



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

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

**Dydd Mawrth, 14 Chwefror 2006
Tuesday, 14 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: John Marek (Cadeirydd), Leighton Andrews, Nick Bourne, Jocelyn Davies, Michael German, Christine Gwyther, Jane Hutt (y Trefnydd), Ann Jones, Ieuan Wyn Jones, 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: Gareth Williams, Clerc; Siân Wilkins, Clerc; Sarah Beasley, Dirprwy Glerc.

Assembly Members in attendance: John Marek (Chair), Leighton Andrews, Nick Bourne, Jocelyn Davies, Michael German, Christine Gwyther, Jane Hutt (the Business Minister), Ann Jones, Ieuan Wyn Jones, 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: Gareth Williams, Clerk; Siân Wilkins, Clerk; Sarah Beasley, Deputy Clerk.

*Dechreuodd y cyfarfod am 5.32 p.m.
The meeting began at 5.32 p.m.*

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

[1413] **The Deputy Presiding Officer:** I call the meeting to order. In view of the Presiding Officer's absence, under Standing Orders, I am here in his place as Chair for the conduct of this meeting. My first duty is to give the Presiding Officer's apologies. I know that he would wish to be here, but he has been prevented from being able to attend.

[1414] We have a substitution, do we?

[1415] **Mr Williams:** Yes. Christine Gwyther is here instead of Val Lloyd.

[1416] **The Deputy Presiding Officer:** I have been chairing Plenary all afternoon, so I will just catch up on the Chair's brief as I do not want to do anything wrong.

[1417] I need to advise Members that we, or the Presiding Officer and you, will probably need to meet tomorrow night as scheduled to consider any amendments not reached this evening—though I hope that we will reach all the amendments; I certainly will not delay the proceedings—to consider those matters on which the Business Minister has agreed to report back, and to discuss the committee's report.

[1418] I should make a statement as to what I will do and whether I will be voting. My natural inclination is to use my two votes. However, I know that the Presiding Officer has agreed to use only his casting vote. Although all the parties are not agreed on this—and I do not want anyone to identify themselves—the majority of parties, since they have established the convention, would wish me not to use my first vote but my casting vote only. I propose to do that on the condition that we will have a debatable motion in Plenary on the report, that all those amendments for which I would dearly love to vote—and there are plenty of them here before us this evening—can be brought up by opposition parties, and that we will be able to make the required changes and amendments to the report of this committee when it is

presented and considered by the Assembly in Plenary. I propose to follow the convention established on this committee by the Presiding Officer, and I will use my casting vote as directed, because I have no freedom of choice on that, depending on what happens on each of the amendments.

[1419] **Christine Gwyther:** Could you just go over your terms again, please?

[1420] **The Deputy Presiding Officer:** They are not terms, but I will go over them again. I am not asking you for any terms, because that would be unfair.

[1421] **Christine Gwyther:** I thought so.

[1422] **The Deputy Presiding Officer:** Yes, exactly. I am not doing that.

[1423] Since we are being broadcast live and the meeting is public, people might think it odd that I did not vote when I could have, and it makes a difference to whether amendments go through. I have watched the proceedings of this esteemed committee on television on a number of occasions, and have noticed that a lot of the votes are tied and a lot of the amendments therefore fail. If I were to vote using my first vote, it would be likely—though one cannot always tell in advance—that a number of these amendments would succeed. Now, because of the convention established by the Presiding Officer, I will not do that. I shall not use my initial vote, which I do have and could use if I wanted to do so, in order to keep the convention that the Presiding Officer established. However, I reserve that right. This is not laying down terms or anything, but I reserve that right, since this will come down eventually to the report, which has to be considered in Plenary. If no-one else will put down amendments in Plenary, I will put them down, and I hope that they will be debated, and that those that find favour will succeed. Is that clear, Christine?

[1424] **Christine Gwyther:** I think so.

[1425] **The Business Minister (Jane Hutt):** I recall that, last week, the Presiding Officer said that he intended to provide a report to the Assembly on the proceedings of this committee. I was just looking at the minutes of the last meeting to see where that appears, because he definitely brought this to the committee at the start of the meeting. So, I appreciate that you have made it clear that you will follow the Presiding Officer's convention.

[1426] **Nick Bourne:** Jane, can you point out to us where it says that?

[1427] **Jane Hutt:** It certainly was verbally said at the last meeting. I just looked at the minutes, and I cannot see it minuted, Nick. So, I appreciate that point.

[1428] **Nick Bourne:** I have to say that I do not recall that.

[1429] **Michael German:** Nor do I.

[1430] **Ieuan Wyn Jones:** On a point of order, to establish the point that the Minister seeks to make, this is a Government Bill, and I would have thought that the only people who can propose a measure in support of the Bill are those in Government. I would have expected any report on the committee to come from the Government on a Government motion. The only people who can actually table a motion are those in Government, in this case, in Government time, and I would have expected the Government to propose its own response to its own Bill rather than expecting someone else to do that.

[1431] **The Deputy Presiding Officer:** Forgive me for not being completely up to date.

[1432] **Ieuan Wyn Jones:** I cannot find any reference to the Presiding Officer's having said that, and it is certainly not in the minutes.

[1433] **The Deputy Presiding Officer:** Jane, what would you say? Before I bring Nick in, my view is that, normally, you would table a motion asking the Assembly to agree with the report, and then we would be able to amend it or not as Plenary sees fit.

[1434] **Jane Hutt:** This is not a Government committee, though; this is a committee of the Assembly—I certainly see it as such—which will report to the Assembly on its deliberations. To make another point, I will not be able to provide a response tonight to the points that I agreed to take back, but I should be able to bring it back for tomorrow night, if that is acceptable.

[1435] **The Deputy Presiding Officer:** That is fine. It is a different point, but I am sure that that would be accepted.

[1436] **Jane Hutt:** It is a different point, but I just wanted to get that in. I would have thought, actually, that this was a committee of the Assembly and not of the Government. The Government has not set up this committee.

[1437] **The Deputy Presiding Officer:** I agree with you, I think, subject to what Ieuan has to say. He can come back again, but I will invite Nick to comment first, then Jocelyn and then Mike.

[1438] **Nick Bourne:** I cannot recall that being said, but I am sure that, if Jane says that it was, it was. It must have been as an aside, because I would certainly have sought to challenge a suggestion that the committee's report be presented by the Presiding Officer. This is a Government measure, and it has to be an amendable motion put forward by the Government to be debated in Assembly time. It is certainly the basis on which I thought that we were proceeding. If anything different had been suggested and that I had picked up—and I have to say that I cannot recall it being suggested—I would certainly have said something at the time, which is why I was surprised.

[1439] **The Deputy Presiding Officer:** Before I invite others to speak, I will just tell you that Gareth, the clerk, tells me that a report will be presented to the Assembly as a debatable motion and will be amendable. Gareth, do you want to put it in your own words?

[1440] **Mr Williams:** That is the case as I understand it.

[1441] **Nick Bourne:** Is it to be presented by the Minister, given that it is a Government measure? That is the essence of what I believed that it would do.

5.40 p.m.

[1442] **The Deputy Presiding Officer:** Gareth, do you have any advice for us on that?

[1443] **Mr Williams:** No. I would have to take it away and consider it.

[1444] **Jane Hutt:** The Presiding Officer said that, but it was not minuted.

[1445] **Nick Bourne:** He may well have said it, but I am just saying that I did not pick it up.

[1446] **Jane Hutt:** In his absence, it is difficult to take this forward except to acknowledge that there will be a report to the Assembly. Perhaps we could clarify how and when—

[1447] **The Deputy Presiding Officer:** That raises a difficulty for me, because I will not wish to be in the Chair; I will wish to be able to speak to my amendments if I am not able to speak to and vote on them now.

[1448] **Jocelyn Davies:** Chair, you may recall that, when we discussed this matter in the Business Committee some time ago, when we were discussing the changes to Standing Orders that allowed this committee to meet, the idea that the motion would be unamendable was rejected. So, there is no doubt in my mind that the agreement was that the motion would be amendable; otherwise, the changes to Standing Orders would not have been made.

[1449] **Michael German:** Three of us were present in the private discussion on forming this committee, and we formed it on the basis that the committee would be able to use the appropriate Standing Order, which I think was mentioned in the terms of reference approved by the Assembly, to carry forward and seek amendments on a Government measure. It would seem to us to be mighty strange if the report did not come from the Government side. The Government is proposing a measure, to which we have very little in the way of amendments so far in this report, but there are clearly amendments on which the Assembly is divided and which ought to be tested on the floor of the Assembly. Any method that would seek to frustrate that process seems to be inappropriate, and I wonder whether we want to minute that at any stage in this meeting or proceed on that basis. I am happy to move that or to seek clarification on it.

[1450] **The Deputy Presiding Officer:** Are there any views on that clarification? We will move on in a minute, but this is important and we need to spend two or three minutes on it to get it right.

[1451] **Gwenda Thomas:** You might recall the points that I put when the Committee on Equality of Opportunity report was debated a few weeks ago. Standing Orders, as they stand, restrict only the subject committees; the precedent was therefore set by the Committee on the Better Governance for Wales White Paper to amend Standing Orders in order to restrict amendments to that debate. So, unless there is a further amendment of Standing Orders, I would assume that, like the Committee on Equality of Opportunity, this committee's report could be amended.

[1452] **The Deputy Presiding Officer:** It was a Government motion, if I remember correctly, debated two weeks ago. Am I right?

[1453] **Gwenda Thomas:** No. The status of that was the Committee on Equality of Opportunity report—

[1454] **Christine Gwyther:** Sorry, Chair, but I am having difficulty hearing because they keep talking.

[1455] **The Deputy Presiding Officer:** Okay.

[1456] **Gwenda Thomas:** The report of the Welsh Assembly Government and the Assembly Parliamentary Service was incidental to that, as there was not an amendment of Standing Orders to allow that report to go through without amendments. To liken it to the White Paper committee, the Standing Orders were amended in that instance, and I would say that the status of this committee is similar to that of the White Paper committee.

[1457] **Nick Bourne:** I think that there are two issues. As far as I can see, one is the ability to amend, which may well have been conceded—and I think that Gareth has already said that it has been agreed that it is an amendable motion—but the more crucial issue is who presents the report or who proposes the motion and speaks to it. That has to be the Minister; it cannot

possibly be the Presiding Officer or, in his absence, the Deputy Presiding Officer. It is a Government measure, and I do not understand the suggestion that it should be put forward by someone who is not proposing a Government measure.

[1458] **Ieuan Wyn Jones:** In support of that proposition, were we in our proceedings post 2007, where we would be scrutinising a piece of legislation—in this case, it is a draft Bill but it would be either a measure or, preceding the measure, an Order in Council—I would find it utterly amazing if the person reporting back to the Assembly were anyone other than the Minister who was in charge of the measure, or the Order in Council. I would find any proposition to the contrary to be strange in any legislature. The people who must defend the Bill have to be the Government. It seems to me that if we are preparing ourselves for scrutiny, it would set a dangerous precedent if the person presenting the report, in this case, would be anyone other than the Minister. I find that proposition absolutely amazing. If I were a Minister, I would be appalled to allow my Bill to be in the hands of someone who was not a member of the Government.

[1459] **Christine Gwyther:** What we are actually talking about is a committee report and surely it is down to the Chair of that committee to present the report, as was done for the White Paper. I do not understand the argument.

[1460] **The Deputy Presiding Officer:** I think that we have had the arguments, so I am going to make a suggestion, unless anyone else wants to come in. My suggestion is that we move on as we are now. I will observe the convention. However, there are ways of getting around who presents the report. There could easily be a vote in Plenary to decide whether the Government or the Chair of the committee should present the report. We could do that.

[1461] **Leighton Andrews:** Chair—

[1462] **The Deputy Presiding Officer:** Hang on a minute, Leighton. Before we go to that, because it is, if you like, the last action, I would hope that Members who hold different views could talk to each other and reach some compromise. That is the obvious immediate thing to do. At the end of the day, if an agreement cannot be reached, because you cannot compromise on this—it will either be the Government or the Chair who will present the report—and you cannot decide, then I think that Plenary is there to decide for us. Leighton, you wanted to come in.

[1463] **Leighton Andrews:** I am sorry to have come in late to the discussion. It seems to me that if the Presiding Officer has a view, it would be preferable to have him back to the committee to discuss it with him, since he has chaired this committee throughout. We are not very far away in terms of being able to do that. We are likely to have a couple of meetings this week, then we are into half-term recess and, presumably, we will have another meeting afterwards, at the rate that we have been going over the last week or so. I would have thought that there was ample opportunity for a proper discussion about this with the Presiding Officer present.

[1464] **The Deputy Presiding Officer:** I entirely agree and I hope that he will not be away for very long. I also hope that you will come to an agreement. If you cannot, my recommendation is that Plenary should decide. I think that that is the only way that we can proceed.

[1465] **Jane Hutt:** I think that we can return to this matter, and continue with the meeting as planned this evening.

[1466] **The Deputy Presiding Officer:** So, we have agreed to proceed as we are. We will see how things go and return to the matter, as Jane says.

5.48 p.m.

**Mesur Llywodraeth Cymru
Government of Wales Bill**

[1467] **The Deputy Presiding Officer:** We will consider the amendments, which have been grouped for discussion. There is also paper 2, which is on Schedule 11, paragraph 33, to the Government of Wales Bill. Are there any comments on the paper? It is basically a comment. The clerks are suggesting that we take paper 2 first in case we overrun on the individual amendments. However, I am sure that we will get this over with in good time. Are there any comments on paper 2?

[1468] **Nick Bourne:** I am not sure what we are being asked to consider.

[1469] **The Deputy Presiding Officer:** We are to consider paper 2, the Government of Wales Bill, Schedule 11, paragraph 33. It is down as 'GWB2-06-06 (p.2)' in your documents.

[1470] **Jane Hutt:** If the committee is content, I would not have thought that there was a problem.

[1471] **The Deputy Presiding Officer:** Forgive me, again, but it is in my papers and I need to bring it before the committee. If you advise me that everyone is content, I am happy for us to move on.

5.50 p.m.

[1472] **Jocelyn Davies:** May I just make a point? This refers to the procedures for secondary legislation. Members will remember that when we discussed one of our amendments about equality between the languages in last week's meeting, we wanted for it to be said there should only be a departure from that in exceptional circumstances. The example that I gave was that we are finding more and more that the term 'reasonably practicable' is being stretched to the point where it is now being given as an excuse for not producing things bilingually. You gave an assurance that this was taken care of in another part of the Bill. However, I checked that afterwards and I am advised that the part of the Bill that you mentioned talks about Assembly measures, and not statutory instruments, so it did not cover the point that I was trying to make, although it would cover measures. So, I think that it is worth raising the issue again at this point.

[1473] **The Deputy Presiding Officer:** Is it not a consideration for Standing Orders?

[1474] **Jocelyn Davies:** I wanted it to say on the face of the Bill that we would only depart from the equality between the languages in exceptional circumstances, rather than there being the rather broad term 'reasonably practicable', because we find over time that that term—as I am sure that you would agree, John—is being stretched to the point where if it is very inconvenient to produce something bilingually, then it is not produced bilingually.

[1475] **The Deputy Presiding Officer:** Is there an amendment now that we can consider?

[1476] **Jocelyn Davies:** There was an amendment that was discussed last week but it was not accepted by the Government, because an assurance was given that the issue of statutory instruments was taken care of in another part of the Bill, but that actually refers to measures, and not to statutory instruments.

[1477] **Leighton Andrews:** I appreciate what Jocelyn says, but it would be quite helpful to recall the previous discussion. I think that I am right in saying that we have not yet received the Record of Proceedings for that discussion, and I would like us to look at the Record before going into a more detailed discussion on this issue, so that we can recall some of the points that were put in more detail. There was quite a lengthy discussion about this. Could we have an indication of when we are likely to receive the Record?

[1478] **The Deputy Presiding Officer:** Who gave the assurance?

[1479] **Leighton Andrews:** It will be in the Record of Proceedings. This is one of the committee's problems—it is no reflection on anyone who has the job of turning around the Record—but we do not always get the Record when we need it in order to revisit previous discussions where there has been some overlap in terms of the discussions. When are we likely to receive the Record?

[1480] **The Deputy Presiding Officer:** I am told that Members will be advised tomorrow. It is clearly an issue that you need to keep on your agenda.

[1481] **Jocelyn Davies:** Maybe we could return to it tomorrow when the verbatim account will be available.

[1482] **The Deputy Presiding Officer:** Since we are discussing paper 2, I will raise another point. We should be a bit careful before we go too much on the House of Commons and House of Lords system, whereby the negative resolution procedure can operate. In the House of Commons, papers must lie on the table for 21 days, but if a statutory instrument is made under the negative procedure, it is sometimes very difficult to annul that statutory instrument because you could incur costs. In many areas, if people act under the law and the law is then changed, I suspect that the National Assembly could be subject to a judicial review quite often. So, where there is a negative procedure, there should be good procedures so that Members, if they wish to seek an annulment or a vote, are able to do so before the statutory instrument has been made and costs could thereby be incurred. I have not read paper 2 closely enough, but I suspect that the procedures outlined in it run the problem of Members pursuing a vote at the risk of the Assembly subsequently being subject to costs as a result of a judicial review. We should probably have guarantees to ensure that any procedures are of such a nature that that cannot happen. [*Interruption.*] Does somebody understand what I just said? Ann did not.

[1483] **Ann Jones:** I will ask Nick Bourne afterwards, because I know that he, as a lawyer, and Ieuan, would know.

[1484] **The Deputy Presiding Officer:** Did you understand my point, Nick?

[1485] **Nick Bourne:** Perfectly, John. [*Laughter.*] I have felt so far that this is a little bit like one of these complex peace negotiations; we are all setting things out rather than getting down to the business. I feel that it might be better if we just proceed.

[1486] **The Deputy Presiding Officer:** So, we will postpone that until tomorrow.

[1487] **Jane Hutt:** If you look at this paper, which I have only just recently seen, it says that other committees, such as the Health and Social Services Committee and the Environment, Planning and Countryside Committee—the Education and Lifelong Learning Committee has already considered this—will be discussing this issue at future meetings. It seems to me that if those other committees have not yet considered these points, it would be better for us not to consider this until they have done so, following recess. I suggest that we bring it back after recess.

[1488] **Jocelyn Davies:** We will then have the verbatim record.

[1489] **Jane Hutt:** Yes.

[1490] **The Deputy Presiding Officer:** The clerk will minute it with the utmost clarity. So, we will adjourn further consideration of paper 2 until another time.

[1491] We now come to paper 1 on the amendments for consideration. They have been grouped, but the first is on its own, which is on clause 46, page 28, line 10. Do you want to speak to this Ieuan?

[1492] **Jocelyn Davies:** I will be speaking to it.

[1493] **The Deputy Presiding Officer:** On the committees that I chair and am a member of everyone does their homework and reads the information, so that we all know what we are talking about. I say that with all due respect so that it is a question of saying why the amendment is there, because we know what it is about. Over to you, Jocelyn.

[1494] **Jocelyn Davies:** I propose amendment 126.

Clause 46, page 28, line 10—delete (5) and replace with:

'(5) Where a First Minister is for any reason unable to act or has resigned or the office of First Minister has become vacant the other Ministers shall remain in office until the Assembly nominates a new First Minister; and shall elect one from their number to discharge the functions of the First Minister until such time as a new First Minister is appointed.'

[1495] The reason why we have tabled this amendment is that, from reading the Bill, we wondered why the Presiding Officer would be the appropriate person to designate who would be the acting First Minister in the event of the First Minister's office being vacant, or his ceasing to be an Assembly Member for some reason, or being unable to act. The wording that you have in front of you is very similar to what we currently have in the Standing Orders. If this were adopted, it would mean that Cabinet members who would remain would choose from among themselves someone who would act as First Minister until such time as a new First Minister could be nominated by us and appointed by the Crown. There has been one instance in the history of the Assembly when this happened. I think that it worked perfectly well at the time and there were no problems. I do not see any reasons why we should change from that system to one whereby the Presiding Officer gets to choose who the person who would exercise the functions of a First Minister would be.

[1496] **The Deputy Presiding Officer:** Is anyone against this? Christine?

[1497] **Christine Gwyther:** Could a difficulty arise if, with the demise of the First Minister, a coalition Cabinet was then hung between two or three parties and unable to decide who should be First Minister at short notice?

[1498] **Ieuan Wyn Jones:** Would Christine, under the circumstances as outlined in the Bill, be happy if the Presiding Officer designated himself?

[1499] **Christine Gwyther:** Clearly, that would depend on who the Presiding Officer was. That is a very difficult and personal question to answer.

[1500] **Ieuan Wyn Jones:** The Bill as it is drawn allows the Presiding Officer to designate

himself.

[1501] **Ann Jones:** He cannot do both jobs.

[1502] **Ieuan Wyn Jones:** But he could resign as Presiding Officer. It is a wonderful opportunity for the Presiding Officer to nominate himself as First Minister. I find this to be quite an extraordinary provision.

[1503] **Leighton Andrews:** I am not absolutely sure that you are right, Ieuan. As it is currently written, the functions of the First Minister would be exercised by a person designated by the Presiding Officer. The Presiding Officer cannot hold both posts, so I am not absolutely sure that he could, as Presiding Officer, designate himself. I am not sure that you are right on that.

6.00 p.m.

[1504] **Nick Bourne:** He would not be holding the office of First Minister; he would just be exercising the functions. So, I do not think that it would stop it.

[1505] **Jocelyn Davies:** Under the circumstances that you describe, what prevents the Presiding Officer from designating someone who is not even a member of the Cabinet? All I am asking is, why turn to the Presiding Officer when the Cabinet could elect one from its number? This has happened already, and the problem that you foresee is highly unlikely to occur. The Cabinet members would have to elect one from among themselves, so, unless there is a tied vote, we ought to be able to trust the Cabinet to come up with someone. It would be for a short period of time until the new First Minister is appointed.

[1506] **Jane Hutt:** To clarify the point, it is covered in 46(7), which makes it clear that it would be a recommendation of the Welsh Ministers in terms of that acting role. This is a formality; it is a formal role played by the Presiding Officer. The Presiding Officer is the one who makes the appointment to the Queen. You need to have a degree of formality in terms of handling situations in relation to the point where the post becomes vacant, and that is clearly laid out in 46(5) and 46(6). This is about a formality that is necessary and which is laid down in this Bill. Your concerns, Jocelyn, which are understandable, are dealt with in 46(7). It is on that basis that we will not accept this amendment.

[1507] **The Deputy Presiding Officer:** I think that that is probably reasonable, is it not?

[1508] **Jocelyn Davies:** I think that the system that we already have has worked perfectly well once, and I do not see why it could not work again until a new First Minister is appointed. Whether there is a formality that that nomination from the Assembly comes from the Presiding Officer or not—

[1509] **The Deputy Presiding Officer:** It can only be made as a result of a recommendation from Welsh Ministers.

[1510] **Michael German:** The only thing that I can think of, Chair, is if the Presiding Officer refused to accept the recommendation of the Welsh Ministers and then there would not be a First Minister.

[1511] **The Deputy Presiding Officer:** You would have to fetch the men in white coats, I think, if that happened. [*Laughter.*]

[1512] **Nick Bourne:** Or women.

[1513] **The Deputy Presiding Officer:** Or women.

[1514] Let us be serious. Jocelyn, do you want to press this to a vote?

[1515] **Jocelyn Davies:** Yes, why not? Let us see what you do, John. [*Laughter.*]

*Gwelliant 126: O blaid 2, Ymatal 3, Yn erbyn 5.
Amendment 126: For 2, Abstain 3, Against 5.*

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

Davies, Jocelyn
Jones, Ieuan Wyn

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

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

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Bourne, Nick
German, Michael
Melding, David

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[1516] **The Deputy Presiding Officer:** The following amendments have been grouped together: 140, 127, 105, 141, 106, and 107. Everyone has had a hand in these, so we will start by discussing amendment 140 tabled by the Welsh Liberal Democrats.

[1517] **Michael German:** Are you starting with amendment 127, Chair?

[1518] **The Deputy Presiding Officer:** Amendment 140. It is at the top of the list.

[1519] **Michael German:** I know what has happened; I have been given my pages in the wrong order.

[1520] I propose amendment 140.

Clause 48, page 29, line 8—at end insert:

‘(1A) The First Minister shall not seek Her Majesty’s approval for any appointment under this section without the agreement of the Assembly’.

[1521] This is simply a matter of requiring the approval of the Assembly and not just the Welsh Ministers, as I understand it; that is the intention. The First Minister can appoint Welsh Ministers with the approval of Her Majesty, but would also need the approval of the Assembly.

[1522] **The Deputy Presiding Officer:** Ieuan or Jocelyn, do you want to speak to your amendment 127?

[1523] **Jocelyn Davies:** Yes. Obviously, the effect of our amendment would be that the Assembly would be able to sack a Minister. Without this measure there is absolutely no way that it can happen.

[1524] **The Deputy Presiding Officer:** You are saying, basically, that the Assembly can either sack the whole of the Cabinet or no-one.

[1525] **Jocelyn Davies:** That is right, or no-one.

[1526] **The Deputy Presiding Officer:** Therefore, the aim of the amendment is to be able to sack an individual Minister?

[1527] **Jocelyn Davies:** It is.

[1528] **Nick Bourne:** Amendment 105 basically says the same thing as the Plaid Cymru amendment in slightly different words: that it should be possible to propose a motion of no confidence in an individual Minister rather than Ministers at large, and, if that happens, the Minister should have to resign rather than our having an all-or-nothing situation, which, to us, seems to be a bit of a sledgehammer.

[1529] **Christine Gwyther:** Unsurprisingly, I do not support this. It goes totally against the idea of collective Cabinet responsibility. You will not have strong Government if individual Ministers feel that they can be picked off by opposition Members in this way. Whatever the Government recommendation, I will be voting against this.

[1530] **The Deputy Presiding Officer:** As I have a chance to speak here tonight, forgetting the past, I would have thought that, if Plenary passed a motion of no confidence in me, I would resign, whether I had to or not. To that extent, I think that all of these amendments are unnecessary, but real life is not quite like that.

[1531] **Jocelyn Davies:** I think that even in Westminster there are probably mechanisms whereby you could single out one Minister.

[1532] **The Deputy Presiding Officer:** If you put down a motion reducing someone's salary by £1, what happens if that is passed in the House of Commons, Paul?

[1533] **Mr Silk:** A motion to reduce a Minister's salary?

[1534] **The Deputy Presiding Officer:** The Lord Chancellor's salary by £1, for example.

[1535] **Mr Silk:** It has not happened for very many years. [*Laughter.*]

[1536] **The Deputy Presiding Officer:** So, that is of no use. Okay.

[1537] **Jocelyn Davies:** There is no mechanism to do that.

[1538] **Ieuan Wyn Jones:** I can understand why Christine might feel as she does. In the generality of political life, it is important for the Assembly to have a voice about whether either the whole Government or an individual Minister holds its confidence. Although I accept the point that Christine makes about Cabinet responsibility, there is also a wider responsibility in that the Minister needs to be held to account by the Assembly as a whole. That is why we have debates around issues where Ministers sometimes win and sometimes lose. It seems to me that it is quite proper for the Assembly to hold a Minister to account and if the Assembly feels that a Minister is acting inappropriately, that Minister should be held to account through the ultimate sanction of a vote of no confidence. If this set of amendments does not succeed and there was a successful opposition motion that the Assembly has no confidence in Minister X, does Christine think that that Minister should resign?

[1539] **Christine Gwyther:** That is not a question for this committee, so it is not a question

for me as an individual. If you are talking about individual conscience-searching, that is not the purpose of this committee. The ability to pick off individual Cabinet members goes totally contrary to the idea of corporate, collective Cabinet responsibility.

[1540] **Ieuan Wyn Jones:** We are not talking about Cabinet responsibility.

[1541] **Christine Gwyther:** Of course we are. What else are we talking about?

[1542] **Ieuan Wyn Jones:** No. There is nothing to prevent the Assembly putting down a motion saying that the Assembly as a whole has no confidence in a Minister. We could do that under Standing Orders now, if we wished, and that would be held to be in order. If that was the case, and the Assembly were to pass that, would it not then be necessary for that Minister to resign? It is not a matter of conscience but a matter of constitutional practice.

6.10 p.m.

[1543] **Christine Gwyther:** No, it would not be. It is down to the First Minister to make up his or her mind as to whether he or she still wants that person in the Cabinet. That is exactly as it operates in Westminster.

[1544] **Ieuan Wyn Jones:** It does not operate like that in Westminster.

[1545] **The Deputy Presiding Officer:** I am not sure. As Paul says, nothing has been done for a long time.

[1546] **Christine Gwyther:** I would need to be convinced.

[1547] **Leighton Andrews:** We either have a system of collective responsibility whereby Cabinet members endorse each other's decisions and they are held accountable collectively for them, or we do not. That, in a sense, goes to the heart of it. At the end of the day, that is the system that we have adopted and are defending. That is the system by which the First Minister appoints Ministers and makes judgments on whether or not they are appropriate to carry on in their posts, depending on how they are carrying out their functions. I think that it would be a significant departure from that tradition of collective responsibility to allow the Assembly to operate on the formal basis that it has no confidence in a specific individual Minister. Ultimately, that takes away part of the responsibility and duty of the First Minister in choosing a Cabinet and Deputy Ministers.

[1548] **Nick Bourne:** Not dissenting from the importance of the doctrine of collective responsibility which, clearly, has run like a thread through practice at Westminster, there is also a doctrine of individual responsibility of Ministers, if you consider the Crichton Down case, Profumo and so on. I am not suggesting that they apply in any way to any events that have happened here but there are two doctrines of ministerial responsibility, as Leighton is aware. Although it is clearly a convention at Westminster, it is not written down. It is not quite as simple as saying that we have collective responsibility therefore that is the sum total of it, because there are other issues. I appreciate that it is not in statutory form at Westminster. That is certainly true, but it has had more opportunity to build up custom and practice than we have.

[1549] **The Deputy Presiding Officer:** Crichton Down has been watered down over the years.

[1550] **Nick Bourne:** It has. I was not citing it as necessarily the way forward but it is an example of individual responsibility. There are many others recently—under this Government as much as any other, to be fair.

[1551] **The Deputy Presiding Officer:** We have had a discussion. This may not be how the Presiding Officer did it but we have a group of six amendments and I propose to ask who wants to press any of these amendments to a vote. They can then state what the purpose of the amendment is and we can have a vote on them. Those amendments that are not pressed to a vote can then lapse and we move on to the next item.

[1552] **Leighton Andrews:** Amendment 107 has not actually been discussed or even moved. It is a slightly different amendment.

[1553] **Nick Bourne:** You are right.

[1554] **Leighton Andrews:** It has been grouped but it has not been moved or discussed.

[1555] **The Deputy Presiding Officer:** Let us assume that they are all moved for now and they are all on the table.

[1556] **David Melding:** In the spirit of being helpful, I make a suggestion. Our desire to make this an individual possibility was based on the fact that we have a minority Government. If we had a majority Government we would be on fairly sure footing. If there is a minority Government, the confidence of the Assembly is fairly fragile and if one particular Minister is having particular difficulties, as far as opposition Members are concerned, it gives more flexibility given the fact that it may not be possible to have an alternative complete Government. I think that that is what motivated our desire to extend this power, not just to the whole Government but to individual Ministers.

[1557] In the spirit of trying to move this on, I suggest that we compromise and follow the Scotland Act 1998, which requires Ministers to receive endorsement in Parliament before the Queen appoints them. I think that our group would then be prepared to withdraw the amendment that says that they could be removed on an individual basis. If we were to adopt the model of the Scotland Act 1998—

[1558] **The Deputy Presiding Officer:** The one seeking positive endorsement?

[1559] **David Melding:** Yes.

[1560] **Michael German:** Clause 47(2) of the Scotland Act 1998 states:

‘The First Minister shall not seek Her Majesty’s approval for any appointment under this section without the agreement of the Parliament.’

[1561] That is virtually the same wording as the amendment, except for ‘the Assembly’. The reason for that, as David suggested, is to ensure that you have full acceptance by the whole Parliament or Assembly and have the confidence of the majority in Parliament or the Assembly.

[1562] **The Deputy Presiding Officer:** A deal has been offered.

[1563] **Leighton Andrews:** I am grateful to David Melding for coming clean, as it were, about the intention behind the Conservative amendments, because the logic then follows in terms of the Liberal Democrat amendment. The real underlying reason for these amendments is to make minority government impossible in the Assembly. It is intended, in practice, to force, potentially, any Government contemplating being a minority government into the position of having to enter a coalition, because there will always be the threat that an individual Minister can be picked off, either before he or she takes office or subsequent to

having taken office, under either of those proposals. These amendments have a particular intent, and they are designed to drive parties towards coalitions. That is the reality and we should resist it.

[1564] **Michael German:** May I intervene?

[1565] **Leighton Andrews:** No, I have finished.

[1566] **Michael German:** May I ask Leighton a question, Chair?

[1567] **The Deputy Presiding Officer:** There are two speakers first.

[1568] **Ieuan Wyn Jones:** I am sorry that Leighton takes that view. Governments need votes to survive. The nature of our democracy is that you win votes and you lose votes. If you choose to form a minority government, the reality is that you will lose votes. Let us explore Leighton's proposition. He suggests that the amendments would make minority government impossible. Labour has been a minority Government for six months. There is a provision in Standing Orders that allows opposition Members to censure Ministers, and that has not been used. Presumably, Leighton is saying that an irresponsible opposition would use that as a way of preventing a minority government from putting forward its views. However, in a democratic system, you cannot prevent opposition parties from making their views known about the competence of the Government or their confidence in it. That is part of our constitutional settlement. Leighton is saying, if I understood him correctly, that they should be prevented from doing that in order to allow minority governments to operate. Frankly, that is another negation of democracy. I say to Leighton that, to allow those in opposition to do this in particular circumstances, they have to take political responsibility either in not doing it or in doing it. He says that the reason for these amendments is to make it impossible for minority governments to succeed, but what makes it impossible for minority governments to succeed is that they lose votes. In a democracy, you have to live with that.

[1569] **The Deputy Presiding Officer:** We will take comments from Nick, and then Mike, and then we must move on.

[1570] **Nick Bourne:** I will pick up on a point that Leighton just made. Whether it was wilful or unintentional, I am not sure. What David suggests, as I understand it, is a halfway house, because, at the moment, if you disagree with the Government, under the Bill, you have no option but to vote out all the Ministers and Deputy Ministers. Were you to accept the provision that we are suggesting, at least you would have a halfway house by which you could say, 'Right, we are going to allow this minority government to proceed, but we have a particular concern about an area of policy', or whatever, and you single out a particular Minister, for good reason, or whatever. It could be argued that it would make minority government easier rather than more difficult. That is what I am saying, and the intention was not to make it more difficult—far from it.

6.20 p.m.

[1571] **Michael German:** I would normally listen very carefully to Leighton's arguments. However, were you to replay them and put them to the Labour Government when it proposed exactly the same clause for Scotland, on which it had a huge majority in its own Parliament, therefore it was not going to be heeding any other reason for doing it, then I might have been impressed. I am not impressed, however, because the Westminster Government decided that it was going to go down that route as it believed, presumably, that the Scottish Parliament should approve the government that was going to be put in place. That is the issue, is it not? It is an exact reversal of the position that Leighton espoused, because if you have a government that is in a minority, which seeks to be a government in a minority, it still

requires the approval, or tacit approval, of the majority of those voting in that parliament or assembly.

[1572] The right that is being asserted here is the right of the majority who has the vote to have its say. That does not mean that you are going to dictate that the government should follow a particular pathway, but that the government that seeks to be a minority government has to behave in a manner that seeks the approval of the majority of that parliament or assembly. That, presumably, is the reason why it was put into the Scotland Act 1998, and to suggest that it would drive the Labour Party in Scotland to behave in the manner that Leighton suggested is perverse. The answer is that the majority has to be able to have its say in a parliamentary democracy. How that is arranged is down to the members of that parliament or assembly at that time. There are examples of minority governments, for example, in 1978 and 1979, when the Labour Party worked as a minority Government in Parliament with the offside approval of the Liberals. That is an example of how you can do it. The Liberals were not in Government; they were simply supporting some of the measures, some of the time, in Parliament. To try to skew it the other way, and say, 'Well, if we want to be a minority government, we certainly do not want the majority interfering with what goes on' seems to be very perverse.

[1573] **The Deputy Presiding Officer:** Leighton, are you content? I see that you are. I think that it is time to move on.

[1574] **Michael German:** I would like to vote on amendments 140 and 141, which are my two amendments.

[1575] **Ann Jones:** Shall we go through them instead of jumping backwards and forwards?

[1576] **The Deputy Presiding Officer:** Nobody has done that so far.

[1577] **Ann Jones:** Mike has just said that he wants to vote on amendment 140, but if we just go through them—

[1578] **Michael German:** Well, I am not allowed to propose 141 until 140 is voted on.

[1579] **The Deputy Presiding Officer:** Common parliamentary procedure would be to try amendment 140 and, if it succeeds, we go for amendment 141, but Mike might say that if amendment 140 is defeated, it will not be worth trying amendment 141. So, let us see how it goes.

[1580] **David Melding:** Amendment 107 has not been discussed yet, but it is grouped under this section.

[1581] **The Deputy Presiding Officer:** We will come to it.

[1582] **David Melding:** That is fine.

*Gwelliant 140: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 140: 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

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

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

Melding, David

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.*

[1583] **The Deputy Presiding Officer:** I have not used my first vote, which might well have gone another way.

[1584] Since it is the same for amendment 141, do you wish to withdraw that amendment?

[1585] **Michael German:** I withdraw that amendment.

[1586] **The Deputy Presiding Officer:** We now move to amendment 127, which is the next one.

[1587] **Ieuan Wyn Jones:** We are not pushing that to a vote.

[1588] **The Deputy Presiding Officer:** You have withdrawn that. The next amendment is amendment 105.

[1589] **Nick Bourne:** We will withdraw that.

[1590] **The Deputy Presiding Officer:** Amendment 106 is the next one.

[1591] **Nick Bourne:** That is withdrawn as a consequence of withdrawing the other one.

[1592] **The Deputy Presiding Officer:** David, did you want to say anything on amendment 107?

[1593] **David Melding:** I propose amendment 107 to clause 51.

New subsection (2) and renumber existing (2) as (3).

'(2) The number of Welsh Ministers shall not exceed 8 and the number of Deputy Welsh Ministers shall not exceed 5.'

[1594] We think that there should be some limits. We are prepared to accept that having Deputy Ministers is now appropriate, given the split and the need to bring on junior Government members. That is not unreasonable, but we would set a limit of Ministers not exceeding eight, and if there were eight there would, consequentially, be three Deputy Ministers, by my calculations. The First Minister may want to appoint fewer full Cabinet members and then he or she would be able to make up the difference to 12 by increasing the number of Deputy Ministers. We are concerned that, at the minute, you could have a Cabinet of 12, and although there would not be any Deputy Ministers because you would have used up the number of ministerial appointments that you are allowed to make, in supporting the concept of Deputy Ministers, we do not want to end up one day with having just allowed the Government to have a larger Cabinet.

[1595] **The Deputy Presiding Officer:** One question then, David, from the chair: would it not have been a better amendment to say that the total number of Ministers and Deputy

Ministers shall not exceed 13 and of those 13, not more than nine shall be Ministers?

[1596] **David Melding:** The limit is 12.

[1597] **Leighton Andrews:** The Bill says ‘12’.

[1598] **David Melding:** Exactly, and we agree with that.

[1599] **The Deputy Presiding Officer:** The Bill says ‘12’, does it?

[1600] **David Melding:** Yes, but within that number, you could not have more than eight Ministers according to us—plus the First Minister, obviously—which would leave you with three slots for deputies.

[1601] **The Deputy Presiding Officer:** Let me rephrase the question. Would it not be a better amendment to say that the number of Ministers and Deputy Ministers shall not be more than 12 and, of those 12, not more than nine shall be Ministers?

[1602] **David Melding:** If you went that far, that would be all right.

[1603] **The Deputy Presiding Officer:** That would give the First Minister a bit more freedom.

[1604] **David Melding:** I think that that is what our amendment achieves, but that wording may be clearer. What we do not want is to be faced with 12 members of the Cabinet because we voted this through.

[1605] **The Deputy Presiding Officer:** Are there any further comments on that?

[1606] **Jane Hutt:** I think that the limit on the number of Ministers is clear in clause 51. Given that we have a clause on the role of Deputy Welsh Ministers, I do not think that it is necessary to limit a First Minister’s discretion in the way that the amendment suggests. Of course, we will have power, as a result of clause 53, in relation to the salaries of Ministers and Deputy Ministers. I appreciate the point, but we would resist this amendment.

[1607] **David Melding:** May I press the Minister? Can you see a day when we will have 12 members of the Cabinet?

[1608] **Jane Hutt:** I cannot, because if that was the case, why would we have a clause about Deputy Welsh Ministers? Clearly, the intention is to put Deputy Welsh Ministers into statute, which is something that we all want to do.

[1609] **David Melding:** I am happy now that you have assured us that you cannot see a day when we would have 12 Cabinet Ministers and neither, presumably, can the Government, which you represent in terms of collective responsibility. However, we could have more than nine Ministers, could we not, or do you think that that is unlikely as well?

[1610] **Jane Hutt:** I think that we are starting to get into issues—

[1611] **David Melding:** I think that the public has a right to know.

[1612] **Jane Hutt:** I have made it clear that that is why we are putting the role of the Deputy Welsh Ministers into the statute book, for the first time, and a limit on the number of Ministers is clearly laid down. That establishes this Government’s will and the balance will be struck by the First Minister on the appointment of the Ministers and Deputy Ministers.

[1613] **The Deputy Presiding Officer:** David, what do you propose? Are you pressing this amendment to a vote?

[1614] **David Melding:** I will withdraw the amendment.

[1615] **The Deputy Presiding Officer:** You are letting it go, but we can always return to it on the report, so to speak. We move to the next amendment. We have another five groups of amendments, so we need to spend about 10 minutes, or no more than 15 minutes, on each group. Some groups are bigger than others, but we will see how we go. Amendments 128, 130 and 142 seem to have the same objective. Ieuan, do you want to start?

[1616] **Ieuan Wyn Jones:** We are not pressing amendment 128; we will not be seeking to debate it. With your leave, John, we would like to move on to amendment 130.

[1617] **The Deputy Presiding Officer:** That is fine. Amendment 128 is withdrawn. So, we will have amendments 130 and 142. You may go first, Ieuan.

[1618] **Ieuan Wyn Jones:** I propose amendment 130.

Clause 62, page 36 line 12—after ‘First Minister’ insert ‘, the Assembly’.

[1619] Y wyf am ei gwneud yn glir nad yw hwn yn fater yr ydym am ei wthio i bleidlais ond yr ydym am wybod yr hyn sydd y tu ôl i gymal 62. Mae'r Ddeddf bresennol yn dweud bod y Cynulliad yn gallu gwneud sylwadau am unrhyw fater sy'n effeithio ar Gymru, ond golyga'r cymal hwn mai dim ond Gweinidogion, y Prif Weinidog neu'r Cwnsler Cyffredinol sy'n gallu gwneud sylwadau am unrhyw fater sy'n effeithio ar Gymru.

I want to make it clear that we do not want to push this matter to a vote, but we want to know what is behind clause 62. The current Act says that the Assembly can comment on any matter that affects Wales, but this clause means that only Ministers, the First Minister or the Counsel General can comment on any matter that affects Wales.

6.30 p.m.

[1620] Mae'r Cynulliad, o bryd i'w gilydd, wedi defnyddio adran 33 o'r Ddeddf bresennol mewn rhai amgylchiadau eithaf cyfyng i ystyried materion nad ydynt wedi eu datganoli ond y mae gennym ddiddordeb ynddynt. Yr oedd cynnig i drafod ailstrwythuro'r heddlu yn enghraifft o hynny.

From time to time, the Assembly has used section 33 of the current Act in certain limited circumstances to consider matters that are not devolved, but in which we have an interest. Today's motion on police restructuring was an example of that.

[1621] Yr wyf am gael sicrwydd gan y Llywodraeth na fyddai'r cymal hwn, pe bai'r Mesur yn dod yn Ddeddf, yn rhwystro'r Cynulliad rhag trafod materion sy'n ymwneud â Chymru, er, pe bai angen cysylltu'r penderfyniad hwnnw â Llywodraeth San Steffan, yr ydym yn deall mai dim ond drwy'r Gweinidogion neu'r Prif Weinidog y gallai hynny ddigwydd. Yr wyf am gael sicrwydd na fydd yn cyfyngu ar hawl y Cynulliad i drafod y materion hyn, er mai Gweinidogion yn unig sy'n cael cyflwyno sylwadau i Lywodraeth

I seek an assurance from the Government that this clause, if this Bill becomes an Act, would not prevent the Assembly from discussing issues relating to Wales, although we understand that if that decision needs to be connected with the Westminster Government, that could be done only through Ministers or the First Minister. I want an assurance that it will not fetter the Assembly's right to discuss these matters, even though it is only Ministers who can make representations to the Westminster

San Steffan.

Government.

[1622] **Jane Hutt:** I can give that assurance, Ieuan. This is required in order to make it absolutely explicit that the Welsh Ministers can make representations as laid out in clause 62. It certainly does not prevent the Assembly from making representations, so I can give you that absolute assurance. If you want Hugh to nod his head, he will.

[1623] **Ieuan Wyn Jones:** That is always in the nature of a probing amendment.

[1624] **The Deputy Presiding Officer:** You can also hear it from me. Peter, does your view go along with that?

[1625] **Mr Jones:** I see no objection.

[1626] **The Deputy Presiding Officer:** So the Assembly will not be prevented from making representations about any matters that affect Wales.

[1627] **Mr Jones:** No.

[1628] **The Deputy Presiding Officer:** Both legal sides agree on that. Are you happy to withdraw that amendment?

[1629] **Ieuan Wyn Jones:** Yes.

[1630] **Michael German:** I propose amendment 142.

Clause 58, page 34, line 22—leave out ‘Welsh Ministers’ and insert ‘Assembly’.

[1631] Amendment 142 is again a probing amendment, because I am a little unclear about this, though, if the Minister can explain it to me, I will probably withdraw the amendment. An Order in Council has to be passed by the Assembly, but clause 94(5) states that,

‘No recommendation is to be made...to make an Order in Council...unless a draft of the statutory instrument containing the Order in Council—

has been laid before and approved by a resolution of the Assembly’.

[1632] In clause 58(4)(b), it says having been ‘approved by the Welsh Ministers’. There is a difference here, and I do not understand why. If it has been approved by a resolution of the Assembly, according to clause 94(5), it then also has to be approved by the Welsh Ministers. You could foresee a circumstance in which the Government was not in a majority and an Assembly motion put forward an Order in Council which was frustrated by the Welsh Ministers. Or have I read it wrongly?

[1633] **Jane Hutt:** If I can just say—

[1634] **The Deputy Presiding Officer:** Before you do, as an addendum, does the Assembly bind the Ministers in that case?

[1635] **Jane Hutt:** Transfer of function Orders are executive functions exercised by what will be Ministers of the Crown. They will be functions transferred or exercised concurrently with the consent of Welsh Ministers as a result of the transfer of function Order. It is very important that we ensure that it is clear about the transfer of functions relating to Welsh Ministers, and that they are in a position to assess the impact of the transfer of functions in terms of the cost and efficiency. However, at the moment, transfer of function Orders are

agreed only by Parliament, so there is no role for the Assembly. Perhaps Hugh can put me right if I have got this wrong, but it is really to clarify that Welsh Ministers have a role in the future, because they have not thus far. So, it is being very clear about their executive function in this respect, as Ministers of the Crown.

[1636] **Michael German:** I am grateful for that. It is just that we have an Order in Council under this clause, which is an Order in Council on the transfer of ministerial functions, and we have general Orders in Council, which are covered in Schedule 5 along with other things, which are done by the Assembly as a whole. Just to get it clear in my mind, does that mean that an Order in Council that relates to the transfer of ministerial functions would not be put forward, it would not be brought before the Assembly and would not require a vote in the Assembly, and that, therefore, clause 94 on the amendment of Schedule 5 would not apply at all in this respect? Sometimes, you can have functions that are related to measures that have been transferred. That is the obvious scenario. I am just trying to get that clear in my mind, that is all.

[1637] **Jane Hutt:** Perhaps Hugh could comment on that.

[1638] **Mr Rawlings:** Clause 58 is about the transfer of ministerial functions. It is the broad equivalent of section 22 of the 1998 Act. It is about the transfer of executive functions between the UK Government and what hitherto has been the Assembly but which in the future will be the Welsh Ministers. As the Minister has said, section 22 has an omission in that it does not actually provide for a formal agreement at this end on the transfer of executive functions. What we have done here is provide specifically for Welsh Ministers to be able to agree to the transfer of a function from a UK Minister to them. Clause 94(5) deals with the quite separate issue of the transfer of legislative capacity to the Assembly. In those circumstances, it is appropriate for the Assembly to be the assenting body.

[1639] **Michael German:** I think that I understand. So, if a legislative proposal requires a transfer of functions, which is not known, then a separate Order in Council would be laid for the transfer of those functions to the one that actually transfers the legislative competence. Am I right?

[1640] **Mr Rawlings:** Effectively, yes.

[1641] **The Deputy Presiding Officer:** I wish to explore that a bit. Supposing that functions are transferred from London to Cardiff on, for example, the ability to appoint a person to the Rail Passengers Council, and are transferred directly to the First Minister. In those circumstances—and it is something that would therefore fall to be transferred under clause 58—could the Assembly then say, by resolution, that that function must be invested in the Assembly after it has been transferred to the Minister?

[1642] **Mr Rawlings:** No, because the Assembly post 2007 will not have executive functions.

[1643] **Michael German:** I think that the point that John was making is that one thing is often consequent on another. It seems to me that any functions that are to be changed after a clause-94 transfer of legislative competence would be followed by some function change, but there would be two separate Orders in Council.

[1644] **Mr Rawlings:** Yes, there would.

[1645] **Michael German:** On that basis, I am happy.

[1646] **The Deputy Presiding Officer:** I understood, and I thought that you would say that,

Hugh, but I am actually not happy, because this trammels the supremacy of the Assembly.

[1647] **Jocelyn Davies:** You cannot say, ‘Let us end the corporate body’ as well as cling on to it; you have to have one or the other. I think that there has been a consensus that the corporate body should come to an end. Perhaps we jumped into that a bit quickly, but these are the consequences of ending the corporate body. You cannot keep bossing the Executive around.

[1648] **The Deputy Presiding Officer:** I agree with you on the overall point but, in terms of the example that I have chosen, where we would actually be nominating someone, I do not think that it is necessarily an executive function. I would probably argue that it is not an executive function. I am just putting this forward for you to consider, because you will be at this committee later on and I will not. Perhaps there is a need to define what an executive function is. You do not give the power to appoint the auditor general to the First Minister, for example.

[1649] **Jocelyn Davies:** That is a Crown appointment.

[1650] **The Deputy Presiding Officer:** That is an appointment, and this is an appointment. Where is the border? I simply raise that point so that it can be considered. Do you want to proceed to a vote, Mike?

[1651] **Michael German:** I do not want to pursue this to a vote.

[1652] **The Deputy Presiding Officer:** Okay. It is therefore withdrawn. We move to the third group. Amendments 47 and 48 have been withdrawn, so there is just amendment 119 on its own.

[1653] **Michael German:** I propose amendment 119.

Clause 60, page 35—leave out lines 23 to 27 and insert:

‘promote or improve the general well-being of Wales’.

6.40 p.m.

[1654] This is a more general clause. As you know, this clause gives the promotion of wellbeing in its title, but it then proceeds to define wellbeing in the three sub-clauses, 60(1)(a), (b) and (c), as economic, social and environmental wellbeing. I do not know what other sort of wellbeing there might be, but I would have thought that simply putting in the words ‘general well-being’ would be sufficient in its own merit, for the pursuit of happiness and everything that comes from it. *[Laughter.]*

[1655] **The Deputy Presiding Officer:** That sounds sensible to me.

[1656] **Michael German:** I think that general wellbeing is included in a section of the Local Government Act 2000, where powers of general wellbeing are something that local government can have. That seems to be perfectly reasonable to describe it in that way here.

[1657] **The Deputy Presiding Officer:** This is straightforward; we should be quick on this one.

[1658] **Jane Hutt:** I think that we are possibly getting into the territory of the anorak here. It is certainly something on which we would like to ensure that Welsh Ministers have comparable general powers within their areas of responsibilities with those of UK Ministers.

That is what this is about in terms of the law. There is no more to be said.

[1659] **The Deputy Presiding Officer:** It is defined narrowly in the Bill, and you are seeking a wider definition.

[1660] **Michael German:** That is right, yes.

[1661] **The Deputy Presiding Officer:** That is the difference. Minister, are you saying that we should keep it narrow?

[1662] **Jane Hutt:** No, I am saying that we are giving them the same wide general powers that UK Ministers have, and if you want us to go through what it would empower the Welsh Assembly Government to do, it would include promoting sustainable development; collaboration with other public bodies; tackling issues such as those related to drugs; disseminating information of benefit to the public sector; and the power to promote wellbeing very much modelled on section 2 of the Local Government Act 2000.

[1663] **Nick Bourne:** What was that about anoraks? [*Laughter.*]

[1664] **Jane Hutt:** I have several more pages, Nick.

[1665] **Nick Bourne:** The edited highlights will be fine.

[1666] **The Deputy Presiding Officer:** Shall we move on?

[1667] **Jocelyn Davies:** You do not need to point to a specific power to do something; this fills in those little gaps. Even though it says that you may do anything, you cannot order other people to do things. This does not say that you may do things by Order, but you could spend money on things and you do not have to find a specific power to do it. So, I am fine with these.

[1668] **Jane Hutt:** Good, there we go. There goes another anorak.

[1669] **The Deputy Presiding Officer:** Mike, are you happy with these?

[1670] **Michael German:** I think that I will leave it there; I shall not proceed to a vote. I withdraw amendment 119.

[1671] **The Deputy Presiding Officer:** It was clear that yours was a slightly wider definition, but it is pretty wide as it is.

[1672] We will move on to discuss the grouped amendments 129, 131, 120, 133, 132, and 113. No, I am sorry; amendment 129 is on its own. There is a black line on the paper. Ieuan, you are on your own on amendment 129.

[1673] **Ieuan Wyn Jones:** I propose amendment 129.

Clause 61, page 36, line 10—at end insert:

‘ including the implementation of any of the provisions of the Welsh Language Act 1993.’

[1674] Diolch yn fawr, Ddirprwy Lywydd. Thank you very much, Deputy Presiding Cawn weld a wyf ar fy mhen fy hun os Officer. We shall see whether I am on my gwthiaf hwn i bleidlais, er nid dyna yw'r own if this gets pushed to a vote, though bwriad. Os deallaf yn iawn, yng nghymal 61, that is not my intention. If I understand it

mae Gweinidogion Cymru yn gallu gwneud unrhyw beth y maent yn ei ystyried sy'n addas i gefnogi nifer o bethau, gan gynnwys yr iaith Gymraeg. Fel nad wyf yn gwthio'r gwelliant hwn i bleidlais, a fyddai'r Gweinidog yn fodlon cydnabod bod unrhyw beth y mae Gweinidogion Cymru yn ei wneud sy'n cefnogi'r Gymraeg yn cynnwys yr hyn sy'n gynwysedig yn Neddf yr Iaith Gymraeg 1993 fel ag y mae ar hyn o bryd? Pe bai hi'n hapus i gadarnhau hynny, byddwn yn hapus i dynnu'r gwelliant yn ôl.

correctly, in clause 61, Welsh Ministers can do anything that they consider appropriate to support a number of things, including the Welsh language. Instead of my pushing this amendment to a vote, would the Minister be willing to acknowledge that anything that Welsh Ministers do that supports the Welsh language will include that which is included in the Welsh Language Act 1993 as it stands? If she were happy to confirm that, I would be happy to withdraw the amendment.

[1675] **Jane Hutt:** I am happy to reassure you on that point.

[1676] **Ieuan Wyn Jones:** Then I withdraw the amendment.

[1677] **The Deputy Presiding Officer:** We will move on. Amendment 49 is withdrawn. Amendments 131, 120, 133, 132, 113, 134 are grouped, and they are all in your names, Ieuan and Jocelyn, expect for amendment 120, which is in Mike's name.

[1678] **Ieuan Wyn Jones:** If I remember correctly, I am pretty sure that we have had the debate on clause 64 on another occasion, and I am not sure whether the committee should be detained to discuss it any further. I am happy to withdraw all our amendments to clause 64, namely amendments 131, 133, 132, 113 and 134, because we have already had the debate on the clause to which they relate.

[1679] **The Deputy Presiding Officer:** We will then move on to Mike's amendment 120.

[1680] **Michael German:** I think that we have had this discussion about why the whole Assembly cannot organise a poll. I think that I will withdraw it, because we have already had that debate.

[1681] **The Deputy Presiding Officer:** Fine, thank you.

[1682] Let us move on to the next group. This is the biggest group, and goes as far as part 5. It is amendment 108, amendment 109, and amendments 136 and 137; they have been grouped. We have time for a debate on these. Who would like to start—Nick?

[1683] **Nick Bourne:** David is taking this.

[1684] **David Melding:** I propose amendment 108.

New clause 74 (renumber subsequent clauses):

'74 Voluntary Sector Partnership Council

(1) The Welsh Ministers must establish and maintain a body to be known as the Voluntary Sector Partnership Council.'

Note: We would ask the Assembly's legal team to draft the other subsections of the clause relating to appointments to the Council, its functions and membership. A similar model to the Partnership Council (local government) would be followed.

[1685] I propose amendment 109.

Clause 75—delete and replace with:

(1) The Welsh Ministers must establish and maintain a body to be known as the Enterprise Council.

(2) The Enterprise Council is to consist of members appointed by the Welsh Ministers from among

(a) the Welsh Ministers

(b) the Deputy Ministers

(c) representatives of business organisations.

Note: if the principle of an Enterprise Council is accepted, we would ask the Assembly's legal team to draft further subsections relating to functions.

[1686] On the first one, we would like the voluntary sector partnership council to continue. That is essentially the nature of it. At present, there is a scheme but no council, and we think that this dilutes current arrangements. Now, the Assembly itself will probably have a similar council as well and could set that up, but it is very important that this access to the Executive, which the voluntary sector has had through the partnership council, is maintained. It has been a genuine innovation, which I commend the Government on, and I generally do, having worked for many years in the voluntary sector. Therefore, we would like to strengthen that provision, basically.

[1687] We find the current clause 75 very weak. We would like a partnership scheme, which we suggest be known as the enterprise council, to be somewhat similar to the local government scheme, which again has worked very well, and to have an enterprise council constituted of Ministers, Deputy Ministers, and representatives of business organisations. This would strengthen work in this area with the business community.

[1688] I would be prepared to take an amendment on this, however, and that would be to include trade unions, which would be of benefit. I know that Carl Sargeant has made representations here. I would see no problem whatsoever in an enterprise council that is liaising with Government including representatives from trade unions. So that is basically our motivation. I am trying to be constructive in pushing the devolution settlement in terms of where it has brought genuine developments to British politics. The voluntary sector council is an example of that, and the local government scheme continues to be strong under these arrangements—I do not have any quarrel with that—but now is the time to strengthen the business side as well, and the current clause 75 is, frankly, a bit disappointing.

[1689] **The Deputy Presiding Officer:** Are there any comments? Let us do those two before we go on to the others, unless Members disagree. It strikes me that they are slightly separate from the others.

[1690] **Jane Hutt:** I will respond on the voluntary sector partnership council, unless anyone else wants to come in at this point.

[1691] As you know, David, we come from the same stable in terms of the voluntary sector and the importance of the voluntary sector partnership scheme, which is a pioneering scheme; I say 'is' because there is no intention of going back on the existing voluntary sector partnership scheme. With separation, it will be different, because Welsh Ministers will inherit the responsibility for the voluntary sector partnership scheme. If we were to continue, which, as a Labour Minister, I would wish to do, with a non-statutory partnership council, we would have to consider how that would operate in terms of the separation.

[1692] I appreciate how important the partnership council has been. I attended the voluntary sector partnership council on Friday in Caernarfon, and I am meeting representatives later in the week to discuss these points, and to give them the assurances that I hope that I am giving you—the voluntary sector partnership scheme will continue as it has been laid down in the Government of Wales Act 1998, and has served us well. As a Labour Minister, I would want to see that that is taken through with the new arrangements—they would have to be new arrangements in terms of a partnership council as a result of the separation.

6.50p.m.

[1693] Therefore, that is my response to your amendment. I hope that those assurances and the fact that I am meeting representatives later in the week to discuss the matter will provide you with enough comfort to see that your amendment might not be necessary.

[1694] **David Melding:** I would like to reach some compromise because I genuinely think that this is an important area. I completely accept the Minister's good faith, but the problem I have is that clause 72 establishes the partnership council and then there is a separate clause, clause 73, for the local government scheme. It seems to me that we could mirror that somehow and strengthen clause 74.

[1695] I have heard what the Minister has said. When the Minister has spoken to the voluntary sector, particularly about a voluntary sector partnership council with the Government—and I accept that, unless they were Ministers, AMs would not sit on that and that this is something that the Government would have, because I am not trying to hamstring you—if she were to come back to discuss the issue with the committee, we would be prepared, having marked up the issue and having received a somewhat positive response from her, to withdraw the amendment.

[1696] **Jane Hutt:** As I said, I am meeting the voluntary sector representative group on Thursday. To be fair, David, we would not move on the issue of a statutory partnership council because of the different arrangements and because we have had a voluntary sector partnership scheme that has enabled us to work well with a non-statutory partnership council. However, I would like to have the opportunity to discuss this with the voluntary sector on Thursday, and I could certainly report back to you as we will be meeting after the recess.

[1697] **The Deputy Presiding Officer:** You can then consider the matter further.

[1698] **Nick Bourne:** The issue of clause 75 still remains. Does Jane want to respond on this and the enterprise council?

[1699] **Leighton Andrews:** I wish to support the point that Carl Sargeant has put to us on the need for business organisations to include trade unions specifically. I want the Minister to respond on that point. The Wales TUC has argued that case very strongly, and I hope that the Government will be able to look positively on that, if not today, at some point during the passage of the Bill.

[1700] **Jane Hutt:** I would like to come back on that because, as you said, the Wales TUC and businesses have made representations on that. I would like to keep the door open.

[1701] **The Deputy Presiding Officer:** I am sure that we would all agree that the usual organisations ought to be included.

[1702] **David Melding:** I think that what needs to be brought back into consideration is the way in which an enterprise council that included business and trade unions might operate.

[1703] **Jane Hutt:** We will come back to you. We may not fulfil all your requests, but we do want to look at the issue.

[1704] **The Deputy Presiding Officer:** The position is that if you cannot reach agreement, it is your right to table an amendment in Plenary.

[1705] We now move on to amendments 143 and 121 by the Welsh Liberal Democrats.

[1706] **Michael German:** I propose amendment 143.

Clause 76, page 4—leave out lines 25 and 26 and insert:

‘(6) Any Code or any revisions under subsection (5) shall have no effect unless approved by the Assembly.’

[1707] I propose amendment 121.

Clause 76, page 41, line 26—leave out from ‘must’ and insert:

‘have it approved by the Assembly by a simple majority of those voting before it will come into effect.’

[1708] Both of these amendments refer to the code that the Government will have to put in place, against which it will measure its regulatory impact assessments. These are simple amendments that relate to the judge and jury. Those who set up the code have to stick to it. However, if people have to stick to a code that they have written for themselves, they are writing their own rules. The amendments simply ask that any code that the Government proposes for writing regulatory impact assessments should be approved by the Assembly as a whole so that there is some basis for the code.

[1709] You can imagine that, if, for example, you had a particular view on a certain area of bureaucracy that you wished to avoid and you wrote a code in a particular manner, you might be able to take a different attitude towards things. Having the broad sheet against which the Government measures itself on regulatory impact assessments approved by the whole Assembly seems to me a perfectly reasonable amendment.

[1710] **The Deputy Presiding Officer:** That was a simple and straightforward point. Are there any comments?

[1711] **Jocelyn Davies:** You know what I think—this is an issue of ‘let us end the corporate body but cling on to the carcass’. I just cannot agree with Mike at all. This is referring to subordinate legislation that will be made by Welsh Ministers and I think that we should allow them to make the regulatory impact assessment and the code because that is what they will be judged by.

[1712] **Michael German:** I do not think that you are judged by your code. You are judged by your performance against the code, and the code of conduct, like any other, is meant to be the guardian against which Ministers are judged. If a Government sets itself a code that is not robust, the Assembly has no comeback in terms of measurement against that code, because it is simply laid by the Government. That is my point. This is not a point about Government being fettered in any way in the execution of its duty, but is simply about the way in which it sets the benchmark against which it is measured.

[1713] **Christine Gwyther:** It rather sounds to me as if Mike German wants the

Government ministerial code to be amendable by the Assembly, which would render it completely useless. You might just as well say that it should be written by the Assembly. To support Jocelyn's point, either we have a separation or we do not.

[1714] **Jocelyn Davies:** You cannot tell the Ministers to make a code and seek the approval of the Assembly for it. Otherwise, as Christine is perfectly right in saying, it is the Assembly's code. It is the Ministers' legislation. They will have to swim without their armbands.

[1715] **The Deputy Presiding Officer:** Mike, do you want to press this to a vote?

[1716] **Michael German:** No. I will withdraw it.

[1717] **The Deputy Presiding Officer:** We now come to amendment 135 in the names of Ieuan and Jocelyn. There are a few other amendments with it.

[1718] **Jocelyn Davies:** I propose amendment 135.

Clause 77, page 41, line 37—at end insert:

'(3) The assessment referred to in (2)(b) must include an assessment of the effectiveness of those arrangements as regards each 'group', as defined in Part 1 of the Equality Act 2006.'

[1719] This is on the equality point. This amendment would require this assessment, which would have to be reported every year to the Assembly, of the effectiveness of equality of opportunity for each of the groups as defined in Part 1 of the Equality Act 2006. We feel that it should be explicit that this equality of opportunity duty on Welsh Ministers applies to all sources of inequality, rather than there being this general duty of equality of opportunity for all. It should be measured against what is contained in the Equality Act 2006.

[1720] **The Deputy Presiding Officer:** Tell me why you cannot criticise your amendment 137 in the same way that you criticise Mike German's previous amendment.

[1721] **Jocelyn Davies:** Section 77 requires a copy of the report to be laid before the Assembly. Therefore, it is an entirely different matter. We will judge the Ministers on the assessment of what they have done. There is other legislation that talks about equality and defines the groups. We say that there should be an assessment of how the arrangements have worked for each of those groups.

[1722] **The Deputy Presiding Officer:** It is a group of four amendments that you have put forward on this, is it not?

[1723] **Jocelyn Davies:** That specific one that I was talking to was on equality of opportunity. We have another one on sustainable development that talks about international obligations.

[1724] **The Deputy Presiding Officer:** That is further on. Okay. Are there any comments?

[1725] **Jane Hutt:** We have the statutory obligation, which was heralded and must be preserved and strengthened—I am sure that the Chair of the Committee on Equality of Opportunity would want to say that. However, identifiable groups may change over time. Going back to what the Deputy Presiding Officer was implying, perhaps, the key point surely is that the opportunity to judge whether this assessment has been undertaken adequately could be reflected in a resolution to that effect. I do not think that it is necessary to prescribe this for Welsh Ministers in the Bill.

7.00 p.m.

[1726] **Gwenda Thomas:** Section 77 does retain that responsibility on the Welsh Assembly Government and also puts it on the new commission, which is very much down to the recommendation of the Committee on the Better Governance for Wales White Paper. I am not clear in my mind as to what we are saying. On the one hand, we will need structures in the new Assembly to deal with the effectiveness of that report, and that is very much a matter for the new Standing Orders. We are not at all sure, for example, whether there will be a committee on equality of opportunity. So, I think that the effectiveness of any resolution, or any reference to equality for that matter, will be very much down to how we write those Standing Orders and how they defend even the present position. So, I think that Jocelyn's concerns can be taken to the Standing Orders committee, when that is set up.

[1727] **Jocelyn Davies:** I am all for everything that can be dealt with within Standing Orders being in Standing Orders rather than in the Bill, because that is more within the spirit of how Plaid Cymru would approach this. So, I am very happy, if that is taken up in the Standing Orders committee, not to push it to a vote now.

[1728] **The Deputy Presiding Officer:** We should have a mechanism for noting that.

[1729] **Jane Hutt:** We have.

[1730] **The Deputy Presiding Officer:** That is fine. So, let us make progress. We have dealt with amendments 143 and 121, and they have been withdrawn. Are you happy not to push amendment 135 to a vote, Jocelyn?

[1731] **Jocelyn Davies:** Yes. The same point could be made about amendment 136, if Ieuan is happy with that.

[1732] **The Deputy Presiding Officer:** We will come to 136 in a minute. Amendment 51 is withdrawn. We now come to amendment 136. What are your wishes on that?

[1733] **Ieuan Wyn Jones:** I propose amendment 136.

Clause 78, page 41, line 41—at end insert:

'(1A) The sustainable development scheme shall include statements setting out the provisions of any order introduced under subsection 81(5).'

[1734] **Credaf mai'r hyn yr hoffem ei wneud yw gweld beth yw ymateb y Llywodraeth i ysbryd y gwelliant hwn, oherwydd, o dan gymal 78, mae cyfrifoldeb i lunio cynllun ar gyfer datblygu cynaliadwy. Fodd bynnag, wrth gwrs, nid yw'r holl fwriad o gael cynlluniau sy'n cynnwys cyfrifoldeb amgylcheddol yn bosibl oni bai bod rhywun yn cofio bod cytundebau rhyngwladol y mae'n rhaid eu hystyried pan gaiff y rheini eu llunio. Felly, gan fod cymal arbennig yn y Mesur, sef cymal 81, sy'n sôn am rwymedigaethau rhyngwladol, credaf y byddai'n beth da pe bai'r Llywodraeth yn gallu cytuno, wrth lunio datganiad neu gynllun ar gyfer datblygu cynaliadwy, y bydd** I think that what we would like to do is to see what the Government's response is to the spirit of this amendment, because, under clause 78, there is a responsibility to draw up a sustainable development scheme. However, of course, the whole intention of having schemes that include environmental responsibilities is not possible unless someone recognises that there are international agreements to be taken into account when they are drawn up. Therefore, as there is a specific clause in the Bill, namely clause 81, which refers to international obligations, I think that it would be good if the Government could

yn ystyried goblygiadau rhyngwladol yr hyn y mae'n ei wneud, yn ogystal â goblygiadau lleol neu genedlaethol. agree, in drawing up a statement or scheme on sustainable development, to consider the international obligations of what it is doing, as well as local or national obligations.

[1735] **The Deputy Presiding Officer:** Does anyone have any comments?

[1736] **Jane Hutt:** Yes. I think that this follows through on the same sort of points that we made in relation to the last point on equality, because this will be a function of Welsh Ministers, who will be accountable in terms of sustainable development. The Assembly will not have the executive functions to promote sustainable development. Again, if we can use Standing Orders for functions relating to the commission and proceedings, that would be appropriate.

[1737] **Ieuan Wyn Jones:** Nid wyf yn siŵr bod hynny'n ateb y cwestiwn. Gwn fod y Gweinidog yn dweud yr ymdrinnir â'r mater hwn mewn Rheolau Sefydlog, ond hoffwn gael sicrwydd y byddai'r Llywodraeth yn ymwybodol o oblygiadau rhyngwladol pan fydd yn datblygu'r cynllun. Os gall y Gweinidog roi'r addewid hwnnw, yr wyf yn hapus i dynnu'r gwelliant yn ôl. **Ieuan Wyn Jones:** I am not sure that that answers the question. I know that the Minister says that this matter will be dealt with in Standing Orders, but I would like an assurance that the Government would be aware of international obligations when it develops the scheme. If the Minister can give us that assurance, I am happy to withdraw the amendment.

[1738] **Jane Hutt:** I can certainly give you that assurance.

[1739] **The Deputy Presiding Officer:** I would have thought that you would have to.

[1740] **Jane Hutt:** I did.

[1741] **The Deputy Presiding Officer:** Okay. Are you happy not to pursue that, Ieuan?

[1742] **Ieuan Wyn Jones:** Fe'i tynnaf yn ôl. Os yw'n help i chi, Ddirprwy Lywydd, ni fyddwn yn symud gwelliannau 137 ac 138. **Ieuan Wyn Jones:** I withdraw it. If it is helpful to you, Deputy Presiding Officer, we will not be moving amendments 137 and 138.

[1743] **The Deputy Presiding Officer:** Fine. So, that leaves amendment 122 to dispose of.

[1744] **Michael German:** We will withdraw that on the same basis, as we had a discussion earlier. In fact, amendments 137 and 138 have a better formation than amendment 122, but, as they have not been moved, I cannot vote on them.

[1745] **The Deputy Presiding Officer:** We will move on to discuss amendment 123.

[1746] **Michael German:** I propose amendment 123 to clause 117.

Based on the Barnett formula, insert a new clause:

'(1) The Secretary of State shall appoint a panel of not less than four and not more than six experts to recommend the sums of money to be allocated to the Welsh Consolidated Fund.

(2) The Secretary of State shall publish in full the terms of any recommendations made under subsection (1).

(3) *The panel shall have regard to—*

(a) *the principle of fairness;*

(b) *the principle of transparency;*

(c) *the particular needs of Wales.*

[1747] This relates to clause 117, and is to enable the setting up of a panel of experts to look at the way in which the formula for funding Wales would be calculated. It is a straightforward recommendation to change the way in which the funding for Wales is allocated at the moment to one that is based upon fairness, transparency and the particular needs of Wales. It proposes the setting up of a finance commission to do that work with the Secretary of State, and seeks an alternative to the formula that we currently have. Those people who believe that we should have a Barnett formula in place forever will not vote for this amendment.

[1748] **The Deputy Presiding Officer:** Let us see if we can avoid lengthy declaratory speeches, since this is a well-known subject. I will not stop anyone from saying anything, but it is clear what this point is about.

[1749] **Christine Gwyther:** I have a brief question, Chair. Why the specific number of experts? Is it because a model has been established somewhere else?

[1750] **Michael German:** Yes, there are a number of finance commissions, not necessarily within a legislative framework for distribution within the UK, but it is a well-established grouping for the distribution of funding within other non-statutory organisations in England. However, I am not wedded to the number; it is the principle that I am talking about. I am quite happy to withdraw it and come back to it later if you were to accept the principle and not the number.

[1751] **Leighton Andrews:** I think that this is a breach of the doctrine of collective responsibility at UK level, in one respect, in that it seems to be an attempt to circumscribe the role of the Secretary of State as a member of the UK Government in making his representations in relation to the Welsh consolidated fund. This is not something that you would put on the face of the Bill; the Secretary of State is entirely open to take advice from anyone if he wants to do so regarding how the formula is working. This seeks to oblige the Secretary of State to produce something that is either politically consensual or politically contentious, depending on which way you look at it, and seeks to bring the UK Government negotiations over the Barnett formula not so much into the public domain, but under perpetual challenge. This tries to politicise the process in a way that I think is not just unnecessary but is also wrong in terms of procedure. I do not think that this is the way that we should expect the UK Government to operate, and I do not think that this should be placed on the face of the Bill in any way.

[1752] **Ieuan Wyn Jones:** What Leighton has avoided is the obvious question of whether he supports the matter being considered. There are a number of ways in which these things can be done, but all that Leighton has said is that it is not appropriate for it to be done in the Bill. It would be helpful if he or the Government would indicate a willingness even to engage in a debate about the future of the Barnett formula. I do not know about you, John, but, when we debated the Bill in the House of Commons in 1998, one of the things that surprised me was how this clause was drafted so widely. That is repeated here. If, for whatever reason, the Treasury or the Government decided to abandon the Barnett formula completely and decided on a new way of funding the Welsh block, the Assembly would have no voice, because the

current clause says that the Secretary of State must from time to time make payments into the Welsh consolidated fund out of money provided by Parliament of such amounts as the Secretary of State may determine.

7.10 p.m.

[1753] That is a wide provision and if a Secretary of State determines—I am not saying that any Secretary of State would, but in theory he or she could—that all that he was prepared to transfer to the Welsh block was £1, how could the Assembly challenge that? It could not. Mike is, at least, forcing the issue that there must be some formula to determine the funding arrangements for the Assembly. Is leaving it entirely at the discretion of the UK Government as to what those sums should be a sound way to fund the Welsh block? There is a convention that it has been done according to the Barnett formula, but if the Westminster Government decided to change that, then the Assembly would simply have to live with it. I am very concerned about that.

[1754] **The Deputy Presiding Officer:** Yes. I am of your view.

[1755] **Nick Bourne:** I was not proposing to say anything, because everyone knows our position. Everyone could set out their position here, but we all know where we are on this one.

[1756] **The Deputy Presiding Officer:** Yes, I know. That is what I was trying to say at the beginning of all of this. Shall we have a vote on this?

[1757] **Michael German:** Absolutely.

Gwelliant 123: O blaid 3, Ymatal 0, Yn erbyn 7.

Amendment 123: For 3, Abstain 0, Against 7.

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

Davies, Jocelyn
German, Michael
Jones, Ieuan Wyn

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

Andrews, Leighton
Bourne, Nick
Gwyther, Christine
Hutt, Jane
Jones, Ann
Melding, David
Thomas, Gwenda

Gwrthodwyd y gwelliant.

Amendment defeated.

[1758] **Ieuan Wyn Jones:** That amendment deserved a majority.

[1759] **The Deputy Presiding Officer:** Yes, but that is a different matter. Let us move on to amendment 144.

[1760] **Michael German:** I propose amendment 144.

Clause 124, page 67, line 5—at end insert:

'(2A) An annual Budget motion must propose the approval of the amounts of resources requested by the relevant persons mentioned in Section 123(3)(b) to (d).'

[1761] This is about annual budget motions and what those should contain. They do not

contain a list of all the bodies that receive something from this fund or budget and that need to be included. There are watchdogs of all sorts, the children's commissioner and others who are funded by the Assembly. All that this amendment seeks to do is ensure that those listed in section 123(3)(b) to (d) are in the budget, so that the Assembly commission, the auditor general, and the public services ombudsman are in the budget.

[1762] **The Deputy Presiding Officer:** Jane, do you have any comments on that?

[1763] **Jane Hutt:** Hugh might come in on this. I do not think that we can consider this amendment.

[1764] **Michael German:** We knew that before we started.

[1765] **Jane Hutt:** I am struggling. I have taken my anorak off and Hugh has got his on.

[1766] **Mr Rawlings:** With the permission of the committee, I refer you to Schedule 8, paragraph 12, which deals with the budgetary provisions in relation to the auditor general and, in relation to the public services ombudsman, Schedule 10, and the detailed amendments there, which are contained in the Public Services Ombudsman (Wales) Act 2005, which can be found—I am sorry, I am not sure where—towards the end.

[1767] **Michael German:** Can I help? I am seeking to know whether those further Schedules, which you have sought to describe, state that, in the budget laid before the National Assembly for Wales, the amounts requested by those relevant persons and bodies—the Assembly commission, the auditor general, the public services ombudsman—should be declared?

[1768] **Mr Rawlings:** The answer is that the budget resolutions will contain the provision for those office holders. One cannot say that the estimates submitted by the auditor general and the ombudsman would automatically be translated into the budget. However, the two provisions to which I have referred you talk about the situation in which those estimates are not carried through to full effect. Therefore, in other words, if the ombudsman came in and said, 'I want £5 million next year', and there was general agreement that that was not appropriate—given the fact that his current budget is £2 million—then what the amendments provided for in Schedule 10 do is deal with that situation.

[1769] **Michael German:** But you would not know—and that is the question that I started with—what they had asked for in the first place. If the budget was to come forward at £10 million for the ombudsman, and he asked for £10 million, all you would know is that the Government would give him £9 million. That is what I am asking.

[1770] **Mr Rawlings:** With respect, no. The ombudsman's estimates, and the auditor general's estimates, are submitted to the relevant Assembly committee.

[1771] **Michael German:** Okay. Therefore, on what terms should the approval or disapproval of that estimate be given?

[1772] **Mr Rawlings:** If I take the auditor general, paragraph 12(3) of Schedule 8 notes that,

'(3) The Audit Committee must—

- (a) examine each estimate submitted to it, and
- (b) (having done so) lay the estimate before the Assembly with any modifications which the Audit Committee considers appropriate'.

[1773] There is equivalent provision for the ombudsman. Therefore, this is part of the process. This will lead to a line in the overall budget motion, but it is not a matter exclusively within the power of the Welsh Ministers. The reason for that, obviously, is that it comes back to—

[1774] **Michael German:** Independence.

[1775] **Mr Rawlings:** Yes.

[1776] **Michael German:** I understand that, and I wanted to be certain about it. Could Peter tell us whether the procedure laid down here is sufficiently robust to ensure that those bodies that are independent of Government—the watchdogs that are listed—have the resource that the Assembly as a whole feels that they can have, because it is the Government that proposes the budget. That is the question that I want to check through this—it is about the process within the House, and whether that works.

[1777] **The Deputy Presiding Officer:** The Assembly has to pass the budget, or not pass it.

[1778] **Michael German:** If it does not, you then go into the business of amendments to the budget, and so on. This is about whether the Assembly, through these processes, has sufficient safeguards to ensure that those moneys that the Assembly, through the Audit Committee and others, feels are appropriate are put in the budget.

[1779] **Mr Jones:** I think that they would.

[1780] **Michael German:** Could Paul qualify that? This matter is down to the separation.

[1781] **Mr Silk:** As far as the Assembly commission is concerned, this could be a matter that is regulated by Standing Orders, as is the case at present. Standing Orders require the House Committee's budget, if approved by Plenary, to be incorporated in the final budget, so that could be regulated by Standing Orders. However, I do not think that there is anything in the Bill that requires an estimate of the Assembly commission automatically to be included in the budgets by the Minister.

[1782] **Michael German:** Therefore, am I to take it that that would be appropriate as a Standing Orders matter?

[1783] **Mr Silk:** It is certainly something that could be covered by Standing Orders.

[1784] **Mr Jones:** It is done at present, and I see no reason why it could not be done again.

[1785] **Michael German:** Fine. Is the Minister happy to take that away?

[1786] **Jane Hutt:** Yes.

[1787] **Michael German:** If that is the case—

[1788] **Jane Hutt:** I think that it is the expectation anyway.

[1789] **The Deputy Presiding Officer:** It is certainly something that you need to keep in mind, because there are legislatures where the commission's budget has certain constraints on it, but it is then not amendable by the Executive.

[1790] **Michael German:** Yes, so would it be possible to include this matter in this

committee's report as something that we would seek to have a view on in the Standing Orders, and to report the issues that are about independence, separation, and so on?

[1791] **The Deputy Presiding Officer:** Are Members happy if we go along that line? I see that you are. Right, so you will not press that to a vote then, Mike?

[1792] **Michael German:** No, on that basis.

[1793] **The Deputy Presiding Officer:** We have about 10 minutes left. On the last group, 139 has been withdrawn. We now turn to amendments 145, 146 and 147.

7.20 p.m.

[1794] **Michael German:** I propose amendment 145.

Schedule 10, page 155, line 16—at end insert:

'66A In section 1(1) leave out 'a' and insert 'an Officer of the National Assembly for Wales, to be known as the'.

[1795] Amendment 145 refers to Schedule 10 and would make it clear that the ombudsman is an officer of the Assembly, rather than being ambiguous about whether the role is a Government office, an Assembly office, or a quango. It clarifies for whom the ombudsman works.

[1796] **Jane Hutt:** I do not know whether you see this role as being the same as the parliamentary commissioner, who is an officer of Parliament. Is that what was driving you?

[1797] **Michael German:** Yes.

[1798] **Jane Hutt:** In fact, the Public Services Ombudsman for Wales does not have the same role. For example, the Public Services Ombudsman for Wales can look to the Assembly to provide protection but may also have to investigate complaints against the Assembly commission, which, in many ways, is acting as an executive agency of the Assembly. Hugh will come in on this, but I do not think that we feel that the Public Services Ombudsman for Wales needs any additional protection because he or she can already look to the Assembly for protection against the Assembly Government by summoning Ministers to appear before, and explain themselves to, Assembly committees. Therefore, the independence of the role is clear. It is a Crown appointment that is independent of the Assembly Government, so there is no need for this amendment.

[1799] **The Deputy Presiding Officer:** That is clear.

[1800] **Michael German:** Unless I hear a view to the contrary from the Assembly Parliamentary Service—from Peter or Paul—I will withdraw it.

[1801] **The Deputy Presiding Officer:** It is therefore withdrawn. We move to amendment 146.

[1802] **Michael German:** I propose amendment 146.

Schedule 10, page 155, line 34—at end insert:

'(1A) after subsection (2)(e) insert—'(ee) the Assembly;'.

[1803] This amendment simply adds the Assembly to the list of people who receive reports from the ombudsman. It is very straightforward.

[1804] **The Deputy Presiding Officer:** I wonder whether Jane can accept that one.

[1805] **Jane Hutt:** I do not think that there is any need to send copies of all reports to the Assembly. They are sent to the First Minister, but there is a slightly different interest in relation to accountability. Again, it is unnecessary. If you were reassured by my point before, I think that you should be reassured on this too.

[1806] **Michael German:** If this is a matter that can be dealt with in Standing Orders, I am happy to leave it to that.

[1807] **The Deputy Presiding Officer:** I think that we could do that with Standing Orders, could we not?

[1808] **Ieuan Wyn Jones:** I think that the amendment is valid.

[1809] **Michael German:** The question is whether there should be protection in law.

[1810] **Jane Hutt:** Are you referring to any report?

[1811] **Leighton Andrews:** Are you talking about annual reports or every report?

[1812] **Michael German:** This refers to Schedule 10, page 155, line 34, which is about conducting an investigation.

[1813] **Jane Hutt:** Every report?

[1814] **Michael German:** No.

[1815] **Jane Hutt:** It says ‘Reports of investigations’.

[1816] **Michael German:** Yes—reports of investigations.

[1817] **Leighton Andrews:** That is every report.

[1818] **Michael German:** No. Every report of an investigation.

[1819] **Ann Jones:** That is every investigation report. Therefore, instead of receiving just the annual report, as debated in Plenary this afternoon, you would have every report.

[1820] **Jocelyn Davies:** They would not necessarily be debated.

[1821] **The Deputy Presiding Officer:** There is nothing wrong with every report being sent, provided that you strike out names and sanitise them so that it does not cause any problems for the individuals involved.

[1822] **Leighton Andrews:** I have been quite surprised by the number of published reports that we receive from virtually every body, which our constituents pay for each time. I do not know whether these reports would be in a publishable format, unless they were to be sent to us. Therefore, if all that we are doing is adding a significant cost to the ombudsman’s budget, I am not sure that I am willing to do that.

[1823] **The Deputy Presiding Officer:** I was going to suggest that, rather than being sent to

everyone, it could be placed in the Library.

[1824] **Michael German:** Yes.

[1825] **Leighton Andrews:** That would be fine.

[1826] **Michael German:** I am not talking about it being sent to all Assembly Members.

[1827] **Ieuan Wyn Jones:** This is a useful little amendment, because there will be interest in the results of investigations. It may be that not all Assembly Members are interested in every investigation, but there ought to be an obligation on the ombudsman to ensure that at least one copy is sent as a matter of course through the legislation, as you have indicated, to the Assembly Library. I think that that is a perfectly reasonable request. I would hope that that is something that the Government would be prepared at least to take away and consider.

[1828] **Christine Gwyther:** At present, when the ombudsman has made his or her investigations and has finalised the report, it is put on the ombudsman's website in any case. Therefore, I do not really know what this issue is bringing—

[1829] **The Deputy Presiding Officer:** All these reports are in the public domain, are they?

[1830] **Christine Gwyther:** Yes.

[1831] **The Deputy Presiding Officer:** Do you agree with that, Jane?

[1832] **Jane Hutt:** Yes. If the ombudsman was not happy with the way that we have or have not received it in terms of the Government or the Assembly, he or she can issue a special report that would have to be laid before the Assembly. Therefore, there are safeguards in terms of handling the Assembly Government or the commission not responding in a satisfactory way. I do not think that it is necessary to change the face of the Bill in that respect.

[1833] **The Deputy Presiding Officer:** This is a very nannyish Bill, is it not? However, if it has the First Minister for Wales—

[1834] **Ieuan Wyn Jones:** How can the First Minister look at it then, if it is on the web?

[1835] **The Deputy Presiding Officer:** Exactly; that is the point.

[1836] **Ieuan Wyn Jones:** That is what I do not understand.

[1837] **The Deputy Presiding Officer:** Why be so nannyish about all of this and have it in there in the first place, quite frankly?

[1838] **Ieuan Wyn Jones:** Yes.

[1839] **Christine Gwyther:** There may be occasions when Government action should be taken if things have reached a matter of urgency before a report is finalised. Therefore, it is quite appropriate for the ombudsman to be sending an interim report, or something similar, to the Welsh Assembly Government. However, backbenchers would not necessarily have to—

[1840] **The Deputy Presiding Officer:** The corollary to that is that if it is urgent and Government might need action, the legislature needs to hold the Government to account and therefore it should also be made aware of it.

[1841] **Jocelyn Davies:** On a point of clarification, having something in the public domain is not quite the same as laying a document that the Assembly has to deal with. If we had added to the list of those who receive it, is there not an expectation that we would need some sort of mechanism to deal with it? Having something in the public domain that we can all see is all very well, but, if the Assembly does receive it, there will be an expectation that Standing Orders provide a mechanism to deal with it and that something happens.

[1842] **The Deputy Presiding Officer:** We are running short of time. I suggest that we ask Jane to see whether she could include the words ‘send a copy to the Library’, or whatever the equivalent of ‘laying on the table’ is in the Assembly. If you cannot go that far, we should at least have a minute that the Standing Orders committee should look at this and try to incorporate in Standing Orders the sense of the argument that you have made. Would that be acceptable?

[1843] **Jane Hutt:** Clearly, it is a matter for the ombudsman. That is the point.

[1844] **Mr Jones:** I think that it would be very difficult for Standing Orders to require the ombudsman to produce the document and lay the report before the Assembly.

[1845] **The Deputy Presiding Officer:** Therefore, we are left with Jane sleeping on it and seeing—

[1846] **Jane Hutt:** I am perfectly happy to take it away. In terms of the ombudsman, the Assembly—the Government and the commission—has a clear responsibility, and I think that that is quite clear. I will come back on this. Given the time, we cannot do justice to it.

[1847] **The Deputy Presiding Officer:** Do you want to press it to a vote?

[1848] **Michael German:** I will not know until it comes back, and we will then see how it goes.

[1849] **The Deputy Presiding Officer:** That is fine. I was just giving you the option. We will now move to the last amendment, which is amendment number 147.

[1850] **Michael German:** I propose amendment 147.

Schedule 10, page 156, line 10—after ‘Wales’ insert:

‘(or, in the case of a report made in respect of the National Assembly for Wales Commission, the Presiding Officer)’.

[1851] **The Deputy Presiding Officer:** Are there any comments?

[1852] **Jane Hutt:** I do not think that this is really for us to comment.

[1853] **Michael German:** It is your Bill.

[1854] **Jane Hutt:** Can we come back on this tomorrow or whenever?

[1855] **The Deputy Presiding Officer:** Yes, do both together.

[1856] **Leighton Andrews:** I just wanted to ask whether we need to meet tomorrow.

[1857] **The Deputy Presiding Officer:** I was just coming to that, but you got there ahead of me. I have a note from the clerk: I am to invite you not to meet tomorrow as we have

completed everything now.

[1858] **Michael German:** But it is coming back?

[1859] **The Deputy Presiding Officer:** Yes. The suggestion is that we postpone the meeting scheduled for tomorrow until after the recess. This will allow the Minister to come back on all the outstanding issues, including all those from tonight to which she has just committed herself, all in one go. It would allow the publication of the Record relating to discussions on Schedule 11, paragraph 33, and allow Members to consider it. Therefore, I think that the proposal from the chair is that you, and the Presiding Officer, next meet after the recess. Is that acceptable? I see that you are all agreed.

Daeth y cyfarfod i ben am 7.30 p.m.

The meeting ended at 7.30 p.m.