



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Llun, 21 Tachwedd 2011
Monday, 21 November 2011**

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Cynnig Gweithdrefnol
Procedural Motion

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

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

Aelodau'r pwyllgor yn bresennol

Committee members in attendance

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

Eraill yn bresennol

Others in attendance

Andrew Gurney	Swyddog Polisi (Defnydd Tir), Undeb Amaethwyr Cymru Policy Officer (Land Use), Famers Union of Wales
Carwyn Jones	Aelod Cynulliad, Llafur, y Prif Weinidog Assembly Member, Labour, First Minister
Dr Hugh Rawlings	Cyfarwyddwr, Materion Cyfansoddiadol a Chysylltiadau Rhynglywodraethol, Llywodraeth Cymru Director, Constitutional Affairs and Inter-Governmental Relations, Welsh Government
Gavin Williams	Cadeirydd Pwyllgor Defnydd Tir a Materion Seneddol yr Undeb, Undeb Amaethwyr Cymru Chairman of the Union's Land Use and Parliamentary Committee, Farmers Union of Wales

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
Owain Roberts	Gwasanaeth Ymchwil Research Service
Alys Thomas	Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 2.14 p.m.

The meeting began at 2.14 p.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **David Melding:** Good afternoon. I welcome everyone to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. In the event of an emergency, please follow the instructions of the ushers; we do not expect a routine fire alarm test. These proceedings will be conducted in Welsh and English, and, when Welsh is spoken, translation is available on channel 1. If you need to amplify our proceedings, amplification is on channel 0. Please switch off all mobile phones and other electronic equipment completely, as even on silent they interfere with the broadcasting equipment. We have received an apology from Julie James, and I am delighted to welcome Mick Antoni to this meeting as her substitute.

2.15 p.m.

Offerynnau nad ydynt yn Cynnwys unrhyw Faterion i'w Codi o dan Reolau Sefydlog 21.2 a 21.3 Instruments that Raise no Reporting Issues under Standing Order 21.1 or 21.3

[2] **David Melding:** There are two statutory instruments under this category, but I do not see that Members have any queries about them.

Offerynnau sy'n Cynnwys Materion i'w Codi gyda'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

[3] **David Melding:** The first one is CLA52, the Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011. We have a merits report and I will ask Gwyn Griffiths to highlight one or two of the points that that covers.

[4] **Mr Griffiths:** Y rheoliadau hyn yw'r rhai cyntaf i'w gwneud o dan y Mesur Iechyd Meddwl (Cymru) 2010 a'r cyntaf o gyfres o reoliadau a fydd yn dod gerbron y Cynulliad yn ystod yr wythnosau a'r misoedd nesaf. Felly, mae'r adroddiad drafft yn tynnu sylw'r Cynulliad atynt ar sail y ffaith eu bod yn fater o bolisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad. Nid oes unrhyw beth o gwbl o'i le arnynt; yr ydym yn tynnu sylw atynt gan eu bod yn fater o ddiddordeb yn ogystal â bod y rhai cyntaf o gyfres.

Mr Griffiths: These regulations are the first to be made under the Mental Health (Wales) Measure 2010, and the first of a series of regulations that will come before the Assembly over the next weeks and months. Therefore, the draft report draws the Assembly's attention to them on the basis that they are an issue of public policy likely to be of interest to the Assembly. There is nothing whatsoever wrong with them; we are drawing attention to them because they are a matter of interest as well as being the first of a series.

[5] **David Melding:** Are Members content? We are highlighting this legislation because of the importance of the policy area, rather than because there is a matter of very specific concern to us.

[6] **Eluned Parrott:** I have a minor query. This is tabled in English only. Is that correct, or will a Welsh version be available?

[7] **Mr Griffiths:** There is a Welsh version.

[8] **Eluned Parrott:** Do not worry, then.

[9] **David Melding:** I am sure that we can get it sent to you.

[10] We move on to CLA53, the Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011. There is a technical issue here, which, again, Gwyn will elaborate upon.

[11] **Mr Griffiths:** Unwaith eto, rhain yw'r cyntaf o gyfres o ddarnau o ddeddfwriaeth a fydd yn dod gerbron y Cynulliad o dan y Mesur Diwydiant Cig Coch (Cymru) 2010. Yn anffodus, yr offeryn a fyddai wedi bod yn ddefnyddiol i gael gyntaf yw'r Gorchymyn cychwyn, ac oherwydd nad yw hwnnw wedi'i wneud eisoes, mae'r Gorchymyn hwn yn dod gerbron y Pwyllgor hwn heb i'r pŵer i wneud y Gorchymyn fod wedi cael ei gychwyn. Yr wyf wedi bod yn trafod gyda'r cyfreithiwr sy'n gyfrifol am ddrafftio'r ddeddfwriaeth hon ac mae wedi danfon drafft o Orchymyn cychwyn, sydd hefyd yn cynnwys darpariaethau trosiannol ac arbed. Deallaf y bydd y Gweinidog yn llofnodi hwnnw yfory. Felly, er ein bod ni'n gallu tynnu sylw at y mater hwn ar hyn o bryd, erbyn i'r mater ddod i'r Cyfarfod Llawn ar gyfer trafodaeth, bydd y Gweinidog mewn sefyllfa i gadarnhau bod y pŵer cychwyn wedi'i ddefnyddio, ac felly bod y pŵer i wneud y Gorchymyn hwn hefyd wedi'i gychwyn.

Mr Griffiths: Once again, these are the first in a series of pieces of legislation that will come before the Assembly under the Red Meat Industry (Wales) Measure 2010. Unfortunately, the instrument that it would have been useful to have first would have been the commencement Order, and because that has not been made yet, this Order comes before this Committee without the power to make the Order having been commenced. I have been discussing this with the lawyer responsible for drafting this legislation and he has sent a draft of the commencement Order, which also includes transitional and saving provisions. I understand that the Minister will sign that tomorrow. Therefore, although we can draw your attention to this particular issue at present, by the time that the issue comes before Plenary for discussion, the Minister will be in a position to confirm that the commencement power has been used, and therefore that the power to make this Order will also have been commenced.

[12] **David Melding:** Are Members content? Obviously, there is a slight hitch.

[13] **Simon Thomas:** Yr oeddwn eisiau gofyn un cwestiwn. Yn ôl yr hyn a ddeallaf o'r nodyn esboniadol, yr oedd hyn yn gosod ardoll, ac oherwydd ei bod yn defnyddio chwyddiant pob blwyddyn fel mesur ar gyfer yr ardoll, nid yw'n gorfod dod yn ôl mewn rheoliadau pob blwyddyn. Fodd bynnag, nid oeddwn yn gallu gweld unrhyw sôn am chwyddiant yn yr offeryn statudol ei hunan. A yw'r ddarpariaeth hon yn y Mesur ei hunan felly?

Simon Thomas: I want to ask one question. From what I understood from the explanatory memorandum, this placed a levy, and because it uses annual inflation as a measure for the levy, it does not have to come back in regulations every year. However, I could not see any mention of inflation in the statutory instrument itself. Is this provision in the Measure itself therefore?

[14] **Mr Griffiths:** Mae'r Mesur ei hunan yn dweud y dylai Gweinidogion bennu'r ardoll yn flynyddol, ond bod hynny o fewn yr uchafswm sy'n cael ei bennu drwy Orchymyn. Felly, mae'r Gorchymyn yn pennu uchafswm yn unig, ac wedyn bydd y

Mr Griffiths: The Measure itself states that Ministers should set the levy annually, provided that is within the maximum that is set by an Order. Therefore, the Order sets a maximum only, and Ministers will then set the levy annually, and that is when inflation

Gweinidogion yn pennu'r ardoll yn flynyddol, a dyna pryd y bydd chwyddiant yn berthnasol.

[15] **Simon Thomas:** A yw'r uchafswm hwn yn ddilys am 10 mlynedd?

Simon Thomas: Is this maximum valid for 10 years?

[16] **Mr Griffiths:** Dyna'r bwriad ond, wrth gwrs, mae hynny'n ddarostyngedig i'r ffaith bod amcangyfrif teg wedi'i wneud o bosibliadau o ran chwyddiant.

Mr Griffiths: That is the intention, but, of course, that is subject to a fair assessment having been made of inflation possibilities.

[17] **Simon Thomas:** Dyna beth oedd yn fy rhyfeddu. Yr oeddwn yn meddwl byddai'n beth da bod gweision sifil yn gwybod beth fydd chwyddiant dros y 10 mlynedd nesaf, yn fwy na Mervyn King a Banc Lloegr. [*Chwerthin.*]

Simon Thomas: That is what surprised me. I would have thought that it was a good thing that civil servants knew better than Mervyn King and the Bank of England what inflation will be over the next 10 years. [*Laughter.*]

[18] **Mr Griffiths:** Tybiaf eu bod yn gobeithio na fydd angen iddynt ddod yn ôl, ond fe allent ddod yn ôl.

Mr Griffiths: I suspect that they hope that they will not have to come back, but they could come back.

[19] **Simon Thomas:** Gallwn gymryd bod yna *headroom* ar gyfer hwn. Diolch. Nid oeddwn yn siŵr ac yr oeddwn am fod yn glir.

Simon Thomas: We can take it that there is some headroom on this. Thanks. I was not sure and I wanted some clarity on that.

[20] **David Melding:** Okay, we are happy to agree that report on that technical item.

2.20 p.m.

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

[21] **David Melding:** I am delighted to welcome representatives from the Farmers Union of Wales: Mr Andrew Gurney, policy officer, and Mr Gavin Williams, chairman of the union's land use and parliamentary committee. Welcome. We were very impressed by your written evidence. I should warn you that if you submit such cogent evidence in future, you may be asked to come to speak to us again. We look forward to discussing a range of issues that arise from your written evidence. I will ask Mick Antoniw to start with his question.

[22] **Mick Antoniw:** Thank you for the report. It raises a number of interesting and broad principles. Perhaps it would be helpful if you could outline your organisation's involvement in making representations on legislation to Westminster and Cardiff. How does that work in practice? Have any difficulties arisen from having this dual direction?

[23] **Mr Williams:** In that particular instance, it might be helpful if we explained how the structure of the Farmers Union of Wales—*Undeb Amaethwyr Cymru*—works. We are a democratic organisation and our power base is our members. The members of the union drive everything that the union does, including the formulation of its policies. Everything is done from a grass-roots level upwards. We take our instructions from what the members tell us to do. We look at things with a Welsh agriculture slant, and look at parliamentary issues from a

Welsh standpoint. The union has a number of standing committees that discuss such issues. I am the current chairman of the land use and parliamentary committee, which is where the report has come from.

[24] We tend to influence things by lobbying local Assembly Members. You have probably all, in your turn, had some input from somebody from the FUW. On a Westminster basis, we lobby Members of Parliament, and on a European basis, we pursue our Members of the European Parliament. Subsequently, we produce discussion documents and react to documents produced by the Assembly. We will let you know our opinion on anything that has an impact on the agriculture sector. We produce evidence for various committees and try to influence what goes on. That is how we work and how we try to influence what goes on.

[25] **Mick Antoniwi:** From your experience, have you come across any particular difficulties that arise? In your evidence, you make important submissions in respect of Standing Orders, the role of legislative consent motions, and the way in which legislation and powers can be conferred on Wales through a Westminster parliamentary process. You make strong representations about how that might lead to scrutiny in Wales. Do you have particular concerns about whether the decisions that we are making on legislation, and the powers that we are getting, are not being properly scrutinised, are conflicting, or are not sufficiently transparent for your purposes?

[26] **Mr Gurney:** Our main concern is the fact that Wales is a devolved nation—it has been devolved for the past 10 or 11 years, and we had the referendum earlier this year to give Wales further powers—but influence is still coming in from Westminster that is completely bypassing the National Assembly as the governing body of Wales, and giving Welsh Ministers the power to implement that legislation, which, in some cases, might not be the best that it could be for Wales, because it has been written on a UK basis. If Wales had had an influence on its drafting or were able to change little bits of it, it would work better for Wales, the rural areas of Wales and agriculture in Wales.

[27] **Mick Antoniwi:** So, it is transparency that is an issue for you. Things are happening and you may not have an opportunity to represent your members' interests properly. Is that your main concern?

[28] **Mr Gurney:** Yes, definitely. It is also the fact that the National Assembly is being bypassed, even though it is the Government; it is being overruled by the Westminster body. The Government is taking over and bypassing the National Assembly to go straight down to the Welsh Minister level.

[29] **Mick Antoniwi:** Do you have particular examples that may have affected your members or are you talking about matters of principle rather than specific examples?

[30] **Mr Gurney:** I am mainly thinking of matters of principle. The Public Bodies Bill has not quite got to that stage yet, but there are elements in it that are coming straight from Westminster and bypassing the Assembly—that is, even though the Assembly has been able to have some input, there is the potential for the Assembly to be bypassed.

[31] **David Melding:** I know that not everyone will be aware of the significance of the Public Bodies Bill, but quite a few would be in terms of the organisations that it will influence. Is there a feeling among your members that this should have been done by a Welsh Bill in the Assembly?

[32] **Mr Gurney:** I am not too sure on that. There are definitely big chunks in the Public Bodies Bill, such as the merger of the Countryside Council for Wales, the Forestry Commission and the Environment Agency, that will have big impacts in Wales in the future.

It will have an impact on our members when those three bodies are merged together—the likelihood is that they will be merged and although there has been no definite answer on that yet, they will be.

[33] **Simon Thomas:** Yr ydych wedi ei gwneud yn glir nad ydych yn teimlo bod y craffu ar gynigion cydsyniad deddfwriaethol yn ddigonol. Pa fath o gamau yr hoffech weld y Cynulliad yn eu cymryd? Yr ydych yn awgrymu yn y dystiolaeth yr hoffech i bwyllgor ystyried pob un. A allwch amlinellu sut y byddech yn gweld hynny'n gweithio?

Simon Thomas: You have made it clear that you do not feel that there is adequate scrutiny of legislative consent motions. What kind of steps would you like to see the Assembly taking? You suggest in the evidence that you would like a committee to consider each one. Can you outline how you would see that working?

[34] **Mr Gurney:** Yes, certainly. There have been some welcome changes to the Standing Orders for the fourth session of the Assembly, particularly Standing Order No. 29, which has changed quite significantly. So, there is an opportunity for motions to be referred to committees, which is a welcome move, but we feel that it should be strengthened and that the Business Committee should have the ability to transfer consent motions to a more appropriate scrutiny committee—I am not saying that this committee is not appropriate—that has the expertise and knowledge on that subject to fully debate and discuss it and propose any amendments that may need to be made to the legislation behind the consent motion. There are elements already within the Standing Orders, particularly relating to the European side of things, that mean that legislation can be passed down, but Standing Order No. 29 does not make that clear. In fact, it makes no mention of referral beyond the Business Committee stage, whereas, as I said, with European legislation, under Standing Order No. 21, and, I think, under Standing Order No. 30, there are options to refer it further. So, we feel that, within Standing Order No. 29, there should be a chance to refer pieces of legislation to the relevant scrutiny committee, or committees if they are particularly big or cross-cutting.

2.30 p.m.

[35] **Simon Thomas:** What sort of practical consequence would that have? Is there not a danger that if we did that with everything, a committee would simply be swamped by legislative consent motions that are, in effect, rather technical in nature and do not, perhaps, merit a great deal of committee scrutiny? Some more important motions might just pass through as a result because everyone is pressured for time. Do you have any concerns about that?

[36] **Mr Gurney:** There is a possibility that that could occur. However, the committees would have a sufficient level of experience and knowledge so that they would be able to look at a particular piece of legislation and decide that it does not need as much coverage, whereas the next piece that comes in may need to be debated in more depth.

[37] **Simon Thomas:** Mick Antoniwn asked you about this, but I will press the point again: do you have any examples that demonstrate that something did not receive sufficient scrutiny in this place, even though you may have agreed with the decision that was taken at the time?

[38] **David Melding:** That is a difficult question to answer, because we are a bit early on in the process. However, if you do have any examples—

[39] **Mr Gurney:** I cannot think of any off the top of my head.

[40] **Simon Thomas:** I was thinking of your particular interest in rural Wales and so forth. The one thing that strikes me from the evidence is that you see that there is a deficiency in our Standing Orders in terms of following things through. I am not sure whether your evidence

suggests that we should be looking at these things individually, and I am not sure whether you have been able to demonstrate what improvements we could possibly bring to the system. However, I will leave that point for the moment, unless you have further comments to make of course.

[41] **Mr Gurney:** A report was put together by members of the previous Constitutional Affairs Committee that amply demonstrated how we feel that the changes should have been implemented. The subsequent Standing Order that was produced did not seem to go as far as the suggestions that were made in that report. The report would be an ideal model.

[42] **Simon Thomas:** You think that it did the job.

[43] **Mr Gurney:** Yes.

[44] **Mick Antoniw:** Is your real concern the use of the word ‘may’ in Standing Order No. 29, where it says that ‘the Business Committee may refer’, rather than what I understand that you are suggesting, which is a presumption of referral, perhaps with certain exemptions? Essentially, your view is that anything that is substantive should, as a matter of course, be referred for appraisal; is that a correct summation?

[45] **Mr Gurney:** Yes.

[46] **David Melding:** I think that you are also suggesting that everything should be referred so that it is the committee that makes a judgement as to whether it is important or not, and not the Government.

[47] **Mr Gurney:** Yes; that as well.

[48] **David Melding:** The Standing Orders will allow that, should such a culture develop, but I think that the point that Mick makes is appropriate, because, at the minute, an alternate culture could develop where I suspect that these things would not be fully tested. Would I be right in assuming that if an LCM covers an area that is important for your members, the test for you would be whether you were able to give evidence when it was being considered? Would that be the sort of practical outcome that you would be hoping for, so that you would be able to come along and give evidence to a committee that was looking at the issue?

[49] **Mr Gurney:** That would be the ideal outcome.

[50] **David Melding:** I presume that you fear that a closed system would not allow you to do that.

[51] **Mr Gurney:** If it does not get to the committee stage, we will not then have an input to the discussions.

[52] **Suzy Davies:** Staying on this point for a moment, although I will want to move on to something else in a second, do you have any concerns that there might be problems with timing if the culture that you would prefer to see this place adopting were put in place? I do not mean problems in relation to advance warnings, but that the whole system could be flooded with requests. Are you hoping that the number of LCMs that will come forward in future will be small, because they will be confined to technical uncontroversial matters? Do you see a risk that the system will be overwhelmed?

[53] **Mr Gurney:** There is a risk that it could be flooded. As I said in response to Simon’s question, it is more a case of the committee being able to decide which LCMs would be the most appropriate to look at. Rather than being swamped by legislative consent motions, the

committees would be able to look at them and decide that one does not need as much discussion as another, and that they could give one a little less time and priority than another that will have a big impact.

[54] **Suzy Davies:** Do you think there might be some scope in the devolution guidance notes, which is the issue that I am coming to, giving some guidance on what needs to be considered and what does not, rather than making that a matter for the Business Committee—or perhaps alongside it? More generally, how would you like to see the devolution guidance notes updated?

[55] **Mr Williams:** We are concerned that, at the moment, those devolution guidance notes have not been updated to take account of the referendum results, which were pretty clear as to the wishes of the Welsh electorate.

[56] **Suzy Davies:** How would you like to see them changed? Before you answer that, have you been consulted by the Wales Office on updating the devolution guidance notes?

[57] **Mr Gurney:** No, not that I am aware of.

[58] **Mr Williams:** Of primary importance are the things that affect legislation governing Wales. Now that the Assembly has greater legislative powers, it is important for us to feel that—where it perhaps has not happened in the past—UK Government departments deal appropriately with the Assembly, as they should do, rather than taking it for granted that this is how a piece of legislation is going to be. We feel that it is very important that the UK Government acts appropriately when dealing with and drafting legislation that is relevant to Wales, so that Wales has input to that legislation.

[59] **Suzy Davies:** Is that right upfront, at the earliest possible stage?

[60] **Mr Williams:** Yes; the sooner the better in the drafting of the legislation.

[61] **David Melding:** We heard from one witness that, when it came to devolution guidance notes, Whitehall got Scotland but was a bit murkier with Wales. Is that a judgment that you would agree with?

[62] **Mr Gurney:** With Scotland being so much further ahead with devolution, that could be the case, yes. It is eight months since the referendum was held in Wales, and we can only comment on those notes that are available on the Cabinet Office website, but they are not just eight months out of date, but years out of date.

[63] **Mr Williams:** It might be the case that Scotland's affairs are less affected by what happens in Westminster than perhaps are Wales's affairs. It is important that that aspect is fully explored. Welsh legislation is devolved to Wales and is dealt with by Welsh Ministers, rather than UK Ministers, who should not interfere, basically.

[64] **Suzy Davies:** May I just ask what you mean by that? Is it just that the Scottish position has been so different from the Welsh position for so long?

[65] **Mr Williams:** As Andrew says, from our point of view, Scotland is further down the road of devolution. Therefore, Westminster does not seem to make the same assumptions about the Scots as it does about the Welsh—

[66] **Suzy Davies:** So it is a cultural inheritance—

[67] **Mr Williams:** Yes. I think that it assumes that Wales is going to do the same as

England in some areas where, perhaps, the Welsh do not want to do quite the same.

[68] **Eluned Parrott:** We have taken quite a lot of evidence from people who have given us examples from the Scottish system of how things work there. One thing that we have been told about is a system whereby, after every Queen's Speech, the Scottish Government makes a list of all the measures that it thinks will affect the Scottish Parliament's competence and shares the information with Members of the Scottish Parliament. First, do you think that Wales's receiving advance warning from London of Bills that will affect Welsh competence, but also the Executive passing that information on, might lead to an improvement in the effectiveness of scrutiny in the Assembly?

[69] **Mr Gurney:** Any advance warning of Bills that will come forth would allow greater scrutiny, because, of course, there would more time to allow that scrutiny to take place. As far as we are concerned, the operations in Scotland and Wales are very similar. However, as you said, they go through the Queen's Speech and offer prior warning. That provides them with the time to look further ahead and to start discussions within their own committees and structures. It provides the time to look at those issues before they arise—one or two years down the line.

[70] **Eluned Parrott:** Do you work with the equivalent organisation in Scotland? Have you discussed its experience of the Scottish system?

[71] **Mr Gurney:** We work with NFU Scotland, in the same way that we work with NFU Cymru and NFU England, but we have not had discussions at that level; we tend to stick to the practicalities, such as electronic identification for sheep and that side of things, rather than the nitty-gritty of politics.

[72] **Eluned Parrott:** Another area that we have been discussing is how effectively we are able to monitor the powers that are conferred on members of the Executive—Ministers, if you like—in the Assembly. We have taken evidence that suggests that establishing a central record, similar to that which is proposed for legislation, might be effective. Do you think that this might be helpful, and in what way?

[73] **Mr Gurney:** It would be helpful to have a central record, mainly because it would show just how many pieces of Westminster legislation have affected Welsh Ministers without involving the National Assembly. This issue has arisen only recently, but the Assembly has been in existence for about 10 years. Many pieces of legislation have been enacted in that time that have not involved the Assembly.

[74] **Eluned Parrott:** So, from your point of view, the use of such a scheme would primarily be to identify a failing rather than necessarily to keep a record for future use.

[75] **Mr Gurney:** Not necessarily to identify a failing; it would also be for future use. Hopefully, with better scrutiny in future, if and when it comes about, there will still be a central record as well.

[76] **Mr Williams:** It follows on from the point that you made earlier. Keeping this record might provide us with examples of areas that need to be addressed.

[77] **David Melding:** Are you ever surprised that Ministers have certain powers? Do you sometimes sit in the union's office and suddenly realise that there is a provision that will have an effect on your members, and you wonder where that power springs from and then you are told, but you did not realise that a certain Act of Parliament allows Welsh Ministers to do X, Y, or Z?

[78] **Mr Williams:** Where the consultation process has emanated from the UK Government, we find that it is sometimes late in the day when we get to the consultation process, because it has been assumed that it is something that relates to England and not to Wales.

[79] **Mr Gurney:** In addition to that, in some of those consultations, provision for Wales is a small part—a paragraph, or a few paragraphs—of a much larger document. Once again, as Gavin said, the assumption has been made that Wales will follow what has been proposed.

[80] **Mr Williams:** I certainly think that there is a culture with regard to UK legislation that needs to be addressed, so that they understand that they no longer have the power to discuss or affect some aspects of legislation that are devolved. There is still a culture where, to a certain extent, they do not understand that they are no longer in charge of that particular area.

[81] **David Melding:** In contrast, in Scotland, because of the historic separation of the legal system, if nothing else, that culture is not as prevalent.

2.45 p.m.

[82] We have concluded the questions that we wanted to ask you. However, if there is anything that you want to add to help us in our inquiry, now is your chance. Do not feel that you have to fill the space, but we do not want you to leave wishing that you had had an opportunity to say something.

[83] **Mr Williams:** What will be the Secretary of State for Wales's role in this exercise? Sometimes, her role conflicts with what the Assembly wants to do.

[84] **David Melding:** The Secretary of State has submitted evidence, which will be available on our system this week. It explores the interface in our system between the two jurisdictions. I do not want to make any qualitative statement, but the evidence that the Secretary of State has submitted emphasises repeatedly that the Assembly is in charge of its own scrutiny arrangements, and the UK Government assumes that scrutiny is put in place. It makes the point that, even when powers go to Ministers, the assumption is that the scrutiny function will go to the Assembly. That is what we are testing out, in practice, but you might find the note quite interesting.

[85] **Mr Williams:** That is very helpful. The union's overriding concern is that everything affecting Wales should be driven by the National Assembly and the Welsh people.

[86] **David Melding:** If there is not anything else, I thank you for making the time this afternoon. We appreciate it when organisations that have to deal with the real practicalities of the way that our constitution and legal system is structured come to talk to us about it. It ensures that we do not get too esoteric in our deliberation. We are very grateful for your practical take on affairs. Thank you.

[87] I suggest that the committee goes into recess until 3 p.m.. If Members would like to take advantage of it, to wash their hands, now is the opportunity. I would like a few minutes before the First Minister comes in to review what we are going to put to him. Thank you.

*Gohiriwyd y cyfarfod rhwng 2.47 p.m. a 3.03 p.m.
The meeting adjourned between 2.47 p.m. and 3.03 p.m.*

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i Roi Pwerau i Weinidogion Cymru yn
Neddfau'r DU: Prif Weinidog Llywodraeth Cymru, y Gwir Anrhydeddus
Carwyn Jones AC**

**Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in
UK Laws: First Minister of the Welsh Government Rt. Hon Carwyn Jones AM**

[88] **David Melding:** The Constitutional and Legislative Affairs Committee will now reconvene. It is my pleasure to welcome the First Minister and Dr Hugh Rawlings, director of constitutional affairs and inter-governmental relations at the Welsh Government, who will now give evidence.

[89] First Minister, I will ask a general question. How do Ministers acquire their powers and what is the nature of the consultation you have with the UK Government about powers that may be conferred on you and your colleagues?

[90] **The First Minister (Carwyn Jones):** In the past, the practice has been to look at a Westminster Bill and then see what powers could be conferred to Welsh Ministers in devolved areas. I do not anticipate that this practice will be used much in the future, now that we have the power to pass Bills ourselves.

[91] **David Melding:** If you look at something like the Public Bodies Bill, which predates our current settlement, did the Government view it as an opportunity to acquire more functions for the devolved settlement?

[92] **The First Minister:** Yes, it did. Bearing in mind that the Public Bodies Bill predated the referendum, we did not have the legislative capacity that we now have. I would not anticipate a situation where a UK Government Bill conferred powers on Welsh Ministers, save in exceptional circumstances. The natural procedure in future would be for an Assembly Bill to confer such powers, with them set out on the face of the Bill.

[93] **David Melding:** What sort of assessment was made of the Public Bodies Bill? Despite the fact that it predates the current settlement, it is a very significant piece of legislation—or will be—and has already generated a lot of discussion regarding the various organisations that are likely to be affected via alteration, merger or whatever. Did your Government think that it was an area where a Measure could have been applied, under the previous settlement? Did you even think, after the referendum in March, ‘This is a significant area, and perhaps we should go back to square one and bring a Bill before the Assembly to cover these reported issues’?

[94] **The First Minister:** It would have delayed everything—that is the problem. In order to pass the Measure, we would have needed to pursue legislative competence, which would have taken time, and then drafted a proposed Measure, which would also have taken time. With regard to producing a Bill here, again, that would have delayed our objectives, although I fully expect that, in future, a Bill would be the normal mechanism for conferring powers on Welsh Ministers.

[95] **David Melding:** In this case, it is just the opportunity, really—the timeliness of it.

[96] **The First Minister:** It was. The analogy that I have used in the past, in the days of legislative competence Orders, was that, where a Bill was passing through Parliament, and it gave us the opportunity for further devolution of executive powers, then we would leap onto the bandwagon to devolve those powers rather than go through the much slower process of pursuing an LCO and then a Measure. Of course, those days are now gone, fortunately.

[97] **David Melding:** I sense that—as you have stated quite openly—you do not want culture creep; you do not want the way that things were dealt with before to pertain under the new settlement.

[98] **The First Minister:** No. As I said, there might be exceptional circumstances where executive powers might be devolved in the future, but the normal system would be that a Bill becoming an Act in this place would confer powers on Ministers.

[99] **David Melding:** Thank you for those opening remarks, and for clarifying that.

[100] **Suzy Davies:** First Minister, I appreciate what you have just said about there being a change of culture, with powers coming to Welsh Ministers via Acts, we hope, in future. However, we still have a situation where, in Scotland, any transfer of powers has to be done with the consent of the Scottish Parliament, but that is not necessarily the case in Wales. Do you think that that difference of position is justified now?

[101] **The First Minister:** No. I think that there is a strong argument that the Scottish procedure should be followed in Wales.

[102] **Suzy Davies:** What about powers that are transferred to Welsh Ministers in non-devolved areas specifically? Is there an even greater reason for having scrutiny by the Assembly before that is done?

[103] **The First Minister:** I see no reason why the process of scrutiny should be different in those scenarios. The reality is that Scotland has a situation where consent is given before powers are given to Scottish Ministers. In the new settlement, the same should apply to Wales.

[104] **Suzy Davies:** Regarding the transfer of powers, would you prefer most of the work to be done by Welsh Ministers and UK Ministers, or by Parliament and the National Assembly for Wales?

[105] **The First Minister:** I do not think that the UK Government would speak to the Assembly as a legislature. The UK Government would only speak to the Welsh Government on a Government-to-Government basis. I cannot see how the relationship would work in that way, although of course it would be open for the Assembly to develop its relationship with the UK Parliament.

[106] **Suzy Davies:** Acts of Parliament can be scrutinised by parliamentary committees. Would you like to see a culture of joint scrutiny developing in areas where Wales is affected by such Acts, or would you prefer to see powers of scrutiny transferred wholesale to us here in the Assembly?

[107] **The First Minister:** There are already opportunities for Assembly committees to scrutinise Westminster Bills, but I see no reason why the Assembly's ability to scrutinise Westminster Bills should not be strengthened.

[108] **Suzy Davies:** Can you see them working side by side?

[109] **The First Minister:** There have been examples of joint LCO scrutiny in the past. There were logistical difficulties with doing that on every occasion, but I would certainly support extending the Assembly's ability to scrutinise Westminster legislation.

[110] **Suzy Davies:** If we are still talking about legislative consent motions as the main means of finding out about those changes to be scrutinised, what sort of attitude do you

currently take to LCMs? Is your Government proactive? Does it seek out potential LCMs in the legislation that comes out of the UK or do you wait for it, effectively, and find out about it when Parliament has already taking some action on it?

[111] **The First Minister:** No, we would normally look at the legislative programme that is announced every year. When detail is available on each of those Bills, we will proactively look to see whether there are any LCMs that we believe would be needed during the progress of the Bills.

[112] **Suzy Davies:** So, do you do that at, say, the Queen's Speech stage?

[113] **The First Minister:** We do not necessarily get the detail at the Queen's Speech stage. Once a Bill is published, we would inevitably look at a Bill and see what the effect would be on Wales. If there was a need, in our view, for an LCM or LCMs, we would look to discuss the matter with the UK Government at that stage.

[114] **Suzy Davies:** So, is it at the publication stage of a Bill rather than any other given point in a year.

[115] **The First Minister:** It has to be, because LCMs can only really be tabled once we know the detail of a Bill.

[116] **Simon Thomas:** Hoffwn holi ymhellach am y canllawiau yr ydych yn eu defnyddio, fel Llywodraeth, i benderfynu p'un ai fwrw ymlaen â chynnig cydsyniad deddfwriaethol. Yr ydych yn dweud yn eich tystiolaeth fod hynny weithiau yn effeithiol ac yn briodol. Pa fath o ganllawiau yr ydych yn eu defnyddio fel Llywodraeth i benderfynu pryd mae hynny'n ddilys?

Simon Thomas: I would like to hear more about the guidelines that you use, as a Government, to decide whether to go ahead with a legislative consent motion. You say in your evidence that this at times is effective and appropriate. What kind of guidelines you use as a Government to decide when that would be valid?

[117] **Y Prif Weinidog:** Nid oes canllawiau. Mae'n rhaid inni edrych ar bob enghraifft unigol. Byddem yn ystyried a yw'r maes wedi'i ddatganoli. Os ydyw, rhaid inni ystyried a oes angen cynnig cydsyniad deddfwriaethol a dod ag ef gerbron y Cynulliad. Felly, yr ydym yn dilyn beth bynnag sydd yn Atodlen 7 i'r Ddeddf.

The First Minister: There are no guidelines. We have to look at each individual example. We would consider whether the area is devolved. If so, we must consider whether we need an LCM and then bring it before the Assembly. So, we follow whatever is in Schedule 7 to the Act.

[118] **Simon Thomas:** Fel y gofynnodd Suzy Davies, a ydych yn gweld y broses gyda San Steffan yn un rhyngweithiol, a chyda Whitehall yn benodol, neu a ydych yn ei gweld yn broses lle mae'n rhaid ichi fynd ar ôl San Steffan, fel petai, i gael ateb? Hynny yw, a ydych yn fodlon ar y ffordd y mae'n gweithio ar hyn o bryd?

Simon Thomas: As Suzy Davies asked, do you see the process as an interactive one with Westminster, particularly Whitehall, or do see it as a process whereby you have to chase after Westminster, as it were, for a response? In other words, are you satisfied with the way in which it currently works?

[119] **Y Prif Weinidog:** Nid yw'n sicr a fyddai'r ddwy Lywodraeth yn cytuno â'r angen am gynnig cydsyniad deddfwriaethol ai peidio. Pan fyddai deddfwriaeth neu ran o Fil yn effeithio ar Gymru, yn enwedig mewn

The First Minister: It is uncertain whether both Governments would agree on the need for an LCM. Where legislation or part of Bills affect Wales, especially in devolved areas, we would consider the need for an

meysydd datganoledig, byddem yn ystryied yr angen am gynnig. Nid yw honno bob amser yn farn sy'n cael ei rhannu gan Lywodraeth y Deyrnas Unedig.

[120] **Simon Thomas:** Yn ogystal ag edrych ar hyn adeg Araith y Frenhines, pa fath o rybudd neu eiriau ymlaen llaw yr ydych yn eu cael gan Lywodraeth y Deyrnas Gyfunol ynglŷn â lle mae'n debygol o ddeddfu? Wrth ddarllen teitl Bil a'r llinell neu ddwy yn yr araith sy'n egluro'r Bil, ni fyddwch chi weithiau'n gweld y sgîl-ffeithiau a allai effeithio ar yr hawl i ddeddfu yma. Faint o ymwneud a rhybudd yr ydych yn eu cael er mwyn sicrhau bod y Biliau hyn yn addas?

[121] **Y Prif Weinidog:** Unwaith y bydd Bil wedi'i gyhoeddi, yr ydym yn edrych ar yr angen i gael gynnig cydsyniad deddfwriaethol. Fodd bynnag, ni allwn rhagweld y dyfodol er mwyn gwybod pa fath o welliannau a gynigir i Fil. Os bydd unrhyw welliannau a gynigir yn effeithio ar Gymru, byddai'n rhaid inni ystyried bryd hynny a oes angen cynnig cydsyniad deddfwriaethol. Mae'n bosibl bryd hynny na fyddem yn cael llawer o rybudd cyn bod penderfyniad yn cael ei wneud.

3.15 p.m.

[122] **Simon Thomas:** Cawsom enghraifft yn y Cynulliad yn ddiweddar pan oeddem yn pleidleisio arno ar y diwrnod pan oedd y Bil yn mynd drwyddo yn San Steffan oherwydd gwelliannau i'r Bil. Mae rheolau yn Nhŷ'r Cyffredin yn erbyn 'wrecking amendments' fel y maent yn cael ei galw. A ydych yn fodlon fel Prif Weinidog Cymru fod y system yn caniatáu i wrthbleidiau hyd yn oed gynnig gwelliannau yn Nhŷ'r Arglwyddi neu yn Nhŷ'r Cyffredin sy'n ymwneud â meysydd sydd wedi eu datganoli? A ydych o'r farn fod y system honno yn ddigonol ar hyn o bryd o safbwynt diogelu buddiannau Llywodraeth a Chynulliad Cymru?

[123] **Y Prif Weinidog:** Yr hyn sy'n digwydd mewn sefyllfa fel hynny weithiau yw nad yw'n rhoi unrhyw amser o gwbl i'r Cynulliad ei hun fynegi barn ynglŷn â'r gwelliannau. Mae'n golygu ein bod ni fel Llywodraeth yn gorfod penderfynu'n gyflym

LCM. That would not always be a view shared by the UK Government.

Simon Thomas: As well as looking at this at the time of the Queen's Speech, what kind of warning or notice do you have beforehand by the UK Government regarding where it is likely to legislate? When you read the title of a Bill and the couple of lines in the speech that explain the proposed legislation, you do not always see the side-effects that could affect the right to legislate here. How much warning and involvement do you have in order to ensure that these Bills are appropriate?

The First Minister: Once a Bill is published, we would look at whether an LCM is required. However, we cannot see into the future to see what kind of amendments may be tabled to a Bill. If any amendments tabled impact on Wales, we would have to consider at that point whether an LCM is required. It is possible in that instance that we would have very little warning before a decision is made.

Simon Thomas: We had an example in the Assembly recently when we were voting on a motion on the day that the Bill was going through in Westminster because of amendments to the Bill. House of Commons rules forbid wrecking amendments, as they are called. Are you content as the First Minister of Wales that the system allows even opposition parties to table amendments in the House of Commons or the House of Lords that relate to areas that are devolved? Do you believe that that system is adequate currently in terms of protecting the interests of the Welsh Government and Assembly?

The First Minister: What sometimes happens in such a situation is that it does not give the Assembly itself any time to express an opinion on the amendments. It means that we as a Government have to decide very quickly whether a legislative consent motion

iawn a oes angen cynnig cydsyniad deddfwriaethol ai peidio. Felly, nid yw'r system yn gweithio'n berffaith achos mae'n golygu weithiau fod y rhybudd yn fyr iawn.

is needed or not. So, the system does not work perfectly as it sometimes means that we have very little advance warning.

[124] **Simon Thomas:** Wrth ichi drafod hynny, boed hwy'n welliannau neu'n welliannau gan y Llywodraeth, sydd hefyd yn gallu bod yn rhai munud olaf weithiau, ai Swyddfa Cymru neu Swyddfa'r Cabinet yn gyrru'r broses hon o safbwynt cynnig cydsyniad deddfwriaethol yn San Steffan?

Simon Thomas: As you are discussing that, whether they are amendments or Government amendments, which can sometimes also be last-minute ones, is it the Welsh Office or the Cabinet Office that drives this process with regard to LCMs in Westminster?

[125] **Y Prif Weinidog:** Fel rheol, byddem yn cysylltu â'r adran berthnasol yn San Steffan.

The First Minister: We would usually contact the relevant Westminster department.

[126] **Simon Thomas:** Felly, mae eich ymwneud fel Llywodraeth yn uniongyrchol gydag adran?

Simon Thomas: So, your engagement as a Government is directly with the department?

[127] **Y Prif Weinidog:** Dyna yw'r system arferol ynglŷn ag unrhyw bwn.

The First Minister: That is the usual system regarding any subject.

[128] **Simon Thomas:** Yr ydym wedi cael sefyllfa eithaf difyr yn weddol ddiweddar lle gwnaethom bleidleisio yn erbyn cynnig cydsyniad deddfwriaethol ar rhywbeth a oedd eisoes wedi ei gytuno arno mewn ffordd, sef yr un ynglŷn â'r heddlu. A allwch esbonio wrth y pwyllgor sut y gwnaeth hynny godi? Yn benodol, pa wersi a ydych wedi eu dysgu o ran dulliau gweithredu ar gyfer y dyfodol o'r sefyllfa honno fel Llywodraeth?

Simon Thomas: We had quite an interesting situation relatively recently where we voted against a legislative consent motion on something that had already been agreed, in a way, namely the one relating to the police. Can you explain to the committee how that arose? Specifically, what lessons have you learned in terms of ways of working for the future from that situation as a Government?

[129] **Y Prif Weinidog:** Mae'n un peth i roi cynnig cydsyniad deddfwriaethol o flaen y Cynulliad oherwydd bod Bil yn ymwneud â maes sydd wedi cael ei ddatganoli, ond mae'n rhywbeth arall i gefnogi egwyddor y cynnig cydsyniad deddfwriaethol, felly mae i'r Cynulliad benderfynu a yw am gefnogi'r cynnig ai peidio.

The First Minister: It is one thing to lay a legislative consent motion before the Assembly because a Bill relates to a devolved area, but it is another thing to support the principle of the legislative consent motion, so it is for the Assembly to decide whether it wishes to support the motion or not.

[130] **Simon Thomas:** Mae hynny'n wir, a chyda Llywodraeth o un lliw yn y fan hyn a lliw arall yn San Steffan, gallwch weld y bydd y sefyllfa hynny'n codi eto. Nid yw chwaith yn dangos y sefydliad hwn yn gweithio fel corff deddfu yn arbennig o dda. A oes modd ceisio delio gyda'r problemau hyn mewn ffordd wahanol?

Simon Thomas: That is true, and with a Government of one colour here and of another colour in Westminster, you can see that that situation arising again. It also does not show this establishment working very well as a legislative body. Is there a way of dealing with these problems in a different way?

[131] **Y Prif Weinidog:** Os bydd Bil yn cael ei rhoi gerbron Senedd San Steffan a bod

The First Minister: If a Bill is laid before Westminster and parts of it will affect Wales

rhannau ohono yn mynd i effeithio ar Gymru ac ar yr ardaloedd datganoledig, mae'n iawn i roi cynnig gerbron y Cynulliad heb gefnogi'r cynnig hwnnw. Mae i'r Cynulliad benderfynu a yw'n iawn fod San Steffan yn symud ymlaen â deddfwriaeth mewn maes sydd wedi cael ei datganoli. Os nad yw'r Cynulliad yn cefnogi hynny, dyna yw hawl y Cynulliad.

and the devolved areas, it is right to lay a motion before the Assembly without supporting that motion. It is for the Assembly to decide whether it is right for Westminster to move ahead with legislation in a devolved area. If the Assembly does not support that, then that is the Assembly's right.

[132] **Simon Thomas:** Mae'n ddyddiau cynnar ers ennill y refferendwm, ond, hyd yn oed yn ystod y cyfnod hwnnw, a ydych wedi gweld unrhyw anawsterau neu anghytuno rhyngoch chi a San Steffan ynglŷn â beth yw'r meysydd sydd wedi eu datganoli? Mae tystiolaeth bod rhai o'r meysydd ychydig yn llwyd o ran pa un a oes angen cynnig cydsyniad deddfwriaethol ai peidio. A ydych wedi gweld hynny o gwbl hyd yn hyn?

Simon Thomas: It is early days since the referendum was won, but, even during that period, have you encountered any difficulties or disagreement between you and Westminster regarding what areas have been devolved? There is evidence that some of these areas are somewhat grey in relation to whether an LCM is needed or not. Have you encountered that thus far?

[133] **Y Prif Weinidog:** Nid wyf yn gallu dweud beth yn union yr ydym wedi ei drafod gyda Llywodraeth y Deyrnas Unedig, ond nid ydym wedi cytuno ar bopeth ynglŷn â'r setliad cyfansoddiadol.

The First Minister: I cannot reveal what exactly we have been discussing with the UK Government, but we have not agreed on everything regarding the constitutional settlement.

[134] **David Melding:** I wish to clarify this interesting situation regarding the Police Reform and Social Responsibility Bill. It is a fairly unusual example, because of the relatively complicated division of responsibilities between England and Wales. The way in which devolution is effected in Wales, as compared to in Scotland, has created some potential anomalies, because otherwise the principle of the Government being neutral in laying an LCM is a curious one. It is new to me that that was the position that a Government here could take.

[135] **The First Minister:** Where there are occasions when a Westminster Bill seeks to change the law in Wales, the consent of the Assembly is required. That Bill would proceed, regardless of the view of the Welsh Government, potentially. That is why it is important that the Assembly should get the opportunity to express its view as to whether legislation should be passed in that area by Westminster.

[136] **David Melding:** The problem was that it was a joint jurisdiction, in a sense, was it?

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

[138] **David Melding:** Police authorities were under local government, as I recall, and there was the issue of a police commissioner, as something that could be legislated upon, because it was a reserved power.

[139] **The First Minister:** As it happens, the issue was resolved.

[140] **David Melding:** That is unusual, is it not? I do not want the committee to get overanxious about a category that is not going to arise often.

[141] **The First Minister:** There are some areas that are, on the face of it, non-devolved but that contain devolved matters in those areas of responsibility—the Children and Family Court

Advisory and Support Service is one example. There are areas of provision for refugees, which is another example.

[142] **David Melding:** It is probably more of a problem for us than it is in Scotland. We have heard evidence that the division of responsibility between England and Wales is sometimes less clear.

[143] **The First Minister:** Some of the issues also apply in Scotland—the issues relating to immigration would apply in Scotland as well. In other areas, it is clearer. It is also right to say that we are in the early days of the new constitutional settlement, and I believe that things will become clearer over time. It is not as if, in Scotland, the constitutional settlement was always very clear. There have been issues there. One example was over the Supreme Court's relatively recent ruling with regard to human rights in criminal proceedings. Is that a devolved issue, or not, in Scotland? Criminal proceedings are devolved; human rights are not. That was the crux of the argument.

[144] **Mick Antoniw:** I would like some clarification. I understand that we have a certain amount of historical, constitutional baggage. However, as far as the role of the Assembly is concerned, it is one thing to bring a legislative consent motion before the Assembly; it is another to be able to make an informed decision on it. That brings us back to the issue of scrutiny. Is it your view, almost as a matter of presumption, that anything substantive—I am prepared to accept that there are all sorts of minor and technical matters that could be excluded—should go through a process of scrutiny before coming before the Assembly in Plenary?

[145] **The First Minister:** That can be done. The difficulty with legislative consent motions is that the timetable is not controlled from here. The difficulty with LCMs is that once you pass one, you may give the appearance of giving carte blanche to the UK Parliament to legislate as it wishes in that area, which would not be the Assembly's intention. It might be possible to argue that LCMs should be introduced at the end of the parliamentary process in Westminster, perhaps towards the final reading of a Bill in the House of Lords. That would mean that any potential amendments and unexpected consequences of granting legislative consent are dealt with. The difficulty with that is that it allows very little time to scrutinise the LCM, given that the timetable is in the hands of Parliament and not the Assembly. However, in principle, I see no reason why LCMs should not be scrutinised further. The practicalities are the issue.

[146] **Mick Antoniw:** The amendment to Standing Order No. 29 strengthened it to some extent, but inserted the word 'may'. There is a lack of clarity as to in what circumstances there would be a referral to scrutiny. You say in your letter that it is a matter for the National Assembly to determine the Standing Orders, but there is a broader underlying principle as to whether there should be a presumption of referral, except in some sort of categorised, exceptional cases.

[147] **The First Minister:** It is not always clear, because the amount of notice given for LCMs is not always as it might be. There have been occasions when the amount of time given to us to respond to LCMs was very short indeed and would not allow time for scrutiny by the Assembly. In principle, I would have no difficulty with there being proper scrutiny of LCMs, but the difficulty is trying to keep to the timetable of another institution.

[148] **Eluned Parrott:** First Minister, clearly, this issue of timetabling and the length of time available for scrutiny is a critical one. We have received quite a lot of evidence that compares the systems in Wales with the systems in Scotland. One mechanism by which the Scottish Government seeks to build in time for scrutiny is that, at the time of the Queen's Speech, the Counsel General or his equivalent, for example, notifies the Members of the

Scottish Parliament of Bills that are due to come before Parliament that may have implications or may require some form of legislative consent. Do you think that this kind of system could be introduced in Wales and could be useful to us?

[149] **The First Minister:** Yes, I do.

[150] **David Melding:** Do you see the Counsel General doing that?

[151] **The First Minister:** Sorry, I did not want to be as brief as that, but I am trying to be concise.

[152] This year's Queen's Speech will be the first since we have acquired our new powers. I am more than happy to consider adopting the Scottish practice.

[153] **Eluned Parrott:** Fantastic. Moving away from that a little, another area that we have been looking at is the scrutiny of Orders. There was an example earlier this year, which was the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011, which I am sure you remember, where the Minister has been given the ability to amend the Order without necessarily having to go through a scrutiny exercise. The Minister has stated to us that he has no intention to use that power at present, but that, for the purposes of scrutiny, it would be made available on the Welsh Government's website. What do you consider would be appropriate scrutiny by the Assembly in cases where Welsh Ministers can make further provision to the Order without needing to make a formal amending Order?

[154] **The First Minister:** It is a matter for committees. Committees can invite the appropriate Minister to give evidence if there is a proposal to make amendments to the Order in the way that you suggested.

[155] **Eluned Parrott:** Do you think that this is an instance where some form of rules or procedure would be appropriate, or do you feel that this is something that we should investigate on a case-by-case basis?

[156] **The First Minister:** I think that it is best approached on a case-by-case basis. With regard to this particular Order—I think that it is the national curriculum Order that you are referring to—

[157] **Eluned Parrott:** That is correct.

[158] **The First Minister:** I understand that the committee has written to the Minister for Education and Skills about this, and I think that the response is being prepared at the moment. However, this is something that could be pursued further with the Minister for education.

[159] **Simon Thomas:** Mae fy nghwestiwn am eich pwynt blaenorol wrth ymateb i Eluned Parrott ar wella'n system, o bosibl, gan ein bod wedi cael y pwerau newydd, a'i wneud yn fwy tebyg i system yr Alban. Nid wyf yn cofio union eiriau'r Ddeddf bresennol, ond yr arfer yn sicr yw bod yr Ysgrifennydd Gwladol yn dod yma i esbonio beth sydd yn Araith y Frenhines ac ateb cwestiynau arni, i bob pwrpas. Nid yw hynny'n fy nharo yn system ddigonol—yn sicr nid yw hi'n ddigonol wrth gymharu â **Simon Thomas:** My question is about your previous point in response to Eluned Parrott on improving our system, possibly, as we have had the new powers, and making it more like that in Scotland. I do not recall the exact wording in the current Act, but certainly the practice is that the Secretary of State will come here to explain what is in the Queen's Speech and answer questions on it, to all intents and purposes. That does not strike me as an adequate system—certainly it is not adequate in comparison to Scotland's

system yr Alban, nac yn ddigonol i ddeilio â'r hyn sy'n deillio yn awr o Ddeddfau a phwerau deddfu newydd y Cynulliad. A ydych yn meddwl fod y Ddeddf bresennol yn ddigon cadarn i alluogi system debyg i system yr Alban fodoli yn y Cynulliad?

system, nor is it adequate to deal with what is now arising from Acts and the new legislative powers of the Assembly. Do you think that the current Act is sufficiently robust to enable a system similar to that in Scotland to exist in the Assembly?

[160] **Y Prif Weinidog:** Byddaf yn ddigon hapus i edrych ar y system yn yr Alban er mwyn gweld a fyddai'n briodol ddod â'r system honno i Gymru. Nid yw hynny'n fater i mi, ond i'r Cynulliad, wrth gwrs. Efallai, os oes eisiau newid prif ddeddfwriaeth y Cynulliad ei hun, sef Deddf Llywodraeth Cymru 2006—mae'n anodd gwybod ar hyn o bryd—mae hynny yn rhywbeth a all gael ei ystyried.

The First Minister: I would be quite happy to look at the Scottish system to see whether it would be appropriate to bring that system to Wales. It is not a matter for me, but for the Assembly, of course. Perhaps, if there is a need to amend the primary legislation of the Assembly, that is, the Government of Wales Act 2006—it is difficult to know at present—that is something that could be considered.

[161] **Simon Thomas:** Yr wyf yn derbyn hynny, a diolch am hynny. Fodd bynnag, y pwynt yr wyf yn ceisio ei gyrraedd, mewn ffordd, yw eich bod yn dweud mai mater i'r Cynulliad yw, ac yr ydych yn iawn, ond, i bob pwrpas, rhaid cael mwy o wybodaeth gan Lywodraeth San Steffan ymlaen llaw. Mae'r dystiolaeth yr ydym wedi derbyn yn dangos bod arfer wedi datblygu lle mae hynny yn cael ei baratoi ar gyfer Senedd yr Alban. Nid yw'n cael ei baratoi ar ein cyfer ni, efallai oherwydd nad oedd y grymoedd gennym ac oherwydd bod yr arfer o ddod a thraddodi bob rhyw flwyddyn yn cael ei gweld yn ddigonol. Dyna lle y mae gan y Llywodraeth rôl i geisio gwneud y broses hon yn fwy cadarn a rhagweithiol.

Simon Thomas: I accept that, and thank you for that. However, the point I am trying to get at, in a way, is that you say that it is a matter for the Assembly, and you are right, but, to all intents and purposes, we need to get more information from the Westminster Government beforehand. The evidence that we have received shows that a practice has developed where that is prepared for the Scottish Parliament. It is not prepared for us, perhaps because we did not have the powers and because the practice of coming here and delivering every year or so was seen to be sufficient. That is where the Government has a role in seeking to make this process more robust and proactive.

3.30 p.m.

[162] **Y Prif Weinidog:** Pe bai hynny'n argymhellid yn adroddiad y pwyllgor hwn, yr wyf yn siŵr y gallem ystyried ei gefnogi.

The First Minister: If that were a recommendation in this committee's report, I am sure that we could consider supporting it.

[163] **David Melding:** I sense a door opening.

[164] **Eluned Parrott:** Another area that we are considering in this inquiry is the way in which Members, the public and Ministers are able to keep track of powers that have been conferred on Ministers from London, specifically, but also, potentially, by the Assembly. A piece of evidence that we have heard has suggested compiling a list of ministerial powers, perhaps in parallel with the statute that the Counsel General has already discussed. Do you think that this would be appropriate and helpful?

[165] **The First Minister:** A list of Welsh Ministers' powers is available online already at Wales Legislation Online, the website that is operated by the Wales Governance Centre at Cardiff University. I know that the Counsel General shares my concern about the need to publicise—if I can put it that way—Welsh laws more openly. I know that the Counsel

General is keen to ensure that we see the development of a Welsh statute book in future. In terms of administrative powers, however, at the moment, the Wales Legislation Online website is the place where those powers are collated. We are nonetheless looking at this matter, because we know that the use of that website is quite limited, to see how we might improve things for the future.

[166] **David Melding:** It does make sense, however, to have a list of Executive powers in a central record, does it not?

[167] **The First Minister:** It does.

[168] **Mick Antoniw:** I have a couple of questions about the way in which the Government works with Westminster. You say in your letter that devolution guidance notes are being updated at the moment. This is not our primary responsibility, but perhaps you could let us know what the current state of play is with those, when updated guidance may be available and what the content may be.

[169] **Dr Rawlings:** We are in detailed discussion with the Wales Office on this matter, and I would hope that they might be published fairly soon. The committee should remember, however, when we talk about discussions between the Welsh Government and the UK Government, that the UK Government is an extremely complex creature. We deal only with the Wales Office, and the Wales Office deals with the rest of the UK Government. It is only when the UK Government as a whole has an established position, as relayed to us by the Wales Office, that we can have a further discussion. So, we have these discussions and I am hoping that we will be able to reach a resolution, if not by Christmas, then in the early part of next year.

[170] **Mick Antoniw:** Is it the case that there is an ongoing series of meetings and an exchange of information and so on with regard to this matter? Is it a bipartisan process?

[171] **Dr Rawlings:** It is an iterative process.

[172] **Mick Antoniw:** With regard to relations between the administrative sides of Westminster and the Welsh Government, there are a lot of concordats, agreements and so on. To what extent are current relations effective, and is there scope for improvement? Are there difficulties in the relations and with one side's understanding of what the other side is doing? With regard to some of the grey areas that impact on us but which may not be devolved to us—immigration was one that was mentioned earlier—can you give us a bit of an update as to the tone of those relationships and whether the guidance notes will seek to resolve some of those issues?

[173] **The First Minister:** The guidance notes seek to outline how relations will be conducted between the Welsh Government and different parts of the UK Government. They also outline how UK Government departments should interact with the Welsh Government. Where there is disagreement between the UK Government and the Welsh Government, the issue for us is how those disagreements are resolved. They can be resolved in a number of ways, such as through the disputes process of the joint ministerial committee. Ultimately, I suppose, these issues are resolved via the Supreme Court. Concordats between the two Governments and devolution guidance notes between different departments in Westminster cannot be used to resolve disputes over whether something is devolved or not. That has to be resolved via other means.

[174] It might help if I were to outline, very briefly, how we interact with the UK Government. On policy issues, we would interact directly with the appropriate UK Government department, copying the Wales Office in on the correspondence. On

constitutional issues, I would normally write to the Prime Minister, again copying the Wales Office in on those issues.

[175] **Simon Thomas:** My next question follows on from that, and maybe Dr Rawlings could answer it. We have had evidence that states clearly that the real meat on the bones lies in the devolution guidance notes—that these are the notes to which civil servants pay attention—and that the concordats are nice to have but are not used for day-to-day discussions and agreements between the two Governments. Is that a fair summation of where we are? Also, how does this situation underline the need to revise these notes, in light of the referendum result?

[176] **Dr Rawlings:** As far as the concordats are concerned, their significance varies in relation to Whitehall departments, in terms of the regularity and familiarity of their dealings with us. They tend to be particularly useful when there are negotiations between us and a Whitehall department that is not in regular communication with us. That kind of department may not have as clear an understanding of devolution as the Department for Education, for example, which has become accustomed, over many years, to seeing Welsh education issues dealt with here. If a Whitehall department only has very occasional dealings with us—

[177] **Simon Thomas:** Are you referring to a department such as the Foreign and Commonwealth Office?

[178] **Dr Rawlings:** Yes, a department such as the FCO or the Ministry of Defence. A department of that nature might not understand exactly who or what it is dealing with. In those circumstances, a concordat is particularly helpful. With other departments that we deal with on a regular—even daily—basis, we may not even have reference to a concordat. Both sides, as it were, understand the rules of the game.

[179] **Simon Thomas:** In relation to the issues that the committee has been looking at, namely LCMs and the direct devolution of powers to Ministers, the guidance notes govern the day-to-day relationships between civil servants on those issues, do they not?

[180] **Dr Rawlings:** Yes, they do. We would assume that Whitehall civil servants have reference to the guidance notes, because that is the purpose of them being prepared, and that they would gain an understanding of how they should proceed from those guidance notes.

[181] **Simon Thomas:** You have said that there is a review process under way, so let us look at this in a more positive way. Will the review process allow civil servants to refresh their familiarity with these guidance notes?

[182] **Dr Rawlings:** Yes. I would assume that, when we finally complete the revision of the guidance notes, they will be disseminated around Whitehall, which will give Whitehall officials the opportunity to update their understanding of them. This is a refresh that takes account of constitutional changes, so it is more than an update.

[183] **Mick Antoniw:** Bearing in mind the changes that have occurred since the referendum, in respect of legislative powers and so on, will the new guidance notes be subject to ongoing review, to ensure that there are not such large gaps between drafts?

[184] **Dr Rawlings:** To the extent that reference must be made to the guidance notes from time to time, if gaps appear or if different interpretations become apparent, they could be the subject of continuing review. I would not have thought that, unless there is a further significant change in the constitutional arrangements, they would need the sort of refreshing that we are currently undertaking.

[185] **Mick Antoniwi:** I suppose that it ultimately depends on the content and the extent of those guidance notes. That is helpful; thank you.

[186] **Eluned Parrott:** I have a quick follow-up question on Mick Antoniwi's point regarding devolution guidance notes. Obviously, the settlement for Wales moves in chunks and stages, but the way in which we deal with counterparts in Westminster presumably evolves over a period of time and is much more incremental. I am wondering, given the nature of that relationship, whether it is appropriate to have a specified periodic review for devolution guidance notes, so that changes in the ways of working are accurately reflected in them.

[187] **Dr Rawlings:** If Ministers decided that they wanted that, we could, no doubt, put that in.

[188] **David Melding:** I am keen to move to a conclusion, and I do not want to fixate on the devolution guidance notes, as I think that we have nailed the principle of it.

[189] **Suzy Davies:** Is the situation any different in Northern Ireland and Scotland, with regard to the periods of review?

[190] **Dr Rawlings:** I will pass on that one; I just do not know. You can never generalise on Northern Ireland, but in relation to Scotland, there has not been the marked constitutional development since 1999 as there has been here, as represented by the implementation of the 2006 Act following the referendum.

[191] **Suzy Davies:** So, they are pretty bespoke.

[192] **Dr Rawlings:** Yes.

[193] **David Melding:** At this point, I usually ask witnesses if there is anything else that they want to add; I suppose that I should extend the courtesy to you, but I suspect that you feel that we have put all the vital questions to you. That just leaves it to me to thank you, First Minister and Dr Rawlings, for making it a priority to attend and for helping us with our work, and for also giving very concise and clear answers. We are very grateful; thank you.

3.42 p.m.

Dyddiad y Cyfarfod Nesaf Date of the Next Meeting

[194] **David Melding:** The date of our meeting next week is 28 November. There is a paper to note, which is the report of our meeting on 14 November.

Cynnig Gweithdrefnol Procedural Motion

[195] **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).

[196] I see that no Member objects.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 3.42 p.m.
The public part of the meeting ended at 3.42 p.m.