



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); Carolyn Harris; Gerald Jones; Christina Rees; Antoinette Sandbach; Liz Saville Roberts; Mr Mark Williams.

Questions 141-176

Witnesses: **Rt Hon Carwyn Jones AM**, First Minister of Wales, and **Hugh Rawlings**, Director of Constitutional Affairs and Intergovernmental Relations, gave evidence.

Chair: First Minister, thank you for coming along to talk to us today, and Mr Rawlings as well. We very much appreciate your time. Obviously, lots of varied opinions have been expressed about the Bill, so we hope that we might be able to seek some kind of consensus on the way forward as a Committee. Thank you also for the hospitality that the Assembly has shown us today, which has been very well received. May I start off by asking your former councillor to begin the questions today?

Q142 Christina Rees: Welcome, First Minister. Thanks for coming along today. Could you just describe your main objections to the Bill as it currently stands?

Carwyn Jones: There are three issues that will need to be resolved. First, there is the issue that is probably the easiest to resolve: what is and what is not devolved? In other words, what are the reserved powers and what are not? The other two issues are more difficult, such as the retention and extension of Minister of the Crown consent requirements, even in areas that are devolved, and the necessity test, which serves no purpose as far as we can see.

Q143 Christina Rees: Thank you. Have things moved on at all since the draft Bill was published?

Carwyn Jones: I think that it would be helpful if I explained to the Committee what happened before the draft Bill was published. We offered to help with the drafting of the Bill on a non-partisan basis, but that was not taken up. We were then shown part of the Bill before publication, and I indicated to the Secretary of State that it would cause immense problems as currently drafted. I did offer, were the Bill to be delayed in order for it to be revised, to join with him in explaining why the Bill was being delayed, so that there wouldn't be any criticism. Unfortunately, that offer was not

taken up, but it is still on the table. Since then, there have been discussions, and those discussions will continue among officials and, indeed, between myself and the Secretary of State, but he understands, as I do, that there is a great deal of work yet to be done.

Q144 Christina Rees: I have one more supplementary question. I am going to sound like someone here: I have been contacted by Matthew from Cardiff, who is a masters student in politics and is very involved in what is going on. He would like to know whether you think there should be safeguards built into the Bill to provide incentives for you to develop the Welsh economy. It strikes me that once the threshold on power, for example, goes above 350 MW, it is taken away to the UK Government. The same goes for turnover on ports.

Carwyn Jones: On energy, we would not accept that there needs to be a threshold like that, although we note that it is in the Bill. It also depends on the planning application, for the size of what is proposed in terms of energy generation. That makes the difference. On ports, it is trickier because I cannot see why turnover should come into who actually has responsibility. If you say that if a port goes above a certain turnover it moves from the Welsh Government to the UK Government, there is an in-built disincentive to develop a port to its full capacity. Nobody would want to see that. Conversely, if a Welsh port was run by the UK Government, for example, and started to go into decline, it would then be thrown back at the Welsh Government. That strikes me as an unhelpful distinction between ports that would be in the control of the people of Wales and the Welsh Government, and ports that are something like treaty ports used to be in Ireland many years ago. To my mind, those ports should be devolved and turnover shouldn't come into it, because it creates a perverse disincentive in terms of ports being able to grow.

Q145 Antoinette Sandbach: First Minister, you accepted the recommendations of Paul Silk, which included devolution of energy consenting up to 350 MW. Are you now saying that it is not appropriate for the Bill, which reflects the St David's Day process, to have that 350 MW ceiling? It was largely designed to exempt, for example, the nuclear power provisions, but still give the Welsh Government capacity over, for example, Swansea bay tidal lagoon.

Carwyn Jones: Yes, we'll accept 350 MW. It is a huge improvement from where we are now. If I am frank, we would not be seeking devolution of power over consenting for nuclear, but the 350 MW boundary does seem to be rather arbitrary. Nevertheless, it represents an improvement on the current situation.

Q146 Liz Saville Roberts: *(Translation)* You said that you had seen part of the draft Bill, but not the rest. What did you see and not see?

Carwyn Jones: *(Translation)* We did not see the part of the Bill relating to the Assembly, nor the part relating to the new powers that will be transferred, but we did see what was being said about the necessity test and the consent model relating to Ministers of the Crown.

Q147 Liz Saville Roberts: *(Translation)* Did you see the list of reserved powers?

Carwyn Jones: *(Translation)* Yes, we did.

Q148 Mr Mark Williams: In the debate in the Assembly on 7 October, you suggested that the draft Bill was not the Bill that either the Secretary of State or the Prime Minister wanted. What did you mean by that? The Bill has come in for a huge amount of criticism from all quarters, whichever standpoint we have, but does that relate to what you were saying about its origins? We seem to have moved a long way from what was and wasn't discussed as part of the St David's Day agreement to where we are now.

Carwyn Jones: First, it is worth re-emphasising that the St David's Day process was not an agreement. There was certainly much less consensus than, for example, on the Silk Commission, which had cross-party representation, put there by the UK Government. It is correct to say that I am not convinced that this is what the Secretary of State and the Prime Minister want because of what they have said to me, namely that they wish to see more powers transferred to the Assembly and no restrictions placed on how the Assembly exercises those powers. That is not what this Bill does. It is true to say that it does devolve new powers—I acknowledge that—but it also imposes restrictions on the exercise of not only those powers but all powers. I have been told by both the Secretary of State and the Prime Minister that that is not what they want.

The difficulty is that there was a write-around in Whitehall, asking what should be devolved and what should not, and if you ask Whitehall what it wants, it will err on the side of what it wants. We have to accept that the Wales Office has very little influence in Whitehall; it is a very small fish in a very big pond. We currently have a Bill that does not say to me that the Wales Office has said to other Whitehall Departments, "This is what the people of Wales need"; rather, it is the Whitehall Departments saying to the Wales Office, "This what we think you should have." To an extent, it ignores the result of the referendum in March 2011.

Q149 Mr Mark Williams: It is difficult not to be at the very least sceptical of what is before us. You are committed to advancing the cause of devolution, as are, I think, most of us around this table. Within the confines of what you have said, what aspects of the draft Bill are you able to get enthusiastic about?

Carwyn Jones: The further transfer of powers is to be welcomed, as are the self-governing provisions for the Assembly. The fact that the Assembly will be a permanent feature of the UK constitution is of course to be welcomed. The difficulty is that there are new and unnecessary restrictions on how the Assembly exercises powers on behalf of the people of Wales, who elect the Assembly—restrictions that can only cause more conflict further down the line. For example, the necessity test: what does it mean? How is that to be tested in the courts? We run the risk of every single Bill ending up in the Supreme Court. That is clearly not what anyone wants, and it needs to be avoided.

Secondly, the extension of Minister of the Crown consents and their retention in devolved areas creates a recipe for conflict. The very first Government Bill passed by this place, now the Local Government Byelaws (Wales) Act 2012, ended up in the Supreme Court because Minister of the Crown consent could not be obtained for something incredibly mundane. In the future, under this Bill, it would not be possible to send Bills such as the Local Government Byelaws (Wales) Bill to the Supreme

Court, because the Assembly's power to modify Minister of the Crown powers, where that is consequential or incidental, will go. Again, that is a problem.

The third problem is the prevarication that we face, more so now than before, from Whitehall Departments in obtaining Minister of the Crown consents. It took 16 months to get some of the consents for the Social Services and Well-being (Wales) Act 2014, and it has taken many months to get consents for the Public Health (Wales) Bill. This reflects two things; the first is that, as I said earlier, the influence of the Wales Office—this is not aimed at an individual, but the Department—is small in Whitehall. Secondly, when it comes to devolved matters, UK Government Departments operate as English Government Departments, effectively. Their priority is looking at what happens in England, because of the nature of the devolution settlement for Scotland, Wales and Northern Ireland. Obtaining a consent for Wales is not a priority for them. They already have other priorities. That is why these things are being delayed. The reality is that if the need for consents was not there at all, things would be clearer, more coherent and swifter.

Q150 Chair: First Minister, may I test this out a little bit further? My understanding is that the Bill would, as you put it, prevent you from legislating over UK-wide public bodies that are present in Wales—for example, the Food Standards Agency. If that is correct, and if I can put this rather bluntly, why should the Welsh Assembly be legislating over a non-devolved, UK-wide body? If you were able to do that, wouldn't the Government in London be able to say, "Well, if you can legislate over our bodies, we should be able to legislate over your bodies"?

Carwyn Jones: I think, Chair, you have hit a problem on the head there. The Food Standards Agency is not a reserved UK body. Scotland is not part of the Food Standards Agency; the agency is, in effect, owned by the three Governments. For example, it is perfectly open to us to withdraw from the Food Standards Agency and set up our own, because food standards are devolved.

Q151 Chair: That may have been a bad example, in that case.

Carwyn Jones: But it shows the problem. There are others, of course, that are wholly non-devolved, and for which there is an argument for saying that consents might be needed, but there is a caveat to that. It's the same in Scotland, but in Scotland, Minister of the Crown consents are, I understand, fully devolved. There are specific reservations for certain consents. That is not what we have in Wales. If that model was adopted, I would be perfectly content with it. I can see the rationale behind it.

The second issue is: what is a UK-wide body? The Food Standards Agency is not a UK-wide body. Thirdly, of course, there is the issue that Minister of the Crown consents would remain even in areas that are devolved, and where there is therefore no UK Government interest. The Local Government Byelaws (Wales) Bill was an example of that. Not only would consents still be needed if such a Bill was brought before the Assembly now, but the Assembly could not modify the Minister of the Crown consent on the basis of it being consequential or incidental, because that power has disappeared. Therein lies the problem. On the one hand, you have the reserved

bodies, and on the other hand, you have the ability of Ministers in Whitehall to delay or prevent legislation that is wholly devolved from being passed by the Assembly.

Q152 Chair: I hesitate to bring in another example, though I can think of one or two. As a principle, would you accept that the Welsh Assembly should not be able to legislate in a way that will have an impact on a UK-wide public body?

Carwyn Jones: I would accept that on the same basis as Scotland; I think that is fair. For example, if general Minister of the Crown consents are devolved but there are specific reservations for specific bodies, that is perfectly fair, but that is not what we have on the table at the moment.

Q153 Carolyn Harris: Are you personally frustrated by what the Secretary of State has termed “a never-ending constitutional debate” about powers?

Carwyn Jones: I think we all are, but we have to accept that this is a great opportunity to put in place a lasting constitutional settlement. The Bill is a long way from that at the moment. I have already given you an example of what it means in terms of more Bills ending up in the Supreme Court—that surely is in nobody’s interest—and conflict between Cardiff and London, which to my mind is not in the interests of England, Wales, Scotland or Northern Ireland. This kind of conflict, in a constitutional sense, does not exist in Scotland—politically is a different matter, of course—and I would like to see us get to the same position in Wales. We have seen a number of Bills put forward over the past 16 years regarding the powers of this place. We need to get to a position where we have something far clearer and far more coherent that at least respects the current devolution settlement, which this Bill does not because of the necessity test, for example. Of course, we also need something that delivers the powers in part 1 of the Bill.

Q154 Carolyn Harris: The Secretary of State has also said that there is a disconnect between us as politicians—he has suggested that we are obsessive about devolution—and the man on the street who, when we knock on doors, has no interest in what we find so terribly interesting. What are your thoughts on that?

Carwyn Jones: The ultimate constitutional obsession is the European referendum, but that is for another day. The reality is that people are not talking about the constitution. I regularly knock on doors—I was knocking on doors this morning—and it is right to say that people do not talk about the constitution, but when people vote in the election next May, they expect that whichever party or parties win that election will be able to deliver what they said they would in their manifesto. We are not at that point. People deserve to have clarity when they vote, and they deserve to have their views, as expressed in the March 2011 referendum, respected. At this moment in time, the Bill does neither of those things.

Q155 Antoinette Sandbach: I want to come back to the idea of conflict. Many of those living in Wales might characterise the conflict not as a constitutional conflict, but as a political conflict that is using the constitution to drive itself. You say that you have seen the necessity test and the list of reservations. Did you suggest to the UK Government that they

should adopt the adjudication process that was accepted by your party as part of the Silk recommendations?

Carwyn Jones: There is no adjudication process in place. The particular problem we have under the current settlement is that the competence of Bills is not examined until they have been passed.

Q156 Antoinette Sandbach: We have been told by the Secretary of State that a separate piece of work is going on between the Welsh Government and him on intergovernmental relations. Are you saying that is not happening?

Carwyn Jones: No, I didn't say that. That is to do with the machinery of intergovernmental relations, which is represented, for example, by the Joint Ministerial Committee. That is wholly outside the discussion on the Wales Bill, and it preceded the Wales Bill by some distance.

Q157 Antoinette Sandbach: But it is going on in tandem, and it is designed to deal with the idea of conflict by discussing where there can be agreements on an intergovernmental basis.

Carwyn Jones: Not with regard to the Bill. It is to do with the JMC, the way the JMC works and the nature of improving intergovernmental relations across the UK, not just between the UK Government and the Welsh Government. That discussion has been going on since well before the Wales Bill.

Q158 Antoinette Sandbach: Perhaps you can go back to my original question. Having accepted the Silk recommendation for a statutory code of conduct relating to arbitration and resolving issues between the two Governments, which would, in effect, cover constitutional issues, did you suggest it for inclusion by the UK Government in this Bill?

Carwyn Jones: No, because I fail to see the point of it. At the moment, the Bill goes well beyond that. The problem with the Bill is not the nature of arbitration or adjudication, but the issue of the necessity test, and the high bar that is required to be jumped over as far as the Assembly is concerned. Of course, there are also issues such as Minister of the Crown consents. The question of whether there is an arbitration or adjudication test does not help if all that does is entrench the problems in the current Bill.

Chair: I think I had better bring in Liz Saville Roberts.

Q159 Liz Saville Roberts: *(Translation)* Thank you very much. There has been some reference already to Silk, and one thing struck me. We spoke to the leaders of the other three parties this morning; could I ask you to change hats, as it were, and give a Labour perspective on the policy areas that were recommended by the Silk Commission, but did not make it into the Bill?

Carwyn Jones: *(Translation)* In terms of some of the individual things in the Bill, may I choose some examples? The law on adoption is devolved at present; it won't be in the future. One thing that has not changed and should change is the fact that while open-cast licensing has been reserved to Westminster, re-establishing land has been

devolved, so consent is given by Ministers in London, but the mess is dealt with by Ministers in Cardiff. That is not right.

The pay and conditions of teachers, in my opinion, should be devolved. It does not make much sense to me that everything to do with education has been devolved apart from that. And, of course, we have noted that it is 50 years since Tryweryn was drowned, so the boundary should be put in the right place in terms of water. The people of Wales should have control over water. If they have control over energy, for example, why not water? At present, residents in Cheshire and Herefordshire are being controlled more or less from Wales. That is not right. The same is true for Severn Trent in mid-Wales, so it would make sense for us to do that as well. The devolving of water raises another point, of course: is Ofwat reserved or not?

There are several parts of the Bill to consider. Licensing of alcohol is another aspect that should be devolved. There is a larger list than that, of course, but those are some examples. In a way, that conversation is easier, because it does not go to the heart of the model. The model is not right at the moment, in terms of the structure of devolution. We have to collaborate to ensure that that improves ultimately.

Q160 Liz Saville Roberts: *(Translation)* There was agreement in Silk on policing, youth justice and air passenger duty. What do you think of those areas?

Carwyn Jones: *(Translation)* Policing should be devolved, in my opinion. I have said publicly several times that air passenger duty should be devolved; that is what Silk said. It does not make sense if Scotland has seen that devolved, but not Wales. I don't see why that situation should exist. Youth justice has been partly devolved already. That will be withdrawn, of course, under the Bill, as it is at present.

Chair: Okay. Antoinette.

Q161 Antoinette Sandbach: I wanted to come back to the idea that because it was a recommendation in Silk, it should be in this Bill. The St David's Day agreement—I appreciate that you now say it was not an agreement—

Carwyn Jones: I have never said it was an agreement.

Antoinette Sandbach: The St David's Day agreement recorded what was, in effect, common ground between parties. That is what the Bill seeks to enact, rather than Silk recommendations. Isn't that right?

Carwyn Jones: There was never an agreement; we have always said that, from the outset. The agreement was solely between those in one party, as far as I can tell. It is right to say that it reflected what was common ground thus far, but it is the UK Government's decision not to accept the Silk Commission's recommendations. I do not know why it is said that teachers' pay and conditions should not be devolved; and the reason why policing has not been devolved is a lack of agreement within your own party, and not a difficulty within mine or any other.

Chair: Can I move us on slightly, because I wouldn't want us to get—

Antoinette Sandbach: Can I just come back to water?

Chair: Very quickly.

Q162 Antoinette Sandbach: On water and some police functions—particularly on serious crime, for example—do you accept that there might be strategic interests that the UK has as a whole in not devolving certain aspects to do with water, functions of police dealing with crime, terrorism—

Carwyn Jones: Which aspects?

Antoinette Sandbach: I am asking whether you accept that—

Carwyn Jones: In order to answer the question, I need to know which aspects of water you think should not be devolved, so that I can comment on them.

Antoinette Sandbach: You are saying that a line should be drawn, in effect, between Cheshire and Wales, and having represented both regions, I am perhaps in a unique position—at least, my constituency borders that line, and Dee Valley Water supplies water to my constituents. What I am interested to know is: at what point do you think that the pipes should be cut off? How would you say that that line has to be drawn, in terms of water supply, for example to high-energy, high-water businesses? Where do you say that should be drawn? That you have one part in—

Carwyn Jones: I am not sure I understand the question, sorry. I do not see what it has to do with serious crime in any way. The reality is that the water boundary should fall along national borders—I do not feel it is even fair on the people of Cheshire or Herefordshire actually—and these matters can be resolved easily. We did the same with flood defence, and there was never any difficulty there. The people of Wales deserve more control over their own natural resources.

It might be that some people will then think that something could be done to jeopardise the water supply to England. Of course not. I remember the same argument being used on the flood defence committees. It was suggested to me that something might be done to the Severn in Montgomeryshire that would be detrimental to the Severn in Gloucestershire, but that is nonsensical. That is not the way in which mature Governments work with each other, and it is not the way in which it would work in these circumstances. Perhaps you are suggesting an attack on the water pipes.

Q163 Antoinette Sandbach: I am giving two separate examples: policing and water. You gave two examples; you talked about devolution of policing and devolution of water, but I am asking you whether there are strategic functions that you accept should not be devolved, and that—

Carwyn Jones: We are on to policing now. Water, no. Policing, yes. I do not think that there should be devolution of serious crime or counter-terrorism; of course not. When it comes to running policing, Scotland and Northern Ireland do that, and Manchester and the north-east of England soon will; I do not see how that does not apply in Wales. I will give you an example, although it will not get universal agreement: it should be a matter for the people of Wales, through the Assembly, to

decide whether they want police and crime commissioners. I see no issues of national security with that.

Chair: May I go back to where we were? Carolyn, had you finished?

Carolyn Harris: I had finished.

Chair: In that case, Gerald.

Q164 Gerald Jones: First Minister, you have talked in the past about the variable appreciation of Welsh devolution in Whitehall Departments. Have you noticed, or are you aware of, any links between those Departments that you have had the greatest difficulty with, and the reservations that have been expressed about the draft Bill?

Carwyn Jones: The Home Office are the worst. They have very little understanding of devolution and very little sympathy towards it. There is no difficulty working with other Departments. The difficulty arises trying to obtain consents, but there is a lot of working that happens below the radar, as people would expect, between Departments here and Departments in Whitehall—and, indeed, in Scotland. People would expect that to happen. But there can be difficulties dealing—the Home Office is one example—with a Department that is not used to dealing with devolution in Wales.

Q165 Liz Saville Roberts: *(Translation)* Why would you say that the relationship between Cardiff and Westminster is not good at present? Is that related to the need for better structural arrangements between the two places? Are there political reasons? Also, what was the relationship between you, as a body here, and your representatives in the Labour party in London, in getting us to the consents included in the draft Bill?

Carwyn Jones: *(Translation)* The relationship between Labour MPs in London and Labour Assembly Members in Wales is very good. We support each other, of course. In terms of the situation between the Welsh Government and the Wales Office, I think it has improved. I think that the current Secretary of State is much, much easier to deal with than his predecessor, with whom the relationship had completely fallen down. Although there are several examples of disagreement, we are still speaking to each other and discussing things, and the officials are still in discussions as well. The situation has improved a lot with Stephen Crabb.

Having said that, what has not changed is the fact that the Wales Office does not have much influence in Whitehall. It is not the same as Scotland. As I said, rather than the Wales Office telling other Departments, “This is what we want,” what we have is other Whitehall Departments telling the Wales Office what the Welsh people should have. That balance has to shift.

It is also very important remember that the Prime Minister, David Cameron, has told me that he wants a lasting constitutional settlement. It is very important, therefore, that he plays more of a role in that. I have asked to discuss this with him; we have not had an opportunity to do so yet. It is very important that what he spoke to me about—namely, having a robust constitutional settlement—is something that he personally helps to deliver.

Q166Liz Saville Roberts: *(Translation)* You mentioned at the outset that you had not seen parts of the new Bill, but, to be honest, the parts you had not seen were not as controversial as all that. Shouldn't there have been a point before now, when all the quarrelling has arisen, when attention was drawn to the problems with a necessity test, Minister of the Crown consents and so on?

Carwyn Jones: *(Translation)* Yes, because for me the sensible way to approach this would have been to ensure that we were part of it from the outset. The other point is that the Wales Office is small. We, as a Government, have more resources in terms of legal advice and so forth, and we would have been ready to work with the Wales Office and give them that expertise.

When I saw part of the Bill at the outset, I could see the problems in terms of consents and the tests, and I told the Secretary of State, "It might be worth taking a couple of months to get this right, because we do not want this to turn into some kind of political football." That is not how it has been, of course. I would have been happy enough to make a joint statement with him on that to get it right, because this is vital for the future of Wales. It should not be a partisan issue, and that was the Secretary of State's hope. Of course, the offer is still there to ensure that we have something that can be agreed upon and is broad-ranging across the parties.

Q167Liz Saville Roberts: *(Translation)* From the time of the St David's Day discussions, political consensus was going to drive all this. Shouldn't you have raised questions at that point about the fact that this was not going to create a cohesive whole?

Carwyn Jones: *(Translation)* Well, it is difficult to say that, because I hadn't seen the Bill at that point. Nobody expected to see the Bill as it was—namely, keeping ministerial consent, we thought that would go, particularly in the devolved areas. No one expected to see a test that was so difficult in terms of ensuring that we could make changes to the law. That was not in the mix at the time, so it was very difficult to think about what would be in the Bill without having seen the Bill in the first place.

Q168 Chair: *(Translation)* First Minister, does the improved relationship between you and Stephen Crabb mean that it will be possible to come to some sort of agreement on a way forward? Do you think we can resolve the problem that you currently have?

Carwyn Jones: Well, I hope so. I have been in discussions with him, despite what has been said publicly, in order to ensure a constitutional settlement for Wales that is going to be robust and fair. That still continues. We discussed this a week ago, and I think that was a better discussion than they have been until now. I hope that that attitude will continue in the Wales Office.

Chair: I will bring in Liz Saville-Roberts again. We are getting through the questions very efficiently, if I may say so.

Carwyn Jones: Should I extend my answers, Chair?

Chair: No, there's no need to do that.

Q169 Liz Saville Roberts: *(Translation)* We have heard concerns expressed. Leading in another direction, how long do you think the Bill could stand, bearing in mind the number of measures that we have had? Where do we go from here, in questioning the longevity of the Bill as currently drafted?

Carwyn Jones: *(Translation)* I will continue to be discuss this with the Secretary of State. Having said that, there is a long way to go, and I do not think that the foundation is right in terms of the Bill itself. Perhaps we will come on to that later. It does not deal with the question of legal jurisdiction. It is not impossible to have a Bill that is clearer and fairer without looking at that issue, but it makes it much more difficult. We will continue to discuss that, and we will see whether there is hope of changing the Bill. We need to amend the Bill to ensure that there is more support for it—not only on a party basis, but in terms of public support.

Q170 Antoinette Sandbach: First Minister, your Government's evidence to Silk was that it would not be appropriate now to establish a separate legal jurisdiction, and that was the same as your predecessor's evidence to this Committee in 2005. What do you say has changed? In your evidence you were arguing for a reserved powers model.

Carwyn Jones: The difficulty is that this is not truly a reserved powers model. Why do I say that? Because the law is reserved. If you reserve the law, there is not much else left. With regard to the law, it is a conferred powers model.

There are two things to separate out here. First is the issue of jurisdiction and of the court system. The issue of jurisdiction has arisen particularly acutely in the past few weeks because of the way in which the Bill is drafted. The Lord Chief Justice himself has made the point that it is possible to have a distinct or separate—it is the same thing—jurisdiction in the same way as Scotland or Northern Ireland, but without needing to have a separate courts structure like Scotland and Northern Ireland. Now, he is the senior judge in the country and I am not going to gainsay his point, but I think there is sense in that.

Every objection I have heard to the establishment of a separate jurisdiction on the same lines as Scotland or Northern Ireland has revolved around the cost of establishing a separate penal system. Those costs are significant, and I think it is right that we should acknowledge that. But it is possible to set up a separate jurisdiction, but yet have a shared court system. That is one issue.

The jurisdiction also comes into play with the drafting of the Bill. At the very heart of the Bill is the preservation of the single legal jurisdiction of England and Wales. The necessity test is an expression of a viewpoint in the Whitehall Departments that the law should be different in Wales only, in effect, in exceptional circumstances. That is not what people voted for in 2011—there were no restrictions. Also, there is a suggestion that, somehow, there should be some kind of limit on how far—this is the way it has had to be put—the law of England and Wales as it applies in England should differ from the law of England and Wales as it applies in Wales. Now, those are artificial distinctions. If the issue of the jurisdiction was addressed, the Bill would be far simpler—there would not have to be anything like as many reservations—yet we would still keep the same courts system, we would still have access to the

expertise of the High Court and the Court of Appeal, and we would not have the extra expense of creating a separate penal system. It would make things much, much easier in terms of constitutional drafting, which is important to ensure clarity; and that clarity is important in terms of parties being able to fight an election knowing that they can implement what they are elected to do.

Q171 Antoinette Sandbach: That wasn't your evidence, was it?

Carwyn Jones: Well, Silk was some years ago, and we now see a Wales Bill that is predicated on the basis of furiously trying to protect the single jurisdiction of England and Wales, and it doesn't work. This is the only jurisdiction anywhere in the world where there are two legislatures. That does not exist anywhere else. I do not think that that is sustainable in the long term.

Q172 Antoinette Sandbach: Rather than tweak the Bill or modify the provisions to get the clarity, it seems to me from reading new schedule 7B, paragraphs 3 and 4 that there is power conferred to change the law in private or criminal areas where it is for a devolved purpose. Sub-paragraph (5) says: "'Devolved purpose' means a purpose, other than modification of the private law, which does not relate to a reserved matter." Are you saying that that prevents you from legislating in an other-than-reserved matter?

Carwyn Jones: Yes, it does. For example, the subtle yet important change is that where the Assembly seeks to legislate in an area that is partially devolved, at least, it will not be able to do it.

Q173 Antoinette Sandbach: But if it is only partially devolved—

Carwyn Jones: It means that every single time there is any kind of question mark, it always falls on the side of Westminster. It means that, for example, the agricultural sector wages Bill, although it is of course accepted in the Bill, would not have been able to be passed. Secondly, you answer your own question. You used the word "conferred", and that is the problem.

Antoinette Sandbach: No, I did not.

Carwyn Jones: You did use the word "conferred".

Antoinette Sandbach: I didn't.

Carwyn Jones: What you said was that it conferred powers on—

Antoinette Sandbach: No. We will check the record.

Carwyn Jones: Well, you can check the record if you want. Everyone else heard it. The Assembly will have powers conferred on it to change the law in certain circumstances. That is at the heart of the problem. It is not a reserved powers model with regard to the law. That is one of the issues that need to be addressed.

I should clarify one thing, Chair, and that is that I am not saying that the only way in which the Bill can be made acceptable is through addressing the jurisdiction, but it is

the easiest way. The whole thing does not depend on the creation of the jurisdiction; it just makes it easier.

Chair: I am sure that the Welsh Office will have heard that with great interest. Perhaps I could now bring in Gerald Jones for the last couple of questions.

Q174 Gerald Jones: I think we have touched on some of the matters in this question throughout the session, but as a final round-up, what do you think is necessary now to make progress with the Bill? Do you think that reaching consensus on the Bill is possible before the Welsh general election in May?

Carwyn Jones: I think it is possible. It is going to be difficult; let us not pretend otherwise. If you ask me what I would have done, I would have started off on the basis of the jurisdiction and addressing it, but we are where we are now. It is a question now of examining carefully three things: first, the powers issue and where powers lie; secondly, the Minister of the Crown consents issue; and, thirdly, the necessity test. I do not see what the test adds. It stands to reason that the Assembly can only change the law in devolved areas anyway. That is obvious, to my mind. Why, then, introduce a test that seems to imply that it should only be done exceptionally? It is entirely superfluous, to my mind, and it leads to the problem where every single Bill might end up in the Supreme Court. That is surely not what anybody wants to see.

There is a great deal of work to be done. We will carry on working to see how the Bill can be improved—and it needs to be improved. We need to see far more interest and buy-in from the Prime Minister than has been the case thus far. I do not doubt the Secretary of State's dedication in terms of trying to get to a position that is agreed. That is not, however, a view that is widely shared across the Whitehall Departments, and therein lies the problem. If you ask the Whitehall Departments what they think should and should not be devolved, you start off with a difficulty. We will in good faith look to see what we can do to help to improve the Bill, but there is a lot of work to be done.

Q175 Chair: Any further questions? In that case, I must once again thank you for the brevity of your answers. We have actually ended this session early, so thank you all very much.

Carwyn Jones: May I add something, Chair? I do not want to keep you, but it is just a little information. I know that we submitted a list of Bills that could not have been passed with a free hand, and I know that the Wales Office has responded. We have a response, which we will share with the Committee.

Chair: A response to the response.

Carwyn Jones: Yes.

Chair: Excellent.

Carwyn Jones: We will share that with the Committee. At the end of the day, we are in a different place to the Wales Office, but I thought it was important for us to be able to illustrate what we think is our side of the argument in terms of the Wales

Office response. There will not be another response beyond that. There will be a copy shared with the Committee.

Q176 Chair: Is that the one copy you have got there?

Carwyn Jones: Yes, it is the one copy I have got here, but I will ensure that there is more than one copy. These are austere times, but not quite that austere.

Chair: Thank you very much.