

HOUSE OF COMMONS
MINUTES OF EVIDENCE
TAKEN BEFORE
JUSTICE COMMITTEE

Committee Room 3, Y Senedd, National Assembly for Wales, Cardiff

Devolution: a decade on

thursday 8 May 2008

Rt Hon Lord Elis-Thomas AM, ms Claire Clancy

and MR ADRIAN CROMPTON

Professor Nicholas Bourne AM

mr michael german AM

Rt Hon Rhodri Morgan AM, mr Ieuan Wyn Jones AM and mr Hugh Rawlings

Evidence heard in Public Questions 532- 647

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Oral Evidence

Taken before the Justice Committee

on Thursday 8 May 2008

Members present

Mr Alan Beith, in the Chair

Alun Michael

Julie Morgan

Mr Andrew Turner

Dr Alan Whitehead

Witnesses: Rt Hon Lord Elis-Thomas AM, Assembly Member, Presiding Officer; Ms Claire Clancy, Clerk and Chief Executive, and Mr Adrian Crompton, Director of Assembly Business, National Assembly for Wales, gave evidence.

Chairman: (Through an interpreter) We welcome you to this meeting, here in your building. We have already visited Edinburgh and Newcastle in addition to holding a number of sessions in London. We are very pleased to be here today to discuss devolution in Wales, particularly the changes to the arrangements appertaining from the Government of Wales Act 2006. We are very grateful to you for appearing before us today, and extend you a warm welcome. Alun Michael wishes to say a few words.

Alun Michael: (Through an interpreter) I want to welcome the Committee to the South Cardiff and Penarth Constituency, because it is the first time that this Committee has been able to meet in the constituency, and I am very pleased to be here as a member of the Committee on this historic day.

Q532 Chairman: The Assembly Commission has a series of statutory duties and responsibilities, including the promotion of public awareness of devolved government in Wales. Why is that a problem; why do you have to do that?

Lord Elis-Thomas: (Through an interpreter) May I thank you kindly for coming here, before I respond to your question, and make another reference in response to Alun. If it was not for his enthusiasm, then we would not be able to sit here in this building, and we must recognise that. Any new democratic body or even old democratic body must engage with the public. The democratic process must draw on the awareness of it and communicating that process. Democracy must be transparent in order for it to be answerable to the electorate; so we, as a new body, have set out a vision for communication, and especially since 2006, when we have had a more developed constitution; and the Commission, which has come into existence since then, has set out communication with the public and encouragement for the public as a key part of our activity. That is why as well as the three of us here, there is Philippa Watkins, who manages current awareness in the Assembly and is responsible for communicating our activities. I would like to show you the latest piece that we have sent to our website, which is information on progress that is ongoing in proposed orders and measures, because this is how we communicate regularly with the public on changes to the Assembly. You can see behind me on the screen the way that we show how orders and measures develop, and that is updated every day. It is sent out on a weekly basis. Of course, people can subscribe to this, and you can see exactly where any development does occur, and there is a clear statement on individual measures and their journey through our processes to show where we are in the process. In addition, you can see matters that have been added in Schedule 5 of the 2006 Act, which shows where new powers have come in. It is important to emphasise that it shows where the powers come from, whether through parliamentary acts from Westminster or through applications for orders. Those powers mean that we can legislate through measures. Finally, we can link up with a website that is maintained on our behalf by Cardiff University, Welsh Legislation Online. This has been in existence since the beginning of devolution, and it was originally sponsored by the Research Council but now we sponsor its development. I can quickly show you Senydd TV, which has just been made operational so that people can watch our proceedings online at any time. There, you can see a committee and you can also see that we have an e-petition system. We have already received about eight petitions in the first year since it became operational. That is how we operate and communicate with the public in our activities.

Q533 Chairman: (Through an interpreter) It is excellent for the enthusiast, for the anorak, but what about Mr Jones from Machynlleth who has not voted for years and takes no interest whatsoever in the Welsh Parliament?

Lord Elis-Thomas: (Through an interpreter) If Mr Jones goes to Machynlleth town library, he can go online and view all of this, and he could also receive hard copies if he so wished - or if Mr Jones is a member of a society or an association he could invite some of our external outreach workers who promote the work of parliament, in regard to our educational function. That person can be visited by a representative who would explain exactly how the Assembly works. We have a policy of approaching individuals and organisations in the region.

Chairman: It is necessary for Mrs Morgan to declare an interest.

Q534 Julie Morgan: I am married to Rhodri. One of the principles the Commission must apply in carrying out its functions is equality of opportunity, and obviously that has been very important since the Assembly started. Can you comment on how the Commission is addressing that duty?

Lord Elis-Thomas: We come to you fresh from a Commission meeting, where one of our most important papers was one on equality. I had a presentation from our lead persons on equality yesterday, and we have employed consultants to improve our equality scheme. I will ask the Chief Executive to take on that question, if I may.

Ms Clancy: We have been working towards consulting on a single equality statement, and so we have done a lot of work on all the threads that will feed in to that equality statement, and over the summer we will be consulting publicly. In the autumn we hope that the Commission will be able to sign off that single equality statement. We believe on each of the threads that we will be a model of good practice on equality. The Presiding Officer has mentioned all we are doing on promoting and widening engagement in devolution. I think it is worth mentioning, to set the context, that one of the first things the Commission did was to set out their purposes, making the Assembly an accessible and effective parliamentary body that inspires the confidence of the people of Wales. Relevant to question 1 of our strategic objectives is that in all our work we will demonstrate respect, probity and good governance, part of which is ensuring that we have good equalities policies. We also have commissioners who have a portfolio of responsibilities, so the Commission has the Presiding Officer as Chair, and four Assembly members on it; and each of them have a portfolio of responsibilities. Lorraine Barrett is the one who has responsibility for equalities, and she takes this very seriously. She comes to workshops with staff and helps us with work with stakeholders on all types of accessibility and equality.

Q535 Julie Morgan: When you say you are going to have a single equality statement, is that a detailed statement?

Ms Clancy: It is a single equality scheme that brings together what would have been in our policies for race discrimination, equal opportunities for gender; so all aspects of equality come together. It is good practice now for all organisations to have this single equality statement that pulls everything together in one place. It is detailed. The Commission this morning looked at quite a mass of work that has gone in to it, so all aspects of accessibility and equality, yes. If you would be interested in seeing it, we could send you the work we have done so far because I think it is leading the way.

Lord Elis-Thomas: It is interesting to note that we have data on age, grade, disability, gender, gender identity, race, ethnicity, religious belief - or not - and sexual orientation. We work closely with Stonewall Cymru for example on that issue because we want to pursue equalities in a proactive way.

Q536 Alun Michael: The question that was raised with the Committee at one stage was the awareness of what has been devolved to Wales thus far is "poor and the methods with which to discover such information are very thin on the ground". I think you have given a very full answer to how people can be provided with information that is accurate and up-to-date, once they start asking the question; but can you cover the point on the question of awareness of the state of devolution and who is responsible for what?

Lord Elis-Thomas: That is part of the Commission's communication strategy. This is public knowledge - everything is public knowledge with a transparent institution! We have commissioned the University at Aberystwyth to provide us with a full database, as a baseline, of the state of opinion on those questions you raise, so we will find out exactly what people are thinking on the questions you have raised. Therefore, we can target information in a way that is effective. We are able to promote Part III and Part IV, and clearly, we will be working alongside the convention that has been established by the Government initially, and we will share data with the Government, so that when the public debate is developed and deepened as part of what I understand to be Sir Emyr

Jones-Parry's ambition for the Convention, then we will be able to contribute to that on our side of the fence in relation to the Assembly.

Q537 Alun Michael: It still remains the fact that there is a lot of media that affects and informs people in Wales, which is not purely Welsh and very often is ignorant of, even if it does not ignore, the fact of devolution; so there is still a challenge there in terms of informing the public, is there not? Would you accept that?

Lord Elis-Thomas: Of course there is a challenge, but the media outside are Wales are improving, we find. I have more of a problem with some of the media in Wales. Radio Cymru this very week stated the Assembly Government had passed our measure. Where do you start when you have got journalists that do not understand the constitution?

Q538 Alun Michael: I share the frustration! Can I ask a rather different question about performance? Obviously, one of the questions in terms of developing the status and confidence in the Assembly and its work is the question of what it has done to improve the quality of life for people, whether it be on issues of education or health or bringing jobs to Wales or whatever?

Lord Elis-Thomas: We have to distinguish between what we mainly communicate about, which is the process and the way in which those outcomes are made and scrutinised on our side, as a Commission. Clearly, it is for the Government - and of course I speak as a supporter of the Government these days, for the first time ever in my life, but not obviously when I am doing this job - it is for the Government to promote its achievements. I think it is for us to promote the structure of devolution itself and particularly the way the Assembly operates allows for people to find out what powers are and to see how powers have been used. Clearly, the way in which a decision is taken through various processes, or the way ministers are called to account by scrutiny is very much our end of the business.

Q539 Alun Michael: I understand that distinction, and it is an important one; but surely it is a concern for everybody, including the Commission, that people should understand not just the nature of what the Assembly does but how it improves the quality of life for people in Wales? Sometimes, it seems that we spend an awful lot of time on the process rather than on the outcomes.

Lord Elis-Thomas: Can I describe it another way? One thing that we do now is use the chamber in which you and I worked those years ago, Siambr Hywel, as we call it, as the main education and youth chamber; and we have already had a debate in there on environmental policy where young people, in fact primary school people from Ysgol Pencae here in Cardiff, debated for an hour on these issues. We are able to use our processes both as part of a learning experience for school students and we also have a direct link with schools' councils, which are now statutory throughout Wales. We are able to use awareness of democracy in that way, in order to help young people understand how outcomes are brought about by policy process.

Q540 Alun Michael: I suppose my concern is that that is still about process in the sense that if the question is, how do they get involved in the debate about the environment in Wales, that is a very clear answer; if the question is: how has the existence of the Assembly and the sort of debates you are talking about, improved the quality of the environment for people in Wales - that is a question that does not seem to get asked or answered.

Lord Elis-Thomas: I think that is a question for the other politicians.

Q541 Alun Michael: The whole Assembly?

Lord Elis-Thomas: No, I do not think - certainly I would not want to publicly defend or criticise the record of the National Assembly.

Q542 Alun Michael: I am sorry, I am trying to make a distinction between those things that are the responsibilities of the Welsh Assembly Government in terms of actions that have been taken and outcomes, and the contribution that is made by the existence of the Assembly as a whole. People say, "What is it for; what does it do?" What has it done to make life better?

Lord Elis-Thomas: The answer to that since 2006 is very clear: the job of the Assembly is to scrutinise and to legislate and vote in the budget.

Q543 Alun Michael: What has it achieved?

Lord Elis-Thomas: It has achieved already 18 different pieces of legislation going through.

Q544 Alun Michael: that is again back into the process and the legislation rather than - - - - -

Lord Elis-Thomas: That is what a legislature does!

Ms Clancy: There is an interesting example still on the screen on the home page of our website, where there is a discussion forum that is about presumed consent on organ donation. There, it is the Assembly encouraging people in Wales to participate in that debate; and then part of our communication strategy will be to make sure that the information about what the results are of that and the difference it makes to the people of Wales - the information is there for people so that they can see exactly that, the reality of what the Assembly has done. They can look at each stage of it and the influence the Assembly has over that.

Alun Michael: I do not want to labour the point, Chairman, but I think that is getting towards the secondary question. I understand the answers that have been given on the process, the development of the institution and so on, but the contribution, what it means to have the institution doing those things; and I wonder whether perhaps there are reflected points that might be contributed to the Committee after the meeting on that type of aspect!

Chairman: That is entirely up to our witnesses, whether they feel they have got anything to add on that aspect of it.

Q545 Dr Whitehead: Can I turn to the Government of Wales Act: obviously that made a substantial difference in terms of how primary legislation is made and in what way it is underwritten, as it were, by the process of Westminster, but do you think the Act provides sufficient clarity in terms of that process, and in particular in terms of what is now primary legislation?

Lord Elis-Thomas: Co-legislating between legislatures, wherever it happens, is complex. The European Union obviously is the clearest example. The co-legislating between the two Houses of Parliament at Westminster is sometimes complicated. The co-legislating processes between the Scottish Parliament and both Houses in Westminster is complicated; but I think we are getting there. I will not presume to comment on the procedures of the House of Commons, but so far as the Government bills are concerned as they emerge, and exploratory memoranda, when we consider them in the House of Lords the content is much clearer. The territorial application is much more specifically stated. There is a bit of unevenness, but we cannot lecture parliamentary drafts-people on how they should produce their bills - or perhaps we could! It has improved. In regard to the

process itself, my simple duty is to implement the Government of Wales Act as it was given to me by Parliament. That means that the process of seeking proposed orders and the process of deriving powers from Westminster acts and indeed the process of making measures, which is entirely within our control here - all that has to operate as clearly and as cleanly as possible. I do not share the view of some commentators that this is more complicated than most co-legislating situations that I know of world-wide.

Q546 Alun Michael: Do you think steps could be taken to improve how that works? You have mentioned the question of how things are drafted, but are there other things that you think might be done in order to make the process cleaner and clearer?

Lord Elis-Thomas: It is not for me, I think, to propose changes to Part III. After all, the change to Part III is Part IV, is it not, and I am of course a support of Part IV when the time comes. I have clearly discussed this at some length with the Secretary of State, and I know the Secretary of State has given evidence to you, and I know he has indicated that he intends to look at this process in the summer and see if there are ways in which things can be improved. The problem I have is with critics who say that so much of this process is inter-governmental; but of course all legislation is inter-governmental, between departments and ministers; and in this case it is between ministers in Westminster and ministers in Cardiff, and it involves obviously the Wales Office and the Secretary of State as well. When we come to legislation, proposed orders that come out of the ballot for individual Assembly members, it can involve, as it has done already to my knowledge in at least two cases, negotiations between our lawyers here, who assisted in drafting, the member that was taking the measure through, the minister in Cardiff, and then of course the Secretary of State and the minister for the United Kingdom who is dealing with that issue and may lead the implications for English legislation of changes that are taking place here, and in particular the discussion that is going on now about the proposed Mental Health Order. Those are unavoidable and necessary democratic discussions, which happen everywhere. I would challenge anyone who would say this is more complicated because it is happening in between London and Cardiff, between the Assembly and Westminster or between the Welsh ministers and the UK ministers than anything else that goes on around the Whitehall machine anyway. I will ask Adrian Crompton who, as Director of Assembly Business, runs the system with perfect clarity.

Mr Crompton: To reinforce what the Presiding Officer has said, it is early days. In a lot of cases we are doing things for the first time. We have found working with the Act adequately clear, I would say, and we have found our standing orders, as presented to us at the start of the Assembly, to be adequate and to have enough white space between the lines to enable us to change our procedures as we go along. I guess one area where we have had to pick our way quite carefully is on the pre-legislative scrutiny of LCOs, which is an area not covered by the Act at all; but there, too, we have been able to find our way through comfortably.

Q547 Alun Michael: Am I right in thinking one legislative competence order has so far been passed? You have mentioned 18 Assembly measures.

Lord Elis-Thomas: Eighteen pieces of legislation are in the pipeline; they can be either proposed orders or - we are up to 22 now I think.

Mr Crompton: Not quite as many!

Lord Elis-Thomas: I can see 22!

Mr Crompton: The Government has introduced five LCOs and two measures. The Presiding Officer at two-monthly intervals holds private members' ballots for both measures and LCOs, and the proposals that have come from those would be included in that total. We have held five rounds of those to date, and so that is a further ten proposals that have entered the system, and there are a number of other Government proposals either in draft that we know of, and obviously there will be further ballots held in due course.

Q548 Alun Michael: In terms of legislative competence orders that have been passed to date, i.e., one - does that cause any concern in your mind in terms of how the process works through to its four stages, or is that as it were what you might have anticipated at this stage in your proceedings?

Lord Elis-Thomas: What happens to the proposed orders after we have dealt with them is a matter for Westminster and for the Secretary of State. I am not going to comment on what happens in the House of Commons, but the way in which the Constitution Committee of the House of Lords considers these matters is exemplary. I think there might be a case, if I may be so bold, for suggesting your Committee takes an interest in these matters. There is no reason why the arrangement should be that the Secretary of State should send proposed orders to a committee which does not seem to have time to process them and deal with them properly: they might be better directed to a committee that has well-known constitutional expertise and an appetite for justice, if I can put it like that.

Q549 Alun Michael: Can you briefly describe the role in drafting legislative competence orders and Assembly measures? Between the Government and Assembly measures, how does that work out in practice?

Lord Elis-Thomas: Government-proposed orders are drafted by Government lawyers, but clearly there is consultation with ourselves, and our senior legal adviser, our chief lawyer, Keith Bush, clearly plays a key role in terms of advising me on any piece of legislation in terms of its competence and the competence of measures especially in relation to the 2006 Act. When there are changes in the wording of proposed orders - one case has been that a proposed order was discussed and processed by the National Assembly but when it emerged in Westminster it was a little different, shall we say! On the question of changes of that kind we have discussed in the Business Committee whether it would be necessary for such changes to be taken back to the committee that had considered the proposed order in the first place, and in two cases we have looked at so far the Business Committee has taken the view that that was not necessary, and indeed the previous committee that did the scrutiny on the proposed order agreed with that. There is always the possibility, if it were required, of further scrutiny; but I am very keen not to duplicate scrutiny, or double-up on scrutiny. That is why I was very keen on joint scrutiny when it happened in the second Assembly, and I regret that, as is my understanding, that the Welsh Affairs Select Committee has declined the opportunity for close scrutiny with members of the Assembly. That is a matter for them and I will not comment on it any further, but I think it might be something you might like to ask them. As regards measures that emerged not from Government but from our ballots, or indeed proposed orders that emerged from our ballots, the drafting there is entirely on the advice of our legal team. They are there to assist the member who is taking the order or the measure through, all the way through the process. I must say that I have been very encouraged by the willingness of the Secretary of State to - not hold the hands of our members but to ensure that there is a full discussion, hosted by his office, between the member taking through our equivalent of a private member's order - that he or she would have the support of the Wales Office and of its officials in any negotiations that might take place with other ministers in the UK Government. That is very helpful to us because I was concerned that the whole potential of taking private member legislation through would be, as it were, trapped in an inter-governmental debate. That is something

that is bound to happen anyway because even in the system you have in Westminster, the likelihood of success of a private member's measure or bill very much depends upon the goodwill of the minister and the business managers in both Houses anyway - so you have that issue. As I say, I am very heartened by the strong support we have had from the Secretary of State in ensuring that all aspects of the 2006 Act, all potential avenues, can be explored.

Q550 Alun Michael: Can I just say one thing, because misunderstanding is a terrible thing and it has a tendency to grow? I think Y Llywydd is mistaken in thinking that the Welsh Affairs Select Committee has declined the concept of joint work by the two committees. I am a member of the Welsh Affairs Select Committee, and the distinction has been made between the taking of evidence and the proposition of members of the two committees meeting together to look at LCOs, so it is actually strengthening the process rather than weakening. I am not sure how that misapprehension might have arisen. Second, there is a cause for some satisfaction at the way that the final form of the first LCO that has now passed into law improved during the process and ended up at a high level of quality; and that was certainly the view when we reached the point of the substantive rather than the pre-legislative scrutiny. In his evidence to the Committee we had some comments from Professor Sir Robert Hazell about the need for much greater consistency, as he put it, about the way in which the mechanism of legislative consent orders would be followed. He also underlined the fact that he was speaking at what are still early days for the whole process. Do you share the view that there is a need for a more consistent approach, and if so how do you think that should be developed?

Lord Elis-Thomas: No, I do not share the view at all. It was always envisaged during the passage of the Government of Wales Bill that powers would be derived from both Welsh clauses in Westminster legislation and orders in council. It makes no difference to us which way the competence is gained; what matters to us is that we have the legislative powers and we are able to make measures. The Constitution Unit of course has made a contribution to the study of the development of the constitution in the UK, and I respect Professor Robert Hazell's work, but in terms of practical law-making, it does not make a difference how the powers come; the important thing is that they are here.

Q551 Alun Michael: So you think he is looking for an over-proscriptive approach to consistency?

Lord Elis-Thomas: In the debate on the Act, and what ministers said in both Houses on the various stages, it was envisaged that both routes would be there. I cannot speak for my colleagues - you will see them later this afternoon - but I know that Welsh ministers are anxious to use both routes. Indeed, individual members, when they ballot for proposed orders, very much see the possibility either of filling in gaps and generating more matters in a narrower field, or perhaps taking a broader view on some other subjects, depending on what kind of measures might be envisaged and on what activity is taking place on the part of Government and other Assembly members in increasing the potential legislative canvass, as it were. I do not think it is an issue for us how that happens. I will say one thing, however: there is perhaps too much mystery surrounding the whole notion of an order in council and proposed orders; these are just one-off pieces of legislation. Once they occur we have the powers, obviously! I do not think we should be looking for a perfect constitutional solution to how we make the laws, because the more perfect solution will come if we win the referendum; and we are only going to win the referendum if we are seen to be able to make laws effectively with the current system, in my view.

Q552 Alun Michael: That is helpful. Obviously, we are in the early stages of developing process, but on the experience so far, what is your view of the way that the roles of the Secretary of State for Wales, to which you have already referred, and the engagement of Parliament in legislating for Wales, are developing?

Lord Elis-Thomas: I would not want to speak for the House of Commons in any assessment of what the House of Commons has done, but I can obviously speak of what we have done here and what the House of Lords has done. The role of the Secretary of State is a delicate one for me to talk about, obviously, because I have a necessary constitutional relationship with the Secretary of State - whoever has been the Secretary of State - and it has been very valuable for me in terms of trying to run this institution as far as the process is concerned. I will say that the determination of the current Secretary of State to make the system work is very clear. The recent strengthening and restructuring of his office is a sign of that, and his constant endeavour to communicate with Welsh ministers, and obviously with the First Minister but with myself, and the willingness shown to officials here in the National Assembly and in the Assembly Commission to speak with officials in the Wales Office regularly and the willingness to smooth the path of progress especially in relation to Assembly proposed orders being pursued by individual members I think speaks for itself.

Q553 Julie Morgan: Do you think you have enough members in the Assembly with enough capacity to scrutinise?

Lord Elis-Thomas: Again, we have what we have; this is what Parliament legislated for us. Are we using our members effectively, and are we using our resources, our staff and our time and all the rest of our activity effectively? I think we are on target to improve our effectiveness with our current resources. That is what we have tried to do, and we have tried to manage our resources by bringing the Business committee and the Assembly Commission together at key intervals. We are planning another key meeting now when we look at the budget - and we had this discussion this morning in the Commission - to ensure that there were no capacity issues in relation to use of members' time, committee time and the allocation of resources for committees.

Mr Crompton: It is fair to say that the Assembly is working hard. From memory, we have at the moment just over twenty committees, and probably 45 members generally populating those committees; so members have a lot of work on their plate, generated purely by the committee system. Through careful programming of plenary and committee activities, we make sure that members can cope with that. As the Presiding Officer said, we bring together the direction on the organisation of business from the Business Committee with the Assembly Commission with its resourcing hat on to ensure that from a staffing point of view we are properly geared up to support that activity. That is what we are doing at the moment, from my point of view.

Q554 Julie Morgan: Do you envisage there being more difficulties with capacity, as time moves on?

Lord Elis-Thomas: We are trying to ensure that our committees are timetabled in such a way that they function tightly and effectively, so legislative committees - well, we do not have the capacity for more than three at the same time, obviously, in this building. We try to ensure that at any given time we are maximising the resource, but without placing too much stress on staff. After all, we are talking not just about what you see here, but what goes on in there - the interpretation service, the record of proceedings and the whole work of members' research, the support for committees and all our activity invested in the main tool of our work in our website and our intranet. In all those areas the Assembly Commission, which has the legal responsibility to provide services for members, has to ensure that we are getting the best value at all times; but we do try to listen very carefully to what members and staff are telling us. There was a feeling six months or so ago that the process was running ahead of itself because there was so much committee activity, but now I think things have stabilised. Is that the view of you all?

Mr Crompton: It is certainly the view of me, and I am sure I speak for everyone!

Q555 Julie Morgan: You say you have what you have, but you wish you had more.

Lord Elis-Thomas: I think my views on this are well known; I would reduce the number of Welsh MPs and increase the number of Assembly members, but those are my personal views, and I would not dare say that as Presiding Officer.

Q556 Julie Morgan: In terms of the process and how things are actually working, you have enough Assembly members to do the work!

Lord Elis-Thomas: Well, we have to make it work, do we not?

Q557 Julie Morgan: Yes. We have touched on pre-legislative scrutiny earlier in the discussion; how do you feel that is working now?

Lord Elis-Thomas: We are engaging very well with our interest groups and those who have a concern about the form of legislation and indeed the policy implications; and I think most of our committees, pre-legislative scrutiny committees, whether that is done in a specially elected committee or by our four big scrutiny committees where they undertake that work for measures in particular - that work is very thorough. The reports are well produced and researched, and the legislative debates we have had have been substantial. I thought the debate on the NHS redress measure, which I chaired this week, showed a very clear benefit from pre-legislative scrutiny and the reports that had been prepared during that process.

Q558 Chairman: Was that pre-legislative scrutiny of a draft bill, or are you talking there about actual scrutiny of a bill on its way to becoming law?

Lord Elis-Thomas: Well, we call bills measures here, which is very confusing. Measures in England are what the Anglican Church does! We also say "mesur" for a bill and -----

Q559 Chairman: At Westminster we are developing a very distinct pre-legislative scrutiny stage for draft bills, as opposed to bills that are going through their normal legislative process.

Lord Elis-Thomas: We have exactly the same. Currently there is a big consultation process, managed by the Minister for Skills, John Griffiths, on our learning pathways for education legislation, and the draft measure is now out to consultation, and that obviously will come for scrutiny to an Assembly committee; and then we will take it through stages 1, 2, 3 and 4, which is our slightly longer - in terms of numbers anyway - way of managing legislation as it goes through. What we did this week was the stage 3, which is the report stage of the measure.

Q560 Mr Turner: Can I ask a question that follows on from what you asked? If you get more coming in from on top, it gives you more to do. If you get taking over from the bottom, it gives you more to do. I assume - I do not know - that the standing amount of work means a standing level of work! Can you say which of those that extra was coming from?

Lord Elis-Thomas: We are working within the current constitution in terms of the Government of Wales Act, and within our standing orders - are you asking about legislative work?

Q561 Mr Turner: Among others, yes. I take it that that has not changed. I was thinking about bringing stuff up from the bottom - in other words, local authorities have less to do.

Lord Elis-Thomas: No, no, that does not happen. We have a very good relationship with the Welsh Local Government Association and Welsh local authorities. We currently have 22 local authorities, and the Government has a policy of seeking partnership working through the study which Sir Jeremy Beecham chaired two or three years ago now, looking at the relationship between local authorities and health service bodies and so on. Our work is not at all derived from local authorities; our work is derived entirely from Westminster. The scrutiny we undertake is scrutiny of Welsh ministers, and the legislation we undertake is derived through the activity I have just described; and that has exponentially increased of course since the Government of Wales Act 2006. There were also some predictions around then as to the amount of legislation that would appear, and they were all wrong except for ours of course.

Mr Crompton: At the time the balance between the effort put in to the scrutiny of LCOs here and measures will alter, and so a lot of focus at the moment is on the extension of legislative competence, and over a period of time, once that is in place, the balance will shift slightly and we will see more measure-making activity.

Lord Elis-Thomas: My ambition has been to get the legislative process here up to speed in such a way that the movement from Part III to Part IV will be seamless, so that when we move on from making measures to making acts, it will be the same process and we will have the capacity and experience to do it.

Q562 Alun Michael: It would also be true, would it not, that there is an element, apart from parliamentary and local government, of things that would be in the previous arrangements in Whitehall, which would have greater scrutiny through the existence of the Assembly than would be the case prior to the Assembly's existence?

Lord Elis-Thomas: Yes. I suppose the best example is what will happen here next week when Michael Grade will be - well, maybe not crucified but he will certainly be questioned very hard - because we have established a short-term committee on scrutiny in broadcasting. Broadcasting and media and digital issues is non-devolved; but Ofcom in Wales clearly wants to prove itself to be a partner for the devolved institution. The same thing applies to the activity of the police here. There are regular meetings and evidence given by the four chief constables in Wales to Assembly committees and so on. That is covered by the ability both in the 1998 Act, and now in the 2006 Act for Welsh ministers to make representations on any matter affecting Wales. Therefore, the Assembly's committees and its members can make representations to those ministers in order to pursue that so that the level of democratic activity, as Alun quite rightly says, in non-devolved areas has increased. We were encouraged to go down that route by Sir Jeremy Beecham in his report, who emphasised that we should be charged in the three recommendations he made to us as an Assembly as opposed to recommendations for government - he recommended that we should be active in our scrutiny of non-devolved matters because citizen-centred scrutiny, as he described it, should follow citizen-centred services. The citizen does not care whether the service comes from here or there; the important thing is the quality of the service.

Q563 Mr Turner: Can I give you another example? This is where you have a heavy but intermittent - Commons Act 2006 for example: you had one and a half people for you and there were 12 people nationally, that is England, to look at what happened in that. It seems to me you could not possibly cope with 1.5 people when such a task came through: would you agree with me?

Lord Elis-Thomas: I think this is a question for government, not for me. We did not scrutinise that piece of legislation.

Q564 Chairman: It was a piece of Westminster legislation in fact; but it has impact on Wales.

Lord Elis-Thomas: Yes, but I do not think it was scrutinised by the National Assembly at any stage.

Mr Crompton: I do not believe so.

Chairman: We will put the same question to the First Minister later.

Q565 Mr Turner: How would any move towards English votes for English laws impact upon Wales in terms of legislation for Wales?

Lord Elis-Thomas: I am sorry, I am not the person to answer that question. My job is to preside over the National Assembly for Wales. The self-government of England is a matter for England, I think.

Q566 Chairman: I suppose it might lead to your Assembly having to have more powers devolved to it in order to, as it were, clear Wales out of a lot of Westminster legislation because Wales crops up as a part of, and sometimes a small part of Westminster legislation, even in areas that are broadly devolved, does it not?

Lord Elis-Thomas: Yes, the law book, the United Kingdom constitution, especially the devolved parts of it, is the creation of a series of acts of Parliament, and clearly any mention of Wales in any act of Parliament leads to a consequence for England very often because of the way the primary legislation has been written across both countries. I would not envisage that we would go down the route of an attempt to consolidate the constitution or consolidate legislation until we were into Part IV time. I do not see much point in trying to use Assembly measures to consolidate and clarify the constitution; but I can see a strong case for doing that when we have fuller law-making powers.

Q567 Chairman: Is there a process by which staff of the Assembly keep an eye on Westminster legislation in order to spot whether it either incorrectly moves into a devolved area, or simply by its very nature has a legislative impact on a devolved area?

Mr Crompton: We monitor very closely any obvious Welsh clauses, or clauses that have an impact on Wales in Westminster legislation. We also have, as part of our standing orders, obviously something that has not yet been tested, an equivalent of the Scottish procedures for Sewel motions; so it is incumbent on the Government in that case to table a motion drawing the Assembly's attention to the fact that Westminster legislation might be impacting upon our competence.

Q568 Chairman: You are watching out for that in any case, are you not, rather than relying on them to tell you?

Mr Crompton: Yes.

Q569 Chairman: Do you have a feel for how much Westminster legislation has this kind of impact? I am not thinking about legislation in non-devolved matters, but legislation which picks up incidentally on devolved areas of power.

Mr Crompton: At the moment, relatively little that impacts directly on matters that had been devolved to us; but obviously, as time goes on, and Schedule 5 of the Act evolves, then many more, I would imagine - but at the moment very few.

Chairman: (Through an interpreter) I thank all three of you: Presiding Officer, Mr Crompton and Ms Clancy, and I thank the staff for their help with the arrangements. It has been excellent work. Thank you very much.

Witness: Professor Nicholas Bourne AM, Assembly Member, Leader of the Opposition, Conservative Party, gave evidence.

Q570 Chairman: Professor Bourne, welcome. We are very pleased that you are giving evidence to us this afternoon. From day one of the Assembly you have been a member, throughout its existence.

Professor Bourne: Yes.

Q571 Dr Whitehead: I am very interested to ascertain whether the changes that took place following the Government of Wales Act 2006 and the way that legislation is now made and then transmitted to Westminster and finalised are now a clear, crisp and precise process; or do you think that albeit with substantially greater powers in terms of legislative competence for the Welsh Assembly that there are problems of clarity and things that could be done to improve matters?

Professor Bourne: I do not think I would describe it as clear and crisp. It has made a massive difference. I think the third Assembly is very different from the first two, and there is a feeling across parties and across members I think that we are grappling with issues that are much more germane and much more important. I am sure improvements could be made. I do not think that even its biggest fans could call it clear or crisp; I do not think they are adjectives that would spring to mind. I do not think it is a lasting settlement. Without straying into the political, again most people would probably agree with that - but it is not lasting.

Q572 Dr Whitehead: Is it, in your view, not lasting because of process factors such as the capacity of the Assembly to deal with its new role; or do you think the arrangements for legislative competence orders and the way that then transmits authority to Assembly measures are rather a transitional device?

Professor Bourne: I think there is a capacity issue, but I do not think that is the reason that it is not lasting. I think even if there were not a capacity issue the process is convoluted and not clear-cut; it does not give us the tools to get on with the job - "those are the totality of the powers you have got; now get on with the job" - it is every time, within the secondary areas where we have currently got powers - if you want a transfer of powers we have to make a case for it. That involves an awful lot of time being spent here and in Westminster, from what I can gather, which is not a sensible use of time long-term. It was not something that the Richard Commission recommended, for example, and I think wisely not.

Q573 Dr Whitehead: Do you think the comparative roles therefore of the National Assembly and Westminster, both in making and scrutinising Welsh legislation, is clear - and certainly in terms of the role of scrutiny in both the promotion of legislative competence orders and in measures? Is that something you think has worked successfully so far in Wales, and are you aware of how well or otherwise scrutiny in Westminster reflects that?

Professor Bourne: I suppose I am more aware of it from the Welsh dimension than from the Westminster one - naturally I would see more of what is going on here. I would not necessarily say it was lacking in clarity; I think perhaps people can understand how the system works; but I just

think it is unwieldy and convoluted long-term. In fairness, I am not sure it is anticipated that we go on with it long-term, but I just think the sooner we have closure on the issue the better off we are, because there is a recognition that it is a staging post, and I do not think it is a desirable one long-term.

Q574 Dr Whitehead: I get the implication from what you are saying that there is a great deal of process involved for sixty members, and Government, which you feel duplicates what could be a much more streamlined process: but does that inevitably mean that the streamlined process is, as it were, a fuller form of devolution; or is it a question of how the processes work at present to bring the conclusions that are in the Act?

Professor Bourne: As I say, I think there is a capacity issue, but that is not the prime problem. I would be saying the same thing even if I thought we had eighty or even more members, because I would not think this was a sensible use of time in terms of having to justify every single legislative competence order, rather than having a lasting settlement and saying, "this is where we have primary powers across all these areas akin but not identical to Scotland." Therefore, I think it is only a staging post, and the sooner we move on, as I believe, to a more effective lasting form of devolution, the better off we would be. I accept that there is a capacity issue, but in my mind that is not the real issue here. We have to address the capacity issue; but even if we had the capacity this would not be a terribly sensible use of the time of Assembly members or officials or anybody else; it seems to me to be too convoluted.

Q575 Alun Michael: On that last point, do you not think the process of scrutiny of what has become the first LCO to go into legislation was actually helped by that process in that the final version of the LCO was far clearer and more to the point and better supported by the papers than, for instance, the original draft had been?

Professor Bourne: I do not have intimate knowledge of that, but that may well be the case. I would accept that on occasion we may end up with a better piece of legislation than we would otherwise have had. That may well be the case. I do not think that is inevitable, Alan, but it may well have been the case with the first one.

Q576 Alun Michael: I think it was on the first one, and that is a reason for some satisfaction, I suggest, for the Assembly and the Department.

Professor Bourne: Yes, I would not disagree with that, but I do not think it is going to be like that with all of them!

Q577 Alun Michael: You may be right. I wanted to ask you about the issue of performance. We have talked about the legislative process but for many people the question will be: "What has the Assembly done for me?" That can be a bit like the Roman question! What would you say is the added value by having the Assembly now for just over ten years? What is better in Wales compared to a region of England that has not had the benefit of the Assembly's work?

Professor Bourne: I think it is nine years - but the best part of a decade certainly. I think the thing that most people would instantly identify with would be the accessibility and immediacy, as you would know, about the way people have access to their elected representatives here - and again, probably inevitably because it is a relatively small nation, we are much more local to people than Westminster is in all regards. I think that has made a difference, and I suppose sometimes the ability to do things that get overlooked at Westminster or not regarded as important. I can think of things that we could probably handle better in devolved terms than would have been dealt with at

Westminster - foot and mouth possibly - whether one agrees or disagrees - but certainly the farming community would say the badger cull would be another one that could be added to that. We brought in the smoking ban, which I certainly agreed with, more quickly. A small nation may on occasion do things more effectively. If we have a concentrated settlement of saying "get on with these things" - in the very nature of things - and perhaps also linked with that, given the small nature of the Assembly, if we had another twenty members, an ability across parties sometimes to agree on things which, because of the larger nature of Westminster, would not happen. So often a consensus is looked on as a dirty word, but it need not be. There are issues where actions are sometimes postponed because it is not politically sexy, and we can certainly think of some examples.

Q578 Alun Michael: I put my tongue firmly in my cheek and say that arguing that the proposed badger cull is to the credit of the Assembly may be questioned in many quarters.

Professor Bourne: I knew as I said it that I would not necessarily have universal agreement about it!

Q579 Alun Michael: On the question of immediacy and cross-party engagement, it is easy to see the argument there. However, on direct performance issues like whether education is better; whether the Health Service has improved more than in a region of England that does not have the benefit of the Assembly; the attraction of jobs to Wales and things like that - the concrete things that affect people's everyday lives - how would you measure the Assembly's success or otherwise in those terms?

Professor Bourne: Possibly patchy. I think you are right. The Assembly Government has had different priorities from those in England on the Health Service - the free prescriptions, - the waiting-list position has not generally been as good as in England, but, on the other hand, tackling MRSA and C. Difficile has been better. It perhaps is patchy. The GVA figures that are just out today I am afraid show another drop, so that does not look good compared to Northern Ireland or the north-east of England or Scotland. Admittedly it is patchy, and I think perhaps coming back to "what did the Romans do for me?" - people do ask that, I suppose, and it is fair they should. My own feeling is that it is not asked with quite the same asperity that it was, perhaps after four years or six years. It is not "why on earth have we got an Assembly?"; I think it is now much more: "Why does the Assembly not begin to tackle this?" I get the feeling that perhaps as it has become more established - and in the time frame of parliaments, nine years is not that long - that there is much more of an acceptance now that it is part of the landscape, and people are looking to it to do things rather than saying, "Why on earth does it exist?" It is more: "Why on earth does it not start to tackle this?" That is a good development perhaps.

Q580 Alun Michael: It is an interesting aspect of public acceptance, but as a leader of an opposition party do you run a balance sheet, or do you encourage the Assembly to run a balance sheet on the pros and cons of what is contributed?

Professor Bourne: Not in those bold accounting terms; but again within my own party I have certainly recognised that shift of opinion - and it is possibly true of other parties as well. I would not know that with the same certainty, but within my own party there has certainly been a movement from outright hostility, then through clenched teeth, and now grudging acceptance to, "oh well, it is here now; how on earth do we make it work?" I think we have reached that stage, and people will come up with their own experiences. You do get people who will generally say, "We do not always agree with the Assembly but it has done this for us" - and then you get the free bus travel or the free entry to museums, free swimming or whatever - people will come up with their own examples.

Q581 Chairman: As you conceded, you are leader of a party which was hostile to devolution and hostile to the voting system which created an Assembly in which it had a significant role, and has moved in Wales from a position of opposition to these things through a position of saying, "we had better make it work" to what I divine from what you said is a position of saying, "there are positive advantages in all of this for Wales and we will now continue our political battle about whether the party or parties in charge are doing it right" while at the same time believing that the system has benefits, although it could still be improved, as you say. That suggests to me that the system changes behaviour and perceptions.

Professor Bourne: It has certainly changed mine. That would certainly be true - and many other people as well, I suspect. As a party, we have certainly moved the furthest and the fastest. We had the furthest to move, I suppose. The irony is not lost on me: here I am in an institution that I fought to stop existing, elected by a system I disagree with. Frankly, my views have changed, to be quite honest. I do not think people in Wales would be surprised to hear that. That is on record, and the view of the party has changed significantly here and it has also changed at Westminster. The group here certainly are probably all twelve in favour of extra powers. It has changed. A part of that is the reality. You will not be totally surprised by that. I can point to other political parties that have changed their views on Europe.

Q582 Chairman: That suggests that you should not judge how a system will work, or how further changes in a system will work on the basis that people carry on behaving in the same old way; that the system may actually change the way they do things.

Professor Bourne: The reality of devolution, in Welsh terms, has certainly been from my perspective very different from how I thought it would be. I am being quite honest on that. Again, I am not saying anything different from what I said previously. It is true for a large part of our party. We had perhaps low expectation of what would happen, but in general terms we are pleased at the way it has worked out. I can see genuine benefits to the system now, and I believe I can see ways it can be improved. I do not think the system we have at the moment is sustainable in the long term and perhaps not even in the medium term. There is a frustration certainly in the Assembly and cross-party at the position we are in, I think.

Q583 Julie Morgan: Can I follow up the comments on your party? You say it has moved in Wales; has that happened throughout the UK? Is there an acceptance of devolution in Wales throughout the party?

Professor Bourne: I think that would certainly be true. I am not quite sure whether you are asking has the attitude to Welsh devolution changed throughout the UK, or devolution in general?

Q584 Julie Morgan: I am asking about Welsh devolution particularly.

Professor Bourne: Certainly at Westminster the position of the leadership has changed. The current leader is sympathetic to devolution, not at all hostile. The position in Scotland - not that I think they give a lot of their time to what is happening in Wales, but we have regular talks with them, and they have moved as well, so I think there is a shift within the party on devolution. There remains an area of great interest, but I am not expert on it, on how you address the English dimension, which is the dog that at the moment is not really barking - or maybe it is barking, but it is not barking in Wales.

Q585 Julie Morgan: Would you think David Cameron would support an Assembly that was like the Scottish Parliament?

Professor Bourne: I think it would. As you know, we have a review at the moment which Wyn Roberts is leading, and he expects to make recommendations towards the end of July, which is the way we are dealing with it at the moment. There is an openness on the part of the leader and he will obviously want to study that review, and I at the moment have no idea what that review is going to say.

Q586 Chairman: Let us move to your perception of how the government relationship works. I realise it is an opposition leader's perception, but you must have one, as to how the Assembly Government in Cardiff relates to its Westminster counterpart. Do you see that as a close working relationship or one that is more detached, maybe even too detached? Do you see it as heavily dependent on the party in power in each of the two places or one which might be broadly similar whoever was in power at either end?

Professor Bourne: Heretofore we do not have experience of a position where it is not Labour at both ends of the M4 - at least in part and at least the dominant part. That is an interesting issue. You are right that it is an outsider's view really because I have not got any direct knowledge - it is just sometimes reading the runes. It seems a bit ad hoc and sometimes ex post facto, and not that close on occasion - but that is an external view. I would have thought that it could sometimes be a little more cohesive, given that it is essentially the same party, but it does not always appear like that.

Q587 Chairman: It ought not, ought it, to be dependent on the same party being in power, because it is a working assumption of creating a devolved system that governments of different views, whether or not of the same party, may well be elected at different levels of the system?

Professor Bourne: You are right. It should operate regardless of who is in power and which end of the M4, but we would be expected to believe, and indeed have been led to believe that it would be a much warmer relationship than has perhaps been the case, given that the parties at each end are the same. I agree that the real test will be when it is a different party dominant at one end of the M4; that will be the real test.

Chairman: To make sure we do not miss it out, I will ask Mr Turner to turn to the English question.

Q588 Mr Turner: You are obviously not as concerned as we are about the English votes for English laws, but could you say whether it is something that is not at all important, is 100 per cent important, is somewhere in the average?

Professor Bourne: I am a strong believer in the union, so I think it is important because if the issue is not addressed I think there will be serious consequences. I would have thought that somewhere down the road that issue is going to be addressed. There are two separate issues, are there not: the number of MPs - which is a slightly different issue - but there is the other one about: is it right that the Member for Neath can vote on education in Northampton when he cannot vote on education in Neath, and the Member for Northampton cannot vote on education in Neath? I think that issue has to be addressed, and I think it is important. It is not important in the daily grind of what we do here, but nevertheless in the broader picture of the union I think it is extremely important. As I say, as someone who fundamentally believes in the union, I think it does need addressing.

Q589 Mr Turner: Given the forty MPs representing Wales against 33 being the appropriate level, would you agree that that is significant?

Professor Bourne: Thirty-three being the appropriate level if we were on a population basis?

Q590 Mr Turner: Compared with England. Yes.

Professor Bourne: Again, just as in the case of Scotland, where full powers were granted to Scotland or conceded - however one phrases it - I think the same should happen to Wales if full powers were gained in Wales. It is difficult to make a separate case. I know that devolution settlement is not entirely the same, but I think it is again an issue that one would expect to be addressed. Wales would, I think, be over represented at that stage. I do not think it is at the moment; I think you can make out a perfectly respectable case for forty at the moment, but I think if full powers came to us it becomes more difficult, with respect to Julie and Alun, to argue that point.

Q591 Mr Turner: Can we get to a point where Scotland and Wales are more or less the same, and possibly England too - but let us leave that possible for the moment?

Professor Bourne: You are assuming that is desirable! I think they have to be similar. I am not sure they necessarily have to be the same. I am not necessarily convinced of the case about devolution of criminal justice for example, but I think we need to be similar to Scotland. I do not say the same because there are different powers devolved in Scotland and I do not think the system here should be identical to Scotland. I think the issue in relation to England is much more difficult, particularly after the votes in the north-east. So when you say the position in England should be the same, I am not quite sure what you have in mind, but I am not convinced that you can deal with England in the same way you can deal with Wales and Scotland.

Q592 Mr Turner: I suppose I was thinking of it being one unity rather than four or five.

Professor Bourne: With an English parliament?

Q593 Mr Turner: No, English votes.

Professor Bourne: Maybe that is right and perhaps we are in agreement, but I do not think it would be precisely the same template across the board. We have got a more symmetrical system than we have at the moment.

Q594 Chairman: Are there arguments from a Welsh point of view against an English parliament or not?

Professor Bourne: Against a separate English parliament?

Q595 Chairman: Yes.

Professor Bourne: I think really that has got to be largely a matter for England, has it not? My only concern would be if it would in any way undermine the union. I think only at that stage because has Wales got a direct interest any more than England has in stopping the march, the progress of Welsh devolution if that is what the people of Wales want?

Q596 Julie Morgan: I was going to ask you about the relationships between the parliaments and assemblies in the UK. How do you observe those relationships working, and do you think they could be improved between the different bodies?

Professor Bourne: I am sure they could be improved. Speaking from my own experience over a period of nine years I think there probably has been some progress, as you would expect. There has been more sensitivity between Government departments and the Assembly and perhaps vice versa -

I am sure it is not all one-way traffic - and certainly from a party perspective I felt my own party has been better at accommodating and dealing with devolution as time has gone on. Periodically there are blips but it has certainly got better. One thing I wondered about was some sort of body to exchange best practice, whether a British/Irish council type model - perhaps we see it at the moment in terms of fire-fighting and saying "this is the way we should deal with disputes" - maybe we should also at some stage say, "no one part of the United Kingdom has a monopoly of good practice and it would be a good idea to have some sort of body where we have an exchange of best practice across the constituent parts of the United Kingdom, and maybe it could be a useful adjunct to what we do.

Q597 Julie Morgan: Does that happen at all now?

Professor Bourne: I do not think it does in any structural, formal sense. I am sure that informally this sort of things happens, but I discussed this with Malcolm Rifkind and he thought it was something that could be enhanced or brought about.

Q598 Julie Morgan: Is there much contact between the Assembly and the Scottish Parliament, for example?

Professor Bourne: There is a fair amount. Again, the Business Committee would go up and different subject committees would go up, and theirs would come down here and so on. That tends to happen. Then there is obviously the linkage between party groups as well. We have regular dialogue with our counterparts in Scotland. Again, I do not think there is anything in a formal sense which may ensure that things happen rather than rely on individuals and the chemistry between different committees and so on.

Q599 Julie Morgan: You do not think we have reaped the benefits of having these different bodies as much as we could?

Professor Bourne: Not as much, certainly. I think it has happened and it has grown, but I think we could certainly do more.

Q600 Chairman: With only a few minutes in hand it is hard to throw at you the Barnett Formula, but I must give you a chance to say whether you think it is a system that is sustainable, and how you view it from a Welsh standpoint.

Professor Bourne: It is a little bit like local government finance, is it not? It is one of those things where you always think that. It is far from ideal, but if you start meddling with it you might find it is better than anything else you could bring in in its place. I have spoken to George Osborne about this recently, because clearly there is a Westminster dimension. He is very happy to look at the findings of the Commission, which will start work this year. The commission was part of the One Wales Agreement to look at the financing of the Assembly. He is very open to look at that. I do not think we have any great ideological "no-no" to looking at the Barnett Formula. I think the guess we all have is that Scotland probably did rather better out of it than it would on a needs-based formula, and Wales may or may not. It is sensible we look at the evidence. I am very happy to look at the evidence that this Commission looks at when we look at the whole issue. I think that probably is the sensible way forward.

Q601 Alun Michael: There were some implications from what you were saying about consistency across the UK and learning lessons, and that is about the nature of the civil Service. There have

been suggestions that the Civil Service in Wales is perhaps not exchanging, engaging as much in trading experience, information, secondments and all the rest of it as was the case in the Welsh Office. What is your view about the long-term future of the Civil Service and the service that is received by the Assembly?

Professor Bourne: I think that is a very relevant point. I have discussed that with John Shaw(?), and given the size of the Civil Service in Wales I think that is a genuine concern. I do not know how we address that, but I think you are right to raise it. Perhaps it is one of the major concerns that my party does have in terms of the next stage of how we ensure that we have a first-class civil service in Wales and that there is proper exchange and secondments between the Civil Service in Cardiff or Wales now more widely that has devolved around Wales, and Whitehall. I think that is an issue that needs to be cracked. Again, not having had daily experience of dealing with the Civil Service and only a little bit here and there when we have been brought into all-party talks, I am not fully aware of the problem, but I am sure there is one.

Q602 Chairman: There is one other thing we did not record your view on, which is the future of a separate Secretary of State for Wales. What is your view?

Professor Bourne: Well, I will be very careful on that one! I suppose it links in with the Secretary of State - when you say "separate" - it would not necessarily be just a single job because that -----

Q603 Chairman: As opposed to, for example, a constitutional secretary who had responsibilities for relations with all the devolved administrations.

Professor Bourne: I guessed you meant that. It is desirable, certainly from a Welsh perspective that we have somebody around the cabinet table who has the responsibility for standing up for Wales. I do not think that should be the same person who is standing up for other regions of the UK because that then does not really happen, or becomes more diluted. My own view is that it is desirable certainly that it should continue - in the short time.

Chairman: Thank you very much indeed, Professor Bourne; we are very grateful to you for your evidence.

(The Committee suspended from 3.35 pm to 4.10pm)

Witness: Mr Michael German AM, Assembly Member, Leader, Welsh Liberal Democrats, gave evidence.

Chairman: We will resume our session, taking evidence from witnesses in Wales on devolution. We are very glad to welcome, Michael German, Leader - although to finish office later this year, of the Welsh Liberal Democrats. We are very glad to have you with us this afternoon.

Q604 Dr Whitehead: I have been particularly interested in pursuing the question of the effect of the Government of Wales Act on the legislative process in the Welsh Assembly, and particularly in terms of the process of making what is to all intents and purposes now primary legislation. Do you think that the Act and the processes that it has brought about has brought clarity in that process, or

do you think it is perhaps a rather more transitional process upon which further steps could be taken?

Mr German: Thank you for the question. It is certainly a very cumbersome approach, and I think it is transitional. I will perhaps give you a view on both of those. If you simply looked at the one and only legislative competence order that has been through the process, it started its life on 11 June 2007 and actually the order was made on 9 April, for what was a relatively easy approached LCO. That was a single activity, to which members of this Assembly and members of the parliament and the House of Lords and civil servants were devoted in order to be able to pass powers to this establishment, and before any single measure or any single bill of any sort could be passed. In a sense it was a time-consuming effort to get us to a point where we could make measures of our own. In that sense, I regard it as being a transitional approach to something which in the end will result in powers being passed here eventually. In terms of cumbersome, the number of steps and hoops through which the whole process goes is obviously one which, whilst it may have been relatively painless in this first one - I think the number of steps leads to the nine months - or could be more - process before you can start to make use of the powers that have been passed to you. Far less cumbersome of course are the framework powers in primary legislation going through Westminster in other ways.

Q605 Dr Whitehead: Do you think, in terms of passing measures and scrutinising those measures that the procedure is relatively clear and straightforward, or would you distinguish between that process and the legislative competence orders?

Mr German: I think I have to distinguish between the two because the one is about competence. Are these powers within the ambit or remit of what the National Assembly is empowered to do? The second one of course is about the measures and the impact they will have on our people in our term of use "measure" but it essentially means a bill. We have only had one. We have done one, and that has shown and demonstrated that the processes we go through, stages 1 to 3, with full debate, full amendments, has worked well. I think we have carried ourselves and executed that very well; but we are a year down the track since the enactment of the bill that gave us the powers, and we have had one LCO approved and the order made, and one measure. You might have expected some speedier progress on that rolling programme. It may well speed up over years to come, but that two-stage process means you have that length of time, which splits the whole objective of trying to get legislation through in a way that meets the needs of the people of Wales.

Q606 Dr Whitehead: Do you think that that rather cumbersome way that you have described of doing things is an additional problem to the capacity of the Assembly to deal with its new legislative role, or do you think there are any issues concerning what is now required of the Assembly and what it does with its sixty members and pre-legislative scrutiny measures, individual advance of measures and of course the question of government, and I believe forty committees between sixty members altogether? I am surprised you have time to be with us this afternoon!

Mr German: I am not certain whether it is forty - it may be twenty committees plus a sub-committee, so 20 or 21 - I may be wrong. If that is the case, it is across effective members who can populate those about 45 Assembly members. Clearly, there is an enormous pressure upon them because the multitude of different committees people are on mean that you cannot devote as much time as you might like to reading all the papers and doing the background work, and receiving the lobbying that goes before it from organisations that are trying to influence what goes on; as well as being able to devote your full time to dealing with measures. We did take the decision here, quite rightly in my view, that we would not have the scrutiny committees of the Assembly doing legislative measures as well, so that they would be separated out, and a committee for the measure

would be set up separately - and for the LCOs - from the scrutiny committees. The whole pressure in terms of time has meant that the numbers are clearly insufficient to populate the number of committees that you need in order to make the legislation work. That will only get worse: you either hold back the amount of work you want to do in order to match the numbers of people you have got; or you have to increase the numbers eventually. I think that that is bound to happen. There is another side to capacity of course, which is competence, which I have not chosen to address, but I think it would be unfair not to address it, and that is: do you need to build up expertise, knowledge and understanding in order to be able to deal with legislation, as a member? I would think some of the practice we have had in previous years with secondary legislation has given us some of that competence. Undoubtedly, people will have to get used to it, and it is a steep learning curve, but I think the first example we have had of our own measure, the NHS redress measure which we passed yesterday, gave an exemplary pathway through which the members have come; so I think we are learning very quickly how to manage those kinds of matters.

Q607 Dr Whitehead: The advancement by private members of legislation - my understanding of that is, if you compare it with the rather vestigial role of private members legislation in the UK Parliament, that it appears to be occupying a substantially greater role. Is that a capacity issue, in your view?

Mr German: It is bound to lead to needs for more committees, because each one that goes through has to have its own committee, so there is bound to be a capacity issue in terms of members. Apart from private members and the Government's business, we have not yet started on the process when committees can themselves initiate legislation; and there is already talk of legislation coming from committees as well. I think pressure will build up on membership, and that will result either in the holding back of the work of the Assembly, or it will in the end mean that somewhere we have to address this issue of numbers of members.

Q608 Alun Michael: It is really the balance between legislative process and delivery and performance. I would like to ask you about the contribution of the Assembly to performance. People who ask, "What has the Assembly done for me?" - which tends to sound a little bit like the Roman question - would ask: "What is better; to what extent is the Health Service better; to what extent is education better; are we getting more jobs into Wales, as a result of having the Assembly compared to without the Assembly; or what is the performance of people in Wales compared to regions of England that do not have the same body and competences?" What would your response be to that?

Mr German: First, there is probably a growing attitude in Wales, which we sense from opinions and so forth, that the institution of having a National Assembly for Wales is more and more liked; in other words people want to have it. In terms of what the Government is delivering for the people of Wales, the issues have been some good, some bad and some patchy. It has been variable.

Q609 Alun Michael: You said, "what the Government is doing", but I was asking about the contribution that the whole institution makes, which is a further question to ask you.

Mr German: Fine. I could easily comment on Government policy.

Q610 Alun Michael: I am sure you would find it difficult to resist, yes.

Mr German: However, it is right that the National Assembly itself has opened new pathways to democracy here. Firstly, I would say that people generally think the access to politicians and policy-makers is much, much greater than it used to be, and when we have visitors who come from

organisations with perhaps an English background, or who come to us because they are UK organisations, to present evidence to us, they generally say to us that they find access to much easier here. That is for individuals as well. Our recent foray into setting up our new Petitions Committee has meant that we are now receiving vast numbers of petitions from ordinary members of the public, as well as organisations, which are getting a full hearing here, on issues that affect everyday life. The number of visitors to this very building is growing immensely: we are now the second most visited visitor attraction in Wales after St Fagan's.

Q611 Alun Michael: Yes, but, forgive me, that is all about process. It is important and we almost take for granted there have been improvements in those areas, but what about the performance of the services for which the Assembly has responsibility? Has the quality of education developed faster or improved more than, for instance, in the North-West - performance in the Health Service and the attraction of jobs to Wales? What contribution has the Assembly made in the nine years that it has existed to those things?

Mr German: Well, the tools to do the job are there. As I said before, the performance has been both good and bad; we have had patchy performance. In some areas we might say that the Health Service has not served the people of Wales as well. In other areas you might say it has served them better. Certainly in the areas of primary preventative medicine we would have done better, I think, than we have done in England. I think there are things we want to do better, in terms of matching the performance of patient care in secondary healthcare levels. Those are both political and, perhaps, observational from the words that are given to us, and the views given to us by those who present evidence to us and those who talk to us about what happens in this National Assembly. I do not think that people, regardless of their position, would say anything other than, "We are able to influence more the way in which education policy and health policy is shaped and to be able to state what we think about those matters much more freely than we did before".

Q612 Alun Michael: I think we take that for granted. You are an individual who has been on both sides of the fence: you currently lead an opposition party; and you have been a part of government. In those two roles have you maintained, either mentally or in reality, a balance sheet that says, "these are the areas in which we have improved and added value"?

Mr German: I would certainly think that is something we all ought to be doing in our own heads; we should be carrying through that ambition, to make life better for the people of Wales in all of its aspects in public services. No matter what party you are in, that must be your ambition for your people. I would say that there are clearly areas where we have improved and made life better for people in health, education, transport and so on. There are areas where I would say we are not doing as well as we could have done. I am not going to divide it into time slots, but you would expect that there are going to be things where mistakes have been made, and you would expect that - there are things that have been trailblazers - the free buses that have now been introduced in England; the return of school milk for infant school children; the use of better, more local services for healthcare delivery, the relationship with local government - all those things are improvements. I think that many local government colleagues in England would say that their relationship here in Wales between local government and the National Assembly has improved and that they deliver better services.

Q613 Alun Michael: Has performance improved?

Mr German: Yes.

Q614 Chairman: As Mr Michael said, you have had experience in both government and opposition. What picture has that given you of how the inter-governmental relations work?

Mr German: That is an interesting question because my experience in government was that it was variable, particularly with different departments of government; that you could often expect better results - and I think the civil servants here would often say to you that life was a lot easier in negotiating with certain departments than with others. I do not think that the protocols which exist have been thoroughly tested in these respects, and often it has gone to politicians in government to be able to test and press the case forward. I honestly think that if a minister has to engage with a fellow minister to clear a pathway through Whitehall, then something is wrong in Whitehall, not that something is wrong with the system. I think there are questions that may well be asked about the preparedness of Whitehall civil service to accept the role that government has to play here and the role that the Assembly plays. In terms of relationships between government ministers here and government ministers here in Whitehall, I always found that that worked very well. I found that people were ready to accept and to listen. I often found myself in meetings which perhaps I was hearing things that were not necessarily - what people would have told me outside of the room if they had realised which party I belonged to; but I felt that I was part of a team, and I must say that that bit worked extremely well. Whether that has worked well in the last four years or it is continuing to work I cannot possibly judge, because I am only judging from my period in 2004. I think there are questions to be asked about the way in which the civil service recognised what devolution has provided here in Wales for us.

Q615 Chairman: That was particularly in the early years.

Mr German: Yes.

Q616 Chairman: What about the role of the Secretary of State and the Welsh Office? Are they an essential clearing-house and guide into the Whitehall process or not?

Mr German: They are supposed to be the hands, ears and the eyes for what the government here needs to achieve with all Government departments in Whitehall. I am drawing upon my government experience here: they were essentially at that time under resourced in order to be able to stretch into all the areas where there has to be influence and change because of the things that are needed here in Wales. I suspect that all in all the Secretary of State's role is important when you have to have important business conducted through Whitehall, and that means that you are restricted to doing things here because you have to seek approval from elsewhere. The one thing that I am particularly concerned about is the role of the Secretary of State in determining whether or not he will lay a legislative competence order before both Houses of Parliament. There are no ground rules. The Government of Wales Act does not specify when the Secretary of State should say "yes" and when the Secretary of State should say "no". I think there is a case for a much clearer protocol on those matters. The previous Secretary of State said: "I will not refuse anything that is in order." However, that does not give you enough of a reason and a rationale. I point to one of the LCOs that is currently before the Secretary of State, which has not moved, and that is the Environment, Protection and Waste Management LCO, which left here on 29 November and is yet to be referred by the Secretary of State to the parliament for scrutiny. We do not know why or how because that is not a matter in the public domain.

Q617 Chairman: Do ministers in the government here know what is happening, or are they as much in the dark as you are?

Mr German: I am actually chairing the Scrutiny Committee on this matter at the moment, and I am meeting the minister here on this very point within the next seven or eight days because it is certainly not clear to Assembly members, though there are suspicions as to why it has been held up - but there is certainly no clear indication from government here as to why the Secretary of State has held this matter up.

Q618 Chairman: Particularly dealing with some of these inter-governmental things, the limited numbers available within the Welsh Civil Service - Mr Turner raised the example of the Commons Bill when it was going through Westminster, where there were a dozen or more people in Whitehall examining its detailed provisions, but only one and a half people here, we were told in evidence from Cymru Yfory, in their evidence to us. Do you have concerns about the capacity of the civil service here?

Mr German: Yes, I share some of those views. I do not necessarily think it is as dramatic as some people make out but it is certainly the case that prior to devolution here civil servants would largely take the route of the Whitehall civil servant in the same domain, and the Secretary of State here would adjust accordingly. The policy thinking which went behind it came from London and not here. There was never a great swathe of civil servants here with policy formation experience, but I think there is a growth of middle-tier civil servants who are now moving up the tree, as it were, and giving that necessary advice. In terms of skills, that is an area that I worry about greatly. I think the idea of having a greater form of exchange between civil servants from both - other forms of parts of the public service here in Wales and other parts of the public service in London - is one that should be promoted and extended. Eventually of course there is the other question about simple numbers: do we need more civil servants? I prefer to address it the other way round: what skills are we short of and how do we address that skills shortage over the period of time we have got?

Q619 Julie Morgan: Mike, I wanted to ask you about the relationship between the different assemblies and parliaments in the UK and how you have seen that develop and whether that helps the process of devolution.

Mr German: I think there has been a great degree of sharing between this Assembly and the Scottish Parliament. I think it is more one-way traffic going to Scotland, rather than coming in this direction, and I am loath to say it, but it may have been down the parsimonious nature of its first Presiding Officer who did not allow members to travel so easily as members from this National Assembly to Scotland; and that may have been a brake on the whole matter. Certainly committees from here have spent quite a considerable time in Scotland looking at the work of the Scottish Parliament; and individual members equally. In the case of some of our members, we have also done that with the Northern Ireland Assembly, and shared competence in that way. I can only speak from our own party here: we also have a very good relationship with our members in Westminster; but I do not necessarily see that we are getting that level of structural interchange that might be necessary to make a smoother passage. I regret that the pre-legislative scrutiny of LCOs is now not being done jointly. There is the first example - and then it seems to have petered out - and largely that is a matter of regret. It would be useful if we could overcome timetable problems and do things more jointly on this matter. It might help to build levels of expertise as well in both determinations.

Q620 Julie Morgan: What about sharing best practice? Is any of that done?

Mr German: Yes, I think that is very important, and that is why pre-legislative scrutiny, the idea of joint scrutiny, would be extremely useful to continue in order to allow best practice to occur. It is certainly the case that often we look to Scotland on best practice as they move forward on legislative competence much more swiftly than we have.

Q621 Julie Morgan: Do you have any Scottish committees come down here at all?

Mr German: I am trying to remember. I was trying to remember earlier on today whether we had had a whole Scottish committee coming here. I do not think we have, but I could be wrong.

Q622 Julie Morgan: Nick Bourne suggested it might be a good idea to establish a body where good practice could be shared. Would you think that would be a good idea?

Mr German: Yes. The only body that allows that formally to happen is the British/Irish Inter-Parliamentary Body, which many members from Scotland, Wales and Northern Ireland find very useful, along with Westminster colleagues. Since we all sit in alphabetical order around the table, it means you are often sharing levels of expertise with people who are from the Doyle or from Scotland or from Westminster. I think there is room and scope for that to happen, and I think it would be very useful indeed. There are things we can learn from each other, and rather than us just trying to look at each other and picking off what we think is important, it would be very useful to have a body or organisation which allows that sharing of best practice.

Q623 Alun Michael: This is the second witness that has made reference to it. I think there is a misapprehension in the Assembly about the issue of joint scrutiny. As I am a member of the Welsh Affairs Select Committee, I hate to see that sort of thing happening. There has been a suggestion that some of the slightly ad hoc one or two members joining for an evidence session may not be the best way of doing it, but actually the suggestion for the Welsh Affairs Select Committee is a joint meeting of the members of the two committees to exchange views and look at scrutiny together. I think there is a misapprehension around the Assembly about the suggestions there.

Mr German: I am glad to be proved wrong on that if it is the case because it strikes me that there is a temptation from people to say, "What do you want these powers for?" rather than, "Are these powers appropriate?" I think that having joint scrutiny would be very helpful in that matter.

Q624 Alun Michael: I think that will probably become clear. It clearly needs to be clarified. The other question we had to deal with was the views on the English question. Whether it is a genuine question or a perceived question is sometimes open to argument, but certainly there are discussions about issues like English votes for English laws, the number of Members of Parliament and things like that. Do you have views on that?

Mr German: I certainly have views, as a party, on what devolution will mean eventually. Can I put a very practical issue about English votes for English laws? It seems to me that if you are going to have votes in Westminster where only English members would be permitted to vote, then you would need to have a very, very clear line indeed about the competence which falls to Wales, to Scotland and to England. The problem is that those boundaries do not exist, and they will not exist even under the regime of moving off to a referendum. Unlike the Scottish Act, which says, "You can do anything apart from those things which are reserved to Westminster", which gives you a nice clear line, our Government of Wales Act says, "Even after referendum you can only do the things that are in your bible which have been transmitted to you." Unfortunately, that means there will still be a large number of grey areas for which a Sewell type convention might work, but we cannot be certain. I suspect that if you went down that route, you would end up with bills that would say: "Lines 1-56: English members only can vote; lines 57 and 58, UK members can vote; lines 59-63 English can vote." That may be possible to achieve in Westminster, but without an electronic voting system I think that might be very difficult.

Chairman: Mr German, thank you very much indeed for your evidence.

Witnesses: Rt Hon Rhodri Morgan AM, First Minister, Mr Ieuan Wyn Jones AM, Assembly Member, Deputy First Minister, and Mr Hugh Rawlings, Director, Constitutional Affairs, Equality and Communications, Welsh Assembly Government, gave evidence.

Chairman: (Through an interpreter) Welcome, First Minister, Deputy First Minister and Mr Rawlings, and thank you for being prepared to speak to us this afternoon and for the welcome we have received here in Cardiff. (Continued in English) We are grateful to have the opportunity of being here, and we are going to try to find out from you how the devolution process is functioning.

Q625 Dr Whitehead: Good afternoon. I am particularly interested in the process following the Government of Wales Act 2006, and the relationship between the legislative competence orders, the passing of measures, and how that then produces clarity in the legislative process. Do you think that there is sufficient clarity, or do you think that the process that has resulted from the Act is rather cumbersome for what is achieved? Do you think there could be further consideration given to how that process works, particularly between the Welsh Assembly and Westminster?

Rhodri Morgan: It is still early days to give a verdict on how easy it is to get the legislative competence order and subsequent measures machinery to work; and it is therefore too early to say it is not going to work very well; and therefore change it almost before it has had a chance to produce anything at all. It is different from what you find in most other devolved settlements around the world. It has been specifically devised for Welsh circumstances. It of course creaks a little bit at the beginning; anything that parties at both ends are not yet used to is going to creak, but I think that with a bit of goodwill and once we have done three or four, I am sure that people will lose their fear and get a bit of custom and practice into it - because the British system almost invariably works by custom and practice rather than by legalistic formulae. On the question of whether you could devise a better system, history will tell whether you can do that, but we can see a lot of promise in the legislative competence order and measure system. I think what you were getting at in the early part of your question was how people separate out the legislative competence order, namely the box within which competence is transferred from Westminster to the Assembly, and the use to which it will be put. Therefore, do people in Westminster have to approve of possible measures that you might want to use it for at the same time as they are approving or considering the competence order itself? That is the bit where I would happily accept that it creaks at the moment, because that is the newness of it. If you are a Member of Parliament, especially a Welsh Member of Parliament, you are going to say: "Well, yes, but what are they going to do with this?" You have to tell them. You cannot say, "that is none of your business"; on the other hand, you have to say: "Look, it is the principle here we are talking about: is primary legislation and its equivalent in this area better dealt with in Cardiff than it is in the House of Commons in London?" If it is even, if you do not like the measure, that is what you should agree to release to the Assembly; you should cut the apron strings and release the power to the Assembly." It is an important issue in establishing how robust the mechanism is to deal with political party asymmetry between Cardiff and Westminster, namely a party in power here that is different from a party that is in power in Westminster. It needs to be robust enough to do that; and in order to do that MPs have to be aware of the difference between what you are going to do with it and the principle of whether it is better that you should be dealing with it here rather than Westminster dealing with it.

Q626 Dr Whitehead: Is there any sense in which you feel - and I accept that it is early days - that there appears to be a reluctance in the UK Government to use legislative competence orders as the framework for legislation and perhaps, it has been suggested, a feeling of sitting on those orders for some period of time without any clear explanation as to why that delay is taking place, and indeed no mechanism for making sure that they appear?

Rhodri Morgan: These are new animals in the Whitehall/Westminster zoo; and as a result they are bound to poke at them a few times to find out exactly what they do, what they are for - what are the hind legs for; what are those four legs for, et cetera! We are bound to have that. That is the area where the creaking is caused by the newness, not by the fact of some defective piece of machinery; it is just simply that it is new.

Q627 Dr Whitehead: Do you think that that is the primary culprit - if that is the right word - for any suggestions of capacity in the Assembly to initiate, undertake and complete legislation scrutiny and indeed bringing forward legislation by committees, laid against the framework of legislative competence orders and all that that entails; or is there an issue of just the work that is entailed and envisaged by the Act and the number of members that there are to undertake that work, both in government and in the Assembly as a whole?

Rhodri Morgan: That is quite a difficult question to answer. I have a feeling that the Whitehall machine as a whole - it could be ministers or officials or MPs, or it could be Welsh backbench MPs, Wales Office ministers - whatever, and we do not know, to be honest - until we have half a dozen of these completed there is bound to be an element of suspicion - "are they trying to slip something in here that we are not aware of; is that the proper use of Parliament's prerogatives; are we going to find three years down the track something we did not anticipate would emerge from a measure if we do not cross all the "t"s and dot all the "i"s now?" Inevitably, there is a lot of caution in the early stages, just to make sure that this is what they think it is, and that once you are through that channel which you have to pass, of getting the Mother of Parliaments to approve the transfer of power away from Parliament in this particular box, then all of a sudden you find it is being used for a much wider purpose than you thought. People are naturally double-checking. I think that once they have done half a dozen of them, that period will be over.

Q628 Dr Whitehead: That leads to the written question we received about the sheer number of sources of law that relate specifically to Wales. Indeed, the Director of the Institute of Welsh Affairs suggested that there were eleven different ways in which legislation could apply to Wales: from acts of Parliament which have an effect on Wales; Wales-only acts of Parliament; orders in council; measures passed by the Assembly; subordinate legislation from the Assembly itself being subordinate legislation from Whitehall. Do you think there is a need now for a collation of that legislation, a statute book as it were, to among other things be clear in the way you have suggested about the consequences of the Act?

Rhodri Morgan: Yes. If you are a legislator - as I suppose you are and we are - then I do not think we are concerned with this question. The users might well be concerned with that question. In other words, as users you might say: "Would this not be handy if this was all packaged together in one text online or in some other way to make it handy for lawyers in Wales, lawyers outside Wales, voluntary bodies or whoever is affected by a law, to be able to access the source of information at one central point?" I do not feel competent to answer that question because we write the things, and we do not use them so much; they are for others to use. That is the nature of being a parliamentary type body: if you are legislating, you do not always concern yourself too much. We would be quite sympathetic to the idea, but there are almost not enough laws in Wales to codify into a big statute book. There are probably too many laws at the England and Wales levels to codify into a statute

book - it would probably be about a thousand books. Scotland is probably somewhere in between and could probably do it in a nicely packaged couple of tomes. I do not know that we could fill a couple of tomes at the moment.

Q629 Alun Michael: Can I ask about performance? There is a tendency to talk a lot about process and debate, and those things are very important, as is the legislation; but I suppose one of the questions people would look to answer is: what is the value that the Assembly's existence has added? As we have found already, that can immediately be turned to: "What is the Welsh Assembly Government's performance?" I am asking the rather wider question of the performance and the added value from the fact that for nine years we have had the Assembly. What things are better in Wales compared, perhaps, to a region of England like the North-West that does not have the benefit of the Assembly and its operation and so on in fields like education, health, bringing jobs to Wales and so on? Have you made an assessment of that; have you had a stock-take of the value so far, as it were?

Rhodri Morgan: That is a very broad political question in which Ieuan and I might have quite different views. Ieuan would be interested, on the governmental side, only for the period since July, prior to which he was leader of the opposition; and I have responsibility back to the time when you left, and before then, as a minister, going right back to the origin of devolution almost nine years ago now. Everybody will have a different perspective. The key thing is what the public thinks, not what we think. The public sometimes simplify it into the bus pass, and not very much else. Others would see the initiative - I would say the initiative on early years, although it is a very, very slow-moving initiative because you are breaking with a hundred years of tradition in early years education in certainly England and Wales, perhaps as the long-term legacy that the first decade of devolution will bequeath to the people of Wales - the Welsh Baccalaureate. Again, these are quite big initiatives, although the pay-off from them are going to be very, very long-term.

Q630 Chairman: Are the initiatives dependent on the existence of the Assembly to be feasible?

Rhodri Morgan: Entirely, yes.

Mr Jones: Can I touch on one or two of the points that have been raised, first the issue of what may have been seen by some people as the complexity of the system? You said there are all the various forms in which you can legislate. I think that the two primary sources will still be the measures, the flow from the LCO, rather than the LCO itself in terms of the user, and the framework legislation in terms of the primary. I would see there are those two main sources. Obviously, there are statutory instruments, which are secondary legislation. I do not think it is overly complex. The way I would describe it is that its advantage is to allow the Assembly to legislate for the first time in primary terms, both the framework legislation and in its own measures flowing from the LCOs. The issues arise over the timetables, because it is not entirely in our hands - the length of time the LCO would go through Westminster. Therefore, at the beginning of your parliamentary year you begin to timetable LCOs and measures and you have a proper flow between the two; but it is very difficult to predict because you do not know how long sometimes it might take to go through the system. The timetable is not in your gift. On the other hand, I have been dealing since July with a measure which is called the Learner Travel Measure, which flows from framework legislation. We were able to do that because Westminster allowed us to do it. It was basically improving school transport. Following the scrutiny of that original piece of legislation it has become clear that there is a consensus across the Assembly that we needed extra powers to deal with various aspects of school safety, particularly over the regulation of buses. Under the old system there was no way in which the old Welsh Office would have been able to make any representations about new powers unless they were UK-wide or England and Wales; but because of the existence of the Assembly and the

scrutiny of that measure in its early stages, we were able to put in a request for those extra powers. But for the existence of the Assembly, that could not have happened.

Q631 Chairman: I would like to be able to get some sense of how inter-governmental relations work. I will start by asking the First Minister: is it a day-to-day process of constant contact between ministerial level and official level; is it a fire-fighting process where you are occasionally brought in because there is some level of disagreement? I am not talking exclusively about legislation, but all the issues where there is an interaction between the government here and the United Kingdom Government? What is it like in practice?

Rhodri Morgan: When you are talking about the broad achievement of executive decisions being aligned one to the other, because without both being involved you are not going to achieve something, there is a lot of day-to-day contact, and it is just really officials with the ministers being brought in occasionally. If you take Welfare to Work, which is a big UK Government agenda, it is also a big agenda for us. We can get access to the European money, or we lead on it - although DWP have been major accessories to the fact as well. Sometimes they lead on the abatement of the loss of benefit when you access a job; we lead on the occupational therapy, physiotherapy, mentors and so on and put the programme together and submit it for European funding - so that is a very big area of joint activity. The Westminster Government, by and large, will lead on that. The Defence Training Academy at St Athan, which you will be aware of, is a huge programme. It will not actually bring great economic benefits to Wales until about 2013 and beyond, so it is a terribly slow-burning thing - but we are the landlords because we bought the land from the RAF when they left and we have been leasing it back to the Ministry of Defence, who owned it in the first place; so it is their programme, but we are the landlords. We have worked very, very closely with them on that - pretty well day-to-day. There is a lot of executive decision-making not legislating in government; probably government is 10 per cent legislating and 90 per cent is executive decision-making; and in areas where there is a joint interest that will be done by huge programmes of just official-to-official contact, with occasional reference to ministers.

Q632 Chairman: If you are the Deputy First Minister and you belong to a different party and you are part of a coalition, is it different when you are dealing with ministers who are of the First Minister's party but not yours? Although that distinction should not apply to officials, does it colour the process in any way?

Mr Jones: Not that I have noticed. Obviously, as you recognise, I am pretty new to this, so I did not know how to benchmark it in any way. Rhodri has described that the Defence Training Academy is in my department now, so obviously although the First Minister takes a very keen interest in this a lot of discussions are between officials in my department and in the Ministry of Defence. I have to say that the primary contact I have had - because I am responsible for planning and transport, is on the transport side with the Department for Transport in London. I have not found any barriers because we are members of different political parties. I cannot think of any occasion where I felt that that was a major issue. When there are bilaterals, it seems to me to be working at that level reasonably well. To be honest, there have not been what I would describe as major policy differences that might have tested it in the way you describe.

Rhodri Morgan: This is not the first coalition because we had one for two and a half years involving the party you belong to, Chair, between the end of 2001 and the elections in 2003. Mike German probably mentioned when he gave evidence that he would attend joint ministerial committees on Europe with me and Gordon Brown, Jack Straw et cetera, in the run-up to the Copenhagen Summit. Before the 2007 elections, ministers in Whitehall were used to the attendance of ministers on what were previously single party preserves, to have somebody from another person present - now, of

course, since 2007, in spades with the situation in Scotland. There must have been a brief period obviously when the Northern Ireland peace process had worked in the early stages where the Northern Ireland Executive - where the mainstream parties do not even stand - so clearly different parties will go along. That is easier to handle in some ways because obviously they are not competing.

Q633 Chairman: In this process how significant is the role of the Secretary of State and of the Welsh Office, leaving aside those areas where it has particular legislative responsibilities that we have talked about? Is the Secretary of State at the Welsh Office relevant at all?

Rhodri Morgan: It depends on his definition - it has always been a "him" so far - of his function. He has clearly got a function on the legislative. I understand that he has a clear function on the funding side as well. He is there to battle for an appropriate but also a maximum funding settlement for Wales. That is not to mean that in every contact with the Chief Secretary the Secretary of State for Wales must be brought in. That is not the case, so there will be bilateral meetings with the Chief Secretary or the Chancellor of the Exchequer and the Prime Minister sometimes on the implications of the Barnett Formula or the way in which the funding is provided to us; but there is a constitutional duty on the Secretary of State for Wales to get involved in the funding process as well as the legislative process. Where it is much more open is where it involves the bilateral contacts on, say, Welfare to Work, or the Defence Training Academy, or very big industrial potential products coming to Wales or not coming to Wales, where you might want the assistance of the Prime Minister where you would not go through the Secretary of State for Wales, you would approach the Prime Minister's office and say: "Will you place a phone call to such and such a world-famous chief executive to help to sell Wales for this or that purpose?"

Q634 Chairman: What about the initiative to revive the Joint Ministerial Committee, which the Secretary of State has himself talked about: do you see real value in this?

Rhodri Morgan: As it happens, Paul Murphy has been given a kind of extra Welsh territorial role across the UK in dealing with the JMC machinery and its rejuvenation, so it had fallen into a state of rustiness apart from JMC (Europe), which has gone on regardless and is a very, very good avenue for sorting things out before summit meetings. That has been unaffected. It is the non-JMC (Europe) bits of the joint ministerial committee machinery that has fallen into disuse, and Paul Murphy has now been told that in addition to his function as Secretary of State for Wales to rejuvenate this bit of machinery - disputes resolution, best practice sharing, generally keeping the United Kingdom together regardless of the fact that different parties now have an involvement in the government everywhere in the Celtic parts of the United Kingdom. Obviously this is a Labour-led coalition, but on the other hand it is not in Scotland and it obviously cannot be in Northern Ireland; so it is seen as particularly important to revitalise it at this moment. In the summer now the new style JMC domestic will be set up. We have got to give it a full airing and testing. Although Alex Salmond has many doubts about the whole structure of the United Kingdom - shall we say, to tread delicately - nevertheless he is willing to give the new structure a fair wind to see if it works as a disputes resolution mechanism.

Mr Jones: Rhodri has touched on this, but the new political context post 2007 has raised again the issue of having a JMC that goes beyond the European aspect and whether there should be a JMC at domestic issues as well. It does seem to me that there will be those sorts of occasions. I am not sure that the JMC domestic should be seen for something that it is not; it should be, in the final analysis, something to resolve a dispute, but very often issues will be resolved before you get to that stage. That is why it is very important to recognise that there will be issues where there is commonality of ground - not always, and we should not over-stress that either, but on occasions there will be

commonality of position between the devolved administrations and there will be attempts informally to resolve those as we go along because there are bilaterals, quadrilaterals or whatever they may be; and for the JMC then to be seen. It would be an important part of the process because people need to know that it is there if it is needed.

Q635 Julie Morgan: The Scottish Government has asked for a review of the concordat and to have more formal mechanisms in place to improve inter-government relationships. What are your views on that?

Rhodri Morgan: I do not know whether concordats have had quite the impact that was intended. I do not know whether Hugh Rawlings would like to come in on this and tell us whether that is the view of officials as well. They are not some big shadow which tends to fall over us saying "we cannot do this because of the concordat" or "we could make use of the concordat in order to expedite something". That is my own personal view.

Mr Rawlings: That is right. I think we very rarely have reference back to the concordat. Here, we have engaged in a process of updating them in the light of the 2006 Act to make it clear that the relations are bilateral, or between ministers and relevant bodies in Whitehall rather than being between the National Assembly and Whitehall as concordats originally had it. Subject to that, I do not think there has been any need for a major re-writing of the concordats, and really they are very rarely referred to - certainly not on a daily basis for the conduct of relations.

Rhodri Morgan: To be honest, the key concordat is not called a concordat; it is the Statement of Funding Policy. That is the one that does create problems, and where we might define the conclusion of the application of the principle of the Statement of Funding Policy in one way, and the Treasury defines it in another way, and the editor's decision is final - therefore, that is where we get into difficulties and where occasionally you will have a disagreement. I think the Scots would say exactly the same as us, and as far as I know the Northern Ireland Executive of whatever colour would say exactly the same as well. That is a sort of concordat, but I do not think it falls into the concordat category.

Mr Rawlings: No, it does not, because the concordats are bilaterally agreed whereas, as the First Minister has implied, the statement of funding policy is not.

Q636 Julie Morgan: Is there anything that can be done to improve that, or is that just part of the nature of politics?

Rhodri Morgan: I think the JMC domestic this summer and a potential JMC summit meeting that might follow on from it, I am sure will naturally want to raise some of the areas of major financial dispute over, for instance, a decision of the UK Government to define the expenditure on the Olympics in such a way that the legacy half of it does not have the Barnett Formula applied to it. We have never argued that the expenditure on the running track or the swimming pool should have the Barnett Formula applied to it; but we have said that the legacy expenditure, about which ex-Mayor Ken Livingstone did make great play - how much London would gain in the long-term from the legacy left behind in transport and urban regeneration - to us that is Barnett-isable, and the Treasury says, "No, it is not." We say, "Yes, it is"; and they say, "No, it is not." Where do you finish up? We say: "Can we take this to the JMC domestic? Let us give it a whirl there anyway and see where that takes us."

Q637 Chairman: Do you think the Barnett Formula is sustainable? You have just illustrated one of its many odd features, which is that you are going to argue about whether the Olympics counts to create an addition in Welsh public expenditure.

Rhodri Morgan: Yes. The legacy side of the Olympics, shall we say, not to sound as though we are being greedy here - it is the legacy side.

Q638 Chairman: This whole mechanism, when described in that way, reveals itself as being very odd indeed.

Rhodri Morgan: The Barnett Formula's great advantage is that it is rough justice but you know where you stand and you can predict it, and the Barnett Formula squeeze will take place, and you can predict that; and if you have less population you know that it is going to produce a further squeeze. All sorts of things are predictable, and it is rough justice. The problem comes over those 50/50 issues round the edge of the Barnett Formula when the Government says, "We are not applying the Barnett Formula to this aspect of expenditure" and you say: "Why are you doing that; surely that is contrary to the Statement of Funding Policy?" We are quite clear that the legacy side of the Olympics is Barnett-isable, and the Government is saying, "No, it is not." We have to solve that somehow.

Mr Jones: I think it arises, to be honest, more where CSR settlements are tighter than they otherwise were; and those 50/50 calls go against you more than in the past, which I think is the case. What is interesting is that the debate of the Barnett Formula, whilst putting it for so many years now - the question is being asked, and we, as a government, will be setting up an inquiry on the future funding because we believe that is an issue that ought to be looked at - without, obviously, pre-judging what the conclusions would be. It seems to me now that that issue is being looked at not only in the Scottish context but in the English context as well. The issue now is alive in a way that it was not two or three years ago.

Q639 Mr Turner: You are going to face publication of separate codes of conduct for civil servants who serve the Scottish Executive or the Welsh Assembly. How do these codes of conduct differ from that of the UK-wide civil service?

Rhodri Morgan: Not UK - British-wide. The Northern Ireland civil service is totally constitutionally separate anyway - I think British rather than UK - I believe I am right. There is a historical nature about this in that when we came into being, our civil service was a bit different; it covered what you would regard as parliamentary clerks, who were separately structured in Westminster and separately structured in Scotland, and were not separately structured in Wales. They were all part of the same civil service. That is the only difference. As of now, the separation between the so-called Assembly Commission, so that our committee clerks are now separate - although they have the same pensions and so forth - from the administrative civil servants and policy-making civil servants and work for the backbenchers and the Presiding Office, as parliamentary clerks do - that is the only difference. Therefore, the differences will be very, very minor. Huge, you are a civil servant: I cannot see any practical difference now, but there is this bit of history for the intervening period between 1999 and April 1, 2007.

Q640 Chairman: Is that the sole reason why we are now talking about having separate civil service codes for Wales, Scotland and the United Kingdom?

Mr Rawlings: I would not want to comment on Scotland, but my understanding of the UK Government's policy in the Constitutional Renewal Bill is that it is intended to set out in statutory

form that which is already provided for under prerogative powers. The important point to make here is that we already have a separate Welsh code under prerogative powers. I have brought some copies, because I thought this might come up, and I will leave them with the Clerk. The essence of it is that it is something to sit on a civil servant's desk, and it reminds them that their accountability in the first instance is to ministers of the Welsh Assembly Government and not to the UK Government, because that is whom we serve. In terms of the substance, in terms of civil service values and that sort of thing, they are exactly the same; but this is a working document for civil servants to be reminded, as we all know, that we work for the Welsh Assembly Government.

Q641 Alun Michael: I am very interested in this because it is very important for the issue of accountability to be very clear; but of course accountability is different for different civil servants within Whitehall. For instance, the civil servants who are accountable to the Committee for Standards on Public Life, to take one example, will be different to the direct ministerial accountability. It is not really a great difference of principle, is it? The clarity of accountability is clearly important, but it does not seem to be a big difference in terms of the code or how civil servants ought to behave.

Mr Rawlings: There is no difference in substance at all; it is purely to make it clear to Welsh Assembly Government staff that their service is to the Welsh ministers, and that is what the document sets out.

Q642 Chairman: You do not envisage developing for example new and better standards separately from those of the UK civil service?

Mr Rawlings: The Bill as it stands at the moment requires the code to be issued by the Minister for the Civil Service, in other words the UK Government.

Q643 Mr Turner: Tomorrow's Wales identified a resource deficit resulting from a lack of capacity within the Wales civil service that leads to a legislative deficit, and they gave as an example the Commons Act 2006, which twelve people in a team from Defra worked on, but then it came over to Wales where there were only 1.5 people to deal with similar sorts of questions. It does not matter if the exact issue is wrong, but what is the consequence if you simply have not got the civil service to deal with such a complex issue?

Rhodri Morgan: Well, Alun and I both faced this issue in the early days of devolution, in 1999 and 2000. I think it is a very different picture now, to be honest. The change in the last nine years has been pretty massive. Clearly, the history of the old Welsh Office, which was only instituted in December 1964, and was a terribly small department of about 300 staff at that time, had no policy development functions at all. It had a briefing function to ministers and housing and local government branch office/regional office functions. It gradually accreted all the other functions that were eventually devolved, in education, health, agriculture, economic development and so forth. Gradually the numbers and the functions increased, but the policy development function probably not, and the legislative function certainly not. There was no basic reason for it if we only did a bill once every five years; whereas the Scottish Office was doing five bills a year - a massive difference. However, since 1999 there has been a huge increase in the policy-development capability and the preparation of legislation. I would think if there were such a thing as a University Challenge or an Olympics in capacity of the civil service to serve the needs of ministers in terms of legislation, I would be quite happy to put our team in - relative to the size of Whitehall because you have to make an adjustment that way; but I would think we have transformed, without being complacent.

Q644 Mr Turner: I see what you are saying but when you are talking about the business, the business is the same size whether it is Wales or England; and yet you cannot employ twelve people.

Rhodri Morgan: That is a historic problem that all small administrations would have. I am sure you could find examples such as the one you quote. I was not aware of that one. In our civil service you will tend to have in mid-career civil service terms - people who are 35 to 45 - they will have probably a wider experience across more departments than the equivalent in Whitehall. A Whitehall department will have a deeper experience of expertise in a particular field. That is just inevitable, and you would find that if you compared Denmark and Germany or Belgium and France, or Slovenia and Italy. That is inevitable, is it not? A small country has got some advantages in terms of taking a holistic view - synoptic vision - all of these words about being able to see the whole thing - but it is inevitable that you are not going to get the same depth.

Mr Jones: I am currently piloting a piece of legislation through the Assembly, and I think the service I have had from the department in making preparations for it, in amending it, in responding to the committee's scrutiny, has been first-class. I have not seen any issue where I have had to question the capacity within my department to deal with a very complex area of school transport, and to identify the way in which the measure, as originally drafted, needed to take into account changes, observations and things that I was prepared to accept. Seeing that measure re-drafted in a very short space of time showed a high level of skill; so I am not sure I would share some of the issues around that. You have given an example, but I can give an example in my own department where I think the contrary is certainly true.

Q645 Julie Morgan: I wanted to ask about the number of Welsh MPs. Professor Hazell told our Committee that at the very least Wales should have the same electoral quota as other parts of the UK. If it were linked to England, he said it would be 33 compared to the forty MPs we have now. Two of us of course have an interest in this! What are your views about the number of Welsh MPs.

Rhodri Morgan: I am not sure if this was in Alun's time here or whether it was afterwards, but we did at one point have to step in to stop the electoral commission pushing the number of Welsh MPs up to 42. Undoubtedly, the quota system, on a strict interpretation, should have led to the creation of two additional Welsh MPs, and we all felt this was completely bonkers and unacceptable, likely to cause a breakdown in relationship with at least England, not Scotland. Whether it should go below forty - it is very high at the moment in Wales for two reasons. How do you deal with very remote areas of central Wales? Can you merge Merioneth and Montgomery? Montgomery has about 44,000 electors and Merioneth as a county has 32,000. You have a seat of 76,000 and huge travelling distances for any one MP, but there are English seats of that size - and the Isle of Wight, because you do not want to split it, has about 100,000 electors. The Valleys is another geographical problem: it is very difficult to merge valley seats when there is no east-west communication from valley to valley. Then you have the preserved counties from the 1974 Act, which are the determining umbrellas within which you can do your re-distribution. Our preserved counties are much smaller than English preserved counties, which is a further difficulty. That is why we have gone from 36 to 38 to forty - and it would have gone to 42 if we had not stopped it on the grounds that it made no common sense. It might have been the strict interpretation of the law, but we said, "Use your common sense; this does not make sense, given the population of Wales and the population of England, and if you divide the number of MPs from one end to the other." I do not know whether they want to re-write the electoral law completely and get rid of the preserved counties umbrella and have another way of handling the problem of remote rural areas but how you do that, I do not know.

Q646 Chairman: Apart from rural areas most of those problems could be - if you take the view - and it is interesting to know whether you do - that either present powers in Wales or more extensive devolution makes the case for at least having more Welsh MPs overall per population than in England.

Rhodri Morgan: You will recall the Richard Commission four or five years ago recommended 60 to 80 and that they should be elected by the STV, single transferable vote in the electoral system here, but the public would never accept that unless there was a reduction in the number of MPs in Wales and go from 40 to 30, or whatever it was. We took the view that you would never be able to implement an increase in the number of AMs unless you reduced the number of MPs and we did not think that was something we wanted to put, frankly. That was one major area of discussion between me and the administration on it and the Richard Commission recommendations.

Mr Jones: We have had a situation with 60 Assembly members since 1999. The proposal in the Government of Wales Act 2006 where a referendum is to trigger law-making powers does not change the number of AMs. Even if there were to be a referendum on the Government of Wales Act 2006 the number would remain at sixty. That would be at full legislative powers. I cannot see that of itself should affect the number of MPs. Where the question does arise is if sometimes there would be a demand because of pressure for perhaps a rise from sixty.

Q647 Chairman: What about the Secretary of State's view on a referendum?

Mr Jones: The trigger for the referendum comes initially from the Assembly where there would have to be - it would be a very brave Secretary of State

Chairman: Thank you very much indeed.