



Welsh Affairs Committee

Oral evidence: Pre-legislative scrutiny of the draft Wales Bill, HC 449

Monday 9 November 2015

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Members present: David T C Davies (Chair); Byron Davies; Chris Davies; Carolyn Harris; Gerald Jones; Christina Rees; Antoinette Sandbach; Liz Saville Roberts; Craig Williams; Mr Mark Williams.

Questions 60-141

Witnesses: **Andrew R.T. Davies AM**, Welsh Conservatives, **Leanne Wood AM**, Plaid Cymru, and **Kirsty Williams AM**, Welsh Liberal Democrats, gave evidence.

Q60 Chair: Good morning, Mr Davies, Ms Williams and Ms Wood. Thank you very much indeed, on behalf of the Committee, for coming along. As you probably know, we are speaking to the leader of the Labour party and First Minister later, as well as to the Chairs of the Enterprise and Environment Committees, Paul Silk and legislative experts, so we are looking forward to a very productive day.

I thank the Assembly authorities for allowing us to come down and use the facilities here. Can I start the proceedings by asking each of you what you think of the Bill? What is good or bad about it? Do you think it goes far enough? Without any party bias, I will start with Andrew and work across. I will try to work out a different order next time.

Andrew R.T. Davies: Thank you, Chair; that is much appreciated. I welcome the opportunity to give evidence to the Committee this morning. The Assembly has given you all the facilities, judging by the size of the Committee room they have given you today!

I think it is a good Bill. It offers a great opportunity to enhance the responsibilities of this institution. Of course there is some more work to do on it because it's in draft form. I particularly welcome the measures about electoral arrangements, transport and energy consents, for example, and I think that it will reach a conclusion that will be satisfactory to most people. You will not satisfy everyone, because politically people obviously have different aspirations for Wales and how they want Wales to develop, from independence on one side to getting rid of this place altogether, which some other political parties wish for. I think we have to grab this opportunity to use the

legislative process now to enhance the responsibilities. As the Secretary of State has said in evidence to you, this will be the one and only opportunity in this Parliament.

Chair: Thank you very much. Ms Williams.

Kirsty Williams: Thank you, David. Welcome to you. It's nice to see you back. Welcome to you, Antoinette, as well. I welcome all your colleagues to the Assembly this morning. From my perspective, there is a shared aspiration from everybody. The Secretary of State said that he wanted a stronger, clearer and fairer settlement that would stand the test of time. I think everybody would agree with that. The question then is: does this Bill deliver on the Secretary of State's aspirations? My concern is that it does not. I think the question is one of workability. Will the Bill as currently drafted provide a clearer understanding between Westminster and the Welsh Government and National Assembly for Wales and give the people of Wales a clearer understanding of what the responsibility is and where that lies? There are elements to be welcomed. I reiterate the points that Andrew just made about electoral arrangements for this place and energy consents—policy areas that we have long argued should be devolved.

My concerns are about whether this is workable. Those arise out of the necessity tests. There is a great deal of uncertainty about what the consequence of the necessity tests will be. I have concerns about ministerial consents and where ministerial consents will lie. That brings us to the question of a reserved-powers model that goes on to list 200-plus subjects that are to be reserved and the appropriateness of those reserved models. It is a draft Bill, and obviously your work is very important in trying to address those concerns and trying to introduce amendments, which I think could mean that the Bill delivered on the Secretary of State's aims, but in its current form, I don't think he will deliver on his own aspirations.

Chair: Thank you. Leanne Wood.

Leanne Wood: Thank you. I would like to welcome you all to the Senedd as well. It's good to see you here and good that you are working on this piece of legislation.

As you would expect me to say as the leader of Plaid Cymru, I don't think this Bill goes far enough. We would naturally welcome any step forward in broadening the responsibilities of the National Assembly and of the Welsh Government. However, in the Bill as currently drafted, we are taking one step forward and three steps back. For example, we are talking about enhancing responsibility over some environmental matters, but then the Crown Estate is being withheld at UK level while it is being devolved elsewhere. Of course, the clawbacks in the draft Bill are a significant concern for us in the Party of Wales. I think this has provided us with a great opportunity that we are in danger of missing if we are not careful. I echo Kirsty Williams's concerns about workability. I would advocate that a legal jurisdiction could overcome some of those concerns and provide more clarity to the situation, but we have concerns about the clawback. I would say that what really needs to happen is the delivery of the Silk Commission recommendations in full and progress towards parity of responsibility for Wales with Scotland and Northern Ireland.

Q61 Liz Saville Roberts: *(Translation)* Thank you all very much for appearing before us today. We appreciate it. We have a busy day ahead of us, but it is very important to us because today we will gather the evidence that I anticipate will be the basis of what the Committee recommends. Following on from the Chair's question, what changes or amendments would you like to see to make the draft Bill workable and fit for purpose?

Chair: *(Translation)* Who is going to start on this one?

Leanne Wood: I could be flippant and say "Delete all, and replace with an alternative," but I think there must be no clawbacks. That has to be a bottom line, as far as we are concerned, and I would like the amendments to go as close to the Silk Commission recommendations as possible. After all, let us remember that the Silk Commission recommendations were agreed by all four parties that were involved in the process. It was a Government-commissioned report, and we have gone back on that in this process. So from Plaid Cymru's perspective, we already compromised to participate in the Silk Commission recommendations; and we have a problem with further compromise, back on those recommendations. I would like the amendments to be focused on the Silk Commission recommendations, bringing them back on to the agenda, because we are in danger of losing them completely.

Kirsty Williams: I too would like to see full implementation of the Silk II proposals. As Leanne has just said, the commission was set up very particularly to ensure that there was explicit representation from all four parties. That was done for a purpose, to try and develop a political consensus on a way forward, and it is disappointing that, having had all that work, which was subject to a great deal of public consultation as well, we have not been able to make progress on the full implementation. There are for instance some very specific areas around policing and youth justice, that I feel my party would like to see devolved. I think, though, it is very difficult in the context of how the Bill is currently drafted to pick out specific amendments.

My concern would be from a basic principle that power should rest with the elected Government of the people of Wales and there should be specific reasons, and a case argued, for powers to be offered up to Westminster. I believe absolutely in some of the exclusions, on space, foreign affairs and defence. Of course my party would agree that those matters rightly lie with and should be the responsibility of the Westminster Government; but there are other things—for instance, road traffic offences, drink-driving limits and dangerous dogs. Those issues I think should lie here at a Cardiff level.

My concerns are the lack of clarity around necessity. I think that is a lawyers' charter; and we have had enough of that already, haven't we, over the last five years? I think the whole reason for having a new Bill is to try to end this knockabout, where legislation here gets put to the Supreme Court or is constantly second-guessed. For instance, only last week in the National Assembly for Wales we were looking at the regulation and inspection of social care—a vastly important area, safeguarding some of our most vulnerable citizens. There was a whole discussion about "If we put that in, it might be questioned in terms of competence, and then we could end up in the Supreme Court, and then the legislation might be lost." We are constantly second-guessing, as Assembly Members, even now, whether we can or cannot act. The Bill

provides us with an opportunity to end that and to get some clarity; but there are some specific policy examples, such as policing and youth justice, that I would like to see put into the Bill.

Andrew R.T. Davies: Just three things, I suppose, really. If I could just pick up on the point that Kirsty touched on—the Government that the people of Wales have voted for. I would point out that we have just had a general election and the people of Wales voted for the UK Government as well; so it is far better that these things are not polarised in that sort of terminology. It is about Governments working together and delivering for the people. Ultimately, if we can have greater clarity about consents—that will be drawn out, I presume, by the scrutiny sessions that this Committee and other organisations will undertake. There is a piece of work to be done to clear that area up. I regret that air passenger duty has not been included in the Bill. I understand the Treasury are working on that particular point, but when Scotland have been given that and when we have an international airport in Wales, it should have been considered.

For me, the big issue has to be clarity about consents, because ultimately, none of us wants to be going back and forth into court. This is a sovereign legislature. Westminster is a sovereign legislature. Ultimately, if we can have clarity on these issues, everyone will be well served and politicians can then get on with the job they were elected to do, whether that is here or in Westminster, by delivering on their manifesto commitments.

Q62 Antoinette Sandbach: I just wanted to come back on one point. The suggestion has been made that because there were appointed representatives on Silk from each party, Silk should be accepted in its entirety, but is the reality not that the elected representatives drew up an agreement on St David's day and, in fact, what is reflected in this Bill is the common ground agreed on that day? There were differences between the parties on, for example, policing and justice.

Leanne Wood: No, in fact, there wasn't an agreement on St David's day. It was a case of parties sitting around a table and effectively the Secretary of State having a veto on which powers should and should not be devolved. I must place on the record very firmly that what was announced by the Secretary of State on St David's day was in no way an agreement; it was a lowest-common-denominator set of principles below which no party wanted to go.

Q63 Antoinette Sandbach: Sorry, I just wanted to clarify that you were not suggesting in your evidence that, because there was an appointed representative on Silk from each party, that subsequently binds the political parties as to the decisions they make.

Leanne Wood: No, the point I'm making with regard to the Silk Commission is that that process was gone through, evidence was taken and an agreement was reached between the parties on the basis of what was a common—there were a lot of things on the table that were not put forward in the Silk Commission report. For example, the devolution of the criminal justice system being delayed for 10 years is not something all parties would have liked. That was going at the pace of the slowest, if you like, in Silk, but this process takes it lower again, so it rolls back on what I see as an already

agreed baseline between our four parties. Lord Bourne was on the Silk Commission. Are you saying he did not speak for your party?

Antoinette Sandbach: I'm trying to—

Chair: Order. I'm sorry, but we're running out of time.

Q64 Byron Davies: Kirsty, the UK Government would say that this is a Bill for a stronger, clearer and fairer devolution settlement for Wales that will stand the test of time. Would you agree with that?

Kirsty Williams: Well, as I've already said, I just don't think the way the Bill is currently drafted delivers that aspiration. It is an aspiration I share and agree with, but because of issues around the necessity test and around ministerial consents, this probably muddies the water even more than the settlement we already have. In some ways, it potentially takes us back to the ludicrous situation we were in before the last referendum with the LCO process, which was not fit for purpose—a fact recognised by the last coalition Government when it offered the people of Wales a further referendum to move us to the settlement we have now. As currently drafted, I don't think the Bill will meet those aims.

Andrew R.T. Davies: I think it has the potential to do that. We are going into a politically charged couple of months, for obvious reasons. We have the Assembly election coming up, and it is probably difficult to find consensus on this type of legislation just before a Welsh general election, but we have progressed greatly via the Silk process compared with where parties were five, six or seven years ago on many of these issues. I hope, with the good will that was engaged in setting up the Silk process and some of the consensus around it—I take the point made earlier that ultimately, it was where all the points could be agreed unanimously. That was the position we ended up with, but I think there is going to be a particular challenge around this Bill, given the very politically charged environment we are going into over the next couple of months.

Leanne Wood: I would say, in answer to your question, that no, it does not stand the test of time and that is not because people are obsessed with a constitution. Even Plaid Cymru is fed up now of the endless rowing that takes place on this matter and, more importantly, it is a great disservice to people in this country who want this clarity.

The way in which we could deliver a settlement that could suffice over the medium term would be to deliver a model of confederalism for the UK. The difference between confederalism and federalism is that with the former the centre derives its authority from the constituent parts, and with federalism it is the other way around. So a model of confederalism could deliver all the pre-agreed Silk Commission recommendations and, at the same time, deliver a reserved-powers model but one in which all the reserved matters were available for devolution when requested by the national Parliaments of the UK. That would be flexible enough to recognise and reflect the different circumstances in each country, but it would deliver equality, and I think that that is the grown-up way to proceed now on this.

Q65 Christina Rees: How do you see the draft Bill affecting the work of the Assembly?

Kirsty Williams: As I said, the settlement we already have causes day-to-day difficulties when considering legislation here, and I think that the Bill does nothing to address that. In fact, it will potentially make it even harder for Assembly Members—whether they be Back-Bench Members bringing forward Back-Bench legislation or the Government bringing forward their own legislation—because of the long list of reserved items and because of this issue of necessity tests. I have been very critical of the Welsh Government myself, when enacting legislation, in that there is no subsequent consequence if that legislation is breached. Because of the reservations here, it could be very very difficult for the Assembly then effectively to legislate against breaches of legislation that would not end up in the Supreme Court. So I think that it is going to make things more complicated.

For instance, one of the reserved issues is equalities. Does that mean we can no longer legislate on the Welsh language here? Welsh language legislation is based on the principle of equality. Equality becomes a reserved matter; does that mean we no longer are able to legislate on the language?

Chair: Sorry, I am just a bit concerned about the time.

Leanne Wood: I have nothing, really, to add in terms of the points that Kirsty has just made, other than to reiterate that it could be made simpler by the points that I have made already. The danger—the risk—is that whereas the Secretary of State was meant to clarify and reduce the number of times that there would be law having to go back and forth to the Supreme Court, this would actually increase the number of times that law would be referred back.

Andrew R.T. Davies: Obviously, having electoral responsibility transferred to this place will, I think, enhance the ability to build capacity. No one likes to talk about more politicians, but ultimately there is a debate to be had over the ability of this institution to provide the proper scrutiny, provide a Government out of it as well, and ultimately properly engage with the people of Wales. Having the electoral arrangements and all the responsibility that goes with that, will, I think, put greater power in the hands of the people who on a day-to-day basis work in this environment, so that has to be welcomed. It has always seemed absurd to me that a legislature is not responsible for its electoral arrangements, and I welcome that in the Bill.

Chair: That is a point that I think has garnered some interest here, but unfortunately we do not have the time to pursue it further.

Q66 Carolyn Harris: I am going to address this directly to Mr Davies, if you don't mind, for the sake of time. I am going to read back the words that you used to the Chamber last week, which is that you take the point “that if you do move to the ground of a separate jurisdiction, then that might possibly help the clarity of the Bill and some of the uncertainties”. You said a lot more, but may I just ask you, for the sake of clarity, whether you can enlighten the Committee as to exactly what you meant by those remarks?

Andrew R.T. Davies: There is a debate going on at the moment about the jurisdiction. Obviously we have the England and Wales jurisdiction. I remain to be convinced that we should move away from that model, although I am more than happy to engage in the discussion and debate around it. There is a body of Welsh law that is increasing, as each day, each week, each month goes by, because of the laws that are passed here. I do think that obviously Scotland and Northern Ireland having their own jurisdiction helps to clarify the situation, but I recognise the strength of the England and Wales jurisdiction, and I think that we throw that out with the bathwater at our peril. As I said, I am happy to engage in the debate. The point I made was that my mind is not completely shut on that particular issue, but I do need convincing that, at this point in time, it would be a sensible course of action to set up a separate Welsh jurisdiction.

Q67 Carolyn Harris: If that puts you at odds with the Secretary of State, are you still prepared to be as open-minded?

Andrew R.T. Davies: I think previous members of this Committee know that I have a very open mind when it comes to doing what is required and what I believe is in the best interests of Wales.

Carolyn Harris: Thank you for your honesty.

Chair: Thank you. Chris Davies. Feel free to put questions to other members of the panel.

Q68 Chris Davies: I will if I may. Perhaps I will leave Andrew out of this one, because you have already touched on the subject, Andrew. With more responsibilities coming to the Welsh Assembly—or you are asking for more responsibilities—you have touched on the fact that the workload here for hon. Members will be increased. We have already seen the First Minister dismissing a Committee Chair because of conflict, so clearly we are going to see the need for more independent Members in this Assembly. Off the top of your head, ladies, how many Members do you think we would need if this measure goes through in this draft Wales Bill? How many more Members would you need in the Welsh Assembly?

Leanne Wood: It is difficult to put an exact number on it. I cannot remember what the Richard Commission came up with. I think it was 80.

Q69 Chris Davies: This is your opinion, not somebody else's.

Leanne Wood: Well, I would say somewhere in the region between 80 and 100 for it to work properly.

Chair: Thank you for that direct answer. Kirsty.

Kirsty Williams: I think that until there is absolute clarity on where responsibilities lie within each body, it is very difficult to draw up a number. I think you have to look at the number of Assembly Members in the context of changes and responsibilities elsewhere. That includes local government. What is the role of local government? What is the right number of councillors to deliver that? Indeed, what is the number of MPs? I would anticipate that any increase in the number of Assembly Members would lead to a decrease in the number of Members of Parliament. There is no appetite from the public of Wales to spend more money on more politicians. You

cannot look at the number of Assembly Members without looking at the number of MPs and councillors.

Q70 Chris Davies: Clearly, we are going down to 30 instead of 40 MPs, or possibly even 29. As we know, that is already in law in Westminster. So you have not answered my question. Will you answer my question?

Kirsty Williams: As I said, not until there is clarity about what the responsibilities of the Assembly are. I think that at present Assembly Members do work very hard. If there are to be more legislative powers, there would be a case for arguing that there could be more Assembly Members, but my party believes that that has to be cost-neutral because there is no appetite from the Welsh public to spend more money on more politicians. If Assembly Members are doing more and MPs are doing less—that is particularly true now with the English votes for English laws Standing Order changes—perhaps there will be an appetite to reduce the number of MPs.

Leanne Wood: Can I put on record that I agree with the cost-neutral point? I am also interested to know why you are not putting the question to the leader of the Conservatives.

Q71 Chair: Well, why not? Do you want to throw a figure out?

Andrew R.T. Davies: Well, as I said in my reply to Carolyn earlier about the issue that more AMs most probably could do better scrutiny—

Q72 Chair: Would you like to offer a number?

Andrew R.T. Davies: I do not think there is an argument out there yet that has settled on a number. What we have to look at is exactly the basket of responsibilities that we do have: the function of this place; the function of government; the scope of local government in Wales, which is under consideration at the moment; and the shape and size of the Westminster contingent that will leave Wales in the 2020 general election. All that has to be taken into consideration. But I would point out that owing to the way in which the Bill is drafted, this institution will pick up the cost of any increase in the number of AMs. It would not be additional moneys made available, so it would have to be done within the envelope of cash that is available.

Q73 Mr Mark Williams: I want to go back to an earlier question after that display of passion, which is welcome on a Monday morning. I want to go back to the earlier question on the issue of legal jurisdiction. The right emphasis has been placed by all three of you on the workability of this Bill. We have a Bill that is going to be with us for the next year or more. The Bill is drawn up and will be presented to the House of Commons. The debate will ensue about the importance of legal jurisdiction and what that may amount to. There has been a lot of speculation about how it would not be as costly and burdensome as some would think. Can I ask each of you to tell us clearly from your party's perspective, were there to be amendments in the House of Commons addressing the current omission of a separate legal jurisdiction, what your advice would be to your party colleagues in the House of Commons? Kirsty has got to speak to only one these days, so it is quite straightforward.

Chair: I really appeal for a short answer to that, if possible. What would the advice be, Kirsty?

Kirsty Williams: I am very comfortable with a separate jurisdiction, Mark, but I do not think you necessarily have to go that way first. It is possible to have a distinct but not separate legal jurisdiction that avoids some of the pitfalls, such as the cost of devolving the entire judicial system. It is perfectly possible to deliver a distinct but not entirely separate system. Judges are already trained to take cases in Wales because of the changes to Welsh law. We can build on that. I have got no problem with having completely separate jurisdictions, but you can make them distinct but not separate.

Leanne Wood: I would agree with that. We could move from an England and Wales jurisdiction to an England and Wales jurisdiction within the same set-up without necessarily having to go through the cost and evolving it over time, rather than doing it all in one big bang.

Andrew R.T. Davies: I think it is work in progress. As I said in my opening remarks, the clear part of this for me is getting clarity about the deliverability of the responsibilities. I have had assurances that the England and Wales jurisdiction can handle the body of Welsh law that is being created at the moment. If there is an argument that comes forward and people say, “Actually, Scotland gets greater clarity because they have that separate jurisdiction, and Northern Ireland get that,” I think that is a discussion that needs to be had and ultimately taken into consideration. Certainly, from the discussions I have had, at the moment there seems to be a certainty that the England and Wales jurisdiction can deal with the matters that are presented in Welsh law.

Leanne Wood: Can I add a point on this? I would say that if we go for the distinct jurisdiction, we would need to be satisfied that the Silk Commission is implemented in full over time. There would then become a separate jurisdiction over that period of time. A distinct jurisdiction without that is potentially problematic.

Chair: Thank you very much. I know that three people want to ask short supplementaries. I would rather try to get question 4 done first, and then possibly come back to a few things afterwards if time permits.

Q74 Antoinette Sandbach: We are obviously moving from a conferred powers model to a reserved powers model. It is quite clear, therefore, that the proposed Bill needs to be clear in its drafting about what is reserved and what is not. Given that move, and the clarity that is provided—200 areas, roughly, have been reserved—do you agree that because that is now laid out and clear, that provides members of the public and civil society with clear guidance about what is reserved and what remains with the Assembly?

Leanne Wood: No, because of the clawbacks and the necessity tests, which make it unclear and risk rolling back on previous agreements. Although the Secretary of State has set out that he wants to clarify the system, my argument is that this risks making it even more confused.

Andrew R.T. Davies: I think, in fairness, that the Bill does offer a degree of clarity. Throughout the stages that have happened to date in the month since the Bill was published, very knowledgeable individuals have pointed out the positives and the pitfalls. Sadly, some of the pitfalls look as if they are there in the original drafting of the Bill. I am confident that by the time the Bill comes forward for legislative scrutiny in the House of Commons, many of those pitfalls will have been taken out. That, surely, is the luxury of having a draft Bill for us to consider so that we can make recommendations to the Secretary of State.

It would be highly regrettable if there was a rowing back on territory that we clearly understood to be devolved and the responsibility of the Welsh Assembly. I don't think that is anyone's intention, but you will know better than anyone, Antoinette, as a barrister, that when you get lawyers together you can get so many differing opinions. That is where we as politicians have to come in and try to sort that out.

Kirsty Williams: I think that what we are discovering is that when we all argued for a reserved powers model, we were being simplistic as to how that would potentially be developed. The way that this seems to have been approached is not from the principle of powers resting in Cardiff, but rather simply asking Whitehall Departments what they want to hang on to. It doesn't seem to be a particularly coherent list, so we go further down into this area where bits are hung on to at Westminster, rather than giving the entire policy brief to the devolved institution. The list is problematic. Actually, because of the list and the issues around ministerial consent, it takes us back beyond what we currently have. By his own admission, the Secretary of State says that this is to do with issues such as the food hygiene regulations, which were unanimously agreed in this institution following the horrific death of Mason Jones and the need to act upon food safety. The Human Transplantation (Wales) Act 2013, measures to do with Welsh language and housing, and even something as non-controversial as the Local Government Byelaws (Wales) Act 2012 potentially would not have been passed. When the Secretary of State says, "Well, that would have been fine because Ministers would have given consent on all of these things," it is important that he remembers that he needs to legislate not only for this Government or for this set of Ministers, but for future Governments and Ministers. I just don't think that saying, "Well, I would've let it go," is sufficiently robust to achieve what the Secretary of State says he wants to achieve, which is a settlement that will last over time. I have concerns about the list that is currently drafted.

Q75 Liz Saville Roberts: (*Translation*) How do you feel that this draft Bill compares with the reserved powers model in the Scotland Act 1998? Also, on something that has not been referred to yet, what are the implications in terms of EVEL—English votes for English laws?

Chair: There are two questions there really. May I appeal for brevity? You three must have other things to do as well after 10 o'clock. Kirsty, do you want to go first?

Kirsty Williams: The reserved model in Scotland does not have the complication that we have here, because of the issue of jurisdiction. Because Scotland has its own jurisdiction, that kind of reserved model is deliverable. With regards to EVEL, there are grave concerns in a border constituency like mine where a large number of people

receive services across the border, which has implications. I am regretful about the decision made in Westminster.

Chair: If I may, I must give myself a quick question—

Kirsty Williams: It's the Chair's prerogative, David.

Q76 Chair: There are lots of people receiving services on both sides of the border at the moment. There are people in the Forest of Dean who use the NHS in Wales and their MP has no say over the NHS in Wales, so this is surely something that cuts all ways. If you are against the issue of people who use services on both sides of the border not having representation, isn't that an argument to get rid of the Welsh Assembly?

Kirsty Williams: It is an issue of scale. I am just very concerned for my constituents that, when decisions are being made on whether to place the emergency services in Shrewsbury hospital or Telford, for example, or about legal changes around how NHS services are constituted, Welsh MPs will have less of a say. Just as Mr Davies said, it is like turning down the voice of the people in Wales who receive these services.

Chair: The MP for the Forest of Dean has no say over how the NHS and primary services are delivered to his constituents when they have to go to Wales. Anyway, I'm probably taking myself off at a tangent that we mustn't pursue.

Leanne Wood: From my perspective, the biggest problem with the question of EVEL is on finance. I cannot easily work out what is an English law. I don't know whether any of you have gone through the exercise of trying to work out exactly what an English law is, but if you do work that out and could let me know, I would be—

Q77 Chair: Surely it's something that doesn't apply in Wales, because—

Leanne Wood: But everything has a financial impact under the Barnett formula. That's the problem, so potentially everything, apart from maybe a canal in one particular part of England that has absolutely no impact whatsoever on Wales, has an impact. Every piece of legislation in health or education made in England has a financial consequence in Wales.

With the question of how our Bill as drafted compares with Scotland, there is a massive difference, and that massive difference basically is down to the question of legal jurisdiction and the fact that Scotland already had a devolved criminal justice system before they even had a referendum on devolution in 1997.

If I can just come down on one very narrow point on this question of Scotland, it is the question of necessity tests. For me, we have to argue strongly for the removal of these necessity tests for criminal and civil penalties. The National Assembly should be able to apply criminal and civil penalties to matters that are not reserved as it sees fit, because with the tests a mockery is made of the reserved powers model. There is a necessity test within the Scottish Acts, but it is not so damaging, because the devolution settlement is wider and deeper and there is a clear jurisdiction. If we were to get a legal jurisdiction and a roll-back on the Crown Ministers' consents, I suggest that some form of necessity test could be tolerated, subject to experts' input into that.

Andrew R.T. Davies: Two things: I fail to see why the Opposition parties, in this case those in Westminster, are bellyaching so much about the proposals around EVEL. At the end of the day, if you want more devolution, that is the way that responsibility will be divvied up at the end of it. You cannot have English MPs being excluded from certain decisions and parties rowing in their Welsh, Scottish and Northern Irish MPs to support them. We are moving towards a devolved model of governance in the United Kingdom. That is well established. Part of the Bill is about establishing the permanency of this place in legislation. That is in the Bill. It is just a progression of the way the situation is slowly but surely evolving.

Regarding the Scotland Bill, it goes back to the points I was making earlier. That is the debate around jurisdiction and clarity. To me, the big concern with the Bill is the need for greater clarity around the consents and who is making the consents when legislation comes forward. I look forward to engaging in that process as we go forward over the next couple of months, but for me that is the big area that we need to work on. Let us not forget, however, that a lot of the problems here are based in the original Government of Wales Act 2006. We are trying to clean all that up. That was a flawed Bill that was presented. Let us not try to re-enact the mistakes that were made in 2006, so that we are not sitting here in 2026, 10 years later, trying to do it all over again.

Q78 Gerald Jones: There is something I would like to ask each of you: how do you see the relationship between the questions around the constitution and the wider issues of public policy?

Leanne Wood: They are intrinsically linked. The whole point of wanting powers to be in this place is so that it can enact improvements in people's lives. Without that, there is no point to them.

Kirsty Williams: Absolutely. We need these powers, and we need them for a purpose, which is to act on behalf of the people of Wales. I share everybody's frustration that we constantly talk about constitutional issues, which most members of the public never want to talk about. That is why it is important that this opportunity is used correctly to deliver what the Secretary of State says he wants, which is a lasting settlement. That would allow us to move on from these endless debates about the constitution. My concern is that the Bill will not deliver the lasting settlement and that, exactly as Andrew said, people will be here talking about this in five or 10 years' time when we find that the Bill is inadequate, just like the previous Government of Wales Acts and Bills have been.

Andrew R.T. Davies: Two things, really. The first, for me, is the ability to have clarity around everything we are doing now so that the next Assembly term—the fifth—is productive and that whoever forms that Government can get its legislation through on the manifesto commitments.

The bigger discussion and debate is on the type of devolution we want. There is a big debate going on in Wales at the moment about reorganising local government, and we are going to go back to the 1974 local government boundaries, which will create huge local government organisations. Are we getting responsibility just to make a mini-

Whitehall here in Cardiff and replicate what goes on in Westminster, or should we be creating devolution, much like is happening in England, where power is being driven down to cities and some of the smaller areas that can participate? People participate in that process.

Let us not forget that the highest turnout in an Assembly election has been only 45% of the electorate. The lowest has been about 35% of the electorate. It is about doing what we can to improve people's lives, but it is also about creating better economic performance. Do Government do that, or do people do that? My biggest worry is that we will end up creating a mini-Whitehall here unless we create the dynamics of local devolution and empower communities. We can spend all the time we want in these fine Committee Rooms but—

Chair: We can't unfortunately, R-T, as much as we'd like to. Lastly, because we have run out of time, would Craig Williams ask the final question?

Q79 Craig Williams: Thanks, David. We have seen the rhetoric and the emotional statements around this constitutional debate. In the run-up to the Assembly election, which Andrew alluded to, it is going to be a very political environment. Is there any hope of you guys coming together and forming an opinion in the run-up to the Assembly elections? Likewise, is there any hope for the Assembly in Westminster in this highly politically-charged environment? We heard a good example just now—the confederation. It sounded like independence by the back door. Things like that are coming out in this debate. Is there any hope while we have this politicised environment?

Andrew R.T. Davies: I think it would be a challenge because you would be underestimating—you know this because you are politicians—the passion that goes into a full-blown election. We all have our positions. As I said in my opening remarks, you are never going to reconcile the width between those positions but I do think that we have shown, over the fourth Assembly on these matters via the Silk process, that we can bridge some of those gaps and we can put a settlement in place. Where there's a will, there's a way. Certainly, from our side of the fence, we are very committed to ensuring that there is a way forward and that we do not replicate the Government of Wales Act 2006. That would be disastrous for Wales. As the Secretary of State said, this five-year electoral cycle of the Westminster Parliament is the one and only opportunity for us to do it.

Kirsty Williams: I believe there is an opportunity to use this vehicle to achieve what the Secretary of State wants. The Bill, as currently drafted, does not do that, but I do not believe that it is beyond the wit of politicians at both ends of the M4 to come up with a situation that creates a lasting devolution settlement and avoids the pitfalls of the Bill that have already been pointed out. It is a case of both sides acknowledging that and finding a way forward. We always have found a way forward and I am hopeful that we can do so again.

Chair: Thank you very much.

Leanne Wood: I think that people in Wales will take a very dim view if they think politicians are playing politics with this. I cannot speak for other parties but I can tell

you categorically that Plaid Cymru will never play politics with our nation. We always participate constructively, whatever the forum, in cross-party talks and processes. We show good faith and that we are prepared to compromise. The Welsh national interest drives us. That will always drive and inform the position that we take on constitutional and all other matters.

Chair: Okay. Thank you all very much indeed. Sorry that we overran slightly but we did manage to get everything asked.

Examination of Witness

Witness: **William Graham AM**, Chair of the Enterprise and Business Committee of the National Assembly for Wales, gave evidence.

Q80 Chair: Mr Graham, thank you very much indeed for joining us this morning in your capacity as the Chair of the Enterprise and Business Committee. I have just been told that Alun Ffred Jones's flight has been cancelled, so he might not be able to join us at 10.30. You may well have other things to do at 10.30 anyway so I do not want to let things overrun on that basis. May I start by asking your overall view of the Bill? What is good and bad and what would you change if you had the ability to do so?

William Graham: Thank you very much, Chair, for your invitation to come here today. My Committee was able to discuss it briefly last week and the Clerk has prepared some notes from that. The overall assessment of the Bill is very much that it is a work in progress. There are a lot of clarifications that the Committee would like to learn more about. It welcomes the devolution of ports policy, taxi regulation and speed limits. Those are all welcome and are all pretty well defined.

I suppose we are looking again at the tests that the PO has suggested of clarity, workability and no roll-back. That is a concern. We looked at the reservations—I have no doubt that that will come out in questioning—as well as the necessity tests. Perhaps the second part will look at specifics. The overall assessment is that it is welcome. There has been a great deal of consultation on the Bill, in terms of the call for evidence with Silk, and then the consultation, negotiation, re-consultation, renegotiation—and we haven't even reached the amendment stage yet—so I take the view that this is very early days.

Q81 Mr Mark Williams: You are right that it is very early days; this is the second hearing of the Committee in our pre-legislative scrutiny work, so there is a long way to go. Bearing in mind the work you and your officials have done to date, are there specific measures in the draft Bill's schedule of subjects reserved to Westminster that take away power from this place? Do they affect any of your Committee's powers to scrutinise? Have you picked up on any specific areas that represent a move away from devolution?

William Graham: Perhaps I may refer to the notes, because this is a somewhat complex area for non-legal Members. We looked at tests. I suppose the particular reservations were on trade and industry, transport and employment. I will start with trade and industry and reservation C6, on consumer protection. The current exception prevents the Assembly from legislating on consumer protection, the sale and supply

of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications. What we are looking at there is the additional words, “supply of goods and services to consumers”, which is a new concept and is narrower than the current exception. We ask for further clarification on that.

The new settlement includes the wording: “Safety of, and liability for, services supplied to consumers.” We see that as a reduction in terms of the Assembly’s competence. Again, it would be helpful if the scope of those reservations could be explained at a later date.

On the wording of the reservation relating to the regulation of estate agents, this list is an exception, currently in schedule 7, so, again, this reservation might well reduce the Assembly’s competence.

In terms of reservation C7, on product standards, safety and liability, the new settlement reservation refers to: “Technical standards and requirements in relation to products in pursuance of an obligation under EU law.” It is not clear whether that reservation will have the effect of preventing the Assembly from making legislation that engages the technical standards directive.

Further clarification is needed on the meaning and scope of the words: “The national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems.” You see, we are getting into pretty technical stuff very early in our comments.

On reservation C12—

Chair: Sorry, may I stop you there?

William Graham: Do you want me to go into this level of detail?

Chair: Probably not, otherwise we will run out of time.

Q82 Mr Mark Williams: It would be very helpful to the Committee if you could write to us about the work that has been undertaken.

William Graham: Quite so; we will do so.

Q83 Mr Mark Williams: A certain body of work has been done. It is ongoing—we all acknowledge that—but what is your instinct when reading that list? You are talking at the very least about a lack of clarity, and quite conceivably about powers being lost from this place and taken back to Westminster. As a Member of this place and the Chair of a significant Committee here, what does your instinct tell you?

William Graham: You have really touched on the main point. There is a great deal of suspicion that powers are to be taken back from the Assembly. I don’t quite have that opinion myself, but that is the general view. That is the problem with many issues in the Bill. We require a great deal more clarification on items that are generally welcomed in order to be sure that the powers that we currently have remain.

Q84 Mr Mark Williams: There has been a lot of criticism of the restriction that will mean the Assembly can change private and criminal law only so far as is necessary to give effect to a devolved purpose. Again, the assertion is that that could lead to a further reduction in the Assembly's powers. What are your reflections on that?

William Graham: As much as it affects this Committee, it is not particularly worrying, so long as the clarification on those areas of law which we presently hold remains.

Chair: Thank you. I have a few supplementaries. Antoinette is first.

Q85 Antoinette Sandbach: Thank you. William, is it your view that your Committee and the Assembly generally have the resources to scrutinise the additional powers devolved? Obviously there are substantial powers coming in relation to roads, transport and other areas, so, as a Committee Chair, what is your view?

William Graham: I think the way in which the secretariat, particularly to both the commission and the Welsh Government for that matter, has gained much greater experience over the last 15 years fills me with hope that all these new measures will be well able to be properly scrutinised.

Q86 Antoinette Sandbach: You have obviously just given a list and I would be very grateful if, when you write to the Committee, you can indicate where, in the conferred powers model, you say those powers were conferred on the Assembly originally. You came up with a specific list that is clearly reserved, but can you identify where in the Government of Wales Act those powers are conferred from?

William Graham: I am grateful to my Clerk for preparing for such issues, because we intend to write to the Secretary of State to ask for clarification on those matters. I will be delighted to make that available to the Committee.

Q87 Christina Rees: A short supplementary. Going back to resources, do you think that the number of AMs should be increased? I understand that one AM sits on as many as four scrutiny Committees. Is this a way to create parity inasmuch as increasing to say 80 AMs would give the opportunity to have 40 men and 40 women?

William Graham: I do not think my Committee considered that specifically, but I think there is a general indication that more Members to help scrutinise legislation would be entirely helpful.

Q88 Chair: Would you like to put a figure on it? We heard a few bandied around earlier on.

William Graham: I think, from one of the studies that influenced me, it would be approximately 80 Members.

Q89 Liz Saville Roberts: (*Translation*) Thank you. You mentioned in your preamble that there had been a great deal of consultation on this. Of course, there was consultation on the Silk report, but to what extent did the process of reaching the draft we currently have reflect the consultation that happened through Silk? Do you feel that more, if not all, of the Silk recommendations should be reflected in the Bill?

William Graham: Broadly, I would certainly agree. This Committee has made representations to Silk on a number of issues, particularly on transport, and I would say that all the manifestos of the major political parties have a great deal of consensus on some of those issues. Not being party to those negotiations, I do not really know what happened, but, for example, in transport, the Welsh Government have put forward plans for a much more extensive organisation of the railways than the Bill presently allows. That is something that we urgently require clarification on, for example, in relation to franchising.

Chair: Thank you very much for that.

Q90 Craig Williams: Coming on to ports policy, I do not want to go into too much detail, but in terms of subsection (7)(a) and the further devolution of ports policy, do you think that goes far enough?

William Graham: I think it is a very good start. It is the very nature of devolution that it changes and alters. The hope would be that the Bill gives Welsh ports enough self-regulation so that they will be able to compete, because you know that we have enormous competition from both Bristol and Liverpool. So, in that way, the proposals in the Bill meet a great deal of those aspirations. More technical things about trust ports, and things like that, will come in time.

Q91 Craig Williams: I wonder whether I can ask you about the trust port plan, again without making it too dry. I think there are five trust ports in Wales, and one of them, Milford Haven, is being held by the UK Government. Do you think there will be a tidier way of doing that in the Bill, for UK infrastructure? Or do you think trust ports just do that very neatly?

William Graham: Again, we are back to clarification. You make a valid point about Milford Haven, which is an incredibly important port to the United Kingdom. One can understand the reluctance but, really, in my view, and I think in the view of the Committee, it would be better structured within the Bill to reflect the powers that the Welsh Government should have over all the ports in Wales.

Q92 Byron Davies: I have a question on roads. There are several elements to my question, and I will try to condense it if you can briefly answer my points. Do you think that devolving speed limits could cause problems along roads that sometimes re-cross the border? The Secretary of State tells us that the draft Bill does not prevent the Welsh Government from creating penalties to enforce speeding offences, and I wonder whether that is your understanding. Lastly, do you believe that the Welsh Government need control of drink driving?

William Graham: There has to be very proper consultation on the speed limit, because free movement is essential. Adequate signage when it changes from one limit to another should solve that—it need not necessarily be a major problem. We have not discussed drink driving in the Committee, and my personal opinion is that it should be reserved to the United Kingdom.

Chair: Any further questions on that, Byron?

Q93 Byron Davies: Sorry, yes. The Government say that there is consensus on devolving bus regulation, including the traffic commissioners' functions. We have long talked about that. We talked about it in great detail when I was here. Are you concerned that the draft Bill does not devolve regulation of bus operators?

William Graham: I will answer your question this way. Members of the Committee will know how important buses are to the proposals for the metro. They are absolutely vital. The more control that the Assembly Government have over bus regulation, the better. The powers as presently proposed are certainly satisfactory and are greatly to be welcomed but, again, they probably require certain more technical aspects of the regulation itself. In essence, bus re-regulation might be necessary to make the metro viable.

Q94 Christina Rees: Does your view of the St David's day consensus accord with that of the UK Government in relation to buses and more generally?

William Graham: What we understand is that, as the various stages have progressed, there has been pretty significant negotiation at governmental level, but there will always be issues that will not be agreed. The Assembly Government have great aspirations for rail, which, without repealing section 25 of the Railways Act 1993, will not be possible. Again, more clarification is needed.

Q95 Chris Davies: Thank you, William, and good morning. The last question touched on the St David's Day agreement. We heard from the previous witnesses various differing terms in relation to the St David's Day agreement. As an Assembly Member, what is your opinion on the St David's Day agreement?

William Graham: I think the St David's Day agreement set the whole tone, and many aspirations have been raised from that, not all of which are met in the Bill. I am confident that, with adequate clarification on these reservations, more people will be more happy than not.

Q96 Chris Davies: As an Assembly Member, what is your feeling about whether there was complete agreement on the St David's Day agreement?

William Graham: I think there is broad consensus, as has been reflected in the various referendums that we have had in Wales. People are expecting more from this particular settlement.

Q97 Liz Saville Roberts: (*Translation*) You have said two interesting things. You have said that this draft is a good start, and that there will still be issues that are not agreed. Is the draft Bill in its current form likely to provide a permanent settlement?

William Graham: I am confident that, with clarification, yes. I refer back to the railways. As I said, most—well, I think all, in fact—the major political parties in Wales have suggested that the Welsh Government should control Network Rail. That is not met in the Bill, and the Secretary of State has set out reasons why that should not take place. That is just one example.

Q98 Liz Saville Roberts: (*Translation*) How are we going to get this clarity? We have heard the word “clarity” several times from several witnesses today. It is a very open term. How do we get clarity?

William Graham: As far as my Committee is concerned, we are going to write to the Secretary of State with all these reservations and the way in which we require further clarification. I think that once that has been achieved, we will look at it once again, but the Secretary of State has done his best to show that he is in listening mode. This has gone on now for some while. You have to come to a point where you put forward your point of view in terms of the Bill, and then the argument begins. That is what we are having now.

Q99 Antoinette Sandbach: William, you spoke in your opening remarks about various matters that had originally been reserved: for example, employment is in the list of reservations. In your view, do the schedules provide a degree of clarity? Previously, it was a conferred-powers model, with the whole of the exception being employment. We have seen some judicial law making in the Supreme Court judgment on the Agricultural Wages Act. In your view, does the schedule actually provide a much clearer skeleton, as it were, around the division of functions between the Assembly and Westminster?

William Graham: I would agree. The term “skeleton” is a very good one. Our concerns are particularly to do with job search and support, for example: the second tier, as it were, rather than employment law. It is the consequences of that.

Q100 Antoinette Sandbach: Sorry, can you clarify that? Your Committee is concerned—

William Graham: I accept that employment is reserved, but it impinges on, for example, job search and the aspects of that—how you retrain, and so on—and the powers granted to the Assembly Government to be able to do that. The skeleton is there. Again, we need more clarification on slightly more technical issues.

Q101 Carolyn Harris: Mr Graham, I will take you on to the railways now. The draft Bill says nothing about rail transport, other than to reserve legislative competence in relation to rail services. Are you satisfied with the progress on devolution of the Wales and borders rail franchise?

William Graham: That is one we are very concerned about. It goes back to the roads, in a way; it is a very fluid and also, I gather, profitable route, certainly for all those parts of eastern Wales. The Marches line is vital. I am sorry to say it again, but once more, further clarification and better particulars are required on that one. It is a very important route, not only to the people who use it but in terms of the operator also. That really does need urgent clarification.

Q102 Carolyn Harris: The parties to the St David’s Day process agreed that there needed to be a greater role for the Welsh Government in consultation on the inter-city cross-border rail franchise. Does the UK Government’s promise to review whether there is a need to strengthen arrangements satisfy this?

William Graham: In terms of the evidence the Minister has given to Committee, she gives us the very strong impression that she has a good relationship with the Department for Transport in Westminster, and on an official basis. They are looking to make the best use possible of the powers that are currently granted, although there is certainly greater aspiration in terms of rail transport across the board.

Q103 Craig Williams: I am interested in your view and the Committee's view of the Wales and Borders franchise and the intercity service. Frustratingly, Wales does not have its own railway network, because a good chunk of the north-south link is in England. Obviously, that has a bearing on this. Presumably, in asking for clarification, you are never expecting Wales to have control over the borders, in terms of the Hereford-Shrewsbury line. How do you see things emerging?

William Graham: I think, in that respect, it is about the contribution of the line in terms of service and profitability, given the way it links into north and south Wales. The line is the line, isn't it? You know what I mean. But it is extremely important if you are going to frame a franchise, because a lot of the routes that link into it—particularly those mid-Wales routes—will require substantial public subsidy, because they are a true service.

Q104 Craig Williams: But you recognise the timetabling implications in terms of most of that English section and the worries around that?

William Graham: Absolutely—and, of course, the complication, as it were, with Network Rail. We had some interesting evidence the other day after the difficulties with people leaving the matches in Cardiff. The complications between Arriva, Great Western and Network Rail were quite illuminating, shall we say, for the Committee. I commend the report on that to you.

Q105 Byron Davies: A very quick question. You said at the beginning of your answer to Carolyn Harris that you were very concerned about the franchise. Could you just expand on that?

William Graham: Again, it is the timescale, isn't it? How can I describe it? I suppose the best way is to say that the engineering of the electrification has already caused complications. The Welsh Government have their own ideas on the franchise, and it remains to be seen how those ideas will be tested in the market.

Q106 Byron Davies: Is that your main concern?

William Graham: I suppose it is—yes, indeed. It is absolutely crucial that the franchise—or franchises—suits the needs of the people of Wales.

Chair: Thank you very much. I thank William Graham very much indeed for coming along this morning. I can confirm that, unfortunately, Alun Ffred is not able to join us, due to a cancelled flight, so the Committee will now go into private session for the next half an hour, until we are joined by Paul Silk. Thank you all very much.

Examination of Witness

Witness: **Sir Paul Silk**, Chair of the Commission on Devolution in Wales, gave evidence.

Chair: Good morning, Mr Silk—Sir Paul, sorry, forgive me—and thank you for coming in to see us once again. We feel like old friends. May I start by asking Christina Rees to open?

Q107 Christina Rees: Thank you. Welcome. On devolution, you were the first Clerk of this Assembly and then you were asked to chair the Commission on Devolution in Wales. Will you give us your take on the draft Bill?

Sir Paul Silk: Thank you very much. It is a pleasure to be here. I do not think that we have met in this building before, although I have met your predecessor Committee in Westminster on several occasions.

I was not actually the first Clerk of the Assembly. My predecessor was a man called John Lloyd, so I must not pretend that I was here from the very beginning.

When I gave evidence to the Constitution Committee in the House of Lords, I said that there were some things with which I was disappointed about the Bill, having chaired the devolution commission, and I was disappointed at an earlier stage with what was in the St David's Day agreement. That was because some of the things that we recommended in our commission's report were not contained either in the St David's Day agreement or in the Bill, I was not expecting to see them in the Bill, but they were causes of disappointment—such as no devolution of policing and justice.

Many things, however, I was pleased to see in the Bill. The provisions of the Government of Wales Act 2006, in sections 29, 30 and 32, on the constraints on how Committees operate in this place, on the obligation for the Secretary of State to attend proceedings every year and on the right of the Secretary of State to take part in proceedings, are all being swept away in this Bill. Those are very good things as far as the Assembly itself is concerned.

Many things in the Bill reflect what our commission recommended. For example, the Welsh Government and Assembly's powers to be involved with electricity generation up to 350 MW is something we recommended. So although there was an element of disappointment, there are lots of things I was pleased to see in the Bill.

Then there are a whole set of technical issues, which many people have already commented on. I am not a lawyer, but some of those technical issues need to be worked through and, in my view, there needs to be a solution acceptable to both the United Kingdom Government and the Welsh Government.

Q108 Chair: Sir Paul, if this Bill, even in some amended form, gains consent and passes through Parliament, with Assembly support, will that be the end of constitutional matters in the Welsh Assembly for years to come, or will it be followed—as so many others have been—within weeks or months by calls for further powers to be devolved to the Assembly?

Sir Paul Silk: When I appeared before the Constitution Committee in the House of Lords, Lord Cullen asked me exactly that question. I will repeat what I think I said to him. Space is left by the things that we recommended should be devolved but are not being devolved, and there will always be those who advocate that that space should be filled—particularly on policing and justice matters—so I think that if this Bill is passed in its present form, there will always be those who will argue that there are other things that ought to be devolved to Wales. No, I do not think it will be the end of the discussion.

Chair: I fear you are right.

Q109 Byron Davies: Sir Paul, good morning. Given what is in the Bill, do you think this place has the capacity to deal with what it has now, and do you think with the additions in the Bill it will be able to survive?

Sir Paul Silk: It was not the most popular thing that we recommended in our report, but we did recommend that the Assembly should be larger. Part of the reason why we recommended that was because we saw the problems of scrutiny. Already, under the 2014 Act, the Assembly will have tax-varying powers and will have to be responsible for taxation legislation. If it had responsibility for the new set of powers that we recommended—and, indeed, for the new set of powers it already has in this Bill—it would need to scrutinise all those things properly and adequately.

We were particularly concerned by the imposition on Assembly Members. At present, I think most of them serve on at least two Committees, and some of them serve on three or four Committees. That is a hard job to do, and it is particularly hard, we thought in the commission, for Members of the Government party. A number of Members of the Government party are already taken off as Ministers and deputy Ministers, and that leaves very few Members of the Government party to do the work of scrutiny. As you may know, I spent most of my career in the House of Commons. In the House of Commons, you have a Ministry drawn from the House of Commons of about 80 or so Members. That means you have over 550 Members who are able to do the work of scrutiny. I am not suggesting for a moment that the Assembly should be anything of that sort of size, but we did think that it needs to have more Members to do the job of scrutiny as well as the people of Wales deserve.

Q110 Byron Davies: So you would advocate more Members to deal with the Bill?

Sir Paul Silk: Yes, more Members for the purposes of scrutiny.

Q111 Chris Davies: Good morning, Sir Paul. Great to see you with us. I am going to push you a little bit further on Mr Davies's point, if I may. You say that, yes, the Assembly will need more Members. In your opinion, as somebody who understands the workings not only of the Assembly but of the House as well, how many Members would you suggest we should be looking at?

Sir Paul Silk: Of course, under the Bill, this will be something that will be the responsibility of the National Assembly itself.

Chris Davies: Yes.

Sir Paul Silk: We did not suggest a number in our commission report. There was a report that came out from the Welsh Governance Centre at Cardiff University, which thought that 100 was the right sort of number. I am not entirely ducking the question by saying that something between 80 and 120 would be the right parameter. I could see the Assembly doing the job that I would like to see it doing with 80 Members, but I think most academic observers talk about rather more than that—around 100.

Q112 Chris Davies: So we are in the region of 100 to 120.

Sir Paul Silk: I would say 80 to 100 is the sort of number that I would plump for, personally.

Q113 Chris Davies: Can I just ask one more brief question, Chair? Can I just ask for your understanding of the St David's Day agreement?

Sir Paul Silk: My understanding of the basis of it?

Chris Davies: Yes.

Sir Paul Silk: Well, I am not privy to how the St David's Day agreement was determined. I understand it was negotiated between the representatives of the political parties in London who decided on it, but I believe that representatives of the political parties here in Cardiff were brought into the process later. I have only heard that at second hand. I do not know how the St David's Day process operated.

Chair: I think I had better bring in Liz Saville Roberts, and then hopefully, if there is time, we will come back to that.

Liz Saville Roberts: Am I moving on to the next question?

Chair: Yes. We will try to come back to things if we can.

Q114 Liz Saville Roberts: (*Translation*) On the report produced by your own commission, how broadly did you consult civic society? To what extent do you feel that your commission's recommendations reflected the views of civic society? Moving on to the St David's Day agreement, you have mentioned the process, but to what extent do you feel that that process, as you understand it, influenced the cohesive nature of the draft Bill, in comparison with your own work as a commission?

Sir Paul Silk: Through our commission's work over two and half years, we attempted to engage as widely as possible with people up and down Wales—both individuals and representatives of civil society—in all sorts of ways. We saw that as absolutely imperative to coming up with something that would be widely acceptable, which was our remit at the very beginning. Did we always do that as well as we might have done? I think sometimes we asked ourselves whether some of the engagement sessions, which we had from Abertillery to Beaumaris, worked as well as they could have. But we tried and tried to use all sorts of social media and all sorts of other ways

to try to find out what people thought, as well as meeting many organisations up and down Wales.

As I understand it, the St David's Day process was not anything like that. They looked at our recommendations, which we felt were based on our principles and were rational and coherent. The St David's Day process has been characterised as the lowest common denominator. I can completely understand why that was necessary, to come up with something that all parties at Westminster were prepared to go along with, but it was obviously a lower bar than we thought was the right bar.

Q115 Chair: (*Translation*) Can I just ask a question on that point? Is there a risk that the vast majority of people who were ready to go out to the public meetings that you had throughout Wales were likely to be in favour of many more powers for the Assembly? A lot of people who are not willing to go out on wet nights I would be ready to accept will not want to see more powers for the Assembly at all, but they do not speak out.

Sir Paul Silk: I do not think that was the case. I remember a meeting in Newtown, for example, where we did not meet a lot of people who were in favour of anything to do with the Assembly, and that was replicated elsewhere. We certainly met people who were hostile to the Assembly and all its works, if I can put it like that, up and down Wales as well—in Wrexham, also.

Q116 Antoinette Sandbach: I want to clarify some evidence that we heard earlier. There was a suggestion that the political appointments—there were party representatives from four parties on your commission—were effectively delegates, authorised by their parties to negotiate. Will you clarify whether that was the case?

Sir Paul Silk: No, they were not delegates. They were appointed by the four parties represented in the Assembly and in the House. I was not privy to the process for that—each party decided that for itself. I remember that, very frequently, in meetings of the commission each of them would say, “Well, I’m here as myself, not as a delegate of the party.” At the same time, they were clearly the link between the commission and the views of the party, both in London and in Cardiff, and we expected them to go back and talk to their parties and come back to us with the sorts of parameters within which their parties would be happy with our recommendations. They were not delegates.

Q117 Antoinette Sandbach: So the St David's Day agreement effectively reflects the agreed consensus between the elected representatives of parties, as opposed to the appointed representatives of parties who were on your commission?

Sir Paul Silk: Yes, I think that's a reasonable thing to say.

Chair: Thank you very much. In that case, Craig Williams is next.

Q118 Craig Williams: Thanks. Sir Paul, I am thinking in particular about the commission's second report. If that had been implemented in full, do you think that it would have given us a longer lasting settlement? I am interested on picking up on the point that Antoinette just made about how your commission was constituted. The expectation is that people should engage

with their parties. Above and beyond that expectation, I take it that it wasn't pushed and that that dialogue was very informal.

Sir Paul Silk: Yes. As a commission, we met party leaders and party representatives on a regular basis, both in London and in Cardiff. So we were able to speak to them as a commission. But we clearly expected, and I have every reason to suppose that it did happen, that the party delegates—I mean, party representatives; I shouldn't use the word "delegates", as they weren't delegates—spoke to the people that they needed to speak to in their own parties, which were all different in each case.

Q119 Craig Williams: I went off on a tangent there, but I will come to my main point. Sir Paul, if we had implemented your commission's second report in full, do you think that we would now be at a long-standing settlement?

Sir Paul Silk: I would hope so. When I appeared before this Committee before the election, I think I said to your Chair that I hoped that the recommendation would last for 25 years, and I remember your Chair expressing a certain amount of scepticism about that at the time. However, because we tried to found what we were saying on the basis of a coherent set of principles, we felt that it could be the basis for being a settlement for some time. Now, I fully understand that there will always be those who want to push further than that.

There was one piece of uncompleted business in our recommendations, which was looking further at the justice issue. So, although we recommended that there should be some aspects of justice devolved straight away, we saw that there was a longer term over which other aspects of justice should be devolved. So it wouldn't have settled things entirely.

Q120 Craig Williams: Policing and justice, I suppose, is the critical one in terms of how your commission came to its recommendations. Regarding our representative—I would not want to put words in his mouth—policing and justice is such a clear issue and line for our party, so how you came to your report must have been through a lot of compromise.

Sir Paul Silk: Well, I think that for any body that comes up with an agreed report when there are people from different political traditions and different political viewpoints—I am talking to one such body now—there has to be some compromise, and sometimes you have to pass over some things by not saying as much about them as you would want to say. I hope they are not too recognisable, but there are some seams in our report, and with a bit of archaeology you might be able to detect the fact that there was some disagreement inside the commission. Nevertheless, I was very pleased that we were able to produce a unanimous report and none of the members of the commission have stepped back from the report and said, "Well, actually, I don't agree with what we said at the time." It was, I think, important to be able to do that.

When I was in the House of Lords Committee, I was with Kenneth Calman, who chaired the same type of commission in Scotland. Of course, the difference between his commission and mine was that the SNP were not members of the Calman commission, while Plaid Cymru was a member of our commission, and I am very

pleased that we were able to have unanimity about our two reports, although there were representatives nominated by the four political parties that were members of the commission.

Chair: We have an expert here on policing who I think wants to ask a supplementary question on that point.

Q121 Byron Davies: I am not an expert on policing—at least not any more. My question was not about policing, actually. Was your report based on the overwhelming opinion of the people you interviewed or was it as a result of what you thought as a commission?

Sir Paul Silk: Well, we obviously took major account of the evidence we received, but the evidence points in different ways. To take the example of policing, there were, I recall, two police and crime commissioners who were in favour of the devolution of policing and one police and crime commissioner who was not. So we did not come to a conclusion that policing should be devolved because two were in favour and one was against; we had to come to a judgment on the basis of the evidence that we received from them, and of course, our own judgment.

Byron Davies: Your own judgment?

Sir Paul Silk: And our own judgment. We spent a lot of time at the end of the process on both reports thrashing out the more difficult issues and seeing where we could all agree.

Byron Davies: I could go on to ask you why you came to that decision on policing, but I do not suppose we have enough time for that.

Chair: Actually, we probably do.

Q122 Byron Davies: Okay. Could you give the rationale behind the policing to me then, please?

Sir Paul Silk: Well, I wasn't anticipating being asked about that particularly, so I would have to go back and look at precisely what we said in our report. My recollection is that we felt that many aspects of day-to-day policing related very closely to the responsibilities of the Welsh Government. What we did not want to see devolved were issues such as the powers of constables and the Police and Criminal Evidence Act. We wanted those sorts of aspects of policing still to be controlled on an England and Wales basis, but we felt that safer communities were something for which the Welsh Government has responsibility and for which the police have responsibility, and bringing those two together—with the Welsh Government, which is, in our judgment, more responsive to the issues of policing inside Wales than a Government in London would be—was the rationale for our recommendations. I don't agree, but I can understand why those recommendations were not acceptable to the Home Office.

Q123 Carolyn Harris: We have heard many analogies about the draft Bill—the ink is still wet; it is a work in progress—but given the draft as it stands, could you share with the Committee whether you think it is a pullback or an extension of powers?

Sir Paul Silk: Clearly, there are extensions of powers. There are new powers that the Welsh Government and the Assembly do not have at present, but which they would have if the Bill were enacted—so, in terms of energy, elections, and the removal of constraints on the Assembly’s operation, those are all extensions of powers. However, the argument that has been had, before this Committee and in the documents that this Committee has had sent to it, about whether some of the consequences of ministerial consents, of the necessity test and so on are a constraint on the Assembly is an ongoing story, and one where we will all want to see what your Committee concludes. The most recent document I read—yesterday evening—was the document from the United Kingdom Government to your Committee, with the 25 Bills that had been set out by the Welsh Government as Bills that could not be passed. I think the UK Government’s evidence was that there were just five, and of those five, in three cases, I think that they said consent would have been given. So that still leaves two, which is not 25, but it is a pullback of powers. I suppose what would concern me is—let’s assume that five is at one end of the spectrum and 25 is at the other—there is a dispute, potentially, in every one of those, and no one wants more trips to the Supreme Court because there are arguments about whether the Assembly has the power to legislate in a particular area or not. I don’t think that is in the interests of a coherent and workable long-term solution. The process of looking at a draft Bill should try—if I may say this—to find ways in which greater clarity can be put into that Bill in a way that will prevent litigation in the future. As I say, there clearly is a potential for litigation in the Bill as it is drafted at present.

Carolyn Harris: Thank you, Sir Paul.

Q124 Chair: Sir Paul, I just have a quick question. We have had some written evidence that has highlighted the difference of opinion between the Welsh Assembly Government and the Wales Office about whether those 25 Bills would or would not have passed, had this Act been in place. I don’t suppose you have seen that evidence, because it was sent to us over the weekend, but if we were able to send it to you, could you give your opinion as to whose opinion is the more accurate one?

Sir Paul Silk: I’m not a lawyer, so my opinion on that would not be worth reading.

Chair: I’m sure it would.

Sir Paul Silk: I hope that was the document I was alluding to just now—the document in either green or red.

Q125 Chair: It came out in orange on my screen, but that is almost certainly the one. Who did you think was more accurate? You are not really going to tell us that, are you?

Sir Paul Silk: The simple answer is: I am not a lawyer and I couldn’t come to a judgment about that. My concern would be that if one party says, “X,” and the other party says, “Not X,” that has to be judged eventually in court. One concern I have about that is the potential for anybody to raise these issues in any court if they feel the Assembly is legislating in an area that it does not have responsibility for. You can imagine that a clever barrister is going to be able, in any case of a criminal prosecution brought under legislation passed by the Assembly, to say, “Well, they

didn't need to do that. They could have done it in a different way. Look at the consultation document that they published. It said, 'Here's three ways we can achieve our objective. One of them needs criminal sanctions. One does not.' They didn't need to use criminal sanctions, so I'm raising this as an issue of competence for the Assembly's legislation."

Q126 Antoinette Sandbach: That necessity test, as I understand it, is in the Scotland Act and has not caused those kinds of problem. That is my first point. My second point is: didn't we have that position anyway? When you look at the Bill on asbestosis or the Agricultural Wages Bill, the previous Government of Wales Act did not have sufficient clarity about what was devolved and what was not. By moving from the conferred to the reserved-powers model, at least there is a clearer list of what is in and out. You can argue about whether you agree with that, but it provides far greater clarity. Given the experience in Scotland—where, as I understand it, there have not been any such cases under the necessity provisions—is your analysis really right?

Sir Paul Silk: Again, I preface this by saying that, unlike you, I am not a lawyer. The difference in Scotland, as I understand it, is that the necessity test is not, as it were, so important, because the whole area of private law and criminal law is devolved in Scotland. It is within the competence of the Scottish Parliament and the Scottish Government, so the necessity test isn't going to bite in the same way in Scotland.

As to the greater clarity, absolutely. That was one of the reasons we recommended the reserved-powers model—because we felt it would lead to greater clarity. It met that principle, so it should be a clearer model than the conferred powers model was.

Q127 Mr Mark Williams: It would be useful to reiterate what you said about the process involved in the St David's Day agreement. I had the dubious role of being my party's representative in the St David's day discussions. It fell into two parts. First, almost a tick box of running through your recommendations and the appropriateness, sitting in the Wales Office in London, of whether we thought they should or should not be devolved. Secondly, it was characterised by—this is leading to my question—a lack of discussion at that time on what we actually mean by the reserved-powers model. Noticeable by its absence in those discussions was the issue of a separate legal jurisdiction, whatever that means. In the context of that, the other thing noticeable about the St David's day talks that you alluded to in your comment was the absence of, for most of that time, participation from elected representatives from this place. Elected representatives from this place were called in the last two meetings before the St David's Day accord, or whatever we call it, was drawn up.

To return to the main substance of what I wanted to ask, you were questioned by the House of Lords Constitution Committee on 21 October when you addressed the issue of a separate legal jurisdiction. I want to hear a little more about your vision for that in terms of the discussion about a separate legal jurisdiction or a distinct Welsh legal jurisdiction. That is pivotal to our debate about the effectiveness of a reserved-powers model.

Sir Paul Silk: Yes. This has been interesting. The idea of a distinct rather than a separate jurisdiction was not discussed at the time our commission was considering its work. It is an idea that was promoted by a group I was tangentially a member of from the Wales governance centre and the constitution unit at University College London.

A very distinguished group of lawyers among that working party came up with this idea of a distinct jurisdiction. It was taken up by the Lord Chief Justice, no less, in his speech at the Legal Wales conference. To quote the Lord Chief Justice: “It is essential to distinguish carefully the different ways in which the term ‘jurisdiction’ is used...there is no reason why a unified court system encompassing England and Wales cannot serve two legal jurisdictions”. No less an authority than the Lord Chief Justice is talking about the idea of a distinct jurisdiction inside the court system of England and Wales. It is a bit of a red herring to talk about having to set up a whole panoply—there may be those who want that whole panoply of a justice system with separate professions and separate courts and a Lord Chief Justice of Wales. All that sort of thing is possible, but it is also possible to have two legal jurisdictions inside a single court system.

Q128 Mr Mark Williams: But on the weighting some of us would attach to that in terms of delivering that understandable, workable legislation, which some of us contend is not there yet, how much weight would you put on that as a prerequisite to this legislation actually delivering the reserved powers model?

Sir Paul Silk: I think it is one way forward. That group who produced the report in October has re-formed. I am a visiting member, if you like, or a country member of that group, and it will produce another report, we hope, sometime before Christmas, but certainly in the New Year. Among that group are a couple of people you will be seeing later today, but also Professor Rick Rawlings, who is a professor of constitutional law at UCL, and Sir Stephen Laws, who was formerly First Parliamentary Counsel. They will, we hope, produce more ideas along the lines of how you can square this particular circle in a way that will allow a Bill to operate without being trammelled in the way in which I think this Bill has been argued to be by the issues of a single jurisdiction.

Mr Mark Williams: Thank you.

Q129 Antoinette Sandbach: I would not call myself a distinguished lawyer at all, but I did at least have the opportunity to study law and practise it. Although I received training in company law it was never an area I practised in, but from that point of view I am aware that there are, for example, specialist company lawyers with specialist company courts that operate within the legal system, and you can argue it in other areas as well, such as insurance law or shipping. With the way you are talking about it, as a distinct legal jurisdiction, will there inevitably be a branch of the Courts Service that specialises in Welsh laws where there would be judges and lawyers trained specifically to look at either Welsh-only legislation or English and Welsh legislation and where that overlap is, but remaining within the UK—the England and Wales—jurisdiction?

Sir Paul Silk: I think that that is the sort of idea. Just on the court system, the Welsh Government—the National Assembly—has no responsibility and will have no responsibility for the law of defamation. There is not a separate jurisdiction therefore for defamation matters, and many other complicated and obscure parts of the law, and I do not think it would be in the interests of the people of Wales, personally, for us to be cut off from the expertise of some of the courts in London. However, that idea of a distinct jurisdiction could perhaps be pursued and could be beneficial in the context of

the Bill if it does not involve setting up separate professions. One of the strongest advocates for not having separate professions for us in our work were the universities in Wales.

Q130 Antoinette Sandbach: I think that there is research out there that shows that when there was a choice of where proceedings could be issued, very frequently they were issued outside Wales because there was a perception, rightly or wrongly, that there may be greater independence and greater access to legal expertise in insurance or shipping or specialist areas.

Sir Paul Silk: One of the things that the Lord Chief Justice made great play of in that speech that he gave to the Legal Wales Conference was the need for the Welsh legal profession to up its game.

Q131 Craig Williams: Sir Paul, there is a really interesting area of debate around this. In terms of housing, if you are a landlord or a tenant there is absolutely no question that there is a distinct jurisdiction in Wales. I just wondered, when you were taking evidence in the commission and since you are experienced in this area, did you take any evidence, or is there a body of evidence out there, that says, “This has been going through our legal system for a while and there has been a problem”?

Sir Paul Silk: With?

Craig Williams: In terms of the legal system working in relation to Assembly Acts, which do interact. If you look at the landlords, at the Housing Acts, they have made their own case law. Is there any evidence out there at all, or anyone who wrote to your Commission, saying that there has been a problem in this area?

Sir Paul Silk: I cannot recollect anyone saying that to us.

Q132 Liz Saville Roberts: (*Translation*) What you have said about a separate jurisdiction, or rather a distinct jurisdiction, is interesting. You have also referred to the fact that your consultation took two and a half years. Given the discussions that we are having now on the various different interpretations of terms such as legal jurisdiction, is this Bill being discussed in haste? Are we rushing towards a piece of legislation perhaps for the wrong reasons and perhaps only because we have a slot in the Parliamentary year?

Sir Paul Silk: Well, if I can be indulgent enough to produce a quote from our report, we said: “Moving to a reserved powers model would be an opportunity to legislate for well-argued and rational reservations, drafted in a robust, considered and coherent way”. To answer your question, I think that “considered” is very important. We have had four devolution Acts already in Wales; this is the fifth. We don’t want another. I think all of us in this room would like not to have to come back for another session on another Wales Bill in the future.

I would always argue for more time in the consideration of any legislation. My experience in the House of Commons and this place has persuaded me that there is far too much legislation passed by all sorts of Governments, and too much of it is done in too much haste. Not just in the context of this Bill, but because this Bill is an

important constitutional Bill, I would say: take time. Do it properly. Do it right. There is no need to rush things.

At the same time, I have had enough dealings with the business managers in the past to understand that they do not think like that. Every Government Department tries to promote legislation, because it is important for Ministers to feel that they have got the badge of success by getting Bills through Parliament. I can understand that there may not be another slot for another Wales Bill in the future, so you are a little bit between the devil and the deep blue sea. Yes, certainly I would advocate doing it more slowly and in a more considered way, and getting it right.

Q133 Gerald Jones: Clearly, we all believe that devolution in Wales should meet the needs of Wales, based on the needs of the people of Wales. Bearing that in mind, do you believe that the Scottish model in the Welsh context has been a sound basis for drafting the Bill?

Sir Paul Silk: I think, as we said frequently in our work, that the differences between Scotland and Wales are enormous. The number of people who travel across the Welsh border to work, both ways, is—I cannot remember the figures—10 times as many as those who travel across the border to work in Scotland, let us say. Scotland has a different legal tradition, which was preserved in 1707, and, of course, although it has Gaelic, we have the distinction of having two languages operating inside Wales. There are many differences between the two countries, so I do not think simply transposing everything that happens in Scotland to Wales is a sensible approach. You have to ask whether the things that are devolved in Scotland would sensibly be devolved to Wales.

However, I think that the greater the similarity between the devolution settlements in Wales and Scotland, the easier it will be for the courts to interpret some of the issues that will come before them. We can already see that Lord Hope of the Supreme Court, for example, a Scottish judge, has used some of the judgments in relation to Scotland as persuasive in the case of Wales. I am sure that it would be useful for the Supreme Court to have similar principles adopted in the devolution settlement for Wales and the devolution settlement for Scotland. I can see that moving to the centre is something that could be desirable, but that doesn't necessarily mean that everything that is devolved in Scotland should be devolved in Wales.

I know that work is being led by Lord Salisbury, who is looking at a new Act of Union for the whole of the United Kingdom. I think Peter Hain is the representative on Lord Salisbury's group from Wales, and there are representatives from Scotland and Northern Ireland. Lord Salisbury's group, which is coming up with its own report shortly, is going to look for a common Act of Union for the whole of the United Kingdom. I think we are moving to the centre, but we will not necessarily end up in exactly the same place.

Q134 Liz Saville Roberts: (*Translation*) Mention was made previously of the necessity test, in relation to the Scotland Act, and it was compared with this draft Bill. You said at that time that the necessity test in the Scotland Act is relevant only to reserved powers, but here it is also relevant to private law and criminal law. Would it be better for us to pull necessity tests

away from private and criminal law, or would legal jurisdiction be better? What is the best solution of those two options?

Sir Paul Silk: Could you just repeat the final part of that?

Q135 Liz Saville Roberts: I'll try to do it in English. To be honest, it was quite an intellectual challenge to be doing that in Welsh. The necessity tests in the draft Wales Bill refer to three areas: the reserve powers, criminal law and private law. The Scotland Act 1998, if I understand correctly, refers only to reserved powers. Would we arrive at a more workable solution in Wales if we were to remove necessity tests from private law and criminal law, or should we be looking at some definition of a separate legal jurisdiction or an alternative?

Sir Paul Silk: I think that question is beyond my legal pay grade. It is exactly that sort of question that the group I mentioned previously will put its mind to, with some very distinguished constitutional lawyers. The idea that the necessity test should work in such a way that would prevent the Assembly from making legislation in areas where it has in the past—the example I have been told about is the renting homes Bill, where the law of contract is changed—is clearly objectionable to people in Cardiff, and may well be objectionable.

The Lord Chief Justice clearly said in his speech at the Legal Wales conference that any legislature needs to have the power to legislate in a way that affects private law and criminal law. Unless it can impose sanctions or change private law, it is not much of a legislature. I don't think the UK Government aims to prevent the Assembly from legislating in areas that are devolved to it. At least, that is certainly not what the Secretary of State has said.

Liz Saville Roberts: It seems to be quite a staggering difference, compared with the Scotland Act.

Sir Paul Silk: Let's hope that this process—the scrutiny of the draft Bill—will end up in a happy place, as far as that is concerned.

Q136 Antoinette Sandbach: You spoke of the Supreme Court. I think one of your recommendations was that an intergovernmental panel or process should be set up to deal with issues between the two Governments. I understand that there is progress on that matter, which is carrying on outside this Bill. Are you involved in that? Certainly there was concern—or views were expressed—in academia here, for example, that the Supreme Court judgment and the Agricultural Sector (Wales) Act 2014 effectively moved the Government of Wales Act 2006 from a conferred powers model to a form of reserved powers model, and that the Bill is in effect, in part, a response to that.

Sir Paul Silk: One of our recommendations, and one which we set considerable store by, but one which did not get an awful lot of publicity, was the establishment of better ways of co-operating between the Governments in London and Cardiff, because one of the things, certainly, that was pretty universal from our meetings with stakeholders up and down Wales was that they did not enjoy seeing Cardiff and London arguing. They did not see that as doing anything productive for them. So we came up with the

idea of a Welsh intergovernmental committee. I think that idea is still being worked through. In a way, I rather regret that it has not been worked through yet, because one of the things we saw that that committee should do at the beginning was look at the reserve boundary, if you like, and come up with a rational, not a jagged, line between what is reserved and what is not.

I am not privy to the way in which the negotiations have gone between London and Cardiff, but I do not think they have been—or they were not at the beginning—as co-operative as, perhaps naively, we hoped they might be. One of the things we would have liked the Welsh intergovernmental committee to do was, as I said before, look at a coherent, rational boundary between what is reserved and what is not reserved.

On the Supreme Court, the slightly different recommendation we made was that there should be a way for the two Governments to have an arbitrator, if you like. We suggested it might be a former member of the Court of Appeal, who would arbitrate between the two Governments on matters of law before they went to the Supreme Court, because, again, we wanted more co-operation and less litigation.

Q137 Antoinette Sandbach: Do you think, therefore, the discussions in relation to the Bill are being ramped up, as it were, because of the Assembly elections that are happening in May, and that you are getting, perhaps, more entrenched positions from various parties around that because of the context in which this—I see you are nodding.

Sir Paul Silk: I am nodding; you are all politicians and I am not, but as the election approaches, people become more political, so I think that is understandable.

Q138 Mr Mark Williams: Just quickly on that, there has been some discussion about why these governmental discussions have not fed their way through into the draft Bill before us. Notwithstanding the possible success of those negotiations between both Governments, is that something you would look to see written on the face of the Bill, whichever route we take—formalising, if you like, that conflict resolution, should it arise, and avoiding the need to present it at the Supreme Court?

Sir Paul Silk: Well, one of the recommendations we made was that there should be a statutory code of practice on relations between the Welsh Government and the UK Government. If that had been accepted, it would have been legislated for in this Bill. A lot of the relations between London and Cardiff—not least Barnett—are characterised by informal decisions, and those are not justiciable. Whether they should be—I was saying that we want to avoid litigation, but perhaps there is some room for justiciable relations, not just in the case of Wales but between the Scottish Government and the UK Government, the Welsh Government and the UK Government, and the Northern Ireland Government and the UK Government, as is the norm in any federal state.

Q139 Chris Davies: Before I ask my final question, can I just ask whether the Secretary of State for Wales or his team consulted you during the drafting of the draft Bill?

Sir Paul Silk: Not during the drafting of the Bill—and nor would I have expected them to. The Secretary of State, very courteously, telephoned me before the St

David's Day agreement, and also before the draft Bill was published to tell me what was in it. But I would not have expected to be consulted—I'd done my bit when we produced our report.

Q140 Chris Davies: Okay. Thank you. The Secretary of State has said that the previous legislation has not been found fit for purpose. What is your view on whether it provides a firm foundation for the Bill?

Sir Paul Silk: Well, I think that, as I was saying before, we have had several goes at devolution in Wales. The original model was not satisfactory and fell apart very soon. The measures and LCOs procedure fell apart very soon. What I think we all want in this Bill is something that is not going to fall apart very soon, so that we don't come back to another devolution debate in the future. That is why I think the pre-legislative scrutiny of the Bill is very important. The point of pre-legislative scrutiny is that this is a draft; this is not the final Bill. There will be another Bill later on, after your Committee has reported, and after others have inputted into the process. I very much welcome that. I can't remember exactly, but I don't think the other Bills were subject to pre-legislative scrutiny in the same way.

Q141 Chris Davies: Sir Paul, if you were consulted, what changes would you recommend to the Bill that might make it acceptable to all sides?

Sir Paul Silk: If I can leave aside issues like devolution in policing and justice—that is something which I suspect is not going to happen in any Bill that is introduced by the present Government—I think it would be establishing clarity about the necessity tests and the ministerial consents, and making sure the law is clear, so that these arguments do not become issues which can arise in court in the future. That is what I would like to see. That is essentially technical, rather than political. There is a political element to it, but there is a technical element to it as well. I think that those technical issues need to be sorted.

Chair: Okay. Well, Sir Paul, that's a good note to end on. Thank you very much indeed for coming before us again. I will now draw this session to a close. I remind everyone that we are back here at 1.30 pm, when we will hear from academic and legal experts. Subsequently, we will have evidence from the First Minister.