



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

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

**Dydd Mercher, 1 Chwefror 2006
Wednesday, 1 February 2006**

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

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

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

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

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

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

Officials in attendance: Peter Jones, Counsel to the Assembly Parliamentary Service; Hugh Rawlings, 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 6.15 p.m.
The meeting began at 6.15 p.m.*

Mesur Llywodraeth Cymru The Government of Wales Bill

[826] **Y Llywydd:** Croeso i drydydd **The Presiding Officer:** Welcome to the cyfarfod y pwyllgor. Trafodwn gymal 10 o third meeting of the committee. We will Ran 1 y Mesur. discuss clause 10 of Part 1 of the Bill.

[827] Tynnwyd gwelliant 92 yn ôl. Amendment 92 has been withdrawn.

[828] **David Melding:** I propose amendment 14.

In clause 11(8), delete subsection (b).

[829] This amendment would have the effect of deleting the provision that excludes someone who stood in a by-election—and by-elections, by definition, are constituency by-elections—from being on a party list, assuming that the person had been unsuccessful in the by-election. We feel that, in general, dual candidacy is appropriate. However, in this case, it is not strictly even dual candidacy, because we are talking about different elections. So, this is quite invidious and should be removed.

[830] **The Business Minister (Jane Hutt):** We have debated the dual candidacy issue and voted on it. The implication of this is also, as you said, David, to acknowledge dual candidacy, so we would want to move to vote against this.

[831] **David Melding:** Our point is that dual candidacy requires the same sort of date of election. Otherwise, it goes well beyond being dual candidacy and must run all sorts of human rights legislation risks.

[832] **Ieuan Wyn Jones:** Perhaps it would explain it better if you described an example of an election where this would happen.

[833] **David Melding:** If, in 2007, Mr X stood in South Wales West and came second on a party list which elected just one, then stood in 2009 in a constituency by-election and lost, and then, three months or a year later, the first person on his party list resigned or died, Mr X could not then take the regional seat because a year or whatever beforehand he had stood in a constituency by-election. I wonder how on earth this could be defended in terms of human rights law.

[834] **Jocelyn Davies:** So, David, as a point of clarification, in terms of regional lists, this, in effect, says that you remain a candidate for the four years after the election. So, even though the election may have been four years ago, you are still considered a candidate.

[835] **David Melding:** When, of course, they are not candidates at all because the election has been and gone, they have secured whatever place and their future rights to stand are infringed. Also, parties are then forced to remove candidates and the pool of candidates for elections is consequently weaker. I think that it is a really invidious measure.

[836] **Nick Bourne:** In reply to the Minister, the point here is that it is not a consequence of the dual candidacy prohibition; this is a quite different point. As we have now established, it could be up to nearly four years later when you are ruling someone out. It seems to go far beyond what even you desire because it does not seem to get at the mischief that you, allegedly, are trying to correct. I cannot quite understand why you feel that this is necessary.

[837] **Ann Jones:** I am glad you said ‘allegedly’, Nick, because it has been a long day. I think that they have to stay as candidates for the four years because, if there is a vacancy for a regional Member, the next person down for that party on that list automatically steps into that seat. I think that that is legitimate; if your list is there, those are the people who are there until the next election is called, as there are no by-elections for list seats.

6.20 p.m.

[838] **Nick Bourne:** With respect, there is a very important point here. Of course, they have to agree to that. We have been in this situation in the first Assembly. You go to the next person on the list but they have the ability to say ‘yes’ or ‘no’, so it is the first eligible person—man or woman—who agrees to it. Therefore, it is not as simple as saying that the next person comes on, as they might not want to, for very good reasons. Their circumstances might have altered materially or they might be dead. It is not the case that they are automatically on, as it were; they still have to be eligible for taking that place and they have to agree to it. If they were ineligible, because they had fought a constituency and won it, you would then go to the next person on the list.

[839] **Ann Jones:** That is fine because it is that person’s choice to do that. Nevertheless, he or she is still asked because he or she was number three, or whatever, on the list. If you have only secured two places and you have a vacancy, you would ask your number three candidate. If they say ‘no’, which I think happened with your party—

[840] **Nick Bourne:** It could have done.

[841] **Ann Jones:** It could have done. I thought that it did happen with someone in your party. However, if number three says ‘no’, you go to number four and if number four says ‘no’, you go to number five. What is the point? I think that they have to stay as candidates. I do not think that you can start to confuse that issue because they are offered that choice. It is up to them to say ‘no’. I feel that we are just clouding issues.

[842] **Nick Bourne:** With respect, and without protracting it for too long, they still have to

be eligible. It is not just a question of 'yes' or 'no'; they have to be eligible to take the place and then they have the ability to say 'yes' or 'no'. If they have been elected for a constituency in the meantime, clearly they are no longer eligible. I do not quite see what you are saying. They have to be eligible to take the place.

[843] **Jane Hutt:** Why would anyone else be eligible in that situation, particularly in terms of the Bill and the fact that we are calling an end to dual candidacy? If you have then failed to get in through the first-past-the-post system, you have failed to get in through the first-past-the-post system. This relates to regional vacancies. It does not relate to any other—
[ASSEMBLY MEMBERS: 'No.']

[844] **David Melding:** It does in terms of election. That person is removed if he or she has subsequently stood for a constituency by-election. I challenge that. If someone had become the Auditor General for Wales they would then become excluded, presumably, from being returned to elected office. These events are not simultaneous, are they? They can be years apart. Therefore, how on earth does it remain in time a dual candidacy? It is preposterous.

[845] **Michael German:** I seek clarification from David to ensure that I am correct. For example, in the elections that took place in 1999, Christine Humphreys was elected on a regional list. She then withdrew and we appointed the second person on the list, because Eleanor Burnham was asked. However, if the third person on our list then stood for the by-election in Swansea when Val Feld died, she would have been disqualified from standing as a candidate in that by-election because she was previously on the list from 1999. It strikes me as bizarre if that is the case. He or she could have said, 'Look, I am not interested in the list any more'. This cements that person in the list for four years. That seems to be quite bizarre.

[846] **David Melding:** It is the other way around, actually. Should the person stand for a constituency by-election, he or she is then removed from the regional list. An actual occurrence in time—this list received x amount of votes, in this order—is then tampered with because the person has sought his or her human right to stand for a constituency election at a different date. That is the problem. You are tying a general election in 2007 to any subsequent by-election in a constituency. That will break human rights laws, as well as being invidious in any case.

[847] **Ieuan Wyn Jones:** What you are saying, in effect—to clarify the matter using, for the sake of argument, the position of Christine Humphreys and Eleanor Burnham—is that if Christine Humphreys was the regional Member, and Eleanor Burnham was a candidate for Swansea the following year, but did not win, were Christine Humphreys to give up her seat the following year, Eleanor Burnham would be disqualified from taking her place. Those are the circumstances.

[848] **David Melding:** Precisely.

[849] **Ann Jones:** Yes, because she would have stood, and she would be a failed constituency candidate.

[850] **Jocelyn Davies:** In a different election.

[851] **Leighton Andrews:** I just want to be clear, because I think that there is some genuine confusion among all of us about this, as it is quite a complicated clause in the way that it has been drafted. My understanding of the clause is that someone who is on a regional list, as you say, and has been defeated in a constituency by-election, cannot then come in to the Assembly during that period in place of a regional list Member who has withdrawn or died, for example. That would not apply to the subsequent general election, would it?

[852] **David Melding:** Indeed, no.

[853] **Leighton Andrews:** No. Okay. I thought that the suggestion was that that would happen earlier on.

[854] **David Melding:** I understand it, but I fear that I have not expressed it very clearly.

[855] **Michael German:** The principle would be the same as for a candidate in any council election who, should he or she fail to win a seat, could stand for another council ward and then return to the first council ward. The issue is the same: the elections are separate. In our case, this would not be the tied Welsh general election, as the elections are separate. That is the issue at stake. Surely, we cannot tie a person to be a candidate for four years.

[856] **Leighton Andrews:** It seems to me that, actually, in a sense, the regional election is the same election. This clause applies in the case of someone who, having left the regional list to fight a constituency, then comes back because there is an opportunity due to somebody else departing from the regional list. So, it is actually the same election.

[857] **David Melding:** No, it is not.

[858] **Leighton Andrews:** Well, it is. It is all about the previous general election in terms of being a regional candidate.

[859] **David Melding:** I think that we have well established the positions, and that we can now move to a vote. However, it is deeply disturbing that the Government is proposing to alter an election that has occurred, even assuming that dual candidacy is now prohibited. A list was presented, it was found to be legally sound and it was accepted. It attracted x number of votes, and one or two, or whatever, Members on the list get elected. Someone on that list is subsequently withdrawn because they stand for a constituency election at a future date. It is not the same election—it is not in a general election at all, it is in a constituency by-election. This raises very disturbing human rights implications, and it really is trying to take a sledge hammer to the problem that you perceive. You could at least give way on this point, even if you are not going to give way on the general principle of dual candidacy.

[860] **Nick Bourne:** I genuinely think that there might be a human rights dimension here, because they are different elections. Has this been considered by the Government's lawyers? There could be a human rights challenge on this matter.

[861] **Jane Hutt:** Could I ask Hugh Rawlings to comment?

[862] **Mr Rawlings:** I could not say. You will appreciate that people keep turning to me for legal advice, but I am not a lawyer. The only thing that I will say is that, of course, the Secretary of State, in laying the Bill before Parliament, has made a statement that he considers that the Bill does not infringe human rights. That is a general proposition about all parts of the Bill. *[Interruption.]*

[863] **The Presiding Officer:** Order.

[864] **Jocelyn Davies:** It says, on the front of the document that

‘Mr Secretary Hain has made the following statement... [that in] my view the provisions of the Government of Wales Bill are compatible with the Convention rights’.

[865] It is grossly unfair. I do not think that we can bother to argue about whether it breaches human rights, but—

[866] **Nick Bourne:** But it could be challenged.

[867] **Jocelyn Davies:** Yes, it could be challenged, but it is grossly unfair.

[868] **The Presiding Officer:** Mike German, do you want to pursue that further?

[869] **Michael German:** I would just ask whether Peter would like to expand on the eligibility of a challenge under human rights legislation.

[870] **Mr Jones:** You can always challenge.

[871] **Jocelyn Davies:** If it happened to them.

6.30 p.m.

[872] **Mr Jones:** If it happened to them, yes.

[873] **Michael German:** Would that be a serious challenge?

[874] **Mr Jones:** It could be treated as a serious challenge, I am sure.

[875] **Ieuan Wyn Jones:** If I could just postulate, surely there is no point in challenging after the event. Presumably, if you were intending to be a candidate, you would want the challenge to clarify the issue, would you not, before you stood in the by-election?

[876] **Mr Jones:** Yes.

[877] **Ieuan Wyn Jones:** So, the challenge would be before the by-election.

[878] **Mr Jones:** You could go to court and seek a declaration on whether it is compatible with human rights.

[879] **Ieuan Wyn Jones:** So, it would be quite difficult for the candidate if a by-election has been called.

[880] **Nick Bourne:** I am not here to give legal advice, but I think that Ieuan and Peter are right. You would be going to court for a declaration, and, presumably, it would be expedited very quickly, would it not, in that it would have to be heard very quickly if a by-election were pending? The votes are clear, but I think that there is a human rights issue.

[881] **The Presiding Officer:** Do you wish to pursue a vote on amendment 14?

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

[883] **Y Llywydd:** Galwaf bleidlais ar welliant 14. **The Presiding Officer:** I call a vote on amendment 14.

*Gwelliant 14: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 14: For 5, Abstain 0, Against 5.*

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

Bourne, Nick
Davies, Jocelyn

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

Andrews, Leighton
Hutt, Jane

German, Michael
 Jones, Ieuan Wyn
 Melding, David

Jones, Ann
 Lloyd, Val
 Thomas, Gwenda

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

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

Gwrthodwyd y gwelliant.

Amendment defeated.

[884] **The Presiding Officer:** Being a generous and, as I have said before, liberal—

[885] **Michael German:** I was intending to withdraw amendments 34 and 35 anyway because they relate to the single transferable vote, on which we lost a vote earlier.

[886] **The Presiding Officer:** Thank you. So amendments 34 and 35 are withdrawn, and amendment 92 was withdrawn earlier. This brings us to the next group of Welsh Liberal Democrat amendments.

[887] **Michael German:** I propose amendment 36.

Clause 12, page 8, line 6—insert new subsection (1)(c):

‘Will be sixteen years or over’.

[888] I propose amendment 37.

Clause 12(1)(a), page 8, line 10-12—insert:

‘subject to subsection (1)(c)’.

[889] I propose amendment 38.

Clause 12(1)(b), page 8, line 13-14—insert:

‘subject to subsection (1)(c)’.

[890] I propose amendment 39.

Clause 12(2)(a), page 8, line 16-17—leave out.

[891] These amendments are all linked to voting at the age of 16. I think that these are very simple and clear amendments, and this is about whether or not Members feel that they have a view on this matter. If you are in favour of 16-year-olds voting, here is an opportunity to support it in the Assembly in order to encourage young people to vote and to give them the opportunity to engage in politics at that early age. After all, we tax 16-year-olds if they are earning money, and they can go to war and represent our country. We hope that this would mean that, through our political representation, we could give them the opportunity to vote as well. So, they are very simple straightforward amendments to allow people to vote for Assembly Members at the age of 16.

[892] **Ann Jones:** Mike knows that, in another committee, we have been looking at participation. However, this would require us to look at the Representation of the People Act

2000, which is not devolved. I do not think that this is the place in which to push this, Mike, and certainly not in terms of the Government of Wales Bill. I do not think that it falls within the Bill to look at the ages of those who are eligible to vote. It is not on the face of the Bill, and whatever the sentiments regarding people voting at the age of 16 and taking an active part in democracy, this is not the place in which to raise this issue.

[893] **Michael German:** If there is general sympathy with the principle of those aged 16 being able to vote, but not a general agreement that this should be done in terms of this Bill, I am perfectly satisfied for it to appear as a note from this committee to the Assembly. If they wish to represent that view to the Westminster Government, that might be another way of doing it.

[894] **The Presiding Officer:** I take a broad attitude towards what is or is not appropriate in terms of this Bill. These are proposals for amendments. In Westminster, someone in my position might well say that this is not strictly relevant to the scope of the Bill. However, in terms of the way in which we do things here, if you wish to pursue this as a proposal for an amendment, you are free to do so.

[895] **Michael German:** I was sounding this out. If there is sympathy with the principle but not with the amendments, I am happy to withdraw the amendment on the grounds that we can pursue the issue elsewhere within the Assembly.

[896] **The Presiding Officer:** In that situation, it would not come from this committee.

[897] **Michael German:** I understand that. Therefore, I withdraw the amendment.

[898] **The Presiding Officer:** Amendment 36 is therefore withdrawn; amendments 37 and 38 fall. Do you wish to pursue amendment 39?

[899] **Michael German:** No; amendment 39 is on the single transferable vote again.

[900] **The Presiding Officer:** Therefore, it also falls. Amendments 93 and 40 are withdrawn. Amendment 15 to clause 16 has been tabled by the Conservative group.

[901] **David Melding:** I propose amendment 15.

Clause 16, paragraph (1), add a new subsection (f):

'holds the office of Children's Commissioner for Wales'.

[902] We believe that the children's commissioner should be excluded or disqualified from election. This would also apply in principle to the older person's commissioner. These are offices of great distinction that are there to comment on public affairs, therefore, you can reasonably expect people who take that role, as some of the other office holders that are listed, not to be active in the political process. If they are active, it would diminish their office, even if they were to resign, because there would be a suspicion that they prepared for political life in some way through the exercise of that office. We would add the children's commissioner to the list of disqualified persons.

[903] **Gwenda Thomas:** I completely agree that this is a desirable end, but I do not think that this is the way to do it. There are two ways of doing it and the Bill allows for one of them. The first one would be to include the requirement that the children's commissioner could not be an AM in his or her contract of employment. The second is that clause 12(5) of the Bill allows for specific offices to be designated as ones that the holding of which does not permit membership of the Assembly.

[904] **Mr Rawlings:** It is clause 16(5).

[905] **Gwenda Thomas:** It is clause 16(5). Therefore there is no need to amend the Bill in order to achieve the principle of what David is saying.

[906] **Nick Bourne:** I thank Gwenda for those comments, but, with respect, I think that we could turn that on its head. The Order in Council procedure is perhaps for offices that are not yet in being, which will come in subsequently, when you will need to deal with them without an amending statute. Where we have the Act, there is no reason why we cannot add to the list at this stage, given your expressed support, which we welcome. You would then not need to use the Order in Council procedure. Are we agreed that it is a reasonable end? I think that it is desirable that those office holders are not in the political arena.

[907] **Gwenda Thomas:** I agree that it is a desirable end, but I do not see that it necessitates the amending of the Bill. I think that the Bill is flexible enough to allow for that.

[908] **David Melding:** I do not doubt the voracity of what we are being told, but I find it strange that we are being told that it is all right because clause 16(5) has been designed for this purpose. It is a bit like going from Cardiff to Newport via Wrexham again. Why on earth can we not just put it in with the list of disqualified offices? Come on. This smacks of your wanting this Bill to go through in a state of complete virginity when it comes to altering it or not. We have not had any response from the Government on any amendment. I find that we are battering against the Atlantic wall here and there is no give.

[909] **Nick Bourne:** There is a serious issue here. We are here to look at the Bill in terms of suggesting amendments. We have been met with a barrage of stone walls on political issues, which I can understand, but when it comes to an issue on which there is expressed agreement, it raises the question of why we are sitting here scrutinising this Bill, if we hear from the Government that it agrees with the point, but it does not want to amend the Bill. If the Minister wants to tell us now that she is not going to give way on any of the proposals, we might as well say that they are all tied five-five and all with a casting vote and give up here and now. There is not much purpose going through this Bill if—

[910] **Leighton Andrews:** Fine with me.

[911] **Nick Bourne:** There is a serious point here, Leighton. I do not think that it is amusing. This is a serious issue. Generally in committee, on these occasions—I speak with experience of the review of Assembly procedure and so on—there has been a consensual approach to issues that are not party political. This cannot be seen as a party-political issue. You agree with it and yet we are meeting a stone wall, as you are saying that you do not want to amend the Bill. Is that going to be the attitude to every proposal that we put forward? It has been up until now.

6.40 p.m.

[912] **Gwenda Thomas:** On the contrary, I do not see that there is a need to vote for an amendment just for the sake of amending the Bill. I believe that, on this issue, the Bill is flexible enough to allow the principle of what you are saying, which I think is desirable, but I still do not see that we need to amend the Bill.

[913] **Ieuan Wyn Jones:** Let us talk about the current commissioner—I will not name him, but there is a person in post. There is no provision in his contract to prevent him from being an Assembly Member.

[914] **Jocelyn Davies:** We do not know that.

[915] **Ieuan Wyn Jones:** No, we do not, but, for the purposes of this little debate, we can take it that there is not. Let us assume, for the sake of argument, that that person wants to become a candidate for a political party. There is nothing in his contract that says that he cannot, but we have all agreed that that should not happen. What Gwenda is saying is that the Secretary of State would then turn around and say, 'Let us pass an Order in Council to prevent him'. That is a ridiculous way of doing it, because we all agree that he should not be a candidate and yet this poor person does not know that we do not want him to be a candidate. He could make a perfectly reasonable assumption that, because he is not disqualified, he can be a candidate, but the Secretary of State would come down on him like a tonne of bricks. Why do we not make it perfectly clear in the Bill that he cannot be a candidate? What could be more reasonable than that?

[916] **Gwenda Thomas:** We would need to think long and hard about that Order in Council, because I do not think that it would be confined to the children's commissioner. We will be appointing a commissioner for older people and I know that there are other offices that are probably covered in any case. I had to give up membership of the Lord Chancellor's advisory committee, for example, before becoming a candidate for the National Assembly. So this is not a new principle, and I believe that that Order in Council would have to cover offices other than that of the children's commissioner and would be a very useful way of doing that, having thought long and hard about the provisions of the Order in Council.

[917] **David Melding:** If we write it into clause 16 now, that Order in Council would be strengthened if other offices were created—and that seems likely in terms of the older persons' commissioner—because the precedent would be established in the Bill. This law comes into force from 2007, when, I believe, the present commissioner's term is up, and he is only entitled to one term of seven years, so we could be recruiting someone who still, technically, has a right to seek public office, unless we put this in here. This is obviously the most direct way to get this principle accepted and I hope that, even at this late hour, the Minister will give ground.

[918] **Jane Hutt:** I wanted to go back to the point that Nick made, because we do not, in any way, want to undermine what is coming forward in terms of amendments and the opportunity for discussion. We are new to this, are we not?

[919] **Nick Bourne:** No, not really; we have had this in other committees.

[920] **Jane Hutt:** It is very helpful for us to be able to discuss these amendments, cross-party, as we are doing, and for the Government to hear them.

[921] The point of principle is about how we use this Bill and legislation. That is the point that Gwenda has made. We have provisions in this Bill and, in so many cases, we have been saying that we want less on the face of the Bill and more for us to be able to implement. There are amendments further on regarding issues that we think Standing Orders will address, so we will not have to amend the face of the Bill in those regards. That will probably emerge in the discussion later on. So, it is about how we use this legislation. This requires some consideration. We have not considered it, it has not come up in the Assembly before, and we need to give it consideration, probably in the lead-up to the new appointment, and I think that Hugh would say that we will have to have a new Order in Council anyway in relation to those public offices that we have in place. Therefore, it would be premature to amend this when we have not been through that process. That would be the reason for voting against this.

[922] **Michael German:** It always strikes me that if you go to a court of law or you create

a rule or a law that has the effect of pointing the finger at any one individual, it is always a dangerous provision to follow because, essentially, it looks as though it has been done specifically for that person, rather than the post that that person holds. I accept Gwenda's point that there may well be other posts that we do not know about, but we seem to have come up with one post where I would suggest there is uniformity of view as to whether this postholder should be eligible to be a candidate. If the circumstances arise, would you want to go through the process of asking for an Order in Council when that person was in post and had made it clear that he or she wanted to be a candidate for the election? You then create a debate about that person, not the postholder. It is the post of the children's commissioner—which I think we all want to see as an independent post and able to be outside the world of politics—that has been sought here.

[923] Therefore, while I accept that there may be others, this is one post on which we quite clearly have a view, and I do not see why it could not be included in the list, with the Order-in-Council process to be used for ones that we do not know about or that no-one has thought about at the present time.

[924] **Nick Bourne:** I agree entirely with what has been said there. However, to come back on what the Minister has said, in a sense, we have templates for what we are doing today, perhaps not on a Bill, but there has been cross-party working. The National Assembly Advisory Group, and the Assembly review of procedures, are both examples of when there was cross-party agreement on issues. The advisory group was before the Assembly was created, but there was cross-party working on it, as there was on the Assembly review of procedure in the first Assembly, and where, on occasion, there was all-party consensus. There appear to be, and I note that you, Minister, have said, warm words on this, but it will be much more impressive if it is backed up by some action. So far, you have resembled a night watchman at the crease, content with blocking the ball and perhaps not scoring many runs, but determined not to give way on any issue at all, even those that cannot be said to be in any way politically partisan. This is one of them.

[925] Therefore, if I may speak on behalf of the opposition parties, I suspect, I feel that we are going through this Bill and scrutinising important issues, only to find that a decision has been taken that you are not going to give way on anything. Once you have given way, I will find it much more impressive that you are determined to work in a cross-party way on some of these issues at least.

[926] **Jane Hutt:** All that I can say is that we are rather constrained by the amendment process. We had this a short while ago. We believe that this would be a desirable objective, but it is a case of what is the right route and mechanism to achieve it—we do not feel that that is to be achieved through amending the Bill. However, I would be happy to agree that this committee could say to the Secretary of State that it felt that it was desirable, and that we would like him to consider the best mechanism. That means amending your amendment slightly, but I think that we would be happy to say that we see that this is desirable, that we would like this to be in our report on this committee's deliberations and would like the Secretary of State to consider the best mechanism to achieve this.

[927] **The Presiding Officer:** If it is helpful to the committee, I had originally envisaged that the report might take the form of recommendation for amendment. However, there is nothing to prevent us from reporting in whichever way we want. Therefore, if we want to report certain more firmed-up proposals, which are recommendations for amendment, and others that are, as it were, messages to the Secretary of State, there is nothing to prevent us from doing that.

[928] **Nick Bourne:** I welcome the Minister's suggestion. It has given some ground, and is at least a move in the right direction. I regret that it does not go further, but it is at least some

ground.

[929] **The Presiding Officer:** Therefore, is the amendment withdrawn?

6.50 p.m.

[930] **David Melding:** Subject to the report saying that one way of securing the independence of the office would be to add to the list under clause 16(1), or to use another mechanism. Provided that that is expedited, and provided that there is a possibility of that amendment, without it being exclusively the case, we can, in light of the Minister's remarks, withdraw the amendment.

[931] **The Presiding Officer:** Before the amendment is withdrawn, are there any other comments?

[932] **Leighton Andrews:** Broadly, we are all seeking the same objective, but I wish to advance one argument. In this clause, there are two posts designated—the Auditor General for Wales and the Public Services Ombudsman for Wales—that, in a sense, are roles that are somewhat different, given their generality, to those of, say, the children's commissioner or the commissioner for older people. I would not necessarily want to include those positions in the Bill in the same way. Gwenda has advanced perfectly legitimate ways of carrying this out. There is a particular status for the auditor general, and Members who sit on the Audit Committee will understand what I mean by that. The more you broaden the roles in the Bill, the more you are in danger of producing a long list and, ultimately, weakening the special status of those two roles.

[933] **David Melding:** With respect, that is an argument not to disqualify the children's commissioner. Although you can make that argument, I do not think that that would reflect the consensus that has emerged here.

[934] **The Presiding Officer:** Before we lose sight of what I thought was a chink of agreement, perhaps the best approach, if we do not have agreement for a recommendation to amend, would be for me to write to the Secretary of State and circulate the draft to all committee members. Would that be appropriate?

[935] **David Melding:** I think that what we want is to say that one way of doing it would be to add to the list, and that another way would be to have an Order in Council. I think that we can live with that.

[936] **The Presiding Officer:** We will come back to this when we come to look at our report. We will add to that a draft letter to the Secretary of State. So, amendment 15 is withdrawn. We move to amendment 94, with which it would be convenient to take amendment 95.

[937] **Jocelyn Davies:** I propose amendment 94.

In clause 20, page 12, line 25, leave out 'may', and insert 'must'.

[938] I propose amendment 95.

In clause 22, page 13 line 23, at the end add the words 'save that different provision may not be made as between constituency Assembly Members and regional Assembly Members'.

[939] **Jocelyn Davies:** Will the Minister explain why 'may' has been used in that clause? It suggests that allowances might not be paid to Assembly Members.

[940] **Leighton Andrews:** As I understand it, it replicates what is in the Government of Wales Act 1998. Schedule 5 to the Bill provides for the Assembly to have power over:

‘Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister’.

[941] Therefore, Schedule 5 covers that, and it replicates what is in the Act.

[942] **Jocelyn Davies:** I accept that explanation. It did seem that there was a question mark over whether that would happen, but that is an assurance that it probably will.

[943] **Jane Hutt:** The word ‘shall’ might be better. Hugh might wish to come in on that.

[944] **Mr Rawlings:** It might help the committee if I were to explain that if what we were seeking to do was replicate what is in the 1998 Act, then we were careful to do that. If we had used the word ‘must’, someone might ask why, given that the 1998 Act had used the word ‘may’. Obviously, we have failed in that, as you are now asking why we have not changed it.

[945] I take you back to 1998; the reason why it said ‘must’ for paying salaries, rather than ‘may’ for paying allowances, is that allowances were thought, at that time, to be more contestable, and something that the Assembly would need to consciously adopt for its Members, whereas everyone would have expected salaries to be payable. Therefore, what was done in 1998 was to draft the Bill, and then the Act, in a way that gave the Assembly a decision, namely whether it wanted to pay allowances or not. All that we have done this time is to continue that discretion.

[946] **The Presiding Officer:** Is amendment 94 withdrawn?

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

[948] **Ieuan Wyn Jones:** Yr wyf eisiau trafodaeth ar welliant 95, oherwydd mae cymal 22, yn arbennig 22(1), yn caniatáu darpariaeth wahanol o dan adran 20 neu 21 am achosion gwahanol, sy'n golygu y gallwch chi felly roi cyflogau gwahanol i wahanol fathau o Aelodau. Dyna sut yr wyf innau'n darllen y cymal. Mae hynny'n golygu, hyd y gwelaf i, fod modd, mewn theori, ichi wahaniaethu rhwng cyflog Aelodau etholaethol ac Aelodau a etholwyd ar y rhestr. Felly, yr wyf eisiau gwybod a yw hynny'n fwriad, neu a yw hynny'n bosibl. Y cwestiwn sy'n codi yw, a yw hi'n bosibl i hynny ddigwydd ac, os felly, byddai'n well gen i ein bod ni'n pasio gwelliant sy'n rhwystro hynny. Hoffwn gael gwybod gan y Llywodraeth a yw ei dehongliad hi yn debyg i'm dehongliad innau, sef bod modd talu cyflogau gwahanol. Os yw hynny'n bosibl, oni fyddai'n well inni ei gwneud yn berffaith glir na fyddai hynny'n dderbyniol?

Ieuan Wyn Jones: I would like a discussion on amendment 95 because clause 22, particularly 22(1), allows for different provision to be made under section 20 or 21 for different cases, which means that you can therefore provide different salaries to different types of Members. That is how I read that clause. That means, as far as I can see, that there is a way, in theory, in which it is possible to distinguish between the salaries of constituency Members and list Members. Therefore, I would like to know whether that is the intention, or whether that is possible. This gives rise to the question of whether it is possible for that to happen and, if so, I would rather that we pass an amendment that prevents that. I would like to know from the Government whether its interpretation is similar to mine, namely that it is possible to set different salary levels. If that is possible, would it not be better that we make it perfectly clear that that would

not be acceptable?

[949] **Jane Hutt:** This goes back to the 1998 Act, in which we now have this clause of determination or direction that states ‘may provide for different allowances for different cases’, so it is for different allowances for different cases.

[950] **Ieuan Wyn Jones:** What about salaries?

[951] **Jane Hutt:** Does that include salaries?

[952] **Mr Rawlings:** No, it does not. That covers allowances.

[953] **Jane Hutt:** What we are talking about for the purposes of your amendment—

[954] **Ieuan Wyn Jones:** For the purposes of my amendment, I seek clarification as to whether it is possible, under the provisions of this Act, to have different salaries for constituency Assembly Members and regional Assembly Members. If the answer is ‘yes’, then I want a provision included that prevents that from happening.

[955] **Leighton Andrews:** I do not know the answer to that question, but Ieuan has raised a very interesting question, which had not occurred to me before, namely that it might be possible to have different salaries, allowances and expenses for regional and constituency Members, and I would have thought that that might find a great deal of favour in parts of the Assembly. So, I certainly would not want to agree to any clause that would rule it out on a political basis.

[956] **Ieuan Wyn Jones:** I think that, in a sense, we have flushed them out.

[957] Mae'n berffaith amlwg mai dyna pam mae hynny yn y Mesur. Yr oeddwn yn ceisio cadarnhad mai dyna oedd bwriad y Llywodraeth. Efallai nad oedd aelodau o'r pwyllgor hwn wedi ystyried mai dyna oedd y bwriad, ond mae'n amlwg o'r geiriad fod modd ichi wneud y gwahaniaeth hwnnw. Rhaid ichi sylweddoli bod egwyddor yma—egwyddor yr ydym wedi'i mabwysiadu fel Cynulliad ers 1999—sef nad oes gwahaniaeth rhwng Aelod sydd wedi'i ethol ar restr neu mewn etholaeth—ac yr wyf yn siarad fel Aelod etholaeth, fel yr ydych oll. Ni chredaf y dylid ystyried Aelodau sydd wedi'u hethol o'r rhestr yn wahanol mewn unrhyw ffordd ac felly'n haeddu cael system wahanol.

It is perfectly obvious that that is why it is in the Bill. I was seeking confirmation that that was the Government's intention. Members of this committee may not have considered that that was the intention, but it is clear from the wording that you could draw that distinction. You must realise that there is a principle here—a principle that we have adopted as an Assembly since 1999—namely that there is no difference between a Member elected on the list or for a constituency—and I speak as a constituency Member, as are you all. I do not believe that Members who have been elected from the list should be considered differently in any way to warrant having a different system.

7.00 p.m.

[958] Mae'n berffaith amlwg i mi bod cymal 22(1) wedi'i roi i mewn er mwyn caniatáu i hynny ddigwydd. Fel mater o egwyddor, yr wyf am i chi barhau i gadarnhau nad ydych yn gweld y dylid bod gwahaniaeth rhwng Aelodau o'r ddau fath. Pe bai gwahaniaeth, byddwch yn rhannu'r Cynulliad

It is quite evident to me that clause 22(1) has been inserted in order to allow that to happen. As a matter of principle, I want you to continue to affirm that you do not see that there should be any difference between those two types of Members. If there was a difference, you would be dividing the

ar unwaith, a byddai'n golygu eich bod yn tanbrizio gwerth Aelodau rhanbarthol. Dylem barchu rolau gwahanol yr Aelodau. Maent yn cyfrannu mewn ffyrdd ychydig yn wahanol i'w gilydd ond credaf fod rhaid inni, ar sail egwyddor, dderbyn bod y ddau'n gyfartal o ran cyflog a lwfansau.

Assembly at once, and would mean that you hold regional Members in low esteem. We should respect the different roles of Members. They have slightly different contributions to make but, in principle, we must accept that both are equal in terms of salaries and allowances.

[959] **Jane Hutt:** I will just confirm that clause 22(1) states that 'Different provision may be made', not 'will be made'. Obviously, we will have an Assembly commission whose members will also have views about this, as Leighton has expressed. This is a provision in the Act. We had a provision in the Government of Wales Act 1998 on allowances that we have lived with and no-one has questioned for the past seven years. This provision is available as a result of this clause. I have to confirm that, because that is what you are asking me. It is 'may be made', and not 'will be made'.

[960] **Nick Bourne:** I appreciate that the Minister will want to discuss this, because I think that she was taken slightly by surprise by this because she thought initially that it was on expenses. We had the difference on expenses for very good reasons. There are different allowances. For example, if you are Cardiff based, you get a lower housing allowance, which is understandable. That is easily defensible, because people representing Cardiff constituencies would not need a second home as a base in Cardiff. That is quite different.

[961] However, I think that this goes to the heart of the way in which we have operated for the past two Assemblies. It takes it even further than this division in terms of first-past-the-post Members not standing on the list. There is a danger. I wonder whether the Minister would go so far as to say that she would seek guidance. Given that we have previously been guided by the Senior Salaries Review Body in terms of our allowances and salaries, would she expect that to continue? I really think that it would undermine the work of the Assembly if we started paying different salaries to backbench Assembly Members, though Ministers and Chairs of committees are obviously different. Bearing in mind that all parties may have some regional and some constituency Members, I think that different salaries would undermine the quality of Assembly Members that we have currently in a potentially quite dangerous way.

[962] I readily admit that I speak with a special pleading, but I think that there is an issue of the equality that we have enjoyed in the first two Assemblies.

[963] **Jane Hutt:** All that I can say is—

[964] **The Presiding Officer:** Jocelyn Davies will speak first, Minister. Then you can respond.

[965] **Jane Hutt:** I am sorry.

[966] **Jocelyn Davies:** I was assuming that this allowed us to pay extra salaries to Chairs of subject committees and to vary salaries—not to distinguish between constituency and first-past-the-post Members but to recognise extra responsibilities that Assembly Members hold in the Assembly. It does seem as though Government Members agree with me, but it would help if the Minister would confirm that she does not envisage, and is not taken with the idea of, discrimination between different types of Assembly Members.

[967] **Jane Hutt:** I think that it has been helpful to bring out that point, Jocelyn. We already differentiate, as you say, in terms of salaries, ultimately, for different cases. I think that I can give the assurance, certainly as far as taking this to the Senior Salaries Review

Body is concerned, that that would be our intention.

[968] **Ieuan Wyn Jones:** Derbyniaf fod y Gweinidog o dan ychydig o anfantais gan nad yw'r holl wybodaeth ar gael ganddi ynghylch yr hyn a ellir ei gynnwys yng nghymal 22(1). Yn hytrach na fy mod yn tynnu'r gwelliant yn ei ôl neu yn ei wthio i bleidlais, a fyddai modd gohirio'r drafodaeth ar y gwelliant hwnnw i ganiatáu i'r Gweinidog ddod yn ôl gyda rhywbeth mwy clir yn y pwyllgor nesaf? A yw'r Gweinidog yn fodlon gwneud hynny?

Ieuan Wyn Jones: I accept that the Minister is at a slight disadvantage because not all of the information regarding what can be included in clause 22(1) is available to her at present. Rather than withdrawing the amendment or putting it to the vote, would it be possible to postpone the debate on that amendment to allow the Minister to come back with something clearer in the next committee meeting? Is the Minister willing to do that?

[969] **Jane Hutt:** I can certainly put into writing what I have said, if that would be helpful.

[970] **Ieuan Wyn Jones:** The only clarification that I need, Minister, is whether the clause as drafted allows salaries to be differentiated.

[971] **Jane Hutt:** Yes, it does.

[972] **Ieuan Wyn Jones:** It does?

[973] **Jane Hutt:** Absolutely—as it does at present.

[974] **Ieuan Wyn Jones:** If we are agreed that that is the case, and if we are agreed that you do not intend to do it, why is that not clarified in the Bill?

[975] **Jane Hutt:** The Bill allows this different provision to be available to us and to future Assembly commissions, which will undoubtedly go to the SSRB with any proposal in terms of salary arrangements and changes. It is inappropriate for us to make that kind of intervention at this stage.

[976] **Leighton Andrews:** Could we clarify the current basis for differentiating payments for Members—backbenchers and Chairs of committees and so on—as that might be helpful?

[977] **Mr Jones:** Well, they would under section 16(4) of the Government of Wales Act 1998.

[978] **Leighton Andrews:** This is, therefore, a replication of what was open to us previously, is it?

[979] **Mr Jones:** Yes, exactly the same.

[980] **Leighton Andrews:** So, until Ieuan Wyn had advanced this amendment to suggest that it could be used in the way in which he is suggesting, all that we were doing was—

[981] **Mr Jones:** The only difference is that, under the present Act, it does not relate to salaries.

[982] **Leighton Andrews:** However, we are paying differential salaries, so on what basis are we doing that?

[983] **Jocelyn Davies:** Extra responsibility allowances.

[984] **Jane Hutt:** Through allowances.

[985] **Leighton Andrews:** Okay. That was just what I wanted to understand.

[986] **Jocelyn Davies:** If, for example, as is often the case in Westminster, an Assembly Member has another job, this provision could be used to reduce his or her salary here.

[987] **Mr Rawlings:** There is separate provision for that.

[988] **Jocelyn Davies:** I know that it automatically happens if you are a Member of the House of Commons.

[989] **Nick Bourne:** Or the European Parliament.

[990] **Jocelyn Davies:** Or the European Parliament. However, you could have another job, and it may not be one of those. You could be a barrister or an accountant, or hold another full-time job. This provision could then be used, if the Assembly saw fit in the future, to reduce your salary, because it was considered that you did not attend here full time.

[991] **Jane Hutt:** Yes, it could. You could use clause 22.

[992] **Jocelyn Davies:** We do not have to mention individuals. It is something that is common in politics. People hold full-time jobs elsewhere. It happens. However, this could be used.

[993] **Nick Bourne:** In response to the Minister's earlier request about the letter, I would certainly value that, Jane, if you are able to do that.

[994] **Ieuan Wyn Jones:** Os yw'r **Ieuan Wyn Jones:** If the Minister will draft Gweinidog am ddod â llythyr gerbron, ni a letter, I will not push this amendment to a wthiaf y gwelliant hwn i bleidlais. vote.

[995] **Y Llywydd:** Symudwn ymlaen at **The Presiding Officer:** We will move on to welliant 16, felly. amendment 16, therefore.

[996] **David Melding:** I propose amendment 16.

In clause 23, add a new subsection (2) and renumber subsequent subsections accordingly:

'(2) The oath is to be taken (or the affirmation made) in public in the Assembly Chamber'.

[997] We think that it would be more dignified to take the oath in public in our wonderful new Chamber. I think that this would reflect standard practice in other institutions—not that we should emulate them for the sake of it. Rather than doing it behind closed doors, all elected Members should be proud to do this in public. We propose, therefore, that it is done in the Chamber.

7.10 p.m.

[998] **Val Lloyd:** I understand where the amendment is coming from, but I see no need for it, as it can be dealt with under Standing Orders, and might be better left to the Standing Orders committee. It replicates the current provision under the Government of Wales Act 1998.

[999] **Jocelyn Davies:** Anything that can be left to Standing Orders should be left to Standing Orders.

[1000] **Leighton Andrews:** I have a lot of sympathy with what David Melding suggests. It would be excellent to see all Assembly Members taking the oath in whichever way they wish to take it in public rather than behind closed doors. However, I will agree, on this occasion, that perhaps it is a matter for Standing Orders, but it is certainly something that we should be able to encourage.

[1001] **David Melding:** If the Minister would indicate sympathy to pursue this through Standing Orders, we would be happy to withdraw the amendment.

[1002] **Jocelyn Davies:** I did not say that it was going to happen. [*Laughter.*]

[1003] **Jane Hutt:** I can tell you that I fully support this going to the Standing Orders committee.

[1004] **David Melding:** Then we will withdraw the amendment.

[1005] **The Presiding Officer:** Amendment 16, therefore, with relief, is withdrawn.

[1006] **Ieuan Wyn Jones:** I propose amendment 96.

Clause 25, page 15, line 29:

Delete the word 'must' and replace with the word 'may'; and

after the word 'election' insert the words

'and must within 21 days of the date of a general election'.

[1007] Yr ydym wedi cael rhyw gymaint o drafodaeth ar yr egwyddor hon eisoes pan ddywedasom fod rhaid i'r Cynulliad gyfarfod o fewn saith niwrnod i etholiad a'n bod yn meddwl y dylid caniatáu 21 diwrnod. Mae cymal 25 yn dweud bod rhaid i'r Cynulliad ethol Llywydd yn ei gyfarfod cyntaf, ond rhaid i'r cyfarfod cyntaf fod o fewn saith niwrnod. Gwnaf yr un math o bwynt ac a wneuthum yn y drafodaeth flaenorol, sef ni welaf pam y mae'n rhaid cynnwys y gair '*must*' yn y fan hon, am wahanol resymau. Er enghraifft, gallai rhywun ragweld sefyllfa lle na fyddai'n bosibl cyrraedd cytundeb ar ethol Llywydd o fewn y saith niwrnod. Nid yw'r sefyllfa'n cyfateb â'r sefyllfa gyfredol oherwydd, fel yr wyf yn ei ddeall, mae'r Llywydd yn darfod yn ei swydd ar ddiwrnod yr etholiad ond, o dan y Mesur hwn, byddai'r Llywydd presennol yn aros yn ei swydd nes bod Llywydd newydd yn cael ei ethol. Felly, nid wyf yn hollol siŵr pam mae'n rhaid ethol Llywydd o fewn saith niwrnod. Cymeraf mai dyma sydd yn y Ddeddf bresennol, ond gan ein bod wedi newid y cymal hwnnw yn y Mesur hwn, ni welaf pam y dylai fod

We have already had some discussion on this principle, when we said that the Assembly must meet within seven days of an election being held and that we think that we should allow 21 days. Clause 25 states that the Assembly must elect a Presiding Officer at its first meeting, but the first meeting must be held within seven days. I make the same sort of point as I made in the previous discussion, namely that I do not see why the word '*must*' has to be included here, for various reasons. For example, one could foresee a situation in which it would not be possible to reach an agreement on electing the Presiding Officer within seven days. That situation does not accord with the current situation because, as I understand it, at present, the Presiding Officer leaves office on the day of the election, but, under this Bill, the current Presiding Officer would stay in office until the new Presiding Officer was elected. Therefore, I am not entirely sure why a Presiding Officer must be elected within seven days. I assume that this is what is contained in the current Act, but given that we have changed that particular

rheidrwydd ar y Cynulliad i ethol Llywydd o fewn saith niwrnod. Gallwn ragweld amgylchiadau lle byddai angen cymryd mwy o amser. Yn naturiol, mae pwynt yn dod pan fo rhaid penderfynu faint o amser y dylai hynny fod, ac awgrymaf 21 diwrnod eto.

clause in this Bill, I do not see why the Assembly would have to elect a Presiding Officer within seven days. I could foresee a situation arising in which we would need more time to decide. Naturally, a point would come when you would have to decide how long that should be, and, again, I suggest 21 days.

[1008] **Y Llywydd:** Efallai y byddai'n hwylus i ni drafod gwelliannau 41, 42, 43, 44 a 45 y Democratiaid Rhyddfrydol yn awr hefyd. Mike?

The Presiding Officer: Perhaps it would be appropriate for us to discuss the Liberal Democrat amendments 41, 42, 43, 44 and 45 now. Mike?

[1009] **Michael German:** I propose amendment 41.

Clause 25(1)(a), page 15, line 30—after 'a', insert 'acting'.

[1010] I propose amendment 42.

Clause 25(1)(a), page 15, line 30—leave out from 'referred'.

[1011] I propose amendment 43.

Clause 25(1)(b), page 15, line 32—leave out.

[1012] I propose amendment 44.

Clause 25, page 15—insert new subsection (2)(1):

The Assembly must, within 28 days following a general election, elect from among the Assembly Members—

(a) a presiding officer (referred to in this Act as the 'Presiding Officer'), and

(b) a deputy presiding officer (referred to in this Act as the 'Deputy Presiding Officer').

[1013] I propose amendment 45.

Clause 25(7), page 16, line 11—insert new subsection:

(c) different political groups, both of which are political groups without an executive role.

[1014] These are similar amendments primarily because you can alter the balance of power in the National Assembly by the election of the Presiding Officer and Deputy Presiding Officer. Our amendments leave you a number of choices as to how to do it. You could simply continue with the current Presiding Officer so that, if the Presiding Officer had stood for election after the previous Presiding Officer, that Presiding Officer could remain in place until such time as you elect your Government. So you then have a Presiding Officer in place to carry out the business of maintaining the fabric of the institution.

[1015] The second alternative would be not to elect a Deputy Presiding Officer to ensure that you did not upset the political balance, and then the Deputy Presiding Officer could come from either the Government or the non-Government side depending on which side the Presiding Officer's party was placed.

[1016] Thirdly, where the Presiding Officer was not a candidate or had been defeated in the election, there would be a route for an acting Presiding Officer to be elected for the period from when you first met until the election of your First Minister.

[1017] I think that we are all aware of the difficulties that we face in terms of the balance that could be altered by having the Deputy Presiding Officer and the Presiding Officer from one side or the other. It could equally apply to one side or the other. There is no rule at present which says that they could be on the Government side or on the opposition side, or one on each side, although logic would tell you that it would be more sensible to have one from each side; that way you do not greatly affect the balance of the institution as a whole.

[1018] If you are going to have those sorts of discussions before you know which is the Government side and which is the non-Government side, you may need some time after an election that is inconclusive in terms of majority, which is more likely than not given our current set-up, in order to work those conditions together.

[1019] It was put to us at the last discussion that this was the same as in Scotland, but the Scottish situation is not as tight as the situation here. I always remember the discussion between parties prior to the 1997 general election on the Government of Wales Bill, which eventually came out. It was discussed that the end-product—as the First Minister has frequently said in this building and in the media—would be a situation designed so that Labour would either have a small majority or no majority at all. That situation will continue. It means that we need to have that time.

[1020] One mechanism or another has to ensure that the election of a Presiding Officer or a Deputy Presiding Officer does not affect the subsequent election of the Government and leaves it open to the Assembly as a whole to choose its Government. Otherwise, we might find ourselves in the rather strange position of having to have a Government which has an artificial majority because of a mistake that was made or not made earlier, between the seventh day and the twenty-first day. One way or another, a mechanism needs to be found to deal with that. The current Bill does not allow us, or provide us with, that opportunity. I think that it is important that the election of a Government and a full-time Presiding Officer and Deputy Presiding Officer should be taken simultaneously, which means that we need some time after the election to do that.

[1021] **David Melding:** Could I ask Peter Jones to interpret clause 25(7)? Does it assume that there is a Government or, if we do meet within seven days and there is no Government, then, in effect, there are no restrictions and we can elect a Presiding Officer and a Deputy Presiding Officer from whichever parties we want? Or would sub-clause 7 then apply 21 days later when a Government is formed? You may end up finding that the Deputy Presiding Officer is from a party that is in the Executive, as is the Presiding Officer; is he or she then disqualified?

[1022] **Mr Jones:** Something would have to happen. [*Laughter.*]

[1023] **Gwenda Thomas:** I feel that amendment 6 right through to amendment 45 tie in to amendments that the committee considered on Monday, including, for example, amendments 85 and 87 from Plaid Cymru. I was not at the meeting, but I understand that there was discussion that was relevant then and is relevant now. Again, I do not feel that there is a need for this. I cannot see why the Assembly could not elect a PO, and, if it then became apparent that that Member became a member of the administration, there could be a resignation. I think that we are just proposing a complication and that the Bill does provide—that is how I feel; this is complicating the issue—[*Laughter.*]

7.20 p.m.

[1024] **The Presiding Officer:** Order. Do not laugh. This is a very serious matter.

[1025] **Gwenda Thomas:** The Bill provides the necessary flexibility to deal with all these clauses, quite frankly.

[1026] **Ieuan Wyn Jones:** David has asked a perfectly reasonable question. Let us assume, Gwenda, that we come back and there is no Government—no-one is a member of the Executive. Clause 25(7) envisages an Executive at the time that the PO is being appointed—

[1027] **Michael German:** And the DPO.

[1028] **Ieuan Wyn Jones:** Let me just finish. And the DPO. The reality is, however, that, because of how the provisions in what will become the Act have been constructed, you have to come back within seven days and appoint a PO first, and because there is no Executive, the provisions of clause 25(7)(b), cannot apply. So, what we are saying—

[1029] **Gwenda Thomas:** No—

[1030] **Ieuan Wyn Jones:** Let me just finish my argument. For the sake of argument, what we are saying is that if we were to come back here and appoint a PO and a deputy, and, a week later, formed a Government of which the PO and the DPO were members, they would both have to resign. So, why have we come back?

[1031] **Gwenda Thomas:** Should we not tie this in with Schedule 11, which deals with transitional arrangements, so that we understand fully—*[Laughter.]* You can laugh, but I cannot because I do not understand the complexity of Schedule 11, which may throw light on what will happen in transition. It is important to consider the implications of Schedule 11 as well.

[1032] **Michael German:** All that Schedule 11 says, in paragraph 15, is that the reference in clause 25(1) to the first Assembly meeting following a general election includes a reference to the first meeting of the Assembly following the 2007 election, which is the next one.

[1033] **Gwenda Thomas:** But do you not think that there is the flexibility there to deal with the matter?

[1034] **Michael German:** No. There is no flexibility, because the law says that, of the DPO and the PO, one can be in the Executive, and one cannot be, but neither cannot be in the Executive. Since we do not know which parties will be in the Executive on the seventh day, you cannot comply with clause 25(7)(b).

[1035] **Gwenda Thomas:** Your amendment would mean that both the PO and the DPO could not come from opposition parties either.

[1036] **Michael German:** Yes, they could. There is nothing in this at the moment—and that is the problem—that says that you have to give mind to the balance of the Government, except that, at the point when you are required to elect a Presiding Officer and a Deputy Presiding Officer, clause 25(7)(b) states that only one of them, or neither, can be in a political group with an executive role. Since we do not know which groups will be in the executive role, you cannot comply with clause 25(7)(b) at that time. That is a *sine qua non*—is that the phrase that lawyers use?

[1037] **Mr Jones:** I would agree that that is a rule—the law—and it is not qualified. As I

said earlier, something would have to happen—either the DPO or the PO would have to resign, or both.

[1038] **Ann Jones:** You are only resigning the office.

[1039] **David Melding:** At a cost of £40,000, which is the cost at the minute, I believe. They would be entitled to severance pay under the existing arrangements, would they not? There are all sorts of complications.

[1040] **Jane Hutt:** Not to resign the seat, though.

[1041] **Nick Bourne:** No, to resign from the post. With respect, there is something that needs to be looked at here in terms of the difficulties that could arise. In fairness, they can still arise within 21 days; it just makes it a little less likely. I do not think that there is the flexibility here to cover it, because it is a very difficult situation in terms of knowing exactly how to cover it. But it could put both your PO and your DPO in an extreme position having to resign, and that clearly is not desirable in terms of stability, quite apart from any financial consequences that there might be.

[1042] **Ann Jones:** I see that the PO is thinking of resigning because he will get £40,000.

[1043] **Michael German:** He has lost the batteries from his laptop.

[1044] **Ann Jones:** I think that we really have to look at what the public is saying. Part of the argument on Monday was that we have the election and people are going to expect to see us moving forward. People will look at the 21 days and say, ‘Well, what have we elected everyone for?’. I was not aware of the technicality that David mentioned regarding severance pay. My understanding is that if you resign, your seat—

[1045] **David Melding:** The Presiding Officer gets severance pay as well.

[1046] **Ann Jones:** We will have to look at that, perhaps. That certainly puts a new perspective on a lot of things, but I did not think that that was necessarily the case. Is that the case even if we pass a resolution via the Assembly?

[1047] **Jocelyn Davies:** In terms of the provision as it is written here, I think that we would probably find ourselves, after the seven days, choosing the Presiding Officer and the deputy from among Members who we do not expect to be in the Executive.

[1048] **Nick Bourne:** Or at least one of them.

[1049] **Jocelyn Davies:** Yes. So, you would be choosing your Presiding Officer and deputy from a small pool because you would want to avoid the situation wherein people would have to resign. I have concerns about that. This is probably what would happen: we would eliminate, from our choice of Presiding Officer and deputy, those who are likely to, or will possibly, end up in the Executive. I think that we could end up choosing at least one of those from a tiny group of people.

[1050] **Leighton Andrews:** I have been forced to look at the Bill, which is always very dangerous of course. Am I wrong in thinking that clause 25(9), which says that the Assembly may actually rule that the sub-clause that says that the PO and the DPO may not be in the same political group or must be in different political groups both of which are political groups with an executive role, can be put aside for a temporary period by a resolution supported by two-thirds of the Assembly? We seem here to have a way out of possibly part of that problem.

[1051] **Michael German:** The likelihood is that if you were in the position wherein the issue of how a Government will be formed is unknown because there is not a clear decision—and, on most occasions, that will be the case—you are then not able, I would have thought, to find two thirds of the Assembly that would set aside this matter while the issue of Government was being determined. To prejudice your Government in order to find yourself a chairperson for your non-meetings—because you do not have any meetings in those 21 days—would seem to me not to be the right political move to make if you are in with a possibility of being part of the Government.

[1052] **Jane Hutt:** We obviously had this debate on Monday, as Gwenda said, and we were clear then that we wanted to stick to the seven days, in line with the Scotland Act 1998. However, I would be prepared, if you withdrew the amendments, to take this back to look at some of the complexities that have been raised today and to bring it back to this committee.

[1053] **Ieuan Wyn Jones:** I know that you are saying that it is the same argument, but it is not precisely the same argument. You can meet within seven days, which is what you say should happen, but you need not actually do that. What I am saying is, ‘Yes, meet within seven days’, because you say that you are not prepared to amend it, but you do not have to do anything until then. What you cannot do is say to yourself, ‘We have to meet within seven days, we have to appoint the First Minister, we have to appoint the Presiding Officer and the deputy, but we do not know what sort of Government we are going to have’, because, as Mike said, very often, because of the electoral system that we have, we are not going to be in that position. We may be, but the likelihood is that we will not. Therefore, what you are saying is that you are forcing the Assembly to take decisions that, frankly, are not in the interest of the people of Wales because it would be better for there to be clarity about the Government and the set-up before you take these important decisions. It is absolutely ludicrous, in my view, to appoint a Presiding Officer only for him to have to resign within a week. Why do it? We are asking the Minister to look at whether there should be breathing space that would allow these things to happen, without our being forced by the Act into a situation that the Assembly might later regret. I am quite happy, as far as our amendment is concerned, for the Minister to have a look at it and come back with some more views.

7.30 p.m.

[1054] **The Presiding Officer:** Therefore, amendment 96 is withdrawn. Mike German, you have proposed amendment 41.

[1055] **Michael German:** There were number of subsequent amendments, too. Amendments 41, 42, 43 and 44 go together.

[1056] **Jane Hutt:** What about amendment 45?

[1057] **Michael German:** Amendment 45 would not be included. I think that I will come back to that later as it relates to the executive role, but does not relate to this matter specifically.

[1058] Actually, I think that it would be best to withdraw amendment 45 as well. It is amendment 46 that is on a different matter. I am prepared to withdraw up to amendment 45, if the Minister is going to come back with alternative proposals to deal with this very tricky issue. I do not think that this serves political interests or is in the interests of the people of Wales as a whole, after having an election that they will see frustrated by our having been forced to do things that are not helping the provision of a proper Government.

[1059] **The Presiding Officer:** Amendments 41, 42, 43, 44 and 45 are withdrawn, therefore.

We now move on to clause 27 and amendment 103.

[1060] **Nick Bourne:** I propose amendment 103 in the name of the Welsh Conservative group.

Clause 27, in paragraph (2), subsection (b), delete all and replace with:

‘one Assembly Member from each political group.’

[1061] This relates to the Assembly Commission and clause 27.

[1062] **Michael German:** On a point of order, Chair, I did not withdraw amendment 46, but I am perfectly prepared to concede to amendment 103, because its wording is better. I am therefore prepared to withdraw amendment 46.

[1063] **The Presiding Officer:** We can debate both amendments now, and then you can withdraw amendment 46.

[1064] **Nick Bourne:** I am grateful for that, Mike.

[1065] **Michael German:** Yours is better than mine.

[1066] **Nick Bourne:** The purpose of our proposed amendment to subsection 2 was to stipulate that there should be one Member from each political group, so we have deleted ‘four other Assembly Members’. This may be the intention of the Government—usually there will be four political groups, but there could be more and, conceivably, there could be fewer, although that seems unlikely. We therefore suggest ‘one Assembly Member from each political group’ because that would seem to be the best way of proceeding. I suppose that it is a bit like the Business Committee.

[1067] I appreciate that this matter could be covered in Standing Orders, which might be the answer that I am about to get, but so could many things. It could say in the Standing Orders that there should be Assembly Members rather than ‘four Assembly Members’. The Bill stipulates four, and I think that we need a little bit of clarity as to how those Assembly Members are to be appointed from political groups, otherwise they could all be appointed from the same group. That clearly would not be desirable from anybody’s point of view, but it is a possibility, and I suggest that we should go a little bit further with this amendment.

[1068] **Michael German:** We were also concerned about the possibility of having all Members from one political group. I would be happy if the Minister were to say that she agrees with this point and that she will bring it back to be looked at in Standing Orders, because it obviously gives that inclusion. That is probably a much better way of dealing with it.

[1069] **Jane Hutt:** I think that the point has been made. This is a matter for Standing Orders and I am happy to say that the way that we would provide for it would be to ensure that there is representation from all parties as appropriate. Scotland does not have it in its Bill, and I do think that we need it either.

[1070] **Jocelyn Davies:** Having a Member from all political parties could mean a lot of people, so I think that we need to think about that.

[1071] **Jane Hutt:** There are only four members, so—

[1072] **Jocelyn Davies:** However, if you say that you are leaving it to the Standing Orders, I

am pretty confident that you are not going to run amok.

[1073] **The Presiding Officer:** Amendments 103 and 46 are therefore withdrawn.

[1074] Symudwn at gymal 29, gan ddechrau We now move to clause 29, starting with
gyda gwelliant 97. amendment 97.

[1075] **Jocelyn Davies:** I propose amendment 97.

Leave out clause 29.

[1076] This is the d'Hondt formula. I will not ask the Minister to explain the formula to us—

[1077] **Ieuan Wyn Jones:** Oh, come on. I have been looking forward to it. [*Laughter.*]

[1078] **The Presiding Officer:** Order. I am certainly looking forward to it.

[1079] **Jocelyn Davies:** Well, the Minister might like to give us a run-down.

[1080] We have said all along that what could be left to Standing Orders should be left to Standing Orders, and I think that this is an ideal candidate for that. I remind the Minister to adopt rules that suit you whether you are in Government or not. I am not sure that you would be all that pleased with this if you were not the largest group.

[1081] I take you back to the Government of Wales Act 1998. We have been told that the best has been replicated from that Act. I think that there were about three and a bit lines that told us how we had to compose our committees in the last Act. It said that, as far as practicable, the balance of the parties in the Assembly should be reflected in the membership of committees. Those are just a few words, but we have found them to be a straitjacket on occasions. When we have wanted to change the size of committees and so on, we have been told that it is difficult because of those seven or eight words. We are now talking about more than a page to describe this very complicated formula. This is way over the top. It should be left to Standing Orders. There would be no problem at all in arranging committees, especially if we have similar wording, although perhaps not quite as strict, to that in the last Act. We would be much better off. To present us with this, when we have felt constrained when we have wanted to do things in the last few years, is an affront and I hope that you would agree that this is not appropriate.

[1082] **David Melding:** Are you minded to take our amendment with this?

[1083] **The Presiding Officer:** Yes. I am minded to take 97, 17, 56, 55 and 57 together. Is that helpful?

[1084] **David Melding:** I propose amendment 17.

Delete clause 29 and replace with:

'The composition of committees shall be determined by the procedures set out in Standing Orders and such procedures must generally have the effect of reflecting the overall representation of political groups in the Assembly in the composition of committees.'

[1085] We have a problem with this clause, because it introduces a very inflexible system. There are two problems. It could, effectively, restrict the size of committees to 10, if we are going to be proportionate to the size of each party. We have seen on the tables that if we go

down to eight, and certainly if we go down to six, there is a grossly disproportionate result whereby the largest party has four seats under the current configuration. I remind you that it is possible that, after the next election, group A could have 28 seats and B, C and D could join together to form a coalition with 32 seats—

[1086] **Leighton Andrews:** They are keen on this coalition.

[1087] **David Melding:** Under this system, a coalition Government, as constituted by law—which is what it would be; it would be legitimate if it presented a programme and got the confidence of the Assembly—would be disadvantaged on committees. So, it would be very difficult to run the Assembly—*[Interruption.]* You say ‘Ah’, but if we needed committees of six just to get through the workload, that would be precluded under these circumstances because you would have four Members from party A, namely the opposition, and two Members from the parties representing the Government. That is the absurdity of this position.

[1088] **Nick Bourne:** I will come in on that point, if I may. Before the Government Members get too excited about thwarting any possible coalition—it may be a long way into the future, but it could conceivably happen—I remind them that there is another possibility, and that is that they form themselves into a political group for these purposes and therefore dominate. It has implications for workload, as whichever is the largest party will have to have the lion’s share of the work. So, I do not quite understand—sorry, this is a long intervention—why we are moving away from something that is proportionate across the parties to something that will impose a much greater workload on one political party.

7.40 p.m.

[1089] **David Melding:** There are two flaws. First, we would have to have committees of at least eight members, probably 10, and even larger sometimes if other parties are returned, which will be very restrictive. There is also this potential flaw in that the party in opposition would be locked into having more seats than is proportionate, and more than the governing coalition. Therefore, returning to the old system of Standing Orders, that it should be broadly proportionate, is the best system. It seems a strange way of locking us in, basically, if we are on a system that has one party that is larger than the others—and is likely to be so for some time—but may not be receiving the Assembly’s confidence. I know that it is a leap of imagination, but you have to put yourself in that position to look at what is wholesome in a developing Welsh democracy. I am afraid that this has a heavy lace of partisan politics about it.

[1090] **Michael German:** I propose amendment 56.

Clause 29, page 18, line 11 to page 19, line 14, subsections (2) to (9)—leave out.

[1091] I propose amendment 55.

Clause 29, page 18, line 11, insert new section (2):

‘The members of any committee established by the Assembly under subsection (28)(1)

(a) shall be elected by the Assembly from among the Assembly members, and

(b) shall, unless the committee exists solely to provide advice, be elected so as to secure that, as far as is practicable, the balance of the parties in the Assembly is reflected in the membership of the committee.’

[1092] I propose amendment 57.

Clause 29, page 18, insert new section:

'(3) The committees established by the Assembly in 28(1) shall be as far as is practicable chaired by member of political parties in proportion to their member of the Assembly.'

[1093] I support all that. Two issues seem to arise from this. First, it is surely a matter for the National Assembly for Wales to determine its own rules on committees, and the current regime of having a statement about proportionality across the piece has managed us well. We have had discussion about how that should be provided, but it has worked reasonably well and comfortably for us. However, I do not see why it is that, in a Bill, you need to specify an arrangement that, I believe, is almost as complex as the arrangement for the committees for the Northern Ireland Assembly, which had a much more difficult job to do in trying to meet across a divide.

[1094] The second issue relates to my understanding—and perhaps I could ask the Clerk to confirm this—that, in the Members' research paper that we have had, and in the briefing from the Members' Research Service, it would appear that, in order to comply with this Act, we would have to have committees, if the current number of seats were to apply, of somewhere in the region of 10 Members per committee. Now, if that were the case, that would place an almost impossible burden on us all. Is that the inference that I should draw from the briefings that all political groupings have had from the Assembly Parliamentary Service? Could the Clerk or his adviser confirm that?

[1095] **Mr Silk:** I do not have that document in front of me, but my recollection is that that is the case.

[1096] **Michael German:** Thank you.

[1097] Therefore, if the current situation would require committees of 10, you can see the National Assembly's workload pattern spinning well over four days if you were to have an average number of measures going through in a given year. That alone seems absurd, because we would surely want to agree sizes of committees that reflected our position, and not some laid-down position that could well alter—even alter for the worse—if there was a different balance between the parties following the election. I cannot see the logic for why it has been prescribed in this way—in such a determined manner—when, for the last six or seven years, we have managed our own house. Beyond the issue of two or three-week cycles, I do not believe that it has caused us a great deal of trouble.

[1098] **Leighton Andrews:** I have had a quick glance at the Members' Research Service briefing, and what I saw did not seem to reflect entirely what Mike said.

[1099] **Michael German:** If I may intervene, I asked the Clerk to the Assembly whether the advice given to political groups here, including your group, was that which said that, under the current situation, you would require committees of 10. That was confirmed by the Clerk. Therefore, it is not my position—this is what you have put to you by the Clerk and the Assembly Parliamentary Service.

[1100] **Leighton Andrews:** Thank you for that pompous intervention. I am sorry, but the briefing that I have had, and I think my colleagues and our group have had, is that the reality is that committees of 10 or eight, under the d'Hondt formula, would, in practice, be the same as they have been for the past two and a half years in the Assembly. Therefore, for 10, it would be five Labour, two Conservative, two Plaid Cymru and one Liberal, and for eight it would be four Labour, two Plaid Cymru, one Conservative, and one Liberal. Therefore, there is no actual change on 10 or eight. There are issues, as I understand it, when it gets down to

smaller committees, which I think has been said. The d'Hondt mechanism has been used not only in Northern Ireland, where it is specified in the Northern Ireland Act 1998, but in the European Parliament and the Scottish Parliament. It is important that we have a fall-back position set down.

[1101] I have noticed with considerable interest over the past six months or so that the opposition has used its majority in the Assembly to set up, for example, special committees, such as the Committee on Rail Infrastructure and Improved Services, which I have been put on, where party balance is clearly not reflected in any way. Of course, it would always be open for a majority to overturn Standing Orders. However, it seems to me that we must have something laid down in legislation that provides a basis for fairness. Clearly, the way that things have started to operate here—and we have seen it, and been on the receiving end of it on several committees that the Assembly has now set up—means that we are moving away from party balance. That indicates why we must specify a position in legislation.

[1102] **The Presiding Officer:** I now have to call Paul Silk to respond to an earlier point about the research that was prepared.

[1103] **Mr Silk:** I now have the relevant document in front of me, and it says that committees of 10 Members each would give the best match to the current political balance.

[1104] **Ann Jones:** That agrees with what I said.

[1105] **Leighton Andrews:** Nor does it contradict what I said.

[1106] **Gwenda Thomas:** Is it not the case the d'Hondt mechanism would need to be a fall-back position only? Clause 29(8) states:

‘The provision may permit the Assembly to disapply subsections (2) to (7)’.

[1107] That means that, in the event of an agreement—and it is to be hoped that there would be an agreement—this would simply be to secure a fall-back position.

[1108] **Nick Bourne:** The fall-back is obviously the change to the d'Hondt mechanism.

[1109] **Gwenda Thomas:** However, you could disapply subsections (2) to (7).

[1110] **Nick Bourne:** Yes, you can, and then that is the fall-back, because if you do not do that, you have the d'Hondt mechanism.

[1111] **Gwenda Thomas:** Provided that there was a resolution by a two-thirds majority vote, subsections (2) to (7) need not apply.

[1112] **Nick Bourne:** Oh, yes, and another full moon, and we will be outside eating oysters. With respect—

[1113] **The Presiding Officer:** Some Members might be very keen on that. [*Laughter.*]

[1114] **Nick Bourne:** It is a very seductive thought at the moment. With respect, that means that it will be the d'Hondt mechanism unless we do something about it. Therefore, you cannot characterise that as a fall-back position—that is what is there.

[1115] **Gwenda Thomas:** You could not have perpetual disagreement.

[1116] **Nick Bourne:** I am beginning to wonder. It is what we have had so far. However, let

me say what I would have. In relation to what Leighton said, this applies only to subject committees, so the railway committee situation could arise in exactly the same way. Subject committees are safeguarded as membership has to be proportionate. The majority party is safeguarded in that a proportionate system is in place for subject committees. It is different for other committees. Perhaps you have a point on that matter, but this does not deal with it. It is quite separate. As I understand it, the d'Hondt mechanism would apply only to subject committees. I do not know whether Leighton wishes to intervene.

[1117] **The Presiding Officer:** I believe that Leighton wishes to speak later.

[1118] **Ieuan Wyn Jones:** I am not quite sure why my colleagues are being so measured in response to this clause. This is an awful clause; a dreadful clause.

[1119] **Jocelyn Davies:** I did say that it was an affront. [*Laughter.*]

[1120] **Ieuan Wyn Jones:** Yes. On my left, I was encouraged. Perhaps I should have said that I was looking more to colleagues on my right. I apologise, Jocelyn. I shall be taken to task later, no doubt.

[1121] This is a terrible clause. I have never seen anything like this in a Bill. It is done because it gives the Labour Party an advantage. That is all it is about. It is not about fairness. It is not about ensuring that we have committees that reflect political balance. It is about giving the Labour Party an advantage, and I think that we ought to say that that is the purpose of the clause. It is partisan.

[1122] **Leighton Andrews:** Oh, come on.

[1123] **Ieuan Wyn Jones:** Of course it is. I have never before seen any legislation in which it is set out that a Government can force through a measure to insist that a committee system can be set up only according to the Government's wishes. It has never happened before. As Jocelyn has made perfectly clear, the measure in the 1998 Act left the Assembly to do it.

7.50 p.m.

[1124] Leighton Andrews has not persuaded me with his railway committee argument; that is the worst example that he could have chosen. We have had subject committees that have worked very well. What is the Labour Party's problem with the current system? That is what I want to know. It has not persuaded me that there is a case for change. All it has persuaded me of is that it wants an advantage after the election.

[1125] **Ann Jones:** I would like to dispel this notion that everyone thinks that this is partisan in favour of the Labour Party—it is not. [*Laughter.*] You may laugh, but I will just say '2-1' and carry on. We are, hopefully, in a position whereby we can negotiate a position through. All this is based on the current numbers coming back post 2007, and everyone is getting rather excited about it. It may not necessarily be that way, and we would negotiate that. Clause 29(8) is the one that allows us to do it. We would go through proper negotiation, do it sensibly and, if it breaks down, as Gwenda said, and we cannot agree upon it, then the d'Hondt system is there. That is the safeguard.

[1126] Clause 29(9) goes one step further and gives independent Members, who are not members of political parties, a guaranteed place on a committee. The Bill, as drafted, safeguards them as well. That is the way forward, and that is the way that we should be going. I think that it is about how we interpret political balance, and if we could trust that that political balance would be properly interpreted, then I would agree that there would not be a need for d'Hondt, but we have seen this situation arising with things such as the railway

committee and the Committee on School Funding. We have seen that happening under this coalition, but, unless you had formed a coalition party, you would not be a coalition, and we would then still have the four parties negotiating the seats, and I would hope that we could do that. You would be able to get that two-thirds agreement because you would have agreed the membership arrangements for your committees. We must dispel this myth that it is partisan.

[1127] **Nick Bourne:** I am sorry Ann, but it is.

[1128] **David Melding:** Only Labour wants it, so how can it not be partisan?

[1129] **The Presiding Officer:** Order.

[1130] **Ann Jones:** There is a party here with six Members, which accounts for one tenth of all Members, yet it gets a seat on every committee. If you were to play the political game and take political balance right through, that might not necessarily be the case, because we might say, 'That political party is only entitled to x number of seats, and we would allow it to have only those seats in committees'. However, we do not say that. In a way, therefore, that is the reverse side of the coin. In terms of where we are, the Bill, as drafted, protects everyone, including independent Members.

[1131] **Jocelyn Davies:** One of the problems, Ann, is that the current Act says that we must have political balance on each committee. If it said 'across' committees, it would be different. Even those couple of words are restrictive. If it said 'across' committees, there would have been no problem in that. All I am saying is that having more words does not necessarily mean that you have more flexibility, and a clause that said 'where reasonably practicable, committees across the Assembly will reflect the political balance' could do away with all of this. This is a formula that does advantage the largest political group, without a doubt.

[1132] **Jane Hutt:** We must also recognise, and I am sure that you do, that the Bill provides for real new opportunities as far as we how we manage our committee structure in the Assembly. I know that the Panel of Chairs has been eagerly discussing this in terms of the constricted arrangements that we have now. So, it enables us to decide on our committee structure, as well as on the size of our committees, and it also provides for all Members to be entitled to a place on a committee. It overrides d'Hondt—you recognise that—to say that we are entitling all Members to a place on a committee.

[1133] I want to go back to the points that were made earlier. The d'Hondt mechanism is a fall-back position in terms of its intention, and we do not want to predict what the committee structure will look like after 2007. I am saying that, as a Government—

[1134] **Nick Bourne:** On a point of order, where does it say that it is a fall-back position?

[1135] **The Presiding Officer:** Order. To reply to that bogus point of order, it is not a point of order; it is a point of debate.

[1136] **Jane Hutt:** Nick, this clause is not designed to fetter the next Assembly, and this is a matter of record. We might decide that we want to have small committees of six members. Were we to decide that, as Gwenda said, we would need a two-thirds majority to disapply d'Hondt. Do we not recognise that this is about achieving consensus? [ASSEMBLY MEMBERS: 'Come on, Jane.'] This is about how we have managed the last seven years, during which time, in the Business Committee, we have had the two-thirds majority requirement to enable us to achieve such consensus. So, the consensus has delivered, and, David, I think that you made the point that, in terms of the current committee structure, the Welsh Conservatives and Plaid Cymru have two members each on some committees of eight members, and that has been achieved by reaching consensus through negotiation. What we are saying is that we

would see this as a clause that is not to fetter the next Assembly, but, in terms of taking this forward, it provides some surety, through legislation, that d'Hondt is there to protect the rights of groups and Members that have been identified today. That should now move us to a vote.

[1137] **The Presiding Officer:** Yes, but not before Nick Bourne, Ieuan Wyn Jones and Mike German have closed the debate.

[1138] **Nick Bourne:** Comments such as 'This is a way of achieving consensus' are bound to provoke us. I am getting annoyed. This is in no way about achieving consensus. If it is not a partisan move by one political party, we are bound to ask why it is that only one political party wants it. At the moment, we are protected, Jane. We are not just protected by consensus; we are protected by what is in the Act, which requires party political balance and proportionality. Unless I am mistaken, it has also meant that independent Members are represented on committees. I do not think that it is a matter of grace on the part of the Labour Party; it is in the Act. Let us get that quite clear.

[1139] If you seriously think that we will not have d'Hondt, why on earth put it in the Bill? Do you seriously think that the statutory provisions do not hamper people, and that you will not be fettered by a statutory provision? Of course we will be hampered by statutory provisions. That is what statutes do—they introduce laws by which you are bound. This law will hamper us in the next Assembly, and it will, in all probability, unless something unforeseen happens, give an advantage to the largest party, which, let us face it, is likely to be the Labour Party, in terms of committee membership. It will do that. If that is what you really want to do on the face of the Bill, be honest about it. It will do that, but it will also give you a massive imposition in terms of workload. However, let us be honest about it and say that this is not about consensus working, but about delivering something for the Labour Party. Leighton was, perhaps, honest about it, because he objects to what has happened in relation to a couple of sub-committees that we have set up, on the railways and school funding. Do not lose sight of the larger picture. By and large, the committee structure that we have had over two Assemblies has worked pretty well in terms of committee composition and in driving the Government's agenda with, obviously, input from opposition parties. You are putting all that at risk. If you want a one-party state, then say so now, and we will know where we are. That is what it is beginning to look like to me. To suggest that this is consensus politics is risible, and you must know that in your heart of hearts.

8.00 p.m.

[1140] **Michael German:** This is a nasty little nugget of a clause, and it takes power away from the National Assembly. It is in no way a back-door approach. The only place that it is used is in the Northern Ireland Assembly, when it is functioning, and it had a particular job to do in order to manage the very difficult political balance in that Assembly. It was abandoned in the Scottish Parliament. Leighton said that it applies there, but it does not. It was abandoned because it was unworkable. I suspect that we will have to face some misery with this clause if it exists. It is in no way a back-stop for anyone. This is the front-door method by which we will have to proceed. If we have to proceed with this method, we may have to fight to get rid of it when we eventually—after six or seven years of it—find that it is fatally flawed and will not work. Given that it will give some groups more of an advantage than others, there is bound to be a feeling that the group that has the biggest advantage from it, which is the largest group because of the way in which the formula works, will not want to be a part of the two-thirds majority. That seems to me to be an obvious situation. If you are advantaged in a political situation of this sort, whereby you give yourself an advantage vote, you will not want to see that disappear. How you can say that we will all agree that it will be overturned I do not know.

[1141] The current arrangement has given us the broad consensus around proportionality. It has worked well, and will not apply—this clause or any other clause—to anything else but the subject committees of the Assembly. It does not apply to committees that provide advice to the National Assembly as a whole. I do not see any reason why that sort of arrangement cannot be put in, nor do I see any reason why we cannot go back to leaving the National Assembly to make its own way forward on this, through our Standing Orders and our own arrangements, provided that we have an overarching proportionality clause in the Bill. It is interference of a kind that must be deemed to be partisan, as there is no other reason for it being there. It was not in the White Paper, which talked about it as being broadly proportional, but suddenly it has been brought forward as a major new clause in the Bill. There must be some reason for that; I can only think that the party that wrote it is feeling under stress in some way.

[1142] **Ieuan Wyn Jones:** One thing that I do not understand about what the Business Minister is saying is that she says that this is a fall-back if the Assembly does not agree to vary it. However, there is no doubt whatsoever that, as written, this gives the Labour Party an in-built advantage, as I think David, Jocelyn and Mike have elucidated. If it gives you an advantage, why on earth would you want to see it varied? That is your starting position. You see the result of the next Assembly elections in 2007, find that you are the largest party, then people will have worked out, under d'Hondt, what the committee places will be. What on earth would possess you to vary that to give an advantage to other parties? All that you would say is, 'Unless the new system gives us this, we will not disapply d'Hondt, because the only group that is disadvantaged by its disapplication is us'. You are bound to say under those circumstances, 'Let us try to reach agreement, provided, of course, that you give us at least what we would have under d'Hondt'. That would have to be your starting position. I cannot see what benefit there would be in negotiating anything else.

[1143] When I said that this was a partisan measure, one of my colleagues pointed out that this is supported only by the Labour Party. No other political party supports this. To be blunt, if it disadvantages the Labour Party, it disadvantages everyone else. What you are doing, in a way, is building up considerable resentment, with no advantage to the Assembly. I urge the Minister to take back a very firm view that the Government should think again on this clause. It may be that you are in difficulty today and that you cannot do that because your political masters in London have said that under no circumstances will they agree to remove that provision.

[1144] **Leighton Andrews:** Oh, come on.

[1145] **Ieuan Wyn Jones:** That is where this has come from. Where else has it come from? It has come from you masters in London. So, I say to you, go back to them and tell them that the National Assembly is firmly of the view that this should be looked at again.

[1146] **Jane Hutt:** I think that we probably need to move to a vote, but I will say finally that we have to look at it from another perspective, in terms of the people of Wales. The disadvantage of having an Assembly where we have not been able to reach an agreement on determining the political balance of committees is much more important in terms of that argument. The flexibility remains with the Assembly regarding the committee structure and the size of committees, and this is providing a stable fall-back provision in the event of parties in the Assembly being unable to reach an agreement. That is key for the people of Wales. I suggest that we move to a vote.

[1147] **Nick Bourne:** There are proposals from different political groups, but I keep coming back to this point. It is not a fall-back procedure; it is the procedure that applies unless something else is done. It is not a fall-back, and to try to characterise it as such is deeply misleading.

[1148] **Y Llywydd:** A hoffech bleidlais ar welliant 97, Ieuan Wyn Jones? **The Presiding Officer:** Would you like a vote on amendment 97, Ieuan Wyn Jones?

[1149] **Ieuan Wyn Jones:** Hoffwn. **Ieuan Wyn Jones:** Yes.

*Gwelliant 97: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 97: For 5, Abstain 0, Against 5.*

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

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

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

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

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

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

*Gwrthodwyd y gwelliant.
Amendment defeated.*

*Gwelliant 17: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 17: For 5, Abstain 0, Against 5.*

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

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

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

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

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

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

*Gwrthodwyd y gwelliant.
Amendment defeated.*

[1150] **The Presiding Officer:** If amendment 56 is rejected, amendments 55 and 57 will fall.

*Gwelliant 56: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 56: 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
Hutt, Jane
Jones, Ann
Lloyd, Val

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.

[1151] **The Presiding Officer:** Therefore, amendments 55 and 57 have fallen. We have completed our consideration of amendments to nearly 20 clauses.

[1152] Yr ydym wedi trin rhan sylweddol o'r Mesur heno, felly yr wyf yn bwriadu dod â chyfarfod heno i ben a gohirio tan ein cyfarfod nesaf—a fydd mewn lle gwell. We have dealt with a substantial part of the Bill tonight, and so I intend to bring this meeting to a close and adjourn until our next meeting—which will be in a better place.

Daeth y cyfarfod i ben am 8.08 p.m.

The meeting ended at 8.08 p.m.