Questions 275 - 292

Examination of Witnesses

Witnesses: Alun Ffred Jones AM, Chair of the Environment and Sustainability Committee, National Assembly for Wales, gave evidence.

[This evidence was taken by video conference]

Q275 Chair: (Translation): Thank you, Alun Ffred for coming today. Unfortunately, there is no simultaneous translation in Parliament, so we will take the evidence in English. (Continued in English) Thank you very much indeed for coming along today.

Craig Williams: Good afternoon, Alun Ffred. I know we are going to go into the details of your views on the extent of the reservations, but can I ask you, first, for your overall assessment of the draft Bill?

Alun Ffred Jones: The Secretary of State stated that the aim of the Bill is to provide clear and lasting devolution settlements. It would seem to me that it certainly falls well short of that because of the ambiguity and uncertainty that is created by certain sections of the Bill, and I think any level of uncertainty is bad for democracy. Democracy usually works best when it is simple to understand, and this Bill is certainly not easy to understand. That level of ambiguity certainly needs to be addressed. We are coming up to the Assembly elections next year, of course, and I think that this uncertainty about the powers of the Assembly has bedevilled devolution. One would have hoped that this Bill would produce a level of certainty around that, but I think there is a general view that it does not do that and does not accomplish what it set out to do. The proposed reductions in the powers that we currently hold is obviously very concerning to us as Members, and I am sure that you have heard that message before.
Q276 Craig Williams: Which specific powers are you referring to that you are going to lose and that you are concerned about?

Alun Ffred Jones: There are a number of areas. Do you want me to refer to those powers that are relevant to our Committee that have created certain tensions, shall we say? Obviously, there is welcome for those areas where there is an extension of the powers of the Assembly in terms of energy consenting, though there are issues around that as well that we may turn to, such as control of dogs and non-energy minerals. There is also an issue around marine licensing. There is obviously uncertainty around product standards, safety and liability, and intellectual property. Those are specific areas and we have written a letter to the Assembly’s CLA Committee, which will be producing a report later this week, I think. There are details in that letter that we could supply to you, although it is publicly available, about the specific concerns that have been expressed by the Committee. I could go into some details about some of those, but I do not know whether you want me to. If I may, perhaps I will look at energy, which is a good one.

Obviously, there is general agreement that some of the proposals around energy are to be welcomed, but there is an issue about the limit of 350 megawatts. This was, to be fair, included in the comments, of course, made by the commission, but the arguments proposed there were not very convincing about why there should be this 350 megawatt limit. If we take one example of the tidal lagoon in Swansea, that would fall within the powers of the Assembly because of its size and, therefore, it would be dealt with down here. But again, if, as is proposed, we go on with the proposal to carry out a tidal lagoon around the Cardiff bay area, which is larger, that would not be dealt with here in the Assembly. I think people in general will be very confused as to why the Government here would deal with one, but would not be dealing with another. That is one example of perhaps an arbitrary limit being proposed on the powers of the Assembly without proper justification for it. That is just one example.

Chair: Alun, if I may I will juggle the order of the questions around slightly because you have mentioned energy and two Members would like to ask about that.

Q277 Antoinette Sandbach: In relation to the 350 megawatt limit, as you will be aware, I think your current limit is 50 megawatts. Is that right?

Alun Ffred Jones: Yes.

Q278 Antoinette Sandbach: Yes, so it represents a substantial increase. Of course, you will be aware that your Committee produced a report on energy in this Assembly that indicated that there was a substantial backlog in energy applications in Wales and that there seemed to be some kind of capacity issue, even up to the 50 megawatt mark.

Alun Ffred Jones: I am not aware of the backlog, though if that refers to some of the wind farms on land, I do not think it is a capacity issue. Even if there was a capacity issue, I would still contend that the 350 megawatt limit seems to be arbitrary and that the Silk Commission itself, though it gives that as a proposed limit, does not really give convincing arguments as to why it should be. I come back to the example of the tidal lagoon in Swansea bay, which will be within the powers, if this is proposed, whereas the next one will not be.
Q279 Antoinette Sandbach: Can I ask if that is your personal view or whether that is the view of your Committee?

Alun Ffredd Jones: I am almost certain that it reflects the view of the majority of the Committee. I am just looking briefly at our letter and there is no reference to the 350 megawatt limit, but obviously we are conducting an inquiry at the moment and that is going in very interesting directions. It would seem to me that there is going to be a divergence between the views of the Assembly and the Government in London. If that is the case—

Q280 Antoinette Sandbach: Can I just ask you whether you accept that some projects are so big in terms of energy generation, that they are strategically significant and that, therefore, there is an argument that those should be decided in Westminster rather than elsewhere?

Alun Ffredd Jones: That is a political judgment, and I would argue that, on this 350 megawatt limit, there is no proper justification being made as to why the limit should be there. You quite properly state that there may be political arguments as to the size of certain projects to be dealt on a UK level, but I think 350 seems to be arbitrary. That would be my view and, as I said, there is no point in arguing the toss about whether some other larger ones should be dealt with on a UK level. Certainly, this one seems to be arbitrary.

Q281 Carolyn Harris: Good afternoon. I want to stay with tidal lagoon, but I want to talk about the contract for difference, which is currently the logjam that is preventing the work in Swansea bay. Silk has recommended that the CfD should be devolved, but the Government has declined that and are keeping it in-house, as it were. In Scotland, there is a requirement for the Government Ministers to talk with the Scottish Ministers before they make any changes, but there is no provision for that in the Wales Bill. Do you feel that, first, for the sake of parity we should be looking at the same concessions and, secondly, is it your personal opinion that the tidal lagoon may have already gone ahead by now if we had had that power?

Alun Ffredd Jones: I cannot answer the last one. It is my personal view, of course, that powers devolved to Wales should be on a parity with Scotland. My own personal view as well is that the devolution settlement needs to be a sturdy one and should, in general, be equitable throughout the countries of the United Kingdom. Yes, I would agree that any powers that have been devolved to Scotland and any arrangements should be reflected here in Wales. But I have to say that is not part of our letter to CLAC and, therefore, is perhaps slightly outside the scope of this particular discussion.

Chair: Okay. Sorry, Christina Rees. Apologies, I think I meant to call you earlier.

Q282 Christina Rees: That is okay, I am used to being forgotten. Good afternoon, Alun Ffred.

Alun Ffred Jones: Afternoon.

Christina Rees: One thing that seems to be missing from the draft Bill is the promised obligation on Whitehall Ministers to consult Cardiff Ministers before granting development consent for a 350 or more megawatt generating station. Would you agree with that?
Alun Ffred Jones: As I said, if that is part of the settlement with Scotland and Northern Ireland then I think that should be reflected in the Wales Bill. In general, I think the point about the Bill is that some powers seem to have been taken away from the Assembly but there is also too much ambiguity around others. There are details in our letter to CLAC. Any ambiguity is bad for democracy in general. Therefore, if the present Bill is to be strengthened, those areas that need to be looked at, especially also the clauses around the necessary evidence.

Q283 Christina Rees: Thank you. Are there any other omissions from the Bill?

Alun Ffred Jones: With regards to our Committee and our work, we have noted certain areas that we think should be looked at; for example, marine licensing and conservation. These are within the powers of the Welsh Ministers but, for example, in terms of designated areas as marine conservation zones, Welsh Ministers may not designate an MCZ that includes any part of the Welsh offshore region without agreement from the Secretary of State. There does not seem to be any rationale behind that sort of statement and nothing is offered in the Bill itself. There are other issues that I mentioned earlier, which we are very concerned about.

Q284 Craig Williams: Just very quickly, because of the context of the 350 megawatts and what we were just talking about, you are constantly asserting that the Assembly should decide that but, of course, the Energy Bill will come into force before the draft Wales Bill, or the Wales Bill as it will be then. It will not be Westminster transferring powers; it will be the Assembly taking them off local government, because local government in Wales will have the power for between 50 and 350 megawatts. Do you agree with that? From what you were saying, it sounded like you would want to centralise it back to the Assembly.

Alun Ffred Jones: Without going into too much detail, I think the Planning Bill that was passed will deem that any major developments will be decided centrally. That is what the Planning Bill states. Obviously, we do not know what is meant by “major developments”, but I would imagine that any sizeable development in the energy field would be dealt with centrally by Government. In fact, already decisions have been made through the planning system whereby certain centralisation, whether that is good or bad, will be dealt with centrally.

Q285 Mr Mark Williams: The Wales Bill, in its current form, emanates, obviously, from Silk and from the St David’s Day Agreement. Part of that was a write-around undertaken by the Wales Office to all the relevant UK Government Departments. When we interviewed the First Minister, he alluded to a less than helpful attitude from Departments such as the Home Office and the Ministry of Justice. I was wondering whether, through your Committee, there have been any particular difficulties or challenges you have found with DECC in terms of their understanding of devolution and, indeed, what has been presented in the Bill. Have they been as difficult as the First Minister characterised the relationship with the Home Office and Department of Justice?

Alun Ffred Jones: I do not think, it is fair to say, that the Committee has any direct dealings with DECC, but that could be a view of Government Ministers who would have been dealing directly with their counterparts in London. It would probably be unwise for me to offer any view on whether they are being helpful or unhelpful. But it does seem that there is no centralising theme in the Bill in terms of the powers that are being descended.
What does seem to have happened is that a number of departments have decided that they will simply put the brakes on further devolution and, indeed, claw back some powers. All have created ambiguity, which, again, I stress, I think is just as damaging as any clawbacks. I think that I am probably not in the best position to comment on individual departments.

Mr Mark Williams: No, I think the terminology you used of brakes is something that has not been lost on some members of this Committee in terms of the relationship between UK Government Departments and the Assembly Government. Thank you very much.

Q286 Liz Saville Roberts: (Translation): Good afternoon, Alun Ffred. I hope you’re well. (Continued in English) We have touched on quite a number of this suite of questions, so I am going to ask quite a specific one now. In the evidence that has been presented to us, there has been regular criticism of the restriction that the Assembly can only change private law and criminal law as far as is necessary to put into effect a devolved purpose, that this might lead to more litigation, and concurrent with that would be a reduction in the Assembly’s powers. What is your view on the necessity clauses, and specifically private and criminal law?

Alun Ffred Jones: Again, the necessity test seems to be excessive, to say the least, and in itself creates ambiguity. There is an example within the scope of our Committee’s work that refers to carrier bags. We know that the Assembly passed a regulation about carrier bags many years ago—the 5p charge on the use of and so on—and that lately there has been legislation in England along the same lines. There is a potential here that, though both countries are now operating this charge on carrier bags, if the Assembly, for example, decided that they would levy certain fines that are far greater than in England, but the results were not markedly different, then there is that necessity test. The necessity test will come into play, and will there be a challenge along the lines of, “Is it really necessary for the Government in Wales to have done that?”

These seem to be minor matters and, indeed, could be called trivial, but again it raises the question of whether any law that introduces this level of uncertainty and the likelihood or possibility of challenges in the High Court is good law. I would contend that it is not. Keep it simple so that people can understand it. As this measure stands, I think it fails that test quite markedly. That is my opinion and it is the general opinion of the Committee. We were very concerned because of the details, which again are included in our letter to CLAC, which refers to different areas of work within the scope of our Committee where there is ambiguity or uncertainty.

Q287 Liz Saville Roberts: Do you feel that the Assembly, as a legislative body, might find itself having to go to the Supreme Court far more often in order to put any legislative moves into effect?

Alun Ffred Jones: As you know, quite a few of the laws that are being passed here have ended up in the High Court in London because of challenges to them, and I thought that the purpose of this measure was to do away with that, or not do away with it, but make it less likely that laws passed here would be subject to challenge. From what everybody tells us and from the work that we have done internally here, that possibility seems to be still with us and, indeed, is very likely to happen. I really think this is just bad democracy. I think, not on political terms but in terms of the workings of democracy in the United
Kingdom, that the Bill needs to go back to the drawing board because it does not produce what the Secretary of State wanted or desired when he initially started out on this road.

In terms of Silk and the St David’s Day Agreement, the truth is that this measure does not reflect the all-party consensus that emerged from Silk. There is a lowest common denominator at work here and there has been a severe rowing back from that point. Again, it is that uncertainty and ambiguity that is also of great concern.

Q288 Antoinette Sandbach: Alun Ffred, you were, just moments ago, calling for a similar devolution settlement to that in Scotland. Of course, this necessity test is present in the Scottish settlement. Are you now saying that you do not want a similar settlement to Scotland?

Alun Ffred Jones: Again, I am no constitutional lawyer, but from the information and the evidence provided to us, the necessity test as it applies in this measure seems to create problems or potential problems. I understand that they are also present in the Scotland Act but, as I understand it, it is in a different context, or at least its application does not seem to create or potentially create as many difficulties. But I am not familiar enough with the Scotland Act to be able to comment further.

Q289 Antoinette Sandbach: In terms of your comments in relation to Silk, of course, that was a recommendation process, not a cross-party process where the delegates, as it were, to the commission had the authority to agree binding recommendations on their parties. Do you accept, albeit that the St David’s Day process was, as you describe it, the lowest common denominator, what is reflected in the Bill does reflect that process?

Alun Ffred Jones: I do not know what that process involved. As I understood it, it came from the Government of the day, which was a coalition Government. The process leading up to this measure, of course, is not something that I am familiar with. I accept, of course, that what you say about Silk is correct, but it still was a cross-party consensus and seemed to be accepted by many and welcomed by many as a basis for a measure, but this Bill certainly does not reflect that. I would return to the point that I made earlier, right at the very beginning, that the desire of the Secretary of State was for this measure to provide a stable future for devolution in Wales. I do not think this measure, as it stands, delivers that.

Q290 Chair: Okay. Thank you, Alun Ffred. Sorry, I did not want to cut you off there, but I know we will run out of time in a minute. Just quickly, are you happy with the ability of your Committee and the Assembly to scrutinise the extra powers that you are going to have or, indeed, the ones that you currently have?

Alun Ffred Jones: I think so. I think that scrutinising legislation will become an increasingly important part of the Assembly’s work. I think that we could and should improve our methods. I do not think we are perhaps as good as we should be, but I do not think it is a matter of capacity. It is a learning process and I do not see why we in the Assembly, should not be able to accomplish that, though I would say that a larger Assembly would assist matters in that respect.

Chair: Or a second Chamber, perhaps?

Alun Ffred Jones: Certainly not.
Chair: No?

**Alun Ffredd Jones**: But I would certainly welcome a few more members.

**Q291 Dr James Davies**: Diolch. Prynhawn da. Could I turn to the requirement or otherwise of the consent of UK Ministers for certain decisions made in the Assembly that perhaps impact on England? I am thinking in particular about the Environment (Wales) Bill, where I understand a legislative consent motion is needed because it places a duty on UK reserved bodies. Do you think it is right for the Welsh Assembly to be able to place duties on UK-wide public bodies without the consent of the UK Government?

**Alun Ffredd Jones**: As things stand, that is impossible. That is merely a fact. What I think should happen is that UK Ministers and departments that operate in Wales, and sometimes operate in quite substantial measure in Wales, should be sympathetic to the devolution process and understand the devolution process, so that, when a request is made, what is requested and why it is requested is clearly understood. Obviously, that also applies to the Welsh Ministers making those applications. In the case of the Environment Bill, that process does not seem to have worked very well, and whether that is the fault of the Government here or the Government in Westminster I cannot comment on. Certainly, in order for that to work properly, there has to be a two-way process and a proper understanding of devolution. That criticism of Whitehall has been made, but I cannot comment further than that.

**Q292 Liz Saville Roberts**: Very quickly, the draft Bill keeps the Government of Wales Act 2008 restrictions over water and, in fact, extends them to sewage, although at the same time, it offers a joint Government review programme. Do you think the situation is satisfactory?

**Alun Ffredd Jones**: We welcome the extension of sewage and controlling the sewerage. Obviously, the issue of the border then needs further discussion. I understand why the exemptions are made, but I would have thought that using the present borders would be preferable, with then suitable arrangements being made in order to protect the wellbeing of people who are affected on the other side of the border. Certainly, the new extension of the powers is to be welcomed, but I think the whole issue around water is not going to be decided by this piece of legislation and—excuse the pun—it will run and run because it is so important.

Chair: Okay. On that note, diolch yn fawr eto, Alun Ffred, am ddoedd. We look forward to seeing you in the Welsh Assembly, perhaps soon. Thank you. Maybe you could pass on our thanks to the Assembly authorities for the hospitality we have always had when we have come to visit. Thank you all very much indeed.

**Alun Ffredd Jones**: You are more than welcome. Diolch yn fawr.

Chair: Thank you.

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1 Note by witness: Due to audio difficulties, the witness misheard the beginning of this question. He responded in relation to the question of whether the proposed extension of competence to sewerage was satisfactory.