



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

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

**Dydd Llun, 17 Hydref 2011
Monday, 17 October 2011**

Cynnwys
Contents

- 3 Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest
- 4 Offerynnau nad ydynt yn cynnwys Unrhyw Faterion i'w Codi o dan Reolau Sefydlog
Rhif 21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order Nos. 21.2 or 21.3
- 4 Offerynnau sy'n cynnwys Materion i'w Codi gyda'r Cynulliad o dan Reolau
Sefydlog Rhif 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under Standing Order
Nos. 21.2 or 21.3
- 4 Gohebiaeth y Pwyllgor
Committee Correspondence
- 6 Ymchwiliadau'r Pwyllgor: Ymchwiliad i Roi Pwerau i Weinidogion Cymru yn
Neddfau'r DU
Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in UK
Laws
- 19 Dyddiad y Cyfarfod Nesaf
Date of the Next Meeting
- 19 Cynnig Gweithdrefnol
Procedural Motion

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Mark Drakeford	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

David Davies	Aelod Seneddol, Ceidwadwyr, Cadeirydd Pwyllgor Materion Cymreig Member of Parliament, Conservatives, Chair Welsh Affairs Committee
Paul Evans	Clerc y Swyddfa Gyflwyno, Tŷ'r Cyffredin Clerk of the Table Office, House of Commons

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

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

Dechreuodd y cyfarfod am 2.29 p.m.
The meeting began at 2.29 p.m.

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

[1] **David Melding:** Good afternoon. Welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will make the usual housekeeping announcements. I welcome all Members, particularly Mark Drakeford who is substituting for Julie James. Welcome, Mark. We are not expecting a fire drill, so if you hear the alarm please follow the instructions of the ushers. Headsets are available for translation when Welsh is spoken, and to amplify the sound. Channel 1 is for translation and channel 0 is for amplification. Please switch off all mobile phones and other electronic devices completely.

2.30 p.m.

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

[2] **David Melding:** We do not have any before us this time.

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

[3] **David Melding:** The only instrument to discuss is CLA46, the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011. Do Members have any views? I do not think that the team wanted to draw anything to our attention.

[4] **Simon Thomas:** Ai dyma'r un lle nad yw'r cynnydd wedi cael ei esbonio? Credaf ei bod yn werth codi'r pwynt hwnnw. Nid wyf yn siŵr a oes angen asesiad effaith rheoleiddiol llawn, ond byddai'n werth cael gwybod y rheswm am y cynnydd. Chwyddiant yw'r rheswm, mae'n debyg, ond nid yw'n dweud hynny. Nid oes ffordd, felly, i bobl o'r tu allan weld a yw'r cynnydd yn deg ac yn gymedrol ynteu a oes cysail ar gyfer cynnydd pellach a fydd hyd yn oed yn uwch gan eu bod wedi defnyddio rhyw fath o ganllaw nad ydym yn ymwybodol ohono. Felly, mae'n werth nodi'r pwynt hwnnw yn yr adroddiad.

Simon Thomas: Is this the one where the increase has not been explained? I think that it is worth raising that point. I am not sure that we need a full regulatory impact assessment, but it would be worth knowing the reason for the increase. Inflation is probably the reason, but it does not say that. There is no way, therefore, for people from outside to see whether the increase is fair and measured or whether there is a precedent for further increases that will be even higher, as they have used some kind of guide that we are not aware of. So, it would be worth noting that point in the report.

[5] **Mr Griffiths:** Nid oes esboniad o gwbl ynglŷn â sut y maent wedi cyrraedd y ffigurau sydd yn yr offeryn.

Mr Griffiths: There is no explanation whatsoever as to how they have reached the figures contained in the instrument.

[6] **Eluned Parrott:** It cannot possibly be on the basis of inflation, because we note that the figure of £722 is rising by £20 and the figure of £640 is rising by £39. So, if the increase was inflationary, those are not the figures that you would expect.

[7] **Simon Thomas:** One is retail price index and one is not.

[8] **David Melding:** I hear Members' concerns. If they are acute enough, there are things at your disposal that you can do.

2.32 p.m.

**Gohebiaeth y Pwyllgor
Committee Correspondence**

[9] **David Melding:** The first item of correspondence is the response to the Beef and Pig Carcase Classification (Wales) Regulations 2011. Are Members content with the Minister's response? I do not know whether the secretariat has anything in particular to draw to our

attention.

[10] **Suzy Davies:** There seems to have been a delay because there is more than one amendment coming in. Is that the case, or are we talking about the one amendment that has been raised in our correspondence? Is there more than that? If there is only one amendment, it does seem to be taking some time.

[11] **Mr Griffiths:** Mae arnaf ofn nad oes gennyf ragor o wybodaeth na'r hyn sydd yn y llythyr. Yr hyn sy'n ddi-ddorol yw ein bod wedi ysgrifennu i ofyn am amseriad mwy penodol a'r ymateb oedd: o fewn y misoedd nesaf. Nid yw hynny'n llawer mwy penodol na'r hyn oedd gennym gynt.

Mr Griffiths: I am afraid that I do not have any further information other than what is contained in the letter. What is interesting is that we have written to ask for a more specific timing and the response was: within the next few months. That is not much more specific than what we had before.

[12] **David Melding:** The next item of correspondence is the Minister's response to the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011. Are Members content? Are there any unresolved issues that the secretariat wants to raise with us?

[13] **Mr Griffiths:** Y cwestiwn a godwyd yn yr achos hwn oedd: pe bai'r Gweinidog yn defnyddio ei bwerau, a fyddai'n cytuno i hysbysu'r pwyllgor hwn neu i wneud datganiad ysgrifenedig i'r Cynulliad llawn yn esbonio bod y pwerau'n cael eu defnyddio? Mae'n dweud y bydd unrhyw ddarpariaeth o dan y pŵer yn cael ei chyhoeddi ar y rhyngwrwyd. I'r rhai ohonom sydd â phrofiad o chwilio am bethau ar dudalennau rhyngwrwyd y Llywodraeth, nid yw hynny'n llawer o help.

Mr Griffiths: The question raised in this case was: if the Minister were to use his powers, would he agree to notify this committee or to make a written statement to the full Assembly to explain that the powers were being used? He says that any provision under the power will be published on the internet. For those of us who have experience of searching the Government's pages on the internet, that is not much help.

[14] **David Melding:** Would Members feel it appropriate for me to write to the Minister to note that the current proposal is to publish on its web page but that we feel it appropriate that we receive notification if these powers are going to be used?

[15] **Eluned Parrott:** Yes, please.

[16] **David Melding:** Whether it will do that or not is another matter, but at least—

[17] **Simon Thomas:** I think that that is fair enough, but it is caught up with the Counsel General's statement about a better Welsh statute book and better access to Welsh statutes.

[18] **David Melding:** It can also publish it on its web page. It is not a problem.

[19] **Suzy Davies:** If we do not know—

[20] **Eluned Parrott:** It is about the appearance of transparency as well as the actual act.

[21] **David Melding:** Moving on to CLA42, the Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations 2011, you might remember that we raised issues about why this is taking longer than expected. The Minister has responded. Eluned, I think that you raised this point originally. I think that the Government felt that, because there was a challenge, it made sense to allow the challenge to proceed and that it did not want to be part

of the challenge. It seems a reasonable explanation, but Members might have other views. I see that we agree, so I can note that no further correspondence is needed.

[22] The next item is CLA19, the Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011. Again, we have had a response from the Minister. Are Members content? Are there any issues? I see that there are none.

[23] Finally, we have CLA17, the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011. Are there any comments on the response that we have had from the Minister on that? It did not seem to be a very substantive response with regard to why it did not consult widely enough. However, there it is; it is on the record. That concludes our correspondence.

2.37 p.m.

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i Roi Pwerau i Weinidogion Cymru yn
Neddfau'r DU**
**Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in
UK Laws**

[24] **David Melding:** Just in case you did not hear the announcement earlier, proceedings are conducted in English and Welsh. You can use channel 1 on the headsets for a translation into English when Welsh is spoken. You can also use channel 0 to amplify proceedings.

[25] Our committee is carrying out an inquiry into the granting of powers to Welsh Ministers in UK laws. Today's meeting is the third oral evidence session. Last week, the committee heard the evidence of Dr Paul Cairney, senior lecturer in politics and international relations at the University of Aberdeen. Today, I welcome David Davies MP, chair of the Welsh Affairs Committee in the House of Commons. David is supported by Mr Paul Evans, clerk of the table office in the House of Commons and a former clerk to the Welsh Affairs Committee. I am very grateful to both of you for being here this afternoon and for helping us with our enquiries. We look forward to the session that we are going to have with you.

[26] We have agreed a range of fairly general questions. I am going to encourage Members to join the discussion as we proceed. Mr Evans, if you want to add something to what David is saying at any point, just catch my eye and I will try to involve you as much as possible. We are here to gain some of your expertise.

[27] The premise of this inquiry is that, in devolved areas, powers given to Welsh Ministers should receive the informed consent of the National Assembly for Wales, and we are looking at ways in which powers come when consent is not always expressly given. Does either of you have a view on that general principle that it should only be the National Assembly for Wales that gives Welsh Ministers Executive powers?

[28] **Mr Davies:** I would have thought so. When the body was set up, it was one entity, and I do not think that we thought through the implications of splitting the Assembly from the Welsh Government. However, I presume that most of the committee will agree that powers, and anything that the Welsh Government does, ought to be with the agreement and support of the Assembly. That is fairly fundamental.

[29] **David Melding:** Mr Evans, what is your view, as a clerk of the Table Office?

[30] **Mr Evans:** To add a technical point, the issue of how the National Assembly gives its consent to ministerial powers if they happen to lie outside or cut across the devolved

competence boundary needs to be worked out, given that there may be occasions where it is not clear cut. If it lies fairly and squarely within the new competence of the Assembly, it can be done by the Assembly, but there may be occasions when it cannot be done by the Assembly alone.

[31] **Eluned Parrott:** One thing that we are concerned about is the extent to which the procedures that are used to devolve powers are clear and well understood. We have heard the argument that, if the powers are to come through to Welsh Ministers through Assembly legislation, rather than Westminster legislation, it would provide greater clarity, but we currently do not have our own statute book. What is your view on how to provide the best appearance of clarity as well as the practice of clarity through the law in this regard?

[32] **Mr Davies:** You must ensure that there is a body within the Assembly that is carefully scrutinising that and making public any concerns. I am trying to think of a parallel, and the one that I am coming up with is with regard to European Union legislation in Parliament, which must be scrutinised by the European Scrutiny Committee, which can, if it thinks that something is controversial—Mr Evans will correct me if I am wrong—send it back to Parliament to be discussed. That is not an exact parallel, but that is perhaps an approach that could be adopted by the Assembly in some way. We are clearly facing some issues, because we had not foreseen how devolution was going to develop, and while we all have our opinions as to the pros and cons, I think that we would all agree that, whatever situation we arrive at, we want to see it working as well as possible and to see all decisions scrutinised as well as possible.

[33] I detected, when I was looking through the background to this report, that there was an implication that Members might be interested in seeing how bodies within Parliament might be able to contribute to this process—presumably including the Welsh Affairs Committee, which is why I am here. My note of caution is twofold. First, the Welsh Affairs Committee is a select committee; it is a different beast from a Bill committee, which is probably a more suitable vehicle for that kind of scrutiny. Secondly, anything that the Welsh Affairs Committee does must be done with the agreement and co-operation of the National Assembly for Wales and the Welsh Government. We very much believe in a mutual relationship, which is why I accepted with alacrity the invitation to come here today. We have always found, at a personal level, that relationships have been good, and we thank you for your evidence recently to the committee.

2.45 p.m.

[34] However, we have detected that, certainly at a Welsh Government level, the co-operative approach is not always reciprocated in the way that we would like. In order for us to undertake any form of scrutiny, we would have to have the full support of the people who would ultimately carry out the functions granted to them, either by the Assembly or Parliament, which would make it difficult.

[35] **Simon Thomas:** Prynawn da. I want to follow up what you said about the select committee and the difference between it and a Bill committee. Here, we are about to embark on a strategic new relationship of having Bill and select committees in one, as it were. Historically, in the Commons, the Bill committee for Wales would have been the Welsh Grand Committee, I assume. Certainly, it could be convened to look at any Welsh legislation. Do you see a role for the Welsh Grand Committee in this? How does that work now?

[36] **Mr Davies:** I suspect that Mr Evans will correct me on any technicalities in a minute, and do so in his usual diplomatic fashion without making it clear that I am completely wrong, but I do not see the Welsh Grand Committee as being a Bill committee either. A Bill committee, in its traditional form, will take hold of a piece of legislation and Members will

spend a couple of weeks—or months in the case of Crossrail—going through it twice a day, literally arguing over every clause in the Bill and making significant changes to it. It is heavily whipped and very political, although perhaps less so than the House of Commons itself. It is open to members of the public and every decision taken is scrutinised. People from outside will sometimes lobby heavily on certain clauses.

[37] When a select committee looks at legislation, it looks at things in a much broader way: what the effects of it will be or what its effects have been. It is a far more consensual body, and it works by getting a unanimous opinion on something and presenting that back to the Government, hoping to have influence in that fashion. Deliberations will often be in private; in fact, they will virtually always be in private, even if the evidence sessions take place in public.

[38] The Welsh Grand Committee is neither one thing nor another. It convenes a couple of times a year. It will look at a big and broad picture. I do not want to say anything too controversial, but many will ask questions about how effective it is. I do not think that, in its current form, it would be a particularly effective body for scrutinising in depth legislation that is either about to be or has been enacted by the Assembly.

[39] **Mr Evans:** I would add, Chair, that the Welsh Grand Committee would not traditionally be the vehicle for Welsh legislation at Westminster. That would be what used to be called a Welsh standing committee, now a Welsh public Bill committee, which used to be convened when we had Wales-only legislation, which I do not think will ever happen again at Westminster. It had 16 Welsh Members on it and any added Members necessary to represent the party balance at Westminster. The Welsh Grand Committee has always stuck to the big picture, discussing issues of principle—perhaps a Second Reading-style debate or something like that, but not line-by-line analysis, to which it is not really suited, because it is too big and disparate.

[40] **Eluned Parrott:** Forgive me, I am new to the Assembly and not familiar with the way in which Part 3 worked in practice, but it is my understanding that the Welsh Affairs Committee had a role in looking at the legislative competence Order process. Is that correct?

[41] **Mr Davies:** That is correct.

[42] **Eluned Parrott:** That has now changed since we have moved to Part 4. I think that Mark will ask about the devolution guidance notes and things along those lines, but what is your view of the procedures as they now stand, and of your role in those procedures?

[43] **Mr Davies:** We do not have any further say—LCOs are, effectively, a thing of the past. The Assembly has those powers, so there is no reason for us to look at that. We might decide to look broadly at how the Assembly is doing in an area, but it would probably be an area in which there is an overlap with the national Government. I was not the Chair of the committee when we were doing that scrutiny, and, as I was a member of the Home Affairs Committee, which met at the same time, my attendance record was not the best ever. However, it seemed to me that we made the best of a situation that was quite difficult.

[44] If the Chair will allow me to make a slightly more general comment, I have had the chance over the last few years to look back at how the Assembly worked, and how select committees work in Parliament, and other things as well. You know that I come from a certain viewpoint about the Assembly, but I do put on record that there are certain things that the Assembly does very well indeed. We can argue about the pros and cons, but only a fool would say that there are no advantages. Things such as the way it works around families, with normal working hours, and the ease of access to Ministers, and, indeed, Assembly Members, are all huge pluses for the Assembly that Parliament cannot replicate. At the same time, the

select committee system has worked better in Parliament than the system did in the Assembly when I was a Member here. Things may well have changed now, but for the select committee system to work well there has to be a slight detachment from party politics, and I think that that is easier in a body of 650 people than in one of 60. Even then, there is a difficulty. There are a lot of people on select committees, and a lot of select committee Chairs—I am sure that you will forgive me for excusing myself from this—who fancy themselves as Ministers, and therefore are perhaps not quite as enthusiastic as they should be in scrutinising Ministers from their own political party. That is the sense that I have for all bodies. However, I imagine that it would be much more acute in a body with a smaller number of people. I say that with all due respect: I am not here to try to knock the Assembly, but my sense was that, in the first four years of the Assembly, the committee system here was not working quite as well as the system in Parliament does.

[45] **Eluned Parrott:** There seems to have been an emphasis from you that you do not feel that you have a role to play in scrutinising Assembly legislation that passes powers to Ministers. Conversely, there may be a perception that we do have not the formal structures necessary to scrutinise effectively when Westminster Bills are handing powers to our Executive. What are your thoughts on that? What kind of suggestions might you make on how Westminster scrutinises Westminster Bills involving the transfer of powers?

[46] **Mr Davies:** After the Second Reading of a Westminster Bill, which, as you know, is the big debate that we have around the general principles, a Bill committee will be convened. There is no guarantee, if part of that Bill relates to Wales, that a Welsh MP will be sitting on that committee. There is perhaps a role for a relevant committee in the Assembly—perhaps your committee—to write to the Chair of the Welsh Affairs Committee, or to the Secretary of State for Wales, drawing our attention to the fact that there is a relevant clause in that Bill that will have particular effect on Wales, and asking whether they will ask Welsh MPs to put their names forward to be selected to sit on that Bill committee. One would then expect them to concentrate on that particular area. However, trying to give the Welsh Affairs Committee a direct role in that scrutiny would be fraught with political problems, not just on our side, but also on yours. We did see instances previously, when the Welsh Affairs Committee was scrutinising LCOs, where Welsh Assembly Government Ministers were less than enthusiastic about coming along and imparting their opinions. Believe it or not, as Chair, I really do not want to be sending men in tights with swords to compel Welsh Ministers to appear before the committee. I shall take the insults and turn the other cheek.

[47] **David Melding:** I conclude from what you have said, David, that if we look at the legislative consent motions—which are perhaps obsessing us like LCOs used to, given that they send power back to Westminster in a specific area to do our legislative work—you would not think it appropriate for your committee to have any sort of scrutiny role; you feel that the Assembly would have made its decision to allow a consent motion to go ahead, and that is that, really.

[48] **Mr Davies:** Anything is possible in politics. We could construct a way of doing it, as we did with LCOs, when it was powers going in the other direction, but would it have the support of the entire Assembly? Politically, I see a big problem there. If it is a legislative consent motion, we are talking about Welsh Government Ministers giving powers to Parliament to make legislation in an area that is devolved. We would have to summon the Ministers responsible to come to give evidence. It is legally and technically possible to do it, but politically, it is very difficult if people do not want to co-operate. The only way that that could be done would be if the Assembly itself were absolutely—or almost absolutely—united in saying that it wanted this to happen. I sense that that is probably not likely to happen.

[49] **David Melding:** That is very clear. I think we might tease out some of the ways to identify potential problems or challenges with LCMs, if our systems are more robust, and

how we highlight that to whoever needs to know that information in Westminster. Perhaps Mr Evans will want to express opinion on this. When LCMs have passed, there is going to be a Welsh section to a Bill. In fairness, LCMs tend to be used for fairly technical areas. Obviously, if we were to move from that principle, we would potentially have many more issues. It would be fair to assume that Westminster more or less regards that once an LCM has been made by the Assembly, it is not really appropriate for them to scrutinise it very much. Does it all go through on the nod, then? Or, in your experience to date, is it still something that could potentially be subject to Westminster scrutiny?

[50] **Mr Evans:** We are talking about two things here—it is important to be clear about that. The legislative consent motion is not subject to any formal scrutiny at Westminster, as a rule. The parts of the Bill that will then emerge, to which the Assembly has consented, will be subject to scrutiny and could be amended at Westminster. Obviously, they could be amended in a direction that the Assembly was unsympathetic to. That is probably where a problem could arise in the future and that is where you need to put your finger on the issue.

[51] **David Melding:** Presumably, the culture at Westminster is that—

[52] **Mr Evans:** I do not think that there is a culture yet. The devolution of primary legislation is a pretty recent phenomenon, so I do not think that we could speculate on what is going to happen in the future. To my mind, it has not been an issue, surprisingly, in relation to Scotland. I think that we can take that as a signal that it is unlikely to be an issue in relation to Wales, but you do have a problem. You are asking how the Assembly might have more of an impact, if it wanted to, on the scrutiny of the bits of Bills to which it has consented. One advantage is that public Bill committees now take evidence. If it was a significant and major thing, rather than a small technical point, you could first present written evidence. You might even seek to give oral evidence before a public Bill committee nowadays. So, there are ways in through that. To emphasise what Mr Davies was saying, the whole LCO process, which we had between 2007 and 2011 with the Welsh Affairs Committee, was essentially a voluntary arrangement. As Mr Davies said, it relied on the committee wanting to do it and agreeing to do it and on a degree of co-operation between them and the other players in the process. Similarly, for scrutiny of primary legislation post Part 4, it is a matter of whether there is the political will to do it and whether it seems appropriate. Anything is possible. There is no technical impediment.

[53] **David Melding:** I just sense that there would be a presumption against interfering very much when two Governments have decided on the part of the Bill that deals with Wales and after we would have had a yes-or-no discussion here—a minute or so with little chance to scrutinise. What would you anticipate, David, as to the attitude of your colleagues when they are doing the line-by-line scrutiny?

3.00 p.m.

[54] **Mr Davies:** We all have busy lives. If we are in a situation where the Welsh Government has asked the British Government to legislate on its behalf and the British Government has said that it is happy to do it, are members of the Welsh Affairs Committee and other Welsh MPs likely to then turn around and say, ‘Hang on, we’re not very happy with this—we want to scrutinise it’, but, if they did, what would be the body that did that? A Bill committee can change legislation; it can take it back to the House of Commons, which may then change it back again, or the Lords might, but it basically will change legislation as it goes through. Are we suggesting that something on that line be convened? If so, we then have the problem of working out what the party balance will be. Would it be based on the number of Members of Parliament in the House of Commons or on party balance in the Assembly, where there will quite often be a different party in charge? I fully understand the problem that you are trying to overcome, but I can see all sorts of practical difficulties and, frankly, an

attitude of people not wanting to get involved in that.

[55] **David Melding:** That is important: to pose the question is almost to answer it. Mark Drakeford now takes us on to the issue of how Westminster Bills sometimes confer powers directly on the Executive here.

[56] **Mark Drakeford:** Good afternoon. I want to ask you a number of questions in relation to that narrow issue that the Chair has just mentioned. The committee has some concerns about the scrutiny arrangements that surround a process in which a Government-sponsored Bill at Westminster proposes to transfer powers not to the National Assembly itself, for it to decide how they might be disposed of, but directly to Welsh Ministers. Mr Davies, you have cogently explained why the Welsh Affairs Committee would not want to be doing a piece of scrutiny every time that that happened, but do you think that the committee has a potential role to play in helping to map out a more robust system at Westminster in which those proposals might be considered? We have heard about a number of different possibilities from witnesses, using various mechanisms that already exist in the House of Commons and the House of Lords, and you mentioned one yourself in trying to get the individual Bill committees to take an interest. If there was a range of potential mechanisms in which that proposal could be better scrutinised, is there a role for the Welsh Affairs Committee in trying to take an interest in mapping those out and proposing a better way forward?

[57] **Mr Davies:** ‘Yes’ is the short answer to that. The longer answer is that, first, we would have to find out exactly how many Bills we are talking about, and there is no easy answer to that. I have been trying to find out myself—and I may need to be going at this even harder—but I have not been able to get a definitive list. That is the first thing that we would need to do. Secondly, we need some sort of early warning system that it was going to happen. We would probably have to have the Wales Office liaising with all the other Government ministries to try to ascertain that. We would need to ensure that the Wales Office was informed if that were to happen. There is now meant to be a devolution champion in every ministry, so we look forward to seeing how that works out and how much championing they are actually doing.

[58] It would be feasible to do that. If the Wales Office wrote to the Welsh Affairs Committee and, out of courtesy, to your committee as well, then we could always discuss how one might scrutinise if concerns were to arise. However, as I said, it would not be a Bill-committee-type scrutiny; it would be the big-picture stuff. In the case of the Welsh Affairs Committee, if there were agreement, there would be some form of very short inquiry—probably no more than one or two sessions—involving any interested parties, possibly people from the Assembly, any interested NGOs, the ministry concerned in London and, dare I say it, the relevant Welsh Minister on whom the powers were to be conferred, if he or she were willing to come.

[59] **Suzy Davies:** Good afternoon. Some of the questions that I wanted to ask have already been answered. So, I just want to confirm that you cannot see the need for a specific role for the Welsh Affairs Committee in regularly scrutinising the parts of Bills that we have been talking about. However, is there a place for the House of Lords’ Delegated Powers and Regulatory Reform Committee or the Joint Committee on Statutory Instruments in liaising with this committee or, certainly, the Assembly, on the sorts of things that we have been talking about today? One thing that worries me, if we are talking about an opportunity for Westminster or the Assembly to scrutinise parts of Bills that affect the transfer of powers to Welsh Ministers, is at what stage the Assembly can intervene and say, ‘We’ve got concerns now; maybe we didn’t have concerns six months ago, but we do now’. Do you have any views on that? Should the opportunity for the Assembly be limited to a certain part of the passage of a Bill through Parliament or would there be an opportunity for the Assembly to

intervene at any point? Also, if so, we go back to the same question again: how would we do that?

[60] **Mr Evans:** It is quite complicated. My view, and it may be wrong, is that further executive devolution to Welsh Ministers within the areas of devolved competence could not take place without a legislative competence motion from you. If that is the case, that seems to remove quite an area of anxiety in terms of your control over the process. There is no doubt that things might go under the radar. Changes may occur in Bills that people do not realise will affect the executive powers of Welsh Ministers. Who should carry out that scrutiny? I suspect that it is probably you, I am afraid. Mr Davies pointed to the example of the European Scrutiny Committee. If you have the time and capacity—and it is mostly staff-driven—to go through Westminster legislation to pick up any detailed points that have been missed in this area, you could draw it to someone's attention. I think that you have identified the right sort of people in Westminster to work with, namely the Constitution Committee of the House of Lords, the Delegated Powers and Regulatory Reform Committee of the House of Lords and the Joint Committee on Statutory Instruments. They are all appropriate bodies to deal with this—particularly the delegated powers committee. You can encourage it to have as one of its tests, as it were, a search for inadvertent or excessive use of the devolution of executive powers to Welsh Ministers without a legislative consent motion. That could be a test that it might seek to apply. However, I think that you would have to do the donkey work here to alert those committees to things that are happening.

[61] **Suzy Davies:** It is then a matter of the conduit between the two, is it not?

[62] **Mr Evans:** The conduit is your Chair writing to the Chair of the delegated powers committee of the House of Lords, which is probably the most appropriate committee. The point that was made earlier is that the problem is that huge amounts of executive powers have been devolved to Welsh Ministers since 1964 and no-one really knows the extent of those powers, the boundaries of those powers and so on. It seems to me that there will be all sorts of occasions when it is likely that something will trespass on those powers in a way that no-one is fully aware of. There is a need for a Welsh statute book so that we know about these powers. I do not think that anyone has written down anywhere—as Mr Davies said, we have not found it anywhere—a list of all the executive powers of Welsh Ministers.

[63] **Mr Davies:** Even Alan Trench—I do not know whether anyone knows him—is unable to give a firm answer on that. We put it to him, and if anyone could answer a question like this it would be Mr Trench. I am thinking about the big picture here. I am probably doing myself out of a job, but it seems to me that, if the British Government is going to confer powers onto Welsh Government Ministers, there ought to be a mechanism for the relevant Minister in London or in Cardiff to inform the relevant committee in the Assembly, which I suspect will be this one, and for this committee then to decide upon some form of scrutiny. If it is a Bill going through Parliament affecting Wales, where a clause is going to have an effect on Wales, it would be perfectly reasonable to write to the Chair of the Welsh Affairs Committee, who could then ask for volunteers to sit on that specific Bill committee and perhaps try to get some sort of convention with all the party whips that, where there is a Welsh element to the legislation, at least someone, perhaps more than one person from Wales, ought to be represented. I think that Mr Evans is right. The bulk of the scrutiny would have to be done here, and I think that you understand the political dimensions of it.

[64] **Suzy Davies:** Following on from that, and referring to something that you mentioned earlier, if we try to express our concerns through our own Government, it might not come to an awful lot. We need a mechanism for coming to Parliament directly. Is it too cheeky to consider the possibility of our going to our opposite numbers in Parliament?

[65] **Mr Davies:** Not at all. To some extent, all of us are treading new ground here. I am a

very political person, as you know, but I also have a non-political role as a committee chair. I would find it perfectly reasonable to act in what I hope would be an impartial fashion, if I were asked by the Assembly to ensure that Wales was represented on a Bill committee, to find some way to make that happen. It is not up to me to make it happen, but at least to make the effort and to show that the effort has been made—to offer it out to MPs of all parties and to try to get some informal agreement that Welsh MPs would be represented. It seems to me to be a perfectly reasonable thing to ask. As I am sure any committee chair would be, I am also always happy to look at the big picture of how a piece of legislation might have an impact on Wales before or after its implementation. However, in doing so, we need to have more co-operation from the Assembly. I say truly that we are not in the business of picking fights with the Assembly—far from it. We all have our views about this and the constitutional journey that we are making, but we all have an interest in deciding that, no matter where the bus or coach that Ron Davies referred to stops, it stays on the road and is driven safely at all times.

[66] **David Melding:** I wish to make one point. I think that your evidence is very clear and reflects very much the emerging evidence from witnesses that we have to make our own procedures more robust so that LCMs receive appropriate scrutiny and that we do not just have perfunctory debates or no debates in the Assembly. Occasionally, an LCM will be quite material; they will not all be technical. That is what we are driving at. Taking as an example the latest LCM that has been tabled, just last week, relating to the Education Bill, the Assembly will debate that a week tomorrow. Under current arrangements, there is very little time for us, the committee responsible for education and children and young people to look at that LCM in detail. Some people have looked at this whole issue and said that, if the timing is difficult sometimes—and let us face it, Governments here talk to the UK Government and agree the legislation that they want in terms of the drafting—the legislative process can sometimes be considered as the final stage, so it is not built in to their considerations beforehand in a way that would give us time to scrutinise fully. Therefore, if we are in the position of not having had time to have a very good look at something, I sense that you feel that we cannot turn to Westminster and hope that Westminster can put it right—we have really got to turn to the Government here and say, ‘Look, I know the challenges, but you have got to build in more time when you are doing negotiations so that there is a realistic period when scrutiny can be done in the Assembly’.

[67] **Mr Davies:** What you are saying is absolutely right. I do not have it to hand, but I believe that, in one of the devolution notes—I think that it might be No. 9; such is the life I lead, I do occasionally read these things—

[68] **David Melding:** We are going to come on to these guidance notes—

[69] **Mr Davies:** Okay, but to pre-empt a question, one of those notes certainly addresses the need for the Wales Office to liaise with the relevant ministries in Government whenever anything that is likely to affect Wales or that will possibly involve a devolved area is brought forward in a piece of legislation. It cannot be beyond the wit of man, if there is already an agreement between Whitehall departments to discuss legislation affecting Wales, to ensure that this committee of the Assembly is, at the very least, copied in. It would seem a perfectly courteous and reasonable request to make.

[70] **David Melding:** We will come on to the issue of devolution guidance notes. Eluned, do you want to come in here?

3.15 p.m.

[71] **Eluned Parrott:** On that point about visibility and clarity, you have said that we need to be looking at the ways in which we can scrutinise things, but I worry that there is an

opportunity for the Assembly not to know about things that are happening. The research service obviously looks into these things in great detail, but I wonder what the best conduit is for information between Parliament and the Assembly, rather than between the Governments.

[72] **Mr Davies:** That second point is very good. We are all backbench MPs and Assembly Members, and I think that all of us, from every party, have probably felt in the past that we have not known as quickly as we ought to about things that are going on. I know that I have, and I do all the time. Things seem to be sprung on us—I am not saying that it is always deliberate, but that is the sense that I have. I think that there are ways in which we can ensure that we are better informed and on time of something that is likely to be of interest to us.

[73] In the case of British Government matters that are going to affect Wales, it obviously becomes a little bit more complicated than in a normal situation between an Executive and a legislature. However, there are already mechanisms in London for Whitehall departments to speak to each other and inform each other. It is not just an understanding; it is written into devolution guidance notes, so it must be happening.

[74] **Eluned Parrott:** Paper is a lovely thing. [*Laughter.*]

[75] **Mr Davies:** There is no reason why other people cannot be copied in on it. It could be a letter—I am making this up now—from the Department for Work and Pensions saying, ‘We are going to have a new tsar for pensioners, we could have one for the whole of England and Wales, but we suspect the National Assembly for Wales might want to appoint its own’. So, there is an issue there. Surely at that stage, somebody else could be copied in to it. That would be entirely reasonable.

[76] The second part of your question is about how the National Assembly as a body can deal with Parliament as a body, and not the Executive. Probably, the only two vehicles that you could liaise with are the Welsh Affairs Committee or the Welsh Grand Committee. I would suggest the Welsh Affairs Committee—I would say this, would I not? It convenes every week, you all know how to get hold of the chair and it has proper backup from within the civil service. I would have thought that it would be a slightly more appropriate vehicle. As far as I am concerned—I think that I speak for the committee—there would be a positive attitude towards co-operating with a committee such as yours. It sounds like motherhood and apple pie, but we want to work and co-operate with the National Assembly.

[77] **Mr Evans:** I will have to just jump in there, Chair, to correct Mr Davies’s reference to the civil service. [*Laughter.*]

[78] **Mr Davies:** Yes, of course, you are not actually a civil servant, are you?

[79] **David Melding:** You are much more important than civil servants—you work for Parliament.

[80] **Mr Davies:** I accept that smack on the wrist.

[81] **Simon Thomas:** Cyn troi at y canllawiau ar ddatganoli, hoffwn ddilyn y pwynt a wnaethoch yn awr. Yn gynharach yn y sesiwn dystiolaeth, yr oeddech i bob pwrpas yn awgrymu nad oedd rôl i’r Pwyllgor Materion Cymreig, ac eithrio edrych ar y darlun mawr. Hynny yw, nid oeddech yn gweld bod ganddo rôl fel pwyllgor Biliau sy’n arolygu’r materion

Simon Thomas: Before turning to the devolution guidance notes, I would like to follow up the point that you just made. Earlier in the evidence session, you suggested in effect that there was no role for the Welsh Affairs Committee, other than to look at the big picture. That is, you did not see that it had a role as a Bills committee that scrutinises those issues in detail. We have also suggested

hynny yn fanwl. Yr ydym ninnau wedi crybwyll bod y Cynulliad eisoes yn edrych ar y darlun mawr. Efallai nad yw hynny'n digwydd ond am chwarter awr, ond yr ydym yn dadlau ar sail egwyddorion a ddylai San Steffan ddeddfu yn y maes neu beidio. Felly, mae'r system eisoes yn delio â'r darlun mawr. Mae'r pethau eraill yr ydych wedi'u trafod yn bethau anffurfiol—cysylltiadau, cael copïau o lythyrau ac ati. Pethau digon buddiol yw'r rhain, ond maent yn anffurfiol. Nid ydynt yn rhan o'r system, na hyd yn oed yn rhan o'r canllawiau ar ddatganoli y byddwn yn eu trafod mewn eiliad.

[82] I bob pwrpas, mae'n awgrymu i mi, Mr Davies, nad ydych yn gweld rôl uniongyrchol i'r pwyllgor dethol yn y maes hwn. Nid yw hynny'n beth drwg o gwbl, oherwydd yr ydym yn ymchwilio i weld gan bwy y mae rôl. A wyf yn gywir i ddod i'r casgliad hwnnw?

[83] **Mr Davies:** Yr ydych yn hollol iawn. Mae'r pwyllgor yn hapus i'ch helpu chi, ond pe baech am roi rôl fwy i'r pwyllgor, fel y byddem yn gwneud y darlun manwl, pwy fyddai ar y pwyllgor? Ar hyn o bryd, mae rhai o aelodau'r pwyllgor nad ydynt yn dod o Gymru, am ei bod yn bwysig sicrhau ein bod yn cael cydbwysedd rhwng y pleidiau drwy'r Senedd, ond nid yn y Cynulliad. Gan droi'r cwestiwn yn ôl atoch chi, a fyddech chi'n hapus pe byddai aelodau o'r Pwyllgor Materion Cymreig yn penderfynu ar rywbeth a newid y gyfraith, gan nad yw rhai ohonynt yn dod o Gymru a'r mwyafrif yn dod o blaid nad yw mewn grym, gwaetha'r modd i mi, yn y Cynulliad? Nid wyf yn meddwl y byddech yn derbyn hynny, ac nid wyf am achosi problemau cyfansoddiadol. Felly, dyna'r peth cyntaf. Yr ydych yn gywir, ac yr wyf yn cytuno â chi ynghylch hynny: nid wyf yn gweld rôl fawr i'r pwyllgor.

[84] Fodd bynnag, nid wyf yn cytuno'n llwyr â'ch pwynt negyddol ynghylch y ffurfiau answyddogol o ddelio â'r broblem hon. Y peth hyfrytaf am gyfansoddiad Prydain yw'r ffaith bod confensiynau yn dod allan o'r cytundebau answyddogol. Felly, pe baem yn dechrau dweud wrth adrannau Whitehall bod yn rhaid iddynt gysylltu â'r pwyllgor hwn neu bwyllgorau eraill yn y

that the Assembly is already looking at the big picture. This may only happen for 15 minutes, but we have a debate on the principles and on whether Westminster should legislate in that area. Therefore, the system already deals with the big picture. The other things that you have discussed are informal—links, being copied in to letters and so on. They are beneficial, but they are informal. They are not part of the system or, even, part of the devolution guidance notes, which we will discuss in a moment.

To all intents and purposes, it suggests to me, Mr Davies, that you do not see a direct role for the select committee in this area. That is not a bad thing at all, because we are conducting an inquiry to find out who has a role. Am I right in coming to that conclusion?

Mr Davies: You are entirely correct. The committee is happy to help you, but if you wanted to give a greater role to the committee, so that we were to look at things in greater detail, who would sit on the committee? At present, there are some members of the committee who do not come from Wales, because it is important to ensure that we have party balance across Parliament, but not the Assembly. Turning the question back on you, would you be happy if members of the Welsh Affairs Committee decided something that changed the law, given that some of them are not from Wales and that the majority come from a party that is not in power, unfortunately for me, in the Assembly? I do not think that you would accept that, and I do not want to cause constitutional problems. So, that is the first thing. You are correct, and I agree with you about that: I do not see a strong role for the committee.

However, I am not completely in agreement with you on your negative point about unofficial methods of dealing with this problem. The nicest thing about the British constitution is that conventions emerge from unofficial agreements. So, if we were to start telling departments across Whitehall to contact this committee or other Assembly committees, while it would be an unofficial

Cynulliad, er mai trefniant anffurfiol fyddai hynny am y tro, ymhen 10 mlynedd, byddai'n rhan bwysig o'r cyfansoddiad. Felly, efallai galledd ddechrau yn awr gyda'r confensiwn Melding-Davies. [*Chwerthin.*]

[85] **Simon Thomas:** Beth am y 'confensiwn David-David'?

[86] **David Melding:** Flattery will get you everywhere. [*Laughter.*]

[87] **Simon Thomas:** Gan droi at yr hyn sydd ychydig yn fwy o gonfensiwn ar hyn o bryd, sef y nodiadau cyfarwyddyd datganoli, a greddwch fod angen eu hadolygu, gan fod y refferendwm wedi'i basio? Beth a ragwelwch yn digwydd yn ystod y broses, os oes proses o gwbl?

[88] **Mr Davies:** Gan osod y refferendwm o'r neilltu am eiliad, credaf ei bod yn bwysig cadw llygad ar y nodiadau cyfarwyddyd datganoli. Er hynny, yn sgîl y refferendwm, mae amser wedi dod i ailedrych arnynt a'u diweddarau, ond nid wyf am fynd i fanylder o ran hynny. Efallai y galledd droi at Paul Evans os ydych am ofyn cwestiynau ar bethau penodol. Yn gyffredinol, mae llawer o waith wedi cael ei wneud ar nodiadau, ond fe'u hysgrifennwyd ar ddechrau'r broses, ac felly, gan fod newidiadau mawr wedi bod, mae'n rhesymol ailedrych arnynt.

[89] **Simon Thomas:** Nid oes gennyf gwestiynau technegol, ond mae dau gwestiwn yn codi o hyn. Yn gyntaf, sylwais nad yw'r nodyn sy'n ymwneud â'r Ysgrifennydd Gwladol wedi ei adolygu er 2005. Felly, nid y refferendwm yn unig sydd wedi pasio ers hynny; yr ydym wedi cael pedair blynedd o Orchmynion cymhwysedd deddfwriaethol hefyd. Beth yw rôl eich pwyllgor yn awr, a ydych yn bwriadu edrych ar hyn? Yn ail, os byddwch yn adolygu'r canllawiau hyn, a fyddwch yn cadw rhai o'r trafodaethau hyn mewn cof? Hynny yw, a oes modd, drwy'r canllawiau, osod rhai o'r pethau hyn ar waith? Er eich bod wedi cyfeirio—yn briodol—at y ffaith bod y canllawiau eisoes yn cyfeirio at yr angen i drafod yn fewnol, mae'r rhai ohonom gafodd rywffaint o brofiad o'r system LCO dros y pedair blynedd diwethaf wedi gweld yn glir nad oedd trafodaeth yn digwydd rhwng yr adrannau yn

arrangement for the time being, within 10 years, it would be an important part of the constitution. So, perhaps we could begin now with the Melding-Davies convention. [*Laughter.*]

Simon Thomas: What about the 'David-David convention'?

Simon Thomas: Turning to something that is slightly more of a convention at present, namely the devolution guidance notes, do you believe that they need to be reviewed, now that the referendum has been passed? What do you anticipate happening during that process, if there is such a process?

Mr Davies: Putting the referendum aside for a moment, I think that it is important to keep an eye on the devolution guidance notes. However, following the referendum, the time has now come to revisit and to update them, but I do not want to go into detail on that. Perhaps you could turn to Paul Evans if you want to ask questions on specific points. Generally speaking, a great deal of work has gone into those notes, but they were written at the beginning of the process and, given that there have been major changes, it is therefore reasonable that we take another look at them.

Simon Thomas: I do not have any technical questions, but two questions do arise from this. First, I noticed that one of the notes, namely the one relating to the Secretary of State, has not been reviewed since 2005. So, it is not just the referendum that has passed; we have had four years of legislative competence Orders, too. What is the role of your committee now, and do you intend to look at this? Secondly, if you review these guidance notes, will you bear some of these discussions in mind? That is, is it possible, through the guidance notes, to put these things in place? Although you have appropriately referred to the fact that the guidance notes already refer to a need to have internal discussions, those of us who have had some experience of the LCO system over the past four years saw clearly that negotiations did not happen between departments in Westminster in reality.

San Steffan mewn gwirionedd.

[90] **Mr Davies:** Yr wyf yn hapus i feddwl am unrhyw awgrym am waith y pwyllgor. Ar hyn o bryd, ni allaf ddweud a fyddai'r pwyllgor am wneud hynny neu beidio. Mae'n llawer o waith i fynd drwy rhywbeth fel hynny. Pe baem yn ailedrych ar y nodiadau, byddai'n well cael cytundeb rhwng y Cynulliad, Swyddfa Cymru ac Aelodau Seneddol Cymru sydd ar y pwyllgor. Felly, gallem ddechrau ar fisoedd o waith yn gwneud argymhellion am y nodiadau heb sicrwydd, ar ddiwedd y broses, y byddem—

Mr Davies: I am happy to consider any suggestion about the committee's work. At present, I cannot say whether the committee would want to do that or not. It is a lot of work to go through something like that. If we were to look again at the notes, it would be better to have an agreement between the Assembly, the Wales Office and Welsh Members of Parliament on the committee. So, we could begin months of work to make recommendations on the notes, with no guarantee, at the end of the process, that we—

[91] **Simon Thomas:** Swyddfa Cymru sydd i fod yn gyfrifol.

Simon Thomas: The Wales Office is meant to be responsible.

[92] **Mr Davies:** Ie. Byddwn yn awgrymu y byddai'n well edrych ar unrhyw beth yn y nodiadau sy'n achosi problemau—pethau penodol yn hytrach na'r cyfan. Byddai hynny'n fwy ymarferol i'r pwyllgor ei wneud. Mae'n rhaid cofio, er bod hyn yn ddiddorol i mi, chi, Aelodau Seneddol ac Aelodau'r Cynulliad, nid oes gan y mwyafrif mawr o bobl ddiddordeb mewn materion cyfansoddiadol. Sylweddolodd y pwyllgor hynny wrth ddechrau ar ymchwiliadau i faterion megis band eang yng Nghymru.

Mr Davies: Yes. I would suggest that it would be better to look at anything in the notes that cause problems—specific things rather than the entire package. That would be more practical for the committee to do. We have to remember that, even though this is interesting for me, you, Members of Parliament and Assembly Members, the great majority of people are not interested in constitutional affairs. The committee realised that when we began inquiries into issues such as broadband in Wales.

[93] **David Melding:** Some of the work to scrutinise any reform to the devolution guidance notes would have to be done by your committee, would it not? With regard to the role of the Secretary of State, we could not do that.

[94] **Mr Davies:** One of the committee's recent reports into Wales and Westminster looked at this and had some things to say. Of course, we would be involved, but I suggest that it would prove a bit fruitless for us to embark on months of work, with witnesses coming in from all over the country and poor old Alan Trench writing vast amounts of—

[95] **David Melding:** He is coming here as well. We will put it to him. [*Laughter.*]

[96] **Mr Davies:** I am sure that he would be quite happy to do it, but others might not. At the end, if there was not some formal agreement with the Wales Office and the Assembly, the work would have been in vain. So, there is an immediate role to look at any technical issues that have arisen in the notes, but looking at the whole thing—I baulk at suggesting that I wish to rush back to London and embark on that particular job tomorrow.

[97] **David Melding:** I understand that point, but part of our findings may relate to whether these notes are still fit for purpose. If they are there and need to be used, presumably, they need to be as up-to-date as possible.

[98] **Mr Davies:** However, at the same time, when you have gone through them, if you find specific areas that you think are not fit for purpose—and I am sure that you will—we

would be very amenable to looking at those particular areas.

[99] **David Melding:** Do Members have any other questions? I have a couple of general ones that perhaps Mr Evans would like to comment on. We have approached the devolution settlement as if it were a clear one, whereas there is a lot of overlap. One way of looking at what we have been discussing is that we are dealing with where there is a confluence of the two systems, and it is probably no bad thing that we get that. However, the scrutiny element does not seem to have been hardwired into robust systems yet. Would officials in Parliament agree with that?

[100] **Mr Evans:** I would be cautious about agreeing with it wholeheartedly, Chair.

[101] **David Melding:** You can disagree with it.

[102] **Mr Evans:** We are undoubtedly dealing with a new phenomenon, namely the boundaries between Westminster and the devolved bodies. Even though we have had 10 years of it, I would not like to say that we have come to grips with the issues that it raises, and they will be more complicated in the context of the West Lothian commission, which will also look at this. So, there is room for improvement in how we deal with this fuzzy boundary, I am sure, and at an official level we have to provide the advice to committees and others in the House about where the UK and Wales have friction or rub together in the devolution settlement, and they can choose what they do with it.

3.30 p.m.

[103] Picking up on the points that were made earlier, you have heard from Mr Davies about the LCO process in the last Parliament, and, however difficult it was in some ways politically, it made a huge change to the extent that there was interchange between the Assembly and the Welsh Affairs Committee and Westminster more generally. That has laid the foundations of a system for people talking to each other. However, it is quite difficult to find official channels. Inter-governmental communications are very settled and clear; they are directed by a Secretary of State or a First Minister or whoever, and that is all straightforward. Inter-parliamentary talk is much less clearly defined and much more difficult; it has to be done through individuals and committees, but there is still room for us on the official side to facilitate that kind of dialogue and ensure that it is possible and that it is happening. Does that answer your question?

[104] **David Melding:** Yes, that is very helpful. I have a final question, and it is horribly broad. One witness said that one problem with legislative consent motions is that they basically say 'yes' early and quickly, and then that is it. The witness suggested that LCMs ought to have conditions attached, so that, when the legislation comes back, if the conditions have not been met or have been amended out, which is sometimes the problem, the Assembly could respond. You could see the Scotland Bill as raising some of these issues. What Westminster has done has antagonised the Scottish Government to some extent, I suppose, and there has been a bit of a stand-off. Does that teach us any lessons on whether this would be welcome, or does that draw us into LCMs covering much more material aspects of legislation rather than saying, 'Let us have a convention that LCMs are fairly technical in nature'?

[105] **Mr Davies:** One answer would possibly be to have in the Assembly the equivalent of a Third Reading, when you could either accept or throw out whatever has been put before you as a body.

[106] **Mr Evans:** That is a very radical suggestion.

[107] **David Melding:** That would be an LCM with super conditions.

[108] **Simon Thomas:** It is wonderfully radical if you think of Westminster—[*Inaudible.*]

[109] **Mr Evans:** We could hold off the Third Reading. There is also a provision called reasoned amendments. An LCM, as you say, essentially happens at Second Reading, or before Second Reading, hopefully. You could conceive of a similar process before Third Reading, but you have to recognise that Westminster retains the right, and has the undoubted right, to legislate in any way it wishes, and it can choose to ignore that.

[110] **David Melding:** Processes can be devised, can they not? You could specify that part of the Bill would only be enacted by resolution in the National Assembly or something such as that.

[111] **Mr Evans:** We would have to be convinced that it would add value to the process—that there were examples of Westminster flagrantly disregarding something. It would certainly be possible.

[112] **David Melding:** We have set a hare running there, perhaps taking the prerogative of a Chair too far. David, did you want to add anything?

[113] **Mr Davies:** Not really. It just amused me slightly that I am being asked to comment on how, along with your valued committee, I can prevent more powers being given to Welsh Ministers. I look forward to this rapport continuing.

[114] **David Melding:** We have concluded our questions, and I thank David Davies and Paul Evans for giving evidence today. The fact that we have taken a full hour of evidence reflects the interest that your experience has sparked here. We have had a very valuable session indeed, and I am particularly grateful for you coming down from Westminster to participate in our proceedings. David has returned to the haunts of his salad days, perhaps, when he was an Assembly Member. We are grateful for the attitude that you have shown today in looking for solutions that are in the public interest. I wish you a safe journey back.

3.34 p.m.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[115] **David Melding:** The next meeting is on 31 October. There is one paper to note: the report from our last meeting.

Cynnig Gweithdrefnol Procedural Motion

[116] **David Melding:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi).

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

*Derbyniwyd y cynnig.
Motion agreed.*

Daeth rhan gyhoeddus y cyfarfod i ben am 3.35 p.m.
The public part of the meeting ended at 3.35 p.m.