



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
The Constitutional and Legislative Affairs Committee**

**Dydd Llun, 6 Hydref 2014
Monday, 6 October 2014**

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In
addition, a transcription of the simultaneous interpretation is included.

**Aelodau'r pwyllgor yn bresennol
Committee members in attendance**

Suzy Davies

Ceidwadwyr Cymreig
Welsh Conservatives

William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
David Rees	Llafur (yn dirprwyo ar ran Alun Davies) Labour (substitute for Alun Davies)
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Louise Gibson	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Lesley Griffiths	Aelod Cynulliad, Llafur (y Gweinidog Cymunedau a Threchu Tlodi) Assembly Member, Labour (the Minister for Communities and Tackling Poverty)
Amelia John	Dirprwy Gyfarwyddwr Is-adran Dyfodol Tecach, Llywodraeth Cymru Deputy Director, Fairer Futures Division, Welsh Government
Eleanor Marks	Dirprwy Gyfarwyddwr Is-adran Gymunedau, Llywodraeth Cymru Deputy Director of Communities Division, Welsh Government
Carl Sargeant	Aelod Cynulliad, Llafur (y Gweinidog Cyfoeth Naturiol) Assembly Member, Labour (the Minister for Natural Resources)
Katie Wilson	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Steve Davies	Cynghorydd Cyfreithiol Legal Adviser
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 12:59.
The meeting began at 12:59.

Penodi Cadeirydd Dros Dro
Appointment of a Temporary Chair

[1] **Mr Williams:** Good afternoon and welcome to this meeting of the Constitutional and Legislative Affairs Committee. The committee Chair, David Melding, has submitted his apologies for today's meeting, and the first item of business therefore is the appointment of a temporary Chair. I invite nominations from the committee members for a temporary Chair to be appointed under Standing Order 17.22.

[2] **Suzy Davies:** I nominate Simon Thomas.

[3] **Mr Williams:** I see that there are no other nominations and I declare Simon Thomas AM appointed and invite him to take the chair.

*Penodwyd Simon Thomas yn Gadeirydd dros dro.
Simon Thomas was appointed temporary Chair.*

13:00

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau Introduction, Apologies, Substitutions and Declarations of Interest

[4] **Simon Thomas:** Diolch yn fawr a chroeso. Mae'r cyfarfod yn awr yn agored. Rydym wedi derbyn ymddiheuriadau gan y Cadeirydd, David Melding. Fe fydd y pwyllgor yn ymwybodol y bu farw tad David Melding, yn anffodus, felly, hoffwn nodi fel pwyllgor ein cydymdeimladau tuag at y Cadeirydd ar y mater hwnnw. Rydym hefyd wedi derbyn ymddiheuriadau gan Alun Davies, ac mae David Rees yma yn ei le. Croeso i David. Mae William Powell i fod yma am ei gyfarfod cyntaf, rwy'n meddwl, ond y mae wedi'i ddal mewn traffig ar hyn o bryd. Felly, rydym yn gobeithio y gall William ymuno â ni.

Simon Thomas: Thank you very much and welcome. The meeting is now open. We have received apologies from the Chair, David Melding. The committee will be aware that David Melding's father has passed away, unfortunately, so we would like to note our condolences as a committee for the Chair. We have also received apologies from Alun Davies and David Rees is substituting on his behalf. Welcome, David. William Powell is to join us for his first meeting, I think, but he is held up in traffic at the moment. So, we hope that William will be able to join us.

[5] Nid ydym yn disgwyl larwm tân, felly, os oes rhywbeth yn digwydd, dilynwch y tywyswyr. Gofynnaf ichi roi unrhyw ddyfeisiadau electronig ar 'tawel' ac, wrth gwrs, mae'r cyfarfod yn gweithio drwy gyfrwng y Gymraeg a'r Saesneg. Mae cyfieithiad ar gael ar sianel 1 y clustffonau, a chlywch yr hyn sy'n cael ei drafod yn yr iaith wreiddiol ar sianel 0.

We are not expecting a fire drill, so, if anything should happen, please follow the ushers. I ask you to switch any electronic devices to silent and, of course, the meeting will be bilingual. Interpretation is on channel 1 of the headphones and the original floor language is on channel 0.

13:01

Tystiolaeth mewn perthynas â'r Bil Addysg a Chynhwysiant Ariannol (Cymru) Evidence in relation to the Financial Education and Inclusion (Wales) Bill

[6] **Simon Thomas:** Mae'n dda gennyf groesawu'r Gweinidog newydd i'r cyfarfod, sef Lesley Griffiths. A gaf ofyn i chi, Weinidog, gyflwyno'r swyddogion sydd gyda chi er mwyn y cofnod?

Simon Thomas: It is my pleasure to welcome the new Minister, Lesley Griffiths, to this committee. May I ask you, Minister, to introduce the officials who are with you for the record, please?

[7] **The Minister for Communities and Tackling Poverty (Lesley Griffiths):** Diolch. On my right is Eleanor Marks, deputy director of communities division, and on my left is Katie Wilson, Government lawyer from the communities, housing and regeneration team.

[8] **Simon Thomas:** Diolch, Weinidog. Os ydych chi'n hapus, awn ni'n syth at y cwestiynau sydd gennym ni fel pwyllgor ar y Bil wrth inni gasglu tystiolaeth.

Simon Thomas: Thank you, Minister. If you are content, we will go straight to the questions that we have for you as a committee on the Bill as we collect evidence.

[9] A gaf ofyn i chi'n gyntaf gwestiwn yr ydym yn gofyn ynglŷn â phob Bil bellach yn y pwyllgor hwn? A ydych chi o'r farn bod y Bil, beth bynnag am y materion eraill, oddi mewn i gymhwysedd y Cynulliad?

May I ask you first of all the question that we ask about every Bill in this committee? Are you of the opinion that the Bill, whatever the other issues are, is within the competence of the Assembly?

[10] **Lesley Griffiths:** It is not my role to determine whether or not the Bill is within competence. I am aware that the Presiding Officer has made a statement to the effect that the Bill is within competence. Members will have noted that, in my letter to this committee, I raised the matter that the provisions of the Bill would need very careful consideration to determine whether they might potentially fall within the express exception in the Government of Wales Act 2006 of financial services, including investment, business banking and deposit taking, collective insurance schemes and insurers, because I noted that there was no analysis of that in the explanatory memorandum.

[11] **Simon Thomas:** Rydym wedi nodi eich bod wedi gwneud hynny'n benodol o gwmpas adran 12 yn y Bil, rwy'n meddwl, sydd ynglŷn â rhoi cyngor ynghylch addysg ariannol. A yw hynny wedi eich arwain i drafod â'r Gweinidog sy'n gofalu am y Bil y materion hyn, neu ai jest barn y Llywodraeth yw hon ar hyn o bryd?

Simon Thomas: We have noted that you said that specifically in relation to section 12 in the Bill, I think, which is about giving advice in relation to financial education. Has that led you to discuss with the Minister responsible for the Bill these matters, or is this just the opinion of the Government at present?

[12] **Lesley Griffiths:** Sorry, did you say financial education or financial management? I am not quite sure.

[13] **Simon Thomas:** Education.

[14] **Lesley Griffiths:** Okay, and when you said 'with the Minister', did you mean the Member in charge?

[15] **Simon Thomas:** The Member in charge, yes.

[16] **Lesley Griffiths:** Well, no, I have not had discussions on that particular subject with the Member. Around competence, I have had no discussions with the Member at all.

[17] **Simon Thomas:** Felly, nid yw'r cwestiynau yr ydych chi'n eu codi ynglŷn â'r rhan benodol yn y Bil sy'n delio â rhoi cyngor ariannol yn sail i unrhyw beth penodol; mae hynny jest yn codi pryder, os deallaf yn iawn, felly.

Simon Thomas: So, the questions that you raise about the specific section of the Bill that relates to giving financial advice are not the basis for anything specific; that is just something that raises concern, if I understand it correctly.

[18] **Lesley Griffiths:** Yes. My comments were about the whole of the policy intention. I am fully supportive of the principles behind Bethan Jenkins's intention, but, if you think about ensuring that the public has access to services around financial management and debt et cetera, I think that that access is already there for financial management. We have the Money Made Clear Wales website, which is hosted by the Wales Co-operative Centre, for instance.

So, I think that that provision is unnecessary.

[19] **Simon Thomas:** Fe wnaethoch chi sôn eich bod yn cefnogi'n eang ddelfrydau'r Bil, fel petai. Rydych chi wedi dweud yn benodol, wrth gwrs, nad ydych chi o'r farn bod angen deddfwriaeth sylfaenol, fel y cyfryw. Heb fynd i mewn i'r polisi, achos nid yw'r pwyllgor hwn yn ymwneud â pholisi fel y cyfryw, a fedrwch esbonio wrthym fel pwyllgor pa bwerau neu ddarpariaethau sydd eisoes ar gael i Weinidogion i wneud yr hyn y mae'r Bil yn ceisio ei wneud, a pham felly nad ydych yn teimlo bod angen Bil?

Simon Thomas: You mentioned that you support, broadly, the aims of the Bill. You have said specifically that you are not of the opinion that primary legislation is needed. Without going into the policy, because this committee does not deal with policy as such, could you explain to us as a committee what powers or provisions are already available to Ministers to do what the Bill is attempting to do, and why, therefore, you do not feel that a Bill is needed?

[20] **Lesley Griffiths:** As I set out in my letter to the committee, I think that almost all of the proposals in the Bill could be delivered using existing legislation. From a financial education point of view, that is already being delivered using existing powers, and local authorities already promote financial inclusion, both for residents and for their employees. I am thinking particularly about the promotion of credit unions with their employees and having pay deducted from their salaries to promote credit unions. I think that the legislation that we already have is enabling local authorities, and, from an education point of view, that advice to be given. My main concern, I think, around financial management and inclusion is that we will put unnecessary burdens on local authorities and create more bureaucracy at a time, obviously, when we are trying not to do that. I also think that, in relation to financial inclusion, not everything has a legislative solution. So, I think that it is better that we make sure that our advice services are good. We are developing a framework of quality standards for advice services at the moment, because I think one thing that is very important is that we have consistency of quality right across Wales. In relation to financial education, the Minister for education and I were in front of the Children, Young People and Education Committee last week. It is very clear; we have the literacy and numeracy framework, which has only been in place for about a year, so we need to see how that is rolling out. We have also had financial education on the statutory curriculum since 2008. It is also in the frameworks for personal and social education. So, I think that we are doing a great deal already.

[21] **Simon Thomas:** Yr hyn yr ydych wedi ei ddisgrifio, wrth gwrs, yw grymoedd a pholisïau hyrwyddo ac ati, ond nid dyletswyddau. Pan oedd yr Aelod, Bethan Jenkins, o flaen y pwyllgor, pwysleisiodd hi fod y Bil hwn yn rhoi dyletswyddau ar awdurdodau lleol, er enghraifft, yn ogystal â dyletswyddau yn y cwricwlwm sylfaenol hefyd, wrth gwrs. A ydyw hynny'n rhywbeth yr ydych yn ymwrthod ag ef yn llwyr, felly, ac yn llwyr argyhoeddedig bod gan Weinidogion yr holl bwerau y mae arnynt eu hangen ar hyn o bryd?

Simon Thomas: What you have described, of course, are the powers and the policies for promotion and so on, but not the duties. When the Member, Bethan Jenkins, appeared before the committee, she emphasised that this Bill was placing duties on local authorities, for example, as well as duties in the primary curriculum, of course. Is that something that you are rejecting entirely, therefore, and are you content that Ministers have all the powers that they need?

[22] **Lesley Griffiths:** Yes, I think so. There is a great deal of work being undertaken by local authorities already. I do not want to see silo working. I think that I mentioned this in committee last week. I do not want to see 22 local authorities having 22 different strategies. I think that it would be much better to have partnership working with everyone. We can issue guidance if necessary. You might be aware, because I know that you are scrutinising the Minister for Natural Resources next, that there might be a place in the Well-being of Future

Generations (Wales) Bill to issue guidance, but I do not think that duties are the way forward.

[23] **Simon Thomas:** Diolch, Weinidog. Nid wyf yn gwybod a ydych yn hapus i ofyn cwprwl o gwestiynau, Bill. Croeso i chi. **Simon Thomas:** Thank you, Minister. I do not know whether you are content to ask a few questions, Bill. Welcome to you.

[24] **William Powell:** Diolch. Minister, could you please expand on the reference that you have just made to the appropriateness of guidance? What you said in your letter to this committee was:

[25] ‘Guidance could potentially deal with the promotion of financial inclusion.’

[26] Could you please expand on that, and do you feel that it would be relevant?

[27] **Lesley Griffiths:** Yes. Thank you, Bill. As I have already stated, a local authority has very wide-ranging wellbeing powers, so they could be used to promote financial inclusion, and we have said that we could issue guidance around financial inclusion. Under the provisions proposed in the future generations Bill, there will be public service boards. They could be used to assess the wellbeing of the area and create local wellbeing plans. I think that that is where the assessment should be done as to what needs to be brought forward in relation to financial inclusion. I think that that is where the guidance could be issued. I think that we could do it under public service boards.

[28] **William Powell:** Minister, do you feel that the governance arrangements for public service boards would fit them well to actually carry out that role?

[29] **Lesley Griffiths:** Yes, certainly. That is my understanding.

[30] **Simon Thomas:** Suzy Davies is next.

[31] **Suzy Davies:** Just to go back to the point that Simon was making earlier about this difference between duties and powers, you have been very clear in your evidence that there is a range of powers already available to you to deal with both financial inclusion and financial education, but the Bill was brought forward on the basis that those powers do not seem to be producing consistency or results. I note that, in your remarks a few moments ago, you said that consistency and quality were things that were needed. Bearing in mind that powers are available, if they are being used, they are not being used to produce consistency, so is it possible to say why you are not using the powers that are available to you to achieve that and, by doing so, getting rid of Bethan Jenkins’s explanation that the only way to do this is via duties?

[32] **Lesley Griffiths:** I think that when you have 22 different ways of doing things, you are always going to get inconsistency. Part of the reason for having public service reform at the present time is to bring about more consistency. I think that the work that we are doing with the advice services, and I mentioned the network and the framework of standards, will bring that about. Certainly, from a financial inclusion point of view—I am only three weeks in post and I have had a look at this in quite some depth, because I did a statement early on—perhaps there is not as much inconsistency as I originally thought. I am contradicting myself now, but I just do not think that having individual financial inclusion strategies in each local authority would encourage the consistency that we need, but it is something that we will have to look at. However, for what Bethan is trying to do in the Bill, I think that the legislation is already there and I do not think that any new legislation is needed. I do not know whether you want to add anything on technical points around duties, Katie.

[33] **Ms Wilson:** Well, obviously, there are discretionary powers at the moment that could

be used, namely the general wellbeing powers of local authorities. In terms of duties, they are not currently in the legislation, but, as the Minister has already said, in relation to the Well-being of Future Generations (Wales) Bill, they could be incorporated into the local wellbeing plans and the strategic needs assessment that public services boards would need to carry out. I think that further work is being done on advice services and ensuring the quality and consistency of the advice services that are being provided, and, in that way, they are hoping to ensure consistency across the whole of the country.

[34] **Suzy Davies:** Okay, thank you for that, but we still have what I think I can call a reality gap between a principle that everybody seems to espouse and the practicalities of local authorities still having the option to downplay, perhaps, what they might feel is not an obligation—it is a discretionary power, and you have used the word ‘discretionary’ yourself. In difficult circumstances, councils will be looking for opportunities to save money, and this could be such an area, if they are not obliged to deal with it. Do you not think that placing a duty on local authorities at least provides clarity in providing a red line over which councils cannot step?

[35] **Lesley Griffiths:** No, I do not. I go back to what I said about reducing bureaucracy. I think that imposing more separate duties that place prescriptive and detailed process-driven requirements on local authorities to make them have multiple strategies is undesirable. We have the legislation there already, we use it where it is appropriate to do so, and I do not want to create that silo approach that I referred to in my evidence paper.

[36] **Suzy Davies:** Okay, thank you.

[37] **Simon Thomas:** May I—sorry, Suzy—follow up, Minister, on one thing, without going into the next session, which is looking at the Bill that you have referred to several times now? My reading of that Bill is that, although it sets up these local service boards, there is still not really an obligation or duty, for example, to collaborate within that Bill, so we could still end up, if we are not careful, with 22 different kinds of approaches here. So, the weakness that you see in the Bill that we are discussing before us could be replicated in the Government’s own Bill. Is there not something missing here around some kind of duty—not just permissive powers, but a real duty to ensure that this is delivered on the ground?

[38] **Lesley Griffiths:** There is a duty in the Well-being of Future Generations (Wales) Bill on specified public bodies to engage in integrated community planning, so that could be somewhere where—. It will include the requirement to produce an assessment, as I said, of the wellbeing of the area, and I would expect issues about financial inclusion to be included there.

[39] **Suzy Davies:** I appreciate that you have answered this in part already, actually, but you claim that sections 4 and 5 of the Bill, which are to do with financial education, are a duplication of existing powers. They must be existing powers that are not being used to full effect. Would that be a fair assessment?

13:15

[40] **Lesley Griffiths:** I mentioned that the literacy and numeracy framework had only been in place for a year, so I think that the evaluation of that is perhaps not as far ahead as it could be, and we will know more when that has been done. Certainly, however, I mentioned that there had been statutory functioning in the curriculum—I think that that has been since 2008. Maths, obviously, is a statutory curriculum subject. I know that the Minister is bringing forward new GCSEs from September of next year, where there could be additional arrangements regarding financial education also. There is statutory reporting on numeracy. What this Bill seeks to do is to add a non-statutory framework to the list. So, I think that if

you have statutory duties and a non-statutory framework, which one will a teacher look at?

[41] **Suzy Davies:** The statutory duty, I suspect. Just to reinforce that point, the powers to do all that have actually been in place since 2002, and it has taken—there you are—over a decade for the literacy and numeracy framework to be introduced. So, you can understand that there might be scepticism that any warm words towards financial education might see another decade before they are introduced more formally by Welsh Government. However, I take your point that you do not think that a duty is necessary, so I will not labour the point.

[42] Perhaps I can just move on to the explanatory memorandum. Your written evidence has stated that you do not think that it is very clear and that it does not convey Bethan Jenkins's policy intentions very clearly. Would you like to expand on that a little bit for us?

[43] **Lesley Griffiths:** Yes. The point I raised about the Bill not meeting the policy intention centres on the technical drafting of the Bill, in relation to part 4 within my portfolio—I think that I should probably explain that, Chair. I know that other Ministers have written to you about separate parts of the Bill. If I may, I will give you an example from section 12. As it is drafted, I do not think that it necessarily conveys the policy intention of ensuring that individuals have access to financial advice, because it places a duty on the local authority to include on its website information about where to obtain advice on financial management, and where a local authority thinks that advice is not reasonably available, it may provide that advice itself. So, as this is a discretionary provision, as opposed to duty, there could be a situation in which the local authority considers that advice is not reasonably available, but decides not to provide any such advice itself as it is not under a duty to do so. So, I do not consider that the drafting of the provision conveys the policy intention.

[44] **Suzy Davies:** So, you see a discrepancy between powers and duties here and the effect that it can have in practice. Thank you very much.

[45] **David Rees:** Minister, in your response, you highlight section 9(2) as being too wide and note that you are concerned about that. Obviously, there is a question of flexibility and the ability to respond to a change in circumstances. How do you consider it to be too wide, considering that we actually do not know the future, in one sense, and we do not know how wide it could need to be?

[46] **Lesley Griffiths:** Again, this is a rather technical drafting point. I might bring Katie in here. As I say, I support the intention—

[47] **Simon Thomas:** We do technical drafting on this committee. It is meat and drink to us.

[48] **Lesley Griffiths:** I would prefer to see tighter drafting. Certainly, in my discussions with lawyers—. Obviously, it is drafting style; it is not our drafting, but you will be aware of that. I will bring Katie in on this point.

[49] **Ms Wilson:** The point here is that I believe that the intention behind the power is for Welsh Ministers to have the power to add or remove matters from the list of things that the local authorities can include in their strategies. We have no objection to that power being there; we think it is a sensible idea that we can update the things that should be included in a strategy as time progresses and as important things in financial management change. It is just that we would prefer to see the drafting explicitly say that the power is to be used to amend the things that could be included in the strategy, whereas, at the moment, it is just drafted a bit wider. As we say, however, that is really just a matter of drafting style.

[50] **David Rees:** The Member has responded to this committee and has indicated that that

is exactly what she intends.

[51] **Ms Wilson:** Yes. It is not the intention; it is just the style.

[52] **David Rees:** It is a drafting issue, more than one of intention, and clarification on the face of the Bill.

[53] Section 10, you have also indicated, is perhaps unnecessary. You indicate that you actually have those powers already. Can you expand on that? Is there a problem in section 10? If we are looking at this Bill and it just adds to the clarity as to a specific title, and does not increase the power—you say it is already in position, so it will not hinder or add anything—but will just make something clearer, is that a problem?

[54] **Lesley Griffiths:** The comment that you referred to about section 10 being unnecessary has to be taken in the context of the whole Bill, for the reasons that I have already explained. If the Bill progresses as it is currently drafted and there is a duty on the local authority to have a financial inclusion strategy, then, in my opinion, it is appropriate to have a guidance-making power relating to that strategy.

[55] **David Rees:** However, in principle, the concept of providing clarity is not an issue.

[56] **Lesley Griffiths:** It is not an issue.

[57] **David Rees:** Okay. Shall I move on?

[58] **Simon Thomas:** Yes.

[59] **David Rees:** The next part of the question I have is on commencement Orders, and section 14 of the Bill talks about commencement Orders within the Bill. You believe, or your response to the committee indicates, that you think it might undermine the principle of commencement Orders. I personally want to have some clarity as to why you think that is the case.

[60] **Lesley Griffiths:** Okay. If the Bill is passed by the Assembly, the Assembly already has approved its provisions. So, all that needs to be done after passing is to bring the agreed provisions into force. With any Bill that is passed in the Assembly, it is implicit, or there is acceptance, that Welsh Ministers will then decide when to bring those provisions into force, in accordance with the commencement powers contained in the Bill. The First Minister wrote to this committee last year regarding commencement Orders and set out how ancillary provisions that are included in commencement Orders are there to ensure the smooth commencement of the Act, if you like. They are not freestanding, substantive provisions. Given that the Bill will already have been approved by the Assembly, Welsh Ministers then have the responsibility for the decision to commence. I think that it goes against this to then subject commencement Orders to further scrutiny by the Assembly.

[61] **David Rees:** So, are you saying that, because of the practices in place, the system should adhere to what we have done in previous Bills?

[62] **Lesley Griffiths:** Yes.

[63] **Suzy Davies:** I found this to be an interesting section, because it has attempted to address concerns that this committee has raised about commencement Orders in the past. Taking on board completely what you said about the content of the Bill and that once that is passed it is passed, the different days on which different bits of it might be brought in is not of particular interest to anyone, I do not suppose. However, this committee in the past has

expressed concerns about how incidental, consequential and transitional provisions might be dealt with, because, of course, we have heard the Government and other Members say in the past that they are just for smoothing things through, but we as an Assembly have an opportunity to see if that is the case. In that respect, this is quite an unusual and far-thinking Bill, I would say. Bearing in mind that it is just giving the opportunity to the Assembly to reassure itself that those incidental, consequential and transitional provisions are harmless and of no concern to anyone, is there any point in trying to prevent the Assembly doing that?

[64] **Ms Wilson:** There may also be some practical considerations that need to be considered in subjecting commencement Orders to further scrutiny by the Assembly. So, if a commencement Order was subject to negative procedure and it came into force, and then an Assembly Member passed a motion for annulment, then the Welsh Ministers would be obligated to do something to revoke the commencement Order. However, simply revoking the commencement Order would not have the effect of undoing the commencement. It would simply revoke the transitional, incidental or consequential provisions. The Bill would still be in force and it might put people that the Bill or the Act was subject to in an uncertain position. The arguments around this are quite technical and I am sure that it might be easier if we could write to you with further detail about some of the practical difficulties.

[65] **Suzy Davies:** By all means do that, but from what you are saying, I cannot understand what the problem is, because in terms of dates of commencement, this Bill does not seek to apply any procedure to that, as far as I can see, from memory. It is just whether there are questions about the secondary, secondary legislation almost.

[66] **Ms Wilson:** Transitional provisions are quite often contained in commencement Orders or in the incidental provision to ensure the smooth coming into force of the Act, so that everybody knows whether they are subject to a previous law. If their case had already started, they might still be subject to a previous law. These types of transitional provisions are inextricably linked to commencement. So, subjecting the whole Order to procedure may cause some practical difficulties. If, under the Bill, a commencement Order contained solely commencement provisions, it would not be subject to procedure, but commencement Orders very often contain transitional provisions that would then take them into the Assembly procedure.

[67] **Suzy Davies:** You will send your note, but we might have to agree to differ on that one at the moment. Do you have any views on the sunset clause? Or, sunrise clause, I should say.

[68] **Ms Wilson:** It is a matter for the committee to decide whether it is appropriate and whether there is justification for having a sunrise clause.

[69] **Suzy Davies:** That is fine. If you have no views, you have no views; that is great. Thank you very much.

[70] **Simon Thomas:** I orffen y pwynt ynglŷn â Gorchmynion cychwynnol, ar rywbeth penodol yr ydych wedi cyfeirio ato yn eich tystiolaeth, rydych yn cwstiyu'r defnydd o'r Gorchmyn yma o dan adran 14(3), gan ddweud ei fod yn cyfeirio at 14(2)(b), ond bod y pŵer i'w gael yn 14(1)(a). A ydych chi o'r farn felly—beth bynnag rydych chi'n ei feddwl o'r Gorchmynion cychwynnol hyn a'r ffordd mae'r Bil yn delio â nhw—fod y pŵer wedi

Simon Thomas: To conclude the point on commencement Orders, and turning to something specific that you have referred to in your evidence, you question the use of this Order under section 14(3), stating that it refers to section 14(2)(b), but that the power is contained in 14(1)(a). Are you therefore of the opinion—whatever you think of these commencement Orders and the way that they are dealt with by the Bill—that the power is attributed to the wrong place, in your opinion

ei briodoli yn y lle anghywir, yn eich barn chi as a Government?
fel Llywodraeth?

[71] **Lesley Griffiths:** This was another technical drafting point, but I note in Bethan Jenkins's letter to the committee that she has said that she will bring forward an amendment to correct the drafting error.

[72] **Simon Thomas:** 'Clarify', I think she says.

[73] **Lesley Griffiths:** Apologies: 'clarify'. However, I do not have any—

[74] **Simon Thomas:** Okay, that is fine, but you have those doubts. So, clarification, if the Bill were to go ahead, would be welcomed therefore by the Government.

[75] **Lesley Griffiths:** Absolutely.

[76] **Simon Thomas:** Nid wyf yn meddwl **Simon Thomas:** I do not think that there any
bod unrhyw gwestiynau eraill. A yw pawb yn other questions. Is everyone content? Bill is
hapus? Bill sydd nesaf. next.

[77] **William Powell:** In the context of this committee's work on the making laws inquiry, what, if any, input has the Welsh Government had into the drafting and preparation of the Bill that stands before us?

[78] **Lesley Griffiths:** We have had no input into the preparation or the drafting of this Bill. The first time that we saw the Bill was the same time as members of the committee, on its introduction. It is a Member-proposed Bill that has been drafted by Assembly lawyers.

[79] **William Powell:** Thank you for that clarification.

[80] **Simon Thomas:** A oes unrhyw beth **Simon Thomas:** Is there anything else that
y byddech chi am ei ychwanegu, Weinidog, you would like to add, Minister, or are you
neu a ydych chi'n hapus? Gwelaf eich bod. content? I see that you are. The Record will
Bydd y Cofnod yn cael ei gylchredeg i chi ei be passed to you for you to correct if
gywiro os oes angen. Rydym yn edrych necessary. We look forward to receiving any
ymlaen at dderbyn unrhyw wybodaeth further information that you have for the
bellach sydd gennych i'r pwyllgor. Diolch yn committee. Thank you very much.
fawr iawn.

[81] **Lesley Griffiths:** Diolch. **Lesley Griffiths:** Thank you.

13:29

Tystiolaeth mewn perthynas â Bil Llesiant Cenedlaethau'r Dyfodol (Cymru) Evidence in relation to the Well-being and Future Generations (Wales) Bill

[82] **Simon Thomas:** Mae'r pwyllgor yn **Simon Thomas:** The committee will now
awr am drafod tystiolaeth gan y Gweinidog discuss evidence from the Minister on the
ar y Bil Llesiant Cenedlaethau'r Dyfodol Well-being and Future Generations (Wales)
(Cymru). Mae'n dda gennyf i, felly, Bill. It is a pleasure, therefore, to welcome
groesawu'r Gweinidog newydd, Carl the new Minister, Carl Sargeant, to
Sargeant, i'r pwyllgor. A gaf fi ofyn i chi, committee. May I ask you, Minister, to
Weinidog, gyflwyno'r ddau swyddog sydd introduce the two officials that are
gyda chi, ar gyfer y cofnod? accompanying you, for the record?

13:30

[83] **Carl Sargeant:** Thank you, Chair, and thank you, committee. This is a good opportunity to be with you today. I will ask Amelia to start.

[84] **Ms John:** I am Amelia John. I am the head of the Fairer Futures Division, as well as the senior responsible officer for the Bill.

[85] **Ms Gibson:** I am Louise Gibson, lawyer for the Bill.

[86] **Simon Thomas:** Diolch yn fawr, a chroeso i chi i gyd. Os ydych yn hapus, Weinidog, fe wnawn ni ddechrau yn syth gyda chwestiynau gan aelodau'r pwyllgor. A gaf fi ofyn cwestiwn gofynnol yn gyntaf, sef, a ydych chi'n gwbl hapus bod pob rhan o'r Bil oddi mewn i gymhwysedd y Cynulliad?

Simon Thomas: Thank you very much, and welcome to you all. If you are content, Minister, we will go straight to questions from committee members. May I ask the requisite question first, which is: are you completely content that all parts of the Bill are within Assembly competence?

[87] **Carl Sargeant:** Yes, I am.

[88] **Simon Thomas:** Diolch yn fawr iawn. A ydych chi, serch hynny, wedi cael unrhyw drafodaethau â Llywodraeth y Deyrnas Gyfunol ynglŷn â'r Bil hwn? A yw e'n ymwneud â rôl ac adrannau Llywodraeth San Steffan?

Simon Thomas: Thank you very much. Despite that, have you had any discussions with the United Kingdom Government about this Bill? Does it relate to the role and to the departments of the Westminster Government?

[89] **Carl Sargeant:** Chair, as you acknowledge, I am new in post—only three weeks in. However, the department has been engaged with departments of the UK Government—the Ministry of Justice and the Home Office—with regard to activities around the Bill, and we have not been informed of any competency issues that the UK Government may or may not have.

[90] **Simon Thomas:** Diolch am y cadarnhad hwnnw, Weinidog. Rwy'n edrych ar y Bil fel ag y mae yn awr, a dyma Fil sydd wedi gweld sawl newid i'w deitl—dim ond ers tair wythnos rydych chi wedi bod yn y swydd hon, felly nid ydych wedi cael cyfle eto i newid ei deitl. Fodd bynnag, erbyn hyn, a ydych o'r farn bod teitl y Bil—a'r disgrifiad sydd yn y teitl—yn cyflwyno pwrpas polisi'r Bil?

Simon Thomas: Thank you for that confirmation, Minister. I am looking at the Bill as it stands now, and this is a Bill that has had its title changed several times—you have only been in post for three weeks, so you have not had an opportunity to change its title yet. However, by now, are you of the opinion that the title of the Bill—and the description that is in the title—conveys the policy purpose of the Bill?

[91] **Carl Sargeant:** That is a really interesting question, Chair. Yes, I have been in post for three weeks, but, actually, as part of a collective responsibility around Cabinet, we are all very keen to understand what the Bill means, and how that is communicated. I think that the journey of the Bill has been interesting, with several Ministers being involved in it. However, I think that the title of the Bill embraces what we are trying to achieve in terms of the general communication of what is in the Bill in content, and actually also taking it beyond. If I am perfectly honest, sustainable development is a strange concept for people to grasp, so we are talking about 'future generations', so it is a much more broad-ranging principle of change, for community. We think that we have got it right—well, I would say that, would I not? However, the fact is that the title is simple and captures the spirit of the Bill complete.

[92] **Simon Thomas:** On that point then, Minister, perhaps you would like to tell us why you need a Bill like this, and what it is, indeed, aimed to deliver.

[93] **Carl Sargeant:** Okay. I am sure that the Chair and the committee have been well versed in how the Bill is structured. When I came into post, I think that what I tried to do with the team was to encompass how we get this comms message across to people. It is not an easy Bill in terms of understanding what the principles are, and, therefore, is there anything that we can do to make this an easy conversation? The commissioner, Peter Davies, has been doing some tremendous work around Wales as part of the conversation that he has been having with stakeholders. The Bill broadly encompasses the three strands of sustainability: the economic, social and—

[94] **Ms John:** The environment.

[95] **Carl Sargeant:** The environmental aspects of the Bill.

[96] **Simon Thomas:** The one where it all started, Minister, but there we are. [*Laughter.*]

[97] **Carl Sargeant:** Excuse me. What we have done, Chair, and I do not know whether it is helpful for committee, is that we have brought some additional copies—it was last minute—that I thought would be really useful. These look at the architecture of the Bill, so it is a really easy read about explaining exactly what the Bill structure is, and how it moves forward. As you are aware, the principle of the goals is the overarching principle of what the Bill is about—a sustainable Wales. Underneath that lie some progress indicators, and then who will be involved in the process, and then how that will be delivered—so, the issues around long-term challenge, the integration of services, collaboration, engagement, and prevention longer term. So, all those things, along with the goals and the sustainable governance national indicators, encapsulate change.

[98] If I could liken it to a bit of a nudge-nudge process—it is about taking people from a different place and time, from where we are now, to a sustainable change and improvement. I think that what we can see, and what is not happening now, is that there is nothing in legislation that encompasses sustainable development within the ethos and governance of an organisation in the public sector. That is the difference from where we are now to what the Bill will deliver.

[99] **Simon Thomas:** It is interesting that you say that, Minister. As you know, in looking at this Bill, this committee does not look at the policy, as such, but at the need for legislation and the way in which the legislation works. You said that there is nothing really there in legislation, but of course we have in the founding Acts of the Assembly a commitment to sustainable development—although you have said that that term is better explained in this Bill. We also passed the Local Government (Wales) Measure 2009 under the previous Government, when we had a different set of powers. Reading the Bill, many would feel that the Government could do this anyway by using a nudge-nudge approach, as you said, and by considering where you put your money and your resources. What is the need for legislation here?

[100] **Carl Sargeant:** Of course, the principle of doing this is contained in the local government Measure, in which there are seven strands of change, one of which is sustainable development. What we are saying here in public service in Government is that sustainable development should not be an add-on or an extra; it should be the core principle of doing business. That is why the whole ethos of creating public services and delivering them must have the principle of sustainability at the heart of it. That is where legislation, we think, is a consideration in all of the other aspects, but this puts it at the core. That is why we think that we need to legislate for this.

[101] **Simon Thomas:** Okay, Minister. I think that Suzy wants to ask a question.

[102] **Suzy Davies:** On that last point in relation to the local government Measure and the seven aspects of improvement, if this Bill passes in more or less the shape it is in at the moment, are you planning to revoke some or all of the local government Measure?

[103] **Carl Sargeant:** Noⁱ, we wrote the Measure as a whole. I know that the auditor general has a view on this as well in terms of the way in which the Bill relates to the local government Measure. What we are saying is that the Bill can be seen as complementary. There will be things that we will probably need to amend during that process, but it is not prohibitive in terms of developing this Bill alongside the local government Measure as well. It could be tidier, and a review is intended by the Minister for Public Services, I think, to look at the local government Measure and the way in which it operates.

[104] **Suzy Davies:** That is quite encouraging, because one of the points that has been raised about this Bill, with its various titles, is clarity, and I would like to ask you a little bit about some of the words used in the draft at the moment. However, it gives me more hope that at least clarity is being looked at, particularly as it relates to other existing Measures.

[105] In sections 2 and 3—in fact, the early sections of the Bill—there are words like ‘aim’, ‘principle’, ‘goals’ and ‘objectives’, ‘indicators’ and ‘plans’; there are quite a lot of concepts in there. Bearing in mind that this Bill is all about trying to be understood more clearly by the public than existing legislation, do you think that this plethora of concepts will actually complicate things?

[106] **Carl Sargeant:** It is a really interesting question. It is about how we take people on a journey for change. Legislation being black and white is not helpful in this regime, because we are talking about a whole raft of public services that deliver many different things. However, never before have we had it in statute that, for example, a local authority will have to consider the health needs of the community as well, or vice versa, that the health boards will have to look at the educational needs of individuals on the basis of wellbeing and sustainable development. Now, this will be at the heart of these processes.

[107] We are not being specific and saying, ‘You must do x, y or z’; what we are saying is that public services have to consider the impact on their local communities and, by working collectively, they have to look at how the way in which they create their policies in governance and process can have a positive effect, considering the goals that we have across the Bill. It looks at the implications for them all together. That is why decisions made in the short term by an individual authority for the things they are responsible for—a public sector body doing one thing and having an intervention—may offer a short-term improvement for a community, but we are saying with this Bill that it is about having a long view about what the collective effect of their decisions will be. That is why there is some flexibility in there: because Wales is a large place where there are different requirements. We think that the flexibility of the Bill gives enough room for authorities to respect the legislation in terms of what they know they have to do to improve, but it also gives them enough flexibility to change where change needs to be taking place locally.

[108] **Suzy Davies:** On that, I appreciate your policy intentions here, but we are talking about a piece of legislation, and our central core principle for that needs to be clarity. So, I appreciate that you need some flexibility in the Bill, and that is inevitable when you are talking about future generations, but you are asking a variety of public services to respond to concepts like ‘wellbeing’ and ‘needs’. I know that you have spoken to another committee about wellbeing, and perhaps I can ask you to explain to this committee why there is no definition of wellbeing when we already have a Bill where, actually, the clarity is not what it

might be, simply because the concept is quite difficult.

[109] **Carl Sargeant:** Of course, and that is why we have hopefully helped, and we will share with you the detail of the architecture of the Bill. If I take your two points—

[110] **Suzy Davies:** Stick with ‘wellbeing’; I will come back to ‘needs’.

[111] **Carl Sargeant:** Okay. On wellbeing, the wellbeing principle is defined by the goals attributed to the Bill. So, across the goals is a prosperous and resilient Wales and a healthy and more equal Wales, cohesive communities and a vibrant culture and thriving Welsh language. That is the principle of wellbeing as defined in this Bill. There is a very similar approach in section 60 of the Government of Wales Act 2006, in terms of how that defines it. So, this is not a bizarre concept that we just dreamt up. The principle of explaining what we mean by wellbeing is defined in the ‘goals’ architecture of the Bill. That is a very simple concept, I think.

[112] **Suzy Davies:** Is it not worth just having a small clause that says ‘The definition of ‘wellbeing’ is in section 3’ or whatever it was—I cannot remember?

[113] **Carl Sargeant:** Chair, that may be a very valid point and I would welcome clarity from committee on that point.

[114] **Suzy Davies:** Thank you very much. May I take you to ‘needs’ now? I dug out my old law dictionary on ‘needs’ and it was deeply unhelpful. As you are asking, as I say, a variety of public bodies to respond to needs, can you give me some idea of what has been your difficulty in preparing the definition of ‘needs’ and presumably why it is not in the Bill?

[115] **Carl Sargeant:** Again, Chair, what we are saying is that this is not a new principle—this is not a new concept. Local authorities and public sector bodies deal with this on a daily basis. Needs assessments for individuals, whether in health or education, is a general principle that is acknowledged by the public sector. Defining that means something different to all of those organisations, but it is a common term that is used in relation to what the needs of an individual are. Would it be helpful to define that in the Bill? I am not convinced of that, but, again, if it is a recommendation of the committee, then I would have to consider that very carefully.

[116] **Suzy Davies:** It would be a very difficult definition for the reasons that you have said, but I wondered whether you had applied your mind to it and deliberately decided not to include a definition.

[117] **Carl Sargeant:** Given how I have just responded, this is a term used by the public sector already; we do not think that it needs to be defined on the basis that it is already being used as a common term throughout the public sector.

[118] **Suzy Davies:** Okay, thank you.

[119] **Simon Thomas:** William Powell is next.

[120] **William Powell:** Minister, by common consent, the national indicators for measuring progress against the achievement of the wellbeing goals will play a key role. Indeed, under section 11, we have imposed upon Welsh Ministers a duty to publish such indicators. In that context, why is there no Assembly procedure applied to the making of those indicators, given their significance?

[121] **Carl Sargeant:** It is very similar to the current position—they are indicators; they are

just figures and they are not targets. They are information sources from which people, such as the commissioner, the general public and public service boards, will be able to gauge progress. So, I believe that they are correctly placed in terms of assisting in knowledge as opposed to a target needing to be achieved by x, y or z body. It just helps in the improvement.

[122] **William Powell:** Thank you for that, Minister. Pursuing the point, under section 21, the future generations commissioner for Wales—she or he—would have to prepare and publish an assessment of the improvements that specified public bodies would have to make to comply with. Subsection 3 defines the reporting period, which may be amended by regulation to which the negative procedure would apply. Why, in this case, is the negative procedure being applied, given that this is a power to amend the Bill?

13:45

[123] **Carl Sargeant:** It is purely a technical issue, effectively. Looking at how the electoral system works across Wales, we are looking at the ability for Ministers to ensure that reporting could be an advantage to people who are making decisions in the longer term. So, for all political parties, for example, wishing to create their manifestoes at a period in time and looking at what sustainable development and change would be in communities, the commissioner would need to report in a timely fashion in order for that to be of use. It would be pretty pointless for a commissioner, if it was in legislation, to report at a certain time if the election dates changed. For example, they could be reporting three months after an election in Wales. So, we are saying that the commissioner should have the ability to report at timely intervals, but this is based purely upon ensuring that the data that are provided are useful to as many people as possible.

[124] **William Powell:** So it fits into the electoral cycle of the National Assembly and other bodies.

[125] **Carl Sargeant:** Ideally, yes.

[126] **William Powell:** Okay, thank you. Section 23 permits the future generations commissioner to work jointly with other existing commissioners who are in post. Why is this provision necessary, given that it only provides a power to work jointly rather than a duty? What would the relationship be, in your view, with the Auditor General for Wales, given his overarching responsibility in this area?

[127] **Carl Sargeant:** This provision is consistent with that for all the other commissioners in Wales in terms of the operation of working jointly. It is just a transfer of similar legislation in place that we are applying to this Bill in terms of a future generations commissioner as well. In an ideal world, Chair, if I may say so, it would be nice if everybody got on all the time, but that is not always the case. Therefore, sometimes, you need some legislation to support the issue around working together. They may have differing views or a certain view on a policy or performance. This gives a legislative framework for commissioners to work together. Again, we are applying it as we have with other pieces of legislation that we have taken through the Assembly.

[128] **Simon Thomas:** If I may just take you back, Minister, to a couple of replies you gave to William Powell, you talked about the indicators as being not targets, but indicators and statistical evidence therefore. However, it is important, is it not, to note that choosing indicators affects the outcomes? Part 2 of the Bill is called 'Improving Well-being'. Now, we do not have a baseline; we do not have a definition of 'well-being'; and we do not really know what 'improvement' means. The indicators are the core of that. If the indicators do not show some kind of improvement judged by a fairly independent future generations commissioner, to be fair, do you not feel that there should be some kind of Assembly scrutiny

of that process so that we do not find ourselves faced—and this does not apply to you—with a future Government that simply chooses the indicators that look best for it?

[129] **Carl Sargeant:** Thank you for your question. It is not always wise to disagree with the Chair, but may I start with your comment that we do not have a definition of ‘well-being’? We believe that we have a definition of ‘well-being’ in terms of the goals. Of course, the committee will have a view on that. On benchmarking, an awful lot of data are currently available in terms of national indicators that we already publish. Of course, we are looking to streamline that, probably, so that we do not have as many national indicators, so that they are meaningful. I accept the principle of the Chair’s comments. In terms of developing the national indicators, as I said, they will be statistically based. There will be a process whereby we have to consult on these. Again, there is nothing prohibitive within the way the legislation is drafted currently, whereby Members or the Assembly or committees could not provide their view on the consultation process. I accept that there is nothing named in the Bill, but there is nothing prohibitive to suggest that that could not take place.

[130] **Simon Thomas:** Just to go back to that, not wanting to have an ongoing argument about definitions, but I accept your response to the earlier question around the definition of ‘well-being’, which is that it is framed in the Bill in terms of the—I think you call them—

[131] **Carl Sargeant:** Goals.

[132] **Simon Thomas:** Goals. Aims or goals, yes. Other Bills, of course, have much more firm definitions of ‘well-being’. The social services Act, for example, has it there. If, however, you are framing your definition of ‘well-being’ in terms of a relationship with a set of goals on the face of the Bill, how do you measure your improvement of wellbeing? Wellbeing defined as a goal—. For example, let us take the one on Welsh language; if you do not have a direct relationship between what that means in effect, with statutory underpinning of some kind, then how can the Assembly and the public be sure that the Bill is actually delivering and is not simply another way of writing a strategy? That is what it looks a bit like at the moment.

[133] **Carl Sargeant:** Let us take that example in detail. One of the goals is of a Wales with a vibrant culture and thriving Welsh language. One of the national indicators—although, I do not know and I am not trying to pre-empt this—could be, for instance, the use of the Welsh language in communities. There are already statistics around that, Chair. Whether there is an increase or a decrease there would be the indicator of success or not within the Bill’s structure.

[134] If we take it that that is the principle of what we are trying to achieve, national indicators would be the indicator of whether we are achieving or not. Underneath that, you have the public services and how they will be delivered. So, governance is a really important part of this Bill in terms of the long-term assessment, integration of working together, collaboration, engagement and prevention—probably not in this aspect. All of those five things underneath it, in terms of how you will do this, are really important. That is why the Bill is important in terms of public service delivery.

[135] What we are not seeking to do is have a target of 50% and 60% next year and so on. I think that it is something that the commissioner can and will report on to see whether there is an improvement and whether real consideration has been given by the public service body to enhancing and creating a vibrant culture and thriving Welsh language. So, there is a complete process from the start of the concept and idea to actually how you are going to deliver this within the Bill’s structure. So, I do not accept that it is too vague. It gives flexibility and clear direction of what public bodies are supposed to be doing in terms of the Bill.

[136] **Simon Thomas:** Thank you for that example, Minister, because it was useful, I think, in terms of my reading of the Bill at the moment, which certainly leads me to believe that the bit around governance is the only bit that is rather better pinned in legislation than the rest of the Bill. However, I think that those are questions that David Rees might want to ask, anyway.

[137] **David Rees:** We will see. [*Laughter.*] Minister, in answer to William's question, you talked about the negative procedure for section 21. In section 31, which gives you powers to amend the list of statutory membership of public boards, invited partners or other bodies, it is not quite consistent, because to include two of those groups is affirmative and one is negative. Why the inconsistency?

[138] **Carl Sargeant:** This is quite complex. I might need a bit of assistance from my team, Chair, if I may, but I will give it a go to start. There are three core principles of membership, effectively. There is a core group of public services that are listed and will be in the statute. There is then a group of interested parties that, because of the constitution, people like police and crime commissioners and police et cetera—not devolved to us—will have a responsibility and should and could be part of this PSB. Therefore, the powers need to reflect what is devolved and what is not. The third group of membership includes third sector bodies and other organisations that have an impact on our communities, but are not generally considered the public services board. That is why there are three elements of procedure in terms of the core group being the prominent group that should not really change, and then there is flexibility around the other two, because, either they have devolved powers or they do not, or are public services or not. That is why there is a difference between the three bodies, effectively.

[139] **David Rees:** I can see the differences between bodies. I had two questions. You answered why the inconsistency, but there is also the question of who decides who goes into which group.

[140] **Carl Sargeant:** The public services core group will be listed—

[141] **Ms John:** Yes. The members of the public service board are listed on the face of the Bill, as are the invited participants. So, there is a statutory responsibility on public service boards to invite certain bodies to participate in the public service board. That includes the police and crime commissioners, the chief constable, probation and so on. Then the other partners are a whole series of bodies within a local area that the public service boards may feel they want to invite to be involved. However, the legislation will have less of an impact on them. In terms of the members and the invited participants, they will have actions to undertake under the legislation.

[142] **David Rees:** The situation that, I suppose, I wanted to ask the question on is this: if the UK Government puts in different regulations and rules, which may create different bodies, and which may actually fit into the first two, how do we get them into those first two? At the moment, they would be by the affirmative, and the last one would be negative. How do we make sure that, if a body is created that fits into those two, it gets there?

[143] **Carl Sargeant:** There is no issue in terms of introducing that into legislation by amendment at some point, but I think that it is the procedure—. Your questioning, I think, is around who is involved in which group, whether they are negative or not. We believe that the listed category of public services is the devolved functions—what we have responsibility for. Of course, the UK Government may have an increase in powers, or it may wish to devolve further bodies, which we may seek to include on that list. It is not prohibitive in terms of process, but I would welcome the views of the committee. For example, if the police were to be devolved to Wales, how do you think that that should be dealt with? I am quite open for a

view from the committee on that.

[144] **David Rees:** There could be a situation where PCCs do not exist in a few years' time.

[145] **Carl Sargeant:** Indeed. We could not instruct them to come then, could we? *[Laughter.]*

[146] **David Rees:** Linked to that is part 4, which discusses the establishment of public service boards. Again, the Welsh Minister will have the power to make regulations. In paragraph 35 of your answer you state,

[147] 'This power will give the Welsh Ministers the ability to determine the communities that comprise the area of a Public Services Board'.

[148] If there are no such regulations, the communities will be decided by the public services boards. I have two questions. Why would you not want to make regulations? In other words, why do you have that opportunity in there? Secondly, would that not create perhaps inconsistency across Wales?

[149] **Carl Sargeant:** No more or less than there is at the moment. Public services boards, or local service boards as they are currently, are not in statute, within the same remit as this Bill would encompass them. They operate very differently. We have some very good local service boards and some that could be better. With this, we are saying that activity in the public sector has to identify what the community; therefore we would expect, by statute, that to happen. If it does not, we will, by using the powers delegated to us, enforce what a community would be. Again, it is that fallback position. We would seek to ensure that the legislation gives the capability for PSBs to define communities, but if they subject—. If they wish not to do that, we have the powers to intervene.

[150] **David Rees:** So, it is more of the reverse role. You are allowing PSBs to actually make that call themselves, but if they fail to make that call, you will then implement regulations to ensure that they make that.

[151] **Carl Sargeant:** That is correct.

[152] **Simon Thomas:** Mae gennyf ychydig gwestiynau, Weinidog, dim ond i gloi rhai o'r agweddau hyn. Yn gyntaf oll, hoffwn ofyn ichi ynglŷn â rôl cynghorau cymuned. Mae cynghorau cymuned wedi eu cynnwys yn benodol yn y Bil, ond mae yna hefyd drothwy o 200,000 o ran sut mae'r cynghorau cymuned yn ymwneud â dyletswyddau yn y Bil. Yn gyntaf, a allech chi esbonio pam y mae'r rhif hwn ar wyneb y Bil? Hefyd, a oes gennych y pŵer i amrywio'r rhif yn y dyfodol?

Simon Thomas: I have a few questions, Minister, just to conclude on some of these aspects. First, I wish to ask you about the role of community councils. Community councils have been contained specifically within the Bill, but there is also a threshold of 200,000 in terms of how the community councils deal with duties contained in the Bill. First, could you explain why this number is on the face of the Bill? Also, do you have the power to vary the number in future?

[153] **Carl Sargeant:** If I may, I will defer to one of my officials to respond to that in detail.

[154] **Ms John:** In terms of the threshold on community councils, they are the ones that are captured, I believe, under the regulations under section 39 of the Public Audit (Wales) Act 2004. So, it is the consistency with that. However, there is then the ability to change that threshold if circumstances change. It was therefore felt appropriate, after consultation, to

change that threshold.

14:00

[155] **Simon Thomas:** Sorry. Just to be clear, you are saying that the £200,000 threshold is in another piece of legislation. Is that correct?

[156] **Ms Gibson:** The threshold was taken from another piece of legislation, and the power to make regulations, which would be subject to the affirmative procedure to afford the appropriate scrutiny, is there to enable us, if there were any change to that threshold, to then make the consequential change in the provisions of our Bill. It is to ensure that those community councils that have got sufficient funding to enable them to make a meaningful contribution to the provisions of the Bill would be able to be a part of that.

[157] **Simon Thomas:** Okay. Unless I am completely incorrect here, that previous piece of legislation is from 10 years ago, and there has been a lot of inflation since then, plus it is not to do with these kinds of duties. Why is it appropriate?

[158] **Ms Gibson:** Because that is the threshold that is currently used. It is something that is, you know, understood and is a fair and reasonable amount.

[159] **Simon Thomas:** Currently used for which purpose? Sorry, I do not understand.

[160] **Ms Gibson:** In terms of the gross expenditure, so if they have to prepare accounts, they are subject to a formal accounting procedure. It is something that is just in keeping with the existing provisions in relation to community councils. But, if it should change, our Bill can respond to that.

[161] **Simon Thomas:** I appreciate that you can bring forward regulations, but it strikes me that it has not been based on an analysis of the responsibilities set forward in this Bill. I simply put that to you, Minister, to consider.

[162] Mae gennyf ail gwestiwn i chi. Nid wyf yn gwybod a gawsoch gyfle i wrando ar y dystiolaeth a glywsom gynt ar y Bil arall, sef y Bil Addysg a Chynhwysiant Ariannol, ond awgrymodd y Gweinidog, Lesley Griffiths, bryd hynny—ac mae'n siŵr y cewch chi gofnod ohono—fod modd cynnwys yr angen am addysg ac, yn benodol, gynhwysiant ariannol o fewn eich cynlluniau yn y Bil hwn, sef gwaith byrddau cenedlaethau'r dyfodol. A ydych yn cytuno felly fod y Bil hwn hefyd yn rhoi cyfle i wireddu amcanion Bil Bethan Jenkins?

I have a second question for you. I do not know whether you had an opportunity to listen to the evidence that we heard in the previous session on the other Bill, namely the Financial Education and Inclusion Bill, but the Minister, Lesley Griffiths, suggested at that time—and I am sure that you will receive the transcript—that there was a means of including the need for education and, specifically, financial inclusion in your plans for this Bill, namely the work of the future generations boards. Do you agree that this Bill also provides an opportunity to fulfil the aims of Bethan Jenkins's Bill?

[163] **Carl Sargeant:** There are two points, Chair. Taking the last first, in regard to your question, is the ability specifically to encompass Bethan Jenkins's Bill in this Bill? No. I will explore further the detail of that. The Bill, and the goals, as I have explained, Chair, are not prohibitive in terms of change. Of course, while the direct answer on Bethan Jenkins's Bill is 'no', the consequences are possibly a 'yes'. The wellbeing of an individual, and the wellbeing and sustainable development of a community, surely have to encompass a prosperous Wales. That is just one of the goals and aspirations. If the public service boards believe that the educational attainment or knowledge of an individual needs to be enhanced on that basis, of

course, it could possibly be one of the indicators or set in guidance around that, but we would not seek to be specific with Bethan Jenkins's objectives in terms of her Bill process, to include it in the architecture of this Bill. Chair, I do not know whether Amelia wants to add anything.

[164] **Ms John:** Really, just to give a little bit more detail on that, we would expect financial inclusion to be a part of any assessment of wellbeing in an area. So, we would expect public service boards to be taking in the financial inclusion of communities. Section 35(3)(c) of the Bill particularly asks them to look at the needs of disadvantaged or vulnerable groups, so particular groups or communities that may be financially excluded. We would certainly want to make it clear in the guidance to the Bill that financial inclusion is an important part of any such assessment.

[165] **Simon Thomas:** Okay, thank you for that. My final point is on commencement Orders, which we always enjoy on this committee. You have several ways of doing this, but section 52 in particular has something a little bit more unusual, in that it asks for powers particularly 'in connection with'. That strikes me as quite a wide-ranging set of powers that you would be using there. They are not the transitional ones that we usually see, although those are there as well, I appreciate. Is there a particular reason for asking for that?

[166] **Carl Sargeant:** We think that this is very common in terms of legislation and the terms that we use. I will refer you to my legal team in terms of demonstrating that, if I may.

[167] **Simon Thomas:** Yes, indeed. We see different variations of these powers, but why this particular form of words?

[168] **Ms Gibson:** This is just a common legislative provision, and it is really good drafting practice. It is sensible and limited, and it cannot be used widely. There are examples of this provision in the last four Assembly Acts: the Housing (Wales) Act 2014, the Agricultural Sector (Wales) Act 2014, the Education (Wales) Act 2014, and the Social Services and Well-being (Wales) Act 2014. Basically, it cannot be used to do anything contrary to the provisions of the Act, and it is just there as a supplemental provision if any of the operative provisions need a supplemental provision to enable them to work as they were intended. That is what it is there for. So, it is a matter of making good law that can be usable, going forward.

[169] **Simon Thomas:** Diolch am hynny. **Simon Thomas:** Thank you for that. I do not see any further questions from the committee. Nid wyf yn gweld bod unrhyw gwestiwn pellach gan y pwyllgor. A oes gennych chi Do you have any further points that you wish unrhyw bwynt pellach yr ydych eisiau ei to make, Minister? wneud, Weinidog?

[170] **Carl Sargeant:** No, Chair. I just look forward to your response in terms of the detail that we have given today. I will share with the clerk, if that is helpful, the architecture of the Bill, just to explain more, in a simple form, about what the Bill does and how that operates.

[171] **Simon Thomas:** Yes, please do. Of course, you will get a copy of the Record, and you will be able to correct anything that you wish to then.

[172] Diolch yn fawr iawn i chi. Thank you very much.

14:06

Offerynnau nad ydynt yn cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3

Instruments that raise No Reporting Issues under Standing Order 21.2 or 21.3

[173] **Simon Thomas:** Symudwn ymlaen at eitem 4. Mae offeryn o dan y weithdrefn gadarnhaol yma ynglŷn â chynllunio gwlad a thref. A oes unrhyw gwestiynau? Rwy'n credu bod gan Gwyn bwynt i'w wneud, beth bynnag.

Simon Thomas: We will move on to item 4. There is an affirmative resolution instrument here in relation to town and country planning. Are there any questions? I believe that Gwyn has a point to make, in any case.

[174] **Mr Griffiths:** Diolch, Gadeirydd. Hoffwn dynnu eich sylw yn benodol at y Gorchymyn hwn oherwydd yr ymchwiliad sydd ar fin cychwyn o ddifrif ynglŷn â gwneud Deddfau ar gyfer Cymru. Mae proses ddiddorol, rwy'n meddwl, yn y fan hon lle mae Deddf Gynllunio 2008 wedi cynnwys darpariaeth ar gyfer Lloegr, gan gynnwys pŵer i Weinidogion Cymru wneud Gorchymyn drwy'r weithdrefn gadarnhaol i ymestyn y ddarpariaeth i Gymru. Felly, mae'r pŵer yn aros yn y fan hon yn hytrach na bod cynnig cydsyniad deddfwriaethol yn cael ei gytuno yn y fan hon i ddeddfwriaeth San Steffan fod yn weithredol yn uniongyrchol yng Nghymru. Byddai hyn, er enghraifft, wedi bod yn ffordd o ddelio â'r cynnig diweddar a gawsom ynglŷn â chytundebau rhwng ysgolion a chartrefi. Gallent fod wedi diddymu'r rheini yn Lloegr gan roi'r pŵer i Weinidogion Cymru, drwy Orchymyn, ymestyn y ddarpariaeth i Gymru yn yr un ffordd ag y mae hyn wedi digwydd. Nid oes gennyf gof o ddod ar draws hynny mewn cyd-destun gwahanol, a dyna pam oeddwn yn meddwl ei fod yn werth tynnu hwn i sylw'r pwyllgor, fel ffordd arall y mae'n bosibl deddfu dros Gymru.

Mr Griffiths: Thank you, Chair. I want to draw your attention specifically to this Order, because of the inquiry that is about to commence in earnest on making legislation for Wales. There is an interesting process here, I believe, whereby the Planning Act 2008 includes a provision for England, which includes a power for the Welsh Ministers to make an Order via the affirmative procedure to extend that provision to Wales. Therefore, the power remains here rather than a legislative consent motion being agreed here so that Westminster legislation applies directly to Wales. This, for example, would have been a way of dealing with the recent LCM that we had on home-school agreements. They could have abolished those in England, while giving a power to the Welsh Ministers, by Order, to extend the provision to Wales in the same way as is taking place here. I cannot recall seeing this in any other context, and so that was why I thought that it would be worth while to draw this to the committee's attention, as another way in which it is possible to legislate for Wales.

[175] **Simon Thomas:** Diolch, Gwyn, ac rwy'n credu bod hwn yn ddiddoro. Cawsom ni dipyn bach o ffrwgwd dros y cytundebau cartref ac ysgolion oherwydd y broses ddiffygiol, efallai, yn y fan hon. Rydym yn nodi hynny a byddwn yn ei fwydo i mewn i'r ymchwiliad pellach y byddwn yn ei wneud ar lunio cyfraith i Gymru, rwy'n credu. A oes unrhyw bwyntiau eraill ar yr adroddiad neu ar sylwadau Gwyn, neu a ydych chi'n hapus gyda hynny? Gwelaf eich bod. Diolch yn fawr iawn.

Simon Thomas: Thank you, Gwyn, and I think that this is interesting. There was a bit of a fracas over home-school agreements because the process here was, perhaps, deficient. We note that, and we will feed it into the further inquiry that we are going to undertake in relation to legislating for Wales, I think. Are there any other points to make on the report or on Gwyn's comments, or are you content with that? I see that you are. Thank you very much.

14:09

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**
**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

[176] **Simon Thomas:** Cynigiau fod

Simon Thomas: I propose that

y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog 17.42(vi) a (ix).

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi) and (ix).

[177] A yw pawb yn hapus gyda hynny? Gwelaf eich bod, ac felly rwy'n gofyn i'r cyhoedd gilio o'r cyfarfod, os gwelwch yn dda.

Is everyone content with that? I see that you are, and so I ask that the public exit the gallery, please.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:09.
The public part of the meeting ended at 14:09.*

ⁱ This is correct in the context of the discussion regarding Part 1 of the Local Government (Wales) Measure 2009 which relates to performance improvement, which is not being repealed by the Well-being of Future Generations (Wales) Bill (subject to the repeal of certain transitional and savings provisions relating to Part 1 of the Measure referred to below). However, the Bill does repeal Part 2, sections 48(2)(b), 50(5)(c) of that Measure, which relate to Community Strategies and Planning. The Bill also repeals section 51(3) of, and Schedule 3 to, that Measure which makes transitional and savings provisions in relation to Parts 1 and 2 of that Measure.”