



Cynulliad  
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

25/9/2017

Agenda'r Cyfarfod  
Meeting Agenda

Trawsgrifiadau'r Pwyllgor  
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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<br>Dafydd Elis-Thomas<br><a href="#">Bywgraffiad</a>   <a href="#">Biography</a> | Annibynnol<br>Independent                                 |
| Nathan Gill<br><a href="#">Bywgraffiad</a>   <a href="#">Biography</a>                            | Annibynnol<br>Independent                                 |
| Huw Irranca-Davies<br><a href="#">Bywgraffiad</a>   <a href="#">Biography</a>                     | Llafur (Cadeirydd y Pwyllgor)<br>Labour (Committee Chair) |
| Dai Lloyd<br><a href="#">Bywgraffiad</a>   <a href="#">Biography</a>                              | Plaid Cymru<br>The Party of Wales                         |
| David Melding<br><a href="#">Bywgraffiad</a>   <a href="#">Biography</a>                          | Ceidwadwyr Cymreig<br>Welsh Conservatives                 |

**Eraill yn bresennol**  
**Others in attendance**

|   |  |
|---|--|
| Y Gwir<br>Anrhydeddus/Rt Hon<br>Alun Cairns AS/MP | Ysgrifennydd Gwladol Cymru<br>Secretary of State for Wales   |
| Michael Dynan-Oakley                              | Prif Ysgrifennydd Preifat<br>Principal Private Secretary   |
| Philip Rycroft CB                                 | Ysgrifennydd Parhaol, yr Adran ar gyfer Gadael yr Undeb Ewropeaidd<br>Permanent Secretary, Department for Exiting the European Union |
| Sophie Traherne                                   | Cynghorydd Arbennig<br>Special Adviser   |
| Geth Williams                                     | Pennaeth Cyfansoddiad<br>Head of Constitution  |

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol  
National Assembly for Wales officials in attendance**

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

*Dechreuodd y cyfarfod am 10:01.  
The meeting began at 10:01.*

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

[1] **Huw Irranca–Davies:** Bore da. Good morning.

[2] Croeso i chi i gyd. Welcome to you all.

[3] Welcome, everybody, to this morning's session of the Constitutional and Legislative Affairs Committee. Some simple housekeeping instructions first of all: we're not expecting a fire alarm, but, if there is a fire alarm, Members should follow the committee team's directions to the fire exits. There is no test forecast for today. If we could make sure, as normal, that all mobile devices are switched to silent. As you're aware, we have instantaneous translation facilities on channel 1. You don't need to press any buttons to hear it; simply put the headphones on and switch them on. Don't touch any buttons on the microphones as there's no need to do that; it's hands free. And that's all the housekeeping arrangements.

10:02

**Llais Cryfach i Gymru: Sesiwn Dystiolaeth 12**  
**Stronger Voice for Wales: Evidence Session 12**

[4] **Huw Irranca–Davies:** We can move on to the business of the committee today. The first substantive item of business is indeed our inquiry session on the stronger voice for Wales. We're delighted to have in front of us here, at evidence session 12, the Rt Hon Alun Cairns MP, the Secretary of State for Wales, and a formidable team of people as well. Secretary of State, you're very welcome indeed. Would you like to introduce your staff or would they like to introduce themselves?

[5] **Mr Cairns:** Wel, diolch yn fawr, Cadeirydd. Mae'n bleser cael bod yma. Diolch yn fawr am y gwahoddiad. A gaf i gyflwyno Geth Williams, un o'r swyddogion o Swyddfa Cymru; Sophie Traherne fel cynghorydd arbenigol; a hefyd Michael Dynan–Oakley sydd yn gweithio yn y swyddfa breifat. Diolch yn fawr iawn am y gwahoddiad. Mae gen i lawer iawn o ddiddordeb yn yr adroddiad yma ac yn yr ymchwiliad.

**Mr Cairns:** Well, thank you very much, Chair. It's a pleasure to be here. Thank you very much for the invitation. May I introduce Geth Williams, one of the officials from the Wales Office; Sophie Traherne who is a special adviser; and Michael Dynan–Oakley, who works in the private office? Thank you very much for the invitation. I am very interested in this inquiry and in your report.

[6] **Huw Irranca–Davies:** Diolch i ti hefyd. Diolch yn fawr iawn.

**Huw Irranca–Davies:** Thank you to you too. Thank you very much.

[7] We're going to begin, if that's all right, with some opening questions and remarks from my colleague, David Melding. He's going to take us into this session. David, over to you.

[8] **David Melding:** Thank you, Chair. Good morning, Secretary of State, it's always a pleasure to have one of our *alma mater* back, but it doesn't mean we're going to be easy with you. [*Laughter.*]

[9] To set this morning's session in context, the role of the Secretary of State is over 50 years old now, but it's changed over that time very considerably, especially since devolution. I wonder what you think is the main role of the office now.

[10] **Mr Cairns:** I think you're right, Mr Melding, about the way in which the

role of the Secretary of State has changed. If you consider probably it was quite—the role was one of probably lesser influence in the very early days, I suspect. That would have grown to considerable executive powers pre devolution, and then post devolution it would have been shared responsibility with the Welsh Government, or which was a corporate body here in the Assembly in those days. And as every Government of Wales Act will have passed, the role of the Secretary of State will have changed. But I would say that, whereas there's a strong role for individual Whitehall departments to have a good working relationship with the Welsh Government and, I would say, with the Assembly as a whole from time to time, those departments will often consider issues in isolation, whereas there's very often a much wider context that needs to be taken into account. One of the roles of the Secretary of State for Wales is to maintain the awareness of that wider context.

[11] Another role of the Secretary of State as it stands is to influence Government policy with consideration of devolution, with consideration that a decision in England will have an effect and, even in a devolved area, will have a material influence, because of the scale of the different nations. And the role of the Secretary of State, sitting at the Cabinet table, is to ensure that any Cabinet colleague who is pursuing an area of policy is fully aware of the consequences, and to influence that in a positive way to suit the Welsh context or to take into account the Welsh consequence that would come out of a policy.

[12] **David Melding:** A couple of your predecessors, Lord Murphy and Lord Hain, are obviously Labour politicians, but they gave us quite strong evidence that the role of Secretary of State was still important. There have been some people, obviously, who have questioned its purpose—

[13] **Lord Elis-Thomas:** Oh, surely not. [*Laughter.*]

[14] **David Melding:**—in the age of devolution. But it's interesting that they have said that, no, it is important, and your answer there, I think, was very interesting, in that English domestic policy making can have a big influence on us because of the scale, and I think that's a very intelligent answer. So, do you see your job as facilitating, sometimes, what the Welsh Government needs to do but, you know, perhaps has some difficulty with the ramifications of what happens in England and their policy development?

[15] **Mr Cairns:** Well, I think you'll often have a situation where a Whitehall

department will rightly engage with the Welsh Government in a particular policy area, and that is right and sensitive, and it takes place on a daily, a weekly and an ongoing basis. But, at certain points, the Whitehall department will turn to the Wales Office to seek advice, to conduct its engagement in a context that we will effectively bring to their attention. Sometimes, something might seem inconsequential to a Whitehall department but could have a significant consequence in Wales, to the politics, to the outlook and to how Wales is seen, or to how Whitehall is seen in Wales.

[16] There's also a process by which any Government policy evolves and develops. The Secretary of State for Wales is aware of that at a very early stage and influences that as it develops and evolves, before it gets to the clearance process whereby there is a write-around to every Cabinet Minister to allow the policy to develop. But the Secretary of State and, I would say, the other territorial offices as well are quite active with other Government departments well before any policy has been confirmed, and certainly before any announcement.

[17] **David Melding:** So, would it be fair to say that, where the balance of this lies, it's trying to get—or is helping—Whitehall in general, and particularly the big departments that set English policy, to be deeply aware of devolution and the ramifications, as I said, of what they do? think you've made a very convincing case that that's a really important role, and of all the decentralised states in the world, we obviously have rather strange units in England being so large and the other nations being much smaller, though they are very established in their national identities. I just wondered whether you think it's as effective in the other direction. Does the Welsh Government try to use you as a facilitator sometimes? I know there's going to be a lot of the political pantomime here, but, you know, beyond that, when there is some real joint working necessary, is that effective, do you think?

[18] **Mr Cairns:** I think that's a really good point. You're right about there being a public perception. I think much of it will come down to personalities. The First Minister and I get on very well; we've worked very closely together. In any communication that goes from the Welsh Government to a Whitehall department—sometimes in support, sometimes in protest of a policy—I'm always copied in, usually by the Welsh Government, but, very often, if that has happened because of an administrative reason, it's brought to my attention immediately by the Whitehall department so that I can then place a context on it or press for my views. That's maybe in more of a formal way, but, because the relationships are pretty strong, my understanding of how



this place operates in undoubtedly a help. And therefore, from time to time, I'll have an informal text from a Minister, or a phone call, asking would I pay particular attention to a particular area because of whatever the consequence might be.

[19] Now, I'm not sure whether that happens necessarily with every Secretary of State, or has in the past, but it made me smile that one opposition MP said to me, maybe six months or more ago, that the relationship between the Wales Office and the Welsh Government is probably stronger now than when it was the same colour administration at both ends of the M4. Now, that was said in a positive, tongue-in-cheek sort of way, not meant as any criticism of what had happened in the past. But I think there are often a lot of common issues where the First Minister and I would see the same way, and therefore me using influence in Whitehall will very often lead to a positive outcome, which very often doesn't get recognised or publicised, partly because it's not necessarily controversial.

[20] **David Melding:** Actually, you anticipate a question I was going to ask about whether, in your view, the facilitating role, when the Welsh Government would quite like your good offices, as it were, is helped or hindered by the fact you're from different parties. But I sense that you're most effective when we're a bit beyond the political battle, and it's more concentrating on common objectives—things that clearly would benefit Wales, and getting us a better deal. And would you say that's where most of your leverage is?

[21] **Mr Cairns:** Well, whether that's most of the leverage, because I think that the role of the Secretary of State is wide ranging, and we've only touched on relatively small elements of it in our discussion—. But, essentially, all Governments want the same thing. I mean, we want to improve wealth and prosperity, and social justice, and so on. We often have different ways of getting there. Devolution provides an added complexity, and the role of the Secretary of State to influence that outcome across Whitehall, I think, is extremely important.

[22] And I think one way of describing it, in terms of how Whitehall officials will often see it, is probably the way in which the BBC, 18 years ago, would often have reported the news about health, for example, and they would have said, 'Health in England and Wales is A, B, C'. Well, of course, when it was devolved and it wasn't an England-and-Wales policy any more, the BBC quite obviously learnt along the process and are continuing to do so, and I

think that's probably fair to say about Whitehall officials as well. And they will get—there's constantly a better understanding. But you have to remember there's also a churn of Whitehall officials, which is natural in any large organisation. So, the role of the Secretary of State, and of the Wales Office, with their official team, to constantly keep on oiling the wheels of Government to understand the implications on devolved administrations, or the role of devolved administrations, is ongoing. Although it's much, much better, as is—I think we would all acknowledge—the way the BBC reports devolved issues, which is a hundred times better now than it would have been 18 years ago.

[23] **David Melding:** I think some colleagues may pursue some of these points about, you know, Whitehall's more general understanding of devolution. I just want to ask, in an earlier answer, you said that a Welsh Minister may be in some sort of bilateral contact with a UK department and you would get copied in. How do you think all that works in terms of the balancing act when, you know, sometimes the Welsh Government does want to be a bit more bilateral in its dealings, I guess—if it's an environmental issue, or agricultural policy, or whatever—and they may not want to go through you so much? I mean, how does all that work out? I mean, are you relaxed about it, or do they generally try to use both, in parallel, approaches, and does that make for awkward government, or does that actually, in the real world, assist meeting common objectives?

[24] **Mr Cairns:** Well, the reality is that some individuals, some departments, will operate and respond better than others, and if there is an issue that the Welsh Government—. I think that would be the same even within all the responsibilities of the Welsh Government. So, there will be some individuals more effective than others, in terms of engaging. So, if there is an engagement taking place between the Welsh Government and a department, I will always be sighted in terms of what's happening and what's going on and if I see that I have no objection or don't need to add support because it's progressing in a way that I'm content with, then that will happen. Officials will occasionally communicate my views, which, sometimes, will be in support of the Welsh Government, sometimes will be questioning or pressing for further evidence, or whatever the case might be. So, I'm completely relaxed about that engagement between the Welsh Government and the Whitehall department. But, be it the communication coming from the Welsh Government that is taking place, or even when it's from the Whitehall department, they will always bring it to our attention, anyway. Some departments, again, are better than others at doing that, but the approach I

take is that I want Whitehall departments to engage with the devolved administrations, but in the context of the advice that comes from the territorial office.

10:15

[25] **David Melding:** Finally, then, so you're relaxed about which route is the primary one at any one time in terms of these contacts, do you sometimes feel that a Welsh Minister's missed a trick, and if they'd had a word with you earlier on, perhaps a little less formally, that you would've been able to use your good offices more effectively? Do you ever feel a slight frustration?

[26] **Mr Cairns:** I think hindsight's always a wonderful thing, but the reality of presses—. It's probably better if I answer it in the way that my relationship is sufficiently positive, I would say, with Welsh Government Ministers—that's how I consider it anyway—that they would bring something that is of particular relevance and importance to them to my attention that I can then seek to press that case and influence the Whitehall department in order to see it that way, providing I agree. I mean, from time to time, I may say to a Welsh Minister, 'Well, I'm sorry. That's not where UK Government policy is', and then on that basis, of course, those are the ones that tend to come in the public domain, but they're very, very small in comparison with the ongoing work of Government that is positive and constructive on both ends of the M4.

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

[28] **Huw Irranca-Davies:** Thanks for that line of questioning, David. Before I bring in my colleague Dafydd Elis-Thomas, could I ask, in carrying out that role of oversight of Whitehall policy and having impacts on Wales, what is your capacity? How many members of your team do you have who carry out that role to make sure that Wales is spotted, as Whitehall departments are carrying out their policies?

[29] **Mr Cairns:** Well, it's an ongoing issue. It's difficult to pinpoint in the way that you've asked the question, because we have officials who look across Whitehall departments. And the point I've made to officials, having been Secretary of State for a short time when I've felt that maybe there was a job of work to do in terms of engagement in a particular policy area, I encourage officials almost to be ahead of the curve so that we're thinking ahead of where the Whitehall department could be reacting, because the

earlier that we're seeking to influence or change, the better it would be.

[30] One practical example of late will have been the Severn tolls and the VAT implications. It wasn't necessarily on the radar of the Department for Transport, not for any officials, the VAT elements of it, when we made the policy decision that the tolls were going to be abolished by the end of next year. But of course, I recognised the significance of the VAT issue very early on, whereas it wasn't necessarily seen as a priority in the whole DfT agenda, because there were much bigger issues that they were dealing with at the time. But having said that, a 20 per cent reduction in the tolls would be seen to be helpful and significant, and something that could well have led to a furore if it hadn't been identified quite early on.

[31] **Huw Irranca-Davies:** That is a really interesting one. So, the VAT reduction one, that particular example, would that have automatically been followed through by the Department for Transport anyway, but you spotted the importance of it? Would they have carried through on it, regardless? Would they have done it?

[32] **Mr Cairns:** Well, I think it just wasn't on their radar at that time. I think the more consideration that you give to a policy, the more likely you are to come out with an outcome. So, we may well have ended up where we are now, with DfT continuing on that basis, but us being slightly ahead of the curve before they've got to the consideration, we're almost providing a ready-made solution, if you like.

[33] **Huw Irranca-Davies:** Right. Very good. Sorry, Dafydd.

[34] **Yr Arglwydd Elis-Thomas:** Na, ddim o gwbl, Gadeirydd. Allaf i ddim siarad Saesneg gydag Alun achos nid ydym ni erioed wedi gwneud hynny. Ac felly, mae'n bleser dy groesawu di yma—os yw hi'n briodol galw 'ti' ar Ysgrifennydd Gwladol mewn pwyllgor yn y Cynulliad. Rwy'n credu'i bod hi.

**Lord Elis-Thomas:** No, not at all, Chair. I can't speak English to Alun, because I've never done so. So, it's a great pleasure to welcome you here—if it's appropriate to call you *ti* in Welsh in an Assembly committee, as Secretary of State for Wales. I think it is.

[35] Mae wedi bod yn werthfawr iawn i ni dy fod ti wedi cyfeirio at bwysigrwydd perthnasau anffurfiol a phwysigrwydd personoliaethau pobl

It has been very valuable to us that you have referred to the importance of informal relationships and the importance of people's personalities

a'r arddull rwyf ti'n ei ddefnyddio ac yn cysylltu â dy berthynas arbennig di â Phrif Weinidog Cymru.

and the method that you adopt and your style in your particular relationship with the First Minister of Wales.

[36] Fe garwn i wybod ychydig bach mwy am y berthynas â Gweinidogion eraill yn y Llywodraeth yn San Steffan, yn y meysydd sydd heb eu datganoli. Hynny yw, i ba raddau wyt ti fel Ysgrifennydd Gwladol Cymru yn gallu cymryd rhan yn rhybuddio neu yn cyngori adrannau eraill o'r Llywodraeth? Nid wyf i'n sôn am yr adran gweinyddu cyfiawnder yn arbennig. Ond i ba raddau wyt ti'n gallu eu cyngori nhw ynglŷn â'r modd maen nhw'n gweithredu polisiau sydd heb eu datganoli, ond yn arbennig y modd y maen nhw'n gweithredu ymhellach yn y broses o ddatganoli, lle mae trafodaethau yn mynd ymlaen rhwng Llywodraeth Cymru a nhw?

I would like to know a little bit more about the relationship with other Ministers within the Government in Westminster, in the areas that haven't been devolved. That is, to what extent do you as Secretary of State for Wales take part in warning or advising other departments of Government? I'm not talking about the Ministry of Justice in particular. But to what extent can you advise them about the way that they implement policies that haven't been devolved, but, in particular, the way that they act further on in the process with regard to devolution, where there are debates going on between the Welsh Government and them?

[37] **Mr Cairns:** Wel, a gaf i sôn, er enghraifft, ynglŷn â'r heddlu ac ynglŷn â diogelwch? Mi oedd y Champions League yma ychydig o fisoedd yn ôl. Er nad yw pethau oddi amgylch heddlu a diogelwch a therfysgaeth wedi cael eu datganoli, yn amlwg maent yn mynd i gael impact enfawr yng Nghymru pan fo yna ryw fath o ddigwyddiad chwaraeon fel hwnnw—digwyddiad mwyaf chwaraeon y byd eleni—yn cymryd lle. Felly, er nad oedd y cais ariannol ynglŷn ag arian i'r heddlu yn cyrraedd nod y fformiwla achos nid oedd y gwariant dros 1 y cant o

**Mr Cairns:** Well, may I mention policing and security? The Champions League was here just a few months ago. Although issues surrounding policing, security and terrorism are non-devolved, clearly they are going to have a huge impact in Wales when there is a sporting event on that scale happening. It was the largest sporting event of the year, and it was taking place here. So, although the request for funding for the police didn't match the formula, because the spending wasn't over 1 per cent of police expenditure and, therefore, there were no obligations

wariant yr heddlu, felly nid oedd unrhyw fath o oblygiadau ar y Swyddfa Gartref i gefnogi'r cais ariannol, roeddwn i'n gwbl ymwybodol ynglŷn â'r risg ac ynglŷn ag eisiau gweld a rhoi *guarantee* o lwyddiant i'r digwyddiad. Felly, mae hwnnw yn siampl eithaf syml, lle y gwnes i siarad â'r Swyddfa Gartref, ymyrryd yn y trafodaethau, a dyna £1.4 miliwn ychwanegol yn dod i Heddlu De Cymru er mwyn rhedeg yr heddlu a phethau diogelwch oddi amgylch i'r digwyddiad.

[38] **Yr Arglwydd Elis-Thomas:** Wel, fel talwr tâl y cyngor yn ne Cymru, rydw i'n ddiolchgar iawn iti. [*Chwerthin.*]

[39] I'r un cyfeiriad eto, nid wyf i eisiau holi a chymharu rhwng yr Ysgrifennydd Gwladol presennol a rhai eraill, ond mi oeddet ti yno yn nes ymlaen yn y broses, sef y gwaith ynglŷn â beth ddaeth yn Neddf Cymru 2017. Yr argraff gawsom ni yn y pwyllgor yma yn y dystiolaeth a gawsom ni gan yr Ysgrifennydd Gwladol ar y pryd oedd ei fod o wedi cysylltu ag adrannau'r Llywodraeth yn San Steffan gan ofyn pa faterion oedden nhw'n eu tybio oedd yn briodol i'w datganoli, ac felly bod llawer o'r dadleuon a gawsom ni yn San Steffan ac yn y fan hon ynglŷn â'r eithriadau a'r modd yr ysgrifennwyd Bil Cymru yn y drafft gwreiddiol, fod hwn wedi cael ei effeithio gan ddiffyg dealltwriaeth adrannau yn San Steffan oedd ddim wedi cael eu helpu gan y

on the Home Office to support that request for funding, I was entirely aware of the risk, and I did want to provide a guarantee of success for the event. Therefore, that's one example, quite a simple example, where I spoke to the Home Office, intervened in those discussions, and an additional £1.4 million was provided to South Wales Police in order to run policing and security around that event.

**Lord Elis-Thomas:** Well, as someone who pays council tax in south Wales, I'm very grateful to you. [*Laughter.*]

But in the same vein, I don't want to ask about and compare the current Secretary of State and others, but you were there later on in the process, namely the work in relation to what became the Wales Act 2017. The impression that we received in this committee, in the evidence that we received from the Secretary of State at the time, was that he had contacted departments of the Government in Westminster to ask what issues they felt were appropriate to devolve, and that much of the debate that we had in Westminster and in this place with regard to the exemptions and the way that the Wales Bill was written in its initial draft was that this was impacted upon by a lack of understanding from Westminster

ffordd y gofynnwyd y cwestiynau gan Swyddfa Cymru. Wedyn, fy nghwestiwn i, yn codi o hynny, yw: a allwn ni gael sicrwydd nad yw pethau fel hynny yn debygol o ddigwydd eto?

[40] **Mr Cairns:** Wel, yn sicr mae yna broses o ddysgu drwy'r amser. Fel y dywedais i'n gynt, mae gweision sifil yn symud ymlaen. Rydw i'n credu bod, o dan y Prif Weinidog, neges gref i bob adran ynglŷn â phwysigrwydd undod y Deyrnas Unedig ac felly mae'n rhaid ein bod ni'n cydweithio a chymryd i mewn i ystyriaeth yr agweddau sydd yn dod oddi wrth y rhannau o'r Deyrnas Unedig lle mae yna bolisiau wedi cael eu datganoli.

[41] Ond wrth ein bod ni wedi mynd trwy'r gwaith i fyny at y Mesur eleni, mi oedd yna lawer iawn o drafodaethau rhyngof innau a Phrif Weinidog Cymru. Yn amlwg, nid oeddem ni'n gytŷn ar bob dim, ond, eto i gyd roeddem ni'n gwybod yn sicr lle'r oeddem ni'n mynd, y ddau ohonom ni, ac roeddwn i'n hyderus trwy'r amser y buasem ni wedi llwyddo cael y cynnig cydsyniad deddfwriaethol yn y pen draw.

[42] Felly, fel y dywedais i'n gynt, mae'r gweision sifil yn dysgu ac yn newid, ond mae yna rôl gen i fel Ysgrifennydd Gwladol er mwyn dylanwadu arno fe. So, mae yna lawer iawn o bethau yn y Mesur lle roedd yna wrthwynebiad yn wreiddiol gan

departments, which wasn't assisted by the way that the questions were asked by the Wales Office. So, the question arising from that is: can we have an assurance that similar things aren't likely to happen again?

**Mr Cairns:** Well, certainly there's an ongoing learning process. As I said earlier, civil servants move on—there is churn. I do think that there is a strong message from the Prime Minister to all departments on the importance of the unity of the United Kingdom and, therefore, we must work together and take into account the opinions of different parts of the United Kingdom where policy areas are devolved.

As we went through the work leading up to the Bill this year, there were a great deal of discussions between myself and the First Minister. Clearly, we didn't agree on everything, but we did understand the direction of travel, the both of us, and I was confident throughout that we would succeed in getting that legislative consent motion ultimately.

As I said earlier, civil servants do learn, but they also change, and I have a role as Secretary of State in influencing all of this. So, there are a number of things contained within the Act where there was opposition originally in Westminster, and when

San Steffan, ac felly pan fydd gwleidyddion yn siarad, fel arfer mae'n llawer haws i gael rhyw fath o gytundeb, er bod yna weithiau wahaniaethau rhwng y gweision sifil, efallai, yn y fan hyn ac yn San Steffan hefyd.

[43] **Yr Arglwydd Elis-Thomas:** A ydy dy ymyrraeth di fel Ysgrifennydd Gwladol Swyddfa Cymru gydag Ysgrifenyddion eraill a Gweinidogion ar lefel Gweinidogion gwladol hefyd, yn amlwg, mewn adrannau eraill sydd yn delio â materion heb eu datganoli, a ydy'r ymyrraeth yna yn cynnwys y gallu i gysylltu yn uniongyrchol neu drwy swyddogion Swyddfa Cymru gyda swyddogion yr adrannau eraill, fel bod y neges yn mynd drwodd nid jest ar lefel gwleidyddion, ond bod hi'n mynd drwodd hefyd ar lefel yr Ysgrifenyddion a'r Gweinidogion, ond hefyd y lefel swyddogion?

[44] **Mr Cairns:** Wel, fel dywedais i yn gynt, mae yna waith yn mynd oddi amgylch pob wythnos, bron bob dydd, oddi wrth weision sifil yn San Steffan a gweision sifil yn y fan hyn. Mae hynny'n digwydd tro ar ôl tro. Mae'r gwleidyddion, fel arfer, yn dod o hyd i'r broblem pan fydd yna broblem. Felly, pan rydw i'n codi pwynt gyda rhyw Ysgrifennydd Gwladol o ryw adran arall, yn sicr mae hwnnw fel arfer yn cael ei ddatrys yn gymharol hawdd, achos maen nhw'n derbyn fy meirniadaeth i, y rhan fwyaf o'r amser, byddwn i'n dweud, heblaw efallai fod pethau

politicians speak, it's usually far easier to reach consensus and agreement, although there are occasionally, of course, differences between civil servants here and in Westminster.

**Lord Elis-Thomas:** Is your intervention as Secretary of State from the Wales Office with other Secretaries and Ministers on a Minister of state level in other departments that are dealing with non-devolved issues—does that intervention include the ability to get in touch directly, or via officials at the Wales Office, with officials in other departments, so that message does permeate, not just on a political basis, but it goes through the Secretaries and Ministers, but also on an official level as well?

**Mr Cairns:** Well, as I said earlier, there is work ongoing every week, virtually every day, between civil servants in Westminster and civil servants here. That happens regularly. Politicians usually identify a problem when that problem emerges. So, when I raise a point with a Secretary of State from another department, then usually that would be resolved quite easily, because they accept my view on most occasions, I would say, unless there are any legalities that I haven't fully understood in driving the policy in the first place. So, there is a great



cyfreithiol nad oeddwn i'n gwybod amdanynt wrth i mi wthio'r polisi yn y lle cyntaf. So, mae yna lawer iawn o gydweithio rhyngof innau a Llywodraeth Cymru gyda'r adrannau yn San Steffan, ond hefyd mae cydweithio yn digwydd y ffordd arall rownd hefyd.

deal of collaboration between myself and the Welsh Government with Westminster departments, but there is also collaboration happening the other way too.

[45] **Yr Arglwydd Elis-Thomas:** A gaf i ofyn un cwestiwn am drefniadau mwy ffurfiol ynglŷn â chyfranogiad Ysgrifennydd Gwladol Cymru o bwyllgorau Cabinet Llywodraeth y Deyrnas Unedig? Sut y mae'r pwyllgorau Cabinet o fewn y Deyrnas Unedig yn arbennig—ac mae hyn yn amlwg yn mynd i godi—yn llywio'r broses o adael yr Undeb Ewropeaidd?

**Lord Elis-Thomas:** May I ask one question about more formal arrangements with regard to the participation of the Secretary of State for Wales in Cabinet committees at the UK level? How do those Cabinet committees within the United Kingdom in particular—and this is obviously going to arise—steer the process of exiting the EU?

[46] **Mr Cairns:** Wel, rydw i'n eistedd ar chwe phwyllgor Cabinet—yn amlwg, y Cabinet yn gyfan gwbl, ond chwe phwyllgor Cabinet ac is-bwyllgor Cabinet. Gallaf i roi'r rhestr yn hawdd iawn i'r pwyllgor, os oes ei heisiau. Ond, unrhyw beth sy'n digwydd ynglŷn â Brexit, rydw i'n eistedd ar y pwyllgor, ac yn gynnar iawn yn y drafodaeth mae'r Prif Weinidog yn troi tuag ataf fi, a thuag at Ysgrifenyddion Gwladol yr Alban a Gogledd Iwerddon, er mwyn denu ymateb oddi wrthym ni i gael gweld beth fydd yr ymateb cyfansoddiadol, beth fydd yr ymateb gwleidyddol, mewn gwahanol rannau o'r Deyrnas Unedig. Felly, yn amlwg, rydw i'n dylanwadu er lles Cymru. Efallai y byddai rhai pobl yn cytuno â'r cyfeiriad ac efallai y byddai rhai pobl

**Mr Cairns:** Well, I sit on six Cabinet committees—clearly, the Cabinet itself, but also six Cabinet committees and sub-committees. I could provide that list to the committee if that would be of assistance. But, anything happening in terms of Brexit, then I am a member of the relevant committee and very early in the discussion the Prime Minister will turn to me, and to the Secretaries of State for Scotland and Northern Ireland, in order to ask for our response in order to see what the constitutional and political response may be in the various constituent parts of the United Kingdom. Therefore, I obviously bring influence to bear for the benefit of Wales. Some may agree with the direction of travel and others may

yn anghytuno â'r cyfeiriad, ond yn disagree, but certainly I will always act for the benefit of Wales in any committee or sub-committee.

[47] **Yr Arglwydd Elis-Thomas:** Mae Lord Elis-Thomas: Well, that's a very hwnnw yn ddatganiad pwysig iawn, important statement, if I may say so, os caf i ddweud, yn gyfansoddiadol, constitutionally, and it's important a'i fod o wedi cael ei wneud o flaen y that it has been made in this committee, so thank you.

[48] Felly, y cwestiwn olaf—yn y The final question—in this round of rownd yma beth bynnag—beth sydd questions at least—what's wonderful yn hyfryd i fi ei glywed yw bod, ar for me to hear is that, at times, and adegau beth bynnag, ac mewn rhai in some Cabinet meetings, the United cyfarfodydd Cabinet, y Deyrnas Kingdom is operating in a way that Unedig yn gweithio mewn modd y someone like me would describe as byddai rhywun fel fi yn ei alw yn 'federal'.

[49] **Mr Cairns:** Efallai yn fan hyn y Mr Cairns: Well, this is where we may byddwn ni'n anghytuno, achos nid disagree, because we don't have a system ffederal sydd gennym ni. Ond a federal system. That's why the Prime dyna pam mae'r Prif Weinidog yn troi, Minister does turn, at a very early yn gynnar iawn yn y drafodaeth, i stage, to seek the political and i gael gweld yr agwedd wleidyddol, constitutional views, and the gyfansoddiadol sydd yn dod, a'r interpretations coming from outwith dehongliadau sydd yn dod o du allan any policy context, and the impact it i unrhyw fath o destun polisi, a'r will have on various different parts of effaith y bydd yn ei chael ar wahanol the UK.

[50] **Yr Arglwydd Elis-Thomas:** Lord Elis-Thomas: Thank you very Diolch yn fawr. much.

[51] **Huw Irranca-Davies:** Dafydd, thank you very much. Secretary of State, I, like Dafydd, welcome the statement you made there, that on the various committees on which you sit, you speak for Wales. It has always been an interesting paradigm, this traditional concept of the Wales Office and your role as Secretary of State for Wales, as the voice of Wales within Whitehall and the UK Government, but the voice of Whitehall and the UK Government within Wales. So, that statement is quite significant, I think, for us as a

constitutional committee.

10:30

[52] Could I ask you, though: how strong do you feel that voice is on those committees and sitting around the Cabinet table? Do you feel that the Secretary of State for Wales's position, and the Wales Office, is at least equal to all those other departments? I guess the easy answer is 'yes'. This has been something that has been a long-term question: how strong is that voice of Wales at the top table?

[53] **Mr Cairns:** Well, I would say it's very strong. You would expect me to say that. There is no area of policy where I have been asked not to speak. I mean, I'm encouraged to speak widely on a whole range of policies that are in devolved areas and in reserved areas. So, I would say that my views are welcomed. When I was reappointed by the Prime Minister after the last election, in our discussion in terms of priorities, part of that discussion was, 'Please continue to ensure that you speak out in the way that you are.' That was the request that was made of me, and I continue to do that. It's pretty easy to pick up, in terms of body language around the table, as to whether attention is being paid or not, and I certainly haven't sensed anything that Wales's view is not being considered and listened to.

[54] **Huw Irranca-Davies:** I guess that what I'm getting at—and this is over a series of administrations of different political complexions—is the ability of a Secretary of State for Wales to actually sit there and say, 'Well, I'm digging in on this one.' Have you—

[55] **Mr Cairns:** I'm sorry, I missed that last part.

[56] **Huw Irranca-Davies:** 'I'm digging in on this one. This is so important.' Do you find yourself in those positions, ever, or is it all collaborative and all fine?

[57] **Mr Cairns:** Well, I think the reality is that discussions happen at a much earlier stage. If I go back to the answer that I gave to you earlier, it's about trying to be ahead of the curve in terms of a policy direction, so that there's a mature consideration by the time that it comes to a Cabinet committee. I wouldn't have done my job if it gets there where there hadn't been a view from Wales or from the Wales Office in terms of the impact of that policy. Therefore, the earlier the engagement that the Secretary of State

for Wales has in a policy consideration—. You will know, Cadeirydd, that there will be a widespread public consultation, and that there is quite a long process before a policy gets to a confirmed position and then before it gets announced. There are several places in which the Secretary of State influences, and my approach is to be as early as possible and encourage officials to be engaging with different Whitehall departments in order to ensure that the Welsh angle is considered and taken into account. I don't think I've come across an area whereby it's ever been dismissed.

[58] **Huw Irranca-Davies:** Thank you very much for that answer—

[59] **Mr Cairns:** I know I haven't come across—. I should confirm that: I haven't come across a period where any view is dismissed.

[60] **Huw Irranca-Davies:** Thank you for that. It was remiss of me earlier on; I didn't say at the outset of proceedings that Nathan Gill has given his apologies. He can't join us until slightly later in the morning, but he was going to ask a couple of questions that I might put to you. The first one is: you have seen the list of people who have come in front of us, and one of the things that has been repeatedly said to this committee is that Whitehall civil servants—and I'm going to exempt those people sitting at this table straight away—do not have a good enough understanding of devolution. How do you feel about that?

[61] **Mr Cairns:** Well, I think it goes back to the answer that I gave earlier, when I highlighted the parallel of the BBC. I think it's an ongoing, evolving process. I think that even in my time in Parliament, of seven years, and my time as Secretary of State—for what is it; 15, 18 months or so—I've noticed an ongoing development and shift. From some of the recommendations that have come out of the Lords Constitution Committee, and from the Public Administration and Constitutional Affairs Select Committee, there is an ongoing job of work to do. The UK Governance Group was set up in 2015 in the Cabinet Office. I know that you are talking to Philip Rycroft later today. That is a constant, ongoing evaluation. But even if we stop today, the point I made earlier is that you need to consider that there is a constant turnover of officials and civil servants. I would also say that it's very helpful when Whitehall officials come on secondment or even come and work in the Assembly, in the Welsh Government, and vice versa. I can remember that some senior appointments here in the Welsh Government in the early days—so, in the Assembly in the early days—will have had their experience across Whitehall departments, and that has been a significant help. From the time

when I served on the public administration select committee in the House of Commons, there was certainly a perception—I don't have the data to hand—that that free movement, if you like, between Whitehall and Cardiff is probably not as free as it used to be. I think that the greater the movement the better it would be in terms of supporting. The same applies to politicians. Politicians, such as your good self, with understanding of how Whitehall operates and how the Assembly works, and myself, who went the other way—I think it's a good added benefit in order to help educate the machinery of government at both ends of the M4.

[62] **Huw Irranca-Davies:** I think we really welcome that answer, because it certainly says that we need to keep on working on this. Could I ask you this: all these years, 20 years after devolution, do you think the point that we've got to, the level of understanding that we have in Whitehall of devolution, is satisfactory?

[63] **Mr Cairns:** I think it's a lot better than it ever was. I think there's absolutely a sensitivity to it. I, without doubt, believe that. But it's an ongoing dynamic. Because, in fairness, the Wales Act 2017—that will change it again—

[64] **Huw Irranca-Davies:** Focused all attention.

[65] **Mr Cairns:** —but even the principal appointed day hasn't come into effect yet.

[66] **Huw Irranca-Davies:** Sir Derek Jones was in front of us—one of the people who gave us evidence—and he said it's still now regarded by some Whitehall departments as an afterthought—in his words—when you get to devolution issues.

[67] **Mr Cairns:** Well, I don't see that. I disagree with that, because I see very early on—and Whitehall departments often will raise issues with us early on: what are the consequences that we would see, or what we think should be their consideration to it. So, I would disagree with that, but I always say there is always work to do, because it's a dynamic that is constantly evolving. Maybe you might want to ask Geth, who is an official who deals with the officials across Whitehall departments.

[68] **Huw Irranca-Davies:** Well, I'd welcome that. And you have a long institutional memory as well. You've long experience.

[69] **Mr Geth Williams:** Nothing helped raise the awareness of Wales more in Whitehall than the Wales Bill. [*Laughter.*] It involved two years of very intensive work with all departments across Whitehall—policy teams, legal teams, Ministers. They all became very well aware of what the new reserved powers settlement looks like. We're about to embark on an intensive training programme with departments across Whitehall in anticipation of the new reserved-powers model coming into force next spring. We need to ensure that the new reserved-powers model is ingrained in the Whitehall psyche. And as the Secretary of State said, the departments come to us if they're uncertain about any aspect of it.

[70] **Huw Irranca-Davies:** Thank you very much. Perhaps I could ask just one final question. It's on the mechanics of this. I wonder how you regard the functioning—the effectiveness—of memoranda of understanding and devolution guidance notes. How important are they? Are they working well? Geth Williams and I, I think back in 2006–07, were working on these together. How are they doing?

[71] **Mr Cairns:** Well, you'll be aware that there was a commitment in the Joint Ministerial Committee by David Cameron in 2015 to review those. There's an awful lot of work that's gone on. They came forward to the last two Joint Ministerial Committees for consideration, and there was broad agreement—but there was also agreement for more work to be done in other areas in light of the referendum, for example, to leave the European Union. I would also say that there will be a need for further ongoing reviews because of the Wales Act 2017. The constitutional make-up of the UK has changed so much. Simply having one document that is fixed is not necessarily a workable, practical model.

[72] **Mr Geth Williams:** I think the thing to remember about DGNs is that they are internal guidance notes for Whitehall departments, and I know Whitehall departments rely on them heavily. And again, if any department is unclear about any aspect of it, they're on the phone to the Wales Office for guidance. As the Secretary of State said, there will be a new guidance note to reflect the new reserved-powers model.

[73] **Huw Irranca-Davies:** Have you ever been in a situation—? Sorry, Secretary of State; I'm directing this at you, whilst looking to your team as well. But I'm wondering whether you've ever been in a situation, in your experience, where you've had to go back and remind a department, 'This is

what either the guidance notes or the memorandum of understanding says. You're not playing by the ball here. Let me just remind you of what it says in black and white'.

[74] **Mr Cairns:** Well, I certainly think it's—

[75] **Huw Irranca-Davies:** Do you ever use it in those ways?

[76] **Mr Cairns:** Well, not in that tone. I mean—

[77] **Huw Irranca-Davies:** You're too diplomatic.

[78] **Mr Cairns:** I would say it works both ways. Because Whitehall departments' engagement sometimes with the Welsh Government will offer a very generous interpretation, in terms of what the memorandum of understanding is, because of an issue that the Welsh Government will have raised, and sometimes it will offer quite a strict interpretation of it. The reality is that the job of government is ongoing—it's a dynamic in itself. It comes down to relationships. And if there are relationships and confidence on both sides, then I think it leads to better outcomes.

[79] **Huw Irranca-Davies:** Thank you very much. I'm going to bring in my colleague Dai Lloyd. Dai.

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| <p>[80] <b>Dai Lloyd:</b> Diolch yn fawr, Gadeirydd, a bore da, Ysgrifennydd Gwladol. Mae fy rhan i o'r cwestiynau i gyd yn ymwneud â'r Cydgyngor Gweinidogion. Ac felly, i ddechrau, a allaf ofyn i chi yn gyffredinol: beth ydy eich profiad chi o'r Cydgyngor Gweinidogion? A ydych chi'n teimlo bod Cymru'n cael ei hystyried yn gydradd efo'r Alban a Gogledd Iwerddon o fewn waliau'r Cydgyngor Gweinidogion?</p> | <p><b>Dai Lloyd:</b> Thank you very much, Chair, and good morning, Secretary of State. My part of the questions relates to the Joint Ministerial Council. And so, to begin with, may I ask you in general what your experience of the Joint Ministerial Council has been? And do you feel that Wales receives equal consideration to Scotland and Northern Ireland within the walls of the Joint Ministerial Council?</p> |
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| <p>[81] <b>Mr Cairns:</b> Wel, mae'r cydgyngor yn fforwm ofnadwy o bwysig, ond y gwirionedd yw mai un cyfarfod o bryd i'w gilydd yw hynny,</p> | <p><b>Mr Cairns:</b> Well, the JMC is a very important forum, but the truth is that meetings are held occasionally, and, as I said earlier, the role of</p> |
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ac, fel y dywedais i ynghynt, mae'r rôl o lywodraethu, y rôl o weithredu, yn llawer mwy dynamig, byddwn i'n ei ddweud, na hynny. Felly, nid hynny yw'r prif fforwm, achos bod rhaid i benderfyniadau gael eu gwneud wrth bod polisiau yn cael eu datblygu ac yn cael eu hamlinellu.

[82] Ond, i'r ail gwestiwn, yn sicr, mae Cymru'n cael ei gweld yn yr un modd ag y mae Gogledd Iwerddon a'r Alban.

[83] **Dai Lloyd:** Yn naturiol, gan ei fod e yna, dyna pam rydych chi'n cael y cwestiynau am y Cydgyngor Gweinidogion. Ac, wrth gwrs, rydym ni wedi cael tystiolaeth o flaen y pwyllgor yma cyn heddiw sy'n darogan efallai fod y profiad o'r Cydgyngor Gweinidogion yn un cymysg, o ran effeithlonrwydd, ac ati, a phobl wedi ei gymharu ag ambell i gyngor plwyf—rwy'n credu yn eich etholaeth chi, a dweud y gwir—o ran gweithrediad. Ond ta waeth am hynny.

[84] Ond, o gofio hynny, a fydddech chi'n credu y bydd angen i'r Cydgyngor Gweinidogion esblygu eto, o ystyried bod y Deyrnas Unedig yn gadael yr Undeb Ewropeaidd? Mae yna bwysigrwydd nawr, achos mae Prydain yn gadael yr Undeb Ewropeaidd. A ydych chi'n rhagweld y bydd y Cydgyngor Gweinidogion yn esblygu eto mewn rhyw ffordd, i ymateb i'r alwad a'r cyfrifoldebau newydd?

governance and delivery is far more dynamic than that. So, that isn't the main forum, because, of course, decisions do have to be taken as policies are developed and outlined.

However, in response to your second question, certainly, Wales is seen as being equal to Scotland and Northern Ireland.

**Dai Lloyd:** Well, as it's there, that's why you're being asked these questions about the Joint Ministerial Council. And we've heard evidence within this committee before now that states that the experience of the Joint Ministerial Council is perhaps mixed with regard to its efficiency, and so on. And people have compared it with some parish councils—perhaps in your constituency—in terms of its activity. But never mind about that.

But, remembering that, do you believe that the Joint Ministerial Council will need to evolve further in light of the UK's withdrawal from the European Union? It's important now, because the UK is exiting the UK. Do you foresee that the Joint Ministerial Council will need to evolve further in some way, to respond to the new responsibilities?



[85] **Mr Cairns:** Wel, mae hynny'n gwestiwn da. Mae eisiau i fi ddweud mai cyd-bwyllgor yw e, nid cydgyngor, yn y lle cyntaf. Felly, er fy mod i wedi defnyddio'r gair 'cydgyngor', 'cyd-bwyllgor' yw'r peth.

**Mr Cairns:** Well, that's a good question. And I should say that it's a joint committee rather than a joint council. I have also used the same term—I do admit that.

[86] **Dai Lloyd:** Rydw innau hefyd—rwy'n syrthio ar fy mai.

**Dai Lloyd:** I have too—I accept that.

[87] **Mr Cairns:** Yn amlwg, mae yna bob amser mwy o waith i'w wneud i wella pob lefel o bolisi, a phob lefel o ddatblygu polisi hefyd. Ond byddwn i'n dweud bod yna lawer iawn o *hype* fel arfer o amgylch unrhyw gyd-bwyllgor sy'n digwydd fel hyn. A'r gwirionedd yw, os bydd yna alw am newid polisi, er enghraifft, yng nghyd-bwyllgor fel hynny, nid yw pawb yn mynd i adael y cyd-bwyllgor yn cytuno bod yna shifft enfawr o bolisi wedi bod. Achos mae yna rôl datblygu polisi, mae ymgynghoriad, ar y ddwy ochr—ym Mae Caerdydd, a hefyd yn San Steffan. Felly, er mwyn codi, efallai, bod eisiau edrych ar ryw elfen o bolisi, mae hynny efallai yn llawer mwy realistig, byddwn i'n ei ddweud, na disgwyl shifft mawr o bolisi, ac mae'r *hype* cyn unrhyw fath o gyd-bwyllgor efallai yn disgwyl yr ail beth, sydd ddim cweit mor ymarferol.

**Mr Cairns:** Now, clearly, there's always more work to be done to improve all levels of policy and policy development. But I would say that there's usually a great deal of hype surrounding any JMC of this kind. And the truth is that, if there is a need for a change of policy in a joint committee such as that, not everyone is going to leave that meeting agreeing that there's been a huge shift in policy. Because there is a role in developing policy, there is consultation on both sides—in Cardiff Bay and in Westminster. And therefore, in order to raise any element of policy, that is more realistic than expecting a huge shift in policy, and the hype before any joint committee perhaps anticipates that huge shift, which perhaps isn't quite as practical.

[88] **Dai Lloyd:** Ac yn dilyn o hynny, felly, mae yna awgrym gan Lywodraeth Cymru yn y fan hyn y gallai Cyd-bwyllgor y Gweinidogion

**Dai Lloyd:** And following on from that, there has been a suggestion from the Welsh Government here that the JMC could be overhauled and

gael ei weddnewid a'i ailstrwythuro i fod yn rhan o Gyngor y Gweinidogion y Deyrnas Unedig. Beth ydych chi'n ei feddwl am y gosodiad yna?

[89] **Mr Cairns:** Wel, yn amlwg, rydw i wedi gweld y cynnig. Ond, eto i gyd, mi fydd dehongliad pob unigolyn yn wahanol o ran sut y byddai hynny'n edrych—pa fath o waith y byddai e'n ei ystyried. A fyddai'r *hype* yn dal i fod yr un peth, a'r un fath o siom, efallai, gan rai bod dim sifft enfawr ym mholisi yn digwydd achos un cyfarfod. So, yn ymarferol, mae yna job o waith i'w wneud yn San Steffan o ddatblygu polisi, job o waith i'w wneud yn ardaloedd polisi sydd wedi cael eu datganoli gyda Llywodraeth Cymru, er enghraifft, ac rydw i'n meddwl bod yna rôl gan y cydbwyllgor i gymryd i mewn i ystyriaeth y gwahanol elfennau er mwyn sicrhau bod y polisiâu'n cydweithio.

10:45

[90] **Dai Lloyd:** Reit. A fy nghwestiwn olaf i, wedyn, Gadeirydd, jest yn symud ymlaen ychydig: gwnaeth y Prif Weinidog yn fan hyn ddatganiad yn *Plenary* yr wythnos diwethaf—wel, rhan o'r datganiad ar y Bil i adael Ewrop oedd e, ac roedd o'n dweud, pan na fo Llywodraeth y Deyrnas Unedig yn derbyn bod yna anghydfod i'w gael—hynny yw, anghydfod rhwng fan hyn a San Steffan—ni ellir sbarduno proses anghydfod, a bydd Llywodraeth y

restructured, to be part of the UK Council of Ministers. What do you think about that position?

**Mr Cairns:** Well, clearly, I've seen that proposal. But, again, every individual interpretation would be different, in terms of how that would look—what kind of work it would carry out. Would the hype surrounding it still be there, and the disappointment experienced by some that there isn't a huge shift in policy as a result of a single meeting. So, on a practical level, there is a job of work to be done in Westminster in terms of developing policy and a job of work to be done by the Welsh Government in those devolved policy areas too, and I do think that there is a role for the JMC to take into account the various elements in order to ensure that the policies work across the board.

**Dai Lloyd:** Right. And my final question, then, Chair, just moving on a little bit: the First Minister made a statement in Plenary last week—well, it was part of the statement on the EU exit Bill, and he said that when the UK Government does not accept that a dispute exists—that is, a dispute between this place and Westminster—a dispute process cannot be triggered, and the UK Government will win every single time. That was the fundamental point

Deyrnas Unedig yn ennill bob tro, felly. Dyna oedd y pwynt sylfaenol roedd o'n gwneud. Os nad oedd yna gytundeb bod yna anghydfod, ac yn benodol, felly, os nad oedd San Steffan yn cytuno bod yna anghydfod, nid oedd yna broses anghydfod yn gallu cicio i mewn. O dan y fath safiad yna, felly, a oes perygl y bydd llais Cymru yn cael ei wthio i'r cyrion yn rhy aml?

[91] **Mr Cairns:** Wel, nid ydw i'n gweld y bydd llais Cymru'n cael ei wthio i unrhyw le heblaw cael ei dderbyn a chael ei ystyried yn ddigon teg, fel y byddai pawb yn disgwyl. Ond os gwnewch chi edrych nôl tuag at y gwahanol gydbwyllgorau sydd wedi bod yn y maes yma, mi welwch chi lle mae yna setliad wedi dod—gwahaniaethau gyda'r Alban weithiau, gwahaniaethau gyda gwahanol rannau o'r Deyrnas Unedig, ac maen nhw yna ar y record er mwyn bod y pwyllgor yn gallu edrych tuag atyn nhw. Ond mae yna gytundeb am beth sy'n cael ei drafod neu beidio, ac mae'n rhaid i bob rhan o'r Deyrnas Unedig gytuno â hynny.

[92] **Dai Lloyd:** A ydych chi'n cytuno efo pwynt y Prif Weinidog, yn y bôn? Mae o'n dweud: pan mae yna anghytuno rhwng Llywodraeth Cymru a Llywodraeth y Deyrnas Unedig, os nad ydy Llywodraeth y Deyrnas Unedig yn cytuno bod yna anghytuno, nid oes yna broses i fynd i'r afael â'r anghytundeb yna; mae'n dibynnu ar y ffaith bod San Steffan

that he made: if there wasn't an agreement that a dispute existed, and in particular, if Westminster didn't agree that there wasn't a dispute, then there wasn't a dispute resolution process that could kick in. Under that kind of position, therefore, is there a danger that Wales's voice will be marginalised too often?

**Mr Cairns:** Well, I don't see that the voice of Wales will be marginalised in any way. It will be given fair consideration, as everyone would expect. But if you look at various joint committees that have taken place in this area, you will see where a settlement has been reached—there have been differences with Scotland and differences with other parts of the UK, and they are on the record so that the committee can consider them. But there is agreement as to what is discussed or not, and all parts of the UK must agree on that.

**Dai Lloyd:** Do you agree with the First Minister's point, at heart? He says that when there is a dispute between the Welsh Government and the United Kingdom Government, if the United Kingdom Government doesn't agree that there is a dispute, then there is no process to resolve that dispute. It depends on the fact that Westminster also agrees that there is

hefyd yn cytuno bod yna anghytuno, a dispute or a disagreement, if you os ydych chi'n dilyn y ddadl. follow that. [*Laughter.*]  
[*Chwerthin.*]

[93] **Mr Cairns:** Wel, mae'n rhaid bod pob Llywodraeth yn cymryd i mewn i ystyriaeth, os bydd rhywbeth yn cael ei weld yn annheg, mae yna gost bob amser. Y gost yn y modd mae'r Llywodraeth yn cael ei weld, y gost wleidyddol yn y pen draw, a'r gost mewn cymaint o ffyrdd. Yn fy mhrofiad i, pan mae yna wahaniaeth sydd yn ddigon teg a lle mae yna le cryf i fynd ag ef i'r cydbwyllgor, yn sicr, byddai hynny'n cael ei ystyried fel mae e wedi cael ei wneud sawl gwaith yn y gorffennol.

**Mr Cairns:** Well, every Government must take into account that if something is seen as being unfair, then there is always a cost in political terms and there are other implications too, of course. But from my experience, when there is a dispute where that can be taken forward in the joint committee, then certainly that would be considered, as it has been on a number of occasions in the past.

[94] **Dai Lloyd:** Océ. Rydw i'r ymwybodol o'r amser, felly gwnaf ei adael o'n fan yna.

**Dai Lloyd:** Okay. I'm aware that the time is passing, so I'll leave that now.

[95] **Huw Irranca-Davies:** Diolch.

**Huw Irranca-Davies:** Thanks.

[96] Thank you very much. Yes, we're coming into the final section here of the hour and I did want to make sure that, in good chairmanship, we close it bang on time as well. I wonder, just before I go on to the final set of questions, whether I could ask you: the proposals that have been put forward by Welsh Government, do you see merit in them at all, or are there dangers from a Whitehall perspective, because they tend to lead us towards a more, if not federal, a sort of quasi-federal—it's a step way beyond what we've been used to with JMCs? There is an argument that you could strengthen the JMC; you could have more meaningful, collaborative setting of agendas, meaningful outcomes, more transparency with them et cetera, et cetera. But the Council of Ministers—is there an in principle problem with that for Whitehall?

[97] **Mr Cairns:** Well, I would say the interpretation of what a Council of Ministers is will be different with different people, so until there's some sort of detail in terms of what it would do, what it would stand for, what its merit

and limitations would be, then it's sort of difficult. But—

[98] **Huw Irranca-Davies:** So, for example, the one-plus-one voting intention on it, so that decisions have to be carried—that's quite a different situation from where it currently is.

[99] **Mr Cairns:** Well, but the reality is, as I mentioned to Dr Lloyd, that the Joint Ministerial Committee as it stands considers those sorts of policy areas, and even if there's a recognition—. Let me give an example of something very small that you highlighted earlier: the memoranda of understanding. There was an agreement to go away and consider them, though there's an awful lot of joint work that's gone on between Governments, and then they come back to the Joint Ministerial Committee in order for final sign-off. At the last, there was a need to go further to conduct some more work in that policy area.

[100] So, the difficulty is that there is a considerable amount of hype around a particular meeting. I think many of your witnesses have already said that there's a briefing in the press, and I think Baroness Randerson talked of this, to a degree, where there is almost a build-up that would be impossible, even if there was a will for a shift in policy. Therefore, the sorts of structures that have been talked about, I don't think are necessarily practical in terms of the way that Governments operate in general, and the consultation with the public, the consultation across departments and the consultation with different administrations and the outcomes there would be from a shift in policy.

[101] **Huw Irranca-Davies:** Does it carry the threat of shifting the power too much towards the devolved administrations in the detail of the reforms that have been put forward in the Council of Ministers?

[102] **Mr Cairns:** Well, it depends, again, what is meant by a Council of Ministers, whereby details are meant. You could almost call the Joint Ministerial Committee a Council of Ministers, because that's what it effectively is, but the reality is that there's a recognition that more work needs to be done on the Council of Ministers—more work needs to be done, sorry, I should say, on the Joint Ministerial Committee.

[103] **Huw Irranca-Davies:** Are you letting us into a piece of work that's going on? [*Laughter.*]

[104] **Mr Cairns:** I know you've obviously got Philip Rycroft in later today, who is an official who has served at many Joint Ministerial Committees, and he will be able to offer a view from a Cabinet Office perspective and as an official. But I think, sometimes, people's expectations are very different to what would ever be practically delivered, because of the policy work that needs to be done to grant or to recognise a shift in policy in any one particular direction. I therefore think that a particular focus on one meeting or one body is impractical and unrealistic.

[105] **Huw Irranca-Davies:** Okay, thank you very much. I want to turn now, in our closing section here, to other aspects, and one of them is the lessons that may have been learned from the way that the Wales Bill was handled. And that isn't a criticism, that is simply to say that we assume you would've done a postmortem—

[106] **Lord Elis-Thomas:** It's not dead yet. [*Laughter.*]

[107] **Huw Irranca-Davies:** No, sorry. A post-match analysis of how the match went of the actual handling of the Wales Bill, or, as it now is now, the Wales Act 2017. What lessons have you learned?

[108] **Mr Cairns:** I would have picked it up halfway through, as it were, and some excellent work was done with my predecessor and I continue to engage in a positive way and in the same spirit that he'd shown in terms of the shift from the draft Bill. But we need to remember that a draft Bill is very much a draft Bill and that's part of the purpose. There were many criticisms and some compliments, but that shift from the draft Bill to the final Bill, I think was much more realistic. But I think we can also take positively the comparison with what led to previous Government of Wales Acts. We'll all remember the Richard commission that then led to almost a rejection and the Legislative Competence Order structure. If you think of how devolution has developed over time, it's hard to believe that in 2010 we had the LCO structure still in place. So, I think even if we recognise—. Even those who are critics of the Wales Act would never want to go back to what we had and I hope that even those would recognise that it was handled and developed in a much better way than what we ended up with with the 2006 Act, which gave us the LCO structure.

[109] **Huw Irranca-Davies:** Okay. Do you think, by the way, that, in the clarity—putting any disputes over what's in it to one side—that came from the Wales Act there are now any dangers, going forward, with the European

Union (Withdrawal) Bill? Have you, as a Wales Office, cast your eye over this and thought, 'Right. In terms of the clarity now around devolved responsibilities and competences, the EU withdrawal Bill muddies the water'?

[110] **Mr Cairns:** Well, I think that we've certainly taken into account the views of the devolved administrations and the Welsh Government explicitly from the White Paper of the withdrawal Bill. If you think of what that highlighted—because devolution has been established in the context of being a member of the European Union, therefore, we have explicitly, in the withdrawal Bill, called the European context 'retained EU law'. And that has been done explicitly on consideration and consultation with the devolved administrations, about how we can best get to a place that will allow for and provide the path for further devolution in those areas.

[111] **Huw Irranca-Davies:** I mean, the reason I mention it is, one of the interesting aspects of this, depending on how the EU Withdrawal Bill proceeds through Parliament, is that some people are saying quite clearly that there is a danger here that, after your work last year on the Wales Act, this reintroduces something that looks like the old LCO process for areas of devolved competence.

[112] **Mr Cairns:** I would strongly disagree with that, because we—

[113] **Huw Irranca-Davies:** It looks like it technically.

[114] **Mr Cairns:** No, I would strongly disagree, on the basis that it's being defined within the withdrawal Bill as 'retained EU law' on purpose, because that is the context in which devolution has been established. And there are two issues that can happen in terms of how the withdrawal Bill has been set—that those areas can be devolved at an early stage, as quickly as possible, with agreement with the devolved administrations—and that's clearly what we would like to see in the vast majority of areas—or there would need to be separate legislation in order to move that forward. Now, we all know about the sort of close scrutiny that the Commons will provide, but particularly in the House of Lords, over any new legislation that would infringe on the powers of the devolved administrations. And therefore, on that basis, I would say to—I've said to the First Minister—take confidence from the way in which the withdrawal Bill has been framed. Retained EU law has been specifically designed and defined, recognising the context in which devolution was established, but also providing the route for which further devolution can take place from that position.

[115] **Huw Irranca-Davies:** Thank you for that, Secretary of State. And I'm sure we'll return to this as the EU withdrawal Bill proceeds, and David Rees's committee, the EAAL committee, as well. But can I ask you, in terms of the Wales Act, one of the interesting aspects of the Wales Bill's progression was the way in which there was interaction between the Wales Office and the Llywydd here. Now, that's interesting for us as a constitutional committee, because that's engagement between government and parliament.

[116] **Mr Cairns:** Well, I think that's—and I should have referred to this earlier, in some of the questions about relationships, because I think that the Government itself should, rightly so, have engagement with the Assembly, through the Presiding Officer, quite obviously, particularly on issues when it relates to the powers about its own organisation, and that's the logical thing to do, because the views of the Presiding Officer, not the Assembly, might be different to the views of the Government, and that needs to be taken into account and consideration. So, in terms of the positive engagement that takes place between my office and the Welsh Government, I would say that that positive engagement is equally strong with the Presiding Officer.

[117] **Huw Irranca-Davies:** So, on lessons learnt, going forward, it's interesting that—you're defining that very much as Government to Parliament, with the Llywydd, in terms of her responsibilities. How would you regard that, if we were to be at constitutional matters again, in terms of engagement with a committee such as this, which deals with constitutional matters on the Assembly's behalf? And, by the way, I'm not looking backwards, but I'm actually looking forwards. What role is there for engagement between this committee and the Secretary of State for Wales when there is a constitutional matter affecting Wales?

[118] **Mr Cairns:** Well, I think it depends on what the issue is specifically. And I'm not picking and choosing for a second, because I strongly believe that the Secretary of State for Wales is there to be scrutinised by Parliament and by the Welsh Affairs Select Committee, and I think that the cross-sover between Assembly committees scrutinising Ministers in Parliament—it can happen, and will happen, but I don't think it should necessarily be the norm. And likewise for, say, the Welsh Affairs Select Committee, or any other committee, to scrutinise a Government Minister from here in Wales, because, obviously, it's the role of the Assembly Members to scrutinise Welsh Ministers, and it's the role of Parliament to scrutinise the Secretaries of State. But I would add to that, there are exceptions that take place, so it shouldn't



necessarily be the rule.

11:00

[119] In discussions that, Cadeirydd, you and I have had in the past, I think there is very much a role for informal evidence sessions and engagement, and I think that that can sometimes be the solution when there might be a difference about whether it crosses that boundary to be an exception or not.

[120] **Huw Irranca-Davies:** Secretary of State, thank you very much. Do you have time for one final question—

[121] **Mr Cairns:** I do.

[122] **Huw Irranca-Davies:**—looking closely at the clock? The question is quite a fundamental one. It's whether you've given any thought, or whether the Cabinet, the UK Government Cabinet, has given any thought, to what's going to happen if the EU withdrawal Bill fails to secure legislative consent in Cardiff or in Edinburgh. What happens then?

[123] **Mr Cairns:** Well, we want to agree a position. The conversation I had—. And I would hope that this can highlight the positive engagement we had. Before the EU withdrawal Bill was published, and before it was shared with Members of Parliament—because the Government risked the wrath of the speaker in the House of Commons by having shared that with the Welsh Government some two weeks before the Bill was published in the Commons, and MPs could have legitimately complained that that was being shared with a devolved administration before that—. So, that was shared two weeks before, but, when I had a telephone call with the First Minister on the day of publication for us to formally communicate it with each other, we both agreed that, of course, there were differences where we were, and we would work to resolve them in exactly the same way that we did with the Government of Wales Bill at the time, which is now the Government of Wales Act 2006, which received a legislative consent motion. So, my focus is on working to succeed in securing the LCM and I don't want to consider anything else.

[124] **Huw Irranca-Davies:** Thank you very much. Well, thank you very much, Secretary of State. I really appreciate your time appearing with us, and all your colleagues as well. Thank you very much. I wish you—. I was just going to wish you a safe journey back, but you may only be heading across the bay.

[125] Diolch yn fawr iawn i chi. Thank you very much. Thank you.  
Diolch yn fawr iawn.

[126] We will send you, of course, a transcript, so you can check through for accuracy and so on.

[127] **Mr Cairns:** Thank you. Diolch yn fawr.

[128] **Huw Irranca-Davies:** And, colleagues, we'll return later in private session to reflect both on that and subsequent evidence sessions that we have today.

11:02

**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**

[129] **Huw Irranca-Davies:** So, if we could turn now to other business, we move on from that item, which is item No. 2, on to item No. 3, instruments that raise no reporting issues under Standing Order 21.2 or 21.3. Under paper 1 in your packs, we have several negative resolution instruments. I won't read them all out, because they're quite extensive. There is nothing to note on these, but do Members have any comments or observations? We're content to note. Thank you.

[130] Diolch yn fawr iawn. Thank you very much.

11:03

**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**

[131] **Huw Irranca-Davies:** We move, then, to item No. 4, which is instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3, and we have, there, one instrument. It's the composite

negative instrument SL(5)119, the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017. Now, my thanks to our lawyers for a short note on this. What we understand is that these composite regulations further amend the Education (Student Loans) (Repayment) Regulations 2009. They relate to functions exercisable in respect of Wales, in part by the Welsh Ministers and in part by the Secretary of State. The 2009 regulations make provision for the repayment of student loans in England and Wales, but you've identified—our lawyers have identified—one point for reporting under Standing Order 21.2. Gareth.

[132] **Mr Howells:** Diolch. Yes. The committee will be familiar with this point. Again, it's the composite instruments laid before Parliament and the Assembly, and it's in English only.

[133] **Huw Irranca-Davies:** Now then, as Members will recall, we've discussed this before, as Gareth was saying. Unless you want to go into greater dialogue—. We still intend to write on this matter, and not only on this one but previous ones. We've had some complications with the general election getting in the way, but we will pursue that. Is there anything, now, at this point, that we want to add to that letter?

[134] **Yr Arglwydd Elis-Thomas:** A **Lord Elis-Thomas:** May I just say, on gaf i jest ddweud ar hynny, rydw i yn that point, I am certainly of the bendant o'r farn bod i Lywodraeth opinion that for the Welsh Cymru gyflwyno unrhyw offeryn Government to introduce any statudol i Senedd Cymru nad yw'n statutory instrument to the Welsh cydymffurfio â Deddf yr Iaith Parliament that doesn't comply with Gymraeg 1993 ymlaen drwy holl the Welsh Language Act 1993 and on Ddeddfau Llywodraeth Cymru, ble through all the other Welsh mae'r Gymraeg a'r Saesneg i'w trin ar Government legislation where both sail cyfartaledd—ac felly yn fy marn i Welsh and English are to be treated y mae'r ddogfen yma yn amhriodol on the basis of equality—and ac allan o drefn? therefore, in my view, this document is inappropriate and out of order?

[135] **Huw Irranca-Davies:** Thank you, Dafydd.

[136] **Yr Arglwydd Elis-Thomas:** A **Lord Elis-Thomas:** Was that clear? oedd hynny'n glir?

[137] **Huw Irranca-Davies:** Could I just ask Gareth or Gareth or anybody just

to illuminate our understanding a little bit on what the potential implications of this are for other statutory instruments that may be laid, both in our normal course of business, but also perhaps as a result of the EU withdrawal Bill as well?

[138] **Mr Howells:** Well, in particular, if the UK Ministers use the power to amend Assembly legislation, then that will need to be done in English and in Welsh, because, if our legislation is in English and in Welsh, it would need to be amended, in whatever way the UK Minister sees appropriate, in both English and in Welsh.

[139] **Huw Irranca-Davies:** So, could I suggest, on that basis, that we also flag that up now, because we're still in process with the EU withdrawal Bill, but it can clearly be anticipated that this carries wider implications? So, it's wise to put the shot across the bows, in whichever way you describe it legally, at a very early stage. Okay.

[140] **David Melding:** I think it's so important that expediency cannot apply to the principle that we make law in English and Welsh.

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

[142] **David Melding:** And this is not a marginal piece of law, even if you were looking at expediency grounds. It relates to an important public policy and how it affects young people paying back their graduate loan. So, I think we need to be tough and lay down the very clear line that we have.

[143] **Huw Irranca-Davies:** Thank you very much.

[144] **Dai Lloyd:** Yes—not just a shot across the bows but a shot pretty near actually skimming the bows, if we could use that terminology. [*Laughter.*]

[145] **Huw Irranca-Davies:** Thank you. Okay, very clear direction there from the committee.

[146] **Lord Elis-Thomas:** I would blast them out of the water. [*Laughter.*]

[147] **Huw Irranca-Davies:** So, we move with that, and thank you for your comments on that. I think it's very clear now what that letter should contain.

11:07

**Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad  
arnynt o dan Reol Sefydlog 21.2 na 21.3 ond sydd â Goblygiadau o  
Ganlyniad i'r DU yn Gadael yr UE**

**Instruments that Raise no Reporting Issues under Standing Order 21.2  
or 21.3 but Have Implications as a Result of the UK Exiting the EU**

[148] **Huw Irranca-Davies:** We move to item No. 5, instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU. Just to remind committee members, but also those who are listening in to this session today, this is a recent process we have brought forward in order to identify specifically those statutory instruments that do carry implications through us exiting the EU. So, the instrument actually has a clear report, but it does relate to EU law and, as a result, the committee is reporting to the Assembly separately on these instruments, highlighting these issues that have implications arising from the UK exiting the EU for information only, and to help with the understanding of how such law may need to change in the future. Gareth, was there anything you wanted to add in terms of this particular one?

[149] **Mr Howells:** Yes, just for information. So, these regulations, made by the Welsh Minister, are another example of EU-related legislation, and, under clause 2 of the withdrawal Bill, these kinds of regulations will be retained as domestic law, and the Welsh Ministers will have certain powers to amend this kind of legislation in devolved areas. These regulations enforce this EU regulation, and also this EU regulation will form part of domestic law on exit day under clause 3 of the withdrawal Bill, but there will be no power for the Welsh Minister to amend this directly effective EU law, basically, even in devolved areas, such as food.

[150] **Huw Irranca-Davies:** Okay, thank you very much. Content with that? David.

[151] **David Melding:** I think it's very useful and, for those that need to follow certain aspects, anyway, of regulation making closely, it would be a great help.

[152] **Huw Irranca-Davies:** Yes, there we are. Thank you very much. Thank you, Gareth.

11:08

**Papurau i'w Nodi**  
**Papers to Note**

[153] **Huw Irranca–Davies:** So, we move on to item No. 6. Now, committee members will note that we have a lot of papers as part of our pack, which I know you will have spent about five days reading though. We do have the opportunity to discuss these in some detail in a private session, if we choose to move to private session subsequently, but if there are any particular points that you want to raise—. I'm not going to list them all, because, under item No. 6, what we have done is themed them for the convenience of Members, because there were so many.

[154] So, we have a large group of papers relating to the process of exiting the EU. I don't think I need to read them all into record, do I? They'll be on record and on our site, so, if any members of the public or others want to check on them, they can see what they are there—several papers there relating to exiting the EU. We also have, then, a group of papers—. Oh, sorry, on those particular papers, a few points to note: paper No. 6, which is the letter from Lord Jay of—and I'm going to struggle to pronounce this correctly—Ewelme. Nobody's contradicting me.

[155] **David Melding:** I think you've taken your best stab at that, Chair, I must say. [*Laughter.*]

[156] **Huw Irranca–Davies:** My apologies to Lord Jay if I pronounced that wrongly. On that particular paper, a meeting has since been arranged for the second week in October to discuss the scrutiny of Brexit-related issues, which we'll discuss in private session as well. On paper 7—

[157] **David Melding:** Which you are attending, Chair.

[158] **Huw Irranca–Davies:** Indeed. Which I will be attending on behalf of the committee.

[159] Papers 7 to 10 relate to the EU withdrawal Bill, including the legislative consent motion and correspondence from the First Ministers of Wales and Scotland, enclosing their suggested amendments to the Bill. We can return to discussing this subsequently. So, I'll defer discussion until the private session.

[160] Then, we have a batch of papers on Welsh Government legislation. So, I invite Members to note the correspondence on various Welsh Government Bills. Members will have received hard copies of the legislation handbook on Assembly Bills, hopefully, today, in their pigeon holes as well. That flows, of course, from some of the previous work that this committee was doing, and the committee will be meeting the Law Commission on 16 October relating to that batch of papers. We then have papers to—

[161] **David Melding:** I do have a question—

[162] **Huw Irranca-Davies:** Sorry. Yes, David.

[163] **David Melding:** —if we're on Alun Davies's reply.

[164] **Huw Irranca-Davies:** Yes, indeed. Not yet.

[165] **David Melding:** Oh, we've not reached it yet, then.

[166] **Huw Irranca-Davies:** Not yet, but we are moving on to it now.

[167] **David Melding:** On the additional learning needs in education.

[168] **Huw Irranca-Davies:** Oh, I'm sorry. That one. Yes, sorry.

[169] **David Melding:** I just wanted clarification on whether a Minister previously has given any indication of what 'accept in principle' means, because we do have a definition here, and that's a matter 'subject to further consideration and discussion', which is much more contingent, I think, than a lot of people would have thought 'accept in principle' means. But I think it is something to note. I'm not sure if this is the first statement we've had of what 'in principle' is taken to mean.

[170] **Huw Irranca-Davies:** Interesting. Do we have any observations on that at the moment? I wonder if we could reflect on that, then. Thank you, David. Very helpful.

[171] If we then move to the papers to note in respect of the Wales Act 2017, I'd invite Members to note the correspondence from the Llywydd and from the Secretary of State regarding the implementation of the Wales Act 2017, and advising that the principal appointed day for changing to the new

reserved-powers model will be 1 April 2018. Members will recall that there was a write-around to various parties prior to that clarification.

[172] Then, we have a group of papers to note on the stronger voice for Wales inquiry. There are two papers there, from the British Academy and the Learned Society of Wales, both of which we welcome very much. They were received after the consultation period closed, but we have accepted them, if Members are content with that, because they are good, substantive pieces of evidence.

[173] Then, we have the final category, 'Papers to note—other': a letter from the Llywydd and also, from Welsh Government, a written statement. The letter from the Llywydd is to do with Assembly reform on disqualification, defamation, contempt of court and Assembly privilege. We'll be able to return to that in our private session. The Welsh Government's written statement is on the commission on justice in Wales, which again we can return to if Members want to.

[174] So, are we content in noting all of those papers? Thank you.

11:13

**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 exclude the public from the meeting  
unol â Rheol Sefydlog 17.42(vi).*

*in accordance with Standing Order  
17.42(vi).*

*Cynigiwyd y cynnig.*

*Motion moved.*

[175] **Huw Irranca-Davies:** In which case, under item No. 7, I propose a motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the remainder of our business this morning. Are you content? All Members are content. Thank you very much. If we could move into private



session—.

*Derbyniwyd y cynnig.*

*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:14.*

*The public part of the meeting ended at 11:14.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 14:30.*

*The committee reconvened in public at 14:30.*

### **Llais Cryfach i Gymru: Sesiwn Dystiolaeth 13** **Stronger Voice for Wales: Evidence Session 13**

[176] **Huw Irranca–Davies:** Prynawn da, and welcome to this afternoon's session of the Constitutional and Legislative Affairs Committee. We are straight in this afternoon, into the final evidence session, session 13 of our stronger voice for Wales inquiry, and we are delighted to welcome this afternoon Philip Rycroft CB, Second Permanent Secretary at the Department for Exiting the European Union, and soon to be Permanent Secretary at that department.

[177] **Mr Rycroft:** From Monday.

[178] **Huw Irranca–Davies:** From Monday. So, we really appreciate you giving your time to come down and spend a little bit of time with us. We also have a familiar figure to my left, who was with us this morning in his role accompanying the Secretary of State for Wales and is here again, Geth Williams, deputy director of constitution and policy at the Wales Office. So, you're both very welcome indeed.

[179] If you're content, we'll go straight into our session this afternoon, and I'll kick off. I wonder, in the position that you have, which is quite a unique position in terms of your experience and where you fit into the constitutional structure, could I ask you, Mr Rycroft, to explain the relationship between the Cabinet Office, the Wales Office and the Ministry of Justice? How would you explain that to us and to people who are listening in on this?

[180] **Mr Rycroft:** I'm very happy to do that, Chairman. I should add to your introduction that I have been, since May 2015, Second Permanent Secretary to the Cabinet Office, and my role there is the head of the UK Governance

Group, and that role continues. It is from that perspective, really, that I will answer your questions. So, the UK Governance Group, which was created in May 2015, brought together the constitution group in the Cabinet Office, the Wales Office, the Scotland Office and the Office of the Advocate General for Scotland. It was brought together to oversee constitution and devolution issues. You may want to talk a little bit further about how we do that and why we do that, and to what purpose. But that basically established a very close working relationship between the Cabinet Office and the Wales Office.

[181] The Ministry of Justice, like all other departments in Whitehall, has responsibilities vis-à-vis the devolution settlement, as well as for reserved areas, and it's one of the departments that we work very closely with, not least because of their responsibilities for justice issues in respect of Wales. As I say, it is a department like many others where our role in the Wales Office and the UK Governance Group is to make sure that the MoJ understands its responsibilities vis-à-vis devolution and enacts those responsibilities successfully.

[182] **Huw Irranca-Davies:** That is an excellent introduction and overview. Thank you very much. I'm going to pass on to my colleague David Melding.

[183] **David Melding:** Thank you, Chair, and I'd like to welcome Mr Rycroft as well. I think it greatly helps our work when we have senior UK civil servants here—we've not always been successful at getting them, which, obviously, does not apply in your case.

[184] I wonder how the UK Governance Group operates in practice. How much does it react to events? Are you anticipating? We are in a remarkable situation with the European Union (Withdrawal) Bill, with two of the devolved Governments now saying they will not recommend their legislatures to give legislative consent, while the UK Government says that it doesn't really matter because no consent is required. Did you see this problem coming, and can you throw any light on how we might deal with it in terms of how the governance group operates?

[185] **Mr Rycroft:** Thank you. There's a lot wrapped up in those questions, and I think I, like many other people, am out of the game of predicting the possible outcomes of elections and referendums and so on. The UK Governance Group, just to emphasise its core purpose, is about maintaining the integrity of the union and about sustaining a flourishing democracy. I'm very pleased to say that those two objectives now are at the top of the list of

the Cabinet Office's overarching objectives. So, this is absolutely central to the approach of the Cabinet Office at the centre of Government, advising the Prime Minister on matters constitutional and around the devolution settlements. And so, to my mind, this bringing together of the UK Governance Group in the Cabinet Office, with the support of the territorial departments—obviously the Wales Office, also the Scotland Office, working very closely with the Northern Ireland Office as well—creates a real centre of expertise on constitutional and devolution issues, which gives us the ability to look at what's going on across Government, to ensure that Ministers are well advised on what this means for the devolution settlements and for the constitutional future of the country.

[186] I hope that we can say that we are proactive and that we do seek to anticipate where issues may arise. We're obviously responsive to what Ministers wish to see happening. So, under my watch, as head of the UK Governance Group, we've taken through both the Scotland Act 2016 and the Wales Act 2017, responding to manifesto commitments. But, clearly, we also need to be responsive to the situation that faces us now with EU exit, and doubtless we'll come on to talk about, in the context of inter-governmental relations, all the things that we've done to try and ensure that there is good connectivity across the UK Government and the devolved administrations to find a way forward through EU exit.

[187] I should emphasise that, from the way that we work, we're not inward looking—just worrying about the arcane aspects of the UK constitution. We have to do that to some extent, but we will only succeed if we are outward looking, and that's across the rest of Whitehall as well as further afield. In the context of Whitehall, we've put in place a lot of mechanisms to try and ensure that all departments understand their devolution responsibilities, understand the nature of the devolution settlements and are working very proactively, where that's required, with the devolved administrations to advance common policy objectives.

[188] **David Melding:** I realise, obviously, you're under political direction, so we're not trying to tease out of you any inappropriate confidences in terms of political direction and that side of these important matters, but it seems to me that one of the challenges that we have with the whole issue of where EU governance goes or to what extent it will become shared governance within the UK, is the fact that Whitehall is the engine room both of the United Kingdom Government and implicitly, as a consequence of devolution, the English Government, or when departments make huge policy initiatives for

England, then that obviously has an effect on what's possible sometimes in the rest of the union. But has this issue of English governance been deeply thought through? It's been in the background for a while, but it now seems to be playing on the minds of the civic sector here and lawyers—and I'm sure this is true in Scotland as well—as well as our respective Governments in Wales and Scotland, that the issue of Whitehall also standing for English governance is not really factored in yet.

[189] **Mr Rycroft:** It is part of our role to make sure that departments do understand that. The vast majority of departments, and the vast majority of policy areas, will be clear on their respective responsibilities, but that clarity needs to express itself, both in their relationship to people in England, but also to the three devolved parts of the UK and to their Governments. All the departments I work with in Whitehall have 'UK' in their title and all of them have reserved responsibilities to some extent—some relatively modest, like the Department for Education; some a lot wider like the Ministry of Defence, or the Foreign and Commonwealth Office. But wherever they sit on the spectrum, they need to understand when they're making policy for England or when they're making policy for the whole of the United Kingdom. Part of the process that we go through with the Wales Office and the Scotland Office and the Northern Ireland Office, as well as other colleagues in the Cabinet Office, is to ensure that when proposals are coming forward—legislative proposals or other policy proposals—that that thought process has been gone through.

[190] There are two other things to mention in this respect, in terms of people thinking hard about what relates to England and what relates to the UK or relates to Scotland, Wales or Northern Ireland. Since 2015, of course, we've had the introduction of English votes for English laws, which, if you like, has institutionalised a process in the legislative sphere of people going through a very deliberate process, which is ultimately signed off by the Speaker as to whether English votes for English laws should apply to particular pieces of legislation. So, that has been a big change in terms of, if you like, obliging people even more these days to think through the application of their legislation.

[191] The other thing to draw attention to, of course, is the process of devolution within England—so what started off as a process of city deals, the metro mayors, which has obviously expanded well beyond that now. While that's not our responsibility in the Cabinet Office—it's the responsibility of the Department for Communities and Local Government—nevertheless we

provide a bit of a benchmark about how to think about devolution processes. But that process as well, I'm encountering with civil servants across Whitehall that they want to see how that process relates to the existing devolution settlements, and what this means for the way in which they can transact their policy responsibilities over time.

[192] All of this adds up to very major change, and I suspect you'll come on to ask me about whether Whitehall's kept up with that change, but part of the rationale for having the UK Governance Group right at the heart of Government is the ability to think through these issues and to help guide Whitehall in its response to them.

[193] **David Melding:** So, if we take a very practical example—and we'll stick to generalities; I realise that only that is appropriate—a common framework on environmental policy, I suspect, once we get through the political pantomime, won't be that difficult to agree, because there are pretty common approaches, externalities and all the rest of it apply, and there's the great technical ability that we get in Whitehall, which can add power to our decision making as well. That's the other side of this, you know, and I think it's important to emphasise that. When you come to the future of agriculture, though, we have such vastly different patterns of agriculture in Wales, Scotland and Northern Ireland compared to England—I mean, massively different. How is that likely to be handled? Is it something your group would take particular care to advise the departments on, or would you expect it to be hardwired into the Department for Environment, Food and Rural Affairs and any other department that is going to be involved in this and then you just kind of check?

[194] **Mr Rycroft:** So, we will work very closely with all relevant departments across Whitehall to ensure a consistent, coherent approach to all the areas of returning power from Brussels and where they relate to the devolution settlements. As you've identified, agriculture and environment are very big topics within that, and you'll know that we've identified, for example for Wales, 64 areas where you have that crossover between current European competence and the devolution settlements. These are very, very complex issues. The Ministers I work for are clear on the approach they wish to take. They do not wish to take away existing powers from the devolved administrations. They expect to see, as a result of this, an increase in powers for the devolved legislatures. But, they're also approaching this with an eye to the coherence of the internal market within the UK. Many of these rules—not all of them, but many of them—were taken up to European level precisely

because the management of these frameworks was important to ensure the integrity of the European single market. So, bringing these powers home, we have to have a very clear eye on what it means for the internal market within the UK.

[195] You used the example of agriculture, and you point out the differences between agriculture in the different parts of the UK, but there are contiguous interests. For example, if you look at the Welsh border and sheep farmers one side of the border or the other side of the border, farmers in Cumbria or over the border in the Borders in Scotland, knowing that they're competing on a level playing field, if you like, is going to be really important for that industry; industries knowing that if they have to abide by rules on chemicals and food labelling and so on, there is a consistency across the UK market.

14:45

[196] So, what we've embarked on—. Indeed, the First Secretary of State was meeting John Swinney and Mike Russell again this morning as part of a series of his discussions with the devolved administrations. He met the First Minister here not many weeks ago to take forward that discussion, to get a good understanding from each of the devolved administrations of what they think of these powers, what they think of the requirement for UK frameworks, and how they may be applied. This is a very, very big piece of work, and the role of the Cabinet Office, working very closely with my other department, in terms of the Department for Exiting the European Union, needs to ensure that there is a consistency of approach across the UK Government, not least so the devolved administrations know where they stand in terms of their negotiations and discussions with us.

[197] **David Melding:** I think other colleagues will talk a bit about frameworks and immediate constitutional issues around them. You mentioned in your answer the territorial departments. Can I ask, for instance: can our Secretary of State refer a matter to your group? Do you then give advice to the Secretary of State directly as well as other departments? How does that operate, and are there—. Is there someone from the Wales Office on your group, indeed, at the official level?

[198] **Mr Rycroft:** So, the director of the Wales Office, Glynne Jones, reports to me on the official line, but, obviously, his primary political line of reporting is to the Secretary of State for Wales. So, what we've tried to do is

to make sure that there is a knitting together, if you like, of understanding the civil service end, to ensure that there is the best possible support for the Secretary of State for Wales, as well as for the First Secretary of State and other Ministers. So, as a consequence of that, I and my colleagues across the rest of the group work very, very closely with the Secretary of State for Wales, the Secretary of State for Scotland, and the Advocate General for Scotland as well. I will meet the Secretary of State for Wales on a regular basis to swap notes on where things are at, and he will ask things of us, as well as of Wales Office colleagues, in order to advance the agenda of the Wales Office across Government.

[199] **David Melding:** And this machinery has been formalised since 2015 or—. Presumably, there were analogous practices before, but this has brought it all together. Has it been improved the machinery, do you think, and made it more predictable? What are the advantages of the group?

[200] **Mr Rycroft:** So, prior to May 2015, these responsibilities, in ministerial terms, were held by the Deputy Prime Minister. And if you look far enough back in my CV, I was the director general who headed up the civil service side of his operation. So, in protoform, if you like, these responsibilities rested with me, but as part of my wider role in supporting the Deputy Prime Minister. In the formation of the May 2015 Government, in recognition of the salience of these issues and the importance of the devolution settlements, the then Prime Minister, supported by the Cabinet Secretary, took a view that it was about time that these responsibilities were given far more visibility and salience within the construct of Government. These things matter in Whitehall—where people sit and the titles they carry. So, one of the consequences of that was that the job was created as a second permanent secretary in the Cabinet Office, which gave me the right to attend regular meetings of permanent secretaries across Whitehall, which means that, on a very, very regular basis, I can remind them, as they present their various proposals to the collective of permanent secretaries, that they should be taking into account matters pertaining to Wales, Scotland, and in particular, my colleague, Jonathan Stephens, who's the Permanent Secretary for the Northern Ireland Office, is also able to make those points vis-à-vis matters pertaining to Northern Ireland.

[201] And the institutionalisation, if you like, at the heart of Government has been hugely important, in that visibility, the salience of the issues, the recognition factor, if you like, from other departments. I won't say that we got there in one bound and that every official in Whitehall is completely

fluent in the devolution settlements, but I would hope that we have made significant progress over the last couple of years.

[202] **David Melding:** And finally from me, you're moving on, next Monday, to become the Permanent Secretary at the Department for Exiting the European Union. Will your successor, as head of the group, be someone of equal authority to you in fulfilling these very important functions?

[203] **Mr Rycroft:** So, I am retaining my responsibilities at the permanent secretary level, recognising that that was a big job in its own right. We've created a new post of director general within the UK Governance Group to take some of the strain. So, that person is Lucy Smith, who was previously director of the constitution group in the Cabinet Office, and knows this business extremely well. She is now in post with a full team behind her, so she is able to run more of the business on a day-to-day basis with, hopefully, my support, and certainly my support in taking the issues to the permanent secretary table.

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

[205] **Huw Irranca-Davies:** Thank you, David, very much. Can I just ask, just on lines of clarity, in terms of official accountability, who is the head of Wales Office accountable to, because if my understanding is correct there's no permanent secretary at the—.

[206] **Mr Rycroft:** It's accountable to me. In civil service reporting terms, the head of the Scotland Office, the head of the Wales Office and the head of the Office of the Advocate General for Scotland all report now to the director general of the UK Governance Group and, through her, to me.

[207] **Huw Irranca-Davies:** Okay, that's helpful. Thank you very much.

[208] **Mr Geth Williams:** Sorry, but the director of the Wales Office is also an accounting officer in his own right

[209] **Mr Rycroft:** In his own right, yes.

[210] **Huw Irranca-Davies:** There we are; thank you.

[211] **Mr Rycroft:** So, the difference—. So, reporting lines I do as performance management, I'll make sure he's delivering against his



objectives. He is an accounting officer in his own right for the expenditure of the Wales Office and, clearly, his political boss is the Secretary of State for Wales.

[212] **Huw Irranca-Davies:** Brilliant, thank you very much; very clear. Some of the evidence that we've heard from people who understand Whitehall and the way the civil service works here in Wales and have studied it over many years have referred to the uneven nature of understanding between different Whitehall departments. Rather than single out the bad ones, I'll single out a couple of good ones: the Cabinet Office and the Treasury, it was said by one of our witnesses, had very high levels of knowledge and understanding of devolved issues. He went on to mention, as others have done, ones that are not quite so good. Would that be your impression as well from that central position that you occupy?

[213] **Mr Rycroft:** I think that's a leading question, if I may, Chair.

[214] **Huw Irranca-Davies:** I know.

[215] **Mr Rycroft:** Clearly, the relationship to the devolution settlements and the need to interact with the Government in Wales vary depending on where you're sitting in a Whitehall context. The understanding of the devolution settlements I think has improved. I've been dealing with this business now for over five years and I think we have come a considerable distance, but the devolution settlements themselves have changed over that time; we've had two Wales Acts. So, Whitehall needs to keep on keeping up, if you like. I think there is still a distance to travel before I would be content that all of the Whitehall civil servants who need to understand this business have a clear understanding of the way in which power is now held in different parts of the UK, and how you get business done across the UK, given the very great powers that are held here in Cardiff, in Edinburgh and in Belfast. It's our contention that you cannot in very, very many policy areas advance your policy agenda without a very good understanding of the devolution settlements and what this means in Wales, in Scotland and in Northern Ireland. And that is the challenge that we've got: to take Whitehall on that learning journey. We've put a lot of effort into that. I think it is showing the results, but I'd be the last person to sit back and think we've cracked it, because there is a way to go. As has already been pointed out, it's not just a question of the devolution settlements changing. With EU exit, the whole dynamic shifts in another way and that, in turn, will require our colleagues across Whitehall to adapt their thinking, their learning and their practice to

keep pace with where we're at.

[216] **Huw Irranca-Davies:** Okay. I think that's a very honest and frank answer, and it was certainly commented on by some of our witnesses that there were real efforts, and had been for some years, but this has to be a constant process. But your acknowledgement that we still need to go further, I think, is welcome. I don't want to put anything that is a leading question to you, but do you ever sense—because I can say this as a former Wales Office Minister—some reluctance amongst some departments to engage compared to others? Some are shier than others to fully get what devolution is about.

[217] **Mr Rycroft:** I don't think it's a reluctance to engage. I think devolution does pose challenges. It makes things more complicated. It means that civil servants have to understand what's going on in different power centres and they have to understand the politics, not because they're political actors themselves, but they have to understand how things are done here in Cardiff, how decisions are made, where political interests lie, and so on, in order to be able to understand how their policies might land in the different parts of the UK. So, from that perspective, and the fact that people have to accommodate more, if you like, in policy formulation, there may be moments when people say, 'I don't want to go there', but this is not optional now. The devolution settlements are a fact of life, have been for 20 years, and people need to get on with it. For most civil servants, people do the job of civil servants because they're interested in how government works, in how power is managed, how policies are made. Increasing complexity to a lot of civil servants is meat and drink. So, what I tend to encounter—and I think Geth would back me up on this—across Whitehall now is a far increased willingness to recognise that these issues are there and actually to seek a bit of help in understanding how to deal with them, but, once they've got the bit between their teeth, to get on with it, because this actually is part of being a civil servant now, and ultimately is part of doing a satisfactory job as a civil servant.

[218] **Huw Irranca-Davies:** That's really helpful. Before I pass on to my colleague Nathan, can I just go back to something you mentioned to David Melding here? You used that interesting phrase that part of the function of the governance unit is to have regard to the integrity of the constitution, and David asked that question, asking whether you had a proactive role in the constitution, or was it simply managing it—managing change, managing conflict, managing tensions between different parts? Is there that proactive role? Can I get clarity on that? And, if so, how does it shape itself when you

have the First Minister of Wales putting forward a suggestion of this and that, and the First Minister in Scotland suggesting that we could do this in order to strengthen the integrity of the UK. How do you respond to that?

[219] **Mr Rycroft:** Seen from an official perspective, Wales and Scotland and Northern Ireland essentially have two Governments. There is the devolved Government and the UK Government. Part of the responsibility of the UK Government is to help people in Wales, Scotland and Northern Ireland understand what the UK Government does for them, and how those responsibilities relate to the responsibility of the Welsh Government. If all our Ministers and all our civil servants spent all their time sitting in Whitehall not promoting that, not engaging with interests in Wales, those messages would not get across and, given where we are in the constitutional history of this country, that would not be fulfilling one of my main challenges, which is to maintain the integrity of the union. So, from that perspective, this is a very proactive agenda, and of course the person who leads that for the UK Government in Wales is the Secretary of State for Wales. Looking for the opportunities to support the Welsh economy, he went recently on a trade mission to Japan, for example, to promote the Welsh economy. There's also the work we've done over city deals, the Severn tolls, and so on and so forth. He's been a very, very passionate and active advocate for Welsh interests in the UK Government, but projecting that also in Wales so the people of Wales understand what their two Governments do for them. I think this is very basic, but hugely important.

[220] **Huw Irranca-Davies:** So, if I could be more specific, looking back in the past, you could conjecture that at some point a government of a different perspective thought, 'There are tensions here within the constituent parts of the UK', prior to devolution, and, as one of our responses, somebody came up with the idea that we should look at devolution as a response to that demand for greater accountability and responsibility. If the unit that you're involved with saw dangers, and if you, in the role that you're in, saw dangers to the integrity of the union, would you say to Ministers, 'Well, actually, Ministers, you do need to think about a way forward here? There might be mechanisms that we need to change; there might be adjustments that we need to make'? I'm not asking you to be ultra-specific, but would you see it as your role to say, 'Minister, there's a bit of a threat coming down the line' or 'There's a big threat coming down the line. We need to think through this'?

15:00

[221] **Mr Rycroft:** It is part of our job to advise Ministers on what is happening in the context of devolution settlements, as well as the wider constitution, and it would be remiss of us not to project that advice into possible future scenarios, but clearly, the nature of that advice would remain confidential—

[222] **Huw Irranca-Davies:** Absolutely. But it is fascinating that that is part of your role. Nathan, if you'd like to take us on, please.

[223] **Nathan Gill:** Thank you, Chair. Nice to meet you. Just a quick question, really, about how the performance of Whitehall is monitored and how you feel that they're actually performing in their abilities to understand the devolution settlement.

[224] **Mr Rycroft:** One of the things that we instituted early on—because it was that precise issue: how did we know what they were doing—is that we required each department to think about their devolution responsibilities and to set them out, what they were doing about them, how they were promoting understanding of devolution within their departments and how they were advancing this broader agenda that I've just described, and set all of that out in devolution capability plans. These are owned by departments, but they are made visible to the Cabinet Secretary, and part of my job has been to advise the Cabinet Secretary on performance against those plans. I appear, on a biannual basis, in front of the civil service board, which, if you like, is a senior governance mechanism for matters pertaining to the civil service, to explain where we've got to on that agenda and to seek their approval for taking it forward; to get their endorsement, if you like, for the next steps of activity. So, we have put in place mechanisms to keep abreast of what departments are doing. I think that's very important, because that, by and large, is what bureaucratic organisations respond to—to be given a clear set of objectives, to have a plan to manage those objectives and to be held accountable for them.

[225] **Nathan Gill:** Okay. So, your ultimate goal, I would take it, is for there to be fluidity between the different departments, and also between the different Governments. How will you know when you've got there?

[226] **Mr Rycroft:** In a way, when the day arrives when we no longer need devolution capability plans, because it is so bound into the warp and weft of Government that we have absolute confidence that this is part of the way that

departments go about their business. And that every civil servant, as they advance through their careers, takes with them a good body of knowledge and understanding of devolution and the wider constitutional framework and, ideally, some experience of working outside of the Whitehall context, even if that's just a week's work shadowing, but ideally, more exposure than that, so that they've got a really good understanding of how Government works at different levels within the United Kingdom. But we're not at that great day yet, so we need to carry on this process; we need to keep upping the ante on this.

[227] A particular area where we started off on a relatively low base but where we have ramped it up considerably is on learning. So, for example, now, we have devolution wrapped into the core curriculum for all civil servants. We've got it as part of the learning experience for the fast stream and the other high potential schemes in Government. It is a process of making sure that this is just integral to the jobs that the majority of civil servants in Whitehall do. So, we've made progress, but as I've said to the Chairman, we've a way to go; I can't rest on my laurels just yet.

[228] **Nathan Gill:** Absolutely not, no, and certainly, with your new role, you're going to be kept very busy. I just wanted to go back and look at something that was said—basically, that civil servants' knowledge of devolution, particularly Welsh devolution, can be poor, but more down to ignorance than hostility. Several of the people who've reported to our committee have pretty much said that, and not just pre 2015 but since. We had some evidence last week and people from the third sector were quite adamant that, when they deal with Whitehall, people just really don't get or understand Wales and the fact that we even have devolution. So, that may come as bit of a disappointment to you, but what programme—. I notice here we've got the Devolution and You programme. How well do you think that is actually working in reality?

[229] **Mr Rycroft:** From the work we've done, we can do the numbers. The number of folk who are exposed to devolution learning has increased and has increased rapidly over time. It has become another example—a standing feature at Civil Service Live, which takes place at venues around the country, including in Cardiff. We need to keep working away at that so that people have that basic understanding. But there are quite a lot of folk still who won't have been exposed to that learning. There'll be some of them who are coming from jobs where they didn't have much interface with the devolution settlements and now they're dealing with the third sector in Wales—your

example—and maybe don't have a good grip on what that means for their jobs, what the devolution settlements mean for their jobs. We need to address that through other routes as well. Part of that is about the visibility and the support that's offered from the Wales Office in that instance, but it is also about calling people in, if you like, when things haven't worked out. So, there are various mechanisms all the way up to the Cabinet, on the political side, where departments essentially have to set out their proposals and have to be held to account for how they've responded to the devolution settlements and to the interests in the different parts of the UK. It's not a complete fail-safe, and things will slip through the net from time to time, but by and large I'm pretty confident that, when the issues are identified, we pick them up and we deal with them. We won't always get the outcome that we want, because some of these things are subject to proper debate in Government, but the critical thing is that the devolution settlements, which stand proxy, ultimately, for the interests of Wales, and the people of Wales itself, are not neglected in the councils of Whitehall.

[230] **Nathan Gill:** Okay. I'm not sure about what kind of turnover you have in Whitehall, but as any large organisation, there must be huge amounts of it. In your induction process, are there specifics within the induction for new employees to train them up?

[231] **Mr Rycroft:** The core curriculum that has been—. This is part of, if you like, the professionalisation of the civil service to ensure that incoming civil servants are exposed to a common curriculum so they have the basic level of understanding, not only just on devolution but on how Parliament works, on Government finance and all the rest of it. One of the bits of pressure we applied on that system was to ensure that devolution and constitutional learning was embedded in that core curriculum.

[232] **Nathan Gill:** That's very good to hear.

[233] **Mr Rycroft:** You'll be familiar with core curriculums from a wider educational perspective, and you understand how important it is to have these issues at the centre of that learning. But in addition to that, we try and expose fast-streamers, for example. These are the—they're not always that young, but the folk who are coming in fresh to the civil service on a fast-track to promotion. Again, they've got that exposure to devolution learning. That's the sort of route by which we'll get those coming into the civil service over time, but we also need to get to civil servants who have been in the system for longer than that, and that's, again, part of the 'devolution and

you' approach, part of what we do with civil service learning, part of what I've done quite a lot of—and my colleagues have done quite a lot of—over the last four or five years. It's just getting around Whitehall, talking to people, running seminars, speaking to senior teams and getting around the executive boards of all the departments to talk to them, the Permanent Secretary and their senior teams directly, to emphasise the importance of all of this. I think, as one of your colleagues said earlier on, people understand us now. They understand the importance of it. What we don't encounter is a resistance to this message—'It's nothing to do with us; go away'—it's more about, 'Look, we've got extremely busy agendas. Help us to understand how we can incorporate this in our business and in running the departments in a way that gets us what we want and helps you to get what you want'.

[234] **Nathan Gill:** And I suppose having that knowledge will ensure that they get it right first time as well, so it's time-saving for everyone—

[235] **Mr Rycroft:** Exactly, and, ultimately, it is one of our arguments that, if you're taking forward a complex policy issue that has some interface with interests in Wales, you're far better off sorting out those issues upfront than waiting, doing it at the last minute or, even worse, waiting and then not quite getting it right, because that will then involve more work to fix it and to advance things as they should have been in the first place.

[236] **Mr Geth Williams:** As I said this morning, we'll be ramping up training and learning a lot within Whitehall over the next six months in anticipation of the new reserved-powers model coming on-stream next April.

[237] **Nathan Gill:** Good.

[238] **Mr Rycroft:** Geth and team will be on the road.

[239] **Nathan Gill:** Thank you. And just finally, really, I just wondered to what extent you feel the memorandum of understanding and also the devolution guidance notes—. How effective are they in inter-governmental relations?

[240] **Mr Rycroft:** Obviously, both sets of instructions, if you like, have been in the system for a while. We need to keep them under review, because the world is changing quite rapidly around us, but they do provide anchor points for our formal relations with the devolved administrations and how we deal with them, and they are a point of reference for all civil servants in the devolved administrations as well as in Whitehall. If we didn't have them, we'd

have to invent them. I can't claim that they're word-perfect, but we do have a commitment to keep them under review. Clearly, that commitment is even more meaningful now we are in an EU-exit process. But it is very, very important that we have constructs that guide people in the formality of the relationships. But one would hope that that would be the base level and, on top of that, what colleagues in Whitehall do, as well as in the devolved administrations, is build good constructive working relationships so they don't have to keep, if you like, referring back to the manual. They know what they're doing and they know how to do it; they know how to get results for their respective Ministers.

[241] **Nathan Gill:** Yes, we've heard of the importance of those relationships from many people. And, you know, obviously, we're all human and it's crucial. So, pretty much you're saying that they're living documents; it's something that's going to evolve with time. Who is directly responsible for changing it?

[242] **Mr Rycroft:** It's the team in the UK Governance Group, particularly in the Cabinet Office, that will hold the ring for Whitehall on that, but clearly the MOUs are documents that have been put together with the devolved administrations as well so, ultimately, this has to be a collective exercise.

[243] **Nathan Gill:** Okay. Thank you ever so much.

[244] **Huw Irranca-Davies:** Nathan, thank you very much. And before I bring my colleague Dafydd Elis-Thomas in, it was remiss of me not to mention that there are translation facilities on channel 1 here. Dafydd.

[245] **Lord Elis-Thomas:** Is that an invitation for me to speak in Welsh?

[246] **Huw Irranca-Davies:** Well—

[247] **Lord Elis-Thomas:** It's my practice usually to address people that I'm used to addressing in English in that language, so I'll carry on in that way. You mentioned earlier, as I heard you, that, from the perspective of trying to re-educate the UK civil service generally, devolution made things more complicated. I have to put it to you that, from the perspective of sitting here in Cardiff, or even sitting where I prefer to sit in Snowdonia national park in north-west Wales, devolution makes things more simple, in that there is a clarity about who does what. You mentioned as well that Wales delighted in having two Governments. Well, if you don't know which Government and



which Assembly or Parliament has the main responsibility for policy functions, how do you expect the electorate to be able to make an intelligent decision at an election?

[248] **Mr Rycroft:** That's a very good point and a very good question. We will get this right if we make it simple for the citizen, and that is part of the effort that we all have to put in. Some of the evidence suggests the devolution settlements aren't well understood and that people aren't clear where power rests, and I think that's a responsibility on both Governments to make sure that people do have that understanding. The complexities, if you like, should be behind the scenes. This is about running Government. Running Government is a complicated business and that's a job that we need to do. That complexity should not be something that, if you like, occupies public space, beyond committees such as this.

15:15

[249] But the key challenge, I think for all of us, is that people do understand the benefits that devolution has brought—we are just past a significant anniversary, clearly—and why that has made government better for people in Wales, right the way across Wales; ditto for Scotland and in Northern Ireland.

[250] **Lord Elis-Thomas:** Well, thank you for your remark, 'That was a good question', and that wasn't a bad answer.

[251] **Mr Rycroft:** Thank you. [*Laughter.*]

[252] **Lord Elis-Thomas:** Obviously, you've worked in Scotland as well, in the Scottish Government, but I would want you to look, if you will, at the exercise that we had in bringing forward—and obviously Geth Williams had a major role there—what emerged as the Wales Act 2017. Now, it does seem to me that the transference from a conferred-powers model to reserved-powers model was made unduly complicated by the degree of reservations that reappeared within the reserved-powers model. Would you like to comment on that?

[253] **Mr Rycroft:** So, ultimately, this was a Bill that was voted on by the UK Parliament, the parameters set by Ministers. We had a very vigorous debate, and Geth will attest to this, within Whitehall about what should be on the list of reservations, how that Bill should be constructed, what further powers

should be devolved, and, ultimately, we civil servants took our political instructions on those boundaries. What I can say is that it was a long, arduous process, actually. It was a difficult thing to do. I think we probably underestimated at the off just how much work it would involve. We got to a point, clearly, where, happily, the Bill received a legislative consent motion from the Welsh Assembly and passed into law. There's a lot of learning that we can draw from that process in terms of the amount of consultation with the Welsh Government, with other interests. But we did get, at the end of the day, to what I would consider is a very significant piece of legislation in terms of what it means for the Welsh devolution settlement looking forward, not least the switch from a conferred to reserved-powers model and giving the ability to this institution to govern its own affairs, and the rest you know and understand very well.

[254] **Lord Elis-Thomas:** I don't think it is really a constitutionally appropriate situation where this committee of the National Assembly for Wales has to assist the UK Parliament by producing reports, along with the Presiding Officer here, which set forward proposed draft amendments in order to relieve—well, obviously, mainly in the upper House—Parliament from its inability to scrutinise all this properly. Isn't that an improper situation for a democracy of unity and diversity like the United Kingdom?

[255] **Mr Rycroft:** Are you saying—? Was it the process by which this legislature commented and responded to the draft legislation coming—

[256] **Lord Elis-Thomas:** Yes, well, we had previous Secretaries—. I don't want to embarrass Geth Williams, whom I greatly respect as a long-standing official of constitutional issues—where would we be without him? But that's not the point.

[257] **Mr Rycroft:** I'd echo that.

[258] **Lord Elis-Thomas:** Of course you do. But what I'm trying to say is that I didn't think it was appropriate that it was through that attempt to generate even actual draft amendments in proper parliamentary form for the two Houses—well, the House of Lords, mainly, down the road. And, of course, some of us were able to, because of our position, pick those up and run with them, and we got some results, which is good. But what I'm saying is that there must be a better way of drafting devolution legislation than the way we do it now.

[259] **Mr Rycroft:** If I put this neutrally, I think we were appreciative of all the inputs we had from many diverse sources, which I think all added up to making the Act a better one at the end of the day. The team had a huge challenge in putting this Bill together and in creating a worthwhile and a sustainable piece of legislation. It was worth the effort, I think. We maybe underestimated one or two things at the start, but the previous Secretary of State had the courage, if you like, to say, ‘Okay, fine, we need to go back and look at some of these things, in particular the necessity test, because of the reaction that we got to that’. We went back, we had another look, we did challenge where challenge was required within our own house, and we drove the legislation forward to do what it was intended to do. Could we have done it better? Of course, every legislative process could be improved, but I would hope that you’d accept that the end result in terms of achieving the reserved-powers model was worth the work that was put into it.

[260] **Mr Geth Williams:** I think there’s a question to reflect on about when it’s appropriate to consult in the context of a draft Bill. So, the UK Government took the decision of preparing its proposals, publishing them in a draft Bill, and then consulting on the contents of that draft Bill. Now, in hindsight—and hindsight’s a wonderful thing—perhaps we should have consulted a bit more before publishing our draft proposals, and then things like the necessity test might not have slipped through, which, frankly, it did. So, it’s something to reflect on: when is it appropriate to consult, and when should one publish a draft Bill?

[261] **Lord Elis-Thomas:** Well—

[262] **Huw Irranca-Davies:** I wonder, Dafydd, if you would allow me just a small interjection here.

[263] **Lord Elis-Thomas:** Of course, you are the Chair. [*Laughter.*]

[264] **Huw Irranca-Davies:** [*Inaudible.*]—abusing my role here, but, if there were—. Heaven forfend for a moment, but, if there were to be a sixth legislative tranche of Government of Wales at some point in the future, Geth, from where you sit, and from where you sit, Mr Rycroft, does that mean that there would be, you would suggest, a different way of doing things, that, at an appropriate point where this germ of an idea of another iteration of a devolution settlement came about, you would do it differently in the way that you consult, the way you lay it out, the way you engage before something is presented? Were you hinting at an acknowledgement that that would be a

different way forward?

[265] **Mr Geth Williams:** I think it depends on the context, because, looking back, remember, there was Silk 2, there was the St David's Day command paper, and we were merely taking forward the contents of the St David's Day command paper and moving it into legislation—

[266] **Lord Elis-Thomas:** Well, some of it; not all of it.

[267] **Mr Geth Williams:**—where additional powers were being devolved and implementing the recommendation to establish a reserved-powers model. So, I think, in the absence of those, certainly, we'd consult more in any future Wales Bill.

[268] **Huw Irranca-Davies:** Mr Rycroft, from your central position in all of this, good governance of this UK family—.

[269] **Mr Rycroft:** If you'll allow me a modicum of pride, in that the devolution Acts that have been approved since I took up this, they do have a different look and feel to a lot of legislation, precisely because, actually, they are very heavily consulted on. Now, we may not have got that completely right, the timing of that, who we talked to at what stage of the process, but Silk commissions, the St David's Day deal, Smith commissions, Calman commissions—there has been at each stage of these things a very deliberate process to engage with interests across Wales and across Scotland before legislating, and then being very responsive, actually, to the critique that has come back from the Assembly in this case, and from the Welsh Government, and from wider stakeholders in Wales, in order to ensure that those Bills, as they passed into law, were as fit and proper as possible. And I think we can, if you will allow me, take some pride in those processes—complicated, difficult, contested, but, ultimately, those pieces of legislation achieving their LCMs was hugely important.

[270] **Huw Irranca-Davies:** Dafydd, do you mind? I'm—[*Inaudible.*—]—you off now. David, please.

[271] **David Melding:** I think the problem when—. You know, it's interesting that Mr Williams said that necessity tests slipped through. We are then in an exhausting process to try and spell out the implications of that. The American Supreme Court, I think in 1804, and I think the case is *Marbury v. Maryland*, dealt with necessity tests. I read out the case in the National

Assembly. It's a bit disappointing, isn't it, that, over two centuries later, we get tripped up on that. But the point is the work we then were drawn into, and our attention couldn't then have been spent quite as much on issues we think would have brought genuine improvement, because we were dealing with such a deficiency.

[272] **Mr Rycroft:** I think, in a context of the change to the Welsh settlement, these were big issues, and we were on a learning journey, if you like. We were dealing with interests within the UK Government as well about how this process might have been taken forward. The fact that we maybe didn't get there in one bound might be regretted in hindsight, but the effort that was put in—. I hope you would think that there's not nugatory effort, because it produced, at the end of the day, a better piece of legislation. I'm sorry if it was a lot of work—it was a lot of work for us too—but that's our job to do that. But, as I say, the test of this is in the Act itself and the fact that it has put the Welsh devolution settlement on a reserved-powers footing and all the other powers that flow from that Act, and let's see how it goes in the next few years.

[273] **Huw Irranca-Davies:** Back to you, Dafydd.

[274] **Lord Elis-Thomas:** I don't want to be churlish. I was very delighted to have the amended definition of Welsh law at the beginning of the Bill, so thank you very much for that. One final question from me: why has the UK Government repeated the process that I allege happened with the Wales Act with the Bill to withdraw from the European Union? In the sense that it's clear to me that the devolution sections of that cannot have been fully consulted with anyone in Wales, let alone the Welsh Government. Apparently—*[Inaudible.]*—some of them before the actual publication of the Bill.

[275] **Mr Rycroft:** It is a piece of legislation that pertains to the whole of the United Kingdom. As the Secretary of State, I think, said to you this morning, we did share it a little bit in advance of publication with the devolved administrations, thereby taking some risk because one, in those circumstances, would have expected maybe the first recipient to be the UK Parliament. But we are at the beginning of a process. The First Secretary of State, just yesterday, said that he will look very carefully at the amendments that are being put forward. We are in a deep process of engagement with the devolved administrations on this whole question of the returning powers, frameworks, and the rest of it. This will take time, it needs to take time, and, in that process, we need to make sure that we get the Bill right as well and

we will be responding clearly to what the devolved administrations have to say over the piece.

[276] **Lord Elis-Thomas:** The difficulty for some of us who—. Let me speak frankly: I've had a good life out of the United Kingdom and its institutions, and I don't regret that at all, but I only wish that it was easier. I only wish that we didn't have to face, yet again, the possibility of not being able to approve a legislative consent motion here or in Scotland because of the way that this Bill has been drafted.

[277] **Mr Rycroft:** Yes, I hear what you say and, clearly, many of us would wish aspects of our lives over the next little while would be easier, but this is a complicated process and there are different views as to how it should be taken forward. We have to find a way in our advice to Ministers of mapping that forward that takes into account the various interests that are at stake here—nobody will thank us, if, as a result of this, the UK internal market, for example, is compromised, farmers face unfair competitive pressure on different sides of internal UK borders and the rest of it—and doing that while respecting the devolution settlements and not taking away powers that the devolved administrations currently have. This is a complicated process, but it is a hugely important one and the commitment of the UK Government is to work very closely with the devolved administrations as we take that forward, as well as wider interests—obviously the legislatures, but also the stakeholder community in Wales more broadly and all parts of Wales.

[278] **Lord Elis-Thomas:** Thank you.

[279] **David Melding:** Do you think that's shared governance, or is it something that really is the prerogative of the United Kingdom Government?

[280] **Mr Rycroft:** In formal terms, the return of powers is to the UK Parliament, if you like, but how we take this exercise forward—. If you look at the way the devolution settlements have evolved and changed, some people do talk about an increased domain, if you like, of shared governance. If you take tax-raising powers, for example, there's the need for the Welsh Government and the UK Government to work very closely together on that in order to deliver objectives for both Governments—similarly with welfare powers under the Scotland Act 2016. This can't be done in isolation by one Government. So, people are speaking about shared governance; that's entered the discourse of thinking about devolution. And, clearly, the set of questions that we're looking at now touch on devolved interests, touch on UK

interests; finding a way forward is in the interests of all Governments.

15:30

[281] **Huw Irranca-Davies:** Mr Rycroft, Mr Williams, do you think I could trespass on your generosity in time, because this is very, very useful to us? Could you spare us another 15 minutes, do you think?

[282] **Mr Rycroft:** I think I could stay another 15 minutes, Chairman.

[283] **Huw Irranca-Davies:** We really appreciate it—this is very, very helpful indeed. Dai, over to you.

[284] **Dai Lloyd:** Diolch yn fawr, Gadeirydd. Mae hi wedi bod yn drafodaeth hynod ddiddorol, ac roeddwn i eisiau mynd ar ôl rhai agweddau sydd wedi cael eu crybwyll eisoes, gan ddechrau efo mater Deddf Cymru, a oedd yn sefyllfa anodd, wrth gwrs. Mae'n werth atgoffa pobl, efo'r holl sôn am barchu canlyniadau refferendwm, yng nghyd-destun refferendwm Brexit y llynedd, fod yna hefyd angen parchu canlyniad refferendwm yma yng Nghymru yn 2011, pan wnaeth 64 y cant o drigolion Cymru bleidleisio dros gael mwy o bwerau i Gymru.

**Dai Lloyd:** Thank you very much, Chair. It has been a very interesting discussion, and I wanted to pursue some particular aspects that have already been mentioned, starting with the issue of the Wales Act, which was a difficult situation, of course. It's worth reminding people, with all of the mention made of respecting the results of referenda, with regard to the EU referendum last year, that there's also a need to respect the result of the referendum here in Wales in 2011, when 64 per cent of the residents of Wales voted in favour of additional powers for Wales.

[285] Ac wedyn, yn y cyd-destun yna, roedd hi'n destun loes wedi hynny, pan ddaeth Deddf Cymru 2017 allan, ac er, rydym yn cydnabod, fod yna welliant wrth symud y model i fod yn fodel cadwedig, sy'n cadw pwerau, lle rydych chi'n gwybod lle rydych chi, roedd hi'n destun siom bod yna restr hir o bwerau sy'n cael eu cadw. Roeddem ni'n disgwyl rhywbeth fel,

And then, in that particular context, it was of course of great concern when the Wales Act 2017 came out, and, even though we acknowledge that there has been improvement in moving the model towards a reserved-powers model, where you reserve powers, it was a cause of concern and disappointment that there was a long list of reservations. We were expecting something like,

dywedwch, rhyw ddwsin o bwerau cadwedig, yntefe. Wel, ar ddiwedd y dydd, mae yna o leiaf 193 o bwerau cadwedig, sydd yn golygu ein bod ni wedi colli pwerau yn y fan hyn, yn groes i ganlyniad refferendwm 2011. Ac mae yna archwiliad—rydym ni wedi pasio 22 o Ddeddfau ers 2011 yn y fan hyn, ac, o dan y gyfundrefn Deddf Cymru newydd, buasem ni ddim ond yn gallu pasio rhyw wyth ohonyn nhw. Mae hynny yn fater o ffaith.

[286] Rydym ni'n cydnabod yr holl waith caled, ond, yn y bôn, rydym ni wedi gweld ar lawr gwlad ein bod ni'n colli pwerau, sy'n ein harwain ni nawr at y ddadl ynglŷn â Bil ymadael ag Ewrop. Mae hynny'n bwysig i'r cyddestun yma o sut rydym ni'n teimlo ynglŷn â'r Bil Ewropeaidd yma hefyd, yng nghyd-destun datganoli. Achos, fel rydych chi wedi ei grybwyll eisoes, mae yna faterion sydd eisoes wedi eu datganoli yn y fan hyn—amaethyddiaeth, yr amgylchedd ac ati. Ac, yn nhermau Bil ymadael â'r Undeb Ewropeaidd, mae adran 11 yn peri gofid i ni, achos rydym ni wedi cael tystiolaeth yn y pwyllgor yma yr wythnos diwethaf. Rydym ni'n deall y busnes fframwaith yma; yr hyn nad ydym yn ei ddeall ydy pam mae'n rhaid i'r pwerau fynd o Frwsel i Lundain, a stopio yn y fan hynny, lle, yn nhermau fyny at rŵan, mae'r pwerau yna y meysydd datganoledig wedi mynd o Frwsel i Gaerdydd. A nawr rydym ni'n ffeindio eu bod nhw'n stopio yn Llundain.

say, a dozen reserved powers. Well, ultimately, there are at least 193 reserved powers, which means that we have lost powers, which is opposed to the referendum of 2011. So, we have passed 22 laws since 2011 here, and, under the new Wales Act regime, we would only have been able to pass eight of them. That's a matter of fact.

So, we acknowledge all of the hard work that's been done, but, at heart, we've seen that, on the ground, we've lost powers, which leads us now to the debate with regard to the withdrawal from the EU Bill. That fits into this context about how we feel about the context of this particular Bill, in the context of devolution. Because, as you've already mentioned, there are matters that have already been devolved here—agriculture, the environment and so on. And, with regard to the EU withdrawal Bill, clause 11 does cause some concern to us, because we have heard evidence in this committee last week. We understand the issue of frameworks, but what we don't understand is why the powers have to go from Brussels to London, and stay there, where, hitherto, those powers in the devolved fields would have gone from Brussels to Cardiff. And now we find that they're stopping in London.



[287] Felly, rydych chi'n gallu gweld wedi hynny pam mae'r agwedd yn dechrau cael ei chreu ein bod ni'n credu bod yna *power grab* yn Llundain, achos rydym ni wastad wedi cael y pwerau yma dros amaethyddiaeth, a physgodfeydd a'r amgylchedd. A nawr rydym ni'n gweld eu bod nhw ddim yn mynd i gyrraedd Caerdydd. Mi fedrwn chi sôn am fframweithiau, ond y dystiolaeth gyfansoddiadol, gyfreithiol, glir gawsom ni yma yr wythnos diwethaf oedd, hyd yn oed efo fframwaith, mi fuasem ni'n colli pŵer yn y lle yna. Dyna'r dystiolaeth arbenigol rydym ni wedi ei chael yn y pwyllgor yma.

[288] Felly, jest i'w roi o gerbron: a rydych chi'n gallu deall, felly, sut mae Llywodraeth Cymru, a Llywodraeth yr Alban, wedi dod i'r casgliad am y Bil yma fel y mae e, sef ei fod e yn mynd yn groes i egwyddorion datganoli, achos rydym ni'n gweld bod y pwerau rydym ni wastad wedi eu cael yn y fan hyn, ers 1999, yn nhermau amaethyddiaeth, nawr yn mynd i fod yn Llundain? Ac mae yna rywun yn mynd i benderfynu ar ryw fframwaith, a'r arbenigedd rydym ni'n ei gael ydy bod hynny'n golygu colli pwerau. Ac mae hynny'n dod ar ôl Deddf Cymru 2017, lle rydym ni'n gwybod eisoes bod y lle yma wedi colli pwerau. A rydych chi'n gallu deall ein pryder ni, felly?

[289] **Mr Rycroft:** Thank you for that. Clearly, this is quite contested political

So, you can appreciate, then, why that attitude, or the impression that's starting to be created is that there is that power grab in London, because we've always had those powers over agriculture, and fisheries and the environment and so on. And now we see that they're not going to come here to Cardiff. So, you can talk about frameworks, but the constitutional, legal evidence that we heard last week was that, even with a framework, we would lose powers in that area. That's the expert evidence that we've had in this committee.

So, just to put this to you: can you understand, therefore, why the Welsh Government, and Scottish Government, have come to the conclusion about the withdrawal Bill as it stands, which is that it is contrary to devolution, because we see that the powers that we've always had here, since 1999, in terms of agriculture, are now going to lie in London? And someone is going to think of some framework, and the expertise that we've received is that that means that we're losing powers, and that comes after the 2017 Wales Act, where we know already that this place has lost powers. Can you understand, therefore, our concern?

territory. I'm here before you as a humble civil servant, and you will pursue some of the sort of political dimensions of this in other contexts. I think what I would say about the frameworks and the powers returning from Brussels is that of course it's worth remembering that the devolution settlements have meant that the Welsh Government, as well as the Scottish Government and Northern Irish Executive, have always operated under the constraint of having to abide by European law. So, if you take something like agriculture, the Welsh Government has not had the freedom to do what it would wish to do, or might wish to do in terms of agriculture because Wales has been part of the common agriculture policy, which has put in place various constraints on all the Governments of the EU in the way in which they can act. What we don't know, of course, is what the eventual deal we will do with the EU will be, once we're out of the EU, nor do we know what possible deals we will do in respect of other trade deals across the world. International obligations have always been reserved and will continue to be so. So, in looking at the powers coming back from Brussels, it is worth thinking about how those powers are exercised as part of the EU, and thinking about what our relationship with the EU might look like in the future, what our relationship with other countries might look like, and how that therefore may place constraints on all the Governments of the UK in the future.

[290] There is a long list, as you know—64 I think it is for Wales—of areas coming back where there is an interface with devolved competence. What Ministers have made very clear is that they do expect there to be further devolution in this context, and they have made very clear that they wish to respect the devolution settlement. But in dealing with those things, as I say, which impact on the internal market, and may impact on our international obligations, that's where we need a process of discussion with the Welsh and Scottish Government, and the Northern Ireland Executive, if one reforms, as to how we take that process forward, and that's what we're engaged in at the moment.

[291] **Dai Lloyd:** Diolch yn fawr am yr ateb clir yna. Yn naturiol, roeddwn yn mynd ymlaen ynglŷn â materion gwleidyddol, ac rwy'n deall yn union eich swyddogaeth chi yn hynny o beth, a diolch am yr ateb cynhwysfawr yna. Ond yn dilyn o hynny, wrth gwrs, gan fod yna bryderon rydym yn gwyntyllu yn y fan

**Dai Lloyd:** Thank you very much for that very clear response. Naturally, yes, I was going to go on to talk about political issues, and I do understand your function in that regard, and thank you for that very comprehensive response. But following on from that, because there are concerns that we're airing here,

hyn, ac nid fi yw'r unig un sy'n eu gwyntyllu nhw, a ydy Llywodraeth y Deyrnas Unedig wedi ystyried o gwbl beth a wnâi pe byddai'r Bil yn methu cael cydsyniad deddfwriaethol yng Nghaerdydd a Chaeredin? Ar ddiwedd y dydd, os bydd y fan hon yn pleidleisio yn erbyn cydsyniad deddfwriaethol i'r Bil ymadael, bydd yna oblygiadau ar Lywodraeth y Deyrnas Unedig, ac mae'n debyg y bydd hynny yn glanio ar eich desg chi wedyn, fel y swyddog sy'n gorfod gweithredu pa bynnag benderfyniad. Felly, mae'r gogwydd gwleidyddol a'r gogwydd swyddog yn cyd-redeg, felly ar ddiwedd y dydd, os bydd fan hyn a Chaeredin yn pleidleisio yn erbyn cydsyniad deddfwriaethol y Bil ymadael, beth fydd yn digwydd wedyn? Neu ai mater, fel y dywedwch, i Lywodraeth Prydain yw hyn, a fydd yn ein hanwybyddu ni ta beth?

and I'm not the only one who has aired them, has the UK Government considered at all what it would do if the Bill were to fail to receive legislative consent in Cardiff and Edinburgh? Ultimately, if this place were to vote against giving legislative consent to the withdrawal Bill, then there are implications for the UK Government, and they're likely to fall on your desk, as the official who has to implement whatever decisions. So, the political issue and your role do correspond, so if this place and Edinburgh are going to vote against giving legislative consent to the withdrawal Bill, what happens then? Or is it a matter, as you said, for the UK Government, and they would ignore us regardless?

[292] **Mr Rycroft:** As you say, these are politically sensitive, difficult issues. We have a process under way at the moment. As I said earlier on, just this morning, the First Secretary of State, Damian Green, is meeting the Scottish Government, and this is part of the bilateral process. He's met the First Minister for Wales, and there will be that continuing contact over time, as the Bill advances, to look at the issues and give very careful consideration to the concerns raised by the devolved administrations, with the hope of ensuring that there will be legislative consent motions granted for the Bill. That is hugely important, and that is our aim.

[293] **Dai Lloyd:** Diolch yn fawr. Rwy'n ymwybodol iawn o'r amser, felly rwy'n fodlon hepgor fy nghwestiynau ychwanegol. Mae fyny i chi, Gadeirydd.

**Dai Lloyd:** Thank you very much. I'm very aware of the time, so I would be willing to leave out my final questions. It's up to you, Chair.

[294] **Huw Irranca-Davies:** No, no, Dai, I think you're okay.

[295] **Dai Lloyd:** Océ. I faterion **Dai Lloyd:** So, moving on to perhaps ychydig bach llai dwys efallai nawr, less serious issues, and this matter of a'r Cydbwyllgor Gweinidogion, y JMC. the Joint Ministerial Committee. In Yn eich tyb chi, ydy'r broses Brexit your view, has the Brexit process wedi amlygu unrhyw wendidau yn y pointed out any weaknesses with the Cydbwyllgor Gweinidogion fel JMC as an inter-governmental mecanwaith rhynglywodraethol? mechanism?

[296] **Mr Rycroft:** So, we recognised very early on that we would have to think quite hard about what constructs are put in place for multilateral, inter-governmental contact after the referendum, and in discussion with officials from the Welsh Government, Scottish Government, Northern Ireland Executive, we decided to use the JMC machinery, in particular to create this new manifestation around JMC(EN). That, in a sense, demonstrates the flexibility of the JMC machinery. What is it there to do? It is there to provide a forum in which the four Governments can come together for an exchange of views about things that are of concern to them at the time. It was absolutely clear that this big, new issue, if you like, on everybody's agenda would need to be addressed in a multilateral context, and the JMC was the appropriate one to use. If we hadn't had the JMC, we would have had to invent something equivalent, akin to that. It has not been an easy process. I don't think I'm telling you anything very novel there. It has been a difficult process—very different views expressed around that table—but the fact is that the recognition that the JMC itself is a valuable vehicle for the expression of those views, demonstrated by the fact that we have faced a lot of calls through the summer from the Welsh Government and the Scottish Government for the JMC(EN) to be reconstituted and to be held on a regular basis—and indeed, it will meet again next month.

[297] **Dai Lloyd:** Océ, diolch. **Dai Lloyd:** Okay, thank you.

[298] **David Melding:** Could I come in here?

[299] **Huw Irranca-Davies:** David.

[300] **David Melding:** It's really to feed in a view, I think, rather than get a response from you—you said that the repatriation of competences that are currently at the European level doesn't really affect Wales and Scotland because those setting agricultural policy in Wales are at the moment under a constraint at the European level—that constraint will then be applied at the

British level. But I think the real fundamental challenge for us is, of course, those setting policy for the English Government are currently under that constraint at the European level, but when the powers are repatriated they won't be under any constraint. And in that exercise, setting the UK policy will, in effect, be setting the policy for England. That's the real danger I think many of us face. That's the fear that many people have, I think, in Scotland and Wales. I do hope this is given thorough consideration because we're a cross-party committee and I think we all share this concern. Speaking as a Conservative, and wanting the health of the union to flourish, it does make me feel a little uneasy, I must say.

[301] **Mr Rycroft:** If I may, just a very brief response to that—that's precisely why we value the engagement we're currently conducting with the devolved administrations at various levels. At the high political level, lots of detailed official-level discussions are going on as well, and what we need is feedback about how we can manage all of this, how we can move these processes forward in a way that ensures that, around the management of these issues, looking forward, they genuinely reflect the interests of all parts of the UK.

[302] **Huw Irranca-Davies:** I think that's really helpful. We're rapidly colliding now with the extended time as well. I wonder, subsequent to this, if you were able to send us some thoughts on what I was going to ask you, which was to do with the timetable and programme for discussions between the UK Government and devolved Governments on those common frameworks. A little bit more detail would be really helpful to the committee, and also what inter-governmental structures are now facilitating that dialogue. And just to echo—and I can only speak as somebody who has also heard the same evidence as my colleagues have—there will be various views around the table here on devolution, independence et cetera, et cetera, but I think one of the things that we probably have heard repeatedly and convincingly is the need for a different type of mechanism to actually arbitrate between the constituent parts of the union. With you sitting there right at the centre of the governance, possibly the message to take away is to be open to those ideas that are coming forward, and I realise that you are not the master of the political runes here, but certainly of the policy runes—to be genuinely open to those, because it seems to us, particularly as we approach the European Union (Withdrawal) Bill, but even post the Wales Act 2017, that some new structures are necessitated, and whether that is a turbocharged, meaningful version of the Joint Ministerial Committee process in all its entirety or whether it is a Council of Ministers or whatever and, as you are aware, it's been floated, the idea of who deals with the arbitration of that,

that it isn't this difficulty of a UK Minister also being the England Minister. So, we would say that to you: please be open to those ideas.

15:45

[303] **Mr Rycroft:** And, indeed, as officials, we were charged by the JMC plenary back in 2015 to look at the MOU and to seek revisions to it, and I took forward a process with my colleagues from the Welsh Government, Scottish Government and Northern Ireland Executive to do precisely that, and we presented a set of proposals to the JMC(P) in 2016—I think mid 2016—that, unfortunately, could not be agreed by all the administrations round the table. But we put a lot of effort into that. I think we made substantial progress and we are formally charged to keep that process moving forward, but to do precisely what you've described, Chairman, which is to make sure that the JMC works to the best possible effect as a construct for inter-governmental relations within the UK.

[304] **Huw Irranca-Davies:** Thank you very much. Geth Williams, Philip Rycroft, thank you very much indeed for your time and for extending your time with us. It's really appreciated, and I think it's been a very useful session for us. Thank you very much indeed.

[305] **Mr Rycroft:** Thank you very much. Thank you.

[306] **Mr Geth Williams:** Thank you.

[307] **Huw Irranca-Davies:** Safe journey back as well.

[308] **Mr Rycroft:** Thank you.

15:46

**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 weddill y exclude the public from the*

*cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in  
17.42(vi). accordance with Standing Order  
17.42(vi).*

*Cynigiwyd y cynnig.  
Motion moved.*

[309] **Huw Irranca-Davies:** With the consent of the committee now, we will move into private session, under Standing Order 17.42. Are we content?

[310] **Dai Lloyd:** Bodlon.

**Dai Lloyd:** Happy.

[311] **Huw Irranca-Davies:** Bodlon. **Huw Irranca-Davies:** Happy. Thank Diolch. you.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 15:47.  
The public part of the meeting ended at 15:47.*