

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Welsh Grand Committee

DRAFT WALES BILL

Wednesday 3 February 2016

(Afternoon)

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Resumption of general debate.

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Sunday 7 February 2016

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chairs: †MR DAVID HANSON, ALBERT OWEN

Andrew, Stuart (*Pudsey*) (Con)
 Bebb, Guto (*Aberconwy*) (Con)
 Brennan, Kevin (*Cardiff West*) (Lab)
 Bryant, Chris (*Rhondda*) (Lab)
 † Cairns, Alun (*Parliamentary Under-Secretary of State for Wales*)
 Clwyd, Ann (*Cynon Valley*) (Lab)
 † Crabb, Stephen (*Secretary of State for Wales*)
 † David, Wayne (*Caerphilly*) (Lab)
 † Davies, Byron (*Gower*) (Con)
 † Davies, Chris (*Brecon and Radnorshire*) (Con)
 † Davies, David T. C. (*Monmouth*) (Con)
 Davies, Geraint (*Swansea West*) (Lab/Co-op)
 † Davies, Glyn (*Montgomeryshire*) (Con)
 † Davies, Dr James (*Vale of Clwyd*) (Con)
 Doughty, Stephen (*Cardiff South and Penarth*) (Lab/Co-op)
 † Edwards, Jonathan (*Carmarthen East and Dinefwr*) (PC)
 Evans, Chris (*Islwyn*) (Lab/Co-op)
 Flynn, Paul (*Newport West*) (Lab)
 † Griffith, Nia (*Llanelli*) (Lab)
 † Harris, Carolyn (*Swansea East*) (Lab)
 Hart, Simon (*Carmarthen West and South Pembrokeshire*) (Con)
 † Hoare, Simon (*North Dorset*) (Con)

Irranca-Davies, Huw (*Ogmore*) (Lab)
 † Jones, Mr David (*Clwyd West*) (Con)
 † Jones, Gerald (*Merthyr Tydfil and Rhymney*) (Lab)
 † Jones, Susan Elan (*Clwyd South*) (Lab)
 † Kinnock, Stephen (*Aberavon*) (Lab)
 † Lucas, Ian C. (*Wrexham*) (Lab)
 Lumley, Karen (*Redditch*) (Con)
 Moon, Mrs Madeleine (*Bridgend*) (Lab)
 † Morden, Jessica (*Newport East*) (Lab)
 † Morris, David (*Morecambe and Lunesdale*) (Con)
 † Rees, Christina (*Neath*) (Lab)
 Sandbach, Antoinette (*Eddisbury*) (Con)
 † Saville Roberts, Liz (*Dwyfor Meirionnydd*) (PC)
 Smith, Nick (*Blaenau Gwent*) (Lab)
 Smith, Owen (*Pontypridd*) (Lab)
 † Stevens, Jo (*Cardiff Central*) (Lab)
 Tami, Mark (*Alyn and Deeside*) (Lab)
 † Thomas-Symonds, Nick (*Torfaen*) (Lab)
 † Williams, Craig (*Cardiff North*) (Con)
 † Williams, Hywel (*Arfon*) (PC)
 † Williams, Mr Mark (*Ceredigion*) (LD)

Glenn McKee, Liam Laurence Smyth, *Committee Clerks*

† **attended the Committee**

Welsh Grand Committee

Wednesday 3 February 2016

(Afternoon)

[MR DAVID HANSON *in the Chair*]

Draft Wales Bill

[*Relevant documents: oral evidence taken before the Welsh Affairs Committee on 26 October, 9, 16 and 30 November and 9 December 2015, and written evidence to the Committee, reported to the House on 16, 23 and 30 November and 7 December 2015, on the pre-legislative scrutiny of the draft Wales Bill, HC 449.*]

2 pm

Question again proposed,

That the Committee has considered the matter of the draft Wales Bill.

The Chair: I advise hon. Members that about nine hon. Members are seeking to catch my eye before the end of the debate. I intend to call the winding-up speeches from 3.30 pm. The right hon. Member for Clwyd West was on his feet.

Mr David Jones (Clwyd West) (Con): Welcome to the Chair, Mr Hanson.

Before we adjourned, I was expressing both support for what the Wales Office is seeking to do via the Bill and concern about whether the Bill is the best vehicle for achieving that. The difficulty we have in this country is that, as other hon. Members have said, we have experienced piecemeal devolution over many years, going back to the original defective settlement imposed in 1999. We have asymmetric devolution, which that is not necessarily a bad thing. One of the strengths of this country is the inherent flexibility of its institutions, so I do not think that the asymmetry is the problem. I think that having had years of piecemeal devolution, we are continuing the process and keep tinkering with the devolution settlement. We are trying to fix the big end when what we need is a completely new engine.

I commend to members of the Grand Committee the work being carried out by the Public Administration and Constitutional Affairs Committee, of which I am a member, as are the hon. Members for Merthyr Tydfil and Rhymney and for Newport West. That Committee is carrying out an extensive inquiry into the British constitution, and evidence we have heard in recent weeks follows a pattern, which is that progress of further devolution is proceeding too quickly, with too little thought and, frankly, not in a holistic manner.

For example, we visited the Welsh Assembly some weeks ago and were told by Dame Rosemary Butler, the Presiding Officer, that changes to the devolution settlement are being rushed. Only yesterday we heard evidence from Lords Forsyth and Lang, former Scottish Secretaries, who expressed the same concern; and that concern was echoed in the report by the Wales Governance Centre published yesterday. I know there is anxiety and keenness within the Government that the Bill should proceed as quickly as possible, but I ask my right hon. Friend the Secretary of State to give careful consideration to the

evidence that is emerging, not only from the Public Administration and Constitutional Affairs Committee, but from external sources, that if we carry on at this pace of reform, we are going to make an even bigger mess.

Suggestions have been made, for example by the First Minister, that there should be a constitutional convention. That suggestion has been echoed to a certain extent by Lord Norton of Louth, who has called for a constitutional convocation. There have also been suggestions that a high commission on the constitution should be established. There is merit in giving consideration to all those suggestions.

What we are all seeking is a constitutional settlement that ultimately will settle the question of devolution. I remember when I arrived in this House in 2005 being told by Lord Hain, who was then Secretary of State, that the Bill that became the Government of Wales Act 2006 would settle the issue of devolution for Wales for a generation, and here we are talking about it again. There has to be a terminus to this process and it has to be a terminus that is fair and reflects all the interests of all the people of this country. I do not believe that the bolt-on approach represented by the Bill is the right approach.

I entreat my right hon. Friend the Secretary of State not to proceed at such great speed. I know that, from the point of view of the press, there is tremendous attraction in a Wales Bill being introduced to the House on 1 March—the St David's day Bill. We need something much more substantial than that. While fully applauding my right hon. Friend's desire to put right the mess that we inherited from previous Parliaments, I ask him to think about pausing the process. I ask him to give the whole process more time, to listen to the interested parties who are now increasingly making their voices heard, and to consider with his colleagues in Government putting in place a process that gives the people of this country the opportunity to have a devolution settlement that endures, not one that—God forbid—we have to revisit in five years' time.

2.5 pm

Nick Thomas-Symonds (Torfaen) (Lab): It is a pleasure to serve under your chairmanship for my first Welsh Grand Committee, Mr Hanson.

Our starting point has to be what the Secretary of State for Wales says in the foreword to the draft Wales Bill:

“We are determined to ensure the people of Wales have a clear and lasting devolution settlement... For too long Welsh politics has been dominated by constitutional debates about what is and is not devolved.”

I fear that, as it is, the draft Wales Bill is likely to create more and more debate, much of which will end up before the UK Supreme Court unless stringent and significant changes are made to the Bill. I shall give a few examples, starting with the issue of ministerial consent.

The provisions on ministerial consent on page 73 of the draft Bill mean that if the Assembly wants to legislate in a way that affects the power of a UK Government Minister, it must first ask for consent. In and of itself, that creates great uncertainty, because the powers of UK Government Ministers are set out in hundreds of statutes. Let me give one example of the kind of absurd consequences that could arise and why the provisions are an example of devolution being rolled back, not forward:

the Control of Horses (Wales) Act 2014. Reservation 184 in the draft Bill is about arbitration. Section 7 of the 2014 Act contains a dispute resolution procedure to resolve disagreements between horse owners and local authorities. Under the draft Bill, that Act would have to be subject to ministerial consent. There we have it: horses in Wales having to be subject to a UK Government Minister in London. I do not know the Secretary of State's view on horses, but no doubt we will have to find out if the draft Bill becomes a permanent fixture.

The Silk Commission said that one way to resolve uncertainties would be to transfer the powers in the devolved areas. I urge the Secretary of State to look at ministerial consents to see whether there can be such a simplification. Otherwise, we will simply be piling up work for the UK Supreme Court.

In an intervention on the Secretary of State this morning, I raised the issue of reserved powers. Yes, of course, a reserved powers model can work extremely well. I think the right hon. Member for Clwyd West pointed out that my predecessor as MP for Torfaen, who was twice Secretary of State for Wales, had spoken about the reserved powers model. There is nothing wrong with the model. The problem is that, first, it has to be pretty clear and, secondly, the number of powers that are and are not reserved has to be in line with the expectations of the Welsh people.

Conservative Assembly Member David Melding said of the reserved powers in the draft Bill:

"They are numerous. Quite literally, they cannot be counted, although most who have attempted enumeration put the figure somewhere above 250. This is ominous."

The Secretary of State really should take that into account as he looks at how he can redraft the Bill. Dame Rosemary Butler put it this way:

"there is significant roll-back in the reservations themselves. A large number of matters which are not exceptions from the Assembly's current competence have been made into reserved matters in the draft Bill."

That is devolution being rolled back.

The Secretary of State for Wales (Stephen Crabb):

The hon. Gentleman highlights an important point and refers to comments by the Presiding Officer of the Welsh Assembly. Does he agree with the Presiding Officer's presumption that all of those silent subjects were intended to be devolved, and therefore the Supreme Court judgment on the Agricultural Sector (Wales) Bill effectively makes all of those subjects devolved now if they can be linked in some way to a devolved purpose? Alternatively, does he agree with me that we should go back and understand Parliament's intentions in making the existing devolution settlement and then extend the devolution boundary by a political process, rather than rely on the courts?

Nick Thomas-Symonds: With the greatest of respect to the Secretary of State, I do not think he has quite picked up the point I am making, which is this: the Assembly has already legislated on a number of matters that, under this Bill, it will have to seek his consent to legislate on. Another example of where his consent would have been required is the Human Transplantation (Wales) Act 2013. I am sure he is a generous man with his consent, but the reality of the situation is that where the Assembly has been able to legislate, the Bill now requires his consent to do it. That is a roll-back of devolution; it is as simple as that.

Stephen Crabb: The hon. Gentleman is getting confused. Under the existing settlement, the Act to which he just referred required ministerial consent. That consent was given, with no problem at all. Under the new settlement, because that Act has an impact on reserved matters or functions of a UK Minister of the Crown, it would still require consent. We should not see consents as some great problem. We need a way of regulating the interface between the UK Government and the Welsh Government.

Nick Thomas-Symonds: With respect, the Secretary of State has to understand that simplicity is the most important thing. The Silk Commission said—this is what the Presiding Officer of the Welsh Assembly was also referring to—that there must be scope for the situation where consent is not required in the 20 devolved areas. I cannot understand why the Secretary of State cannot see that. The roll-back of the devolution process is the danger of the Bill.

Stephen Crabb: Confused.

Nick Thomas-Symonds: If we want to talk about confusion, let us move on to necessity, because we will have some fun on that with the Secretary of State.

Let us be clear what the test of necessity actually means. The Assembly has to be convinced that Acts are necessary before it can act—that is what the necessity test says. There are plenty of examples in the Bill; there is one on page 69, if Members want to look at it. Let me tell the Secretary of State what the Wales Governance Centre at Cardiff University said:

"The concept of necessity-testing in the draft Bill represents a failure of comparative legal method... The use of necessity-testing in the draft Bill jars with basic constitutional principle."

Why does it say that? It says that because necessity-testing is a concept that has essentially been taken from Scottish law, but in Scottish law it would refer only to cases where the law has to be modified in a very narrow, consequential way in relation to reserved matters, and not in the very broad sense that it is being attempted to include in the Bill. That is the central problem.

This morning, the right hon. Member for Clwyd West kept asking, "What do you replace necessity with?" It is true that we could use a different word. We could use "reasonable" or "sufficient" if we wanted to, but none of that would deal with the basic problem, which is that that would ultimately have to be a subject of interpretation by the judiciary. The real problem is that the Secretary of State has to revisit the framework in which the necessity test arises; it has to be about the overall framework.

I practised in the courts in England and Wales for many years, and one problem is that the necessity test could end up before the criminal courts and the civil courts on a daily basis. That is what the Law Society of England and Wales has said about the extraordinary worry that there is about the Wales Bill. We could have the law being challenged on an almost daily basis, which certainly cannot be what the Secretary of State intends.

Further to those confusions, David Melding AM—my new favourite Conservative—said on 13 January:

"Judicial review could become, if not the norm, then far from the exception. Welsh legislation would be drafted in an atmosphere of profound uncertainty, which itself would curtail its scope and ambition. Taken to extremes, the very exercise of the legislative function could be compromised."

[Nick Thomas-Symonds]

My hon. Friend the shadow Secretary of State also referred to that pretty stinging criticism. With all this stuff floating around, I certainly would not mind being a fly on the wall at the next meeting between the Conservative AMs and MPs.

The Secretary of State now has an opportunity to take another look at the Bill. He has previously said, and I take him at his word, that he is in listening mode. I hope that he is still in listening mode and that he is willing to go back and look at the Bill. The organic growth of devolution went from the Government of Wales Act 1998 to the 2006 Act and the referendum, and we are moving another step forward on the journey. We certainly do not want—to change the metaphor—the devolution car to go into reverse. Since the first Welsh Secretary of State took office in 1964, he is the only one under whose tenure the powers of Welsh Members of Parliament have been taken away. Not one of the previous Secretaries of State—

Stephen Crabb: Nonsense.

Nick Thomas-Symonds: Well, find me an example under a previous Secretary of State of English votes for English laws. You will not find one. Secretary of State, do not make a disastrous devolution Bill your second contribution to history.

2.16 pm

Dr James Davies (Vale of Clwyd) (Con): It is a pleasure to serve under your chairmanship, Mr Hanson, as it is to speak in my first Welsh Grand Committee since being elected in May. I am a member of the Welsh Affairs Committee and we have all enjoyed the pre-legislative scrutiny over recent weeks, so I do not intend to speak at length about the issues covered by the Committee, but I do have a few points to make.

The Bill's key feature is delivering a reserved powers model, in theory to create additional clarity and reduce legal challenges, about which we have had some discussion today. We heard from a multitude of witnesses in our Select Committee and received conflicting legal advice from various quarters. I am a doctor, not a lawyer, but the list of reservations must as a starting point accurately reflect what the UK Government intended in their conferred model when the last piece of devolution legislation was passed. The length of the list is not what is important.

Elements of the draft Bill also constitute the delivery of further powers to Cardiff Bay, the basis for which is the St David's day agreement. For those of us in Wales who believe strongly in the United Kingdom, as I believe the vast majority do, the level of government where powers are based should be rooted in common sense and the potential to achieve the best outcomes for the people of Wales, not on the simple expectation of a continual one-way transfer of powers from Westminster to Cardiff.

The general public and, it is fair to say, many politicians are often unaware of where powers are currently held in Wales. We need greater clarity, which will help accountability. The best way of achieving clarity is to ensure, as I said, that constitutional decisions on devolution are based on a strong underlying rationale. The draft Bill contains a few examples of new powers arising from the St David's day agreement of which I would urge further study.

The first is fracking. It is proposed to devolve the licensing powers of the Oil and Gas Authority to the Assembly, but not the licensing powers of the Coal Authority. That is interesting because the Coal Authority licenses underground coal gasification, which, as you will know, Mr Hanson, is the type of unconventional gas extraction of most interest to our part of north Wales. In my opinion, energy production and security is best managed at a UK level, but I am led to believe that some of the decisions made in the St David's day agreement might have been based more on what was in the headlines at the time, and prominent issues of the day, than on the overall picture.

The second issue is speed limits. Local authorities and the Assembly Government control the speed limits that are put in place to increase safety. Unless I am mistaken, what is suggested now is the devolution of the national limits—in other words, the largely un-signposted 30 mph limit in built-up areas, the 60 mph limit and the motorway limit of 70 mph. As we all know, many roads cross the England-Wales border; in fact, people often have no notification that they are moving from England to Wales or vice versa, so is the proposal workable? Is it in any way desirable? Are the cars in use in Wales or the safety of the roads so significantly different that there should be a different policy on a national speed limit? I very much doubt it, and I think the issue should remain reserved. If the powers will not be used anyway, why on earth would we want to devolve them?

The third issue to mention is voting systems. I have no issue with the Assembly having a greater say over its voting system, but do we want confused voters to be faced with a second set of electoral boundaries, a different voting age and so forth? I come back to accountability—there is a risk that politicians will become less accountable.

We have heard voices advocating more separatism in this debate, and that does not reflect the views that I hear in my part of Wales. People are concerned about the success of the local economy and the quality of local services. When services have been devolved, such as in the health service and education, there is often great concern about their performance in Wales.

Jonathan Edwards (Carmarthen East and Dinefwr) (PC): My position is that Wales should be an independent country. Is the hon. Gentleman's position that the National Assembly should be scrapped?

Dr Davies: I respect the view of the people of Wales. I was too young to vote in the devolution referendum, but I would not have supported devolution had I had that choice.

Jonathan Edwards: In 2011?

Dr Davies: No, when the Assembly was first formed.

Local people want to see true devolution to localities, as the UK Government are pursuing, for instance the devolution of business rates in England and planning powers over many offshore wind farms. Sadly, in Wales, all too often we see the centralisation of powers in Cardiff. I urge both the UK and Welsh Governments to devolve to local communities in Wales, and particularly north Wales. They need to empower local authorities and others in north Wales to pursue the issues that are particular to the region, which largely relate to our strong links to the north-west of England.

There is, of course, an economic sub-region spanning north Wales and north-west England, with 50,000 cross-border commutes daily, equating to about 1 million a month. Earlier today I met the North Wales Business Council, which emphasised the need for the North Wales Economic Ambition Board to be allowed to develop into a body with powers analogous to a local enterprise partnership. That would assist the development of a much needed growth deal in partnership with the Cheshire and Warrington LEP.

North Wales clearly has a key opportunity to be part of the northern powerhouse, especially through the upgrading of transport infrastructure. That would be an important way to address deprivation and unemployment in my part of the world. Parts of north Wales have untapped workforce availability, and therefore, an associated cost to the taxpayer through out-of-work benefits. Better links would help the strategic and united growth of the north Wales and north-west region, and the political barriers that have developed post-devolution could be addressed through true devolution—not along the M4 to a very distant Cardiff, but out to the communities of Wales.

2.23 pm

Mr Mark Williams (Ceredigion) (LD): It is a privilege to serve under your chairmanship this afternoon, Mr Hanson. Whether you are calling me to speak from the Liberal Democrat Front Bench or the Liberal Democrat Back Bench, I do not suppose it matters much these days—[*Interruption.*] It is a Bench, that's right.

It is a great pleasure to follow the hon. Member for Vale of Clwyd. He used the word “enjoy” liberally as he reflected on our deliberations and pre-legislative scrutiny in the Welsh Affairs Committee. With no disrespect to our Chairman over there—the hon. Member for Monmouth—it has not exactly been enjoyable, but none the less, the process we have been undertaking is incredibly worthwhile and important.

To respond to a point made by the hon. Member for Vale of Clwyd, is the draft Wales Bill the great talking point in the aisles of Morrisons in Aberystwyth or in the mart in Tregaron? I suspect not. However, the heart of our democracy involves clarity and coherence. People need to know who to go to—whether it is their Assembly Member or Member of Parliament—and what powers such people have. The Secretary of State is right to seek a much clearer devolution settlement through the Bill, and, on those grounds alone it is important that it proceeds.

Many of the points that have been made today are ones that I and my colleagues in the Welsh Assembly have made since the draft Bill was published. There are genuine concerns about the Bill, and the Secretary of State has been big enough and realistic enough to acknowledge that there are challenges. It is a draft Bill, and as part of the process we want it to morph into something more substantive. We will have Second Reading in the Chamber to address many of our concerns.

The draft Bill has a fair number of Liberal fingerprints on it. Its origins were in the coalition Government with the creation of the Silk Commission I and II, the referendum and the St David's day agreement. I was privileged to be part of those discussions. However, it would be difficult for me as a Liberal Democrat to support the draft Bill. We are where we are and part of the process of pre-legislative scrutiny is to seek remedies

to the problems and for the Secretary of State to listen to the overwhelming evidence that expresses those concerns, which has certainly been heard by the Select Committee.

The Secretary of State candidly talked about his history, and his journey to being a devo-pragmatist. I, too, remember those early days on the Select Committee when he did not always have the views he has now. I celebrate that movement towards devolution, whatever the motivation behind it. He has given us a challenge to get a Bill that is right.

As the Select Committee deliberated, it was sometimes quite hard. We had discussions about what really underpins the Bill. Is it an attempt to remedy a failing system based on existing legislation? The right hon. Member for Clwyd West described it as a “bolt-on” and I think he is right in that analysis. It is certainly there to alleviate problems. Is it simply seeking to import a model from Scotland? Maybe parts of it, yes, and there are failings there, because Scotland has a very different system from what we need and require in Wales. If we could start again, I would like to see the principle of subsidiarity embedded in the legislation far more clearly: the notion that powers are best exercised at different levels of government, as close as possible to the people we serve.

The Secretary of State has wisely said that the list of reservations must be diminished, and diminished it must be. I will quickly go through the list of issues controlled by London, not all 267 of them, I hasten to add: hovercraft; knives; pedlars and street trading; dangerous dogs; gender recognition; sports ground safety; driving instruction; auctions and mock auctions; hallmarking; gun-barrel proofing; regulation for the carriage of animals on aircraft; fire safety; pedestrian crossings; traffic signs; exemptions from speed limits; insurance of motor vehicles; coal; the sale and supply of alcohol; misuse or dealing in drugs or psychoactive substances; the classification of film and video recording; licensing and the provision of entertainment and late-night refreshment; betting, gaming and lotteries; Sunday trading; railway services; the Boundary Commission for Wales; the regulation of estate agents; timeshares and package travel and package holidays; the regulation of unsolicited goods and services and trading schemes; railway heritage.

Hon. Members: Hooray!

Mr David Jones: I do not know if the hon. Gentleman is suggesting that all those issues should be devolved to Wales. I notice he mentioned gender recognition. Would that mean that someone could be a man in England and a woman in Wales?

Mr Mark Williams: I thank the right hon. Gentleman, if only because he has given me a chance to catch my breath. Would seeing those powers controlled in Wales mean the unravelling of our constitution and the end of the Union? Should we have not started from the principle that what is devolved to Scotland and Northern Ireland should be devolved to Wales? Better still, if one believes in subsidiarity, should we have not started with the principle that all powers are devolved, and it is for the Secretary of State and Westminster to argue the case for reserving them to Westminster?

However, we are where we are and we have this Bill. The hon. Member for Wrexham, who is not in his place, talked about the need for a constitutional convention and the right hon. Member for Clwyd West said he was

[*Mr Mark Williams*]

open to the case for that. He described the Bill as a “bolt-on”. That and the devolutionary drift in other parts of the UK points to the need to look at such matters in the round. My party has always believed in a federal Britain, with home rule for Wales, and we need a constitutional convention to look into that.

Some have asserted that there should be a pause and, on balance, I agree. Too many concerns have been expressed, as the Select Committee will reveal at some point in the future. The question is: how much of a pause should there be? If a pause means that we lose a legislative slot for the Wales Bill to carry forward devolution, I would be immensely concerned. However, the issues on which the Secretary of State has openly reflected, such as looking again at the necessity test, or whatever form of words we use for that, ministerial consents and the scale of the list of reservations, are a big body of work that needs to be done urgently.

I would not say that the Secretary of State was disdainful when I talked about the need for robust dialogue with Assembly colleagues, but that dialogue needs to happen. I was privy to discussions between Westminster MPs representing the four parties and our Assembly colleagues and given the level of concern expressed since the draft Bill was published, that needs addressing. There are rumours of delays to the suspected date of Second Reading. I do not expect to get a date at the end of the Committee, but we need to be mindful of that and of the work that needs to be done.

The Secretary of State said that he wants the matters to be settled. The issue of a distinct jurisdiction has gained much traction in discussions, with various questions fired around the Committee today asking people to define what that means. I am not a lawyer—perhaps that is obvious—so I cannot give that definition.

Craig Williams (Cardiff North) (Con): Will the hon. Gentleman give way?

Mr Mark Williams: I will carry on. I hope that the hon. Gentleman will forgive me.

Craig Williams: I hope he answers my question anyway.

Mr Mark Williams: I know his question, but I am not going to give him an answer because he tried it on the hon. Member for Llanelli. A debate is going on about the question of a distinct—not separate—jurisdiction. The genie is out of the bottle and if the Secretary of State wants a resolution—I know he is sincere about that—that issue must be addressed and I think it should be addressed in the Bill.

Sir Paul Silk said that politicians should be open to a review between the Assembly Government and the Westminster Government and a time period of 10 years was referred to, which is probably too long, given the debate that we have had. That issue will not go away. Hon. Members still here in a few years’ time—I hope to be—will have to revisit the Welsh jurisdiction issue unless it is dealt with soon.

Stephen Crabb: The hon. Gentleman is making a good speech. I urge a bit of caution in the discussion about distinct and separate jurisdiction, because I fear

that history is slightly repeating itself. Two or three years ago in Welsh Grand Committee and on the Floor of the House people were saying, “We need the reserved powers model,” but simply to say that we will move to a distinct jurisdiction would not tackle the problems of the complexities of consenting that we have been talking about. It does not tackle the complexities around the spillover effects of the Welsh Government making law that affects reserved matters or has an impact in England. All those really difficult and contentious issues still need to be addressed, whether we are maintaining the joint jurisdiction or somehow moving to a distinct or separate jurisdiction.

Mr Mark Williams: Of course, the Secretary of State is right. That is the difference between the draft Bill and the final Bill that he will present before us in due course. He partially answers my point. He is right that three or four years ago people were talking about a reserved system. That is what is being proposed now. My point is that unless the issue of a distinct jurisdiction is dealt with, he or his successors will have to deal with it in a few years’ time.

I will end in the same way as the hon. Member for Dwyfor Meirionnydd, my neighbour in west Wales, ended her speech. I want to vote for the Bill. I want the march to devolution—in my party’s case, to home rule—to continue. I want to vote for the Bill on Second Reading, but I can only do so if certain changes are made. The Secretary of State is making very encouraging noises about listening to people. He needs to address the concerns that we and others in Wales right across the board in civil society, as well as our colleagues in the National Assembly, have raised. He needs to make those changes.

2.36 pm

Glyn Davies (Montgomeryshire) (Con): I apologise for not having been here for the opening speech today, Mr Hanson. It was impossible for me to be here. It is a pleasure to serve under your chairmanship and to follow a very thoughtful speech by the hon. Member for Ceredigion.

I congratulate the Secretary of State on the draft Bill. We need change and reform, and publishing the Bill in draft form gives us the opportunity to comment on it and to speak as we are speaking today in this forum and as we have been able to speak for some time, and to give other organisations a chance to comment on it. For the main Bill then to be brought forward taking into account what everybody has said is a very good way to proceed.

We all have the same objective: we all want a stronger, fairer, more stable devolution settlement. In 1997, I was not in favour of establishing the National Assembly for Wales—I campaigned and voted against it. But when such a body is established, the purpose of a party is to do everything possible to make it successful. The steps we have taken since then have been steps on the road to make it successful, but there is one more step to take, and I congratulate the Secretary of State on delivering that.

We have looked at broadcasting and I wanted to make the briefest of references to today’s S4C agreement, which is brilliant news, and to congratulate my hon. Friends the Members for Carmarthen West and South Pembrokeshire and for Aberconwy on the sterling work they put in. Though unsung, they were like a couple of Rottweilers.

I will move on to the subject under discussion. I want to speak in general terms, not on the details of the Bill, because it is a large Bill and some of the details will change, but on two hugely important issues. I want to speak positively about the Bill. Many of the comments I have heard have been quite negative. Some people have been quite negative about the Bill today, without saying what should go in its place. I thought the presentation of the report from academics and constitutional experts that came out this week was incredibly negative and was not at all helpful. I have massive respect for a member of the group who talked about the recommendation that Assembly Members should not approve the Bill because there had been absolutely no change from the draft Bill, but that will not be the position. It provided a meaningless headline and gave a negative feel to the response to the Bill, when it is something that we can all build on and make something we want of it. I think the negative response was a mistake.

I want to touch on two major changes. The first is the move from a conferred model to a reserved powers model. That was never going to be easy. I have always favoured it since the Assembly were established. During my period in the Assembly as chairman of the legislative Committee, I always thought a reserved model was right. But it is a hugely difficult step to take. Not only that, it will not remove the legal arguments about what is devolved and what is not—those will continue—but I think it is the right step to take.

A list has been produced, which has caused a great deal of entertainment and amusement as people list what seems inappropriate, but the Secretary of State has made it clear to me that he will look at this list and we will have a different list. So it may cause amusement to talk about unlikely things that should be reserved, but we should not set aside how important it is to move to a reserved powers model. It changes the nature of devolution, it is the biggest step in the Bill and we should welcome it and congratulate the Secretary of State on bringing it forward. It should have been there in the beginning.

The second big issue is income tax powers. There are divisions over this issue, of course, even on my side. I remember speaking in favour of income tax powers in the main Chamber, when there had been no referendum. I felt I was alone at the time, but I must say that that has changed. I thought that a referendum was no more, in many people's minds, than a blocking mechanism. I suspect that my friends on the Opposition Benches will do everything they can to avoid having the financial responsibility that comes with income tax powers. A Parliament does not grow up until it is responsible for both sides of the ledger—what it spends on the one hand and what it raises on the other. If we had a referendum on that, the arguments would be completely different—it would be simply a blocking mechanism.

The Bill is an incredibly courageous step by the Secretary of State to introduce the change that is desperately needed to make devolution grow up and become a proper Parliament, which is what it should be, and give the people that chance. The people voted for us knowing that that was the position, and we should go forward and include it in the Bill.

The background to where we are has for ages been the Barnett formula. Again, I do not want just to pass by on the Barnett formula. For ages, that dominated

discussion: in a debate like this, it was all that was talked about. What we now find is that Government spending in Wales has reached a level that the Barnett formula would deliver, so it is not an issue. We should congratulate the Government on funding Wales and continuing that funding throughout this Parliament at a level that meets the requirements that critics have argued for over many years. It is a major step forward.

Another background issue is the debate about the police. It is recommended that policing should be devolved. I am not against that—I never have been—but it has to be on the basis of an understanding that policing will be improved. We could be satisfied if policing would be improved, but I do not think we have ever seen that. Policing is something that is a bit different; we should look not just at the devolution aspect, but at how effective it is. If policing can be devolved and be as effective as it is now, it is something that a lot of us could live with.

The point is that no one will agree with everything in a draft Wales Bill—dispute and disagreement will inevitably occur. I am going to have to bite the bullet of devolving greater energy powers, knowing full well that the present Welsh Government are intent on granting permissions that will destroy mid-Wales. That is what they want to do. Also, it is a hugely centralising Government. Only last week they took power to themselves to deal with energy projects over 10 MW: those are small energy powers but the Welsh Government want to take them. It is an anti-localism strategy and I very much hope that leaving power to the people becomes a feature of the debate in the Welsh Assembly election.

Devolution is not just about transferring power to Cardiff, it is about transferring power to the people, and the Welsh Government are accumulating power to themselves every chance they get. There is a lot of talk about wanting a pause. I am sure that the Secretary of State will consider that we do not want a pause just because it is too difficult to confront. A pause has to be for a genuine reason, not because there are some tough decisions to take before an election so you pause to avoid taking them. That is just not good enough.

There is much talk about a constitutional convention. That may well be sensible, but I cannot help but feel that my Opposition friends are very keen on a constitutional convention because it is the ultimate in long grass—they think, “We will not have to take any of these decisions; we can just talk about them forever and a day.”

2.45 pm

Carolyn Harris (Swansea East) (Lab): May I say what a pleasure it is to serve under your excellent stewardship for the second time this week, Mr Hanson, for my very first Welsh Grand Committee?

As members of the party that was the architect of devolution, my colleagues and I would naturally support a Bill that moved to elevate the Assembly to a reserved powers model, but the draft Bill we have been presented with is, in reality, an instrument to roll back the powers of the Assembly and make its ability to govern effectively restrictive and cumbersome.

As a member of the Welsh Affairs Committee, I have spent many long hours pondering the Bill and hearing substantial evidence on it. The conclusion I have reached is that the Bill is, at best, fragmented, patchwork and arguably a complete shambles. Throughout the evidence

[Carolyn Harris]

sessions of the Committee, we repeatedly heard widespread condemnation of the draft Bill from the legal profession and noted academics. We read in the press that there has also been condemnation from within the Conservative party itself.

I will touch on two areas today: energy and the necessity test. I welcome the initiative to allow the Welsh Assembly to have authority over onshore oil and gas extraction, including fracking. I also welcome the move to allow the Welsh Assembly to grant planning consent for energy projects of a capacity of up to 350 MW. However, I am sure that large renewable investors in Wales will be disappointed with that limit.

It could be argued that if the renewables industry in Wales is to survive, companies need to be confident that they have a guaranteed price for energy—a so-called subsidy-free contract for difference. They need confidence in planning decisions for both developments and the associated grid, so the draft Wales Bill should allow planning decisions on both those things to be made in Cardiff, not in Westminster. The renewable energy industry needs that boost; it needs the confidence to allow it to continue to attract investors.

Craig Williams: Does the hon. Lady welcome, in the spirit of the Bill and localism, the fact that the power she succinctly puts forward is coming to local authorities in Wales through the Energy Bill? Local authorities will be able to grant that power.

Carolyn Harris: I can only speak for those in the industry who have lobbied me, who feel that the Wales Bill will give them no confidence to attract investors. The current provisions are not sufficient.

The Government of Wales Act 2006, which governs how the Assembly currently operates, contains basic tests that the Assembly must meet before it can legislate. However, the draft Bill increases the number of tests from nine to 13. The Assembly's own Presiding Officer and others have pointed out that that will make the work of the Assembly far more complicated.

There is much controversy around the necessity test. The remit of the test is that the Assembly must be convinced the Act to be passed is necessary. The draft Wales Bill is littered with references to the necessity test. For example, the Welsh Assembly will only be able to modify the law if it is convinced that that will have "no greater effect on the general application of the private...law than is necessary".

Even "necessity" has various definitions. The Assembly's director of legal services agreed with that point and referred to necessity's several different meanings in law. As a consequence, more cases could end up in the Supreme Court to decide what necessity means in each particular context. That will only cause confusion, slow down the Assembly's work and ultimately cost the taxpayer significant money.

The Law Society of England and Wales, as my hon. Friend the Member for Torfaen mentioned, also warned that the necessity tests are drafted in such a way that they could be challenged in the course of ordinary civil or criminal cases. Surely the Assembly, as an elected body, should be allowed to make decisions on the policy areas that are devolved to it. There should be no demand

on it to justify a policy it wants to implement as necessary. It would be in the interests of all if the necessity test were entirely removed from the Wales Bill.

I would like to thank the Secretary of State and his officials for all their hard work but I suggest they go away, sleep on it and come back with a completely different draft Bill.

2.50 pm

Craig Williams: May I say what a pleasure it is to serve under your chairmanship, Mr Hanson, and to take part in my first Welsh Grand Committee? I would say that I will be brief, but along with many words we have spoken today, it seems that in the Grand Committee, the word "brief" does not quite mean what I thought it did. I hope to contain my remarks.

As a Member of the Welsh Affairs Committee, I would like to pay tribute to our Chairman. He has brought Members within and across parties together on many of these issues.

My hon. Friend the Member for Swansea East is the only Member I know who could get away with claiming the architecture of devolution and then go on in the same breath to complain how complex it is. It amuses me no end but she carried it off with her usual charm.

I support the process in which the Bill has come forward. I had to pinch myself on a couple of occasions during the debate to remind myself that we are discussing the draft Bill. We are not discussing the end Bill, which I am sure will dominate the Welsh Affairs Committee and the normal legislative process in the House once we get it. This is a draft Bill and that is the way I have approached it, with the constructive criticism that a lot of people from all parties have brought to the Wales Office. It is not just that. It seems to have taken Welsh academia and the Welsh Governance Centre by surprise that we are talking about constitutional issues and are again seeking to empower Wales a little bit more.

I was 12 years old at the time of the 1997 referendum and I have no doubt that when my grandchildren are 12 they will still be talking about a separate jurisdiction. The genie is out of the bottle. I pay tribute to the hon. Member for Dwyfor Meirionnydd for the way that she approaches the issue in a clear and concise manner, and I understand completely where Plaid Cymru comes from, although I disagree fundamentally with her on most of the points she has made in Committee and, more broadly, in the Chamber. We need to understand as Welsh politicians that it is okay to disagree and to disagree forever. I cannot see how we think we are all going to get round a table and finally agree forever on Welsh devolution. That is simply never going to happen and is an aspiration that none of us should share. As a proud Welshman and a Welsh MP, I love Committees. I love joining Committees, I love serving on Committees and I love setting up Committees. I just think we need to be mindful of this constitutional journey we are on. There will be no terminus, no end, but there will be significant movements, and this is one the most significant that I have seen and studied.

Of course, this is the beginning of the process and it is always interesting to hear calls for people to pause at the beginning of anything, but during this draft stage it is very welcome. I do accept the premise of my right hon. Friend the Member for Clwyd West about the piecemeal

nature of devolution. Is it where we want to be? I do not think so; it is not where I want to be as a proud Welshman in terms of protecting the Union forever. The United Kingdom has a glorious unwritten constitution which has worked for a couple of years, and I suppose we are just seeing the nations in this Union coming together now and stapling. I recognise where the constant call is coming from with Plaid Cymru but I am bemused and confused at the noises—

Stephen Kinnock (Aberavon) (Lab): I am very interested in the hon. Gentleman's comment about being uncomfortable with the piecemeal nature of devolution. He must surely then support the idea of constitutional convention.

Craig Williams: I do not at this moment. I can see the argument for looking holistically at the Union, at the four nations and how to draw this together within our glorious unwritten constitution, but the political calls for that being made at the moment are tied to the Bill and efforts to pause it, and not for good reasons. I understand the broader opinion about protecting the Union—I take it that the hon. Gentleman is a proud Unionist, as I am—but I do not accept that we should link that to the Bill and further powers for Wales. This is an important juncture for Welsh politics and the Assembly, and we should crack on and take a pragmatic approach.

The Wales Governance Centre and academia have commented on the Bill, but what are we going to do as a nation if we cannot draw together? It seems to me that the Government come up with ideas, happily produce them for public scrutiny, take it all on the chin, then everyone reacts. There is never a response along the lines of, "This is what we as a Welsh nation, academics and legal experts have come up with after consideration." It should not take anyone by surprise that we are in this position. The onus is on those people to come up with more practical solutions—or just some solutions, not constant entirely negative feedback.

Briefly—I have fallen into my own trap straightaway, as I am not very brief—in this regard, my Labour fan, since we are picking fans from alternative parties, is Lord Morris of Aberavon. His clear view on the single jurisdiction is out there. The starkness of what the First Minister has said—and is saying—is not apparent to me. I do not know why we keep referring to the single jurisdiction. What does the shadow Secretary of State mean by "distinct jurisdiction"? I did not get clear and concise answer—she requested one from the Secretary of State—and I am more than happy to give way if she has come up with a meaning.

That is the nub of the issue. What on earth is a distinct jurisdiction? If it is a different jurisdiction, we have that in housing in Wales. The Assembly has cracked on and, in layman's terms, we have a distinct jurisdiction on housing law as it comes through the Assembly and as it develops. We are talking about only 3% of UK—England and Wales—laws; 3% are effected by the Assembly. Why on earth are we looking at getting that 97% down to the Assembly? It simply does not make sense to think about a separate jurisdiction, and it does not make sense to go for a distinct jurisdiction. It sounds like a political soundbite in the run-up to the Assembly elections. I get the political sentiment behind the proposal, but I do not get any sense of a legal rationale.

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): Have we not been told that we cannot even consider a distinct legal jurisdiction? We have not even got to the position where we discuss maturely what this actually means. That surely is something that we should look at and go into greater detail, but we have not had the room to discuss it properly.

Craig Williams: I have never known Plaid Cymru to wait for permission to discuss or look at something. If the hon. Lady is suggesting that she should seek our permission before exploring anything, I welcome that due deference, but I do not think that that is the case. If someone had a clear definition of "distinct jurisdiction" it would have been published and it would be out there. There would be a clear answer, but no one in the Committee can answer the question of what a distinct jurisdiction is.

Liz Saville Roberts: To be fair, there are three models in the Bill.

Craig Williams: At least. The hon. Lady emphasises my point for me. She is asking for clarity in the draft Bill, and this is the panacea that people come up with. There are already three models. If we want clarity, "distinct jurisdiction" does not solve the problem. I think that in many areas of law Wales already has it, so I do not see why we need to make reference beyond this practical solution. I accept what the Secretary of State said about protocol and looking at the way in which our legal system operates. That is a separate issue—a distinct issue—from what we are talking about, but there is bit of maturity in Welsh politics and where the Assembly is at. We should recognise that it now has the power to effect laws, and it has, for the sake of argument, a distinct jurisdiction, but I still hold my hands up, as I have no idea what that means.

On reserved matters, we have seen some welcome movement by the Secretary of State and the Wales Office, but I see the complications. Space is an obvious one. Why on earth is that in the Bill? I wholly welcome the spaceport—it should of course go to north Wales. The industry, the sector and the technology are developing and they need to be future-proofed. The Bill should be future-proofed, and space should be a reserved matter—but we could argue at length about hovercraft.

To conclude, there is a clash between political reality and academia. I find completely bemusing the emotive terms that some academics and Welsh politicians have used when discussing the Bill. I can see how people can get emotional about a Commonwealth games bid from Wales and about the city deal for Cardiff and the transformational effect on south Wales, but I cannot see how people can get so emotive about the deep constitutional debates that we are having at the moment. Of course, the onus is on us to get excited about it, because if we do not get excited, I do not think anyone in Morrisons in Aberystwyth, or in Tesco or Asda in Cardiff, will be getting excited at all. I call for a mature, pragmatic approach to the Bill, which is a huge step for Wales. I welcome the responsibility that the Bill would bring to Wales with income tax devolution—true responsibility for the Welsh Government.

3.1 pm

Stephen Kinnock (Aberavon) (Lab): It is pleasure to serve under your chairmanship, Mr Hanson. It is also a pleasure to participate in my first Welsh Grand Committee.

[Stephen Kinnoek]

I want to engage in a spirit of pragmatism and problem solving, which is needed particularly when we are dealing with what are often relatively technical issues. To an extent, there is an opportunity to take some of the politics out of this and to adopt a positive, problem-solving approach, and it is in that spirit that I make my speech. I also defer to colleagues who have been involved for far longer than I in some of these areas, so I am not going to dive down into the weeds of some of the issues.

The benefit of being a relative newcomer is that one is perhaps more able to apply a common-sense test, and that is where the red lights start to flash for me. I see a real risk of what I would call constitutional red tape. I know that the Conservative party is a great enemy of red tape and is passionately committed to removing it whenever it possibly can, so let us examine some of the red tape of the Bill, which contains a 34-page list of 267 powers. I feel convinced that if someone in the Department for Business, Innovation and Skills came forward with a new proposal for regulating business in this country and it consisted of 34 pages of 267 new sets of regulations, the Secretary of State for Wales would be jumping up and down and ringing alarm bells. The Bill really does not pass the test for which we are looking: streamlined, well co-ordinated, smooth and effective government.

Jo Stevens (Cardiff Central) (Lab): Never mind our test, that clearly fails the test of the Secretary of State for Business, Innovation and Skills of one rule in, two rules out.

Stephen Kinnoek: I agree absolutely with my hon. Friend. It is an issue of clarity, common sense and making progress. The message that the Secretary of State for Wales has received from both sides of the Committee, and from our very own favourite AM, Mr David Melding, will be heard loud and clear. The critical point is to ensure that the Bill is not made in London, but is developed in collaboration with Wales. I welcome all the feedback that has been given today.

The lack of clarity also means that we run the risk of the Bill being questioned from the point of view of politicising the approach. For example, clauses 13 to 16 state that Westminster will retain control of ports with a turnover of £14.3 million. Lo and behold, that means that Milford Haven would remain under UK Government control. To my knowledge, the Secretary of the State has not made it entirely clear—it is not clear from the Bill—why it is necessary for Milford Haven to remain under Westminster's jurisdiction. I am sure that the right hon. Gentleman would want to make that clear in the Bill and to dismiss any damaging speculation that it might be because the Government are preparing to privatise the port.

Stephen Crabb: The hon. Gentleman is making a thoughtful and interesting speech. May I allay his fears on this point? One of the voices that has not had enough air time in this whole constitutional debate is that of the business community. However, on the issue of ports, and especially a large, strategic energy port such as Milford Haven, the voice of the business community came through loud and clear. This is entirely to do with UK strategic issues, despite any scaremongering that we might hear from the hon. Gentleman or his political colleagues regarding potential privatisation.

Stephen Kinnoek: I thank the Secretary of State for his intervention and welcome the clarity that it brings. I am trying to make a broader point: when there are gaps, loopholes or a lack of understanding, they open up the risk of speculation about the motives behind a policy. That is why clarity is so important and I cite that example simply to illustrate that risk.

The necessity test is another prime example of how the Bill risks creating uncertainty and ambiguity. We must take with the utmost seriousness the quote by our favourite Assembly Member, Mr David Melding, about the possibility of legislative gridlock, or the very basis of legislative function being compromised.

All hon. Members in the room will recognise the broader point that politics and politicians are not always and universally held in the highest regard by the public. Anything that looks as if it might mean more and more Committee meetings, more and more bureaucracy and more and more legislative ping-pong between Westminster and Cardiff has the potential to bring the Assembly and this place into disrepute. I am sure that all Members would not want that to happen. Although the hon. Member for Cardiff North has told us how much he enjoys sitting endlessly in Committees, I am sure that he agrees with that point.

My final specific concern is about ministerial consent and the risk that this process is seen as tantamount to an English veto. We must be absolutely clear that the direction of travel for devolution is more devolution and more decentralisation. The referendum in Wales in 2011 made that clear and we need to recognise the democratic voice of the people of Wales in that context. Anything that looks as if it may be a way—even through the back door—of pulling powers back from Cardiff to London must be treated very carefully indeed and could again create concerns, with some speculating about a possible hidden agenda.

I conclude with the broader point that I sympathise with the Secretary of State for Wales because I feel that he has been asked to take on the task of creating something that is very important, even though, as hon. Members have said, it might not be what gets the average constituent of Aberavon out of bed in the morning. It is very important because it is about saving the United Kingdom. I am proud to be Welsh and I am very, very proud to be British. I believe passionately in the integrity of the United Kingdom. In a rapidly globalising world, with huge challenges coming at us from all angles, the last thing that we should be doing is diminishing the role, power and influence of the United Kingdom on the global stage.

The draft Bill must be seen in that context. We are not talking in isolation about reserved powers, the necessity test and the question of distinct or separate. We are talking about the architecture of the United Kingdom. The debate around the Scottish referendum was, of course, very passionate, but it demonstrated that the constitutional foundations upon which this country is built are cracking beneath our feet. The main reason why they are cracking beneath our feet is because we have had this piecemeal, sticking-plaster, botch-it-and-scarper approach to building our constitution over the years. That is why we need a constitutional convention—so that the things we are discussing today can be discussed within a broader context.

I know that the Secretary of State for Wales is an avid fan of rugby, our favourite and national sport. In some ways, he has been asked to define the rules at the breakdown of the ruck without having any sense of the broader rules of the game of rugby—the offside rule, passing backwards, the knock on, or whatever it might be. So many issues are in the framework of what we are talking about today, and they are the broader debate within which this debate must exist. The result of a lack of clarity is the kind of constitutional red tape to which I referred.

In conclusion, this plea for a constitutional convention is not at all about what the hon. Member for Montgomeryshire, who is no longer in the room, said with regard to kicking this into the long grass. It is not at all about wanting a pause and a broader discussion because we do not want to take the hard decisions—quite the opposite. Labour Members want to take the hard decisions because we wish to save the integrity of the future of the United Kingdom. If we do not adopt the radical, bold solution of a constitutional convention that leads to a full—and, in my view, written—constitution, with a clear definition of powers that defines where the English regions fit in with Scotland, Wales and Northern Ireland, we will find, in 20 years, that this great United Kingdom will no longer exist.

3.12 pm

Byron Davies (Gower) (Con): It is a great privilege to serve under your chairmanship, Mr Hanson. I apologise that I am suffering from terrible flu at the moment, so I hope that you can hear me okay.

I was recently a Member of the National Assembly for Wales, of course, and I think I am unique among Welsh Conservatives here in having been a Member of the National Assembly for Wales and a Westminster MP. I have seen the Welsh Government working at first hand and I have several concerns about the way they operate.

My first concern is that while I get the fact that we need to have tax devolution, and that the Government need to show competence and to be answerable for the money that they raise and how they spend it, the Welsh Government in Cardiff Bay have recently overseen an appalling piece of financial mismanagement—the regeneration investment fund for Wales. Tens of millions of pounds are being wasted, so it is worrying to think that we will suddenly hand down to Wales tax-raising powers. There is a certain arrogance about the Welsh Government's response to the loss of those millions of pounds, so I am really concerned that, should we give them tax devolution and these tax-raising powers, they will follow the same sort of path. I cannot say how much I feel for the people of Wales if they are to suffer such mismanagement.

Stephen Crabb: My hon. Friend makes an important point. I understand his long-held, strong views about our being careful about devolving taxes to Cardiff Bay. He highlights the scandal of that sale of land and the loss to the taxpayer, but until and unless the Welsh Government become a more responsible body by being accountable for the money that they raise as well as how they spend it—as long as they carry on as a big spending Department—we will get more of these scandals and more of that careless use of public money.

Byron Davies: I understand the Secretary of State's point. We have to realise that the scandal, as he calls it, of the regeneration investment fund for Wales was examined by the Wales Audit Office, which produced a damning report, and by the Welsh Assembly's Public Accounts Committee, whose damning report was published only last week. I hope that I can have some faith in his suggestion that if we give the Welsh Government this responsibility, they will grow into a more responsible—

Mr David Jones: Does my hon. Friend agree that while it is all well and good to give the Assembly Government the responsibility for accounting for the money that they spend, tax-varying powers should not be conferred without the acquiescence of the Welsh people, as was the case with the Scottish people in 1997, and that therefore a referendum should be held on the issue?

Byron Davies: It is well known that I think that the people of Wales should have had a referendum on that issue, and it is in the public domain that I have made that known to the Government.

Jonathan Edwards: Since the hon. Gentleman has been elected, he has voted for the devolution of full income tax powers for Scotland and for devolving corporation tax in its entirety to Northern Ireland, so why is he so opposed to empowering the people of Wales with fiscal powers?

Byron Davies: I have just answered that point. After seeing at first hand the Welsh Government at work, I do not have faith in their competency—it is that simple.

My final point is about policing, an area in which I have some experience. I am delighted that we will not devolve policing to Wales, because it is a very complex matter. It is about complex intelligence systems and cross-border complexities. I have always been of the opinion that bigger is better in policing. I am in favour of regional policing and we need to consider that issue in another forum, but I am delighted that it is not being considered in the Bill.

3.17 pm

Gerald Jones (Merthyr Tydfil and Rhymney) (Lab): Last, but not least, Mr Hanson; it is a pleasure to serve under your chairmanship. This is a double pleasure because, as is the case for many other Members, this is the first Welsh Grand Committee that I have attended.

As other right hon. and hon. Members have said, the draft Bill does not have much support from academics, lawyers and even the Secretary of State's party colleagues in the Welsh Assembly. Indeed, many of those who have given evidence to the Welsh Affairs Committee have outlined concerns about the Bill, particularly regarding whether it takes us forward. As our party established the Welsh Assembly, Labour Members support the additional powers for Wales proposed in the Bill, but we have significant concerns about how the powers of the Assembly would be rolled back by its other provisions.

The Secretary of State says that he wants the Bill to provide a clear and lasting settlement, but I am deeply concerned that it would take devolution backwards and not provide anything like the stable solution that he is seeking. In fact, I agree with the view that the Bill may

[Gerald Jones]

be unworkable. We know that existing legislation sets out basic tests that the Assembly must meet before it can legislate—it must abide by EU law and the European convention on human rights. It is regrettable that the Bill increases the number of tests from nine to 13. It is clear to most people that that will make the work of the National Assembly more complicated and increase bureaucracy.

There is much wrong with the Bill, but I shall focus on the necessity tests. They appear throughout the Bill, but several legal experts have made the point that “necessity” has an array of different meanings in law. The unfortunate result of the necessity test would be that many more cases could end up in the Supreme Court to decide what “necessity” means. Clearly, that would slow down the Assembly’s work and would cost the taxpayer hugely. The reality would be the bizarre situation of the Supreme Court, rather than the elected National Assembly for Wales, deciding whether a law is necessary.

Chris Davies (Brecon and Radnorshire) (Con): Although I have missed some of this afternoon’s debate, for which I apologise, I have heard a lot about various legal jurisdictions—separate or whatever—and constant calls from Labour Members for a different jurisdiction. My hon. Friend the Member for Cardiff North, who has now disappeared from the room, spoke of how much time he has spent sitting in Committees, as have I. Those of us on the Select Committee heard from lawyers, academics and legal experts who constantly wanted a new jurisdiction in Wales, although they seem to be the only ones calling for it. We have heard from the Secretary of State that the senior legal people in this country do not recommend that. The general public in Aberavon and Brecon and Radnorshire do not want it, either.

The Chair: Order. The hon. Gentleman’s intervention is too long. He will have an opportunity to make a speech after Mr Jones has finished, should he so wish. Interventions should be short sentences.

Gerald Jones: I am not sure where the hon. Member for Brecon and Radnorshire was going with that. Clearly, we want a system that works and that provides a framework for moving the Assembly and devolution forward.

The Assembly’s Constitutional and Legislative Affairs Committee’s report on the draft Bill says:

“The necessity tests have elicited considerable reaction amongst those who have provided us with evidence and it is fair to say that these tests have received very little support.”

We should accept the principle that the Assembly should be able to legislate freely in the areas devolved to it without having to prove that its actions are necessary.

Stephen Crabb: There is nothing in the draft Bill that makes the Welsh Assembly consider whether legislating in a devolved area is necessary. This is about a spill-over effect in reserved areas impacting on England and the underlying principles of civil and criminal law. There is freedom to act as long as it can be satisfied that the impact is no greater than necessary. There is nothing about satisfying an overall test of whether legislating in a devolved area is necessary.

Gerald Jones: There are necessity tests throughout the Bill. Many existing Acts of the Assembly would not have been possible if the draft Bill had been in force. We should accept the principle that the Assembly should legislate freely in those areas that are devolved.

The Bill would be much easier to implement if the necessity test was taken out of it—I ask the Secretary of State to consider that—but, unfortunately, I am not filled with much confidence that that will happen. However, to be fair, the Secretary of State has indicated that this is a draft Bill and that he is listening to comments during pre-legislative scrutiny. After listening to the deliberations of not only the Welsh Affairs Committee, but those in all aspects of Welsh life, as my hon. Friend the Member for Llanelli mentioned, I hope that the Secretary of State will act accordingly.

3.24 pm

Hywel Williams (Arfon) (PC): It is a pleasure to serve under your chairmanship, Mr Hanson. I apologise to you and the Committee for my slightly late arrival; I was detained by the Prime Minister’s statement.

I thank the Secretary of State for allowing us this pre-legislative stage for discussion. The Bill has sparked some vigorous debates about what Wales’s constitutional position should look like, not just among politicians but in civil society, although possibly not for the people on the streets of Aberavon. I hope that we will have sufficient time to think about and discuss the draft and the responses to it, not least by bodies such as the Wales Governance Centre. I would like to thank the centre for its excellent and useful report that was launched in Parliament last night. I also look forward to the report by the Welsh Affairs Committee. The discussions will take place not only today and tomorrow, but through the next weeks and months, so that parliamentarians and, more importantly, the people of Wales can come to a considered view, not subject to the time constraints of a party or parties facing difficult Assembly elections.

While I am glad that legal issues around workability and drafting are under the spotlight before the Bill is published in full, we have not had adequate time to scrutinise in debate the policy areas in the list of reservations. Members have mentioned the lack of a guiding principle in the list, and that absence is fairly clear. As far as I know, little effort has been made to justify the reservations as a group and the principle behind them. However, they do need to be justified.

I will give a small and obscure example. Members will recall that this morning I asked the Secretary of State for the justification for retaining alcohol and entertainment licences, and I referred to schedule 1 referring to schedule 7A, and so on. I would like to tell the Committee a very brief story about the debates around the Licensing Act. At that time, a number of local licensees told me that they would like to apply for their licences in Welsh. I asked the Secretary of State for Culture, Media and Sport at the time whether application forms could be made available in Welsh. The Secretary of State, now safely ensconced in the upper echelons of the BBC—I think that is today’s equivalent of running away to sea—was embarrassed because he had no answer. He countered by offering me a meeting. At the meeting, I suggested the names of a number of translation companies, which could turn the forms around in a day. Inevitably, he said it was not as simple as that. It was

not a mere matter of translation. Eventually, Welsh forms turned up, some 18 months later, long after the aforementioned licensees had despaired, and had applied for and been granted the licences in English.

I doubt that the Cardiff Government would be remiss in the first place, but if they were, they would get their skates on. Yet now, apparently, alcohol and entertainment licences must be retained here, although licensing is a local authority function and local authorities work through the Welsh, not the UK, Government, in general. I do not why it is in the list unless it is because DCMS insists that it is.

When I asked the Secretary of State all those years ago why he had not ensured that Welsh forms were available, he eventually confessed that a mere 13 years after the advent of the Welsh Language Act 1993, after 13 years of apparently serving the people of Wales well, his Department—the Department for culture, for heaven's sake—still had no Welsh language plan. Is this the same Department that now insists that it retain the power over Welsh entertainment and alcohol licences, let alone S4C—I, of course, welcomed the announcement made today—or is the decision for our own Secretary of State?

There are many other points to be made. I will not repeat the words of my hon. Friend the Member for Dwyfor Meirionnydd about the true consensus that we achieved with Silk versus the Bill that is now before us, which has been called the lowest common denominator. However, I think it is clear that the erosion of the work of the Silk Commission has hampered the Secretary of State in his stated aim of achieving a long-term settlement.

Reference has been made to policing, and I note the concerns of the right hon. Member for Clwyd West. Policing was also referred to by the hon. Member for Montgomeryshire, who is no longer in his place. Policing is devolved in Scotland and in Northern Ireland, but it is reserved in Wales—I am not quite sure why. What makes it necessary to reserve policing in Wales when it is not necessary to do so elsewhere in the UK?

The hon. Member for Gower referred to the complexities of cross-border considerations. I just want to say that it would be for the Secretary of State to argue the case for reserving, and it is not for me to argue why that should not be. I would point out that the police forces themselves support the devolution of policing. The former chief constable of Gwent Police highlighted in her evidence to the Silk Commission the fact that the Home Office develops initiatives based on the English Partnerships landscape without considering the different landscapes in Wales. That intra-Wales issue could be addressed by the devolution of policing.

The crime priorities in Wales are different. England has a knife crime problem that has not affected Wales in the same way, but that dictates the priorities of the Welsh police forces regardless. Those police forces are unique within the UK because they are non-devolved bodies operating within a largely devolved public service landscape. In the usual way, it is a case of follow the money, and where does the money for the police come from? It tends to come, as we all know, from the Assembly itself.

The police are required to follow the agendas of two Governments—currently of a different political hue. To reserve policing prevents us from achieving greater clarity and efficiency by uniting devolved responsibilities such as community services, drugs prevention and safety

partnerships with those currently held by UK Government. In my view, that is linked to the question of legal jurisdiction. I will not rehearse the argument made by my hon. Friend the Member for Dwyfor Meirionnydd this morning, but the unified jurisdiction has been a block on progress.

I should like to consider briefly the reservations that we have about energy. Plaid Cymru compromised during the Silk Commission. We believe that full responsibility should be transferred to the Welsh Government, just as it is in Scotland, but in the interests of compromise, we agreed to support an arbitrary limit of 350 MW. We compromised on that in return for compromises elsewhere, but given that the report has been cherry-picked our compromise is now meaningless. We gave in, but we do not seem to be getting back. Under the current proposal, the Swansea bay tidal lagoon would fall within the remit of the National Assembly, but the proposed Cardiff and Colwyn bay lagoons would be a matter for this place.

Stephen Crabb: I find the point that the hon. Gentleman has made fascinating, because this is the first time that I have heard anyone who was involved with the Silk Commission describe a process of fudge and political compromise. I thought from previous contributions to the debate that the commission was characterised by high-minded principle, but the hon. Gentleman is saying that it was all a bunch of trade-offs to achieve consensus, which did not have the buy-in of Her Majesty's Government or of the official Opposition, so there was no great Silk consensus based on principle.

Hywel Williams: The principles of the Silk Commission and its recommendations are quite clear—further devolution—however, as the Secretary of State knows better than I, in the process of discussion people take positions on the basis of what is before them. We decided to compromise on our long-held belief that there should be no limits. There is an interesting case that illustrates why this might be so. In the village near the town where I live, near Caernarfon, there is a hydro-electric scheme. It was initially going to generate 49 MW, because at 50 MW it would have to come to the attention of the Department of Energy and Climate Change in Whitehall. When the limit was mooted to be 350 MW, the proposed capacity was immediately raised. What we have here is an example of legislation preventing economic development that we would all want to see—the production of green electricity—because of an arbitrary limit. That is one of the reasons why we did not want such an arbitrary limit, but it is now 350 MW, which we have agreed to.

I will not refer in any detail to the contribution of my hon. Friend the Member for Dwyfor Meirionnydd, excellent as it was. It was a model for first speeches in a Welsh Grand Committee and I am sure that it will repay close reading. She said that there was little shift in mentality. There has been a change, but not a change in the world view. We heard contributions from the hon. Members for Monmouth and for Wrexham, who discussed English votes for English laws. That is a problem. I raised a point of order in the Chamber when we were debating the student issue, asking how I would represent the thousands of English students who live in Bangor, many of whom voted for me, and who will be affected by that decision. They would be unrepresented, especially if the vote went a different way. That issue needs to be addressed.

[Hywel Williams]

I am suspicious about the suggestion from the hon. Member for Wrexham that we have a joint committee of Assembly Members and Members of Parliament, along with local councils in both Wales and in England. That would be a camel by design, but perhaps we could meet in Ludlow, as the Council of Wales and the Marches used to do. There are some excellent restaurants there, I am told, but even that could not attract me to the proposal.

The right hon. Member for Clwyd West said, quite rightly, that the powers model is not a panacea and needs to be discussed. I certainly agree about that. He did not believe, as I have said, that the Welsh Government should handle policing, and there is a debate to be had about that. The hon. Member for Torfaen made an interesting reference to horses—not camels—and he made a good point that there would be legal challenges daily, which is something that animates everyone on the Committee. We want a proper solution that would not be subject to the attention of the courts.

The hon. Member for Vale of Clwyd suggested that decisions made during the St David's day process were directed by what was in the press on that day. As a long-term politician, God forbid that we take any notice of the press at all. The hon. Member for Ceredigion said that clarity was at the heart of democracy, and I agree with him entirely, as I do on many matters. He also addressed the issue of a distinct jurisdiction. The hon. Member for Montgomeryshire decried the negative tone of the discussion. In last night's meeting to launch the report by the Welsh Governance Centre direct reference was made to the negative tone of the coverage of that report. Given that the press are not here, I might say that there was a direct reference to the *Western Mail's* completely negative coverage.

The Chair: Order. I am sorry to interrupt the hon. Gentleman. He will know that time is pressing, so I hope that he will conclude his speech shortly.

Hywel Williams: Thank you, Mr Hanson. I certainly needed that note of caution.

We heard contributions from the hon. Members for Swansea East, for Cardiff North, for Aberconwy, for Gower, and for Merthyr Tydfil and Rhymney, all of which will surely repay close attention.

Finally, there is a saying in Welsh, *tri chynnig i Gymro*—three chances or opportunities for a Welshman or, I might say, for a Welsh woman. Well, this is the fourth attempt at getting devolution right, and I am quite happy to allow a fifth. Wales must have an Assembly based on a fuller, clearer and more workable set of powers to make decisions for the people of Wales. The Secretary of State could call for a pause, and I think that I reflect the view of the Committee in saying that.

3.39 pm

Susan Elan Jones (Clwyd South) (Lab): It is a great pleasure to serve under your chairmanship, Mr Hanson.

It is fair to say that we have heard a range of insightful contributions from hon. Members, and it is quite clear that the Bill, as drafted, is flawed. All the contributions that we heard are worthy of serious consideration. The hon. Member for Dwyfor Meirionnydd spoke of the

Bill as a lawyers' playground, which is an alarming thought. The right hon. Member for Clwyd West decried the Bill's bolt-on approach and made some very serious points concerning the necessity test in schedule 2, describing it as a positive invitation to make more reference to the Supreme Court, which is very worrying. My hon. Friend the Member for Wrexham spoke in great detail about the whole dilemma of English votes for English laws, especially for Welsh Members of Parliament serving border constituencies. He also spoke of the need for a constitutional convention.

My hon. Friend the Member for Torfaen spoke of the many anomalies in the draft Bill, the possible dilemma concerning horses and the apparent threat to the United Kingdom. The hon. Member for Vale of Clwyd called for greater clarity about where powers are held. The last Liberal standing, the hon. Member for Ceredigion, spoke of the importance of clarity, of subsidiarity and, again, of the need for a constitutional convention. The hon. Member for Montgomeryshire, in a wide-ranging speech, urged the Secretary of State to look at a different list of reservations, but not, we hope, at more reservations.

My hon. Friend the Member for Swansea East, who serves on the Welsh Affairs Committee, spoke of many matters, including the necessity test. My hon. Friend the Member for Aberavon decried red tape—a view with which we would all agree—and spoke of many constitutional issues. The hon. Member for Gower requested fewer powers. My hon. Friend the Member for Merthyr Tydfil and Rhymney spoke of the fear of increased bureaucracy. The hon. Member for Cardiff North said that he was not excited about constitutional issues but volunteered to be on committees, which I think would make him an excellent representative, should we ever get to a constitutional convention. Finally, the Chair of the Welsh Affairs Committee, the hon. Member for Monmouth said that the idea that we can somehow scrap the Welsh Assembly is “long gone”, which I think, by his own standards, makes him *devo-philic*.

To be serious, however, today's debate has shown that the draft Bill is nowhere near commanding consensus. Before it was published there was cross-party agreement on the need to give greater powers to the Welsh Assembly. Indeed, before May's elections, all the main parties in Wales were agreed that we should move to a reserved powers model of devolution. As we have heard, the model proposed in this Bill is unclear, unworkable and unacceptable in that it rolls back the Assembly's powers. Many hon. Members have referred to the evidence of the Assembly's Constitutional and Legislative Affairs Committee. Its report is pretty incisive and damning, saying that

“the draft Bill neither meets the Secretary of State's aims of a stronger, clearer and fairer devolution settlement for Wales that will stand the test of time, nor the view expressed in his evidence to us that ‘the new reserved powers model provides the clarity the current model lacks.’”

The Bill seems to fail every test the Secretary of State has set. It will not make the settlement stronger because it takes power away from the Welsh Assembly.

As many witnesses said in their evidence to the Committee, this is a ridiculously long list of reservations that amounts to a power grab. It is pure Gilbert and Sullivan because they are on a list, and it would not be so bad if it were a little list, but it is ginormous: 34 pages of reservations and 267 separate powers. Therein lies

the problem. The Secretary of State failed to stand up to Departments to ensure a rational basis to the reservations. As a consequence, if the Bill were passed, the Assembly would end up with fewer powers than it currently has. The Bill will not make the settlement clearer either, because, as Members have highlighted today, the so-called necessity tests introduce serious complexity that could be resolved only by the Supreme Court. It would be time-consuming; it would be costly to the taxpayer, and it would lead to the unacceptable situation whereby judges, as opposed to the democratically elected Assembly Members, are deciding whether Acts of the Assembly are necessary. The tests amount to a significant roll-back of the Assembly's powers, and hardly anybody is prepared to defend them.

The Bill will not make the settlement fairer, for, as well as depriving the Assembly of many important powers that it already has, it introduces a wide-ranging English veto on Welsh laws. Ministers in Whitehall will be able to block legislation that they do not agree with, even if it relates only incidentally to a Minister of the Crown's powers.

The Bill as drafted will not stand the test of time. Indeed, it has not even stood up to the scrutiny we have given it today. We all agree that we need a lasting settlement that provides certainty about the Assembly's powers, but this is not it. The Bill is so fatally flawed that if it were passed in anything like its current form, there would undoubtedly be a need for another Bill in the very near future, which takes us back to "The Mikado".

Today's debate has not only highlighted the serious flaws in the Bill, but spelled out the changes that must be made for it have cross-party support—which is what we want—both here and in the Assembly. As my hon. Friend the shadow Secretary of State said this morning, we will not support the Bill unless it is radically amended. We cannot support it in its current form, because we believe in an Assembly with greater powers. Our party created the Welsh Office in the 1960s and established the Welsh Assembly and gave it greater powers through the 2006 Act, so we will not vote for a Bill that leaves the Assembly with fewer powers than it has at present. The people of Wales will not stand for that, and neither will we.

I thank everyone who has contributed to the debate.

Jonathan Edwards: I hope you will forgive me, Mr Hanson, but in my old age my approach to politics is getting cynical. I think that what really concerns the Labour party is not the roll-back of powers, but the possible inclusion of fiscal powers—income tax sharing powers—in the Bill. Will the hon. Lady make a commitment that, if the Secretary of State moves on some of the rolled-back powers, the Labour party will support a Wales Bill that proposes more fiscal powers for Wales?

Susan Elan Jones: Let me be clear: the Labour party in Wales has always supported a fair funding settlement for Wales. We will not settle for rhetoric—*[Interruption.]*

The Chair: Order.

Susan Elan Jones: We will not settle for rhetoric when what we want is fair funding for the people of Wales and proper funding for services. We will not vote for a Bill that leaves the Assembly with fewer powers than it has at present, because that is not acceptable.

Wrth orffen, hoffwn fynegi fy siom mai Saesneg yw'r unig iaith a ganiatawyd yn y Pwyllgor yma heddiw. In finishing, I would like to express my disappointment that English is still the only language permissible in this Committee. I have raised the issue with the Leader of the House and have written to the Chair of the Procedure Committee. It is not acceptable in this day and age, when Wales has two official languages, that we are allowed to use only the English language in our proceedings here.

3.48 pm

The Parliamentary Under-Secretary of State for Wales (Alun Cairns): Thank you, Mr Hanson, for chairing this Welsh Grand Committee so ably, and I echo the comments that have been made about Mr Owen, who chaired this morning's sitting. I thank right hon. and hon. Members for their contributions and for the largely positive way in which the debate has been conducted. We have had the odd tense moment, but there has been a remarkable change in the culture of the Welsh Grand Committee, certainly compared with some of the sittings I attended in the past.

As the Secretary of State said at the outset, we want a constructive debate about the draft Wales Bill, to inform the improvements we will make before the Bill is introduced. The Committee has certainly agreed about the principle involved, but there has been some disagreement about the detail and the wiring, to use a phrase used by the Secretary of State. That only underlines how complex and difficult this process is. Some of the suggestions we have heard—I will come to them in a moment—are flawed.

According to many members, the answer is to call for a constitutional convention. My hon. Friend the Member for Montgomeryshire said that that could well be a method of kicking the matter into the long grass. There is only one example in modern history of a convention or a commission to examine the UK settlement: the Kilbrandon Commission. It was set up by Harold Wilson in April 1969 and it reported in October 1973. It had 16 volumes, 10 research papers and it ended inconclusively. That is a warning that some hon. Members may wish to bear that in mind when they call for a constitutional convention. It does not address the fundamental issues that we are trying to resolve.

Stephen Kinnock: I agree that we cannot just press "pause" on the world and wait for a constitutional convention. However, there is no reason why such a convention could not be started while we deal with some of the urgent issues that need to be tackled. The argument that, because something may not have worked in the past, it should not be tried in the present is deeply reactionary. I hoped that a more progressive point of view would be expressed.

Alun Cairns: I am grateful for that point, which I accept in the spirit that the hon. Gentleman intended. I intended partly to give a light-hearted example of a constitutional convention, and partly to probe the motives of some who call for such a convention to ascertain whether they really want a Bill.

Mr David Jones: I fully appreciate my hon. Friend's point. We do not want a talking shop that goes on for years. I also understand his possible suspicion of Members of other parties, such as the First Minister of Wales. However, given that Lord Norton of Louth, who is a

[Mr David Jones]

well-respected Conservative peer, is calling for a constitutional convocation, should not the Wales Office at least consider that?

Alun Cairns: Certainly, the Wales Office and the Government will listen to all the points that are expressed, but I was merely highlighting the one example that we have in modern history of a constitutional convention and how complicated that became to give a context for the difficulty of trying to resolve some of those issues.

I remind people who have been extremely critical of the draft Bill, the St David's day agreement and the process that the Secretary of State undertook, of the Richard Commission and the amount of time that that spent, only to be rejected by the Government of the day. That left us with a complex situation and the LCO mechanism. How many of us remember how complicated that was, whether we were in the Assembly or in Westminster? It is therefore a bit rich for some people to suggest that there is a simple and straightforward way of resolving the issues. We are keen to listen to and develop the debate, and the draft Bill was published in that spirit.

To underline the points that were made at the outset, there is a lot of rhetoric and misunderstanding. Some comments that have been made in Committee are simply inaccurate. I will pick up on some of them shortly, including those made by the hon. Member for Clwyd South. The draft Bill is ambitious and extends significant amounts of new powers to the Assembly. Matters that have been raised—be it the necessity test or the consents—are not about limiting Assembly powers. There is no Machiavellian plot to clip the Assembly's wings. It is about giving the Assembly the powers, with two Governments that have responsibility for matters that relate to Wales: the legitimate Welsh Government, who will have legitimate powers over devolved matters, and the UK Government. Who knows? In the long-term future, there may be a Labour Administration, although I do not expect that to happen for at least another two or three general elections. However, in future, Opposition Members in this Committee Room, who may be Ministers in such an Administration, could be grateful for the powers that the Bill will grant to marry the interface between Wales and the UK Government.

Not unexpectedly, several Members raised the necessity test, and I will not have time to go round all those who mentioned it. Let me clear up the misunderstanding that exists. The necessity test applies only when the Assembly seeks to legislate in relation to England, in relation to reserved matters and in relation to underlying principles of criminal and private law. It has nothing to do with the Welsh Government legislating in Wales on a devolved matter. The necessity test is about when something touches reserved matters and matters that could be deemed to be the responsibility of the UK Government.

I will give a practical, straightforward example relating to the education of a child with special educational needs. If that child, from Wales, is being educated in a school in England, Estyn would naturally have the responsibility for inspecting the provision for that child in the school in England. It would not have the authority to close the school in England, because that would be a matter for the UK Government, but it would have the power to go to that school in England. The necessity test is about making the Welsh legislation effective when

it crosses the English border. That is one practical example: there are a whole host of higher education institutions that have bases in England. The necessity test is about making the Welsh legislation effective as it applies to England. That is the scope and the scale of the necessity test. It is about enforcing legislation made by the Assembly.

Nick Thomas-Symonds: Can the Minister confirm that that necessity test is taken from Scots law, where it is used in far narrower circumstances? Ministers are trying to massively broaden it in the Welsh context. Will he confirm that that is the case? Because it is.

Alun Cairns: I am grateful to the hon. Member for Torfaen. The reason I highlighted that practical example was to reject completely some of the accusations that have been made in a number of speeches about not granting the Welsh Government the powers to act in those devolved areas. The hon. Member for Torfaen made a point about legislation relating to horses. That is absolute nonsense as the Bill is drafted.

Nick Thomas-Symonds: Will the Minister give way?

Alun Cairns: I would like to give way, but in the limited time I have left I will not. I will happily write to the hon. Gentleman and share with any other interested hon. Member why the example relating to horses is not relevant. I apologise, but I have two minutes left and I want to talk very briefly about the "separate" and "distinct" jurisdictions.

The hon. Member for Dwyfor Meirionnydd came forward with the very practical suggestion of having the "distinct" jurisdiction governed by the geographical border. However, that in itself curtails the powers of the Assembly when it is enacting legislation in relation to England. That is an example of the complexity here: should we pursue the model presented by the hon. Member for Dwyfor Meirionnydd, we would roll back powers. This complexity explains why we are trying to tease out these issues, so that we can bring forward amendments that will work for Wales, but will also work for the UK Government.

In the minutes that remain, I want to talk about the Crown consents, the so-called English veto. I absolutely reject the accusations and the phrase. More than 50 legislative consent motions have been agreed between the UK Government and the Welsh Government over the past five years when the UK Government have touched devolved responsibilities. That is the responsibility of a mature Administration. If the Welsh Government want to act on non-devolved responsibilities, quite clearly a Crown consent would be the mature, natural approach to follow. If it works, and legislative consent motions have worked well over the past five years, in a mature debate, why cannot that work in the other way? The suggestions of rejecting and opposing them would be to grant the Welsh Government powers extending well beyond any other settlement. I do not think that that is what the Labour party wants and it is certainly not what the Conservative party wants. Plaid Cymru might want that, but it has a respected position, which is to seek independence. I do not think it is what the Labour party or the Government want.

The Chair: Order. Time has beaten us.

4 pm

Committee adjourned without Question put (Standing Order No. 116(5)).