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Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

22/5/2017

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol

Committee members in attendance

Yr Arglwydd / Lord Dafydd Elis-Thomas Bywgraffiad Biography	Annibynnol Independent
Nathan Gill Bywgraffiad Biography	Annibynnol Independent
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Dai Lloyd Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol

Others in attendance

Yr Athro / Professor Paul Cairney	Athro Gwleidyddiaeth a Pholisi Cyhoeddus, yr Adran Hanes a Gwleidyddiaeth, Prifysgol Stirling Professor of Politics and Public Policy, Division of History and Politics, University of Stirling
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Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol

National Assembly for Wales officials in attendance

Ruth Hatton	Dirprwy Glerc Deputy Clerk
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Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Tanwen Summers	Ail Clerc Second Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 13:15.
The meeting began at 13:15.*

Teyrnged i'r Cyn Brif Weinidog Rhodri Morgan Tribute to the Former First Minister Rhodri Morgan

[1] **Huw Irranca-Davies:** Good afternoon. Welcome to this afternoon's session of the Constitutional and Legislative Affairs Committee on Monday 22 May. We have a busy afternoon in front of us with evidence sessions and a great deal of business to get through, but if the committee's happy, I would like to make a short statement at the opening of this session.

[2] As Chair of the Constitutional and Legislative Affairs Committee, I would like to express our deep sadness on hearing of the death of Rhodri Morgan, and on behalf of the committee members and the staff of the committee, to offer our deepest sympathy to Julie and to all the family. The fact that this committee feels empowered and emboldened to examine our constitutional journey, where we have come from and where we may be headed, would not have been possible without the contribution Rhodri Morgan made as First Minister to building confidence in the then new institution of devolution in Wales. The growth in public acceptance of devolution through that crucial early period owes no small part to the skill, the personality and the thoroughgoing but quite unique Welshness of Rhodri Morgan.

[3] In a small footnote to his passing, he was, of course, a former member of a predecessor committee of ours between January 2010 and March 2011.

But it was as the former First Minister that he appeared in person to give evidence to this committee only two weeks ago for our inquiry on a stronger voice for Wales. He demonstrated not only his enduring commitment and relevance to the ongoing journey of devolution, but also his passion, his intellect, his warmth, his wit and his wisdom, built on years of experience serving the people of Wales. There will be time this week in the Senedd for fuller tributes to Rhodri Morgan, but I know that committee members would feel it appropriate today that, above and beyond the course of normal politics, we should recognise the sad passing of a founder father of this Assembly, who has helped lay the foundations of the work that this committee, and these institutions of devolution, will build on for the future. With that statement, we will move on to the substantive business. Unless colleagues have any remarks, we will move on.

13:17

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant Introduction, Apologies, Substitutions and Declarations of Interest

[4] We move on with the agenda. If I could point out some housekeeping basics, as normal. There is full translation in both languages of this place on our translation facilities. They're on channel 1 if anybody wants to avail themselves of them. If there is a fire alarm—and we're not expecting one—then we'll follow to the normal emergency exits, following our committee team. If everybody can make sure their mobiles are switched to silent, now we can proceed into the first substantive part of this afternoon's session.

13:18

Ymchwiliad Llais Cryfach i Gymru: Sesiwn Dystiolaeth 10 A Stronger Voice for Wales Inquiry: Evidence Session 10

[5] We move to item number 2, which is the evidence session on the stronger voice for Wales inquiry. This is evidence session 10. We're delighted to welcome with us, not in person, but in front of us by the technology of Zoom, as I understand it, Professor Paul Cairney of the University of Stirling. You're very welcome this afternoon, Professor Cairney.

[6] **Professor Cairney:** Thank you.

[7] **Huw Irranca-Davies:** Now, I wonder, in starting this session, Professor

Cairney, whether you could perhaps touch on your relevant expertise and experience that puts you in front of us this afternoon.

[8] **Professor Cairney:** Okay. Well, to be honest, I was hoping you would tell me what my relevant expertise was. [*Laughter.*] In general, my research is in public policy. I research, describe and explain how public policy works. I focus on the UK, the devolved UK and Scotland in particular, and I also talk about themes like evidence in policy and policy learning or transfer. I used to know a lot about Welsh policy making in 2006. So, if you want to know anything on ‘Making the Connections’ or anything like that, then— [*Inaudible.*]

[9] **Huw Irranca-Davies:** That will be very helpful. But maybe, perhaps, as an opening, you could tell us a little bit about your knowledge of the Scottish approach to policy making, and if you have any awareness of it, perhaps the subtle differences, or the large differences, between policy making in Scotland and Wales.

[10] **Professor Cairney:** I think in many ways Wales is more Scottish than Scotland is. If you think of the way in which we describe these things—. I’ve put up a blog post on some of these things with more details and links, but I would say there are lots of related phrases about the Scottish approach that we would make some distinctions between.

[11] The first is ‘Scottish policy style’, which is a phrase that academics have been using for a long time to describe two reputations that the Scottish institutions, and the Government in particular, have. It’s about consulting well with stakeholders before and after making policy and placing more trust in public bodies to deliver policy than, say, its UK Government equivalent.

[12] Then we have this phrase ‘the Scottish model of policy making’, which was described by the former permanent secretary there, Sir John Elvidge. He stressed the benefits of some things that were happening slightly before and from the 2007 SNP Government. So, he talked about reducing departmental silos. In fact, they sort of notionally got rid of Government departments in the Scottish Government in favour of a national performance framework. And they talk about the benefit of scale. Scotland is small enough to have relatively effective, often personal, co-ordination between central Government and the public sector.

[13] Then you have what is now called by the Scottish Government ‘the

Scottish approach to policy making'. That would be described by the next former permanent secretary, Sir Peter Housden. That really relates to key principles about governance. I would say there are three phrases that we talk about. One is about a sort of experimental approach to using research and policy delivery that's associated with the improvement method. The second is an approach to the use of community involvement and service users in policy design, so they would use the phrase 'an assets-based approach', which I think a lot of Governments use. Then I'd focus on how central Government, public bodies and stakeholders make policy together, and so they would use that phrase 'co-production'—again, lots of Governments would use the same kind of phrases. All I would say on top of that is these are all terms that either describe reputations for policy making or aspirations for policy making. So, a part of my job is to give you this slightly sceptical assessment of the extent to which there is a Scottish approach in practice.

[14] **Huw Irranca-Davies:** Well, thank you Professor Cairney. That's a helpful introduction to the approach within Scotland. There are some similarities we would recognise immediately, I suspect, with policy making here in Wales. We'll explore them a little bit further. I'm going to pass over to my colleague now, Dr Dai Lloyd.

[15] **Dai Lloyd:** Diolch yn fawr, Cadeirydd. A allaf i ddiolch ichi am eich tystiolaeth? Hefyd, mae yna rai o'ch erthyglau chi sydd wedi dod gerbron, felly rydym ni wedi bod yn ceisio astudio beth rydych chi'n rhagori ynddyn nhw. Ynglŷn â'r meysydd datblygu polisi, felly, a ydych chi'n credu ei bod hi'n ffordd wahanol o ddatblygu polisi os yw maint eich Llywodraeth chi'n llai? A ydy'r dystiolaeth honno, felly, yn berthnasol inni yng Nghymru, i'w chyferbynnu, felly, efo'r sefyllfa yn Lloegr, yn San Steffan, lle, wrth gwrs, mae'r adrannau i gyd yn llawer mwy ac, wrth gwrs, mae'r Llywodraeth yn llawer mwy? A allech chi jest ymhelaethu ar beth rydych chi wedi ei ddweud eisoes? Os ydych chi'n

Dai Lloyd: Thank you very much, Chair. May I thank you for your evidence? Some of your articles, in particular, have come before us and we have been trying to study what you are an expert in. But in terms of policy development, do you think there is a different way of developing policy if the size of your Government is smaller? Is that particular field of evidence relevant to us in Wales, as compared to the situation in England, in Westminster, where the departments are much larger and there is a much larger Government? So, could you just expand on what you've already said? If you think that Scotland's small, then Wales is even smaller.

credu bod yr Alban yn fach, wel mae
Cymru'n llai fyth.

[16] **Professor Cairney:** When I would give talks on this, I would say that if you wanted to get, let's say, in a particular area, all of the relevant stakeholders together in a room, for the UK Government, you'd need a conference centre or a lecture hall. In Scotland you could often do it with a table with 20 people around. In Wales, maybe you could do it—I don't know—maybe it would be three fifths of the size of the table, something like that. So, there is this potential benefit to that scale. Instead of having to have to maintain a distance because there are so many people to speak with, you can maintain a mutually personal relationship with groups, and I think that has the potential to make a difference. The other thing, I think, that you would explain styles with is capacity. So, again, this is reputations. Often, UK Government has a reputation of essentially saying, 'We have the capacity in-house so that we can be confident about the policies we process.' I think the Scottish and Welsh Governments would be more likely to say, 'Well, in many areas, we have low capacity and we rely on outside groups to help us make policy.' So, again, that has the potential to be a very good thing, but subject to the unintended consequences of doing that.

[17] **Dai Lloyd:** Diolch am hynny. Ar gefn hynny, dyna'r ffordd rydym ni'n tueddu i lunio polisi yma yng Nghymru, gyda chefnogaeth cyrff allanol, ond, wrth gwrs, fel rydych chi wedi ei grybwyll eisoes, mae yna beryglon weithiau yn hynny. A allech chi awgrymu, efallai, pa mor bwysig ydy cysylltiadau personol, felly, yn y broses yna o lunio a gweithredu polisiâu? Hefyd, sut y mae osgoi y gwahanol garfannau o fewn llywodraeth, yn y gwrthbleidiau, ac o fewn y sector sydd yn helpu i lunio polisi, sut ydych chi'n atal y syniad yma fod pobl yn mynd yn llawer mwy cartrefol efo'i gilydd, neu'n rhy gartrefol efo'i gilydd, ac yn colli bod yn wrthrychol, felly, wrth lunio polisi?

Dai Lloyd: Thank you for that. Following on from that, that's the way that we tend to put together policy in Wales, with the support of external bodies, but, of course, as you've already mentioned, there are certain risks in that regard sometimes. Could you explain how important interpersonal links are in that process of developing and implementing policy? And how do we avoid those different cohorts within government, in the opposition parties, and within the sector that help to put together policy, how do you prevent this idea that people become far too cosy and miss that objectivity in policy making?

[18] **Professor Cairney:** That's an interesting question. I think what you're trying to get a handle on is what happens when people engage regularly with each other during these policy discussions and they build up trust. I think that's how you explain relatively cosy relationships. You begin to know the people you're speaking with. You develop a sense of who they are and how much you can trust them, and if you do trust them, you tend to rely on them routinely and perhaps don't feel the need to look outside for other voices because you're quite happy with—you know, if it's not broken then you can keep going. I suppose I'm a bit more relaxed about that because usually—I think another phrase that often comes up is 'the usual suspects', you know, tend to be spoken with. I think, for the most part, they're the usual suspects because they have something to offer. So, if you want to do education policy, you speak with local authorities and teachers. If you want to do health policy, you speak with doctors and nurses and managers. It makes sense. Perhaps the biggest question is about how to get a user voice, which is a much larger, less-easy-to-grasp group, and that's not easy. I do have colleagues who do more research on things like mini-publics and citizen juries—this way of trying to get a group of people to deliberate on policies that can feed into these processes. But I've never seen a way for that kind of suggestion to become completely politically feasible because, essentially, you're talking about mini-publics, to some extent, doing the job of policy makers. The policy makers, they're normally elected, they're there to represent people, so it's hard to know what we would do with this other body giving them evidence from the public without having a sense that they're not self-selected or they're biased in a different way. So, it's tricky.

[19] **Huw Irranca-Davies:** Thank you, Dai. Could I ask you, Professor Cairney, do you think it's inevitable, when you have a nation and institutions of that nation of a smaller size, that there has to be more intimate engagement with, as you say, perhaps the usual suspects or the usual bodies? The corollary, I guess, is as a UK Minister, you could turn around and say, 'Look at the impossibility of bringing together all the people who are concerned in education or fisheries or the environment. We'll do something, but nothing too deep and meaningful, because practically it's hard to do.' Whereas in a country like Wales or Scotland, it's almost inevitable, and those things that Dai quite rightly raised then, because it's inevitable and just conjecture, you need to particularly guard against too cosy a relationship.

13:30

[20] **Professor Cairney:** Yes, I think so. I think it seems to be much more

likely that if you're a smaller size of Government with a certain level of resource, you would rely much more on particular groups, and those groups tend to have fairly small numbers and are fairly small sized. I remember when I was interviewing groups in Wales, it tended to be that a UK group maybe had dozens of staff, in Scotland they would have one member of staff, and in Wales they would have less than one member of staff. So, yes, you've not only got the same groups, but possibly the same people.

[21] I should say that the difference in the UK is often a bit more subtle because what I would say is you find these kinds of relationships we're talking about at a much more low level of Government in the UK but, you know, they're not—. They might not exist at the sort of ministerial or Permanent Secretary level, but you will find, within UK Government departments, the same tendency to speak to the same people because of the divides. To make their policies more manageable, they would divide them into smaller and smaller parts and, you know, they would speak to a small group. So, I would say the main difference is that, in the UK, these kinds of cosy relationships are much less visible, but they're much closer to that sort of iceberg analogy where you see the salient kinds of competitive relationships above the surface, but there's a lot of that more consensual stuff going on underneath. I think that's the Welsh difference and Scottish difference: you can see more readily these kinds of cosy relationships because they're far closer to the top.

[22] **Huw Irranca-Davies:** That's fascinating. Thank you very much. I'm going to pass on now to Dafydd Elis-Thomas.

[23] **Lord Elis-Thomas:** Diolch, Cadeirydd. I'm going to ask about the elephant that isn't in the room today—the United Kingdom—and in particular I want to ask about whether you've perceived any improvement in the understanding of devolution in UK departments that interrelate with the Scottish and Welsh Governments over the period you've been studying; or are they just as dumb as I think they are?

[24] **Professor Cairney:** Well, let me put that slightly more politely. [*Laughter.*] I would say that there's a routine reason for the UK Government to know very little about Scotland and even less about Wales, I would say, and it's to do with, I think, a couple of things. One is to do with the number of staff they devote to these issues. So, whenever I've sort of come across people from units designed to keep an eye on devolution, they've tended to be something like four people, and that is essentially the small group of

people who are supposed to speak with all of the UK Government departments and the devolved territories. So, you can imagine that there are a very small number of really in-tune people within Whitehall, but they're speaking with their contemporaries who do not have that knowledge. And, in fact, I think that there'd be a sense in most Government departments that if they have a special unit for devolved contact, then they'd need not develop their own relationships—they can rely on an intermediary. That's certainly something that I would see the last time I looked. Maybe something really good has happened in the past couple of years and I've missed it, but I'm not sure. I'm not sure.

[25] There are these exceptions. As you might imagine, they tend to relate to the areas in which they have to spend more time with each other. So, I think, traditionally, the civil servants with the most knowledge of the devolved territories were working in Europeanised issues, because they routinely had to consult with other Government departments to present a line in negotiations in Europe. So, that could be one of your—. I suppose that there would be this sort of romantic hope after Brexit that, suddenly, the UK would be more interested in the devolveds, but that's a reason to think that there's a potential to go the opposite way. If it no longer has to speak with the devolved territories on its routine European involvement, then I think we're going to have to look for ways in which we'll replace that routine.

[26] **Lord Elis-Thomas:** That's very helpful—

[27] **Professor Cairney:** I should say that I've never thought that there was a sort of malevolent reason to ignore Scotland and Wales. I think it was just more of a benign neglect.

[28] **Lord Elis-Thomas:** Yes, well, I am particularly interested in what you've just said about the implications of the change in our relationships with the European Union. I refuse to let the word 'Brexit' sully my lips, so I won't use it. But in my experience of environmental policy, agricultural policy, common agricultural policy and common fisheries policy over the years—the kind of area I represent, it's very important to us there in north-west Wales—the need to come and develop a UK position, usually presented by the UK British Minister, but sometimes in the case of Scotland, obviously with fisheries and other matters, presented by Scottish Ministers, and in the case of Wales, I think the first example, as it happens, were cultural issues and language issues, which were presented in the Welsh language in a Council of Ministers, much to the amusement of the people who were listening in because

suddenly the English translation booth started having to translate a Minister who was speaking Welsh. So, there are relationships of that kind that have been established. My fear is that once we've left the European dimension, the United Kingdom will seek to repatriate much of that to itself rather than hand it over to us. It may be easier in your case, but it will be particularly difficult, perhaps, for us.

[29] **Professor Cairney:** Well, certainly, I think those concerns have been expressed by the Scottish Government too. They were very quick off the blocks with their own paper that said, 'This is what we're looking for after Brexit.' And they essentially said, 'We want all of the powers that were Europeanised plus some extras that would make sense.' So, I think it's certainly a live issue. Particularly since—. I've never seen a time, I think, in history when the UK Government has set out why there's a division of responsibilities like the way it operated. When I'm explaining why the Scottish Parliament has the powers it has, I would say it inherited a situation in 1999 from the Scottish Office and there was never a point in Scottish history when a group got together and said, 'Right, what would make sense? What should be devolved and reserved according to the nature of the issue?' It's just been an accumulation, and in Scotland, I think, extra responsibilities have really just come from political pressure, not from a technical document. So, if we think that this is more about historical changes and the sort of power-based reasons for changes then, yes, you can think that that's what's going to happen after Brexit. This isn't going to be a sensible discussion based on cost-benefits. They're straightforward negotiations based on who is more powerful in the negotiations.

[30] **Lord Elis-Thomas:** The final point I want to pursue is this relates very clearly to what you've written and spoken about on multilayered policy making, clearly. You're quite right in saying that the Scottish Parliament became the Secretary of State in democratic clothing. The same thing happened to a lesser extent here because the nature of devolution varied between the various nations and regions of the UK. So, the question now is: how can we pursue a rational way of multilayered policy making short of being able to have a proper federation where these matters would be clearly delineated? I of course understand that my colleagues in the Scottish National Party of long standing don't want a federation because they're well ahead on another trajectory, but it would seem to me that we have failed in the past to adapt to the United Kingdom those federal principles that seem to me to work very effectively in states—like in the Commonwealth, like Canada, particularly, and also on mainland Europe—that have grappled with

these issues.

[31] **Professor Cairney:** I'm not sure. I suppose the interesting thing for me is the most Europeanised issues are agriculture and fish and environment, and I think in a lot of ways it makes sense to have the scale of policy making as large as possible in those areas, because you're talking about food security and enough production for a population, and you're talking about things like climate change that are global, not local. So, I think if we're looking for fairly rational ways to do it, there is a reason to have it at the UK scale, and there's also a reason to have it as locally as possible, because it really comes down to, I guess, which level of Government would be best at delivering on an objective. I think that's something that even the European Union has been wrestling with. There are all those issues that we think we need to plan for at a completely European level, but they increasingly recognise that it might be national and subnational territories that are best placed to fulfil those objectives, because you need something else apart from planning. For example, you need a sense of nationality and social solidarity to get populations to agree to the implications of these strategies.

[32] So, I'd imagine, if it's anything like UK policy, from as long as I can remember, there will be a major fudge on these issues. There will be a notion of a shared-powers model where, overall, there are UK objectives in these areas—*[Inaudible]*—ability to deliver and achieve them.

[33] **Lord Elis-Thomas:** Just one very final one again: in our geopolitical location, clearly, what the Irish are up to, north and south, is equally important, and it's very important for us, I think, to have some relationship with Northern Ireland and with the republic in order to ensure—. And, clearly, hopefully, the cultural links that we have with minority languages throughout Europe, from the Bretons and the Basques, and the Catalans, who, obviously, don't have a minority language—they're a huge language—but those relationships will need to be retained as well in another forum, and we need to be looking at these things. So, the multilayered policy making is something that I'm very interested in, and I will pursue you further in another forum, perhaps, on these matters. Thank you.

[34] **Huw Irranca-Davies:** Thank you, Dafydd. David Melding.

[35] **David Melding:** Professor Cairney, can I just follow this point about how we deal with shared governance? You said that the devolution settlement, if we can use that rather complete and rational word to describe

our constitutional situation, was really determined by very historical factors rather than a great moment when founding fathers—when we talk about old constitutions, they'd be mothers and fathers now—meet together and agree a constitution. And if it was federal, then the classic one would be, 'Well, what's devolved, what's retained and what powers are shared?' And you quite rightly said that environmental and agricultural and fishery policy has been at a European level, but I think probably could reasonably be described as shared power making, even though the central pillars of the policies were made at a European level. And now we face the probable need to have a UK version of that sort of structure, but we don't seem to have the architecture to allow it, because we need shared governance but we don't have shared governance institutions, unless you think the Council of Ministers is already acting in that vein. I don't know if Carwyn Jones's—the First Minister—suggestion that the Council of Ministers—sorry, the Joint Ministerial Council—become a council of Ministers to deal with shared power making has made any impact in Scotland, but it does seem to me he's got a point that that is, kind of, the shift you would need if we're going to have proper shared governance.

13:45

[36] **Professor Cairney:** It's been a while since I looked, but my impression of the JMC has generally been that it was set up as a way to be a potential route for dispute resolution between Governments. So, I think, when they were setting up these mechanisms, they anticipated more need for a formal dispute resolution, and found that, really, the UK and devolved Governments were far more inclined, for whatever reason, to deal with things informally. And, you know, if you compare it with, say, federal Governments with constitutions, there's nothing like the recourse to the law to formal procedures.

[37] So, I think, to my mind, the effort required to shift it from that unused dispute body to becoming a meaningful, decision-making body—I think it would be so large that it might be that you're better off just having a differently named body, newly constituted with a different remit. Because I think there's always a danger with bodies that already exist, with their own written-down rules, and informal rules, that they would still continue with rules that were not suitable for current purposes.

[38] So, I mean, it might be that—this is the way I describe Brexit for people who don't like it much—there's potentially this opportunity of seeing

it as an event to make us think about the extent to which the mechanisms we have just now are adequate or not, and if they're not, to design new institutions from scratch. Because it just doesn't happen very often—you know, it's probably the best thing that could come out of these arrangements.

[39] **David Melding:** I don't disagree with you, in terms of whether you could see the JMC evolve, but if we take your point that, if there is going to be shared governance—and, frankly, it seems to me that that principle is one that's very important, if you're to see the United Kingdom survive as a coherent state, anyway; I mean, I suppose it could survive in the sort of manner that Belgium survives as a state—but, you know, in terms of having very logical apportion of functions and effective co-operation, where they need to co-operate between the Governments within the state, if we create a new mechanism, it's very likely to cover environmental policy, farming, fisheries, regional aid, and there's a very strong argument that some macro-economic things at least should get discussed in some way, and, you know, the wider economic goals of the state, which have to be done on the single market, or internal market, on the UK basis. And I just wonder—because I think the Welsh Government want that—but I'd like to get a feeling of, you know, whether the Scottish Government are in that game, or, frankly, are they fairly cool towards it? Because they have a different vision, let's face it, and it's one of preparing for independence, ultimately.

[40] **Professor Cairney:** I'd imagine the current Scottish Government, led by the SNP, is much more interested in using Brexit as a way to reinforce its independent powers from the UK. So, I think, certainly, perhaps at some point, it would be engaged in a shared decision-making discussion, but it wouldn't be at the top of its agenda for some time, I think. Things might be different if there's a second Scottish referendum and we have some kind of certainty, where you know it's either independence or it's long-term UK, so there's much more of a public driver for those kind of discussions. I think, until then, it's hard to see—even the UK Government, with the Scottish Government, it's going to be hard to see them, at least in public, going into the details of these arrangements, just because they have to, in public, maintain these party-political positions; it makes discussion of negotiation difficult.

[41] So, I mean, maybe in the short term this could be—the machinery of the JMC could be the thing that helps here, because that's much more of a civil-servant based, informal set of relationships, where we can discuss what

kind of arrangements, in the short term—you know, behind closed doors. It's not great for transparency and accountability, those sorts of arrangements, but they're probably the most pragmatic we can expect for the next few years.

[42] **David Melding:** Before a second referendum, it's difficult to see an SNP Scottish Government investing in common or shared governance arrangements. Is that your view, ultimately?

[43] **Professor Cairney:** I think so. There is a tricky balancing act here because we're kind of straying on to the party political here, but I think the story the SNP will tell is about being disadvantaged by decisions made by the UK Government—so, pulled out of Europe against Scotland's will, and that sort of thing. But at the same time, there's another part of that story, which is that, throughout this whole time, we've been completely reasonable and tried to co-operate with the UK Government to get us out of the mess that they've made. So, I think it's that part of the story that would help them engage with the UK Government—in a sense if they can maintain this story that the Scottish are being the bigger people here. So, that would fit in very well with our sense that we are the part of the country doing the right thing and being above politics—that sort of thing. So, maybe along those lines, there would be some scope.

[44] **David Melding:** Thank you very much. I wonder if I can just take you back to this question of what devolution makes possible. In the 1990s—I think that students have looked at more federal models, or explicitly federal models, but also decentralised models around the world, and, you know, there's been a shift since the 1980s to more decentralised forms of governance—. One of the great things that was often stated is that you create all these laboratories for policy-making experimentation, and then you can see what works, you all get together—you know, rational political actors—and then apply what works. And you observe—and other witnesses have confirmed this, I have to say—there's very little of that that's happened in the UK. My question is: does that make the UK very odd, or are we kidding ourselves, in that this type of culture is actually very visible in foreign decentralised and federal states?

[45] **Professor Cairney:** I don't think it's too odd. I think it's fairly predictable, because if you look at the literature about who learns from who, it tends to be built on a sense of similarity and closeness. So, you learn from the countries or regions that you think share your characteristics and share

your problems. So, it would make sense for the UK Government to not routinely try and learn from the devolveds, because it would see a much more useful comparison in foreign larger territories—so, territories in the EU of similar size, like France and Germany, and it would look to the US. US states tend to be a regular source of inspiration for policy. It would often see Scotland and Wales as places that saw the world in a different way, and were doing things on a far smaller scale. So, it makes sense for the UK not to learn.

[46] I suppose it's a bit more surprising that Scotland and Wales don't routinely interact and learn from each other, because they are of a fairly similar size, and at least for the first eight years of devolution, they had the same party in Government leading them. But there's so few examples of that happening. In some cases, they even decided to do the opposite of each other. There were a number of cases from the early years, on things like prescription charging—Scottish and Welsh Labour took different approaches and there was never really a sense that they had the same priorities. You could say that was partly because Labour were always in coalition with the Liberal Democrats. Maybe that made a difference for a little while. It left you with a small number of policies in which there was notional learning.

[47] I think one thing that Scotland took from Wales was the children's commissioner, and that was the Scottish Parliament learning from Wales, so that was unusual. I think that was to do with the initial honeymoon period of devolution where parliaments and committees thought they were policy-making bodies. Then you had things like the ban on smoking in public places where eventually all four governments went for the same thing. In that case, there was some link between Wales and Scotland there, but the UK also, then, had the same arrangements. In the small number of cases where we're talking about learning, occasionally the UK joined in. I think both countries have also sometimes learnt from the same places. So, Finland is often one of these countries that has a reputation for doing things very well in certain areas. So, I think Wales and Scotland—both governments—have tried to learn with things like mobile heart-monitoring units and that sort of thing to do with a similar landscape and a similar focus on prevention.

[48] **David Melding:** I think that's interesting, but I wonder how distinctive that would have been from the old Welsh and Scottish offices when they were applying, say, public health campaigns. I remember we had a big one on improving cardiac health in the 1980s, which was hugely successful but again had been, basically—well, it led the way, on a European level, to some

extent, but had also been inspired by good-practice examples elsewhere. Within the British state, then, do you see anything changing if the model of devolution to super-municipal entities in England continues? Is that going to create this sort of ideal, quasi-federal laboratory?

[49] **Professor Cairney:** Not especially. Perhaps in some areas. I think this comes down to the extent to which evidence is the primary driver for this kind of learning and the types of evidence people use. I was saying that there's always going to be a driver for healthcare-related learning across the UK, because there's a very similar professional idea about how you do evidence in this field and how you share it. There are increasingly centralised repositories for evidence on the effect of health interventions. So, I think there will always be that form of learning that takes place.

[50] I think it will be less so in areas in which there's a different idea about learning and a different attitude to evidence. So, I think if you've got areas like social work or education, these tend to be areas in which there's much more of a focus—say, in social work—on an individual relationship between a professional and a service user. Individuals tell stories to each other about their experiences. There's not a national co-ordinated campaign to share practices on that level. It would be similar with education, plus the complication, particularly if you're looking at Welsh, English and Scottish education, that their systems are sufficiently different now for you to struggle to know what the lessons would be. Particularly in Scotland—. I don't know what you would learn from Scotland about, you know, its attainment—you have very different qualifications—or if you can really learn much from the idea that in Scotland you do less compulsory education and an extra year at higher education. The starting point for learning is fairly low. So, I think it would be driven much more by the type of issue than the administrative arrangements that would take place.

14:00

[51] **David Melding:** It strikes me that you're highly sceptical that devolution is really a way, or a source, of reaching greater innovation and better practice—that that's perhaps not really what we should be aiming to get. If we want it, we have to secure it within our own political system and responsibilities and it's a bit of a will-o'-the-wisp to go chasing after these networks that bank best practice and illustrate the way forward in tricky areas. You feel that the particularities of each home nation, then, even in a fairly tight geographical space like the UK, don't lend themselves to that type

of shared learning.

[52] **Professor Cairney:** I think part of the problem here is that, because I'm sceptical about everything, it's my job to respond to anything sceptically. Now, if you ask me that question, I'll find problems with that approach too. I would say that this idea of learning from within is certainly, I think, a feature of Scottish Government now. I think, often, that the Scottish Government will tell the story about innovation within Scotland, particularly at a local level. So, the idea, for example, with the improvement method is that you train lots of people at a sub-national level in a particular way of doing policy and evaluating it. Then they get together in conference centres or other forums and they share experience and then they see who's innovating at that level. I think you could see—. This is probably happening in Welsh Government just under a different name already. But you can see there's scope for innovation and learning at a level in which the starting point is the same: the same central government and, broadly, the same powers across particular areas. So, you can be more confident that the lessons are comparable.

[53] But part of the reason why I would also be sceptical about this is because what a lot of these kinds of approaches tend to find is that you have pockets of best practice in certain parts of the country and, often, those pockets rely on key individuals. The thing we learn routinely is that this project works brilliantly in this area because of the really enthusiastic, committed and skilled individual really driving through co-ordination with networks. So, then you say 'Well, how can we learn from that and transfer it? It's very difficult to do, because if you take away that person or that reason or the impetus, then it becomes difficult. So, I think those kinds of questions about learning from each other are there whatever scale you use.

[54] I should say I shouldn't be so critical about this, because I'm spending—maybe we can speak about this in four years—the next four or five years studying learning and transfer across Europe. If you got me on a different day, I'd be much more optimistic about the chances of that.
[*Laughter.*]

[55] **David Melding:** Thank you very much.

[56] **Huw Irranca-Davies:** Thank you. I'm glad about that, because otherwise your next few years are going to be—you're going to be banging your head against the wall. So, retain some optimism, please. I'm going to pass you on to my colleague now, Nathan Gill.

[57] **Nathan Gill:** Thank you, Chair. Looking at the next few years, we're definitely going to be facing a lot of challenges and I think a lot of political parties, and certainly the First Minister here in Wales, have talked about the need for constitutional conventions, a way of framing the future for, possibly, creating a single market, because as you've already discussed, we're going to be getting some areas back that are devolved that may not necessarily work on a nation-by-nation basis. I just wondered how much you thought that Brexit would act as a catalyst for creating, perhaps, a uniquely British way of looking at this, or whether you thought that we're better off looking for maybe an off-the-shelf kind of solution, maybe looking at Australia or Switzerland or somewhere like that.

[58] **Professor Cairney:** That's a good question. I suppose, being an academic, I should say the more research governments do about this the better, but I suppose the question is how much, though, they'll use it, because governments, however much they import these ideas, do tend to have to adopt them to existing practices. So, when you talk about learning from other countries, there's a spectrum from completely off the shelf, which I think is quite rare, to some kind of inspiration for a certain way of doing things. It's probably closer to that inspiration end that would be most likely. I certainly think that this impetus from Brexit—. I'm in two minds about this, but you might think that if it's so high in people's minds, and there's a notional point by which it happens, that it prompts people to come up with new arrangements in a much more concentrated period of time than you would normally have. The only reason I'm not sure about this is: the vote to leave the European Union was clearly an event on a particular day, but it's still too difficult to know what the actual Brexit will look like. It's not an event, is it? I mean, there will be a Bill passed—the great repeal Bill; fair enough—but I guess it's possible that the transition is so long that there is no equivalent point at which you switch from one set of arrangements to another. So, I suppose that's my concern. It's hard to even envisage what that transition will look like, and how long it will take, and how you'll know when it's happened. It's really difficult to know when you would take something off the shelf and use it.

[59] **Nathan Gill:** Okay. That's very interesting, thank you. You mention, as well, that you felt that there was a small number of people who are in tune about devolution in Whitehall. I mean, obviously, do you feel that there's a need now for that small number to become larger, and if so, how can we go about increasing that knowledge for people working with Ministers here in

the Welsh Government in Whitehall?

[60] **Professor Cairney:** I think, realistically, it would require some degree of necessity. So, there has to be a reason to routinely speak with each other, otherwise—. You know, particularly with the Scottish Government, I think there are some areas in which the Scottish Government essentially says, 'We want to do our own thing in these areas' and the UK Government is often fairly content to let them do it, and if that happens, then there's no real routine need to speak with each other. You rely on, maybe, a smaller number of interested individuals who take more seriously that sort of research-minded focus on what we're doing and how we learn from each other. I think that would always be a small number of people. For that sort of routine, you would have to have a sense that there are shared aims and maybe there's a shared set of rules about what they're trying to do and how they do it that would necessitate this regular interaction. Because I think there's a difference between not having to do something and occasionally getting involved, and something else, which is: you have to get involved with each other routinely as part of our shared commitment. I think it's the latter that would be the only guarantee that there will be routine relationships. But it's hard to know how you would design that, what it would look like, and all that sort of thing. You would just know that, simply by habit alone, you're relying on a sort of routine, habitual relationship between Governments for that to happen, rather than thinking that people will, off their own bat, get involved with each other routinely.

[61] **Nathan Gill:** That's very interesting, thank you. Just looking at the way that policy making occurs, I just wondered how successful you thought stakeholders were in actually influencing policy?

[62] **Professor Cairney:** Okay. So, again, I think the reputation, when you compare Scotland and Wales [*Inaudible.*] is that stakeholders will have much more success in the devolved Governments, because there are fewer layers, fewer obstacles to speaking to the most important people. But, as I said before, I think, in the UK, you'll just find that stakeholders have access at lower levels of Government, and that feeds in. In both cases—and this is the kind of reason to remain sceptical at all times—I think, when you set up a political system as relatively consensual, it give the impression that, simply by talking with each other, we can resolve major differences, beliefs, and interests. I think that's a danger, because often the existence of regular interaction is used to justify decisions. You know, 'We spoke with everyone, and we got their views and we made a hard choice, so everyone should be

happy'. I think, with the UK image, you at least get a sense that they're making decisions that benefit some, and other people lose out, and you can hold parties to account for their choices. I think, in a Scottish and Welsh context, it's too easy to think, 'Right, well this is a collective national will for these things', which is nonsense, isn't it? I mean, it's not really what politics is about.

[63] So, I would say—and this is a long way round to saying—that some stakeholders will routinely do well out of any system, and some will routinely do badly, and that's largely to do with the beliefs of the political parties involved. There are ways in which you can have more voices, but I don't think we should just assume that more consultation means that all stakeholders do particularly well in a Scottish or Welsh system.

[64] **Nathan Gill:** Thank you very much, Professor.

[65] **Huw Irranca-Davies:** Thank you. Professor, could I just go over a couple of things with you that you've mentioned? One flows from David Melding's questions earlier on, and this idea that keeps coming back in our evidence sessions of this laboratory of the nations and regions, and now city regions, as well. It seems, from what you're saying, and from what David was saying in terms of before we had devolution institutions such as the Assembly and Scottish Parliament, you can have innovation and you can have experimentation, but that's not quite the same as wanting to learn from each other. The very basis of our political system, as opposed to a policy-making system, means that, yes, those experiments can happen, but that is not the same as wanting to sit around a table and say, 'Ours—you might want to learn from it'. Academy schools in England; free school lunches or free school breakfasts—which are better? The Welsh baccalaureate, and so on. Sometimes, there's an unwillingness to sit down and to share the evidence-based policy of what actually works because it's not in the political interest. We should just accept that, do you think, in your sceptical frame of mind?

[66] **Professor Cairney:** Well, certainly, I would say there's no getting away from the extent to which power and politics are at the heart of this kind of discussion. So, I don't think there's ever an occasion when the evidence of an intervention will trump the beliefs or starting point for each Government. So, I think all evidence will say is that it produced a particular outcome, but it won't tell you if you should think that it's a good outcome or not. I think there are some cases where there's such widespread agreement on what the problem is and what you're seeking to do that you can learn fairly routinely

from each other. So, again, on healthcare interventions, if we've all got a certain sense of, 'A particular health treatment in one area works, therefore it should work in another area', that's straightforward. But, then, I think if you go on to things like should we have free prescriptions for all, then you could say, 'Well the evidence is that there's a greater uptake for prescriptions in particular areas', but you still have to assess, according to your other priorities or other costs, whether it is a good thing or not.

14:15

[67] I think it seems to become, when you get into the evaluation, much more a political decision about how good the evidence is. I think it would be the same with schools. It's hard to imagine a case where, I don't know, the Scottish and UK Governments are talking and one of them accepts that the other's school system is much more effective. There are so many calculations and assumptions about what they're looking for that it just wouldn't work. So, I would accept that, in these cases, it's not really a kind of evidence-driven learning process. People define the problems they want solved first and then they look for evidence of success. That really limits their analysis.

[68] **Huw Irranca-Davies:** That's answered it very well. I have one other, and it's quite a practical question, based on the line of questioning we had previously on some new format of resolution of conflicts within policies within Government, on thematic areas. It struck me that one of the big issues for Scotland is what fisheries management is going to look like as we extricate ourselves from the European Union. Let's accept that there may well be—the Scottish Fishermen's Organisation may well decide it's in our broad interest to have some UK framework as we've had previously, and then we'll decide quotas can be managed in Wales, in Scotland, and so on. But in the situation we currently have, with the JMCs as they are, with the inter-ministerial working as it is, it'll be an interesting moment if a future England Secretary of State for Environment, Food and Rural Affairs, who just happens to be an MP in a 10m coastal area like Hastings, or something like that, says, 'Now that we've got the powers back and we're within the existing framework, we'll do this in a different way. We're going to up, for the next five years, 5 per cent each year the amount of quota that goes to the under-10m fleet'. Under the current situation—I'm not saying they would do that, because frankly it would be political dynamite, but it could be done. It comes back to David's pushing of this issue of whether the structures need to change now so that the devolved regions and nations can actually say, 'Well, yes, we agree' or 'Not on your nelly'.

[69] **Professor Cairney:** This is a tricky one, isn't it? I think, in that case, you could imagine you would need some sort of clear and perhaps new machinery to deal with fishing quotas. Because the JMC as it is would be there to solve disputes between Governments, and I don't suppose you would want to leave things until there was a big Government dispute before you did anything about it. You would want to be upfront about it. I mean, that may be an example in which you have a much clearer date at which European rules end and British rules begin, and I think you would want an agreement in place by then. Yes, okay—this question's too difficult.

[70] **Huw Irranca-Davies:** Let me, while you think for a moment, just bring David in on that.

[71] **David Melding:** Professor Cairney, it just suddenly struck me that, in your rigour about what sort of knowledge transfer is feasible, and there's evidence for it being successful, should we distinguish between the scale of the thing? Because if there was a UK conference to decide on grammar schools or foundation schools or the standard comprehensive school, or whatever we'd call that model, there I can see it's replete with political difficulties and that it's perhaps naïve to expect that. But wouldn't you be expecting the interested committee, certainly the interested civil servants, to be meeting on a reasonably regular basis to see, for instance, if one particular part of the UK has suddenly found a model that really helps, for example, the educational attainment of looked-after children at—I don't want to say 'a lower level', because that's a hugely important matter there, but it's obviously not a whole-system approach, saying, 'We do it well, you do it badly.'

[72] **Professor Cairney:** Yes, I think so. I think some of my colleagues would call what you described as 'epistemic communities'. You've got these networks of policy makers and academics who get together at particular meetings to discuss relevant evidence and how you can use it. I think those networks already exist, but it's just a case of how enthusiastic each Government's representatives are and, anyhow, because it's a fairly informal network, there's never really a sense of a deadline for making something of the evidence; it's much more routine. So, maybe you could see some kind of scope to make those processes more routine so that there's regular attention to evidence and effectiveness in particular places.

[73] I suppose my impression of most Governments is that there are these

routines within analytical divisions of Governments. So, there are civil servants whose job it is to gather this kind of evidence and think about it, but they tend to be slightly separate from the civil servants, who are in much more operational positions, who are under more pressure to deal with day-to-day issues. I think that that's another area of disconnect, not necessarily between civil servants of different Governments, but between civil servants within Governments who have these different roles.

[74] **David Melding:** Thank you.

[75] **Huw Irranca-Davies:** David, thank you very much. Professor Cairney, thank you very much for your evidence and for spending so much time taking our questions. We will send to you a transcript so you can check through it for accuracy, but thank you very much indeed. I'm pleased the technology worked as well.

[76] **Professor Cairney:** If some of my answers were quite vague towards the end, I apologise for that.

[77] **Huw Irranca-Davies:** No, not at all; it was very helpful. If we come back with questions repeating ourselves slightly, it's because it's helping us to get some clarity as well, but thank you very much indeed. Goodbye, now.

[78] **Professor Cairney:** Okay, thank you. Goodbye.

[79] **Huw Irranca-Davies:** Good. Thank you for that, and we'll come back to reconsider that in private session afterwards, with the will of the committee.

14:22

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

[80] **Huw Irranca-Davies:** If we can move now on to item No. 3, please, immediately, which is instruments that raise no reporting issues under Standing Order 21.2 or 21.3? Within paper No. 1, we have five listed there. Do we have any comments or observations, or are Members happy to note them?

[81] **David Melding:** Content.

[82] **Dai Lloyd:** Bodlon. **Dai Lloyd:** Content.

[83] **Huw Irranca–Davies:** Content; *bodlon*. Diolch yn fawr.

14:23

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

[84] **Huw Irranca–Davies:** We move to item No. 4, then—instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3. And we have one there in front of us, and with the four papers—the regulations, the explanatory memorandum, the report and the instrument itself: the Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017. Now, these regulations make provision on the procedure relevant to reviews carried out by Welsh Ministers in relation to the decision to include a building in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990. But I'm going to pass to our lawyers because you've highlighted, Gareth, a technical point within this.

[85] **Mr Howells:** Diolch. There are some cross–references missing in these regulations. So, for example, where the regulations should say something like, 'A notice under paragraph 1 should do X, Y, Z', the regulations actually say, 'A notice under paragraph must do X, Y, Z'. So, the reference to the '1' is missing. And this kind of thing happens in about eight different places in the English text of the regulations. The Welsh text is fine.

[86] Now, we did look at these informally before they were laid, and the cross–references were fine. The version signed by the Minister is also fine, so something has gone wrong electronically; there are some gremlins in the system since they've been signed and they've been made electronically. We understand the English version will be reprinted with the correct cross–references included.

[87] **Huw Irranca–Davies:** So, we, I assume, are content to raise this matter, get it rectified and make sure it is rectified? And thank you for your assiduity in finding this technical issue and pointing it out. Thank you, Gareth.

[88] **David Melding:** Did we say ‘gremlins’ in the report, Chair?

[89] **Huw Irranca–Davies:** Gremlins, yes. [*Laughter.*]

[90] **Lord Elis–Thomas:** No, no, the gremlins aren’t in the report; the gremlins are in CP2.

[91] **David Melding:** Indeed.

[92] **Lord Elis–Thomas:** They must be weeded out, or whatever you do to gremlins. [*Laughter.*]

[93] **Huw Irranca–Davies:** We’ll identify those gremlins. We’ll name those gremlins. Who are those gremlins? Thank you for that.

14:25

**Offerynnau sy’n Cynnwys Materion i Gyflwyno Adroddiad arnynt i’r
Cynulliad o dan Reol Sefydlog 21.7**

**Instruments that Raise Issues to be Reported to the Assembly under
Standing Order 21.7**

[94] **Huw Irranca–Davies:** Item No. 5—instruments that raise issues to be reported to the Assembly under Standing Order 21.7—we have SL(5)104, ‘Code of Practice for Species Control’. Members have had the papers circulated. This is a code of practice that sets out how the provisions for species control arrangements and orders under the Wildlife and Countryside Act 1981 should be applied by Welsh Ministers and Natural Resources Wales. Now, again, our lawyers have identified one issue for report. Gareth.

[95] **Mr Howells:** Very briefly, this raises the same issue that the committee raised in relation to the historic environment records some two weeks ago. The issue being the use of terms like ‘should’ and ‘must’—explaining what ‘should’ means, what ‘must’ means, and what are the consequences of not doing something you ‘should’ do, and not doing something you ‘must’ do.

[96] **Huw Irranca–Davies:** Could I make a proposal at this point, because this might not be—well, hopefully, it will be the last, but we don’t want to get into the business too often of simply dragging Ministers in for 10 minutes on

every—? Can I suggest we actually write to the business manager, because this seems to be something that is now popping up in different areas? I think probably a word, an instruction, helpful guidance, needs to be given right across the piste, otherwise, I can see us dragging in Ministers once a month to answer for what is essentially a tiny point of detail, but they need to get it right.

[97] **David Melding:** You know, it has big practical implications.

[98] **Huw Irranca-Davies:** It does.

[99] **David Melding:** This code is over a very serious area of public policy—

[100] **Huw Irranca-Davies:** Very much.

[101] **David Melding:** —where people need to know their obligations.

[102] **Huw Irranca-Davies:** Very much.

[103] **David Melding:** So, I agree.

[104] **Huw Irranca-Davies:** Which is why I think a good, firm, robust letter to the business manager would be good. Gareth, or team, if you'd be happy in drafting that—. Do you want it circulated around or are you happy for me to sign it off? You're happy to sign it off, there we are. Okay, so we'll do that.

[105] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** I also think we should contact the Ministers who are responsible in these areas, not just the business Minister—in my view at least. Because it's Ministers who are responsible for what they sign off, and if anything happens then and they are incorrect, then we do need to pursue them.

Rwy'n meddwl y dylem ni hefyd gysylltu efo'r Gweinidogion sydd â chyfrifoldeb, nid jest efo'r Gweinidog sy'n gyfrifol am fusnes, yn fy marn i. Oherwydd y Gweinidogion sy'n gyfrifol am y pethau y maen nhw'n eu harwyddo, ac os oes rhywbeth yn digwydd iddyn nhw wedyn ac nad ydyn nhw'n gywir—wel, mae eisiau mynd ar eu holau nhw.

[106] **Huw Irranca-Davies:** Dafydd, you're right—belt and braces—to the Ministers themselves, and, if it comes up with another Minister, to that Minister as well. But, in addition to that, the letter to the business manager

to say, 'Can we sort this out?'—in the correct technical terms. Thank you for that.

14:27

Papur i'w Nodi Paper to Note

[107] **Huw Irranca-Davies:** Item No. 6—we have a paper to note from the Australian Senate Legal and Constitutional Affairs Committee, and it's in relation to our 'A stronger voice for Wales' inquiry. It's quite a useful letter that they've sent to us, where they've clearly put some thought to it. We can accept it as well as part of our evidence. Are we happy to note? Thank you very much.

[108] Then, we move to another paper to note. Now, we have it here? We do. Right, this has appeared. This is now the Government response? *[Interruption.]* Excellent. It has now appeared, the Government response to the issue that we raised previously around the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017. Committee members will remember that these regulations provide for the making of loans to students who are ordinarily resident in Wales for postgraduate Master's degree courses that begin on or after 1 August 2017. But it was raised in a previous discussion—in fact it was our last meeting—issues around technical and merits points relating to human rights and equalities issues, and we had some discussion on that. So, we have now had the hard copy, hot off the press here, from the Ministers. Now, have we had time to look at this at all to absorb what—? Yes. Do you want to make any observations, Gareth?

[109] **Mr Howells:** Yes. So—

[110] **Huw Irranca-Davies:** Sorry, simply to say, what we were looking for—we're not trying to double guess the Minister here, but what we are looking for is an adequate explanation that they have thought this thing through, that, in their mind, they have thought through the implications on human rights and equality. Gareth, sorry.

[111] **Mr Howells:** So, the Welsh Government sets out its reasons for justification of this policy. The committee doesn't have to decide if it's justified or not. Ultimately, that is a matter for the courts. But the Welsh Government has provided the kind of detail we did request, which showed

that the Welsh Government really has considered this issue. It hasn't just plucked the figure of 60 out from the air. As long as the Welsh Government really has thought about it, then it'll be difficult to say that the age limit is arbitrary and unjustifiable, though, ultimately, of course, it's a matter for the courts if anyone did decide to challenge the age limit.

14:30

[112] **Huw Irranca-Davies:** So, what we now have in front of us, hot off the press, on your reading of it, provides an appropriate explanation of the way they've come to the conclusion that it does, indeed, satisfy equality and human rights considerations.

[113] **David Melding:** They can argue it, because it does go down to 50 per cent quite quickly, doesn't it, between age 60 and 65?

[114] **Huw Irranca-Davies:** It does, but they have their argument that they're willing to deploy. So, for our purposes, are Members satisfied that the Government has now provided the explanation? It is for them to defend, if ever challenged, but they have provided it for us. One aspect is, I think, on the basis of now having this, it may be worth—we don't normally do this—providing a very short supplementary report.

[115] **David Melding:** I think we should provide it.

[116] **Huw Irranca-Davies:** Yes, so that we have clarity that we've had it provided to us now. Okay. So, if we could do that, please, and produce it as a supplementary report. Thank you for that. Yes, Gareth.

[117] **Mr Howells:** There was a second point on these regulations as well around what the regulations say around loans for eligible prisoners. The regulations said one thing and the explanatory memorandum said another thing. The Welsh Government response was that you should read the explanatory memorandum and the regulations. The thing is that doesn't always happen. Sometimes, people will just read an explanatory memorandum. In this case, if they read just the explanatory memorandum, they will be misled.

[118] **Huw Irranca-Davies:** Ah, interesting. Interesting. This is quite a fundamental point. So, there would actually be a clearly different understanding from those two items if you were to read both.

[119] **Mr Howells:** If you read them separately.

[120] **Huw Irranca–Davies:** If you read them separately. Have we come across this before?

[121] **Mr Howells:** Not that I can recall.

[122] **Huw Irranca–Davies:** And the Government's argument is that they need to be read together. Does it say anywhere within these two documents that they need to be read together? Does it say anywhere within the text relating to this issue relating to prisoners that you should refer to the other document?

[123] **Mr Howells:** Not expressly. But they come as a package.

[124] **Huw Irranca–Davies:** They come as a package.

[125] **David Melding:** Well, why is there divergence? What's the necessity for the divergence? I don't understand that.

[126] **Mr Howells:** The policy intention is clearly what is intended in the regulations, but the explanatory memorandum doesn't make it as clear what that policy is.

[127] **David Melding:** So, it's inelegant in that sense.

[128] **Mr Howells:** Yes.

[129] **David Melding:** But does it go as far as being a technical problem, or—
?

[130] **Mr Howells:** Not if you read it with the regulations, as the Government points out.

[131] **Huw Irranca–Davies:** Could I suggest then that, as well as producing this supplementary report, we also go back to the appropriate Minister? But what would we be suggesting—would we be suggesting that they amend it in future? I'm not clear on this, because if it is our—. Okay. This is a question of whether it's being too heavy-handed or not, on the basis that they have provided their explanation that you need to read the two together. The two

are issued together; you need to read the two together. But it is our informed opinion that, should you not do that, you will have two different understandings.

[132] **David Melding:** Everyone involved in this sort of policy area who is not a lawyer and they need to gain a knowledge of this, they'll read the explanatory memorandum. I'm sorry, it's a silly counsel of perfection to say, 'You should read the legislation as well'. This is not insignificant. In prisons, we do try to encourage prisoners to improve their education. So, I think we need to say that it's unfortunate that this—I don't want to be mean and say 'sloppy' or whatever, but it's obviously not—. There was a mistake, it has not been picked up, and I think we should note it so that they take more care in the future, and they may want to make it clear to those involved in prison education exactly what the law is.

[133] **Huw Irranca-Davies:** Yes, I think—. Let's do this. Because we can't let it pass, it is too—. If one of our primary concerns is the clarity of law, not simply for lawyers but for the layperson, then it's clear that the misunderstanding can and probably will arise on this occasion. So, in David's terms, if we can draft something for the Minister on that—. Let's not go in with size 10 boots—

[134] **David Melding:** No, no, I know that—calm and constructive.

[135] **Huw Irranca-Davies:** Indeed.

[136] **David Melding:** Because errors do occur. I don't want to lose all compassion for them, but it's unfortunate.

[137] **Huw Irranca-Davies:** No, absolutely.

14:35

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

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

Cynnig:

Motion:

bod y pwyllgor yn penderfynu that the committee resolves to

gwahardd y cyhoedd o'r cyfarfod yn unol â Rheol Sefydlog 17.42(vi). *exclude the public from the meeting in accordance with Standing Order 17.42(vi).*

Cynigiwyd y cynnig.
Motion moved.

[138] **Huw Irranca-Davies:** Okay, and, with that, if I could seek Members' consent to move under Standing Order 17.42 to meet in private. Are we content? Very good.

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 14:36.
The public part of the meeting ended at 14:36.