



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

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

**Dydd Mercher, 8 Chwefror 2006
Wednesday, 8 February 2006**

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

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

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

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

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

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

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

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

*Dechreuodd y cyfarfod am 5.48 p.m.
The meeting began at 5.48 p.m.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1153] **Y Llywydd:** Cyn i mi agor y pwyllgor yn ffurfiol, ymddiheuraf i'm cyd-Aelodau am ohirio cyfarfod y pwyllgor neithiwr ar fyr rybudd. Yr wyf yn derbyn cyfrifoldeb personol llwyr am hynny. **The Presiding Officer:** Before I formally open the committee, I apologise to colleagues for postponing last night's meeting at such short notice. I personally accept full responsibility for that.

[1154] **Ms Wilkins:** The translation service is not available.

[1155] **The Presiding Officer:** There is a very simple answer to that problem.

[1156] I apologise to colleagues who were inconvenienced by my decision, towards the end of yesterday afternoon, after I had left the chair, to postpone last night's meeting. As Chair of this committee, I take full personal responsibility for that decision, taken because of other public duties that I had to undertake as Presiding Officer, in promoting the opening of our new building. I should have realised that it would not be possible for me to be available on such an evening to carry out my duty in chairing this committee. I apologise for that.

5.49 p.m.

Eitemau i'w Trafod o'r Cyfarfod Diwethaf Outstanding Items from the Previous Meeting

[1157] **The Presiding Officer:** There is one other matter of order. It is my intention to complete the consideration of as many of the remaining amendments as possible this evening. I understand that it would be convenient for the Minister to respond, not tonight, but at a later date, to the outstanding points that we have raised. I propose that we meet to

agree the broad heads, or even the details, of what we have already agreed, in terms of what we have voted on in this committee, and that we might take the Government's response and discuss it at the same time—the Minister will return with issues to the committee and we could discuss them then. If there are any further matters that we would like to append to the report or broach in the form of a letter to the Secretary of State for Wales, which is something that we agreed that we might do at an earlier meeting, the committee could indicate how we might do that. Is that agreeable? I see that it is.

5.50 p.m.

Mesur Llywodraeth Cymru Government of Wales Bill

[1158] **The Presiding Officer:** Has the translation materialised now? This is a very serious dereliction of duty.

[1159] We will continue with Part 1, clause 33 of the Bill.

[1160] Galwaf ar Ieuan Wyn Jones i gynnig I ask Ieuan Wyn Jones to propose gwelliant 98. amendment 98.

[1161] **Ieuan Wyn Jones:** I propose amendment 98 in my name and that of Jocelyn Davies.

Clause 33, page 21, line 22—at the end, add:

'The Secretary of State must publish his reasons for deciding that consultation is inappropriate under this subsection within 21 days of making his decision'.

[1162] On clause 33(5), this is the procedure that the Secretary of State must use to consult the Assembly on the UK Government's legislative programme. My assumption is that this follows, more or less, the current Act. I do not quite understand why it says, in other parts of the Bill, that the Secretary of State must give reasons for coming to a conclusion. For example, if he decides not to support an Order in Council, he must, within a certain number of days, publish his reasons for doing so. Then, obviously, everyone knows his reasons; the issue is in the public domain and everyone can comment on his refusal. However, it seems to me that there is a difference between that situation and clause 33(5), where it states:

'This section does not require the undertaking of consultation with the Assembly about a bill if it appears to the Secretary of State for Wales that there are considerations relating to the bill that make such consultation inappropriate'.

[1163] It is not so much that I am questioning his right to do that, but I feel that, if he does it, we should be consistent in the Bill and he should publish, within 21 days, the reasons why that consultation is inappropriate. I believe that that is a matter of public interest and is a reasonable request.

[1164] **Nick Bourne:** I support that. It seems to me that, at the moment, it is a purely subjective power that allows any Secretary of State simply to say that it is inappropriate. It would be both sensible and consistent to require him or her to give reasons within that time limit.

[1165] **Michael German:** Other parts of this Bill refer to the Secretary of State having to publish his reasons for not doing something, so this is entirely consistent in that regard. If you believe in the Secretary of State being accountable for the decisions that he takes, this

is the only way in which he can be held to account—by having to publish his reasons. I think that that is a perfectly reasonable and consistent thing to do in terms of the rest of the Bill.

[1166] **The Business Minister (Jane Hutt):** We would want to resist this because we think that this is an unnecessary amendment. It will be obvious, in most cases, why the Secretary of State has not consulted the Assembly, and there will be opportunities, anyway, during the debate at which the legislative programme is presented to us, which happens on an annual basis, to explore the issues. However, if this relates to something where there is no distinct separate effect on Wales, compared with other parts of the UK, why should he be consulting us about that part of UK legislation? This is not really necessary and we should resist the amendment.

[1167] **Nick Bourne:** Here we go again. If it is as obvious as the Minister has just indicated, then, presumably, it will not be any great difficulty for him or her to give the reasons. You gave an example of where it would be inappropriate, and that could be given as the reason. So, nothing that you have said so far would counteract what we have said in terms of having to come forward with a reason. You have also just given a case of where it might be totally appropriate for that reason to be given. So, I fail to follow the logic of your argument, if there is one.

[1168] **Jocelyn Davies:** I would like to ask Peter whether it is a basic thing in administrative law that people give reasons for their decisions.

[1169] **Mr Jones:** I think that the courts generally do not like situations in which an administrative law decision is a discretionary decision and reasons are not given. I think that it may be a bit different here, in that courts may be reluctant to get involved in something that is seen as being of a constitutional nature; they would not want to interfere with the democratic framework. I would have thought that the courts would be reluctant to get involved.

[1170] **Jocelyn Davies:** However, it is an accepted fundamental principle of administration that you give reasons for your decisions.

[1171] **Mr Jones:** Yes, and it has become more and more so over the years.

[1172] **Jocelyn Davies:** Yes, because of cases. I notice that the Minister says that there may be Bills that go through that have no effect on Wales. However, it does not say that if a Bill does not have an effect on Wales then the Secretary of State need not consult us, it just says that there is no need if it is considered to be inappropriate. The discretion could be quite wide in terms of what the Secretary of State thinks is, or is not, appropriate. I think that it would be simple to accept the amendment that reasons should be given within a reasonable time.

[1173] **Ieuan Wyn Jones:** It would help our deliberations if the Minister could tell us why clause 94(7)(b) says that if the Secretary of State turns down a request for an Order in Council, he or she must give notice in writing of the reasons for that refusal. That is to be given within 60 days. What is the difference between the two?

[1174] **Jane Hutt:** That is entirely different, is it not, Ieuan? That is about us promoting an Order in Council for our benefit, which may or may not be accepted, though, generally, one would expect it to be accepted. Of course, the Secretary of State should give reasons; we have already debated that. The Secretary of State clearly needs to give reasons because that is about the policy proposals that we, or a committee, may seek legislative backing for through the Order in Council route.

[1175] In answer to your point, Jocelyn, it is about legislation that might not have any distinct separate effect as far as Wales is concerned. I think that that will be clear. If it was something to do with foreign affairs or the Home Office or taxation, it would have a distinct separate effect, so I cannot see why we should say that. There would be no need for him or her to consult.

[1176] **Ieuan Wyn Jones:** I think that you have used an interesting example; you mentioned the Home Office. If there was a Home Office Bill that restructured the police service in Wales, according to your example there would be no need to consult the Assembly about that legislation.

[1177] **Jane Hutt:** Perhaps I used the wrong example. The Home Office example was perhaps not so helpful. There are things under the Home Office that might not have a distinct separate effect in Wales, and I am sure that we can spend time looking at that.

[1178] **Ieuan Wyn Jones:** All legislation that the Home Office produces affects Wales.

[1179] **Jane Hutt:** Therefore, that would obviously come before our legislative programme, and it would be referred to a committee; if, as with the restructuring of the police, Wales were to be affected, then it would not be appropriate for the Secretary of State not to consult us on the legislation.

[1180] **Ieuan Wyn Jones:** Who would decide that?

[1181] **Leighton Andrews:** I do not think that there is an inconsistency in what the Minister is saying. If you had a subject like the police, and it was a Home Office Bill, I do not think that the argument would be that there is no distinct separate effect on Wales from that in other parts of the UK. If the proposal was, for example, to create a single police force for Wales, then that would be something that would require consultation with the Assembly. You could argue that foreign affairs and international development issues might be more straightforward examples.

[1182] **Ieuan Wyn Jones:** What about the war in Iraq, for example?

[1183] **Leighton Andrews:** We do not have responsibility for foreign affairs; the body that was consulted on the war in Iraq was the UK House of Commons, which was asked for the first time ever to vote on a decision such as that.

6.00 p.m.

[1184] However, it seems to me that the general political point is that there is not actually a shortage of opportunities to challenge the Secretary of State should he or she take such a judgment about not consulting the Assembly. There are plenty of ways to do that, through parliamentary questions or debates in the Assembly on the Queen's Speech programme and so on. There are plenty of opportunities to hold the Secretary of State to account for such a decision.

[1185] **Jocelyn Davies:** Given the answer that the Minister has just given, does she envisage that, if there was an education or health Bill and none of the provisions applied to Wales, it would be inappropriate to consult us on matters that were England only—on areas that are more or less devolved? For clarification, would you expect this to be interpreted along those lines?

[1186] **Jane Hutt:** It would be solely matters that did not affect Wales, and those would be

examples. If a piece of legislation were entirely about the English education system, why should we be consulted? We have probably reached the end of our—

[1187] **Jocelyn Davies:** Tether?

[1188] **Jane Hutt:** Response.

[1189] **Nick Bourne:** With respect, I think that the Minister is arguing for a clause that does not exist. Clause 33(5) states:

[1190] ‘This section does not require the undertaking of consultation with the Assembly about a bill if it appears to the Secretary of State for Wales that there are considerations relating to the bill that make such consultation inappropriate’.

[1191] It gives him or her a subjective power to say simply that consultation is inappropriate. It does not have to be reasonable. I can think of examples where we have not had consultation, not only on policing, but on the nationality requirements, where there was not a proper process in relation to the Welsh language, for example. It is all very well to say that there are political means open to us. I do not accept that, because the Secretary of State can say that he or she is acting within the law. We are talking about achieving a sensible provision, and it would be reasonable—I come back to the word ‘reasonable’, which does not appear here—for the Secretary of State to have to give reasons. It does not say that those reasons can then be mulled over, although it gives political opportunities for that—those are the balances and checks that we are looking for. It would be incumbent on the Secretary of State to give reasons. He or she would have to have reasons. Why on earth would the Act not require them to give them? This provision gives carte blanche for a Secretary of State to simply say ‘no’. That is unreasonable.

[1192] **Leighton Andrews:** The examples that were just given did not relate to this clause either. In a sense, they were not examples of where primary legislation was going through necessarily, in terms of the review of the police, at the stage at which consultation, in your terms, did or did not apply. There are several methods of consultation between the UK Government and the Assembly. The concordat system puts those into place, and those are separate from primary legislation. We have developed—not always satisfactorily in regard to some of them—ways of establishing processes.

[1193] I have a legal question, if I may ask it of Peter Jones. The absence of the word ‘reasonably’ does not mean that the Secretary of State can act unreasonably does it?

[1194] **Mr Jones:** In legal terms, ‘unreasonably’ means perversely. There is a very strict test on that.

[1195] **Ieuan Wyn Jones:** The defence that the Government has put forward is pretty weak. It is a reasonable request to ask the Secretary of State to publish the reasons. To touch briefly on one of the issues that Leighton mentioned, one of the great mysteries of life for those of us who are not in Government in the Assembly is how these concordats work. No-one knows. I have simply no idea what discussions go on between Ministers here and those in Westminster.

[1196] **Y Llywydd:** Gwenda Thomas nesaf, **The Presiding Officer:** Gwenda Thomas, next, please.

[1197] **Ieuan Wyn Jones:** I just want to finish the point. What I am saying is that it is perfectly possible and quite reasonable for us to have within this Bill an opportunity for the Secretary of State to say, ‘I do not think that this Bill affects Wales. It is not relevant, and

that is the reason why I am not doing it', or whatever else he comes up with as a reason as to why we should not do it. So, I think that this is entirely reasonable, and I hope that we can move to a vote on that.

[1198] **Gwenda Thomas:** I wonder about the practicalities of this amendment. The Secretary of State, at the moment, is required to consult the Assembly about the UK Government's legislative programme. Clause 33(5) relieves the Secretary of State of that duty, if it appears reasonable and all of that. This amendment would require the Secretary of State to publish his reasons. Where would those reasons be published, and would we then need a supporting system or procedure within the Assembly to scrutinise the reasons and the question of reasonableness? What would that do to the workload that we already envisage in the process of scrutinising Bills? I am just asking you to explain the amendment to its logical conclusion.

[1199] **Ieuan Wyn Jones:** It is quite an easy explanation, Gwenda, because all that the Secretary of State needs to do is to write a letter to the First Minister saying, 'I think that it is not necessary for us to consult the Assembly on this proposal because of X, Y and Z'. There is no need to set up an office, a telephone, a fax machine or anything; all that he needs to do is to write a letter saying, 'I think, under these circumstances, that it is inappropriate to consult the Assembly on this particular Bill', and to give his reasons.

[1200] **Gwenda Thomas:** The word that you use is 'publish'.

[1201] **Ieuan Wyn Jones:** Yes, but that is to publish.

[1202] **Jocelyn Davies:** The Government is used to publishing when it suits it. It would be daft to suggest that it had to publish this by taking out an advert in every newspaper or something. It is just a matter of placing it in the public domain, and that can be easily done. It is just a matter of writing a letter and putting it in the public domain.

[1203] **Gwenda Thomas:** I do not think that you would be satisfied with that, or that we would if we were in opposition. There would have to be a procedure that allowed that to be challenged. I think that the intention of the amendment is to allow the Secretary of State to be challenged if the Assembly thinks that the reasons are unreasonable. Therefore, we need to be able to look logically at any procedure that would need to be there to support that.

[1204] **Ieuan Wyn Jones:** The analogy here is in the arguments that the Government put forward about the reasons to reject the Orders in Council. You cannot challenge them. The debate that we had—and Peter Hain has made this clear—was about the Secretary of State having an absolute veto on an Order in Council. He can say 'yes' or 'no', and once he has said 'no', all that he needs to do is publish his reasons. We cannot challenge that, because it is an absolute right under the Act. Exactly the same would happen under clause 33. He would publish his reasons, we might be critical of them, but at least we would be aware of the reasons. There is nothing that we could do to change that decision, because the Act gives no opportunity to make that challenge, and neither will the provision of clause 94, when it becomes law, about the Orders in Council.

[1205] **Y Llywydd:** A yw'n fwriad gennych i bleidleisio ar hyn, Ieuan? **The Presiding Officer:** Do you intend to vote on this, Ieuan.

[1206] **Ieuan Wyn Jones:** Ydy. **Ieuan Wyn Jones:** Yes.

*Gwelliant 98: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 98: For 5, Abstain 0, Against 5.*

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

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

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

Andrews, Leighton
Hutt, Jane
Jones, Ann
Lloyd, Val
Thomas, Gwenda

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

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

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[1207] **Y Llywydd:** Trown at welliant 18 i **The Presiding Officer:** We turn to gymal 33. amendment 18 to clause 33.

[1208] **Nick Bourne:** I propose amendment 18.

Remove the sentence, 'The Secretary of State can participate by actually attending the plenary session, or by video link' from the explanatory notes, page 34.

[1209] Is it in order to take the opportunity—and this is not said mischievously—to ask the Minister whether the Government is going to be supporting any of these amendments, because we could just move to votes on all of them? I have just sat through a rather surreal discussion about publishing things impliedly in newspapers, which was not the case in point. You have rejected a very simple and entirely reasonable amendment, just to see it thwarted. Is that going to be the case with every single amendment that we have tabled? If so, we could short-cut this meeting very quickly, Llywydd.

6.10 p.m.

[1210] **The Presiding Officer:** I think that it is rather early to have a closed-hand party debate on clause 33, which is what you are saying—

[1211] **Nick Bourne:** I am just asking the Minister, not unreasonably, whether any amendments will be supported by the Government at any point during this process. There has not been a single one so far.

[1212] **Jane Hutt:** I think that that is rather disappointing, because—

[1213] **Nick Bourne:** I will take that as a 'no', then.

[1214] **Jane Hutt:** I gave you the assurance that we were going through a very important process here.

[1215] **Nick Bourne:** Can I take it that you are supporting some of the amendments, then, Jane?

[1216] **Jane Hutt:** The Bill committee here is actually scrutinising the Bill more than Westminster is.

[1217] **Nick Bourne:** You have voted against every single amendment so far.

[1218] **Jane Hutt:** Surely you appreciate the importance of being able to put your views on record. You have instigated the amendments, we are here giving them due consideration, and it is an important opportunity for us to tease out the implementation and delivery of this legislation. You can undermine it, but I certainly will not.

[1219] **Nick Bourne:** You are doing just that.

[1220] **Jane Hutt:** I am not going to comment as we work through this, as we have not got there yet.

[1221] **The Presiding Officer:** I am taking this as a rather long discussion on a point of order, which seems to be the easiest way of handling it.

[1222] **Nick Bourne:** I take it from the Minister's answer that the Government will not be supporting any of these amendments.

[1223] **Leighton Andrews:** I do not think that we, on this side, really want to take any lectures from the Conservatives after their performance in the House of Commons in respect of the Bill, when they went back on the agreements in terms of the timing. I would specifically want to—

[1224] **The Presiding Officer:** Order. It is not appropriate for us to double-scrutinise in this committee, whatever procedure may have happened in the House of Commons.

[1225] **Leighton Andrews:** Okay. I will make a more pertinent point, then, which is that it seems to me that, last week, we identified one area that would probably not have been identified as a potential problem during the scrutiny of the legislation at Westminster. I think that it is quite possible that, in outlining some of the amendments, we may find the occasional one—although I speak as a deep sceptic of the need to establish this committee in the first place—that would have slipped through the net in Westminster. We demonstrated our willingness to engage in that last week, where a practical problem is expressed.

[1226] **The Presiding Officer:** I am not minded to allow a closure motion this early in the evening, but, clearly, if Members persist, I will have to consider one carefully. Is that helpful?

[1227] **Nick Bourne:** Yes. Based on we have seen so far on what I believe, objectively, to be very reasonable amendments, there does not seem to be much point in not doing that early on unless there is to be a more reasonable attitude from the Government.

[1228] **Jane Hutt:** Following on from the points that I made earlier, which were made in good spirit—and you accepted that last week—we identified a number of amendments that we felt would be more appropriately dealt with by Standing Orders, and I gave you some assurances around that. I think that there is one on the children's commissioner's being able to stand for office. I think that what we have gone through has produced some useful results and a steer for our Standing Orders, so we should continue. There are certain issues, such as the next amendment, and if you would allow me to continue and address that next amendment, which is about a practicality and not an issue of—

[1229] **The Presiding Officer:** First, I must ask David whether he intends to propose this amendment and debate it, or whether we are to take up our stumps, so to speak.

[1230] **Nick Bourne:** Based on a slight movement by the Minister, I think that we will

proceed a little further on this.

[1231] **David Melding:** The curtain flickered, I believe. [*Laughter.*]

[1232] **Jane Hutt:** I shall be cursed by my colleagues.

[1233] **Ann Jones:** May I come in?

[1234] **The Presiding Officer:** On this point of order?

[1235] **Ann Jones:** Well, I wanted to come in before, because we must correct the record when Nick said that we have done nothing other than vote against every amendment. The Minister has taken amendments back and, therefore, for the sake of the accuracy of this public record, it must be said that you were wrong, Nick.

[1236] **The Presiding Officer:** Order, there is no need to correct the record. The record in this place is always correct and it stands on its own merit in terms of its content.

[1237] **Ann Jones:** What Nick said was wrong, then.

[1238] **The Presiding Officer:** The Record of Proceedings, if I may say so in the presence of its staff, is self-evident.

[1239] **David Melding:** I have come up with an innovation to move an amendment to the explanatory notes, but I will just say that this is a ‘probing’ amendment. The explanatory notes to the Bill say that the Secretary of State could take part in Assembly proceedings via a video link, and I am not quite sure whether we would want that principle accepted. I know that it was discussed by the Business Committee, and the general feeling was that such methods of participation may be appropriate for committees, but not for full Plenary; they would run the risk of undermining the dignity of the proceedings. I would like to hear the Minister’s views on that.

[1240] **Jane Hutt:** You are right, David. We take this as a probing amendment. The explanatory notes are not there in statute, and they have no legal parliamentary status. I cannot personally see us having a video-link arrangement, but we discussed this at Business Committee and thought that it might be something for future Assemblies to consider. However, it certainly would not be appropriate to vote on this, because it is just a probing amendment to an explanatory note that has no statutory basis. However, speaking personally, I have some sympathy with what you are saying.

[1241] **The Presiding Officer:** The amendment is in order. It may have no statutory effect but that is true of a lot of what we do. As we are in the process of proposing recommendations for amendments, recommendations on changes to other texts, which may draw attention to an issue that may be of an interest to us, can be recorded in this committee and conveyed, for example, to the Secretary of State. I will not go any further on that but, clearly, it is now technically possible not only for the Secretary of State but for any other person to give evidence audio-visually in this most developed of parliamentary institutions.

[1242] **Jocelyn Davies:** I agree with the sentiments that have already been expressed and I would not want to see the Secretary of State giving us a PowerPoint presentation, though that is nothing personal. However, this could very well end up being extended to other people who find it difficult to be at this place at a certain time, and I do not think that that should be encouraged.

[1243] **David Melding:** If I can interpret the Minister’s response to mean that such an

innovation, which would be quite dramatic in terms of our proceedings, would require the approval of the Business Committee, then I think that we could withdraw this amendment.

[1244] **Jane Hutt:** That is a very good point and it just proves that it is worth our sitting here and having this discussion.

[1245] **The Presiding Officer:** Amendment 18 is withdrawn, so we move to amendment 99 to clause 33.

[1246] Mae hwn yn gymal newydd. This is a new clause.

[1247] **Ieuan Wyn Jones:** I propose amendment 99 to clause 33.

Insert a new clause:

“33A. Consultation about representation in European Union institutions.

Within three months of the first Assembly election provided for under this Act, the Secretary of State for Wales must publish a document making proposals for increasing the representation of Wales in the UK Government’s representation within European Union institutions, and consult the Assembly about that document.

Within six months of the first Assembly election provided for under this Act, Her Majesty’s Government shall consider and make decisions concerning increasing the representation of Wales in the UK Government’s representation within European Union institutions.”

[1248] I thought that I would be the first to use the words ‘probing amendment’ here but I have been beaten to it by David Melding. This is very much a probing amendment; I understand that it is totally inappropriate to include such a clause in its present form in an Act of Parliament, but it makes quite a serious point, namely the need to explore with the Government and for it to be able to satisfy us that, after this Bill becomes law and the new powers are in place and, therefore, we have greater responsibilities, our relationship with the European institutions will also be strengthened. I have to acknowledge that, although Ministers might not have been able to attend meetings with the Council of Ministers as often as some of us would have liked them to, there is obviously an increased Wales presence in Brussels and we want that to be encouraged and continued.

[1249] One advantage of the settlement, even the 1998 settlement, is that the Welsh Assembly Government is being represented in some way in Brussels and we have access to the United Kingdom Permanent Representation to the European Union, which is clearly a very important and influential body in Brussels—something that was denied to the former Welsh Office. There were occasional secondments from the Welsh Office to UKRep but there is now a very good relationship between Welsh Assembly Government officials in Brussels and UKRep. In order for the Assembly as a whole to benefit from the early notice of developments at the European level, that should not only be encouraged but strengthened. We want to hear from the Government that it will be actively looking for ways to increase our representations in Brussels following the implementation of this new legislation.

6.20 p.m.

[1250] **Leighton Andrews:** I am not quite clear what the point of the amendment is, really; it seems to me that we already have situations in which Assembly Ministers have attended Council of Ministers meetings. They have represented the UK in meetings in their own right, and they have meetings in Brussels with commission officials to discuss a wide

range of issues, including Objective 1. I am not quite sure why even the transfer of additional powers to the Assembly necessarily changes the nature of our need to make representations to European Union institutions. Clearly, the engagement with Europe has grown over time, and the relationship with UKRep has strengthened: the Assembly has professionalised its own representation on the ground in Brussels, and new arrangements have been put in place for the way in which Wales is represented. All those examples are positive, but I am not sure what specifically, deriving from the new powers, requires changes in the way in which we are represented in Brussels at present.

[1251] **Ieuan Wyn Jones:** I hate to use this phrase, but Leighton has totally missed the point. The point that I was making is that devolution has given us an opportunity to have early warnings of what might happen, and not simply with regard to having Government Ministers turning up at the Council of Ministers; that can happen only fairly rarely. Leighton will know that even if an Assembly Minister attends the Council of Ministers he or she can vote only according to the UK agreed line, so there is no separate Welsh representation at the council. I think that we all agree on that. I am seeking something that is probably not as high profile as that. I want to increase our representation in UKRep, which is the body that carries a lot of early intelligence about what happens in the European institutions. If we are to legislate—and that is what we will be doing after 2007—some of that legislation will impact not only on Wales and the UK, but it could well have an impact on the European stage too. Therefore, it would be useful to know at an early stage, through UKRep, whether, for example, a proposal that we had in mind was somewhere in the annals of the commission being dreamed up as a regulation, or whatever happens at the European stage. I am not really pushing this amendment to a vote; all I am asking is for the Government to say, ‘Yes; after 2007, it will be necessary for us to have a greater presence in Brussels’. That is something that, across parties, we should support.

[1252] **The Presiding Officer:** Leighton Andrews is next, and then perhaps the Minister, and perhaps then we may move on, since it is indicated that there is no intention of moving to a vote.

[1253] **Leighton Andrews:** I am happy to waive it if we want to move on.

[1254] **Jane Hutt:** Ieuan, on that basis, if I say that I am sure that we will want to explore the position in relation to Wales’s representation, we could move on.

[1255] **Ieuan Wyn Jones:** On that basis, I withdraw the amendment.

<p>[1256] Y Llywydd: Hoffwn bwysleisio bod yr offer cyfieithu yn gweithio ers rhyw 20 munud os yw’r Aelodau yn dymuno siarad yn Gymraeg. Mae’r sefyllfa’n gwbl arferol yn awr.</p>	<p>The Presiding Officer: I wish to emphasise that the translation equipment has been functioning for some 20 minutes should Members wish to contribute in Welsh. Normal conditions prevail once again.</p>
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<p>[1257] Grwpiwyd gwelliannau 63, 64, a 65 at bwrpas y drafodaeth.</p>	<p>Amendments 63, 64, and 65 have been grouped for the purposes of the discussion.</p>
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[1258] **Michael German:** I propose amendment 63.

Clause 34(1), page 21, line 24—leave out:

‘If not an Assembly Member’.

I propose amendment 64.

Clause 34(1), page 21, line 25—insert after ‘orders’:

‘but only to provide his legal opinion to Assembly Members’.

I propose amendment 65.

Clause 34(2), page 21, line 27—leave out:

‘if not an Assembly Member’.

[1259] In essence, these three grouped amendments to this clause say that we believe that the Counsel General should not be a Member of the National Assembly. There are powerful reasons for proposing these amendments. It is clear to everyone concerned that the Counsel General should be the best person for the job—the best person to give legal advice—and the post should be sought in open competition.

[1260] The example that we have is that the Government already gets impartial advice from the Permanent Secretary. He provides that advice to whoever is in Government. The danger and difficulty that we would face in having an Assembly Member who was a Counsel General is that his or her advice could be seen to be partial. This role was frequently played from outside the political context within the UK Government, in its having impartial legal advice, until very recently, as pointed out in the Butler report on the Iraq war, when distinct pressure was put on the political role of a Government legal adviser, which meant that that advice no longer appeared to be impartial from the outside. So if you want the best person for the job—and we have already had an example of how that might not work properly inside the Assembly—appointed impartially, it does not appear obvious to us that that person should not be in post when the First Minister changes. If you are providing impartial legal advice to the Government, then that impartial advice would be of the same quality whoever is in Government. The danger of the possibility of that person’s being an AM and falling with the Government is that you are, essentially, politicising that role unnecessarily. It seems to us, therefore, that this role should be without the political process.

[1261] **Jane Hutt:** I think that this fundamentally challenges the perspective of the role of the office of the Counsel General. We are following the Scottish model, as you know, in allowing for someone to be an AM and a Counsel General. We recognise that that person would have to have senior legal experience, but this fundamentally challenges the whole purpose of the Counsel General as someone who could be an AM and, therefore, should be able to vote as and when appropriate. So, we would resist this because the amendments challenge the perspective that we are developing for the Counsel General.

[1262] **Michael German:** We are talking about a parliamentary process, and there are more parliamentarians available in Westminster and thus a larger pool of people. The fact is that if you have a parliamentarian and that person is to be a parliamentarian alone, then that would be clearly understood as a role that that person is playing in the way that they provide advice, but they would be a politically appointed person. If, however, you want to have clarity on this matter, and there is a practical point about the size of the pool of AMs that you want, then the choice would seem to me to be quite clear. You could then either choose to have a politically appointed person or a non-politically-appointed person. It is quite appropriate, if you have a politically appointed person, that that person should fall when the appointee, namely the First Minister, changes.

[1263] I suspect that the reason why it is in the Bill is because it is current parliamentary practice in the UK Parliament. That is probably why we have been rolled into the current

system. If there is a specific reason for wanting to carry that forward other than that it is already the existing procedure in other parts of the UK, then perhaps the Minister could tell me. We are a small pool—you want to keep the number of AMs at 60, and therefore 60 it is. That is a very small pool to choose from, particularly if the Government is only going to have roughly half of those votes. To find the appropriate independent legal advice is not going to be straightforward. It is much more straightforward when you have a pool across both Houses of Parliament from which to choose someone to act in that role, but that will not necessarily be the case here. So, in terms of timing, there is a clear decision to be made as to whether you want a political role or a non-political role for this post. It has been a non-political role, as you know, in the past.

[1264] **Jane Hutt:** I think that this goes back to the other fundamental misunderstanding about this post because, with separation, we now have a post of a Counsel General who will advise Ministers—not advise the Assembly. Other legal advice will have to be made available for the Assembly. This is someone who will give legal advice to the Welsh Ministers, and it may be that that person could be an elected Assembly Member. It is quite clear, as with the Scottish model, in terms of their law officer, that that is the case: it is to advise the Ministers.

6.30 p.m.

[1265] **Michael German:** If you could reflect on it the other way around, you could argue on that basis that the Assembly's legal advice, which it will require—the Government being on one side and the Assembly as a whole on the other—could also be from a Member of the National Assembly who is not in the Government. It is a choice, and I admit it is a choice of principle, and I am just reflecting on that. I would like to know what the argument is for having a politician with that role advising Government.

[1266] **Jane Hutt:** On that point, the Counsel General would be an appointment by the First Minister, and it would be a Crown appointment. I very much doubt if the First Minister would appoint a member of another political party to be the Counsel General for Welsh Ministers.

[1267] **Ieuan Wyn Jones:** What a shame. What happened to consensus?

[1268] **Ann Jones:** Fancied that job did you, Ieuan? [*Laughter.*]

[1269] **Jane Hutt:** We have rehearsed this and we know the situation—we are going for a Counsel General who will advise Welsh Ministers and who would be able to be an AM, though not necessarily so. It follows the Scottish model. It is about separation and establishing, as you said, Mike, a clear role for the Counsel General, which we did not have with the corporate body.

[1270] **Michael German:** I do not necessarily agree with the last point, because we are separating and there will be a need for independent legal advice for the Government as well as for the Assembly as a whole. That is the point I am making—I still want to know why the independent legal adviser to the Government could, might, or even should be, a politician.

[1271] **Jane Hutt:** I rest my case.

[1272] **The Presiding Officer:** Do you wish to pursue this to a vote?

[1273] **Michael German:** If there is no support for it, I do not think that it would be sensible to proceed, although I am still waiting for an answer to my question.

[1274] **The Presiding Officer:** Since you are withdrawing amendments 63, 64, and 65, would it also be convenient—unless you wish to debate them later—to withdraw the amendments to clause 49?

[1275] **Michael German:** Yes.

[1276] **The Presiding Officer:** Thank you. Therefore, amendments 114, 115, 116, 117 and 118 are withdrawn.

[1277] A oes sylwadau ar welliant 100 i Are there comments on amendment 100 to gymal 35? clause 35?

[1278] **Jocelyn Davies:** I propose amendment 100.

Clause 35, page 21, line 35—leave out from ‘so far’ to ‘reasonably practicable’ in line 36 and insert:

‘save in exceptional cases where it is not reasonably possible to do so.’

[1279] This is about our equality of treatment clause, and it requires equality of treatment in the conduct of proceedings between the English and Welsh languages where reasonably practicable. I just do not think that ‘reasonably practicable’ is a high enough threshold—it has become too low. From my experience on the Business Committee, I have found that the term ‘reasonably practicable’ has become very elastic in relation to our statutory instruments, for example. I have become very concerned that they are sometimes published only in the medium of one language, and we are told that it is not reasonably practicable to produce them bilingually. This was often the case if SIs were very technical in nature or contained scientific terms, which seemed to be a reasonable excuse, but we are now told that it is not reasonably practicable if they are very lengthy. It would be better to have this idea that it would only be in exceptional cases that there would not be equal treatment between English and Welsh, because ‘reasonably practicable’ is too low a threshold.

[1280] **Leighton Andrews:** I welcome the fact that Plaid Cymru has tabled this amendment because I would like to probe the Government on this matter as well. Jocelyn has illustrated some of the issues that occur, from time to time, in relation to statutory instruments. They also arise in relation to communications on information technology and the like. When things go wrong, such communications often appear only in English.

[1281] I would like to test the issue of equality of treatment of the English and Welsh languages in the Assembly and ask the Minister what the implication of these clauses would be for attempts to enshrine certain kinds of things in Welsh only, such as the name that has been suggested for the new Assembly building, which only appears to be recorded as ‘Senedd’. I do not know where that has been agreed or whether it has been voted on. I have also noticed, in walking around the new building, that, while most of the signs are bilingual, a few are in Welsh only, such as ‘Siambr’, which is one that I have definitely seen, and ‘Cwrt’.

[1282] Either we are a bilingual institution or we are not. If we believe that we are a bilingual institution, these things have to be made clear. I do not understand why such departures should exist and I want to seek an assurance from the Minister that when we say ‘equality of treatment’, and say that the principle is that the English and Welsh languages be treated equally, words such as ‘reasonably practicable’ cannot be used to make judgments on quite clear policy issues.

[1283] **Jane Hutt:** I am certainly happy to respond to Jocelyn and Leighton. We are talking about clause 35, which is about the conduct of Assembly proceedings. There are other measures in relation to legislation. Jocelyn, you talked about issues in relation to legislation that might arise and I would say that occasionally there are exceptions and, as far as I am concerned, I wish them to be exceptions. That does not relate to clause 35, which is about the conduct of Assembly proceedings and the amendment has to be viewed as just dealing with Assembly proceedings. The wording of the new Bill reflects that of the Government of Wales Act 1998, under section 47. The practices in bilingualism are well understood and I do not see any reason for departing from that. However, as I said, this is about equality of treatment in the conduct of Assembly proceedings. Obviously, there are some issues, Leighton, post separation, which will be for the Government and some for the legislature in terms of the impact of clause 35.

[1284] **Ieuan Wyn Jones:** The point that Jocelyn was making was that because of the way that current legislation has been interpreted, with such a low threshold, we want to see it strengthened. Surely the Minister would accept that it is under the provisions of the existing legislation that the Government may chose, using that exception, to sometimes not produce statutory instruments in both languages. Does she not accept that that is the case?

[1285] **Jane Hutt:** As I said, I dispute that interpretation of the way in which we abide by section 47 of the 1998 Act. It is when there are practical issues that it happens. Sometimes we know that those practical issues are time-critical issues, and that is regrettable. It is always regrettable when we have to invoke that exception, in terms of being ‘reasonably practicable’, because we seek to have equality of treatment in terms of legislation. However, this is not the clause that we are debating at this point in time. We are talking about clause 35, which is about the conduct of Assembly proceedings, not legislation.

[1286] **Ieuan Wyn Jones:** What are Assembly proceedings other than legislation?

[1287] **Jane Hutt:** Perhaps I could ask Hugh to come in at this point.

6.40 p.m.

[1288] **Mr Rawlings:** Perhaps I could help the committee by saying that ‘Assembly proceedings’ is defined in clause 1(5), which refers to the Assembly, committees, or sub-committees of such committees. Clause 35 is about requiring Assembly proceedings to be bilingual, save in circumstances where that cannot be done, for example, when there is no simultaneous translator available temporarily because a committee has a late start.

[1289] On the other hand, if you refer to clause 97(5)—to pick up the point that Jocelyn Davies made—that provision basically says that all Assembly measures shall be bilingual, save in those circumstances that are specified by Standing Orders as permitting them not to be. So, in comparison with the position that we are in at the moment, there is strengthened bilingualism, as far as legislative instruments are concerned, in that it will only be with the explicit approval of Standing Orders that a particular measure shall not be bilingual. Obviously, it is then a question of what goes into Standing Orders.

[1290] **Leighton Andrews:** I want to see whether I can understand that fully. Looking at what you pointed us to in terms of the definition of Assembly proceedings, namely the Assembly, committees and sub-committees, if the Assembly Plenary meets in somewhere called the Siambr, is that in itself subject to these rules on equality of treatment between English and Welsh? Documents that are sent to e-mail addresses that end with the word Senedd could be part of the proceedings. So, it concerns me that we are not, perhaps, operating as tightly as we need to in terms of our interpretation of our bilingual policy. Am I right in thinking that it would be perfectly reasonable to interpret anything going on in

what is called a Siambwr as being Assembly proceedings, and, therefore, any discussion around that should be bilingual?

[1291] **Gwenda Thomas:** I am getting quite confused by this. I certainly have sympathy with what Leighton is saying. Looking at what Hugh has said about clause 97(5) and the reference to Assembly measures, which could impact public bodies, I know that there are examples of when English is not on an equal footing with Welsh. There is no question about that. I am dealing with such a case this week. We do not want to lose the spirit of what we are aiming to do, and that is to be true to a bilingual nation. I am wondering how this amendment would therefore, in practice, impact on the way in which the Bill will work. I can understand the difference between clause 35 and clause 97(5), but I see that it is not always the protection of the Welsh language that is important in a bilingual country, although that is exceedingly important and I would never argue against that. Are we setting up a Trojan horse here in considering this issue?

[1292] **Jocelyn Davies:** I know that I gave the example of the statutory instruments where the term 'reasonably practicable' has been stretched, I think, over time, and, even though this would not apply to SIs, it is the same principle. I stand by my point that it is better to say 'in exceptional cases', because then there would have to be something exceptional about it. Our amendment also has the reasonable test, so I stand by the amendment that this should apply in exceptional cases.

[1293] **David Melding:** Our view is that it is appropriate to strengthen the reference, which implies English as well as Welsh. But, given our historical situation, there lingers an unintended sense of sufferance in clause 35. I think that this sends a stronger signal. It probably will not affect practice a lot, save in some cases where there are still people who feel that some of the proceedings can be rushed through or will not necessarily have all of the documentation prepared in Welsh. Our experience suggests that that is what has happened occasionally. There is no doubt that the Assembly has worked incredibly well as a bilingual institution. Quite a few of us came in in 1999 wondering how it would work, particularly those Members like myself who do not have a command of Welsh. It has been a great success and has been one of the things that we have done for the Welsh nation of which we can be proud. This would strengthen the clause considerably. I do not think that it contradicts anything else. I do not think that it is an amendment that is unreasonable or that should not be accepted. I invite Leighton to send a joint letter with me to the Oxford dictionary saying that there are some words that are so prevalent in English and Welsh in Wales that they could be added, like *senedd*, *siambwr* and *chwrt*. The point is that they are readily understood. The languages meet there, rather than separate.

[1294] **The Presiding Officer:** Jocelyn Davies, I presume that you would like to put this to a vote.

[1295] **Jocelyn Davies:** Yes.

[1296] **Leighton Andrews:** Before we do that, I would like a response from Hugh Rawlings regarding how widely the term proceedings could be drawn.

[1297] **Mr Rawlings:** Proceedings are proceedings of the Assembly, committees of the Assembly or sub-committees of such committees; where they take place is not relevant.

[1298] **Mr Jones:** I would like to point out that, under the present Act, the equality provision relates to the conduct of the Assembly's business. Therefore, one could argue that it is wider now than it will be if it is just confined to Assembly proceedings.

[1299] **Leighton Andrews:** That is important. My understanding of this is that it is

Assembly proceedings, as has been explained by Hugh, and so it is quite narrow. Peter's point is important, and, if it is conduct of Assembly business, I would like the Minister to think about that. I will not support the amendment given that we are dealing with a narrow area, but I would like the Minister to consider, in further discussions, whether the issue of the conduct of Assembly business should be pressed.

[1300] **Michael German:** It was Gwenda who triggered this widening of the approach on equality of treatment when, as Chair of the Committee on Equality of Opportunity, she wrote to Jane, who, in turn, wrote to Peter Hain at the White Paper stage, and presented evidence for the governance paper. So, I would like to ask Gwenda what was in the mind of the committee when it sought the broadening of this area?

[1301] **Gwenda Thomas:** The committee was not involved at the very beginning; there was a realisation at that point that there was a dilution of the statutory obligation towards equality of opportunity. Within the White Paper, equality of opportunity and the Welsh language were dealt with separately; they were not together under the umbrella of equality of opportunity. I gave my evidence to that committee on the equality of opportunity angle. There was also a reference to sustainable development. However, they were treated separately at that point.

[1302] **Jocelyn Davies:** We will take this to a vote.

[1303] **Y Llywydd:** O'r gorau. Pawb sydd o blaid— **The Presiding Officer:** Okay. Everyone in favour—

[1304] **Gwenda Thomas:** Given the point that Leighton made, should the Minister offer clarification?

[1305] **The Presiding Officer:** I thought that the Minister had spoken on this a number of times.

[1306] **Jane Hutt:** If you want clarification on business and proceedings—

[1307] **The Presiding Officer:** We are in the middle of a vote.

[1308] **Jane Hutt:** We have moved to the vote, but I recognise that—

6.50 p.m.

[1309] **Gwenda Thomas:** There is an outstanding issue.

[1310] **Jane Hutt:** Yes.

Gwelliant 100: O blaid 5, Ymatal 0, Yn erbyn 5.

Amendment 100: For 5, Abstain 0, Against 5.

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

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

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

Andrews, Leighton
Hutt, Jane
Jones, Ann
Lloyd, Val
Thomas, Gwenda

Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei bleidlais fwrw yn unol

â Rheol Sefydlog Rhif 8.14.

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

Gwrthodwyd y gwelliant.

Amendment defeated.

[1311] **Y Llywydd:** Trown at gymal 36, gwelliant 101.

The Presiding Officer: We turn to clause 36, amendment 101.

[1312] **Ieuan Wyn Jones:** Cynigiau welliant 101:

Ieuan Wyn Jones: I propose amendment 101:

In clause 36, page 22, line 23—delete sub-clause (6).

[1313] Yn ystod y drafodaeth rhwng Nick Bourne a'r Gweinidog ar ddechrau'r cyfarfod heno, cadarnhaodd y Gweinidog fod y Llywodraeth yn derbyn bod rhai pethau y byddai'n addas cytuno arnynt yn Rheolau Sefydlog y Cynulliad yn hytrach nag mewn deddfwriaeth. Yng nghymal 36(6), o dan y teitl *'Integrity'*, dywedir bod yn rhaid i'r Rheolau Sefydlog gynnwys cymalau sydd yn ymwneud â sut mae Aelodau'r Cynulliad yn disgrifio'u hunain. Wrth gwrs, mae Mr Carl Sargeant yn hoff o ddisgrifio'i hun mewn ffordd arbennig, ond beth y mae'r Mesur hwn yn ei wneud yw rhoi mewn deddfwriaeth rhywbeth a ddylai fod yn fater i'w drafod mewn Rheolau Sefydlog, ac, o bosibl, ddim hyd yn oed mewn Rheolau Sefydlog.

During the discussion between Nick Bourne and the Minister at the beginning of tonight's meeting, the Minister confirmed that the Government accepts it would be appropriate to agree on some things under the Assembly's Standing Orders, rather than in legislation. Clause 36(6), under the title *'Integrity'*, states that the Standing Orders must include provision about how Assembly Members describe themselves. Of course, Mr Carl Sargeant likes to describe himself in a particular way, but what this Bill does is to set out in legislation something that ought to be a matter for discussion under Standing Orders, and, possibly, not even under Standing Orders.

[1314] Dyma'r math o beth—o edrych ar beth sydd wedi digwydd yn y Cynulliad fel y mae wedi esblygu ers i mi fod yma—y mae gennym ganllawiau ar ei gyfer; mae gennym hefyd brotocolau ynglŷn â nifer o bethau ac mae gennym Reolau Sefydlog. Yn aml, mae rhai o'r pethau sydd yn ymwneud â sut y mae Aelodau'n ymagweddu yn fwy priodol ar gyfer canllawiau, protocolau, a Rheolau Sefydlog. Fodd bynnag, nid wyf erioed yn cofio deddfwriaeth a oedd mor gyfarwyddol â mynnu fod Aelodau yn disgrifio'u hunain mewn ffordd arbennig. Nid yw hwn yn rhywbeth a ddylai fod mewn deddfwriaeth.

This is the kind of issue—if I look back at what has happened in the Assembly as it has evolved since I have been here—for which we have guidance documentation; we also have protocols on many issues and Standing Orders. Often, some of the issues to do with how Members conduct themselves are more appropriately dealt with in guidance notes, protocols and Standing Orders. However, I cannot ever recall legislation that was so prescriptive as to insist that Members describe themselves in a particular way. This is not something that should be included in legislation.

[1315] Yn ysbryd yr hyn a ddywedodd y Gweinidog wrth ymateb i Nick Bourne, dyma'r enghraifft berffeithiaf imi ddod ar ei thraws o achos lle gallai'r Gweinidog ddweud, 'Ie, yr wyf yn cytuno â chi. Mae hwn yn fater y gallwn ei drafod mewn Rheolau Sefydlog, ac, unwaith y bydd

In the spirit of what the Minister said in response to Nick Bourne, this is the most perfect example that I have come across of a case where the Minister could say, 'Yes, I agree with you. This is an issue that we could discuss under Standing Orders, and, once we have agreement on it, we can act

cytundeb arno, bydd modd inni weithredu arno'. Yr hyn yr wyf yn ei gael yn anodd yn y cymal arbennig hwn yw bod nifer o bethau yn y Mesur sy'n dod o gyfeiriad un blaid, a'r hyn mae adroddiad Arbuthnott wedi'i ddweud wrthym yw, os ydym yn trafod pethau sy'n ymwneud ag Aelodau, a'r ffordd yr ydym yn sôn am ethol Aelodau ac yn y blaen, dylai hynny fod ar sail rhyw fath o gonsensws sy'n cwmpasu mwy nag un blaid. Mae perygl, os yw'n cael ei weld fel rhywbeth sydd yn ffafrio un blaid neu yn cael ei gefnogi gan un blaid yn unig, ei fod yn cael ei weld fel rhywbeth sydd yn hollti yn hytrach na chyfannu. Dyna sut yr wyf yn gweld y cymal hwn, a gobeithiaf y bydd y Llywodraeth a'r Gweinidog yn derbyn hynny ac yn meddwl eto.

upon it'. What I find difficult in this particular clause is that there are a number of aspects within this Bill that come from the direction of one party, and what the Arbuthnott report has told us is that, if we are discussing issues in terms of Members and the way that we talk about electing Members and so forth, that should be on the basis of some sort of consensus that encompasses more than one party. The risk is that if it is seen as something that favours one party or is supported by only one party, then it is seen as something that divides rather than unifies. That is how I view this clause, and I hope that the Government and the Minister accept that and reconsider.

[1316] **Jane Hutt:** This is meant to be a constructive point—an opportunity for the Assembly to develop this protocol via Standing Orders. It is not saying what the protocol should be; it is saying that, under the Standing Orders, we should have the opportunity to develop a protocol. This is a constructive attempt to take forward clarification and understanding of the important role of the regional Member, and, indeed, of the constituency Member. It served Scotland well and I have often said, over the past seven years, that it is a shame that we do not have a similar protocol in Wales to deal with points of tension. But, it is certainly not laying down in statute what that protocol should say. I hope that we would reach consensus, Ieuan. We must reach consensus on the protocol that will emerge from the opportunities with which this clause provides us. I strongly support what is in the Bill. It is positive, and it will be constructive for our future political and working relationships.

[1317] **Nick Bourne:** The Minister, perhaps unintentionally, distorts matters. The clause does not create an opportunity; it creates an obligation. It states that 'the Standing Orders must include'; that is not an opportunity, but an obligation. It also states what they have to deal with—in two points that are specified in clause 36(6)(a) and (b). Once again, that is an obligation, not an opportunity. We must be clear about what it does say.

[1318] **Jocelyn Davies:** I hope that there is no attempt to treat regional Assembly Members as second-class Assembly Members. It is vital that we put that on record. However, the suggestion made last week that this Bill could allow regional Assembly Members to have lower salaries than first-past-the-post Members was met with some support by the Government committee members. I remind those Members that all their ethnic minority candidates in the last Assembly elections were on regional lists only. Therefore, please do not, under any circumstances or in any context, treat regional Assembly Members as second-class Members. It must be equal. Anything in the protocol—which we would delete the need for—that would lead to that situation should be put out of Members' minds right now, and on the record.

[1319] **Leighton Andrews:** To deal with that final, rather unnecessary, point, the point that is generally made by my colleagues about the relationship between regional Members and constituency Members is not—certainly in my mind—that regional Members are not equal Members of the Assembly. The issue that tends to preoccupy people is the situation of Members who have been defeated in constituency elections who are then elected on regional lists. I do not think that it is a matter of disparaging the role of regional Members

as regional Members.

[1320] Part of the problem is that it is not clear to me that we have identified the particular contribution that regional Members are here to give, or the difference between that contribution and the contribution of constituency Members. This clause is a recognition of the problem that that has created over the past few years. It is a bit of an instruction, frankly, to pull up our socks.

[1321] I welcome the fact that this has been set down in the Bill. It seems far from suggesting that regional Members are in any way inferior to constituency Members. It makes it explicit that neither must misrepresent themselves as being the other. That enshrines a principle of equality in legislation. I would have thought that that would strengthen the position of regional Members and the legislative base for their position in future discussions in the National Assembly. A protocol would be valuable. I am glad that it is in the Bill. It is a recognition of a real problem, and I hope that it will resolve the problem.

[1322] **Ieuan Wyn Jones:** However much he tries to impress us with his reasonable argument, this is a partisan measure. It is partisan because only one party supports it. Leighton forgets that some of us who are not members of the Labour Party are constituency Members. There is not a single constituency Member who is not a member of the Labour Party who supports this provision. Therefore, all the constituency Members who support the provision are members of the Labour Party, and all constituency Members who are not members of the Labour Party think that this is a partisan provision.

7.00 p.m.

[1323] I have never been in a position where I have felt that there was a problem with regional Members. None of my colleagues who are first-past-the-post Members think that there is any problem with regional Members. I think that Leighton rather gave the game away because he referred to candidates as defeated; they are not defeated, because they are elected, except that they are elected in a different format.

[1324] **Leighton Andrews:** The truth of the matter is there are some who have not been defeated. For example, Jocelyn did not stand for a constituency seat at the last election. However, there are 18 regional Members who stood and who were defeated in constituency elections.

[1325] **Ieuan Wyn Jones:** I think that is to misunderstand totally the nature of PR politics. I tempt Leighton, if I may, to read the Arbuthnott report, which makes the point that you do not have defeated candidates. If you are wedded to the tradition of first past the post, then you think of people who have lost the election as defeated candidates. In reality, there cannot be Assembly Members unless they have been elected. You can only come to the Assembly if you are elected. It is just that those who are elected on the regional list have been elected by a different method. If we keep talking about those who have been defeated, then you are treating them differently, and it does not matter how much you give Jocelyn the impression that they are treated as equal, because they are not. The truth is that the Labour Party regards people who have lost an election, as you would describe it, and come in on the list, as second-class Members who have come in through the backdoor. Those are the words that have been used, and they are not helpful. We should at least move on to accept that the Assembly and Westminster have different electoral systems and that all Members are to be treated equally. To force the Assembly through legislation to adopt a protocol that only the Labour Party wants is partisan and it damages the nature of our democratic system.

[1326] **Gwenda Thomas:** Considering what you have just said, Ieuan, is it not reasonable to think that a protocol therefore would guard against the very scenario that you have described? Dealing strictly with the wording of subsection 6, is there any reason why a proposed protocol should not protect regional Members as much as it does constituency Members?

[1327] **Val Lloyd:** I apologise for my voice.

[1328] Ieuan talked about guidance notes when he introduced this amendment, and, clearly, if there are guidance notes, they are not effective. I see it as a very useful measure that will benefit everyone, and I do not see it as partisan; who knows what the future holds. The example on which I am basing my croaky intervention is the fact that I have heard, not once or twice but many times, regional Members for Y region referring to themselves as X-based Members, picking on one part of the constituency. That occurs consistently. I am sure that the protocol would look at issues like that and would be of benefit to us all.

[1329] **Ieuan Wyn Jones:** We must be honest with each other and say that the provision in clause 36(6)(a) is a sop. It exists to give the impression that you are defending regional and constituency Members. I have not heard a single case put forward by a single Labour Member that says that constituency AMs regard themselves as regional AMs. I have never heard that proposition. No arguments have ever been put that constituency Members have referred to themselves as regional Members. That bit of the clause is a sop in order to cover for the one that you really want, which is to prevent regional Members from describing themselves as constituency Members. I am afraid, Val, that this clause would not prevent a person from describing themselves in such a way; all that this would do is prevent a regional Assembly Member from saying that they are a constituency Member. We are going over old ground here and we are disagreeing, but I fundamentally believe that if you have a provision that is only supported by one political party and is opposed by others, so that you have a split Assembly on it, it can only be partisan.

[1330] **Michael German:** I wholeheartedly agree with Ieuan's points. I want to ask the Government Members a second question, which is about the effect of the protocol that they propose. Do the Government Members accept that, although there is a different method of election, all Members are equal and that regional Members as well as constituency Members have constituents to represent? If they are representing those constituents, it inevitably means that different constituents have different parties and Members to whom they can turn. Do they in any way believe that this protocol should not permit that to happen?

[1331] **The Presiding Officer:** Is that a rhetorical question?

[1332] **Michael German:** It is a question to the Government Members.

[1333] **Jane Hutt:** We might be going over old ground but it is helpful to us if we can respect each other in terms of the aims and intentions of, and contributions from, the Government side, although I do not know whether they want to describe themselves as the Government side. This is about trying to get over to you, in a smaller setting, the positive intentions that we have. You do not wish to embrace the positive intention that has been laid out by my colleagues, which is about respect for roles and responsibilities for people who, of course, are representing constituents across a region or in a constituency.

[1334] **Michael German:** The question was: do you recognise that all Assembly Members, elected by whatever method, can represent constituents equally and that they have an equal right to represent those constituents?

[1335] **Jane Hutt:** The whole purpose of this clause is to make provision for us to explore and understand the different roles and responsibilities that we have to our constituents, whether we are constituency Members or regional representatives. I look forward to the day when we sit down and discuss this, Mike. The clause talks about including provision for, or for the making of a code or protocol on, the different roles and responsibilities of Assembly constituency Members and Assembly regional Members. This is an opportunity for us; we should not see it in any way as a partisan issue. As Val says, who knows what may become of Members who will or will not be regional or constituency Members, or neither, in times to come. I hope that you will recognise that we are trying to be constructive in terms of clarifying those roles and responsibilities and recognising the rights of elected Members. I leave it at that.

[1336] **Michael German:** The Minister has not given me an answer to the question that I was asking, which was about the different roles and responsibilities. The word is ‘different’. I was asking the Minister whether she believed that that difference should mean that Members who are elected by one method or another would have different roles in respect of representing their constituents, in terms of being equal. I now ask that question in terms of being different, because the word ‘different’ is in there. The reason that I was asking it is that it is quite clear to me that if there were an equality of ability, you would not need to have this provision about different roles and responsibilities.

7.10 p.m.

[1337] **Nick Bourne:** I do not doubt the Minister’s sincerity, but I do doubt the sincerity of the people who have put this Bill together. During the first Assembly, there was never this great big issue of whether Members were elected by the first-past-the-post method or through the list—it was just not an issue. It has become an issue because some Members, exclusively on the Labour side, have made it an issue. You say that this is not partisan, but we keep coming back to the point that only one party supports it. That makes it partisan by definition, and we have already seen provisions allowing separate arrangements for salaries. We have also seen that the electoral system will be altered in Wales but not in Scotland—because the Labour Party benefits from that arrangement in Scotland. Let us be absolutely clear about this matter: this is a narrow, partisan, Labour piece of legislation, the amendment of which you are resisting. All the good intentions in the world from the Minister would not change that. She is defending every last jot of this legislation, which has been put together by a Labour Party determined to resist all possible change and to entrench itself, if possible, even if it loses power in this place. That is what it is about, and nothing that has been said so far has convinced me otherwise.

[1338] **Y Llywydd:** Galwaf am bleidlais ar welliant 101 i gymal 36. **The Presiding Officer:** I call for a vote on amendment 101 to clause 36.

*Gwelliant 101: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 101: For 5, Abstain 0, Against 5.*

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

Nick Bourne
Jocelyn Davies
Michael German
Ieuan Wyn Jones
David Melding

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

Leighton Andrews
Jane Hutt
Ann Jones
Val Lloyd
Gwenda Thomas

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

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

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[1339] **Ieuan Wyn Jones:** I propose amendment 102 to clause 37.

Clause 37, page 23, line 14—delete sub-clause (3).

[1340] This is another probing amendment, so the Minister can relax. Clause 37(3) reads as follows.

‘The Assembly may not impose a requirement under subsection (1) on a person who—

(a) is or has been a Minister of the Crown, or

(b) serves or has served in the department of the Minister of the Crown, in relation to the exercise of any functions of a Minister of the Crown.’

[1341] I presume that ‘Minister of the Crown’ means Ministers of the UK Government. That sub-clause weakens the Assembly’s ability to deal with various matters, and I use the Social Justice and Regeneration Committee as an example. That committee might reasonably request a Minister to appear before it to explain himself or herself about the changing structures of the police force in Wales but, under that provision, the Minister could refuse such a request, which weakens the Assembly’s ability to deal with various matters.

[1342] When I became the Chair of an Assembly committee during its first nine months, I fully appreciated the weakness and the problems that we faced, because many of the decisions that affected us were taken, in those days, by the Ministry of Agriculture, Fisheries and Food. There was no way you could even question those decisions because there was no way you could ask officials or Ministers to come here. If they felt it inconvenient, they would not come, though sometimes they would if it was convenient. I am not sure why this provision is contained in the Bill, given that it puts the Assembly at such a disadvantage.

[1343] **Jane Hutt:** I am grateful for this probe, Ieuan. You know that we cannot compel a UK Government Minister to attend. We can invite—indeed, as you say, we have invited, with success—UK Ministers to attend committees. This is about UK Government Ministers, and we cannot compel them to give evidence before Assembly committees and produce documents to such committees. We know what you are getting at, but we are devolved, so surely we do not respect other administrations that are not part of our Government.

[1344] **Jocelyn Davies:** Well, this is a UK Government Bill, and the UK Government can tell its own Ministers that, if requested by the Assembly, they must appear. So, this is not a power that we have taken for ourselves; these are powers that the UK Government could give to us.

[1345] **Jane Hutt:** A UK Government Minister is accountable to Parliament, not to the Assembly. Accountability is not to us; therefore, we cannot compel.

[1346] **Michael German:** Could I ask Peter about section 23 of the Scotland Act 1998? Am I right in thinking that Parliament has the power to require any person to attend, including a Minister of the Crown, under that Act?

[1347] **Mr Jones:** Section 23(3) says:

‘(3) In relation to the exercise of functions of a Minister of the Crown, the Parliament may not impose such a requirement on—

(a) him...unless the exercise concerns a subject for which any member of the Scottish Executive has general responsibility’.

[1348] So, in certain circumstances, there is a power to require. However, section 23(4) then goes on to say,

‘(4) But the Parliament may not impose such a requirement...in connection with the exercise of functions which are exercisable—

(a) by the Scottish Ministers as well as by a Minister of the Crown, or

(b) by a Minister of the Crown only with the agreement of, or after consultation with, the Scottish Ministers’.

[1349] Section 23(4)(a) is where they are acting jointly, I suppose.

[1350] **Mr Rawlings:** It is quite important, if I may say so, not to draw attention to particular sub-sections in the Scottish Act 1998 without looking at the overall pattern that is set up. In our Bill, we have looked at the Scottish legislation and found that it does not work for us. We have gone for what you might call a ‘tight/loose’ structure.

[1351] **Ieuan Wyn Jones:** A what?

[1352] **Mr Rawlings:** A tight/loose structure.

[1353] **Ieuan Wyn Jones:** I thought that you said ‘tight noose’.

[1354] **Michael German:** I can feel myself hanging now. [*Laughter.*]

[1355] **Mr Rawlings:** It may well be a tight noose and it probably will be around my neck by the time we are finished.

[1356] **Jane Hutt:** There are no nooses here, I can assure you.

[1357] **Mr Rawlings:** My starting point is that I hope that the committee can recognise that what we have in clause 37 and the following clauses is a major and substantial improvement on what was in the Government of Wales Act 1998, which, in this respect, was unworkable. You start with the proposition in clause 37(1) of the new Bill that the Assembly may require any person to attend—so it is loose—but only in relation to any matter relevant to the exercise by the Welsh Ministers of any of their functions—so it is tight. The purpose of summoning people as distinct from inviting them is in relation to the exercise by the Welsh Ministers of their functions. The corollary to that is that you cannot properly summon—and I emphasise the word ‘summon’—a Minister of the Crown, as the wording says, in relation to the exercise of any functions of a Minister of the Crown. So, in other words, the clause is structured in such a way as to enable the Assembly to do its proper constitutional job, which is to hold the Welsh Ministers to account; in doing that, it may require any person to attend. What it may not do is require someone to attend who is not properly accountable to the Assembly. That is the case of a Minister of the Crown who is properly accountable to Parliament.

[1358] **Ieuan Wyn Jones:** That is quite an interesting proposition, but there will be examples. I think that in another place—if I may say so, although I do not want to hold you to that if you feel that that needs to be amended in the light of the discussion—you made the point that Westminster can still legislate on devolved matters, and it retains the absolute right to do so. It will exercise its functions in that area should it choose to do so on a matter that is also within the function of a Welsh Minister.

7.20 p.m.

[1359] Under those circumstances, you would be entitled to invite a Minister of the Crown here. Let us assume that Westminster exercises that function. Under those circumstances, would we not be entitled to request the Minister to come to explain himself or herself?

[1360] **Mr Rawlings:** The question that may well arise in subsequent years is whether something akin to a Sewel convention will develop in relation to Wales. That is, whether Parliament will continue to legislate in respect of matters for which legislative competence has been transferred or conferred upon the Assembly. As it is drafted, the concluding words of clause 37(1) talk about the exercise by Welsh Ministers of any of their functions. It does not talk about action by any other people who may touch on those functions. It is about the exercise by the Welsh Ministers of their functions, because it is the responsibility of the Assembly to hold Ministers to account for what they have done.

[1361] **Jane Hutt:** That is clause 37 summed up.

[1362] **Ieuan Wyn Jones:** If Westminster decided to publish a Bill under that procedure, which would be something akin to the Sewel convention, would we not be entitled to call that Minister, who is legislating for Wales in an area in which a Welsh Minister is perfectly competent to legislate, to come to explain himself or herself? This Bill would prevent that from happening, would it?

[1363] **Jane Hutt:** I do not feel that it is fair to ask Hugh to answer that. Let us go back to the other point. We have successfully invited Ministers to come to the Assembly—we have had joint scrutiny. Let us think back to all the opportunities and the political process that we have enjoyed. Indeed, we have just been talking about the programme of legislation that will come before the Assembly and which will be referred to committees as it is now. There will be opportunities for us to question and scrutinise other UK Ministers through our own Ministers, which is key, as well as through the role of the Select Committee on Welsh Affairs. There are myriad opportunities and, although it has been a useful discussion, I feel that we should move on now.

[1364] Finally, I recognise, as Hugh said, that it will substantially strengthen the opportunity for you to scrutinise Welsh Ministers, on the responsibilities for which they should be accountable to the Assembly. I suggest that we move to a vote, but it is up to opposition Members, of course.

[1365] **Y Llywydd:** Beth yw eich barn? A **The Presiding Officer:** What do you think? Do you wish to move to a vote on this?

[1366] **Ieuan Wyn Jones:** No. It is a probing amendment, but we have teased out one or two quite important issues as a result of the discussion, and it will give us an opportunity to reflect on whether this particular clause, as drafted, is sufficient protection for the Assembly in those cases. If there were to be examples in non-devolved areas, it would be difficult to justify that request although it might impact on Wales, but we have now found that there could be circumstances in which we would do so, though this is clearly not the way to do it.

Therefore, we withdraw the amendment.

[1367] **Michael German:** It might also be useful, if it could be done outside this committee, if the Assembly Parliamentary Service could provide a short note on the Scottish Bill, and how it differs in its interpretation.

[1368] **The Presiding Officer:** If I may add a gloss, it could also include what has and has not happened in Scotland as a result of legislation. That is just as interesting as what we saw when we were discussing the 'Better Governance for Wales' White Paper.

[1369] Wrth inni gychwyn ein llwybr at Ran 2 a chymal 45, efallai y byddai o ddiddordeb i aelodau'r pwyllgor wybod fy mod yn bwriadu dod â'r trafodaethau i ben tua 8 p.m., er mwyn rhoi cyfle i unrhyw un sy'n dymuno cael swper yn y fan hon i wneud hynny. A yw hynny'n drefniant hwylus? Ni welaf unrhyw un yn anghytuno. O ganlyniad i'r cytundeb hwnnw, nid wyf yn rhagweld y byddwn yn gorffen Rhan 2 heno.

As we start our journey towards Part 2 and clause 45, it might be of interest to committee members to know that I intend to draw these proceedings to a close about 8 p.m., to give anyone who wants to have dinner here to have the opportunity to do so. Is that a suitable arrangement? I do not see any disagreement. As a result of that agreement, I do not think that we will finish Part 2 tonight.

[1370] **Ann Jones:** Point of order. Three members of the Local Government and Public Services Committee have a long-standing engagement with the Electoral Commission tonight, which starts at 7.30 p.m. for 7.45 p.m.. We therefore beg indulgence to finish the meeting at 7.40 p.m., to give us a chance to get there.

[1371] **The Presiding Officer:** Is this meeting to be held at a great distance?

[1372] **Michael German:** It is to be within a very short distance, at a venue you know well.

[1373] **Ann Jones:** It is at an eatery that you know well.

[1374] **The Presiding Officer:** Very well, we will adjourn the meeting in 15 minutes' time. Would that be all right?

[1375] **Ann Jones:** That would be wonderful, thank you very much.

[1376] **The Presiding Officer:** We will complete this group of amendments, then.

[1377] **Nick Bourne:** I propose amendment 104.

Clause 45, paragraph (1)—delete 'Assembly Government' and replace with 'Executive'.

I propose amendment 124.

Clause 45, page 27, line 25—leave out 'Assembly Government' insert 'Executive'.

I propose amendment 125.

Clause 45, page 27, line 26—leave out 'Assembly Government', insert 'Executive'. Leave out 'Cynulliad'.

[1378] I will keep this brief, in the spirit of trying to get through as much as possible. This is largely a matter of taste. We have never liked the title 'Welsh Assembly Government', we

prefer 'Executive' and that is really what this is about.

[1379] **Ann Jones:** Sorry, Nick, but we like the title 'Welsh Assembly Government' and you will not be surprised to learn that we will vote this amendment down, if you push the matter to a vote.

[1380] **Ieuan Wyn Jones:** You cannot vote it down.

[1381] **Ann Jones:** We will vote against it then. It is the same difference, where I come from. It is about confusion—

[1382] **The Presiding Officer:** Order. Technically, what is happening, as you will have observed ad nauseam, is that from where I sit, I am negating the amendments because they cannot be carried. It is not that they have been voted up, down, across or anywhere else.

[1383] **Ann Jones:** Very well, I will take the technical advice; thank you very much for that. In terms of where we go from here, the term 'Welsh Executive' will not mean anything to our voters; I think that they have got used to 'Welsh Assembly Government' and know what it means. They are used to that term and I think that confusion about the different roles will reappear if you change it. We are having difficulty in selling the virtue of what the National Assembly for Wales is doing in certain parts of Wales and to then go back and change the nomenclature is just not on, I think. Given that it is just a matter of taste on the part of the Conservatives, it will not come as any surprise that we are going to say 'uh-uh'.

[1384] **David Melding:** I am just hopelessly old fashioned and I believe in the separation of powers; legislatures and Governments are different. Of course, the Government has to have the confidence of the legislature, but, grammatically speaking, the 'Welsh Assembly Government' is really the commission that runs the internal proceedings of that building that we call 'the Assembly'.

[1385] It is a remarkable thought process. On the one hand, you argue that there has been a great problem with people confusing regional and constituency AMs—it is claimed that some AMs have said that they are based in certain areas; I hope that I have never done that, but I invite contradiction—and that the roles are confused, and the titles somehow have to be protected, yet, on the other hand, you will not change a matter that is clearly confusing for people and one that is repeatedly mentioned in the press. Even the title 'Welsh Government' would be clearer than what we currently have. I think that 'Executive' is understood in Scotland. A change takes time to settle, but I think that clear titles lead to clear understanding and processes, and that is why we have brought these amendments forward.

7.30 p.m.

[1386] **Ieuan Wyn Jones:** I ryw raddau, yr wyf yn dilyn yr un trywydd â David Melding, ond hoffwn dynnu sylw at y Gymraeg yn y fan hon oherwydd, er ein bod am ddefnyddio'r gair 'Executive' yn Saesneg, y gair yn Gymraeg fyddai 'Llywodraeth', oherwydd yr ydym yn tynnu'r gair 'Cynulliad' allan o'r enw. Byddai'n well gennyf i ein bod yn defnyddio'r gair 'Government' yn Saesneg ac yn hepgor y gair 'Assembly'. Fodd bynnag, mae sensitifrwydd difrifol yn Llundain ynghylch y ffaith bod y

Ieuan Wyn Jones: To some extent, I am going down the same route as David Melding, but I would like to draw attention to the Welsh language here because, although we wish to use the word 'Executive' in English, the word in Welsh would be 'Llywodraeth', because we are taking the word 'Assembly' out of the title. I would prefer it if we used the word 'Government' in English, and did not include the word 'Assembly'. However, there is huge sensitivity in London about

Llywodraeth yn galw ei hun yn ‘Government of Wales’, oherwydd mae Llundain yn dweud, ‘But we are the Government of Wales’. Felly, mae rhyw nonsens ynghylch terminoleg. O ran y Gymraeg, wrth gwrs, ni fyddai'r gair ‘Executive’ yn ei wneud yn gliriach.

the Government calling itself the ‘Government of Wales’, because London says, ‘But we are the Government of Wales’. Therefore, there is some nonsense regarding terminology. In terms of the Welsh title, of course, the word ‘Executive’ would not make it clearer.

[1387] Cyfeiriaf yn fyr at bwynt David Melding a dadleuaf yn erbyn yr hyn a ddywed Ann Jones. Yr hyn sy'n ei wneud yn gymysglyd yw defnyddio'r gair ‘Cynulliad’ yn yr enw ar gyfer y Llywodraeth, oherwydd os ydym wedi brwydro—ac yr ydym wedi brwydro'n galed iawn—i hollti'r Cynulliad oddi wrth y Llywodraeth, pam ar wyneb y ddaear yr ydym wedyn yn cynnwys y gair ‘Cynulliad’ yn enw'r Llywodraeth? Mae hynny yn ei wneud yn gawlach llwyr. Ni allaf weld cyfiawnhad y Llywodraeth dros barhau i'w ddefnyddio.

I wish to refer briefly to the point that David Melding made and to argue against what Ann Jones said. What makes it confusing is the use of the word ‘Assembly’ in the name for the Government, because if we have fought—and we have fought very hard—to separate the Assembly from the Government, why on earth are we then including the word ‘Assembly’ in the Government's title? That makes a complete mess of it. I cannot see the Government's justification for continuing to use it.

[1388] Gyda llaw, pam mae'n rhaid rhoi hyn yn y Mesur? Penderfynodd y Prif Weinidog alw ei hun yn Brif Weinidog, er mai ‘Ysgrifennydd’ oedd yn y Ddeddf wreiddiol. Nid oedd term ar gyfer y Llywodraeth yn y Ddeddf wreiddiol, oherwydd rhesymau penodol ar y pryd, ond, am ryw reswm, penderfynodd y Blaid Lafur fod yn rhaid i bwy bynnag fydd yn llywodraethu yn dilyn etholiad 2007 alw eu hunain yn ‘Llywodraeth Cynulliad Cymru’. Ni wn pam mae'r orfodaeth statudol honno yn y Mesur o gwbl. Gofynnaf i'r Gweinidog fynd â hyn yn ôl i'w ailstyried.

Incidentally, why does this need to be included in the Bill? The First Minister decided to call himself the First Minister, although the title ‘Secretary’ was used in the original Act. There was no term for the Government in the original Act, for specific reasons at the time, but, for some reason, the Labour Party has decided that whoever will be in Government following the 2007 election must call themselves ‘the Welsh Assembly Government’. I do not know why that statutory obligation is included in the Bill at all. I ask the Minister to take this back and look at it again.

[1389] **Gwenda Thomas:** Nid wyf yn hoffi hyn o gwbl. Yr ydym am gael statws cyfartal i'r cyfieithiad ond gallem fod yn siarad am bwyllgor gwaith i Gymru drwy ddefnyddio ‘Executive’. Mae'n well gennyf i'r enw fel y mae. Nid wyf am weld sefyllfa lle y byddwn yn siarad am bwyllgor gwaith. Ni chredaf y byddai hynny'n addas ar gyfer dyfodol y Llywodraeth yng Nghymru o gwbl. Credaf fod yn well gennyf yr enw fel y mae.

Gwenda Thomas: I do not like this at all. We want to give equal status to the translation but, we could be talking about an executive committee for Wales by using ‘Executive’. I prefer the title as it is. I do not want a situation in which we will be talking about an executive committee. I do not think that that would be at all appropriate for the future of the Government in Wales. I think that I prefer the title as it is.

[1390] **Michael German:** It will not surprise you to hear that I would have much preferred it had this matter been left to the National Assembly. However, the original decision, which I wanted to see and would still prefer to see, was to have the ‘Government of the National Assembly for Wales’ or the ‘Welsh Government’. Either title would have been a different interpretation to that which we have here.

[1391] What I think has happened since the interpretation was made in the way that has been described is that the differentiation between the Government and the Assembly has not become as clear as it could be, largely because of the incorporation of the word ‘Assembly’ into the Government’s title. I prefer the choice that David Melding referred to, but in order to get that separation clear, you need to take the word ‘Assembly’ out, which means that you have a separate Assembly and a separate Welsh Government. This is the crucial part of the distinction that we are making here. If the Government were to take it away and to think about having the title ‘Welsh Government’, I think that that would solve that problem.

[1392] **Jane Hutt:** Clearly, you know that we will not be taking this away to think further about it. There are many points here. First, the separation that we are going to deliver in order to move away from the corporate body, which, as David said, has not served us well, will deliver the distinction. The people of Wales now know what the Welsh Assembly Government is, and they know that it is a body that is responsible for government in Wales. They also know, increasingly, and, with the separation, will know even more clearly and distinctly, that there is a National Assembly for Wales of elected Members who scrutinise the Government as well as contribute to policy. The word ‘Executive’ may have been accepted after seven years in Scotland, but there are translation issues with regard to the Welsh language—as Ieuan and Gwenda have pointed out—and it also has the connotation of officialdom as far as I am concerned. It would be wholly detrimental to devolution to move away from what is now accepted as the Welsh Assembly Government and the National Assembly for Wales.

[1393] **Ieuan Wyn Jones:** I understand that you prefer the term ‘Welsh Assembly Government’; we prefer the term ‘Welsh Executive’. However, why are you forcing a successor Government to adopt your preference?

[1394] **Jane Hutt:** We were bringing forward a Bill in order to meet the provisions of the White Paper, many of which you have embraced and supported, and to ensure that the people of Wales understand the distinction between the Government and the legislature. That separation will be delivered as a result of this Bill, which a Labour Government is delivering in Westminster, and will deliver as a result of forthcoming proceedings in Westminster. The separation will deliver the distinction. However, we certainly do not want to move away from what is now understood and, I believe, embraced by the people of Wales: the Welsh Assembly Government and the National Assembly for Wales. The separation and the distinction have become even clearer with the move into our new building just over the road.

[1395] **Ieuan Wyn Jones:** I accept that you prefer that phrase while we prefer another phrase. However, what I am asking is this: why are you forcing a successor Government to use your preference rather than leaving it open? What is the advantage?

[1396] **Leighton Andrews:** I find this argument about ‘forcing’ slightly odd. There is a title laid down in the Scotland Act 1998; it happens to be a different title, but any Government in Scotland is forced to use the title ‘Scottish Executive’ whether it likes it or not. There is no difference of principle in this argument. We are laying down a name here, and a name has been laid down in Scotland. If you do not like it, okay, you have the opportunity to try to out-vote the Government in other places. It seems to me that there is no difference of principle here, and to introduce that as an argument at this stage is pretty weak.

[1397] **Jocelyn Davies:** What provisions in the current Act are you using to call yourselves the Welsh Assembly Government now?

[1398] **Leighton Andrews:** I do not know what relevance that has.

[1399] **Jocelyn Davies:** The relevance is that you do not need to lay it down in an Act to call yourself the Welsh Assembly Government. The point that everyone else is making is that this may not be a name that a future Government would want to have. In fact, it is a name that people have expressly said that they do not want to have.

[1400] **Leighton Andrews:** The point is that we are implementing in the Act the separation of the Executive and legislature, which everyone has supported. That is why it has reached a point where it needs to be enshrined in legislation, as was previously done in Scotland.

[1401] **Jane Hutt:** You do have to name that and enshrine it in the legislation.

[1402] **Nick Bourne:** I suggest that we move to a vote. I think that the term ‘Welsh Assembly Government’ is deeply misleading. I wish that I had the Minister’s faith that the people of Wales really understand it; I think that there is great confusion.

[1403] **Ieuan Wyn Jones:** Is it not the case, Nick, that many opposition Members get letters addressed to us with our names followed by ‘Welsh Assembly Government’?

[1404] **Ann Jones:** It is because you do such a good job, Ieuan.

[1405] **Ieuan Wyn Jones:** Thank you, Ann. I can put that on my next leaflet.

[1406] It just highlights that people are totally confused about what is the Assembly and what is the Welsh Assembly Government. These are not ordinary members of the public; this is civic society. Organisations send letters to us as Members of the Welsh Assembly Government.

7.40 p.m.

[1407] **Nick Bourne:** I think that there is confusion among members of the public and civic society, and we have all been elevated in that way. I take the Minister’s point that we now have separation, but I do not think that that is made any clearer by the terminology, ‘Welsh Assembly Government’ and ‘Assembly’. If you left out ‘Assembly’, your point would be well made—Welsh Government and the Assembly. However, this would just lead to confusion. We are used to people saying that the Assembly has done something when they mean the Assembly Government. I do not think that that will change because of the Act, because it is not bedtime reading for most people in Wales—or even for us if we were not on the committee. [*Laughter.*]

[1408] **The Presiding Officer:** Let us move to a vote on amendment 104.

Gwelliant 104: O blaid 5, Ymatal 0, Yn erbyn 5.

Amendment 104: For 5, Abstain 0, Against 5.

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

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

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

Andrews, Leighton
Hutt, Jane
Jones, Ann
Lloyd, Val
Thomas, Gwenda

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

As there was an equality of votes, the Chair used his casting vote in accordance with

Standing Order No. 8.14.

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[1409] **Y Llywydd:** Gyda chalon drom y **The Presiding Officer:** It was with a
defnyddiaf fy mhleidlais fwrw. heavy heart that I used my casting vote.

[1410] As amendment 104 has fallen, consequential amendments 124 and 125 also fall.

[1411] Cyn cau, yr wyf yn siŵr y byddech Before I close the meeting, I am sure that
am wybod fy mod unwaith wedi cael fy you would like to know that I was once
nisgrifio gan gorff cyhoeddus yng Nghymru described by a public organisation in Wales
fel 'Y Llywydd, Llywodraeth Cynulliad as 'The Presiding Officer, Welsh Assembly
Cymru'. Government'.

[1412] Byddwn yn cwrdd eto ddydd We will meet again on Tuesday.
Mawrth.

*Daeth y cyfarfod i ben am 7.41 p.m.
The meeting ended at 7.41 p.m.*