is to be a Parliament for Wales to be known as the 'Senedd'.

[606] This is an amendment which clearly changes the name from 'National Assembly for Wales' to 'Senedd'. It has two functions, the first of which is to recognise that this Bill moves the Assembly to a different plane, one where we move from being an assembly to being a parliament, and the second is that that parliament shall be known as the Senedd. In terms of using Welsh terminology, I do not believe that there is anything inaccurate, mischievous or unpleasant about using a single word, drawn from the Welsh language in monoculture within Wales. If that were the case, we would not have the word for a single-storey house, which begins with a 'b' and ends with a 'w', in the English language, and we would not have the term for a small road which has no exit but goes round in a circle, which is three French words together. It is not sensible, therefore, to think that we cannot use a single Welsh word for the parliament that we have in Wales. After all, in the Irish Republic, which has a huge predominance of the English language being spoken, the words 'Dáil' and 'Taoiseach' are the only words used for their national institution. On that ground, I believe that it is perfectly reasonable to use the Welsh word 'Senedd'. Also, we have a building next door which is called the Senedd, so it brings the two together.

[607] The other part of the amendment recognises that we move from being an assembly to a parliament on the grounds that this Bill, in whatever way it eventually concludes, but certainly in its purpose, would provide primary legislative powers to this current National Assembly. The notes to the Bill make it perfectly clear that a measure of the National Assembly would have the equivalence of an Act of Parliament. Therefore, it is, in all but name, a parliament. The amendment is clear in that it actually recognises that change, which is inevitable over time as we move from an assembly to a parliament. In order to avoid that contradiction as to what you might call a parliament and what it might be, I believe that 'Senedd' is an important word to use, and there is nothing wrong with

using something that is derived from the Welsh language and culture in a mono manner in the future life of Wales.

5.30 p.m.

[608] **The Presiding Officer:** It would be orderly to refer to any amendment that refers to ‘Senedd’ in this general debate using, as I said earlier, a liberal interpretation—and I stress that that is ‘liberal’ with a small ‘l’, in case of any confusion.

[609] **Val Lloyd:** In parts of Wales, we would all agree that it has been somewhat difficult, across the piece, to persuade members of the general public of the value of the Assembly. Certainly, we are now much further along that road, in 2006, than we were in 1999. Acceptance, and more than acceptance, is growing. I have seen a vast change in my constituency, which is the only area that I can really talk about. I have seen attitudes change there from hostility, in some cases, to more than acceptance now. By changing the name, we might set that back a bit. I know you say, ‘Well, what is in a name?’, but there is a lot in a name. My view—which is why I feel strongly enough to speak about it—is that we should keep the name ‘Assembly’ as it is now meaningful to people, as I have found from my discussions with them. We might be in danger of causing confusion and of moving that general acceptance into something less favourable.

[610] **David Melding:** I do not think that we have any great problems with the monolingual nature of the amendment, but I can say to ‘senator’ German that the National Assembly is now used by practice and custom. I am rather pleased that I am a member of an assembly. Many parliaments across the world are called assemblies, and there is no sense of a lack of dignity in having an assembly rather than a parliament or ‘Senedd’. We would stick with what we have. For whatever reason, that is what we were initially called, and the public accept that and have identified with it.

[611] **Michael German:** If there are only those objections—

[612] **Ann Jones:** Will you give way?

[613] **Michael German:** I will give way to you, Ann.

[614] **Ann Jones:** I do have a problem with this moving over from the Welsh language and making it Wenglish, and certainly, some of my constituents do, too. As Val said quite clearly, we have had a tough time, especially up in north-east Wales, in persuading people that the National Assembly for Wales is for them.

[615] **Ieuan Wyn Jones:** Can I intervene?

[616] **Ann Jones:** Yes, go on then.

[617] **Ieuan Wyn Jones:** There were very interesting views from the people of Prestatyn.

[618] **Ann Jones:** No, not Prestatyn.

[619] **The Presiding Officer:** It was west Rhyl, was it not?

[620] **Ieuan Wyn Jones:** Was it?

[621] **Ann Jones:** Come on.

[622] **Ieuan Wyn Jones:** Where did *The Politics Show* come from on Sunday?

[623] **Ann Jones:** Rhyl.

[624] **Ieuan Wyn Jones:** Yes, and was there not a poll of people in north-east—

[625] **Ann Jones:** No, there was a poll of some 200 shoppers who happened to be in the White Rose shopping centre at the time. It is not scientific. Smile all you like, Ieuan.

[626] **Ieuan Wyn Jones:** And what did they say?

[627] **Ann Jones:** Smile all you like, Ieuan, but if you heard the last two or three comments from those people, you would know that many people did not even know what the National Assembly was, let alone if you had said to them, ‘What is a Senedd?’. Let us just stick to what we have got. Mike is just trying this one, and it was soundly defeated by 200-odd votes to—was it five?—on the floor of the Commons. I do not think that it has any legs, and I do not particularly want to start having this Wenglish. I have been at the wrong end with the Presiding Officer for challenging whether we should actually be translating properly these Wenglish words that have been appearing.

[628] **Jocelyn Davies:** I do not see any Wenglish there, actually, but I can understand some of the points that Ann is making. I am quite happy for this to be ‘the Assembly’. That is its proper name, and I agree with David that there are assemblies all over the world that are of a parliamentary nature. I do not see why we should haggle for the word ‘parliament’, just because that is used in Westminster. We do not need to ape that. I am quite comfortable with it being called the ‘Assembly’. I was very disappointed with the decision to call the Government the Welsh Assembly Government, when it is our National Assembly. We should just call it the Assembly Government. We have a hang-up with names. I am comfortable with the word ‘assembly’ and am not at all interested in using the word ‘parliament’. Should the Bill be passed and these things come to pass, I do not think that we could call what it creates a parliament anyway.

[629] **Christine Gwyther:** Use and practice is a very potent thing. In years down the line, we might be calling this a parliament; we might even be calling it a Senedd. I do not actually think of that building as the Senedd—I know that we disagree on that—I think of it as the Assembly. My constituents, who are looking forward to coming to see it, think of it as the Assembly. I am very proud to call myself an Assembly Member, and long may it continue. We just need to stick with custom and practice and what people are comfortable with.

[630] **Michael German:** I think that the arguments that I made at the beginning are ones of substance, which people can choose, as they have done around this table, to disagree with. First, on the issue of the single-language culture, which is about using a Welsh word as common parlance in all languages used within Wales, we already do that with the English language. I already hear that done in the Welsh language as well. I do not believe that there is anything wrong with establishing a national institution for Wales with a Welsh name that represents the country of Wales. It is the name on the front of our new building, and the name will be seen and used by people. So, I do not find that argument very convincing.

[631] I understand what people mean about custom and practice and assemblies and parliaments and so forth, but I believe that, if this Bill is as those who are supporting it on the Government’s side make it out to be, it will give us primary legislative powers and measures equivalent to Acts of Parliament and will move us up a step in terms of our abilities. Therefore, the change of name is seen to represent that move forward at the same

time. So, in that respect, I am quite happy to be the only Member voting for this amendment, if necessary. Therefore, I wish to move it to a vote.

[632] **Y Llywydd:** Os bydd gwelliant 19 yn syrthio, byddai'n hwylus, o fy safbwynt i, i'r un peth ddigwydd i welliannau 22, 23 a 24. Hefyd, os yw'r pwyllgor yn cytuno, os yw'r gair 'Senedd' yn ymddangos mewn gwelliannau eraill, megis gwelliant 25, byddai'n hwylus iddynt hwy syrthio hefyd. Diolch.

The Presiding Officer: If amendment 19 falls, it would be convenient, from my point of view, for the same thing to happen to amendments 22, 23 and 24. Also, if the committee is in agreement, if the word 'Senedd' is used in other amendments, for example amendment 25, it would be convenient for those to fall as well. Thank you.

[633] Galwaf bleidlais ar welliant 19.

I call for a vote on amendment 19.

*Gwelliant 19: O blaid 1, Ymatal 2, Yn erbyn 7.
Amendment 19: For 1, Abstain 2, Against 7.*

Pleidleisiodd yr Aelod canlynol o blaid:
The following Member voted for:

German, Michael

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Bourne, Nick
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val
Melding, David

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Davies, Jocelyn
Jones, Ieuan Wyn

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[634] **Y Llywydd:** Felly, gwrthodwyd gwelliant 19, ac mae gwelliannau 22, 23, 24 a 25 yn methu. Symudwn i welliant 20.

The Presiding Officer: Therefore, amendment 19 has been defeated, and amendments 22, 23, 24 and 25 fall. We will move to amendment 20.

[635] **Michael German:** I propose amendment 20:

Clause 1, page , line 7. Leave out subsection (2).

5.40 p.m.

[636] This amendment seeks to address the voting system for the National Assembly for Wales in the same way as the Richard commission addressed it, by amending the clause to introduce single transferable votes for all elections. I recognise, as I think do the bulk of the arguments that I have heard being made against the current system, that there are two distinct methods of election to the National Assembly—you do not have to look far to find our debates on this matter—that have caused us great difficulties as we try to reconcile the additional Member voting system. The only system that the Richard commission came to agree on universally, without exception, after examining this matter in some depth, was the single transferable vote. We should remember that the only member of the Richard

commission who said that he was not prepared, for any reason, to support the report at that time, gave a reason other than the voting system for his refusal.

[637] The principle is that, first, the single transferable vote is proportional and therefore it results in an electoral system that provides for the people of Wales a representation according to how they vote and, secondly, it retains, although on larger constituency boundaries than we have at present, the constituency link, which has been important to many people. It also provides the voter with a chance that you do not get with the current list system to choose between candidates of the same and other parties; the power is in the hand of the voter, not those of political parties. The system provides an alternative to our present system. This is a matter of principle because it would provide for a proportional election to the National Assembly, for people to have the power to choose between candidates and for that constituency link to be retained. We think that it is far preferable to the system that is provided in this Bill, which is the current system and one that the Richard commission addressed in its report.

[638] **Y Llywydd:** Byddai'n hwylus i ni **The Presiding Officer:** It would be gymryd gwelliant 81 yn awr, ynghyd â'r convenient for us to take amendment 81 gwelliannau perthnasol eraill. now, along with the other relevant amendments.

[639] **Ieuan Wyn Jones:** I propose amendment 81.

In clause 1, page 1, leave out lines 8 and 9.

[640] I propose amendment 82.

In clause 1, page 1, line 17—at end, insert:

'(3A) The system of election shall be a single transferable vote system under which—

a vote is capable of being given so as to indicate the voter's order of preference for the candidates, and

a vote is capable of being transferred to the next choice—

(i) when the vote is not required to give a prior choice the necessary quota of votes, or

(ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.'

[641] I propose amendment 84.

In clause 2, page 2, line 7, leave out 'four' and insert 'twelve'.

[642] I propose amendment 88.

Leave out clause 6.

[643] I propose amendment 90.

Leave out clause 8.

[644] I propose amendment 91.

Leave out clause 9.

[645] This is an important debate for us because it goes to the heart of the way in which we elect Members and relates to whether a system can be made more proportional as a matter of principle and whether you think that an STV system would be more proportional and therefore fairer—we happen to think that it is. However, I think that it would also be extremely helpful to the Government because Government Members are much exercised by the differences between constituency and regional Members and they get very excited when these issues are raised in the Assembly. If there is a way in which you could retain the principle of proportional representation and make clear that there are no differences between Assembly Members, that would mean an end to the arguments that we have here, which are nothing more than a distraction.

[646] It appeared to me that the debate that we had on the Government of Wales Bill in the Assembly was hijacked by disagreements over the value of regional Members as compared with constituency Members, the work that they do, how many offices they have, where they have the offices and whether they are trying to take over the responsibilities of constituency Members, or describe themselves as such. I find that a lot of this Bill is about perpetuating that argument. If you look at the number of clauses in this Bill that will affect the relationship between the two types of Assembly Members, it is becoming a debate that may exercise the minds of Labour Members but, frankly, the debate passes most members of the public in Wales by. I would have thought that, on the grounds of principle, you should take the opportunity to see whether the current system delivers as proportional a system as possible. It is impossible to get a truly 100 per cent proportional system, but at least this goes substantially towards that. It would completely remove from the debate this argument about the value of regional Members compared with Assembly Members. I would be very interested to hear the defence that the Government makes of what it regards as a rather discredited system.

[647] **Christine Gwyther:** I can make a defence of one aspect of the current provision, in that the list system allows for parties to operate positive action. Plaid Cymru does it in relation to female candidates and Labour did it in the last election in relation to black and ethnic minority candidates. If we were looking for another system, I would need to be reassured that that same possibility for positive action would be built into it. I do not see how you could do that in a straightforward single transferable vote system.

[648] **Nick Bourne:** I am slightly provoked now to say something. [*Laughter.*]

[649] **The Presiding Officer:** You do not have to.

[650] **Nick Bourne:** I know, but I feel that I should. I disagree with the STV system, but one thing that we did not have in the first Assembly was these endless debates about whether regional Members or constituency Members were doing a good job. I asked myself what particular feature of the first Assembly led to that not occurring, and it could just be that a fairly prominent Member of the Labour Party was elected as a regional Member and, subsequently, an effective person took over from that Member and she became an effective regional Member.

[651] So, I am not sure that I share the pessimism that Ieuan Wyn Jones put forward, because, if this were to be defeated, I think that there will probably be quite a lot of Labour regional Members again in future. It is a bit of a distraction in this Bill; there are important issues that need to be addressed about the way forward, and I would be very surprised if there are people queuing around the block in surgeries complaining about their regional Members or constituency Members. They come about issues such as housing, agriculture, health and education, and other than in Caerphilly—Jeff assures me that there are people

queuing around the block complaining about these issues, all 27 of them—I fail to see why we are spending all this energy on something that is peripheral to the very important issue about the powers and the way forward on this. I disagree with the STV system, but I disagree intensely with what I regard as a very partisan and spiteful measure to try to divide what have largely been two effective Assemblies. Therefore, I very much regret that.

[652] **David Melding:** I concur completely with my colleague and leader, which is a pleasant position in which to be. As this Bill gets debated by this committee, it is important that those Members from the governing party and the Minister put on record whether they still have full confidence in the additional Member system. Abolishing dual candidacy somewhat diminishes that system, and people have a right to know whether you are still committed to this as a means of ensuring a level of proportionality in the Assembly. I think that that is one of the major reasons why this has been such a successful institution. It was a huge constitutional innovation, and it was very important that all parties and all parts of the nation could sign up to it, and that you did not exclude one party with approximately a fifth of the vote from effective representation. This was a very far-sighted policy on Ron Davies's part in my view. I would like to hear from the Minister that she accepts the principle of proportionality and that she believes in the additional Member system, although she does seek to modify it—I will not embarrass her on that precise point. When we see her colleagues from the Labour Party parliamentary group in Westminster moving amendments to abolish any system of proportionality and to return to a simple first-past-the-post system, it brings into play whether what we are seeing in this Bill is somehow a proxy or preparation to move to a system where the Assembly is elected just by the first-past-the-post method. It is important that people know how this Assembly is likely to be elected in the future.

5.50 p.m.

[653] **Jane Hutt:** Thank you, David. I think that this has been a measured discussion, and I do not think that scrutiny of the Bill should be hijacked, as I think Nick said, by this issue. The point is that it was a Labour Government that introduced the proportionality that enabled the political representation of Wales that we have here. It was the White Paper, which we debated and was taken through to enhance our powers, and which endorsed, as I do, the additional member system and that proportionality. That is what you wanted to hear from me, David. The single transferable vote loses the constituency link, and we continue to use the current additional member system arrangements. We should now move to a vote because we have clarified the points.

[654] **Ieuan Wyn Jones:** I find the Government representatives remarkably coy in this debate; I find it rather strange. There is a perfect opportunity here to get rid of a system that they think is discredited. They have said one or twice, not here today, but in other places, that there are two classes of Assembly Members. They have made that perfectly clear, and this is a way of removing that obstacle. I find it remarkable that they do not want to engage in that debate today, so we will probably have to move to a vote fairly soon.

[655] **Michael German:** I welcome the Minister's statement and endorsement of that approach. I hope that we can replay that endorsement to any Labour AM who chooses not to follow that line as being the line of the Government in the Assembly. It is a system that is criticised. The only comment I take the Minister to task on is that if it retains the constituency link, members of the public will have more than one AM—all universally elected by the same methodology. The only difference between us is the size of the constituency. The constituency would inevitably be somewhat larger than we have at the moment, although it would not be immensely larger because the additional members would be rolled into the whole process.

[656] **The Presiding Officer:** Can I take it then that you wish to move to a vote on amendment 20?

*Gwelliant 20: O blaid 3, Ymatal 0, Yn erbyn 7.
Amendment 20: For 3, Abstain 0, Against 7.*

Pleidleisiodd yr Aelodau canlynol o blaid: Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted for: The following Members voted against:

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

Andrews, Leighton
Bourne, Nick
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val
Melding, David

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[657] **Y Llywydd:** A hoffech chi alw **The Presiding Officer:** Would you like
pleidlais ar welliant 81, Ieuan Wyn Jones? to call for a vote on amendment 81,
Ieuan Wyn Jones?

[658] **Ieuan Wyn Jones:** Hoffwn. **Ieuan Wyn Jones:** Yes.

*Gwelliant 81: O blaid 3, Ymatal 0, Yn erbyn 7.
Amendment 81: For 3, Abstain 0, Against 7.*

Pleidleisiodd yr Aelodau canlynol o blaid: Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted for: The following Members voted against:

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

Andrews, Leighton
Bourne, Nick
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val
Melding, David

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[659] **Y Llywydd:** Mae gwelliannau 22, 23 a **The Presiding Officer:** Amendments
24 wedi syrthio. Tynnwyd gwelliannau 82, 83 22, 23 and 24 have fallen. Amendments
ac 84 yn ôl. Felly, trafodwn yn awr welliant 21 82, 83 and 84 have been withdrawn. We
i gymal 1. will now discuss amendment 21 to
clause 1.

[660] **Michael German:** I propose amendment 21 to clause 1.

Insert new subsection to clause 1:

*'The Senedd is to consist of 80 Members elected through the single transferable vote from
multi-Member constituencies'.*

[661] I think that I need to withdraw this amendment, unless we can take it in two parts
without the single transferable vote, because the second part has clearly fallen. The issue of

having 80 Members is one that we may wish to discuss, but we do not wish to go over the issue of the single transferable vote again.

[662] We have included the provision about 80 Members on the advice of the Richard commission. I understand the difficulties that Members may have in increasing the numbers, but I think that it will prove inevitable should the powers that the Government maintains will transfer to us from this Bill actually transfer. As for the level of scrutiny, given the number of Members who would be on the so-called Government pay-roll vote and those who would not be able to vote, it will leave us with a relatively small number of Members able to conduct the rest of the business of the National Assembly. The issue, therefore, is one of principle regarding whether the people of Wales, given that we have a single Chamber, have appropriate scrutiny with the number of Members available. I believe that they do not.

[663] **Ieuan Wyn Jones:** Teimlaf fod y cynnig hwn i gael 80 o Aelodau yn gynamserol. Credaf fod Mike ei hun yn cyfaddef efallai mai rhywdro yn y dyfodol y dylai hyn gael ei ystyried. Credaf hynny am ddau reswm.

[664] Y rheswm cyntaf yw nad ydym i gael pwerau llawn o dan y Mesur yn y lle cyntaf ond pwerau o dan gymal 3 y Mesur—os cofiaf yn iawn—sy'n golygu mai Gorchmynion yn y Cyfrin Gyngor sydd gennym, nid pwerau deddfu llawn. Nid wyf yn siŵr iawn a ydym eto mewn sefyllfa i wybod yn union beth fydd y galw ar waith Aelodau'r Cynulliad. Mae'n ddigon posibl y bydd rhaid ystyried y peth yn y dyfodol, ond nid ar hyn o bryd.

[665] Yn ail, y realiti yw, os awn i sefyllfa lle'r ydym wedi cael refferendwm ac mae'r rhwystrau i gyd wedi'u croesi, bydd gennych sefyllfa wedyn lle bo gennych, i bob pwrpas, Senedd yr Alban yng Nghymru. Yn naturiol, bydd rhaid ystyried nid yn unig y cwestiwn o gynyddu nifer Aelodau'r corff hwn ond hefyd nifer yr Aelodau Seneddol y dylid eu cael yn Llundain. Yr wyf yn digwydd bod o'r farn, hyd nes bod gennym setliad sy'n llawer iawn tebycach i setliad yr Alban, nad yw'n briodol ystyried lleihau nifer Aelodau Seneddol yn San Steffan gan fod angen cynrychiolaeth gref o Aelodau yn Llundain wrth i'r Gorchmynion yn y Cyfrin Gyngor fynd drwodd.

[666] Mike, yn lle gwthio'r mater i bleidlais yn awr, dylem ddweud y byddwn yn edrych ar

Ieuan Wyn Jones: I feel that this move to have 80 Members is premature. I think that Mike himself would admit that this should happen sometime in the future, perhaps. I think that for two reasons.

The first is that we are not moving to full powers under the Bill in the first instance but into powers under clause 3 of the Bill—if I remember correctly—which will mean that we will have Orders in Council rather than full legislative powers. I do not think that we are quite in the situation to know precisely what the demands will be on Assembly Members. It is quite possible that we will have to consider this in future, but not now.

Secondly, the reality is that if we go to a position where we have had a referendum and all the hurdles have been cleared, we will then have a position where, to all intents and purposes, we have the Scottish Parliament in Wales. Naturally, we will have to consider not only this question of increasing the number of Members in this body but also the number of Members of Parliament in London. I happen to hold the opinion that, until our settlement is far more akin to the Scottish settlement, it would not be appropriate to consider reducing the number of MPs at Westminster, because we will need strong representation in London as these Orders in Council go through.

Mike, rather than pushing this to a vote now, we should say that we will look at

y niferoedd, a hynny dim ond pan fo gennym y pwerau llawn a phan ystyrir y cwestiwn o leihau nifer yr Aelodau Seneddol.

the numbers, but only when we have full powers and when the question of reducing the number of MPs is considered.

[667] Mae rhywbeth arall, wrth gwrs, sef barn y cyhoedd. Nid wyf yn siŵr a allem fynd o flaen pobl Cymru ar hyn o bryd a gofyn am ychwanegiad oni bai bod gostyngiad—nid yn gyfatebol, wrth gwrs—yn nifer yr Aelodau Seneddol.

There is another issue, of course, which is public opinion. I am not sure whether we could go to the people of Wales and ask for additional Members unless there was a reduction—not comparative, of course—in the number of MPs.

[668] **Michael German:** I am not minded to push this through, as I indicated at the beginning.

[669] **The Presiding Officer:** Amendment 21 is therefore withdrawn.

[670] We will move to amendment 25 proposed by the Welsh Liberal Democrats.

[671] **Michael German:** I also withdraw amendment 25.

[672] **The Presiding Officer:** We will therefore move to amendment 112 in the names of Ieuan Wyn Jones and Jocelyn Davies.

[673] **Jocelyn Davies:** I propose amendment 112.

Delete 2(1) and replace with 'the Secretary of State shall, by Order, determine the Assembly constituencies'.

[674] The Bill as it stands states that the Assembly constituencies, that is, the first-past-the-post constituencies, will be the same as the parliamentary constituencies. Instead of having that on the face of the Bill, this amendment would seek to allow the Secretary of State, by Order, to determine the Assembly constituencies. There is no real reason why the constituencies need to be coterminous with the parliamentary constituencies. I suppose that it is a way of controlling the number of first-past-the-post Assembly Members unnecessarily. I heard the Secretary of State saying on television last week that, over time, we may need to increase the number of Assembly Members, but if you have the first-past-the-post constituencies set in statute as being the same as parliamentary constituencies, the only way to increase the numbers is to increase the proportional part.

6.00 p.m.

[675] I think that it is a mistake to have no flexibility for increasing the number of first-past-the-post Members, if that was what suited you at any particular time. So, this is allowing the Secretary of State to have some flexibility to determine—by Order, so it is fairly democratic and within the control of Westminster—how many first-past-the-post constituencies there are.

[676] **Jane Hutt:** Would Jocelyn consider withdrawing the amendment on the basis that there may come a time when there are opportunities for adjustments to the links between the parliamentary and Assembly constituencies? Those might have to be reconsidered. However, at that stage, primary legislation would have to deal with the effects. If this is consequential on single transferable voting—

[677] **Jocelyn Davies:** It is not in the least. I am not suggesting, as other speakers have,

that there should be a reduction in the number of MPs to make up for an increase in the numbers of AMs. I am quite happy for Wales to be overrepresented in Westminster. I think that if you join a club and one member is huge compared with you, it is okay to have some overrepresentation. I am sure that, if our workload increases—and we do not know what our workload will be—we would need some flexibility, and so I am happy to leave that with the Secretary of State. It just seems a shame that an amendment to the Bill will almost inevitably be needed. It is far better to build that flexibility by Order into the Bill now, than to suggest that we will inevitably need to make amendments in future.

[678] **Jane Hutt:** The difficulty is that the amendment does not set out how the Secretary of State should specify constituencies, unlike the existing Parliamentary Constituencies Act 1986. Perhaps you would be prepared to withdraw it, as we would not be able to support it if it went to a vote.

[679] **Ieuan Wyn Jones:** As I said earlier, there are two reasons for amendments. One is to win the argument in committee; the other is to probe the Government. I find it surprising that the Government is being so prescriptive in the Bill. Clause 2(1) states:

‘The Assembly constituencies are the parliamentary constituencies in Wales’.

[680] It would be helpful for the Government to tell us why it needs to be so prescriptive in the Bill.

[681] **Jane Hutt:** It goes back to the point about the basis of your amendment, which would give the power to the Secretary of State to fix Assembly constituency boundaries by Order without setting out how that would be done. You might want to bring Hugh in on this, but it gives a great deal of power to the Secretary of State to specify constituencies. I am not sure whether you would want to give that power to the Secretary of State. The Parliamentary Constituencies Act 1986 gives guidance to the Secretary of State and the boundary commission, but this amendment does not provide for guidance and, therefore, a Secretary of State could use the power inappropriately.

[682] **Jocelyn Davies:** That would mean lengthy and very complicated amendments. The principle is the most important part. The Bill should allow some flexibility in the determination of the number of regional and first-past-the-post constituencies that there may be in future, rather than setting out the exact process. If that were required, you could find excuses to refuse every amendment, Jane. This is not meant to be divisive. It is sensible to suggest that some flexibility should exist, rather than setting down that constituencies should be the same as parliamentary constituencies.

[683] **Ieuan Wyn Jones:** Perhaps we could make the Government an offer. If the Government accepts the principle that there is no reason why Assembly constituencies and parliamentary constituencies should be linked, we would be happy to withdraw the amendment on the basis that it could bring forward something that actually reflects that in another way.

[684] **Jane Hutt:** I think that the issue is difficult. I am not trying to be difficult, but it goes back to who you usually give power to, and it is usually the boundary commission, and not the Secretary of State. It is a serious issue as to how and to whom you give this power in relation to this amendment. So, I am not trying to be negative for the sake of it, but the implications are that we would give the power to the Secretary of State. Hugh may wish to come in on this point, but my understanding is that, normally, it is accorded to boundary commissions to undertake investigations and reviews of parliamentary boundaries and issues.

[685] **Mr Rawlings:** Yes, Minister, that is right. At the Speaker's Conference of 1944, the designation of political boundaries has been remitted to independent agencies, that is, the boundary commission or, in future, the Electoral Commission. They have done that, operating within the terms of specified criteria of balancing a number of factors, which has, on one occasion, led to very difficult litigation. With respect, the amendment as it stands seems to give the role to the wrong person or people, and in terms that are completely at that person's discretion. It would seem rather difficult to justify that.

[686] **Jocelyn Davies:** We have just dealt with that by saying that we could deal with the principle of it. The boundary commission would then lay a report to Parliament, and so the boundary commission does not actually set the terms; it makes recommendations. However, several factors are taken into consideration. As the Bill stands, there is general consensus that the number of Assembly Members will, over time, need to rise, and that the number of Members of Parliament will also rise, according to whether the Assembly constituencies change—unless it is just the proportional part of the Assembly that is increased.

[687] **Mr Rawlings:** With respect, that is the wrong way round. Assembly constituencies follow parliamentary constituencies. Parliamentary constituencies are set by the Electoral Commission, whereas Assembly constituencies, as the legislation provides at the moment, are the same as parliamentary constituencies. The question might be put as to whether Assembly constituencies and parliamentary constituencies are coterminous, but that is a different matter from giving the power to the Secretary of State in unspecified terms as to how that power should be exercised.

[688] **Ieuan Wyn Jones:** I accept that point, but the point that I am making is a political one to the Minister. My invitation is this. If the Minister is saying that she has an element of sympathy with what we are saying but that she cannot support the amendment in its current form, I am saying that we are happy to withdraw that amendment on the basis that she might want to revisit it in a different way.

[689] **Leighton Andrews:** I want to speak against the amendment, politically.

[690] **Ieuan Wyn Jones:** I was not asking you.

[691] **Leighton Andrews:** Well, that is fine, but I am entitled to contribute to this debate, as far as I am aware.

[692] **The Presiding Officer:** Order. I have called Leighton Andrews. This will give the Minister the opportunity to consider further.

[693] **Leighton Andrews:** I was not planning to come in on this matter, but the more I listened to the case being made for it by the opposition, the more concerned about it I became. The effect of the amendment would be to delete the coterminousity, in effect, between Assembly and parliamentary constituencies.

[694] **Jocelyn Davies:** Not necessarily.

[695] **Leighton Andrews:** Well, that is the effect. It takes it off the face of the Bill. There may come a time when it may be right to debate those issues. I just heard a very convincing speech by the leader of the opposition against the previous proposal about expanding the number of Assembly Members, which I thought could equally apply to this amendment from Plaid Cymru. There may come a point when you are aware that these matters need to be reviewed. Of course, if, at any stage in the future, parliamentary constituencies had to be reduced, there would be primary legislation at that time, which

could provide a vehicle for any subsequent changes to Assembly constituencies.

6.10 p.m.

[696] My view is that the current system of coterminosity between Assembly and parliamentary constituencies works well. It is simple for the electorate to understand and, as time has gone by, electoral representatives have become accustomed to delineating the responsibilities effectively between them. I certainly would not want to see any premature move to break that link. I think that, at the moment, it is understandable, and to take it off the face of the Bill would be tantamount to suggesting that we were going to move to a situation where they were not, in future, coterminous.

[697] **Nick Bourne:** I have some sympathy with the points just made. First of all, I will deal with the point that Hugh is raising with regard to the political considerations about fixing constituency boundaries for the Assembly. Scotland is going through a similar exercise, and presumably, there is a way of cracking that—you just give it to the Electoral Commission to do Assembly constituencies. That is not beyond the wit of man.

[698] More convincing is the argument that we are not at the stage yet where we need this, though there may come such a stage. I share the view that there are advantages of working to the parliamentary constituencies in terms of working with MPs, of whatever political colour, often not the same colour as the Assembly Member or Assembly Members. I also very much think that members of the public understand that—they know now that they have an Assembly Member, or Assembly Members, and an MP representing their area.

[699] **Ieuan Wyn Jones:** That is not the case in Scotland.

[700] **Nick Bourne:** Scotland is moving away from that, and there may be a stage when we need to do that, but, just at the moment, I do not think that we have reached that stage. For the same reason, I would not touch the electoral system at all, because people understand how it works. If we are changing the powers, it would be wiser to leave the electoral system as it is, in toto, but I have sympathy with most of what Leighton has just expressed: there is an argument for retaining the present coterminosity.

[701] **Ieuan Wyn Jones:** It is clear that we are not going to win the argument in the committee, but, I will just address some of the points that Leighton made. I was not arguing against looking at an increase in the number of Members, but against doing it at this time. One of the things that the Secretary of State has told us he is most proud of is that he, for the first time, has put on the face of the Bill, law-making powers on the Scottish model. Therefore, he says, we will not have to revisit this, because it will be an Act of Parliament. So, the point that I am making is this: let us assume that, at some stage down the line, we get to a stage where a referendum is won and you are, therefore, activating Part 4; at that point, you will need to revisit this argument, but you will need a new Act of Parliament if you wish then to break the link between an Assembly constituency and a parliamentary constituency. At that point, there may well be an argument for increasing the number of Assembly Members, but you cannot do it under the current legislation. You would need a new Act. The point that we are making is that it prepares the way for that, should you wish to do it in the end.

[702] As Jocelyn pointed out, the fact that you have broken the link does not mean that the link will be broken, because it means that you could retain Assembly constituencies and parliamentary constituencies, but you would not be prevented from changing them. We are saying that it gives that degree of flexibility. However, it is clear that there is no support for that measure in the committee, so we withdraw the amendment.

[703] **Y Llywydd:** Diolch yn fawr, Ieuan Wyn Jones. Tynnwyd gwelliant 112 yn ôl. Felly, awn ymlaen at welliant 26 i gymal 4.

The Presiding Officer: Thank you, Ieuan Wyn Jones. Amendment 112 is withdrawn. We move on, therefore, to amendment 26 to clause 4.

[704] **Michael German:** I propose amendment 26

Clause 4(5), page 3, line 14:

Leave out from 'Secretary of State' and insert 'Senedd has passed a resolution in favour with at least two thirds of the Senedd Members voting to support it.'

[705] This relates to the power to vary an ordinary general election, by a month one way or the other, from the normal practice. It relates to sub-clause 5, where the only intervention by the Assembly would be a consultation with Welsh Ministers. This seeks to get a resolution to carry out such an action, supported by a majority, on a two-thirds basis, of Assembly Members voting for that variation to take place. It seems to me that there are occasions when you have to alter the dates. We could think of some examples, such as the foot and mouth disease crisis, when the Prime Minister was forced to move the date of the general election. We moved the date of our local elections some time ago, so that they could be decoupled. In those circumstances, there may be very important reasons to do so and, clearly, while this retains the right of Secretary of State to make that order, it also requires him to have the support of the National Assembly in so doing. That is the reason for this amendment. Because it is such an important issue on which to seek approval, it also requires consensus from the Assembly to ensure that it passes.

[706] **Jane Hutt:** We could not support this because, clearly, powers relating to the conduct of Assembly elections lie with the Secretary of State. This is just one minor example of these powers, and apart from the fact that the amendment also relates to Senedd Members, the principal point is that powers lie with the Secretary of State and, if we passed this, we would uncouple the whole arrangement in terms of the conduct of Assembly elections from the Secretary of State. So, I would not support it.

[707] **Michael German:** I think that that point has been dealt with, and I believe, Chair, that any amendment that says 'Senedd' means 'Assembly', because we have defeated that.

[708] **Jane Hutt:** My point of principle is that these powers for Assembly elections lie with the Secretary of State.

[709] **Michael German:** I understand that point, which is why we are not seeking to vary 4(1), which retains the power for the Secretary of State. What we are saying, in much the same way as the Westminster Government has put a triple lock on the way in which Assembly consensus is required for measures and Orders, is that the same applies in that the Assembly should at least have the right to approve this process, for whatever reason. I am sure that, in the circumstances where it would be required—it may well be obvious, but divisions might appear—it would be important that both the people of Wales, as represented democratically here, and the Secretary of State, use this power together. The power remains with the Secretary of State, but it has to have that trigger of support from the National Assembly as well, rather than simply consulting Welsh Ministers.

[710] **Jane Hutt:** If we want to pursue this, Hugh would like to make a comment on the interpretation.

[711] **Mr Rawlings:** I am not quite sure what point Mike is making. If he is saying that the words after 'Secretary of State' are to be deleted and replaced by the words in the

amendment, I am not sure whether it quite makes sense.

[712] **Michael German:** The words ‘Secretary of State’ are to be left out.

[713] **Mr Rawlings:** In that case, you are not leaving the matter with the Secretary of State, are you?

[714] **Michael German:** The Secretary of State has the power, but he must also have the approval of the National Assembly. That is the point that I was making, which is not inconsistent with the fact that most of what we want to do is already tied in a lock. For reasons that the Government can explain, this is a similar process, but it is a double lock instead of a triple lock, which the Government is putting on everything else.

[715] **Nick Bourne:** Briefly, my only concern with this—if it was a simple resolution, I would go along with it—is that the great danger in having this two-thirds majority provision is that it begins to get replicated in other provisions here and perhaps elsewhere. I feel very strongly about that. Our parliamentary democracy has always been on the basis of moving if there is a simple majority of votes in Parliament, here or in the Scottish Parliament. Here, we have this two thirds again, which I dislike, so we are unable to support it for that reason. If it was just a simple resolution, we would support it.

[716] **Jocelyn Davies:** I have no problem with a Secretary of State exercising the discretion to move the elections by a month on consultation with Welsh Ministers because these things would happen in extraordinary circumstances. To require the Assembly to meet, with a motion tabled the week before, and so on, would mean meeting in extraordinary circumstances, so I am quite happy to leave this discretion with the Secretary of State, because I do not think that this is a power that could be abused very easily, as the public would be intolerant of anyone who tried to abuse it. These are extraordinary circumstances, which are so obvious that there need not be a resolution to that effect. I am happy with the Bill as it stands on this matter.

6.20 p.m.

[717] **The Presiding Officer:** Amendment 26 is, therefore, withdrawn.

[718] Symudwn ymlaen at welliant 85. We will move on to amendment 85.

[719] **Ieuan Wyn Jones:** I propose that

Clause 4, page 2, line 40: leave out ‘seven’, insert ‘twenty-one’.

[720] Dywed y Mesur, o dan gymal 4(2)(b), bod yn rhaid i'r Cynulliad gyfarfod o fewn saith diwrnod—mae hynny'n golygu 10 diwrnod mewn gwirionedd, gan nad yw'n bosibl cyfrif dydd Sadwrn a dydd Sul. Felly, os oes etholiad ar ddydd Iau, wythnos i'r dydd Llun wedyn fyddai'r saith diwrnod mewn gwirionedd, sy'n 10 diwrnod cyfan. Nid wyf yn siŵr, ac efallai y gall y Gweinidog fy helpu, pam y ceir y cymal hwn fel hyn. Yr wyf wedi dweud nad oes unrhyw beth o'i le i'r Cynulliad orfod cyfarfod o fewn, er enghraifft, tair wythnos.

The Bill, under clause 4(2)(b), says that the Assembly must meet within seven days—in reality, this means 10 days, because you cannot count Saturday and Sunday. So, if there is an election on a Thursday, the seven days would mean a week to the following Monday, which is 10 whole days. I am not sure, and perhaps the Minister could help me here, why this clause has been included as it is. I have said that there is nothing wrong with the Assembly having to meet within, for example, three weeks.

[721] Yr oeddwn yn ymwybodol o'r dadleuon I was aware of the arguments regarding

ynglŷn â pham bod angen inni gyfarfod o dan y ddeddfwriaeth bresennol, gan fod yr holl swyddi, o dan y system bresennol, yn dod i ben gyda'r etholiad. Felly, nid oes Llywydd, Prif Weinidog na Chabinet wedi diwrnod yr etholiad. O dan y Mesur hwn, nid yw hynny'n wir; mae'r Llywydd yn parhau yn ei swydd nes etholir Llywydd newydd, neu nes fod y Llywydd presennol yn cael ei ailethol. Mae cyfrifoldeb y Llywodraeth yn parhau yn enw'r Prif Weinidog nes gwneir penderfyniad i'w newid, os dyna yw canlyniad yr etholiad. Deallaf y sefyllfa bresennol oherwydd, yn ôl yr hyn a ddeallaf o'r Ddeddf ar hyn o bryd, mae'r Ysgrifennydd Parhaol yn gweithredu pŵerau'r Prif Weinidog a'r Clerc yn gweithredu pŵerau'r Llywydd. Gan fod y ddau heb eu hethol, mae rhywun yn deall pam bod angen cyfarfod yn fuan er mwyn penodi pobl sydd wedi cael eu hethol i'r swyddi hynny. Gan fod y Mesur yn newid hynny, ni chredaf ei bod yn angenrheidiol i'r Cynulliad gyfarfod o fewn saith diwrnod. Hoffwn wybod pam bod y Llywodraeth yn mynnu fod yn rhaid cwrdd o fewn saith diwrnod.

why we needed to meet under the present legislation, because, under the present system, all posts cease with the election. Therefore, there is no Presiding Officer, First Minister or Cabinet following the day of the election. Under this Bill, that is not the case; the Presiding Officer remains in post until a new Presiding Officer is elected or the same Presiding Officer is re-elected. The responsibility of the Government remains with the First Minister until there is a decision to change that, if that is the result of the election. I understand the present situation, because, as far as I understand from the Act at present, the Permanent Secretary carries out the First Minister's duties and the Clerk carries out those of the Presiding Officer. Because those two people are not elected, one could understand why we need to meet quickly to appoint elected people to those posts. As the Bill changes that, I do not see that there should be a requirement for the Assembly to meet within seven days. I would like to know why the Government insists on the requirement to meet within seven days.

[722] **Christine Gwyther:** I have a one-sentence question: why on earth would you need three weeks?

[723] **Ieuan Wyn Jones:** It is within three weeks; it could be seven days, 14 days or 21 days. In a sense, the question to the Government is: why seven days?

[724] **Leighton Andrews:** You have said already that the seven days is, in reality, 10 days. Is your three weeks, therefore, more like 28 days in reality?

[725] **Ieuan Wyn Jones:** Yes it is.

[726] **Leighton Andrews:** Okay.

[727] **Jane Hutt:** To try to clarify the point for you, this will relate particularly to the arrangements for agreeing upon a Presiding Officer and a Deputy Presiding Officer, because an additional two weeks would not alter the timescale for the nomination of the First Minister, which has to be done within four weeks of the polling day. I presume that you are thinking of politically difficult situations arising in terms of partnerships and coalitions, and the political balance that might emerge. However, unless Hugh has any further advice for me, we feel that what we are suggesting is appropriate for ensuring that the people of Wales see that we are up and running as soon as possible and as effectively as possible.

[728] **Nick Bourne:** The first point is that it just gives flexibility. It is pretty unlikely that you would need it in most circumstances, but just as you have the power to postpone the

poll for extraordinary circumstances—conceivably there could be extraordinary, unforeseen circumstances that might mean you need it and, since they are unforeseen, it is difficult to posit the sort of example that it would cover—this just gives you that added bit of flexibility. I would have thought that that would be welcome. Otherwise you will be in a problem area if you, for whatever reason, cannot because there is some national emergency. That is difficult to conceive of, but may happen. That might mean that it would be difficult to hold such a meeting. It just gives you the flexibility.

[729] **Leighton Andrews:** I look at this and it seems to me that it is relatively straightforward. Surely, the position is that if there has been an election, you would want the people of Wales to see the newly elected Assembly meeting relatively quickly. This is not about the formation of a Government; this is about the Assembly itself meeting. So, it bears no relation to the issues of forming a Government in a situation where there was not a majority. So, frankly, I do not understand the need to depart from the situation as we have it.

[730] **Nick Bourne:** I was not putting it as an argument.

[731] **Leighton Andrews:** No, I understand that you were not, but it has been made in the debate.

[732] It seems to me that this is a separate issue and I do not understand why a week is thought to be problematic. It seems to me that you would want people to see the outcome of the election—Members taking their seats as quickly as possible and people being represented here. The effect of the amendment is to extend to what is called ‘21 days’, which would, in fact, if you take into account weekends, be nearer 28 days. That seems to me to be far too long after the election for people to see that. I think that the amendment is unwarranted.

[733] **Christine Gwyther:** A week is long enough. The electorate already thinks that the duration of an election campaign is a time when we are absent from our proper jobs, walking the streets, as it were, and that the country is not being looked after. I fail to see why anyone would need more than a week to come back here and to start doing the job for which we have been elected.

[734] **Michael German:** The issue, and Jane has recognised it, is one of the period in which you are in negotiation. That is one that is meant to be, more likely than not, after an election. The difficulty that you face, as we have faced this time, in having the Presiding Officer and Deputy Presiding Officer both come from the opposition is that that has given the Assembly Government, in balance terms, a quasi-majority of one, on the basis of the election. You may think that that is reasonable or unreasonable, but the issue of having time to negotiate is a very important opportunity and safeguard. That means that you maintain the current regime, but do not have to elect a new Presiding Officer and Deputy Presiding Officer until such times as those negotiations have time to develop. I think that those safeguards could well be addressed within Standing Orders.

[735] The difficulty that members of the Government have to think about is whether seven days, given a particular formulation of numbers—and it depends on that formulation and I am not here to speculate on what those numbers might be because this is not just for now, but for the long term—would be sufficient for you to negotiate and approve a Government coalition, if the numbers of the seats were laid out in such a way that the election of the Presiding Officer and the Deputy Presiding Officer would be prejudicial to any of those choices. That is the issue that worries me about the number of days before it. It does not apply in Parliament because it has been a long time since it has had to make such arrangements, but it is meant to be, as the architect of this scheme here has said on many occasions, more often than not. We cannot predict the numbers and that is not the purpose of

this. It is meant to allow room for discretion. If it is the case, as Ieuan has pointed out, that the previous Presiding Officer continues until—

[736] **Ieuan Wyn Jones:** And the First Minister.

[737] **Michael German:** Yes, if the previous Presiding Officer and the First Minister continue until such time as you change those arrangements, then there is no reason why that cannot take place.

6.30 p.m.

[738] **Christine Gwyther:** If they have both been re-elected.

[739] **Jane Hutt:** Perhaps it would be helpful to clarify. This particular clause and time period is laid down in the Scotland Act 1998. It has served Scotland well in terms of the timescale and its particular political formulation. I will not repeat the points made by Chris Gwyther and others but we do feel that there are enough safeguards to enable us to get on with the job. I think that it has served Scotland well and we have looked at the Scotland Act 1998 on a number of occasions. This is laid down on the seven days beginning immediately after the day of the poll. I would suggest that we either move to a vote or consider withdrawing.

[740] **Michael German:** I do not think that we can accept the Scotland Act 1998 position in this context because Scotland's settlement, which provided for far more list Members per regional constituency than we have here, provides a different political outcome. It was always assumed that there would always be a coalition in Scotland in order to exist. It is not the norm here, and the fact that we have now had a number of elections that provide very close and tight outcomes means that this is designed differently here. That was the purpose in the original Government of Wales Act 1998. This is something that may well be problematic for the Assembly unless it gives itself the opportunity to have some discretion in this matter. Ieuan's amendment is just seeking to get that discretion in place, which could rightly be covered in more detail by our Standing Orders.

[741] **Ieuan Wyn Jones:** Mae'n amlwg nad ydym wedi perswadio'r Llywodraeth. Credaf y dylem gael pleidlais er mwyn gweld safbwynt gweddill y pwyllgor ar y mater.

Ieuan Wyn Jones: We obviously have not persuaded the Government on this. I think that we should move to a vote in order to see where the rest of the committee stands on this.

[742] **Y Llywydd:** Galwaf bleidlais ar welliant 85 i gymal 4.

The Presiding Officer: I call for a vote on amendment 85 to clause 4.

*Gwelliant 85: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 85: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.

As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[743] **Y Llywydd:** Symudwn at welliant 86, i gymal 5.

The Presiding Officer: We now move to amendment 86, to clause 5.

[744] **Ieuan Wyn Jones:** Cynigiau welliant 86.

Ieuan Wyn Jones: I propose amendment 86.

Clause 5, page 3, line 22:

delete subsections (a) and (b) and replace with the following words:

'if the Welsh Assembly Government loses a vote of confidence'.

[745] Un o'r pethau nad wyf yn ei ddeall yn iawn ynglŷn â chymal 5 yw bod yr achos sydd glir iaf yn fy meddwl yn golygu y byddech eisiau etholiad rhwng etholiadau, os caf ei roi felly—hynny yw, etholiad cyn diwedd y pedair blynedd—pan fo'r Llywodraeth wedi colli cefnogaeth y Cynulliad ac wedi colli pleidlais o hyder yn y Cynulliad. Yn San Steffan, fe wŷr pawb os yw Llywodraeth yn colli pleidlais o hyder, mae etholiad cyffredinol yn dilyn. Nid oes rhaid i hynny ddigwydd, ond dyna'r confensiwn. Nid wyf yn siŵr pam nad ydyw yn y Mesur ond hwyrach y gall y Gweinidog egluro pam, er enghraifft, mai'r unig reswm dros gael etholiad yw bod y Llywodraeth wedi colli pleidlais o hyder.

One of the things that I do not quite understand in clause 5 is that the case which is clearest in my mind means that you would want an election between elections, if I can put it in those terms—that is, an election before the end of the four years—when the Government has lost the support of the Assembly and has lost a vote of confidence. In Westminster, everyone knows that if a Government loses a vote of confidence, a general election follows. That does not have to happen but that is the convention. I am not quite sure why this is not in the Bill but perhaps the Minister can explain to us why, for example, the only reason for having an election would be if the Government had lost the vote of confidence.

[746] Os caf roi prawf ar hynny ar y Llywodraeth, dyweder bod y Llywodraeth yn colli'r bleidlais o hyder yn y Cynulliad ar ôl 2007, yn 2009 er enghraifft, yn ôl cymal 5(2)(a) a (b), er bod y Llywodraeth wedi colli pleidlais o hyder byddai'n rhaid cael dwy ran o dair o Aelodau'r Cynulliad o blaid cynnal etholiad. Yn naturiol, ni fyddai'r Llywodraeth a fyddai wedi colli'r bleidlais o hyder am gael etholiad ac felly'n pleidleisio yn erbyn ac ni fyddai etholiad. Credaf fod hynny'n gam mawr ar ddemocratiaeth. Pa liw bynnag yw'r Llywodraeth, os ydyw'n colli hyder y Cynulliad dylai wynebu etholiad. Byddwn yn falch iawn o gael gwybod rhesymau'r Llywodraeth dros beidio â chynnwys hynny fel rheswm dros fynd am etholiad yn y lle cyntaf o dan gymal 5(2).

If I could just test that, as it were, let us say that the Government loses a vote of confidence in the Assembly after 2007, in 2009 for example, according to clause 5(2)(a) and (b), although the Government would have lost a vote of confidence, there would need to be a two-thirds majority in favour of holding an election. Naturally, the Government that had lost that vote of confidence would not want an election, so it would vote against and there would be no election. I think that that is a great democratic deficit. Whatever the political hue of the Government, if it loses a vote of confidence, it should face an election. I would be very eager to hear the

Government's reasons for not including that as a reason for going for an election under clause 5(2).

[747] **Leighton Andrews:** Are you therefore suggesting that every time any Welsh Assembly Government loses the vote of confidence, there should be an election?

[748] **Ieuan Wyn Jones:** Let us postulate; let us put the argument. The argument is that a Government that has lost the confidence of the body to which it was elected would have to face the electorate. Let me just put the other side of the argument to you, Leighton, which is the issue of mandates. To put the question back to you, would you, therefore, be perfectly happy, if a Government lost a vote of confidence, for it to be replaced by a Government that has not had a mandate?

[749] **Leighton Andrews:** That is a fair question; my answer would be that, presumably, under our current system, if a Government lost a vote of confidence here, there would have to be attempts—given that we do not currently have, as I understand it, provisions for extraordinary elections—whereby the Presiding Officer would have to see whether any others could form a Government. That would be my understanding of where we are now.

[750] **Ieuan Wyn Jones:** I do not think that the Presiding Officer—

[751] **Leighton Andrews:** Well, somebody would.

[752] **The Presiding Officer:** I can assure you that the Presiding Officer has no intention of forming a Government.

[753] **Leighton Andrews:** I was not suggesting that you should form the Government, but surely a vote of no confidence does not necessarily need to result in another election; it could result in other parties trying to form a Government. That is the point that I am trying to make.

[754] **Ieuan Wyn Jones:** Yes, it could, but there is a democratic issue involved here. In Westminster, you know that if a Government has lost a vote of confidence, there is an immediate election. Everyone knows that; that is the position. It would exercise the mind, would it not, of anyone who wanted to put forward a vote of confidence to say, 'Well, if we bring this Government down, we face an election. What would happen to us in that election?'. That would be the first question, would it not? Therefore, you are putting a bit of a responsibility on those parties that would seek a vote of confidence to understand what the consequences of that vote would be.

[755] Coming back to the democratic principle, if any Government loses a vote of confidence, any Government that seeks to replace it—although this is not the case under the current system, I understand—would need to secure a mandate. Basically, we are arguing the point; I have not yet heard what the Government's reason is for refusing that in the Bill.

[756] **Christine Gwyther:** Could the ultimate response be a ping-ponging between the two or three major parties here? You could almost be having an election every 12 months.

[757] **Jocelyn Davies:** We would be too busy having this referendum.

[758] **Christine Gwyther:** Exactly, but the fact is that we have a fixed term, which Parliament does not, and that is why a vote of confidence in Parliament leads automatically to an election. It does not have a fixed term; we do.

[759] **Jane Hutt:** There is a concern that your amendment would lead to an unstable political situation and public perception, as well, of us being able to form a new administration emerging from a vote of no confidence in a Government. We have put the point quite clearly. It would lead to instability; we have a fixed-term arrangement in terms of our elections and we certainly do not want to preclude the opportunity of a new Government coming forward without the need for elections. That is the bottom line.

[760] **Ieuan Wyn Jones:** You accept, therefore, that if a vote of confidence was lost by a Government and a new Government was formed, which excluded the Government that had won the popular vote in the country, that that new Government coming in would have a proper mandate to govern? That is the logic of your argument, is it not? If you are prepared to accept that, then it means that that debate is over, as far as you are concerned. Are you saying therefore that a new Government taking over from the one that has lost a vote of confidence would have a proper mandate to govern?

6.40 p.m.

[761] **Jane Hutt:** I am not going to judge the likely outcome in terms of how a new Government would be formed. We all know what the numbers are like here, and we all know what those kinds of scenarios might be. We have not been far off those scenarios in our experience. We need to secure stability in terms of the electoral process and the democratic backing of the electorate in terms of the Government that is put into power. If there is a vote of confidence, as you say, Jocelyn, we know what that means in terms of the reputation of the Assembly, and all parties and Members who make up the Assembly. However, it does not seem sensible to lay on the face of the Bill that an election would be possible after a vote of confidence, and we do not see that as being necessary in the circumstances.

[762] **Nick Bourne:** I have general sympathy with what is being proposed by Plaid Cymru, but I would have preferred—and I wonder whether Ieuan might consider this—that if the Assembly resolves that it should be dissolved, it should stay. It is then absolutely clear that you have a vote of no confidence and the knowledge of what you are doing, and not just expressing no confidence—you are saying that there should be a subsequent election. I accept that not every motion of no confidence would or should necessarily lead to a general election. We have our own history on that in terms of Alun Michael. I am not convinced that, in Parliament, it necessarily needs to lead to a general election; there may be a constitutional duty on the monarch to see whether another Government can be formed first. I see Hugh nodding. So, that is why I would prefer to have something to allow that here. We have this horrid two-thirds issue coming in again, which lends itself to the dilution of the system that we have. All these two-thirds points are there, for whatever reason, and I am very doubtful as to why we need this if people know what they are doing. Everything else that happens in the Assembly happens by a majority. You do not have to get a two-thirds majority to get your housing or health policies through, and this should be the same. Assembly Members have to be trusted to run things.

[763] **Christine Gwyther:** We can form our intellectual arguments on this issue only on the basis of previous experience. As regards the Labour-Liberal Democrat Executive in the Assembly, the Liberal Democrats might not have had the mandate from the people, but it did provide a period of stable Government, although it might not have been my absolute nirvana. Ieuan talked about a possible election focusing the minds of opposition parties, without coming up with whimsical votes of no confidence—those are my words. Being faced with the rigours of Government is probably enough to stop whimsical votes of no confidence. We should be confident in the rules by which we play at the moment, and I do not see that Ieuan's proposal would strengthen our settlement.

[764] **Michael German:** Like Nick, I also have sympathy with the amendment being proposed, and I accept that it should not necessarily lead to an election, because an alternative Government might be formed. As the amendment stands, it would clearly require it, rather than allowing the Assembly some choice in the matter. It also raises the issue that, if you allow that choice, why would the resolution be in favour of the 80 per cent rule, which would be the exception to (b) in this amendment. So, there is some work to be done here in relation to the 80 per cent or so of Members who would be needed to vote for there to be an extraordinary general election. There is some work to be done on this clause because it is not satisfactory as it stands. However, I cannot support the amendment in its current context, but I would support some amendment to this clause if it were to come forward in another manner.

[765] **Ieuan Wyn Jones:** Gan fod cydymdeimlad, o leiaf ymhlith rhai o aelodau'r pwyllgor, gydag ysbryd yr hyn yr ydym yn ceisio ei wneud, ond nid y geiriad, gyda'ch caniatâd, hoffwn dynnu'r gwelliant yn ôl, ac efallai y gallem ddod yn ôl at y mater hwn rywbryd eto.

Ieuan Wyn Jones: Given that there is sympathy, at least among some members of the committee, with the spirit of what we are trying to do, though not the wording, with your permission, I would like to withdraw the amendment, and perhaps we could come back to this matter another time.

[766] **Y Llywydd:** Tynnwyd gwelliant 86 yn ôl. Symudwn ymlaen at welliant 27.

The Presiding Officer: Amendment 86 has been withdrawn. We will move on to amendment 27.

[767] **Michael German:** I propose that

in clause 5(2)(b), page 3, line 23: leave out 'seats' and insert 'Members voting'.

[768] This is the much narrower point over which I secured the agreement of Leighton Andrews earlier, and it is a chance for him to follow his view with a vote. The figure should be two thirds of the Members voting not two thirds of the total number of Assembly seats. In other words, it should not be 40 votes regardless; it should be two thirds of those voting, so that those who are not with us, the dead, not the quick—or whatever the words are—the Presiding Officer, those who are ill, not voting or who abstain should not be counted as having voted against. I dread to think of the dreadful accident that might occur should 21 Assembly Members be in a bus together that has a fatal crash; it would be impossible to call for an extraordinary general election if that circumstance arose, because it would require 40 votes and we would not have 40 Members left. In terms of the standard way in which we conduct our business, as Leighton so kindly pointed out, if you want consensus on these matters, two thirds of those voting would do. I will choose different analogies next time.

[769] **Jocelyn Davies:** Mike made a valid point regarding the two-thirds majority requirement. You can imagine a disaster where a good number of Assembly Members were sadly lost, and then this could be a problem—if they were first-past-the-post Members, of course, regional Members would be replaced.

[770] **The Presiding Officer:** Mike, do you want to pursue this?

[771] **Michael German:** I certainly do, because it is a matter of principle; it is about two thirds of the Members voting as opposed to two thirds of the number of seats. I used an analogy that was, perhaps, not wholly in keeping with the spirit of this committee at this moment in time. This approach to Members voting is what you currently find in constitutions, and it is the manner in which we do things throughout this land. Having a two-thirds vote is an established procedure and relates to many issues in the National Assembly.

For example, changing our Standing Orders requires a two-thirds vote. We can change our Standing Orders, but we cannot change this rule. I think that this change is in accord with the manner in which we normally behave. Although I do not accept the position of two thirds—I think that a simple majority would have been better—I am clear that if we are to have two thirds, then it ought to be done by the normal common practice in the unwritten British constitution.

[772] **Y Llywydd:** Pleidleisiwn yn awr ar **The Presiding Officer:** We will move to welliant 27. a vote on amendment 27.

*Gwelliant 27: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 27: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane
Jones, Ann
Lloyd, Val

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.

As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[773] **Y Llywydd:** Tynnwyd gwelliannau 87, **The Presiding Officer:** Amendments 87, 28, 29 ac 88 yn ôl. Trown yn awr at welliant 13. 28, 29 and 88 have been withdrawn. We now turn to amendment 13.

[774] **Nick Bourne:** I propose amendment 13.

In clause 7(5), delete subsection (c), and, in clause 7(6), delete subsection (c).

[775] This is the provision that relates to the bar on dual candidacy, and we are simply seeking to ensure that those who stand for a first-past-the-post constituency seat are also able to stand on the list, as has been the position for the first two Assembly elections, and as remains the position in Scotland. This position was recently endorsed by the Arbuthnott committee. The Labour Party there benefits from and uses that arrangement, and it seems to work well there as it has worked well here. We are unable to understand why, other than for narrow, partisan party reasons, this has been put forward by the Government at Westminster. We imagine that the Business Minister, fair-minded woman that she is, to a fault, will see that and will try to convince it that this is a bad measure.

6.50 p.m.

[776] **Michael German:** I support this and we have tabled amendments with the same purpose because, quite clearly, this does not happen elsewhere within the constitution of any part of the UK. The logic of this would be that you could not stand wherever a ballot was to be held under whatever procedures in any other way. I believe that it is not only done to try to ameliorate bad feeling that seems to have emerged between some members of the Government party and their parliamentary colleagues, and internally here, but it is also

profoundly undemocratic. If there is an election to be held and a ballot paper on which people can be nominated, it is normal practice in this country that you should be able to put your name on that ballot paper. That is true in all parts of the UK. The Arbuthnott commission repeated that point very well in its recent report. Since no evidence has been given in favour of this clause by the Electoral Commission or any other commission, it will be difficult for anyone to understand why, apart from for narrow political reasons, this particular clause has been inserted into the Bill. Therefore, it would be wholly appropriate for the Government to accept that it is not within the constitutional practice of the UK and that it should be withdrawn.

[777] **Y Llywydd:** Byddai'n hwylus i ni ystyried gwelliant 89 i gymal 7 yn awr.

The Presiding Officer: It would be appropriate for us to consider amendment 89 to clause 7 at this point.

[778] **Ieuan Wyn Jones:** Cynigiau welliant 89.

Ieuan Wyn Jones: I propose amendment 89.

In clause 7, page 4, line 36, leave out subsection (c).

[779] Cytunaf â'r dadleuon a gyflwynwyd hyd yn hyn. Mae'r mater hwn wedi cael gormod o sylw o lawer gan y Llywodraeth. Nid wyf yn siŵr eto beth yw'r dadleuon o blaid. Gallaf weld beth yw'r dadleuon gwleidyddol, ond nid oes neb wedi rhoi dadl ar sail egwyddor yn esbonio pam y dylid newid y drefn. Wrth gwrs, yr oedd nifer o'r dadleuon a gyflwynwyd gan Leighton Andrews ac eraill o blaid y drefn bresennol ac yn erbyn STV yn dangos eu bod yn hapus gyda'r drefn gyfredol. Fodd bynnag, am ryw reswm, mae Aelodau sydd eisiau sefyll ar y rhestr ac mewn etholaeth yn cael eu gwrthod. Serch hynny, yn yr Alban, mae aelodau o'r weinyddiaeth yn gallu sefyll ar y rhestr ac fel ymgeiswyr etholaethol. Credaf fod pob ymgeisydd Llafur a safodd i'w ethol mewn etholaeth yn 2003 hefyd ar y rhestr.

I agree with the arguments put forward so far. This issue has been given far too much attention by the Government. I am not entirely sure what the arguments in favour are. I can see what the political arguments are, but no-one has put forward an argument on the basis of principle explaining why the system should be changed. Of course, many of the arguments put forward by Leighton Andrews and others in favour of the current system and which argued against STV showed that they were content with the current system. However, for some reason, Members who wish to stand on the list and as constituency members are rejected. Although in Scotland, members of the administration can stand on the list and as constituency candidates. I think that every Labour constituency candidate who stood in 2003 was also on the list.

[780] Y ddadl a gyflwynir yw dadl Gorllewin Clwyd, os gallaf ei roi fel hynny, lle etholwyd pob ymgeisydd etholaethol beth bynnag. Yr oedd hynny'n gwbl ragweladwy oherwydd os ydych yn caniatáu i ymgeiswyr sefyll ar y rhestr ac mewn etholaethau, fel, wrth gwrs, y mae'r ddeddfwriaeth bresennol yn caniatáu, fe fydd ymgeiswyr na chafodd eu hethol yn eu hetholaethau yn debygol, mewn rhai amgylchiadau, o gael eu hethol ar y rhestr, yn enwedig os ydynt yn ddigon uchel ar y rhestr i gael eu hethol. Felly, ni wn beth ddigwyddodd rhwng 1999 a 2003 i wneud i Aelodau o'r Llywodraeth deimlo bod hwn yn fater sydd yn

The argument made is the Clwyd West argument, if I can put it like that, where all constituency candidates were elected anyway. That was entirely predictable because if you allow candidates to stand on the list and in constituencies, as, of course, the current legislation allows, then candidates who were not elected in their constituencies are likely, in some circumstances, to be elected as list Members, particularly if they are high enough on the list to be elected in that way. So, I do not know what happened between 1999 and 2003 to make

gofyn am gymaint o sylw.

Government Members feel that this is an issue of such import.

[781] Fy unig bwynt arall yn y cyswllt hwn yw na chlywais unrhyw ddadl gan bobl gyffredin yn mynegi nad ydynt yn hapus gyda'r drefn bresennol. Yr unig bobl yr wyf wedi eu clywed yn dadlau yn erbyn yr hyn sydd wedi digwydd yw Aelodau Llafur, a hoffwn wybod a oes unrhyw dystiolaeth annibynnol ganddynt ar wahân i'r dadleuon yr oedd ambell un o Dŷ'r Arglwyddi wedi eu rhoi, a fyddai'n gallu ein perswadio ni bod eu dadl hwy yn dal dŵr.

My only other point is that I have not heard any argument by ordinary people stating that they are not happy with the current system. The only people whom I have heard arguing against what has happened are Labour Members, and I want to know whether they have any independent evidence, apart from the claims made by a certain few in the House of Lords, which could persuade us that their reasoning holds true.

[782] **David Melding:** I think that it is important that we put on record our disgust about this measure, as it goes to the heart of electoral politics and the democratic system established in 1997 and 1999. It is done without any cross-party support, and it is a deeply partisan measure—probably the most partisan thing that has been done since devolution. While I know that we will not change the view of the Government on this, I think that it should be shamed, and reminded that all independent institutions that express an opinion on this come out against the Government, which must be extremely uncomfortable. The Secretary of State was hoping that the Arbuthnott commission would say something in its support, but, of course, it did the exact opposite. Allow me to read some of the conclusions of that commission.

‘Dual candidacy is a common and accepted feature of mixed member proportional systems across the world...We suggest that dual candidacy only seems problematic to some people here because of the legacy of constituency representation within British political culture and the hegemony which this has secured for some parties.’

[783] That is very much part of what is driving the governing party, because it does not like some of the consequences of a more proportionate system. It needs to raise its vision and realise what has been secured by a more proportional system. We have secured a relatively stable constitutional system, which was dramatically different from that which prevailed before 1999. I conclude with what the commission says, namely:

‘that preventing dual candidacy would be undemocratic’.

[784] I am not naive enough to expect the Minister to make any statements that will result in the Government drawing back from this, but it is a fairly miserable measure, I think, and it is on that sad observation that I conclude.

[785] **Leighton Andrews:** I have no problem with proportionality, and it is certainly not an issue for me. I will say, to start with, that people from other parties have endorsed this, and they include Lord Crickhowell and Lord Carlile. It is not in any way right to suggest that the only people who support this are members of the Labour Party.

[786] **David Melding:** Will you give way?

[787] **Leighton Andrews:** No, I will not, for now. To be frank, I have just listened to several opposition Members, so, if I could set out my argument, I might allow an intervention a little later on.

[788] **David Melding:** Other committee members have taken interventions.

[789] **Leighton Andrews:** I have also taken interventions so far in this committee. However, I have just listened to three members of the opposition making their case, and I have to say that I thought your last remarks, David, rather unworthy of you.

[790] It seems to me that what is being advanced as an argument is that this is a partisan position. The reality of the position is that no party at the next election or at subsequent elections could nominate the same people to stand for both a constituency and the list system. If you were to look at the Mid and West Wales region, for example, you would see that Labour holds a couple of seats there with very small majorities. We are not offering a parachute to anyone from the Labour Party for that region, suggesting that they should be allowed to stand on the list in that region. So, the argument that this is partisan and applies only to the opposition parties is entirely bogus and should be exposed as such here and now. It applies to all the parties. That is the reality. Every party is affected by this and it is entirely wrong to suggest that Labour is not affected by it too. Someone who stands for us in a constituency seat cannot stand on the list. Are you so unconfident in your own electoral capabilities in particular seats that you do not think that you can put us under threat? If so, I am delighted to hear it. The reality of the situation is that we are not offering candidates a parachute; it is your parties that wish to offer parachutes.

7.00 p.m.

[791] It seems to me that there are particular difficulties in the size of our legislature, as we are quite small, with only 60 Members. I think that that adds to the level of friction that occurs in certain circumstances between—and let me absolutely precise about this—Members who are elected for constituencies and Members who are elected on regional lists. That situation is further exacerbated in those examples in which people have previously been defeated. David Melding is a regional-list Member covering my constituency, and I am always pleased to see Conservatives in the Rhondda, because we do not see them very often. On the other hand, I have a regional-list Member from another party who lives in the constituency. She did not stand for a constituency, and so this argument would not apply to her.

[792] The issues have been made worse, I suspect, by the fact that we do not have a protocol in this institution currently, as there is in Scotland, governing relationships between constituency and regional Members. I am glad that, under the Bill, as it is proposed, we will have one in future; that will be important. However, I want to nail absolutely the idea that this is partisan. This applies to every political party standing for election in Wales. That is the truth of it, and your attempt to deride this as partisan is ridiculous, because it would clearly apply to people in the Labour Party too.

[793] **Nick Bourne:** That does not mean that it is not partisan. Of course it applies to everyone. I am sorry to have to take Leighton up on this, but it will not do simply to say that there may be one or two people apart from the Labour Party who are in favour of this measure, and that it cannot be partisan as it applies to the Labour Party too. Of course, we know that it does, but here we have the Arbuthnott commission looking at the parallel situation in Scotland. There is a direct read across, and there is no reason why it should apply in Scotland and not in Wales, or vice versa. Arbuthnott has said that it is profoundly undemocratic, and nothing that you have said has suggested otherwise. In the first Assembly, this was not an issue. I do not know why it has been for the second, but it could have something to do with the fact that you had someone elected on the list previously.

[794] **Ann Jones:** Who did not stand for a constituency.

[795] **Nick Bourne:** Only because it was too late to find him a constituency. He did indeed

have a constituency, but it was one that he represented in Parliament, and that led to problems, as we all know. Anyway, the circumstances are very clear. The Arbuthnott committee said that it is undemocratic and nothing that you have said has refuted that in any way.

[796] **Ann Jones:** I have to come back on that. There were no problems with the former Labour Assembly Member who represented the Mid and West Wales region having a parliamentary constituency, Nick. That is outrageous.

[797] **Nick Bourne:** There were problems, Ann.

[798] **Ann Jones:** No, there were not. That is outrageous and just proves what we said to you, that it was not a problem in 1999 because they did not stand on the list. Jocelyn is another example. There are about two or three people who genuinely stand as regional Members and that is fine.

[799] **Nick Bourne:** Can I come back on why it was a problem, because I do not think that you understand what I am saying? It was a problem because it was a completely different area and it clearly encroached on his time. I am not trying to make a partisan point here. He was a Member of Parliament for somewhere completely outside the area that he was representing in the Assembly. That is why I think that it was a problem; it would have been a problem for anyone.

[800] **Ann Jones:** Yes, but that was the convention that was set up in 1999, and the same applied to other Members who had dual mandates at the time, but who did not take up a by-election. That was across parties.

[801] **Nick Bourne:** I am not criticising that.

[802] **Ann Jones:** It is wrong to raise it as a problem, because it was not a problem.

[803] **Nick Bourne:** Yes, it was.

[804] **Ann Jones:** No it was not a problem.

[805] **Nick Bourne:** Yes, it was.

[806] **The Presiding Officer:** Order.

[807] **Ann Jones:** I am sorry, but it was not. I will agree to differ on that one, as it is not relevant to this debate.

[808] **Ieuan Wyn Jones:** Yr oeddwn yn synnu clywed Leighton Andrews yn dweud nad oedd hwn yn *partisan*, oherwydd fod dau Aelod o Dŷ'r Arglwyddi yn digwydd cytuno ag ef. Os dyna'r gorau y mae'n gallu ei wneud o ran cael pobl i gytuno ag ef, mae ei ddadl yn eithaf gwan. Yr hyn sydd yn fy synnu yn ei ddadl—ac nid wyf wedi clywed yr hyn sydd gan y Gweinidog i'w ddweud eto—yw eu bod ar hyd y bedlan yn y Cynulliad ac yn y pwyllgor hwn yn sôn am adeiladu consensws.

Ieuan Wyn Jones: I was surprised to hear Leighton Andrews claiming that this was not partisan, just because two Members of the House of Lords happen to agree with him. If that is the best that he can do in terms of getting people to agree with him, then his argument is quite weak. What surprised me by his argument—and I have not heard what the Minister has to say yet—was that all the while, in the Assembly and this committee, they talk about building consensus.

[809] They are always saying, ‘We have got to build consensus. We have got to make sure that we carry people with us. We have got to make sure that we can take people with us and that we can win the arguments’, and yet they fall back here on the most partisan, introverted, party-political argument in favour of this mean-spirited provision in the Bill. It does not go together. In other words, we have heard all the arguments in favour of consensus building and two-thirds majorities because we must build consensus, and yet the only party in the United Kingdom that supports this little measure is Labour. There is no consensus on it. In fact, it is divisive. To be perfectly blunt, the way in which the debate on the Bill was hijacked during the debate on this issue was ridiculous. We never got to the merits of the Government of Wales Bill during the debate in Plenary, because we were arguing about whether people should stand on the list or in constituencies. I found that very sad, because we missed a real opportunity. If the Government is really in favour of consensus, let it bring the arguments forward, rather than defending what I regard as a very partisan part of the Bill.

[810] **Christine Gwyther:** As Ieuan said, this argument is in danger of hijacking this evening’s meeting, too.

[811] **The Presiding Officer:** Order. There is no danger of that.

[812] **Christine Gwyther:** I just want to reassure you that I will not be prolonging the argument for very long. However, I will be one of those Labour Members in a highly marginal seat fighting the next election with no safety net. To say that we are doing this as a partisan measure is absolutely untrue. I refute that, as will all the other Labour Members fighting highly marginal seats. None of us knows what the outcome of the 2007 elections will be, but I can look my constituents in the eye and tell them that they know who they are getting, and that the list Members who are also elected will not have come from other constituencies. They will be there as list Members to do a very specific, highly regarded and good job, and so will the constituency Members.

[813] **Jane Hutt:** Just to conclude this discussion, I hope, I wish to say that we were clear and open about this in Labour’s manifesto commitment, and, of course, Labour won the general election. That manifesto commitment on ending dual candidacy was there and was taken forward in the White Paper, which was published in June, with extensive consultation with the Secretary of State for Wales, the Electoral Commission and others. There was much criticism in the evidence to the Arbuthnott commission about dual candidacy in Scotland, but it is for Scotland to decide what it wishes to do about the situation. I am saying that we have had a clear mandate as a result of our manifesto commitment and the White Paper commitment and we should now move forwards on this point. It is not partisan, and it will ensure that the electorate is clear about who is representing it on a local and regional basis. I hope that we can move forward in a mature way to acknowledge, through the protocol, the important role that the regional Member plays, as well as the local Member.

[814] **Y Llywydd:** Os bydd gwelliant 13 yn cael ei wrthod, bydd gwelliannau 30, 31 ac 89 hefyd yn cael eu gwrthod. **The Presiding Officer:** If amendment 13 is defeated, amendments 30, 31 and 89 will also be defeated.

Gwelliant 13: O blaid 5, Ymatal 0, Yn erbyn 5.

Amendment 13: For 5, Abstain 0, Against 5.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Bourne, Nick
Davies, Jocelyn
German, Michael

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Andrews, Leighton
Gwyther, Christine
Hutt, Jane

Jones, Ieuan Wyn
Melding, David

Jones, Ann
Lloyd, Val

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol â Rheol Sefydlog Rhif 8.14.

As there was an equality of votes, the Chair used his casting vote in accordance with Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[815] **Y Llywydd:** Gan fod gwelliant 13 wedi'i wrthod, mae gwelliannau 30, 31 ac 89 hefyd yn cael eu gwrthod.

The Presiding Officer: Given that amendment 13 has been defeated, amendments 30, 31 and 89 are also defeated.

[816] Yr wyf yn bwriadu dod â'n trafodaethau i ben, os yw hynny'n hwylus, ar ddiwedd cymal 9. Felly, a wnewch gytuno ar yr hyn a ddylai ddigwydd i'r gwelliannau canlynol? A ddylid tynnu gwelliant 32 yn ôl?

I now intend to bring our discussions to a close, if that is convenient, at the end of clause 9. Therefore, will you agree on what should happen to the following amendments? Should amendment 32 be withdrawn?

[817] **Michael German:** Yes. I withdraw amendment 32.

[818] **Y Llywydd:** A ddylid tynnu gwelliant 90 yn ôl?

The Presiding Officer: Should amendment 90 be withdrawn?

[819] **Jocelyn Davies:** Yes. I withdraw amendment 90.

[820] **Y Llywydd:** A ddylid tynnu gwelliant 33 i gymal 9 yn ôl?

The Presiding Officer: Should amendment 33 to clause 9 be withdrawn?

[821] **Michael German:** Yes. I withdraw amendment 33.

[822] **Y Llywydd:** A ddylid tynnu gwelliant 91 i gymal 9 yn ôl?

The Presiding Officer: Should amendment 91 to clause 9 be withdrawn?

[823] **Jocelyn Davies:** Yes. I withdraw amendment 91.

[824] **Y Llywydd:** Felly, byddwn wedi cwblhau ystyried Rhan 1 hyd at gymal 9, a byddwn yn cyfarfod nesaf nos Fercher gan ddechrau gyda chymal 10.

The Presiding Officer: Therefore, we will have completed the consideration of Part 1 up to clause 9, and we will next meet on Wednesday night and will begin with clause 10.

[825] Diolchaf i'r Aelodau ac yn arbennig i staff Cofnod y Trafodion, y cyfieithwyr a'r clerod. Mae'r cyfarfod wedi rhedeg ychydig yn hwyrach nag yr oeddwn wedi ei fwriadu, ond yr ydym wedi cwblhau rhan sylweddol o'r gwaith.

I thank Members and particularly the staff of the Record of Proceedings, the translators and the clerks. The meeting has run a little later than intended, but we have completed a substantial amount of work.

*Daeth y cyfarfod i ben am 7.10 p.m.
The meeting ended at 7.10 p.m.*

