



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

22/02/2016

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn
ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in
the committee. In addition, a transcription of the simultaneous interpretation
is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies Bywgraffiad Biography	Llafur Labour
Suzy Davies Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Dafydd Elis-Thomas Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
William Powell Bywgraffiad Biography	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

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

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser

Naomi Stocks	Ail Glerc Second Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 13:01.
The meeting began at 13:01.*

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

[1] **David Melding:** Good afternoon, everyone. Welcome to this meeting of the Constitutional and Legislative Affairs Committee. Let me just start with the usual housekeeping announcements. We do not expect a routine fire drill; so, if we hear the alarm, please follow the instructions of the ushers. Switch all electronic devices to at least 'silent', please. These proceedings will be conducted in Welsh and English and, when Welsh is spoken, there is a translation on channel 1. Channel 0 will amplify our proceedings.

13:02

Tystiolaeth gan y Prif Weinidog Mewn Perthynas â Gwaith Etifeddiaeth y Pwyllgor

Evidence from the First Minister in Relation to the Committee's Legacy Work

[2] **David Melding:** We turn now, then, to our first substantive item, which is evidence from the First Minister in relation to the committee's legacy work and particularly looking at some of the recommendations we've made over the years to the Welsh Government. First Minister, you're very welcome this afternoon. Do you want to introduce your officials?

[3] **The First Minister (Carwyn Jones):** I'll let them introduce themselves.

[4] **Mr Rawlings:** Hugh Rawlings, director constitutional affairs and

intergovernmental relations.

[5] **The First Minister:** Dylan.

[6] **Mr Hughes:** Dylan Hughes, y **Mr Hughes:** Dylan Hughes, first
prif gwmsler deddfwriaethol. legislative counsel.

[7] **David Melding:** Well, you're most welcome. I think you're both quite experienced witnesses as well and know how we run the session. Whilst William Powell just settles now, I'll just put the first question that he was going to ask you.

[8] **William Powell:** Apologies, Chair.

[9] **David Melding:** I'll let him follow it up then. We'd just like to start with the legislative consent motion process and the way it has operated in this Assembly and any reflections you have on that, First Minister.

[10] **The First Minister:** Well, in theory, the LCM process works but, of course, the difficulty has been the disputes over what is and what isn't within competence. So, it's very difficult to look at LCMs without considering that background. We've seen it with the Trade Union Bill where we have taken the view, as a Government, that it's within the competence—or parts of it are within the competence of the Welsh Government. That's not a view that's accepted by the UK Government. The difficulty is, of course, that, where there is a dispute over whether something is within competence or not and so requires an LCM, there is no arbitration process to decide what the true position is.

[11] **David Melding:** William.

[12] **William Powell:** Thank you, Chair. Following on from the Chair's question, could you comment on the effectiveness of the devolution guidance note No. 9 in guiding the LCM process between UK Government and the Welsh Government?

[13] **The First Minister:** Well, again, in theory, it's something that is workable, but again we come back to this point over the difficulty of understanding whether something is within competence or not, and that takes us, ultimately, to the current legislation—the current Government of Wales Act and indeed the forthcoming Wales Bill. In theory, it works well, but,

of course, there's a different interpretation placed on what is within and without competence by ourselves and UK Government departments.

[14] **William Powell:** Absolutely. In the context of the draft Wales Bill, could you comment on the extent to which this might have had an impact on the current impasse in which we find ourselves between Welsh Government and the UK Government, thinking, particularly, around the Trade Union Bill?

[15] **The First Minister:** The current Wales Bill, as it's drafted, would have removed the competence of the Assembly to legislate in any area of the Trade Union Bill.

[16] **William Powell:** Yes, that was my understanding. In our report, it was our recommendation that the Wales Office and Welsh Government consider how best to embed knowledge of the devolution settlement here in Wales across Whitehall departments. To what extent would you suggest that that has been successful?

[17] **The First Minister:** It varies. There are some Whitehall departments that are better than others in their understanding of devolution and, in particular, their understanding of devolution in Wales. Those departments that tend to have a strong day-to-day relationship tend to have a good understanding of the nature of devolution in Wales. Those who are less familiar and don't work as closely with us tend not to understand it in the same way. So, it does vary.

[18] **William Powell:** Are there any concrete steps that you would suggest would help to build that greater understanding—

[19] **The First Minister:** It's a matter, to my mind, for the Secretary of State. It's a matter for him to ensure that all departments in Whitehall understand the nature of the devolution settlement in Wales and the effect that it has on an individual Whitehall department.

[20] **William Powell:** Thank you.

[21] **David Melding:** I saw Alun first, and then Dafydd.

[22] **Alun Davies:** Thank you very much. Your answers have indicated that the LCM process works better in theory than in practice. Is that fair?

[23] **The First Minister:** I think that's fair, yes. We don't have—. In effect, the LCMs are a reflection of the Sewel process in Scotland. There are two weaknesses to the process: firstly, it is not possible to have a definitive view of what is and what isn't within competence, and so there'll be disagreements over whether an LCM is needed or not. Secondly, of course, LCMs are not enforceable in that sense. They're not required. They are convention rather than a statutory requirement, and that, of course, means that it can be difficult to get to a position where the Assembly's view has to be respected at all times—if an LCM, for example, is not agreed to by the Assembly.

[24] **Alun Davies:** If you take a Bill that comes forward that the Welsh Government and the National Assembly believe is within the competence of the National Assembly and the UK Government believes isn't and an LCM is passed, that is then, I imagine, sent to the UK Government for its consideration—in those circumstances, it appears to me that there are only two ways, short of the Supreme Court, of that impasse being resolved. One is that the Welsh Government and the National Assembly changes its mind; the other is the UK Government changes its mind. Can you give us any examples of where either the Welsh Government or the UK Government has changed its mind?

[25] **The First Minister:** No, I can't, because we've established our positions early on. Of course, the UK Government's mind has been changed for it, as the Member will know, through the Agricultural Sector (Wales) Bill judgment, but I'm not aware of any occasions where there's been a change of position either by us or the UK Government.

[26] **Alun Davies:** So, in that way, the process, which is designed to provide a mechanism by which legislation can be passed across the territories of the United Kingdom, doesn't work at all where there is a dispute. And, where there is a dispute, the only mechanism available to resolve the dispute is essentially the Supreme Court or one or other legislature legislating in that field.

[27] **The First Minister:** Well, the Supreme Court wouldn't get involved at that stage—

[28] **Alun Davies:** Yes, but the process—

[29] **The First Minister:** First of all, most LCMs are uncontroversial. But, of

course, Members will be aware of those that have proved to be controversial. If the UK Government chooses to ignore an LCM, then the only route that, to my mind, is available is that, if the UK Government then proceeds to pass legislation, it would be for the Assembly to look to repeal or amend that legislation within what it felt was its competence, but there's no referral to the Supreme Court at that stage.

[30] **Alun Davies:** Yes, but—

[31] **The First Minister:** There would be, of course—

[32] **Alun Davies:** —the Supreme Court is the end of the process, isn't it?

[33] **The First Minister:** It's the end of the process. For example, if the Assembly then—. I've said this publicly, so I'll say it again. If the Government then proceeds to repeal or amend sections of the trade union Act, if it becomes an Act, it may well be that the UK Government would then refer the matter to the Supreme Court, and that's when the Supreme Court would get involved.

[34] **Alun Davies:** Yes, I understand that. So, in terms of the process, it's a quite imperfect process and it relies on both Governments agreeing, if it's to work in the uncontroversial way in which you've suggested. And I think most of us want the constitution to work in an uncontroversial way. When the constitution becomes a point of conflict, then that is a failure somewhere—we won't describe exactly where this afternoon. But, in your view, is there a means or mechanism that can help resolve these conflicts without referral to the Supreme Court?

[35] **The First Minister:** A clear definition of competence; that's what it comes down to. Of course, that in itself is a matter of debate, as to where the boundary should be. The LCM process works where there is agreement between both Governments as to whether something is within the competence of the Assembly or not. Where there is no agreement, then clearly the LCM system doesn't work. But it all comes down to having a constitutional settlement that's durable, that's clear, and, of course, to my mind, preserves the competences that we already have as a result of the judgment in the agricultural sector wages Bill.

[36] **Alun Davies:** Okay. Thank you.

[37] **David Melding:** But you are keen to see some form of arbitration before this whole business of having to repeal a piece of law, pass your own law and then subject it to the Supreme Court. You would like a mechanism where there could be some review of—.

[38] **The First Minister:** ‘Arbitration’ perhaps is the wrong word; ‘adjudication’ is probably a better word. The difficulty is that the issue of competence is only resolved at the end of the process.

[39] **David Melding:** Yes, exactly.

[40] **The First Minister:** Sometimes, that’s inevitable, because matters arise during the course of drafting of legislation that then give rise to questions of competence, but there’s no way of actually getting a definitive judgment beforehand on a broad issue as to whether something will be in competence or not. So, take the agricultural sector wages Bill: it might have been that, with a different approach, a different system, a view on whether that was in competence or not on a very specific issue could have been sorted at the beginning of the process, rather than at the end, when all the drafting has been done and when the legislation has gone through the Assembly. But that system doesn’t exist.

[41] **David Melding:** Dafydd.

[42] **Yr Arglwydd Elis–Thomas:** Diolch yn fawr, Gadeirydd. Fe atebodd y Gweinidog Gwasanaethau Cyhoeddus, Leighton Andrews, Aelod Cynulliad, gwestiwn gen i yn ystod ein dadl ni ar y Bil Undebau Llafur ar y pwynt yma ynglŷn ag a oedd Gweinidogion y Deyrnas Unedig wedi dilyn y canllawiau penodol ar ddatganoli oedd yn addas am hynny. Roedd yn amlwg oddi wrth yr ateb i mi mai barn Gweinidogion Llywodraeth Cymru oedd nad oedden nhw ddim. Wel, yn y sefyllfa yma, a oes yna ryw broses i ddiwygio’r canllawiau? A ydy’r canllawiau wedi cael eu diwygio, wedi cael eu

Lord Elis–Thomas: Thank you very much, Chair. The Minister for Public Services, Leighton Andrews, Assembly Member, answered a question from me during our debate on the Trade Union Bill on this point as to whether UK Government Ministers had followed the specific guidelines on devolution here. It was clear from his response that the opinion of Welsh Government Ministers was that they hadn’t. Now, in this situation, is there some process to amend the guidance? Has the guidance been reviewed at all? In addition to that, in a situation of disagreement as to legislative

hadnewyddu o gwbl? Ar ben hynny, mewn sefyllfa o anghytundeb ynglŷn â chymhwysedd deddfwriaethol, beth ydy'r posibilrwydd symud tuag at gyd-ddeddfu, lle mae'r cymhwysedd yn gallu cael ei rannu?

[43] **Y Prif Weinidog:** Mae'n anodd, wrth gwrs, achos bod safbwyntiau Llywodraeth Cymru a Llywodraeth y Deyrnas Unedig yn wahanol ar gymaint o bethau. Felly, byddai hynny'n anodd ei wneud. Y broblem yw y byddai'n bosib i Lywodraeth y Deyrnas Unedig ddweud eu bod nhw wedi dilyn y canllawiau achos y ffaith eu bod nhw o'r farn nad yw rhywbeth tu fewn grym y Cynulliad. Dyna beth yw'r broblem. Mae popeth yn dod yn ôl i'r ddadl ynglŷn â phwy sydd â'r pŵer i ddeddfu. Wrth gwrs, ein barn ni, wrth ystyried beth ddigwyddodd yn achos y sector amaethyddol, yw: os ydy rhywbeth yn dod o dan—efallai bod rhan ohono fe'n dod o dan—bwerau'r Cynulliad, felly mae hawl gan y Cynulliad i ddeddfu. Ein dadl ni, gyda'r Mesur ynglŷn â'r undebau llafur, yw: ynglŷn â gwasanaethau cyhoeddus datganoledig, mae hwn yn rhywbeth sy'n dod o dan rym y Cynulliad, felly mae hawl gyda'r Cynulliad i ddeddfu. Ond nid dyna yw barn Llywodraeth y Deyrnas Unedig. Maen nhw o'r farn—er beth ddigwyddodd yn y llys ynglŷn â'r sector amaethyddol—fod hwn yn rhywbeth sydd dim ond i wneud â chyfraith cyflogaeth, ac felly nid yw'n ddim byd i wneud â'r Cynulliad. So, mae anghytundeb sylfaenol fanna

competence, what is the possibility of moving towards legislating jointly, where competence could be shared?

The First Minister: It's difficult, of course, because the positions of the Welsh Government and the UK Government are different on so many things. So, that would be difficult. The problem is that it would be possible for the UK Government to say that they had followed the guidance because they have a different interpretation and believe that something perhaps isn't within the powers of the Assembly. That is the problem. Everything comes back to that debate as to where competence lies and who has the power to legislate. Of course, our view, in considering what happened in the agricultural sector wages Bill case, is that if something is within, or partially within, the Assembly's remit, then the Assembly has the power to legislate there. Our argument, in terms of the Trade Union Bill, is: devolved public services are something that's within the Assembly's powers and so it has the right to legislate. But that's not the view of the UK Government. They take the view—despite what happened in the Supreme Court on the agricultural sector wages Bill—that this only relates to employment law and therefore is not within the Assembly's competence. So, there is

ynghŷn â phwy sydd â'r pŵer fan hyn. Gyda hynny, mae'n anodd wedyn i weld ym mha ffordd y gallai canllawiau newid pethau.

a fundamental disagreement there as to who has the power in this case. In that situation, it's difficult to see how the guidance could change things.

[44] **Yr Arglwydd Elis–Thomas:** Ond mae'r canllawiau ar ddatganoli, fel rwyf i'n ei ddeall, wedi cael eu cytuno rhwng y ddwy Lywodraeth yn y pen cyntaf. Onid yw'n amser, felly—rwy'n edrych ar Hugh Rawlings, fel yr arbenigwr rhynglywodraethol ymhlith eich swyddogion chi yma heddiw—inni gael canllawiau newydd, i ddiwygio'r canllawiau, i gael barn allanol ar y canllawiau?

Lord Elis–Thomas: But the devolution guidance, as I understand it, has been agreed between the two Governments. Isn't it time, therefore—and I look to Hugh Rawlings here, as the intergovernmental expert among your officials here today—for us to have new guidance, to reform the guidance, to have an external view on that guidance?

[45] **Y Prif Weinidog:** A gaf i ofyn i Hugh i sôn beth y gallwn wneud amdano fe?

The First Minister: May I ask Hugh to talk about what can be done?

[46] **Mr Rawlings:** I think the problem is that the guidance is predicated on a clear devolution settlement. The guidance cannot clarify that which is not clear as a matter of law. We need to get the settlement right, and then the guidance will be rewritten accordingly.

13:15

[47] **Lord Elis–Thomas:** Would it be helpful to refer these guidelines to an independent judicial authority? Could that be done?

[48] **Mr Rawlings:** Well, we couldn't do it, because of course the first thing to say about the devolution guidance notes is that they are guidance for UK civil servants. Formally speaking, they are promulgated by the UK Government to its own.

[49] **Lord Elis–Thomas:** But you were consulted on them.

[50] **Mr Rawlings:** We were more than consulted with; we line-by-line battled on exactly what the guidance note would say. But then, that having been agreed, it is then promulgated to UK Government civil servants, and it

would be for the UK Government to decide if it wanted some independent scrutiny as to the guidance note, or its accuracy in terms of the settlement. But the fundamental problem is the settlement. If the settlement is unclear, the guidance note will not resolve all the issues.

[51] **The First Minister:** I think it's right to say that it's a bit like having a highway code that is well understood and is clear in the sense of understanding how to behave, but there's a fundamental dispute as to who is allowed to drive the car.

[52] **Lord Elis-Thomas:** Or as somebody going to drive on the wrong side of the road, maybe. Thank you.

[53] **David Melding:** I'm keen to move on, but, Alun, did you have a very small point?

[54] **Alun Davies:** I was thinking, in answer to your question, that there will always be a level, potentially, of some disagreement in any system where you've got shared competence. It's an almost inevitable part of it. But it appears to me that we seem to find ourselves spending a lot of time on this, partly because of the indistinct settlement you've described. But also, in a number of different areas it's most brutal, I assume, in the Treasury, where the Treasury takes a decision and, come what may, nothing is going to change that. There seems to me also to be an in-built imbalance in the power relationship between the Welsh Government and the United Kingdom Government. Quite often, the United Kingdom Government is literally judge and jury in a lot of these different matters.

[55] **David Melding:** This is turning into a treatise, Alun. Come on.

[56] **Alun Davies:** It is indeed. But is it therefore the case that we need some sort of constitutional court structure to resolve these matters, or would you see the Supreme Court fulfilling that role in lieu of any constitutional court, and the Supreme Court acting as an appellant court, if you like?

[57] **The First Minister:** No, I think the Supreme Court operates well as a constitutional court, but the Supreme Court can only interpret what it has in front of it. The current settlement is—it's been well rehearsed—unclear. To my mind, I have no difficulty with the Supreme Court actually being the arbiter. What I do think needs to be thought of in the future is whether there is scope for having a system where competence can be determined at an

early stage rather than competence only being determined once a Bill has been passed.

[58] **David Melding:** That's certainly something we'll reflect on. Suzy Davies.

[59] **Suzy Davies:** Thank you. Something a bit more straightforward now, First Minister: our inquiry into the Church in Wales. You were quite clear in Plenary that religion is not devolved. Our recommendation is that, in the meantime, perhaps some sort of convention could be arranged between the UK and Welsh Governments about how we deal with the Church of England. Have any conversations taken place between you and, I don't know—would it be the Secretary of State for Wales or another Government Minister in the UK?

[60] **The First Minister:** Well, religion is a silent subject, of course.

[61] **Suzy Davies:** Oh, you've changed your mind.

[62] **The First Minister:** It's one of these issues that no doubt would end up troubling the Supreme Court if we ever—

[63] **Suzy Davies:** You say that religion is not devolved.

[64] **The First Minister:** It's not clear whether it's devolved or not, religion. But anyway.

[65] **Suzy Davies:** In the meantime.

[66] **The First Minister:** We know the Church in Wales isn't. That's true. There are still some vestiges of establishment that exist, particularly in areas such as—and we came across this a few years ago—marriages, if I remember.

[67] **Suzy Davies:** Yes, and burials.

[68] **The First Minister:** There was correspondence back and forth on that particular issue. There hasn't been recent correspondence on this. It is perhaps for the Church in Wales itself to raise this issue with the UK Government in order to remove the last vestiges of what we all thought had disappeared in 1921.

[69] **Suzy Davies:** And I presume that you're hoping that some change will

occur in the Wales Bill to make it clear who should be responsible for any potential legislative changes that might be needed.

[70] **The First Minister:** Yes. Of course, with a disestablished church, there wouldn't be any legislation that pertained particularly to that church anyway, or there shouldn't be. It's not something that's been at the forefront of our minds, that's true, but nevertheless there is unfinished business there, nearly 100 years on, that needs to be dealt with.

[71] **Suzy Davies:** Okay, thank you. I think that's all we need to hear on that one, but thank you.

[72] Could I just move you on to disqualification from membership of the National Assembly for Wales? Now, obviously, we've debated this fairly recently, but are you confident now that the 2016 Order resolved all the problems that occurred in 2011?

[73] **The First Minister:** Yes, I am. I'm grateful for the work this committee has done in looking at this. I don't think anybody would want to see a repeat of what happened then. The situation now is clearer and I understand that those bodies that are affected have been informed of the situation so that they can get the information as quickly as possible, as well.

[74] **Suzy Davies:** That's what I was going to ask you about, actually. One of our recommendations stated that it was a good idea that the terms of appointment guidance and anything related to the 2016 Order should've been disseminated as widely as possible.

[75] **The First Minister:** Yes.

[76] **Suzy Davies:** Can you give me some indication of who might've been contacted?

[77] **The First Minister:** Well, all the bodies included in the Order had a letter formally sent to them notifying them that the Order had been made and that they were included in it, and the Electoral Commission was also notified when that Order was made as well. So, those bodies affected by the Order are well aware of the changes and of their responsibilities regarding the legislation as it is now.

[78] **Suzy Davies:** And the consultation that took place before that, outside

our own inquiry, did that extend beyond the bodies that are ultimately affected?

[79] **The First Minister:** It was an eight-week consultation that took place. I'm not clear as to the scope of that consultation. It would've been with the bodies affected. I think it best if I write to the committee with further information on that, or do you know?

[80] **Mr Rawlings:** Could I, perhaps—? Yes, one of my teams did this. We did indeed consult on the draft Order and, as a result of that, we made some changes to the draft Order in light of the comments we received. So, all the bodies that were mentioned in the draft Order were formally consulted, but one or two bodies were added. I think, from recollection, the Employment Appeal Tribunal was one of the bodies that were specifically mentioned. So, we did go out fairly widely.

[81] The other thing that perhaps needs to be said is that, while we have notified all the relevant bodies, the Electoral Commission, with whom we've been working quite closely on this field, has been in consultation and discussion with all the political parties drawing their attention to the rules. So, between us, we think—touch wood—we've covered the ground, so that there ought not to be any confusion here as to what the disqualification requirements are.

[82] **Suzy Davies:** Well, that's encouraging to hear, particularly, of course, whatever the Wales Bill ends up looking like, I think we're going to be retaining the idea that we have powers over our own election system.

[83] **Mr Rawlings:** It's a very interesting point that you raise there, because, in fact, in the draft Wales Bill, the provisions in the Government of Wales Act 2006 about disqualification are not included in the list of GOWA provisions that the Assembly can amend. And, without revealing any confidences, I think Wales Office colleagues realise that this has fallen between two stools. There is no objection, in principle, to the Assembly being able to modify the disqualification rules in GOWA, it's just that the draft Wales Bill does not provide for them, but, if and when we have another draft Wales Bill, I would expect those disqualification provisions to be made amenable to Assembly amendment.

[84] **Suzy Davies:** Well, I too hope that that was just an oversight. Thank you—

[85] **David Melding:** Before we move on—

[86] **Suzy Davies:** I have got one more question on this one, actually, if it's okay.

[87] **David Melding:** Yes, still on disqualifications?

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

[89] **David Melding:** I beg your pardon.

[90] **Suzy Davies:** It's just a brief one to do with the role of the Law Commission if those powers are devolved across to us. Do you think that they would have a helpful function in devising how those powers might look in practice?

[91] **Mr Rawlings:** I wouldn't have thought we would need to use the Law Commission, because we have the benefit of this committee's report in 2014, which gives a very clear steer as to what we should be doing next.

[92] **Suzy Davies:** That's fine.

[93] **David Melding:** That's a very good answer [*Laughter.*]

[94] **Suzy Davies:** I just wanted to cover that one off, thank you.

[95] **David Melding:** William, did you just want to—

[96] **William Powell:** Thank you, Chair. Given the relevance of Welsh-language guidance to the determination of the 2011 disqualification cases, have the relevant public bodies been reminded of their obligations under the relevant Welsh language legislation? I think that was an important point that we wouldn't wish to revisit.

[97] **Mr Rawlings:** I think the issue there was that the Electoral Commission's guidance in Welsh was not updated to reflect changes in English. I have been assured that that has been done.

[98] **William Powell:** Okay, thank you.

[99] **Suzy Davies:** Perhaps I can move on, then, to ‘Making Laws in the Fourth Assembly’—a fairly hefty report from us. We have some other questions on this, but perhaps I can just ask you: what do you think were the key lessons that you’ve learned during this first term as a primary legislature?

[100] **The First Minister:** Well, I think it’s fair to say that it took time for the legislative programme to begin. We had our new powers in 2011, and one of the things I think that we underestimated was the amount of time it would take to get a Bill ready—all the preparation work. Once that was done, of course, we’ve seen 24 Acts passed since that time. But, to me, what we have learned more than anything else is that we have been able, in a very short space of time, to produce a significant amount of sound legislation almost from a standing start. It’s true to say we had the lamented legislative consent order process and Measures, but the reality is, for example, when the Scottish Parliament was set up, it had legislative counsel working there because they’d been used to producing Scottish legislation even as a non-devolved UK Government office, and we didn’t really have that. Welsh primary legislation was exceptionally rare. But to get from there to where we are now—we have 24 Acts, and none of those Acts have been questioned in terms of how sound they are—is a significant achievement.

[101] **Suzy Davies:** Well, perhaps I could argue that concerns were raised by this committee about the quality of some of that legislation, but I take your general point that, in a short period of time, miracles have been worked, if that’s not overstating the case a little bit. Can I just ask you specifically, though, about your views on this committee’s recommendations about the production of better financial memoranda and our comments on the balance between primary and secondary legislation?

[102] **The First Minister:** The explanatory memoranda, I think, have improved. I think the regulatory impact assessments particularly are sound. In terms of the balance between primary and secondary, at the end of the day it’s down to flexibility. The determination of whether something should be on the face of the Bill or form part of secondary legislation at the end of the day comes down to the need for flexibility in a particular area. So, for example, if we look at the Social Services and Well-being (Wales) Act 2014, that Act was designed to put in place the structure for social services in Wales in the future. I would argue that, when it comes to eligibility, that that’s something that really belongs to secondary legislation, because it needs to be flexible and it needs to be able to be changed, if needs be, at

short notice. It's not an exact science, but if you put too much on the face of the Bill and then find you have to change something, it takes far longer to change it than, obviously, if it's through secondary legislation. Against that, you have to balance the need for legislation to be scrutinised. We wouldn't want to be in a position where primary legislation was short and everything else was added later by way of secondary legislation. But, at the end of the day, it comes down to the need for flexibility in a particular area that determines whether or not it appears on the face of a Bill.

[103] **Suzy Davies:** So, just to go back to the original question about key lessons, has the fact that this committee on a number of occasions gone back to the relevant Minister and said, 'We don't think that you've got your balance right, even on the basis of flexibility', meant that lessons have been learnt from that?

[104] **The First Minister:** There are different views on this. I mean, we would argue that we've got the balance right—of course we would. I know others would share a different view. But if you look at the legislation that's been produced, we've tried to strike a balance between what should appear on the face of a Bill and what should be then produced through secondary legislation. Some of it, of course, is subject to the affirmative procedure.

[105] **Suzy Davies:** Okay, thank you very much.

[106] **David Melding:** I wonder if I could just take you through some very specific points that we made in our report, and, in fact, a couple were raised in the debate. The first is on the presumption of publishing draft Bills, which your Government does not like, but you did seem to give some ground in the debate where you thought draft Bills for controversial and complex Bills would be appropriate. Are you taking forward that thinking? Is that a way we may see, should you be the First Minister in the next Assembly, that the legislative programme will be developed?

[107] **The First Minister:** Well, we would look to adopt an approach to publish draft Bills where that's practical and appropriate. Where there's substantial legislation, it makes sense to publish draft Bills. The fear that I have is that if there was to be a presumption that a draft Bill should be published, that would quickly become an assumption—that that would be seen as the norm. And it may well be in the future that draft Bills become more common, but there'll be some items of legislation that are relatively shorter and uncontroversial where publishing a draft Bill would simply

introduce a delay into the process that wouldn't add anything to scrutiny.

13:30

[108] So, the approach that we would take would roughly follow the lines of the more complex the legislation, the more likely it is to have a draft Bill in order that the public and the Assembly itself can see what the Bill looks like beyond what a White Paper might look like.

[109] **David Melding:** Okay. I won't draw it out, but I think there's a glimmer of light for us there. I do commend the way you approached that question from the point of view of lengthening the scrutiny process, which is sometimes merited, particularly in a unicameral institution. Along those lines and the view that there should be a Report Stage as an assumption, if I can put it in the language you've just used, I was slightly curious as to why you're unhappy with that recommendation. You don't feel it is appropriate.

[110] **The First Minister:** On a Report Stage, again, it's the same approach that we take to the Report Stage that we take towards a presumption of the publication of a draft Bill: it would quickly become the norm. Obviously, the Report Stage will be an automatic part of the legislative process. There are occasions, again, where that's appropriate. That's true. There are other occasions, particularly with relatively uncontroversial legislation, perhaps short legislation, where it wouldn't be needed.

[111] **David Melding:** But shouldn't it be the norm in a unicameral institution?

[112] **The First Minister:** It depends whether you think the scrutiny can be extended or not. My argument would be that there is a substantial amount of scrutiny already within this institution, done with a small number of Members, compared to others. If it were the case that we were producing Acts that were difficult to follow, that practitioners and the courts were unable to interpret, I think that there would be an argument for saying, 'Well, there's something wrong with the scrutiny process here.' I don't think there is. The scrutiny process is robust. Having an automatic Report Stage wouldn't add to the scrutiny of all Bills.

[113] **David Melding:** Okay; I think we're going to end up in arguments here, which is not really the purpose of this session.

[114] I think we've all been slightly bemused by the Government's reluctance to agree to publish Keeling schedules and make them mandatory for Bills. Presumably you can't draft your legislation without these being internally available to you, so why not make them available to us?

[115] **The First Minister:** Can I ask Dylan to come in on this one?

[116] **Mr Hughes:** Okay. I think, as a starting point, we try and avoid the need for Keeling schedules in the first place. So, you'll be aware that the Counsel General made a statement very early on in this Assembly that we would try and re-state legislation where practicable. So, that's our starting point, which we try and—

[117] **David Melding:** And we commend this virtuous legislative behaviour. Would that we could see more of it.

[118] **Mr Hughes:** Well, I think, Chair, we have done that. I think we have achieved a great deal. It's something that, in our office, we've been keen to make sure that Bill teams are aware of the commitment that was made. I think there have been very few Bills that I would argue have fallen foul—. 'Fallen foul' are not the right words, because we said that where it wasn't practicable we wouldn't do it. There have been occasions where it wasn't practicable. I think the Historic Environment (Wales) Bill is one of them, and the planning Bill is probably the other. But, in both cases, I think we will be looking in future to consolidate the law in any event.

[119] I do appreciate that the Keeling schedules have a value; I don't dispute that. I think, from our point of view, we don't want them to become the norm, in part because we'd like to move to a situation where law is published better, where we've consolidated the law, and the Keeling schedules, in a way, are a symptom of a system that doesn't work very well in the first place. So, that's part of it. The other part of it is that we don't want to do them every time. There are some situations where they, I think, are very helpful, but there are other times when they involve a lot of work for a limited amount of benefit in our view. But, as a principle, I don't think we're disagreeing with the general principle.

[120] **The First Minister:** I think it's worth emphasising as well, Chair, that of course the Law Commission is looking at the accessibility of law in Wales, and again I'd expect them to look at the issue of Keeling schedules as part of that work.

[121] **David Melding:** From our committee's point of view, if there's no need for a Keeling schedule because the law is stated as a coherent entity, then obviously there's no need for a Keeling schedule. But, where there's a need for a Keeling schedule, not to publish it, when you would have to have it yourselves for your internal work, I just cannot understand why you are reluctant to accept our recommendation in this respect.

[122] **The First Minister:** The view that we take is that this is something that is wrapped up in the Law Commission's work. We look forward to any recommendations they might make with regard to Keeling schedules, and then try to take them forward.

[123] **David Melding:** Okay. I think you realise how irritated we've been by this, but I don't think I'm going to make further ground.

[124] Can I just get you to say on record that, you know, we've talked a lot about the balance—what's on the face of the Bill, and what's left to subordinate legislation—but there's also this category where secondary legislation in the future is actually used to amend the statute, and do you accept that, at the very least under those circumstances, the affirmative procedure should be used?

[125] **The First Minister:** Yes, that would be the norm. We are looking at the issue of the approach we take to primary and secondary legislation, the approach we take to Henry VIII powers, and to commencement Orders. We made that commitment: we will undertake a review following the committee's report on 'Making Laws in Wales', on recommendations 6, 7, and 8, and we will take that forward. But, yes, where Henry VIII powers are used, then I can understand the expectation will be that the affirmative procedure is usually used in those circumstances.

[126] **David Melding:** Okay. Well, I'm not sure we like 'usually' there, but I think perhaps we've got enough to go on for now. It's back to you this—

[127] **The First Minister:** Well, I can't imagine a situation where it wouldn't be, if I can make that clearer.

[128] **David Melding:** Right. That's fine. Your tone was what we wanted to hear, so that's fine. Suzy.

[129] **Suzy Davies:** Thank you. Just to move on now to another report we did, on Welsh jurisdiction. I don't want to revisit the whole report, but everyone around this table recognised the existence of a distinct jurisdiction. And, on the back of that, there were recommendations on working with the Law Society to make sure that, on both sides of the border, there was a recognition of an emerging set of separate Welsh law, and also a question about what was being done to consolidate Welsh law in a way that's accessible. So, I'm wondering if you could update us on those two paths.

[130] **The First Minister:** Well, we can't really do much about the distinct jurisdiction, because it's not been accepted yet by the UK Government, so that's still—

[131] **Suzy Davies:** I'm not talking about the legislation, or anything like that, but the actual, practical conversations with the Law Society, and, of course, putting together a Welsh statute book.

[132] **The First Minister:** Yes—

[133] **Mr Hughes:** The Law Commission?

[134] **The First Minister:** Sorry?

[135] **Mr Hughes:** Sorry. Is the Member referring to the Law Commission?

[136] **Suzy Davies:** No, our recommendations.

[137] **Mr Hughes:** Sorry, consolidation and accessibility is something that's being dealt with by the Law Commission. So, again, we're awaiting that report, and I think it'll be for the next Government to respond to the Law Commission. But, as a general principle, we are very supportive of needing to do more to improve accessibility to the statute book. But we're also keen to emphasise that this is a UK-wide problem that has a Welsh dimension, and it's something that we as a Government have inherited. And, therefore, there are limitations—resource mainly—to what we can do. But, we certainly would like to do something about it. Certainly, speaking from my personal perspective, I would like to do something about it.

[138] **Suzy Davies:** And on the Law Society working with education institutions on both sides of the border, so that there's an understanding that there are differences in the law.

[139] **Mr Rawlings:** I think there are two aspects to this. One is making colleagues on the English side of the border aware of the increasing divergence of Welsh law, and then there is the inside-Wales aspect of this. If I take the second one first, we have a big conference coming up on 18 March in Cardiff, with the law schools, at which a lot of the presentation on the day is going to be about the need for both practitioners and students to become acquainted with new Welsh legislation. Obviously, examples like the Renting Homes (Wales) Act 2016 could make a really significant difference. For that Act it was not only a question of dealing with the profession, but it was also a question of doing some training with the judiciary, and that was certainly done. So far as the English side of the border is concerned, I think it has been more difficult. There have been instances, as the Counsel General has commented, of barristers coming to Cardiff to argue cases, coming from London, and arguing cases on the basis of what they took to be the applicable law, which was the law applicable in England, but they didn't realise that there were separate cases in Wales. This is something that's going to resolve itself over time.

[140] **Suzy Davies:** I was going to say, 'Hence the question about the education side of it.'

[141] **Mr Rawlings:** Absolutely. One of the issues here is the extent to which it's possible to engage English colleagues with a serious and continuing education of changes to Welsh legislation. That, if you like, comes back to the problem that was asked about earlier, about Whitehall departments being fully acquainted with Welsh devolution: well, intermittently, and I would guess that's probably the same thing about English legal practitioners too.

[142] **The First Minister:** Can I add to that? As a former practitioner, I would have been aware. I could have practiced in Northern Ireland or in Jersey or in Guernsey or the Isle of Man. I would have been aware. I would have taken steps to make myself aware of not the different principles behind the law, because the principles are the same, but I would have taken steps to ensure that I knew what the applicable law was in those jurisdictions. It's a mindset. What we have are lawyers coming into Wales who don't think that Wales is different and has different laws. That's the issue. If practitioners were aware of the fact that there were substantially different laws in Wales in certain areas of practice, they'd always say, 'Well, I need to find out what the law is.' But, they don't do it. They would do it if they were in Northern Ireland.

[143] **Suzy Davies:** I know. That's what my question was about. It's that getting to university level even, rather than the CPD.

[144] **The First Minister:** It's not even that because most of the law that's taught in law departments in England, Wales and Northern Ireland is the same. The principles are the same. There are slight differences in some areas of the law, but much of it is common.

[145] **Suzy Davies:** But, they're not taught that there are differences, and that's the critical thing.

[146] **The First Minister:** I think they are now, in Welsh universities.

[147] **Suzy Davies:** That's good. That's what I want now.

[148] **The First Minister:** In Welsh universities, they are, in fairness. But, I think it would be right to say that it's not the case in most of the English universities.

[149] **Suzy Davies:** Okay, well, that's the nut to crack, I think, first. Okay. Thank you.

[150] **David Melding:** Dafydd.

[151] **Yr Arglwydd Elis-Thomas:** Lord Elis-Thomas: Thank you very Diolch yn fawr, Gadeirydd. Wrth much, Chair. In referring to the gyfeirio at bosibirwydd Bil Cymru, fe possibility of a Wales Bill, Hugh ddywedodd Hugh Rawlings yn Rawlings said earlier, 'if and when'. I gynharach, '*if and when*'. Tybed a all wonder if the First Minister could y Prif Weinidog ein goleuo ni, beth enlighten us as to what is likely to sy'n debygol, beth yw'r sefyllfa happen. What is the latest position? I ddiweddaraf? Rwy'n cymryd yn assume that there will be no ganiataol na fydd cais i ni ddeddfu i application for us to legislate to allow ganiatáu i Lywodraeth y Deyrnas the UK Government to bring forward Unedig i ddeddfu ar Fil newydd yn y a new Bill in this Assembly. Cynulliad hwn.

[152] **Y Prif Weinidog:** Pwy a wŷyr? **The First Minister:** Who knows? Nid oes neb yn gwybod. Rwy'n Nobody knows. I do hope, of course, gobeithio, wrth gwrs, fod yr that the Secretary of State will have Ysgrifennydd Gwladol wedi clywed listened to what people have told

beth mae pobl wedi dweud wrtho fe—y rheini sy'n gweithio yn y maes—ac wedi gwranddo ar beth maen nhw wedi'i ddweud ynglŷn â'r camau sydd yn gorfod cael eu cymryd er mwyn sicrhau bod unrhyw Fesur neu Ddeddf, yn y pen draw, yn ddigon cryf i barhau yn y dyfodol.

him—those working in this area—and I hope that he will have listened to their comments on the steps that need to be taken in order to ensure that any Bill or any legislation, ultimately, is robust enough to have permanence for the future.

[153] **Yr Arglwydd Elis-Thomas:** Ond, nid oes gan Brif Weinidog Cymru wybodaeth bellach am feddyliau'r Ysgrifennydd Gwladol ar y mater hwn, nac am amseriad unrhyw beth.

Lord Elis-Thomas: But, the First Minister of Wales has no further information as to the thinking of the Secretary of State on this issue, or the timing of anything.

[154] **Y Prif Weinidog:** Na, mae'n rhaid imi ddweud.

The First Minister: No; I have to say 'no.'

[155] **Yr Arglwydd Elis-Thomas:** A ydych chi'n meddwl bod y sefyllfa yma'n foddhaol, Brif Weinidog?

Lord Elis-Thomas: Do you think that that's satisfactory, First Minister?

[156] **Y Prif Weinidog:** Wel, roeddwn i yn gobeithio—. Rwy'n cwrdd â'r Ysgrifennydd Gwladol y prynhawn yma, i fod yn deg iddo. So, nid wyf yn gwybod beth fydd e'n dweud wrthyf i, ond rwy'n credu ei bod yn deg i ddweud bod hynny'n mynd i ddigwydd. Ond, na, nid oes sôn ar hyn o bryd ynglŷn â beth fydd y Mesur ei hunan yn edrych fel.

The First Minister: Well, I had hoped—. I am meeting the Secretary of State this afternoon, to be fair to him. So, I don't know what he'll have to say to me then, but I think it is fair that I do tell you that that meeting is to take place. But, there's been no mention as of yet as to what the Bill itself will look like.

[157] **Yr Arglwydd Elis-Thomas:** Ond, er bod hwn yn gwestiwn tybiedig, pe byddai'r Bil yn debyg i'r drafft a welsom o'r blaen, a fyddech yn argymhell y dylai'r Cynulliad ei wrthod, fel y buom yn trafod yn y pwyllgor hwn sawl gwaith?

Lord Elis-Thomas: But—and this is a hypothetical question—if the Bill were to be similar to the draft that we have already seen, would you recommend that the Assembly should reject it, as we discussed in this committee on a number of occasions?

[158] **Y Prif Weinidog:** Fe fyddwn i. I fod yn deg, mae hwn yn farn sydd yn farn dros y pleidiau. Beth sy'n bwysig i fi yw sicrhau bod gennym ni ddeddfwriaeth sydd yn glir ac sydd yn cadw, o leiaf, y pwerau sydd gyda'r Cynulliad ar hyn o bryd ac sy'n mynd i bara yn y pen draw. Nid dyna sydd gennym ar hyn o bryd. Rwy'n gobeithio y byddwn yn gweld hynny'n newid dros yr wythnosau nesaf.

The First Minister: Well, yes, I would. To be fair, that's a cross-party view. What's important to me is to ensure that we have legislation that is clear, that at least retains the powers that the Assembly currently has and can remain into the future. That's not what we have at present. I hope that that will change over the next few weeks.

13:45

[159] **Yr Arglwydd Elis-Thomas:** Ac, wrth gwrs, mae barn yr arbenigwyr mwyaf dysgedig yn y maes hwn wedi traethu yn ddiweddar iawn ar ystâd y Cynulliad mewn cyfarfod yn y Pierhead. Ni wnawn ni gyfeirio at gyfenw un o'r rhai oedd yn cymryd rhan, ond mae gennym bellach farn glir iawn oddi wrth yr ysgolheigion cyfraith cyfansoddiadol uchaf yn y deyrnas.

Lord Elis-Thomas: And, of course, the views of the most eminent experts in this area were put forward in a meeting in the Pierhead very recently. We won't mention the surname of one of those participating, but we do now have a very clear opinion expressed by the most eminent constitutional experts in the United Kingdom.

[160] **Y Prif Weinidog:** Oes. Y gwendid mawr sydd yng nghanol y ddeddfwriaeth yw y ffaith bod angen—dyma farn Llywodraeth y Deyrnas Unedig—cadw awdurdodaeth Lloegr a Chymru. O achos hynny—dyna o le mae pob gwendid arall yn y Mesur wedi dod. Wrth gwrs, mae'r syniad hwn o gael awdurdodaeth, nid gwahanol ond awdurdodaeth Gymreig, yn rhywbeth y soniwyd amdano gan yr Arglwydd Brif Ustus. Fe wnaeth sôn amdano i ddechrau. Mae hynny, wrth gwrs,

The First Minister: Yes, indeed. The great weakness at the heart of this legislation is the fact that there is a need, in the view of the UK Government, to retain the England and Wales jurisdiction. That is where all other weaknesses within the Bill have emerged from. Of course, this idea of having a jurisdiction, not a separate jurisdiction but a distinct Welsh jurisdiction, is something that was mentioned by the Lord Chief Justice. I think he mentioned it initially. That has received support

wedi cael cefnogaeth dros y misoedd over the past few months, and to diwethaf, ac i sicrhau, wrth gwrs, nad ensure, of course, that the costs of yw'r costau o gael system hollol having an entirely separate system wahanol yn dod arnom ni yng shouldn't fall on us in Wales but that Nghymru ond sicrhau bod gennym we do ensure that we have a means ffordd o gael awdurdodaeth ein of having a distinct jurisdiction hunain er ein bod ni'n rhannu although we share the courts with llysoedd â Lloegr. England.

[161] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Thank you. Diolch yn fawr.

[162] **David Melding:** Alun.

[163] **Alun Davies:** In terms of the approach taken to relationships with the institutions of the European Union, I wonder, First Minister, if you could outline how you've reviewed the strategy that the Welsh Government has published on its relationship with those institutions.

[164] **The First Minister:** I'm happy with the way that our relationship with those institutions are proceeding. It's a long-established relationship that we have with our staff based in Brussels. They have a strong working relationship not just with the Commission but with UKRep, the United Kingdom Permanent Representation to the European Union, and that relationship works well in the main. We do, of course, advance Wales's cause separately to UKRep, as people would expect us to. We have, of course, a number of organisations that share Wales House with us. We've spoken to other organisations and third sector organisations. At this stage, what they're saying to us is that they would find it difficult to find the resource, some of them, to be in that office on a full-time basis, but, nevertheless, the position of the office is important—it overlooks the Justus Lipsius building in Brussels—and the relationship is working very well.

[165] **Alun Davies:** Do you have any plans to review the current EU strategy?

[166] **The First Minister:** It depends what happens in June. All this revolves around what happens in the referendum in June and what the aftermath might be if there were, for example, to be an 'out' vote. There would be two years then of uncertainty. What is absolutely clear is that, whatever happens in June, there will still be an office in Brussels, because we still have to have a relationship with one of the world's biggest markets, as we do with the US,

with our offices in the US, in China and India. But until we know what the outcome of that referendum is, it's difficult to revise a strategy at this stage.

[167] **Alun Davies:** Have you given any consideration to the consequences of a decision to leave the European Union?

[168] **The First Minister:** As the Member knows, I have given that a lot of consideration.

[169] **Alun Davies:** I was asking as a Government.

[170] **The First Minister:** We have. We all know what it means and the uncertainty it creates, more than anything else. We know, at the moment, with certainty, what the EU offers to our farmers, the access it offers to the single market and the European funds that are coming in to Wales. I've been on several trade missions in my time as First Minister and the issue of EU membership is raised every single time, because investors who come to Wales are looking to come to Wales to use it as a European base. Anything that interferes with the flow of trade, which in Wales, or, indeed, the UK and other European countries, in their mind, is a barrier. They will look to invest elsewhere. If they're looking for, for example a country where English is spoken with a stable legal system, they'll go to Ireland, which will be in the European Union.

[171] Our great fear is that we lose particularly service industries to Ireland and they won't come to Wales or indeed to the UK. There are many manufactures in Wales that have integrated operations with other bases elsewhere in Europe. Ford is a fine example; there's an engine plant in Bridgend, there's one in Cologne and there's one in Valencia. My fear is that over time—it's not going to happen overnight—the investment will go to the bigger market, not to the smaller one, because that's where the customer base will be. So, there are a number of issues where we know—. With farming subsidies, it would be very difficult for us to find more than £200 million a year to pay in subsidies to our farmers. There's no guarantee that that money would be transferred to us from Whitehall. He will know, as I do, that the view of hill farming, regardless of party in power, in the Department for Environment, Food and Rural Affairs is not a positive one. They tend to see farming as something that should be taken forward by very large farms—arable and large dairy farms. I'll try and put it diplomatically: I have no certainty that Welsh farmers would be able to benefit to the extent that they do now if we didn't have those subsidies directly from Brussels.

[172] **Alun Davies:** I think the committee very much welcomes the very strong pro-EU stance that the Welsh Government has taken; I presume it will continue to argue the case for continued membership of the European Union. I certainly think we would very much welcome that. In an earlier answer, you mentioned the presence of other organisations in Wales House on Schuman. To what extent have you worked to increase the business presence in that office?

[173] **The First Minister:** We have people now in Brussels whose job it is to work on the trade and investment side across Europe; they're based in Brussels at the moment. One of the things we keep under review is what we should do in the future when it comes to strengthening our trade and investment offer. The dilemma we always face is: do you boost an existing office or do you open a new office somewhere? We know that Ireland faced the same dilemma, given their size as well. We did commission work from the Public Policy Institute for Wales, and we asked them to look at this issue—what's the best approach to take. So, the next step will be whether we look at boosting the numbers in the Brussels office who look after trade and investment, or whether we look to open an office elsewhere in Europe as well.

[174] **David Melding:** Dafydd.

[175] **Yr Arglwydd Elis-Thomas:** Fe wnaethoch chi ohebu, ynghyd â Phrif Weinidog yr Alban a Phrif Weinidog Gogledd Iwerddon, â Phrif Weinidog y Deyrnas Unedig ynglŷn â dyddiad refferendwm i mewn neu allan o'r Undeb Ewropeaidd a'i effeithiau ar etholiadau datganoledig. Mae'r Prif Weinidog bellach wedi gwneud ei benderfyniad. Beth yw'ch ymateb chi i hynny, ac a ydych chi yn teimlo bod y dadleuon a gyflwynwyd gennych chi a'ch cydweithwyr fel Prif Weinidogion datganoledig yn y deyrnas wedi cael yr ystyriaeth ddyladwy gan Brif Weinidog Cameron?

Lord Elis-Thomas: You did correspond, along with the Scottish First Minister and the Northern Irish First Minister, with the UK Prime Minister on the date of a possible EU referendum and its impact on devolved elections. The Prime Minister has now made his decision. What's your response to that, and do you feel that the arguments put forward by yourself and your fellow First Ministers within the UK have been given due consideration by Prime Minister Cameron?

[176] **Y Prif Weinidog:** Wel, siomedig. Nid wyf yn credu bod ein barn ni wedi cael ei hystyried yn ddigon manwl. Roedd e'n rhywbeth diddorol i mi i weld bod Prif Weinidog Gogledd Iwerddon a Dirprwy Brif Weinidog Gogledd Iwerddon wedi arwyddo'r llythyr hefyd, o ddwy blaid sydd ddim yn gryf o blaid yr Undeb Ewropeaidd—y ddwy blaid. Roedd y ffaith eu bod nhw wedi arwyddo, i mi, yn diddorol. Y broblem ymarferol yw hon: yng Nghymru, yr Alban a Gogledd Iwerddon bydd etholiadau wedi cymryd lle ac nid yw'n ymarferol i gael unrhyw fath o ymgyrch drawsbleidiol yn ystod etholiad; rydym ni i gyd yn gwybod hynny. Ac wedyn bydd yna chwe wythnos i dynnu at ei gilydd ymgyrch drawsbleidiol pan fydd pawb yn isel iawn ar egni. Fydd y pleidiau, rwy'n siŵr, ddim mewn sefyllfa ariannol dda dros ben. Rydym ni i gyd yn gwybod beth yw'r broblem. Felly, i greu ymgyrch o fewn chwe wythnos i sicrhau cyllid, i sicrhau bod yr egni yna i redeg unrhyw fath o ymgyrch fel yna, mae'n mynd i fod yn andros o anodd dros ben, yn fy marn i. Dyna beth sy'n fy ngwneud i'n siomedig; byddwn i'n moyn sicrhau bod yna ddigon o fomentwm yna i gael ymgyrch fwy effeithiol erbyn mis Mehefin, ac nid felly fydd e nawr.

The First Minister: Well, I was disappointed. I don't think our views were taken into account sufficiently. It was something quite interesting to me to see that the Northern Irish First Minister and Deputy First Minister had signed the letter too, from two parties that aren't particularly strongly in favour of the EU, but they both signed that letter. That was interesting from my point of view. The practical problem, of course, is this: in Wales, Scotland and Northern Ireland, elections will have taken place and it's not practical to have any sort of cross-party campaign on a referendum during an election campaign; we all know that. And then there would be six weeks to bring together a cross-party campaign when everyone will be very low on energy. I'm sure the parties won't be in a particularly strong financial position. We all know what the problem is. Therefore, to create a campaign over six weeks and to secure the necessary funding for that campaign, and to ensure that the energy is in place to run any campaign is going to be extremely difficult, in my view. That's the cause of my disappointment; I would want to ensure that there was sufficient momentum in order to have a more effective campaign by June, and unfortunately that won't be the case now.

[177] **Yr Arglwydd Elis-Thomas:** Mae yna lawer o drafodaeth wedi bod ynglŷn â grymoedd seneddau'r

Lord Elis-Thomas: There's been much debate on the powers of parliaments of member states in

aelod-wladwriaethau mewn perthynas â Senedd Ewrop a Chomisiwn y Gymuned Ewropeaidd, tra mewn gwirionedd mae'r rhan fwyaf o'r meysydd lle mae sybsidiaredd yn bwysig yn feysydd sydd yn fwy priodol i'r seneddau datganoledig a'r cynullïadau rhanbarthol yng ngweddill Ewrop nag y maen nhw i'r aelod-wladwriaethau. A ydych chi'n meddwl bod Prif Weinidog y Deyrnas Unedig a'r bobl sy'n ymwneud â'r materion yma yn deall yn union beth yw natur y berthynas rhwng Cynulliad a Llywodraeth Cymru a'r Undeb Ewropeaidd yn yr achos yma?

[178] **Y Prif Weinidog:** Na, rwy'n siŵr y byddai Prif Weinidog y Deyrnas Unedig yn ystyried hyn fel rhywbeth sy'n ymwneud â materion tramor ac, felly, yn rhywbeth sydd ddim wedi cael ei ddatganoli. Dyna'r ffordd y bydd e'n meddwl am y peth. Rwy'n clywed beth mae'n ei ddweud ynglŷn â'r ffaith ei fod e'n gryf dros y Deyrnas Unedig yn sefyll yn yr Undeb Ewropeaidd, ac rwy'n derbyn taw dyna beth yw ei farn e. Y broblem, wrth gwrs, ar hyn o bryd yw bod rhai pethau yn cael eu hystyried ar lefel Ewropeaidd a dyna i gyd fyddai'n digwydd yw bod y penderfyniadau'n cael eu symud o Frwsel i Lundain. Nid wyf yn gweld ym mha ffordd y byddai hynny o les i Gymru, ac nid wyf yn gweld y byddai hynny'n wahanol i, neu'n well na, beth sydd yna ar hyn o bryd.

relation to the powers of the European Parliament and the European Commission, whilst in reality most of the areas where subsidiarity is relevant are areas that are more appropriate for the devolved parliaments and the regional assemblies in the rest of Europe than they are to the member states. Do you think that the Prime Minister of the United Kingdom and those involved with these issues do fully understand the nature of the relationship between the Assembly and Government of Wales and the European Union in this case?

The First Minister: No, I'm sure that the United Kingdom Prime Minister would see this as being an issue of foreign affairs and, therefore, as a non-devolved matter. That's how he thinks of it. I hear what he says in terms of his commitment that the United Kingdom should remain within the European Union, and I accept that that is his view on the issue. The problem, of course, currently is that some things are considered at the European level and all that would happen is that the decisions would be shifted from Brussels to London. I don't see how that would benefit Wales, and I don't see that it would be different from or an improvement on what's in place at the moment.

[179] **Yr Arglwydd Elis–Thomas:** Ond a fydddech chi'n cytuno—a hwn yw'r cwestiwn olaf gen i ar hyn—fod yna le i waith gael ei wneud, er efallai ei bod hi'n hwyr yn y dydd ar un ystyr, i egluro yn gliriach beth mewn gwirionedd sydd wedi bod yn digwydd ar hyn o bryd? Hynny yw, mae'r ffaith ein bod ni wedi gwrthwynebu ar rai achlysuron gyda rhanbarthau eraill brosesau deddfu oherwydd ein bod ni'n teimlo bod angen pwysleisio sybsidiaredd a bod y cerdyn coch yma sydd gan y rhanbarthau yn bod yn barod.

Lord Elis–Thomas: But would you agree—and this is the final question from me—that there is scope for some work to be done, even though it may be late in the day in one sense, in order to explain more clearly what exactly has been happening? There is the fact that we have, on certain occasions, opposed legislative processes with other regions because we do feel that there is a need to emphasise subsidiarity and that this red card that the regions have already exists.

[180] **Y Prif Weinidog:** Mae hynny'n iawn. Os edrychwn ni ar amaeth, bach iawn o bethau sy'n cael eu rhedeg yn Brydeinig nawr; mae popeth wedi cael ei ddatganoli. Felly, pan mae pobl yn siarad am amaeth yn dod nôl i Lundain, nid yw hynny'n meddwl dim byd i ni yng Nghymru, ac, mewn un ffordd, byddai rhai'n dadlau efallai y byddai pwerau'n cael eu tynnu o'r Cynulliad petai hynny'n digwydd, ac mae'r un peth yn wir am bysgodfeydd. Ond y peth yw eu bod nhw'n tueddu i ystyried y ddadl yn Llundain trwy edrych ar y sefyllfa yn Lloegr, nid y sefyllfa Brydeinig. Nid ydyn nhw'n ei wneud e'n fwriadol, ond dyna'r ffordd y maen nhw'n tueddu i ystyried pethau. Byddai yna gwestiynau petai'r Deyrnas Unedig yn gadael yr Undeb Ewropeaidd, a wedyn y byddai dadl fawr ynglŷn â, 'Wel, dyna fe 'te, ble mae pwerau'n mynd nawr?' Ddylai'r pwerau hynny ddim mynd i Lundain; dylai'r pwerau

The First Minister: That's true. If we look at agriculture, very few things are run on a British level; everything is devolved. So, when people talk about agriculture being repatriated to London, that means nothing to us in Wales, and, in one way, some would argue that powers would perhaps be removed from the Assembly if that were to happen, and the same is true of fisheries. But the fact is that they tend to consider these arguments in London by looking through an English prism, rather than looking at the situation on a British level. They're not doing it deliberately, but that's how they tend to consider these issues. There would be questions if the United Kingdom were to leave the European Union, and there would then be a major debate as to where those powers should go. Those powers should not go to London; they should come immediately to Wales—fisheries,

fynd yn syth i Gymru—pysgodfeydd, agriculture and so on.
amaeth ac yn y blaen.

[181] **Yr Arglwydd Elis–Thomas:** Wel, yn y broses gawsom ni mewn pwyllgor arall yn y Cynulliad yma ynglŷn â'r polisi pysgodfeydd a'r polisi amaethyddol cyffredin, roedd y gwaith roeddem ni yn ei wneud yn waith yr oeddem yn ei wneud gyda Llywodraeth Iwerddon, gan ei bod nhw'n dal y llywyddiaeth ar yr adeg hynny, ac yn waith roeddem ni'n ei wneud gyda phwyllgorau ac Aelodau Seneddol Ewropeaidd. Dyna ydy natur y broses, ac nid wyf yn siŵr a ydy hynny'n cael ei ddeall yn y drafodaeth sydd yn codi ar y mater yma ar hyn o bryd.

Lord Elis–Thomas: Well, in the process that we went through in another committee in this Assembly on fisheries policy and the common agricultural policy, the work that we did was done with the Irish Government, because they held the presidency at that time, and it was work that we did with committees and Members of the European Parliament. That is the nature of the process, and I'm not sure that that's understood within the debate on this issue at the moment.

[182] **Y Prif Weinidog:** Rwyf wedi clywed ddwywaith nawr gynrychiolwyr—un cynrychiolydd fore Sul, sef aelod Ceidwadol o Senedd Ewrop—yn dweud, 'Wrth gwrs, bydd y pwerau hyn yn dod i Gymru.' Roedd e'n sôn am bysgodfeydd fel un enghraifft. Beth mae hynny'n ei feddwl, wrth gwrs, yw na fyddai dim grym o gwbl gan Lywodraeth y Deyrnas Unedig ynglŷn ag ardal forol Cymru o gwbl. Byddem ni'n siarad ag Iwerddon, ac Ynys Manaw byddwn i'n meddwl hefyd, ac, wrth gwrs, i'r de, gydag awdurdodau Lloegr. Felly, byddai hynny'n newid o'r sefyllfa sy'n wir ar hyn o bryd. Byddai'n bosib, os ŷch chi'n dilyn y ddadl honno, yn y pen draw i Lywodraeth yng Nghymru stopio llongau o Loegr yn dod i mewn i bysgota yng Nghymru. Dyna

The First Minister: I've twice now heard representatives—and one on Sunday morning who is a Conservative Member of the European Parliament—saying, 'Of course, those powers would come to Wales.' He was talking about fisheries as an example. That would mean, of course, that the UK Government would have no powers over the Wales maritime area at all. We'd be speaking to Ireland, and to the Isle of Man I would have thought, along with the authorities in the south of England. So, that would be a fundamental change in the situation that currently exists. It would be possible, if you follow that debate through to its conclusion, for the Government in Wales to stop English boats from fishing in Welsh waters.

beth maen nhw'n ei ddweud. Mae hynny'n dangos pa mor bwysig yw e i gael trafodaeth lawn ynglŷn â beth fydd hyn yn ei feddwl i'r gwledydd yn y Deyrnas Unedig, achos mae rhai pethau, rwyf i'n credu, sydd ddim wedi cael eu hystyried yn fanwl ynglŷn â beth fydden nhw'n ei feddwl.

That is what they seem to be saying. This just demonstrates how important it is to have a full debate as to what this will actually mean for the nations within the UK, because there are some things that I believe have not been considered in detail in terms of their implications.

[183] Yr Arglwydd Elis-Thomas: Efallai y byddai rhai â mwy o ddiddordeb mewn atal llongau o'r Alban ac o Wlad y Basg rhag dod i bysgota ym mae Ceredigion, nag o Loegr.

Lord Elis-Thomas: Perhaps some of us would be more interested in preventing Scottish and Basque boats from coming to fish in Cardigan bay, rather than boats from England.

[184] Mae gen i un cwestiwn olaf, sy'n gysylltiol â gwaith pwyllgorau ac, yn benodol, y cwestiwn o ethol Cadeiryddion pwyllgorau, fel sydd yn digwydd yn barod yn San Steffan. Rwy'n gofyn hyn i chi mewn gwirionedd nid, efallai, fel Prif Weinidog ond fel arweinydd y blaidd fwyaf yn y lle yma: a ydych chi'n meddwl y byddai'n addas i'r mater yma gael ei gyflwyno gennym ni, fel rydym ni wedi trafod ei wneud, ar gyfer y Cynulliad nesaf?

I have one final question, which is related to the work of committees and specifically the question of the election of committee Chairs, as already happens in Westminster. I ask you this not perhaps as the First Minister but as the leader of the largest party in this place: do you think that it would be appropriate for this issue to be brought forward by us, as we have discussed doing, for the next Assembly?

14:00

[185] A fyddai gennych chi farn eich hun, fel arweinydd, a fyddai'n briodol i ni ystyried hyn? Rwyf yn ymwybodol bod sylwadau negyddol wedi cael eu gwneud ynglŷn â'r ffordd rydym ni'n penodi Cadeiryddion yma yn Nhŷ'r Cyffredin gan Aelodau yn y fan honno, ac mae'n ymddangos fel

Would you have a view, yourself, as a party leader, on whether it would be appropriate for us to consider this? I am aware that there have been some negative comments on the way that we do appoint committee Chairs. There were comments made in the House of Commons by Members

gwendid yn ein dulliau democrataidd ni. Nid wyf yn licio'r ffaith ein bod ni'n ymddangos yn llai democrataidd na Thŷ'r Cyffredin.

there and it does appear to be a deficiency in our democratic processes. I don't like the fact that we appear to be less democratic than the House of Commons.

[186] **Y Prif Weinidog:** Beth yn gwmws yw'r broblem?

The First Minister: What exactly is the problem?

[187] **Yr Arglwydd Elis-Thomas:** Wel, yr honiadau sydd wedi cael eu gwneud yw nad oes gan Gynulliad Cenedlaethol Cymru ddull democrataidd o ethol Cadeiryddion pwyllgorau gan yr Aelodau, fel sydd gan Dŷ'r Cyffredin yn San Steffan. Dyna'r pwynt sydd wedi cael ei wneud, ac mae wedi cael ei wneud gan rai cyn-Aelodau o'r lle hwn yn San Steffan.

Lord Elis-Thomas: Well, the claims that have been made are that the National Assembly for Wales doesn't have a democratic method of electing committee Chairs; that they are not elected by Members, as they are in the House of Commons in Westminster. That's the point that has been made and it's been made by some former Members of this place in Westminster.

[188] **Y Prif Weinidog:** Wel, hoffwn i weld unrhyw fath o fanylion yn gyntaf, cyn mynegi barn ar hwn. Ond, nid yw'n amlwg i fi bod yna ryw fath o broblem ddemocrataidd ynglŷn â hwn. Petasai'r pwyllgor hwn yn ystyried hyn yn y Cynulliad nesaf, wrth gwrs, byddwn i'n fodlon—os taw fi fydd yma—ystyried unrhyw argymhellion y byddai'r pwyllgor yn eu gwneud.

The First Minister: Well, I would like to see the details first, before expressing a view on this. But, it's not clear to me that there is some sort of democratic problem in this area. If this committee were to consider this in the next Assembly, I would be willing—if I'm here, of course—to consider any recommendations that this committee may make.

[189] **Yr Arglwydd Elis-Thomas:** Wel, wrth gwrs, yn y pwyllgor hwn, nid oes gennym ni farn ynglŷn â dymuno i chi fod yna neu beidio, ond mae gennym ni i gyd ein barn bersonol.

Lord Elis-Thomas: Well, of course, in this committee, we have no view as to whether we hope you are there or not, but we all have a personal view.

[190] **Y Prif Weinidog:** Rwy'n deall hynny.

The First Minister: I understand that.

[191] **David Melding:** Before we leave that point—I do think it’s a very important one, because four of our six policy and legislation committees had a forced removal of a Chair—do you think any self-respecting legislature can operate where Chairs of committee, in good conduct, do not enjoy security of tenure? What does that do for the independence of this institution?

[192] **The First Minister:** What examples would you give, Chair?

[193] **David Melding:** Well, I—*[Interruption.]* No, seriously, if that’s your answer, then we obviously have a problem, First Minister.

[194] **The First Minister:** Which examples?

[195] **David Melding:** I don’t think it would be dignified for me to go through the two examples on your side, one example in the group I sit on and one in Plaid Cymru.

[196] **The First Minister:** I see. It’s not aimed at the Government, particularly. I understand it now. Okay. Well, I had cause to remove a chair of a committee that wasn’t an Assembly committee, which was my direct appointment, which was to—

[197] **David Melding:** That’s not what we’re referring to.

[198] **The First Minister:** Right, okay. Well, these are issues I think that can be considered, then, in the course of the next Assembly. If the committee wishes to look at this, I’d be happy to look at any recommendations the committee might make.

[199] **David Melding:** The question I put to you is: do you think a Chair of a committee in the National Assembly, in good conduct, should enjoy security of tenure and just be removed by that committee if he or she misbehaves, or should he be there on the say-so of a party leader, I suppose?

[200] **The First Minister:** They’re not. I can say, as far as my own group is concerned, committee Chairs are chosen by the group as a whole and not by me. I don’t appoint and I don’t remove.

[201] **David Melding:** Okay.

[202] **The First Minister:** I don't know how it works in other parties, but that's the way—. It's not a question of me appointing committee Chairs; the committee Chairs are elected by the group itself.

[203] **David Melding:** Well, it would be undignified for me to enter into an argument on that point, but I think what happened in this Assembly is there for everyone interested in our procedures to observe. Many people have, many commentators have, and I think their view is a very firm one that doesn't really permit of hair-splitting in terms of the dignity of this institution.

[204] Do we have any final questions? Well, let me finish on a happier note, because this is the last time you'll appear before us. We're very grateful, First Minister, for your co-operation in several inquiries and also that of your Ministers and officials. So, perhaps you'll convey our thanks to them, which has allowed our committee to work in a very productive way with a very heavy and interesting workload during the course of this fourth Assembly. Thank you very much, First Minister.

[205] **The First Minister:** Thank you.

14:04

**Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad
arnynt o dan Reol Sefydlog 21.2 neu 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2
or 21.3**

[206] **David Melding:** We'll get back to the agenda. Agenda item 3 is instruments that raise no reporting issues. They are, however, listed. They include the first appearance, am I right, Gwyn, of the agricultural wages Orders that have come to us?

[207] **Mr Griffiths:** Yes, indeed, Chair. There is both an agricultural wages Order and an Order setting up the advisory committees.

[208] **Alun Davies:** Hear, hear.

[209] **David Melding:** Do we have any that have reporting points or have I completely missed those?

[210] **Suzy Davies:** Yes, bilingualism.

[211] **David Melding:** That's item 4. Yes, sorry.

14:05

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

[212] **David Melding:** There are instruments that do raise reporting points, and they're listed. One relates to the Wildlife and Countryside Act 1981.

14:06

**Papurau i'w Nodi
Papers to Note**

[213] **David Melding:** Item 5 is papers to note. There is a reasoned opinion from the House of Commons Committee on EU law, and this refers to electoral law, I think. So, it's just there for your information. We also have a letter from the Joint Committee on Human Rights of the House of Commons to the Presiding Officer. It raises this point of the consultation process for possible replacement of the Human Rights Act. This could overlap with our electoral cycle and may prevent us from making our views known during the consultation period. So, perhaps it would be appropriate for us to write and add to the point that's been made by the Chair of the House of Commons committee, Harriet Harman. Are we content that we write?

[214] There's a statement by the First Minister on the report and implementation of the Law Commission's proposals. I thought the layout was very helpful. Are we happy to note that? Then, there's the House of Commons Public Administration and Constitutional Affairs Committee report, 'The Future of the Union, Part One: English Votes for English Laws'. We have been part of this, haven't we? Or is this a separate issue that we talked about when we had the—?. The Presiding Officer submitted written evidence. Is that what this is? Okay, are we happy to note that?

14:08

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Motion:

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

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[215] **David Melding:** I now propose the relevant Standing Order that we conduct the rest of the proceedings in private, unless any Member objects. I see no-one objecting, so please switch off the broadcasting equipment and clear the public gallery.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:08.

The public part of the meeting ended at 14:08.