



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

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

**Dydd Llun, 16 Mawrth 2015**  
**Monday, 16 March 2015**

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi 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**

Alun Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

**Eraill yn bresennol**  
**Others in attendance**

Jeff Godfrey	Llywodraeth Cymru Welsh Government
Jane Hutt	Aelod Cynulliad, Llafur (y Gweinidog Cyllid a Busnes y Llywodraeth) Assembly Member, Labour (the Minister for Finance and Government Business)
Gill Lambert	Llywodraeth Cymru Welsh Government
Y Gwir Anrh Syr / The Rt Hon Sir David Lloyd Jones	Cadeirydd Comisiwn y Gyfraith Chair, Law Commission
Elaine Lorimer	Prif Weithredwr Comisiwn y Gyfraith Chief Executive, Law Commission

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Daniel Greenberg	Cynghorydd Arbenigol Special Adviser
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Clerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Joanest Varney-Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 13:31.*  
*The meeting began at 13:31.*

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

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I start first with apologies. I understand that William Powell and Suzy Davies have been slightly delayed, but they will join us shortly. I'll just make some housekeeping announcements; the usual ones, really. We do not expect a routine fire drill, so if we hear the alarm, please follow the instructions of the ushers carefully. Please switch all mobile devices to silent or off. These proceedings, of course, are conducted in Welsh and English. When Welsh is spoken, there's a translation on channel 1, and channel 0 will amplify our proceedings.

13:32

**Tystiolaeth mewn Perthynas â'r Ymchwiliad i Ddeddfu yn y Pedwerydd**  
**Cynulliad**

**Evidence in Relation to the Inquiry into Making Laws in the Fourth Assembly**

[2] **David Melding:** Item 2 is further evidence in relation to our inquiry into making laws in the fourth Assembly, and I'm delighted to welcome Jane Hutt, Minister for Finance and Government Business. Jane, do you want to introduce your colleagues?

[3] **The Minister for Finance and Government Business (Jane Hutt):** Thank you very much, Chair. Can I introduce Jeff Godfrey, our director of legal services, and Gill Lambert, who is head of the legislative programme and governance unit? And could I say, Chair, that I'm delighted to be giving evidence this afternoon; I think it's a very, very valuable inquiry you're undertaking.

[4] **David Melding:** Thank you for that. We found the Government's written evidence interesting, so we'll now probe some of that. I just want to start by saying that, when you're considering the legislative programme, you are minded about the appropriate level of scrutiny given to Bills, and I just wonder how you balance that judgment with—. You know, some people would say that it's up to the Assembly to determine what level of scrutiny is appropriate, rather than for the Government to make those sorts of decisions. No doubt you have a slightly more nuanced approach to this, so how do these matters enter consideration?

[5] **Jane Hutt:** I think, obviously, we have to be responsible and clear in terms of our timetabling and anticipating how long we believe it will take in terms of bringing forth legislation. I think it's the Assembly's role—. Clearly, it's a matter for the Assembly to decide what the level of scrutiny should be, but I think it's very important that we start the process by making sure we're planning for the timetabling and that we're making effective use of our resources. And, of course, that depends a lot on the good collaboration and work that's undertaken between my officials, particularly led by Gill Lambert and her team, and Assembly Commission officials as well. It is important in doing that that we are taking into account what we feel might be needed in terms of scrutiny, but it is up to the Assembly to guide us.

[6] **David Melding:** Understood. Simon, did you want to probe on that a bit?

[7] **Simon Thomas:** Ie, jest ar y pwynt yna'n benodol. Rydych yn dweud yn eich tystiolaeth, serch hynny, ei bod hi'n briodol weithiau i'r Llywodraeth fwrw ymlaen gyda deddfwriaeth er efallai fod yna bosibiliad, os **Simon Thomas:** Yes, just on that point specifically. You state in your evidence, however, that it is appropriate on occasion for the Government to proceed with legislation even though there may be a possibility of, if

liciwch chi, o *logjam* yn y pwyllgorau. Weithiau, rydych yn dweud, ei bod yn briodol bod y Llywodraeth yn ystyried hynny; weithiau, rydych yn dweud, na all rhaglen ddeddfwriaethol y Llywodraeth gael ei hatal oherwydd y pwyllgorau—er enghraifft, un pwyllgor yn delio gyda dau Fil o'r bron, o bosib. Mae wedi digwydd yn ddiweddar bod rhai pwyllgorau wedi delio gyda mwy o Filiau na phwyllgorau eraill. Felly, beth yn union yw'r ystyriaeth rydych yn ei rhoi i'r ffordd y mae'r Biliau yn cael eu craffu yn y Cynulliad, yn enwedig capasiti'r pwyllgorau? A ydy hynny'n effeithio ar raglen y Llywodraeth o gwbl?

you like, a logjam in committees. Sometimes, you say, it may be appropriate for the Government to take that into account; sometimes, you say, the Government's legislative programme cannot be prevented because of the committees—for example, one committee that is dealing with two consecutive Bills, possibly. It has been the case recently that some committees have dealt with more Bills than other committees. So, exactly what consideration do you give to the way in which Bills are scrutinised in the Assembly, particularly capacity within committees? Does that have any impact at all on the Government's programme?

[8] **Jane Hutt:** Well, we seek to take into account—certainly as a member of the Business Committee—. It is the Business Committee's assessment, and the business managers' assessment of the needs and what is emerging in terms of response to the legislation as it's being developed and as it's being presented. Of course, there will be anticipation of issues or, perhaps, pressures and difficulties in terms of a particular piece of legislation going through, but also, of course, I'm taking into account committee Chairs' views and their programmes of business anyway, which, of course, can have an impact on this. So, I mean, some of this is about practicalities, isn't it? And some committees, of course, have got a lot more legislation; others are very much lighter in terms of their legislative responsibilities and have policy reviews ongoing. But, I think it has to be about the Government being respectful of the Assembly committees' capacity to handle this legislation whilst, certainly as Minister for Government business, ensuring that we do get our Government business through and our legislation through. Obviously, you will have views and this inquiry is very helpful in assessing whether we have actually managed this effectively or whether there have been occasions—and I think we would all know it—where there's been more challenge. But, it has to be about the practicalities of working together—our officials—and, indeed, then being very clear about the knowledge at Business Committee and with committee Chairs about particular pressures and anticipated pressures.

[9] **Simon Thomas:** Jest ar y pwynt yna, y pwynt ymarferol yna, a oes gan y Llywodraeth erbyn hyn farn o gwbl ynglŷn â'r ffordd y mae'r Cynulliad wedi dewis edrych ar Filiau? Fel rydych yn gwybod, yn y Cynulliad hwn, penderfynwyd cael pwyllgorau pwnc sydd hefyd yn ystyried pob Bil sy'n ymwneud â'r maes hwnnw, lle yn y Cynulliad blaenorol, sefydlwyd pwyllgorau penodol ar gyfer trafod Mesurau, a dyna'r drefn a gewch chi mewn Seneddau eraill hefyd. A yw'r Llywodraeth wedi ffurfio barn ynglŷn â pha mor llwyddiannus, neu beidio, y mae'r dull yna wedi bod, o gofio bod ambell i bwyllgor heb ystyried yr un Bil ac ambell i bwyllgor arall wedi mynd trwy bedwar neu bump o Filiau?

**Simon Thomas:** Just on that point, on the point of the practicalities, does the Government now have a view on the way in which the Assembly has chosen to look at Bills? As you know, in this Assembly, it was decided that there should be subject committees that also deal with every Bill covered under that subject area, whereas in the previous Assembly, specific committees were established to deal with legislation, as they have in other Parliaments. Has the Government come to any view on how successful, or otherwise, that method has been, bearing in mind that some committees haven't considered any Bills at all and others have gone through four or five Bills?

[10] **Jane Hutt:** I remember the discussions we had at the beginning of this Assembly term about whether we should—and these were very much cross-party discussions as well—

develop those committees as legislative and policy review and scrutiny committees. I think, again, I'm not sure whether this is something that you have been taking evidence on, but it's certainly timely to look at that and assess that, because I think one or two committees haven't had any legislation. Has the Enterprise and Business Committee had any legislation?

[11] **William Powell:** One.

[12] **Jane Hutt:** I think, going back to the views, we did take evidence from Scotland as well as looking at Westminster, which obviously is very different in terms of the Bill committee process, and looking at the value of committees actually undertaking policy review and scrutiny alongside legislative responsibilities and how that can benefit backbenchers in terms of their roles and the knowledge and expertise that the committee is building up around a particular policy function of the Government. It's something that I'm sure we will return to as an Assembly.

[13] **Simon Thomas:** Does the Government have a view?

[14] **Jane Hutt:** The Government feels concerned for those committees that have had to handle, and concern on behalf of—. Just as feedback from Chairs of those committees and the Business Committee—. But, so far, so good, and we have managed to get it through. But I would say that the feedback that I've had is much more about the fact that we have a lot of pressure on a small number of Members, which goes back to the bigger question about our capacity and our ability to actually handle a lot of legislation as an Assembly. I think the fact is that there have been severe pressure points on some of the committees. That's not to say that that's just about the fact that we've blended policy review with legislation in the committee; it is about time and capacity and the numbers of Members and the responsibilities that they've got.

[15] **David Melding:** I apologise if I've got my facts wrong on this, but I don't think we've seen a major Bill published in draft yet. This was quite an innovation when the Labour Government at Westminster, 10 or 15 years ago, started to move in the direction of publishing some major Bills in draft. So, where do we stand with draft Bills? Is it an aspiration to perhaps be able to manage the legislative process, to be able to publish them, or is it turning out not to be very practical?

[16] **Jane Hutt:** Well, it's being considered on a case-by-case basis, and I think our written evidence, the First Minister's written evidence, does refer to deciding when it's appropriate to publish a draft Bill. I was just looking at myself at what we have delivered—

[17] **David Melding:** I do apologise. There was a draft planning Bill, I've just been told, but please continue.

[18] **Jane Hutt:** Yes. I mean, in fact, there have been five draft Bills consulted on this Assembly term. It might take me a minute just to go through them. There was the draft public audit (Wales) Bill. I was the Member in charge of that Bill. There was a draft human transplantation (Wales) Bill. There was a draft control of dogs (Wales) Bill, and of course that was not taken forward because of what happened with the Westminster legislation. There was a draft public services (workforce) (Wales) Bill. That wasn't actually taken forward as an Assembly Bill. And there was the draft planning (Wales) Bill. So, we've had those five draft Bills, but I was also just taking note of the fact that there is a protocol—I don't know whether the evidence with the Counsel General touched on this—for Welsh Government White Papers and draft Bills, which the committee might be aware of. If not, we can give you sight of that.

[19] **David Melding:** I think it would be useful to have that on how you handle pre-introduction publications and the appropriate strategies. So, I do apologise. There have been

two major Bills under the Government's control that have appeared in draft out of a programme of, I don't know, getting on for a dozen or 15 major Bills. I don't imply any criticism here, but I'm just wondering whether draft Bills are the gold standard. Is that what you would hope to do? Or do you think it's just one of several options in terms of the way the Government brings in legislation?

[20] **Jane Hutt:** As I said, and I think it's outlined in the written evidence, we do have to take into account factors in terms of whether we would progress with a draft Bill. I think it's very valuable. I think we need to take stock of the impact of having a draft Bill. I mean, with the Human Transplantation (Wales) Act 2013, as you will recall, it was seen as almost imperative that we had that as a draft Bill; because it was mighty new and very contentious, it needed an awful lot of pre-legislative consideration. So, it's certainly done case by case, but on whether we then progress through White Papers to Bills or present a full Bill or draft Bill, I think it's still early days for us as a Government, but it would be helpful again to have your views, I'm sure, as a committee, in terms of the value of the draft Bill process.

13:45

[21] Outside, certainly in my tax advisory group, when we've been considering the way forward for our tax collection and management Bill, which I'm bringing forward, it was a representative on my tax advisory group who was saying to me in advice to me as Minister, 'Well, you know, would it be useful if we had a draft Bill?' We've had good consultation. It does go back to, I think, the early stages of consultation as we develop in terms of policy, and what we think as a result of consultation, and, indeed, if that moves into Green or White Paper, whether we feel still more is needed. I think the draft Bill issue may be a question for the First Minister as well.

[22] **David Melding:** So, I infer from that that in two very significant policy areas—planning and human tissue—the Government feels it was very useful to have published in draft. Am I right in forming that impression?

[23] **Jane Hutt:** Yes.

[24] **David Melding:** Simon, did you just want to follow up on that?

[25] **Simon Thomas:** Ie, jest ar y pwyt yna, a dweud y gwir. Beth felly yw barn y Llywodraeth ar ddefnyddioldeb Bil drafft? Ai rhoi cyfle i'r cyhoedd i drafod cynnwys Bil a gweld beth sydd ynddo fe ydyw, achos rwy'n meddwl mai dyna beth sydd wedi digwydd gyda'r Bil Trawsblannu Dynol (Cymru), neu ai craffu cyn deddfu gan bwyllgor o'r Cynulliad? Achos, hyd y cofiaf i—ac efallai fod hyn wedi digwydd mewn pwyllgor arall, felly efallai fy mod i'n anghywir—rwyf ond yn cofio un adroddiad penodol cyn deddfu gan bwyllgor, sef y Pwyllgor Plant, Pobl Ifanc ac Addysg, a wnaeth adroddiad ar Fil Cymwysterau Cymru, ond nid oedd y Bil Cymwysterau Cymru yn bodoli pan wnaeth yr adroddiad, er bod pawb yn gwybod beth oedd yn mynd i fod yn y Bil cymwysterau. Felly, roedd hwnnw'n graffu ar Fil drafft heb weld Bil drafft, mewn ffordd. Ond rwy'n

**Simon Thomas:** Yes, just on that point, to be honest. What therefore is the Government's view on the usefulness of a draft Bill? Is it to provide the public with an opportunity to discuss the contents of a Bill and to see what's included therein, because I think that's what happened with the Human Transplantation (Wales) Bill, or is it for pre-legislative scrutiny by a committee of the Assembly? Because, as far as I recall—and perhaps this has happened in another committee, so I may be wrong—I only remember one specific pre-legislative report by a committee, which was the Children, Young People and Education Committee, which prepared a report on the Qualifications Wales Bill, but the Qualifications Wales Bill did not exist when the report was drawn up although everyone knew what was going to be in the qualifications Bill. So, that was

credu yr oedd e'n eithaf defnyddiol achos rwy'n credu bod y Llywodraeth ei hunan, a'r Gweinidog, wedi defnyddio'r adroddiad i fireinio tipyn bach ar y Bil a beth sy'n cael ei ddweud beth bynnag. Felly, beth yw pwrpas Bil drafft: ai denu diddordeb y cyhoedd ac ymgynghori â nhw, neu rywbeth penodol ar gyfer y dulliau craffu fan hyn?

scrutinising a draft Bill without seeing a draft Bill, in a way. But I think it was quite useful because I think the Government itself, and the Minister, used the report to polish the Bill a little and what was included anyway. So, what is the purpose of a draft Bill: is it to garner public interest and consult, or is it something specific for the scrutiny processes here?

[26] **Jane Hutt:** I think it might be useful if I brought Jeff Godfrey in on this point as well because, obviously, we're very much in the hands of our legal advisers on this. I would say though, from a ministerial, Government perspective, that it's very useful to test out a draft Bill, isn't it, to get the Bill right when we bring it forward? I think there's perhaps not just one answer to this question, is there? You've mentioned an opportunity for pre-legislative scrutiny, as it were, which wasn't actually for a draft Bill, in terms of the discussions you had. Also, there have been some very good, for example, technical briefings, post consultation or during consultation, around a White Paper, which have clearly helped inform the Bill process. I think we are also guided by our advisers about whether we should progress into a draft Bill. I think it is good to do if we can, but it isn't always necessary in terms of the actual piece of legislation and the weight of it, the impact of it, and the stakeholder engagement that we need. Clearly, we want to be as transparent and open as possible, not just for scrutiny by our Members, but also by stakeholders outside the Assembly. Jeff, do you want to add anything?

[27] **Mr Godfrey:** Thanks, Minister. I don't think it's a single factor. Sometimes you can be engaging the public; on other occasions, there may be technical reasons, because of the complexity of the area that you're dealing with, where a draft Bill may be appropriate. So, to take for example the Human Transplantation (Wales) Bill, clearly it was a significant Bill in terms of public awareness and appreciation of what was being done, but in preparing that Bill, rather than amending the Human Tissue Act 2004, it sought to restate the law in that particular area, so there was a technical reason why it was a valuable exercise to do a consultation on that draft Bill. So, I think it can vary from case to case. One of the issues with a draft Bill is you may sometimes be talking to a technical audience because you're dealing with quite complex legislation where the value may not be so much the public on that occasion, but how the legal community or the technical community respond to it.

[28] **David Melding:** With the Bill then, in either case, or both cases, that was introduced into the Assembly, into its formal scrutiny proceedings, did the text change a lot, do you know, in areas of substance?

[29] **Mr Godfrey:** On which?

[30] **David Melding:** Well, between the draft and the actual introduction.

[31] **Mr Godfrey:** I don't think it changed significantly. There were some changes to it, but I don't think it was significant. It did have the value of ensuring that, both in terms of the wider audience in Wales and indeed those who look after the Human Tissue Act, they had an opportunity to look at the way, technically, that the Bill was being prepared.

[32] **Jane Hutt:** Would it be helpful if we drew attention to any changes particularly in that?

[33] **David Melding:** I think it would, yes. That would be helpful. Suzy Davies.

[34] **Suzy Davies:** Thank you, Chair. Just to sort of turn this on its head for a moment, in

the Government evidence at paragraph 20, there's a reference to some Bills being uncontroversial and therefore perhaps not needing quite as much scrutiny as more complex Bills. How does the Government decide what's uncontroversial? It's paragraph 20 in the evidence.

[35] **Jane Hutt:** I think again it goes back to our points about case-by-case consideration and anticipation in terms of whether a Bill is likely to be more controversial. We start having a response to that at a very early stage, of course, when the First Minister makes his legislative statement about the programme for forthcoming legislation. Clearly, soundings and views are given not just within the Assembly but also externally in terms of likely response to policy development, so I think consultation is crucial before we get into draft Bills, and whether that would be appropriate or not—consultation and ensuring that we are aware as a Government of the widest range of views about controversy, complexity and also popularity sometimes, about getting on with it, you know, and saying 'Well, yes, we need to grasp this opportunity'. I think again it really goes back to what the Government's priorities are, and they're very clearly laid out in the legislative programme and the statement.

[36] **Suzy Davies:** Thank you for that answer. Am I to take it, then, that controversy and complexity—I think they were the words that you used towards the end there—are the criteria by which you assess whether something needs further scrutiny or not?

[37] **Jane Hutt:** Well, I do think that the issue about scrutiny and the level of scrutiny has to be—and this goes back to the Chair's first question—a matter for the Assembly in terms of then weighing up the responses that are emerging from announcements of forthcoming legislation and consultation. It really has to be considered on a case-for-case basis, but I think, to go back to the first question about how we timetable and plan for a piece of legislation, again, also it is a matter for the Assembly to decide. We may think this Bill's going to be very difficult to take through, and actually it turns out that there is much more consensus, and there are ways in which we can see a way forward. So, I think it would be very dangerous for us, as Government, to be airing our concerns about controversy at any stage until we're actually standing there defending it, I think.

[38] **Suzy Davies:** Right. That's interesting. As you say, it's up to the Assembly about how much time it needs to scrutinise legislation. Are you confident that the Government has always convinced this Assembly that it's had enough time for consultation and scrutiny in the particular circumstances when we've had expedited Bills?

[39] **Jane Hutt:** Well, we have very clear protocol again about how we ensure that adequate consultation is undertaken. That, of course, is very much up to Ministers in terms of how they take that forward. You know, one of the important points about, particularly this fourth Assembly, is that we've had to learn a great deal. We're still new at this, as a Government, and indeed as an Assembly and legislature. We have to make sure that we're following clear guidelines about our policy developments ahead of introduction of any legislation.

[40] **Suzy Davies:** Ah, right. Can I ask you this question, then? We've had some evidence from other witnesses that, in their view, in terms of some of the Bills that have come forward to us from Government, whether through an expedited procedure or otherwise, perhaps the consultation work on the policy side of it has not been as complete as they might have wished and that, in turn, has led to significant amendment by Government at Stage 2, usually.

[41] **Jane Hutt:** Well, it would be very interesting to know and see the feedback in terms of concern about policy development, or lack of opportunity for consultation in policy development, because that's certainly an absolute prerequisite to getting the legislation right, isn't it—that we do test out and that we do learn from that consultation in terms of policy

development? I mean, that is pre-legislative scrutiny, obviously, so, again, if there are lessons to be learned on that, then, clearly, we have to take that forward.

[42] If you look at the written evidence, we have got the principles of consultation laid out on pages 3 and 4. I think we would seek to have your views on that in terms of the policy development cycle approach. All proposals for legislation have to abide by that and, you know, some of these key issues come back to the whole point of legislation: do we need legislation to deliver on this policy? That is question No. 1. What is the impact going to be in terms of a legislative underpinning of policy? That's before we even get into the whole issue of impacts on other stakeholders in terms of the legislation that we're trying to take forward. I do think paragraph 7 is crucial:

[43] 'The ultimate test for any piece of legislation is that it does what it was intended to do and benefits the people.'

[44] I'm quite interested in looking at the whole issue of post-legislative scrutiny in that respect.

[45] **Suzy Davies:** On the question of why, I think, you're quite right: it's covered in the evidence that is written there, but what about the when question to this? Who actually makes the ultimate decision about when a piece of legislation might be introduced into the timetable?

[46] **Jane Hutt:** Well, we have our legislative programme and the First Minister, of course—and this will be, I'm sure, a question for the First Minister in evidence, when he comes before this committee—has presented his programme on an annual basis and then taken stock also at that point in the summer session, and we have to timetable it. I would say this is something where Gill perhaps is at the forefront in terms of the planning of the legislative timetable. This is something, again, on which I meet quarterly with the legislative programme board, which is in the Welsh Government. We take stock. I was also just checking back how often I've come to Business Committee with a forthcoming timetable of legislation, and I realised that the last time we brought something forward was last year. So, I'm going to bring something forward very rapidly to our Business Committee, because it is important that we are constantly looking at timetabling and capacity. Do you want to say something about that, Gill?

[47] **Ms Lambert:** Yes, if I may. The timetable is quite a complicated activity. There are a number of conflicting pressures and priorities, so it's about understanding what's coming forward as per the announcements from the First Minister and making sure that the appropriate level of scrutiny and the timetabling of that is also factored in, which is why we have a very effective and productive relationship with the Assembly Commission officials to ensure that, in terms of all of the timetabling once it's been introduced, we understand the competing pressures.

[48] Certainly, prior to introduction, we sit down with all our key parties involved in the legislation from the Office of the Legislative Counsel, Legal Services and our policy colleagues, to understand what they're currently working with, and ensuring that everything takes everybody's issues into account, so that the timetable is deliverable at the end of the day. We don't just look at it as an individual Bill; we look at it at programme level. Clearly, where Bills fall, we need to make sure that there aren't those conflicting pressures.

14:00

[49] **Suzy Davies:** Thank you for that answer, because I'm sure you've heard that some committees are having to deal with a great amount of legislation when others, perhaps, aren't

having to deal with anything at all. I appreciate it's a difficult ask, so thank you for your answer.

[50] Finally from me, Chair, Minister, it sounded to me as if, when you responded to my last question, you'd be rather disappointed if lessons weren't learnt during this Assembly about how Bills are drafted and put together and that there would be fewer amendments at Stages 1 and 2, perhaps, in the fifth Assembly, when legislation is being drafted. Can I ask you then, would you also expect to see, less routinely, provisions being included in Bills for Welsh Ministers to make consequential provisions through secondary legislation?

[51] **Jane Hutt:** I think that is something where we would, you know—. We really do have to ensure that we've got the right balance, haven't we, in terms of primary and secondary legislation? I think this is something where the First Minister is fairly clear that he thinks that we have struck the—

[52] **David Melding:** Yes. We will get on to that specifically. I think the point Suzy Davies is making is that you need to leave yourself with some room for manoeuvre in case some things need to be filled in afterwards, because it's not been oven-ready, as it were, going through the legislative process.

[53] **Suzy Davies:** Yes, a sort of post primary legislative finishing off of the policy development, perhaps.

[54] **Jane Hutt:** Well, I think this is something where we have to learn lessons, quite clearly, because this is our first term, isn't it, as a Government, in terms of our experience. I mean, we have to be very clear about what this means in terms of impact on commencement. We have to be very clear that, where possible, we are getting it right and learn the lessons from those Bills, particularly. But, I don't know, Jeff, if you want to add to that at this stage.

[55] **Mr Godfrey:** Yes. I think the question is directed at consequential amendment clauses. They're fairly common in legislation, not simply here, but elsewhere. I'm not sure that they're all—. Certain Bills, if you take very complex large Bills, such as social services, with a large number of provisions, I think it's not unusual and it's to be expected that you will find some provision there in order to make changes as the implementation work develops further. You wouldn't want to run into obstacles that are incapable of being overcome, provided that those clauses are fairly tightly constrained and are directed towards that purpose of making a smooth implementation process. So, I don't think that you would see those disappear, although, clearly, we would always seek to ensure that as many issues as possible are addressed at that point in time that the Bill is taken through.

[56] **Suzy Davies:** I think the point that I wanted to make with that question is that, certainly at primary legislation stage, you would want to know the purpose of those consequential amendments and have some idea what they're likely to say once the secondary legislation comes through, rather than guessing, which is, sort of, the position we've found ourselves in on some Bills so far. But anyway, thank you, Chair.

[57] **Jane Hutt:** If I could just say, Chair, as well, I think the First Minister did undertake a review of this in 2013, and hopefully that will feature in terms of just taking into account the outcome of that review.

[58] **David Melding:** Before we move on to the next section, can I just ask about the legislation team that you chair within the Welsh Government? When you've actually had a Bill presented in a particular department, because it's ready to be submitted to the Assembly, has your team ever sent it back saying, 'No, more work needs to be done; there's still a little too much policy ambiguity in the way it's drafted', or have you pretty much been a pipeline

and once it comes from the departments, it's through your co-ordinating system just really for timetabling?

[59] **Jane Hutt:** I don't actually chair the legislative programme board; it's chaired by a senior official who reports to me. I'm not aware at that stage—. They haven't got as far as bringing something to my attention that they've had to reject at that stage, but it may have happened.

[60] **Ms Lambert:** I think the progress of legislation is the primary focus of the legislative programme board, which is chaired, as the Minister mentioned, by senior officials, but around the table are the Permanent Secretary, all the directors general, and the heads of the legal community. So, every piece of legislation that is currently being prepared for introduction or is going through the Assembly itself is considered in detail, both in terms of our delivery and also the resourcing that's required to support that delivery.

[61] **David Melding:** Has any ever been sent back for further work to the department because it wasn't quite ready?

[62] **Ms Lambert:** Again, perhaps Jeff can come in on this. It's not so much sent back, but certainly—

[63] **Jane Hutt:** Revisions.

[64] **Ms Lambert:** The focus is put back to the lead official to ensure that necessary work is carried out to support—

[65] **David Melding:** Can you add to that, Mr Godfrey?

[66] **Mr Godfrey:** The decision on whether the legislation is ready or not would be for the Minister and the First Minister on advice. The legislative programme board is really just tracking that. Because of the tightness of the programme, the Bills are on course, so if you've got to a position where there were issues that looked as though there would need to be a change to the timetable, or an adaptation, the legislative programme board would be looking at the implications for other Bills, et cetera. But the decision on what to do about particular issues would be for the Minister and the First Minister to make a decision on.

[67] **Jane Hutt:** I would think also advice from the Counsel General.

[68] **Mr Godfrey:** That can factor in if there are competence issues arising as the Bill's provisions are being completed.

[69] **David Melding:** Okay. Alun Davies.

[70] **Alun Davies:** Thanks very much. I must say, I'm not sure I fully recognise some of the descriptions that Suzy's used of the evidence that we've received. Much of the evidence has been very positive, in fact, about the processes of making law in this place. In terms of how we take this forward, what I'm getting from your evidence, Minister, is that this matter is more an art than a science, and that judgments have to be taken, and sometimes very fine judgments, about how legislation is both constructed and then the processes by which it's taken forward. Those processes are processes that are in the gift of the Assembly rather than Government, I think. It might be useful if you could confirm that the Government doesn't have the means, technically, to overrule a decision of the Business Committee, so it is the Assembly that has control over the processes that take place in this place.

[71] **Jane Hutt:** Yes, in terms of scrutiny, it's back to the very first question: it is for the

Assembly to respond, if you like, to the way in which we are presenting a Bill, not just a question of forthcoming timetabling, which will be discussed between two sets of officials, but also on the basis of consultation and policy development, as we've just been discussing. It certainly has to be—that's the basis of the legislature; it has to be in the driving seat in terms of the scrutiny to get the legislation through.

[72] **Alun Davies:** Thank you, that's very useful. In terms of the evidence base that we're building, in terms of this inquiry, I think the one area where there has been an observation, shall we say, that quality can vary is that of explanatory memoranda. I think it's fair to say—and I think the Government has recognised this at different times—that, in terms of explanatory memoranda, there are times when they have not provided perhaps the level of information or the structure of information that Government would wish to see. Is the Welsh Government taking any steps at present to review the situation with EMs?

[73] **Jane Hutt:** Well, this is an area where we have to ensure that we learn lessons and we make progress in terms of delivering the best explanatory memoranda, and I think that we do acknowledge this in our written evidence, that it can vary significantly. I'm particularly interested, obviously, in the financial side, in terms of regulatory impact assessments, but in every opportunity to improve in terms of the best evidence, and we've got a programme of continuous improvement in terms of explanatory memoranda. It's an essential part of the policy development process, so I hope that you've got some good evidence of where it's worked well, as well as lessons learned. But I think these are so important in terms of the role that they play in the context of the legislation, and they have to explain: the explanatory memorandum is about why we're doing this, what's the policy purpose, and the legislative outcome, as well as the cost, based on the evidence base.

[74] **Alun Davies:** Okay. Is there one element of the process where the Government—or the Minister—has a direct influence on the process? Is that whether a Report Stage is followed or not? We've seen examples where that has happened, and where it hasn't happened. Would you consider, Minister, that perhaps it would be more appropriate were the Report Stage to be a part of the essential structure of scrutiny?

[75] **Jane Hutt:** I think, just sort of reflecting on the issues about the explanatory memorandum and how we get it right, and to anticipate, if you like, the journey of the Bill—because the journey of the Bill could result in Report Stage—I think what is a very important point to make, and it is made in our evidence, is that we need to get things right at the starting point, at the early stages of developing legislation. Of course, we've talked about that through consultation, policy development, possibly White Papers and Green Papers, possibly draft Bills, sort of anticipating where there may be hurdles or great differences that might emerge, which means that this might have a bearing on the progress of the Bill. But it is up to Ministers—and the Report Stage is there if appropriate—to reflect and to consider whether they would need to bring in and offer a Report Stage. You know, legislation is about a journey, isn't it, from the early beginnings of a policy, principle and purpose, right the way through to getting the legislation on the statute book. You can't say that it should be every Bill that would get to Report Stage, certainly, as a matter of course.

[76] **Alun Davies:** Well, I don't understand why not, because Stage 2 and Stage 3 do very different things—they are a detailed, line-by-line review of the whole legislation; we don't operate a guillotine structure here, so all elements of the legislation are open for quite detailed amendments. We've seen that in recent weeks and how those amendments, by Government and opposition parties in many cases, working together, have actually significantly improved a Bill. I'm thinking particularly of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Bill, possibly, and also, probably, the Well-being of Future Generations (Wales) Bill—it's been significantly improved by that parliamentary process. So, my suggestion, or my question to you, Minister, isn't, 'Do we need to do that once more, and do

it again to get it right?', but that it may well be useful for the parliamentary process in this place were we able to look again at a Bill, once we'd been through that detailed, line-by-line amendment, rather than just looking at it in terms of, 'We made a mistake here, this is a last opportunity to get it right'.

[77] **Jane Hutt:** I do think, as you say, Alun, we have made significant amendments at Stage 2 and Stage 3, which have helped get the Bill to be fit for purpose. I mean, it's always very, I think, salutary and very rewarding when you sit in through the legislative process, and you hear Members—backbench Members, opposition Members—welcoming change, welcoming the fact the Minister is bringing forward an amendment as a result of having listened and learned as a result of the scrutiny, and indeed when Ministers—as happened with the Well-being of Future Generations (Wales) Bill last week—are also supporting opposition amendments. I think that's a very dynamic and positive way in which we are delivering legislation. I mean, one of the interesting points about our legislation in the fourth Assembly is that we're a minority Government and we've actually progressed this legislation as a result of developing, as far as possible, consensus in the way that we legislate. I mean, obviously, you don't have to have everyone on board, but you have to have a measure of consensus to move forward, to deliver a piece of legislation.

14:15

[78] I don't think that always requires—that doesn't, clearly, require you to go to Report Stage to deliver that. Where we have gone to Report Stage, for example, the Social Services and Well-being (Wales) Act 2014, a huge piece of legislation, and that, of course, was something where, I think, to get that legislation through—. And of course that was, again, the Minister in charge of the Bill, with advice from officials, who had to take that decision. And yet, when it came to it, finally, because it was such a complex piece of legislation, with a lot of amendments, that helped that Bill get onto the statute book in an appropriate way.

[79] **Alun Davies:** It's interesting, because the process of legislation is quite similar in different legislatures. What differentiates, perhaps, this place is not just size and capacity, which I think we probably agree on, but also the fact that this is a unicameral system, and, within a unicameral system, is there more pressure on the process to actually be a more inclusive process, if you like? Rather than the Minister taking these decisions, 'Do I want a Report Stage?', as we're discussing now, 'Does that suit me, does that suit my purposes?', would it not, in a unicameral system, be better were the institution itself able to say, 'Actually Minister, we're not sure you've got things right, ourselves'?

[80] **Jane Hutt:** But that opportunity, of course, goes throughout the whole parliamentary scrutiny process, doesn't it? There's plenty of opportunity, and we've heard it, we've seen it, and you've worked through it in your committees to challenge—and quite rightly—Ministers, to scrutinise Ministers, and to support Ministers as well, in saying, 'Well, we could get it even better, you know, if you took us in that direction'. Some of these are clear differences of opinion on policy, which the Minister is going to have to stand out for, in terms of what the Government wants to achieve. So, I don't think pressing it to Report Stage is something which—which is what you were asking in the first place—is going to—. It has to be a case-by-case business, and I think it is very useful to reflect back, again, on lessons learned from this fourth Assembly, in terms of what we have achieved when we've got that legislation through and voted by the Assembly to put it on the statute book.

[81] **David Melding:** Simon Thomas.

[82] **Simon Thomas:** Diolch, Gadeirydd. **Simon Thomas:** Thank you, Chair. Could I A allaf i jest fynd nôl i rywbeth roeddech chi just return to an issue you described a little wedi'i ddisgrifio o'r blaen, gynnau fach, i'r earlier to the committee, namely the internal

pwyllgor, sef y prosesau mewnol yma sydd gan y Llywodraeth o lunio deddfwriaeth? Yn gyntaf oll, gofyn y cwestiwn a oes angen deddfwriaeth o gwbl, ac, yn ail, wrth gwrs, y broses rydych chi newydd ei hesbonio, o bwyllgorau mewnol ac ati yn profi'r system, ac yn mynd drwy ac yn profi'r Bil yn ei ffurf drafft ac ati. O gofio hynny, a fedrwch chi esbonio sut ddaeth y Bil Llesiant Cenedlaethau'r Dyfodol (Cymru) i gael ei gyflwyno i'r Cynulliad? Yn ei ffurf wreiddiol.

processes that the Government has in drawing up legislation? First of all, to ask the question whether legislation is necessary in the first place, and, secondly, of course, the process that you've just explained, in terms of internal committees and so on testing the system and going through and testing the Bill in its draft form, and so on and so forth. Bearing all of that in mind, can you explain to us how the Well-being of Future Generations (Wales) Bill came to be presented to the Assembly? In its original form.

[83] **Jane Hutt:** Well, that was in our legislative programme, quite clearly. Also, if you remember, it started—I think it was Jeff Cuthbert, at that stage, who was responsible for it, launching that national conversation, I seem to remember, with a certain Michael Sheen, and, of course, the sustainability commissioner, Peter Davies, taking the lead on that. This is a very new bit of legislation—legislation through policy development—and it's a very ambitious piece of legislation. So, I think, that was very clearly a policy initiative by the Welsh Government, which it was then testing out to take through into legislation, and extensive consultation to get us those national indicators.

[84] **Simon Thomas:** You're probably aware that the head of the Institute of Welsh Affairs described this as a perfect example of how not to make legislation, this particular Bill, and I think we should learn from mistakes that might have made in the past. You've just described the very good consultation process, but, unfortunately, it went hand in hand with the building of the Bill. In fact, the hashtag on Twitter was #buildabetterbill, and it's surely strange to be in a situation where you're still filling in the policy while the Bill has been presented and is going through the Assembly stages, and I think that that's the mismatch that we got in this Bill, and you've already acknowledged to Alun Davies how much the Bill was improved by Assembly scrutiny, and, in fact, it was gutted and then re-stuffed again—with the help of Government and with the help of opposition parties as well, and it is a better Bill, I would argue, but I still come back to that original question: how did it get to be presented in that form originally? Clearly, the policy work hadn't been done. Clearly, the detail had not been sort of hung on the framework of the Bill, if you like. Have you learnt lessons from that particular process?

[85] **Jane Hutt:** I think it's interesting, because we talked earlier on about the roles of the explanatory memorandum and regulatory impact assessment, and, you know, this has been a complex and interesting journey for that Bill, but there was a review, if you recall, of the regulatory impact assessment by the Wales Audit Office and then there was another consultation, as a result of which we revised and enhanced the regulatory impact assessment. That was one issue, particularly relating to the costs issue, but, I mean, to a certain extent, isn't this part of—. I don't think that this necessarily undermines or should question the purpose. In fact, the outcome, was, as you say, a much improved Bill, which went through last week, so I think it shows a very open and transparent process that we went through on quite a difficult task, but, for me now, I'm very pleased as finance Minister that this Bill has gone through. It's going to help me in terms of budget process and priorities very clearly in our budget-setting process, as well as the public sector being very clear what our national indicators are and what kind of Wales we want for our future generations, but, you know, I think it's—. I don't think that we should decry or undermine the journey that we went through, and, certainly, as a result of scrutiny, and huge external engagement—. Because I remember meeting people who'd been very involved in the consultation after the committee session, where it was sent back, if you like, to Government, and a strong view again. That's

what's so good, when you can get the external stakeholder saying, 'What's going to happen? Are we going to get this Bill back on track?' Now, I think that that shows that we have got a positive and dynamic process for developing legislation in this Assembly, where the outside world is interested. Is something going wrong? Why is it going wrong? What can we do about it? What are you going to do about it?

[86] **Simon Thomas:** I think you could also—

[87] **Jane Hutt:** We got there in the end.

[88] **Simon Thomas:** You did get there in the end. We all got there in the end, but I think you could also argue that that's a shambolic approach to law making, and that work should have been done much before the Bill was even presented to the Assembly, but I don't want to—

[89] **Jane Hutt:** Well, I would dispute that, of course.

[90] **Simon Thomas:** Of course you would, and I look forward very much to seeing whether this Bill actually helps you as finance Minister in any way, shape or form; I'll be amazed if it does. Nevertheless, it's not about this Bill, it's about the lessons that we can learn from the process of legislation, and there are clearly good lessons there about engagement from external bodies, but the reason for asking this question was that you say in your evidence that you want to move away from framework Bills, and the Bill as presented was a framework Bill. It's a little less of a framework Bill now, because some of the meat has been added into it because of this consultation process that we've already discussed. So, as you say quite clearly that you want to move away from framework Bills, can you explain why and how you would do that?

[91] **Jane Hutt:** We want what should be primary legislation, which we now are responsible for, our primary legislative powers—. We need to be very clear what is important, what are Bills focusing on as the most important matters, in terms of what should be on the face of the Bill and what's in subordinate legislation, which, of course, is a big issue under much consideration by this committee. We feel that we want to be very clear that our primary legislative powers should be used for that purpose, in terms of what are the most important matters and key matters. I think the issues around framework Bills, I don't think actually we are—. You know, we haven't got in fact—. I think we've got the balance reasonably right about that. But it has to be tested out and it is being tested out in this fourth Assembly in terms of our legislative powers.

[92] **Simon Thomas:** The Minister in charge of the planning Bill told us it was a skeleton framework. Surely, moving away from frameworks doesn't mean presenting skeleton frameworks.

[93] **Jane Hutt:** We want to make sure that the people of Wales and those who are going to deliver on our policy are very clear what is the important focus and purpose of this legislation.

[94] **Simon Thomas:** A gaf i jest, gan droi yn ôl at y Gymraeg hefyd, roi i chi bod eich tystiolaeth chi yn anghyson yn hyn o beth? Ar un llaw, rydych chi'n dweud, fel rwyf newydd ei ddyfynnu, eich bod eisiau lleihau y nifer o Filiau fframwaith, ond, yn gyffredinol, rŷch chi'n dweud bod y Llywodraeth o'r farn y cynhaliwyd y **Simon Thomas:** Can I just, turning back to Welsh as well, put it to you that your evidence is inconsistent in this regard? On the one hand, you've said that you want to reduce the number of framework Bills, but, generally speaking, you say that the Government is of the view that the correct balance has been struck during this Assembly

cydbwysedd cywir yn ystod y Cynulliad hwn rhwng deddfwriaeth sylfaenol a phŵer i wneud is-ddeddfwriaeth. Mewn ffordd, mae'r ddau beth yn anghyson achos rŷch chi'n dweud eich bod wedi ei gael yn iawn, beth bynnag, ond, hefyd, rydych chi'n cydnabod, rwy'n teimlo, rhai elfennau a daeth allan o'r pwyllgor hwn a phobl eraill bod yna ormod o ddeddfwriaeth fframweithiol yn mynd drwyddo a bod angen mwy o fanylion ac angen mwy o ddeddfwriaeth sylfaenol gyda manylion ar wyneb y Bil. Sut ydych chi'n cysoni'r ddau osodiad yna?

between primary legislation and power to make secondary legislation. In a way, there's an inconsistency there because you say you've got it right in any case, but you also seem to be acknowledging some elements raised by this committee and others that there is too much framework legislation going through and that we do need more detail and we need more primary legislation with detail on the face of the Bill. How do you actually reconcile those two statements?

[95] **Jane Hutt:** I know that this, as I said just now, is a very important question for this committee, and I respect that. I'm sure you'll be discussing this with the First Minister, as you did with the Counsel General, as well. There's probably going to be inherent tension here between our views as a Government and the legislature in terms of how this can be presented in terms of what's on the face of the Bill and the flexibility of that, in terms of futureproofing and opportunities, in terms of issues around the detail for secondary legislation. So, I think it's not going to be something we can resolve, or you can resolve in terms of this committee.

[96] **Simon Thomas:** Ond y drafferth gyda beth rŷch chi'n dweud, Weinidog, yw ei bod fel petai chi'n dweud mai dim ond aelodau'r Llywodraeth neu dim ond Gweinidogion y Llywodraeth sydd â rhyw fath o olwg pellgyrhaeddol sy'n gallu gweld hyblygrwydd ac sy'n gallu gweld ym mha ffordd y gallem ddiogelu pethau at y dyfodol, fel rŷch chi'n ei ddweud. Ym mha ffordd y gall Aelodau'r Cynulliad, sydd, yn y pen draw, yn gyfrifol am ddeddfu, hefyd chwarae rôl, ac ym mha ffordd y maen nhw'n gallu gweithredu'n briodol i sicrhau ei bod yn briodol i ddirprwyo pwerau i Lywodraeth Cymru? Nid y Llywodraeth yn unig sy'n gallu bod yn berchen ar y syniad yma o hyblygrwydd, er enghraifft. Mae'n rhaid bod hyn yn cael ei rannu.

**Simon Thomas:** But the difficulty with what you say, Minister, is that you seem to be saying that it's only Government Ministers who have some sort of farsighted view and who can actually identify flexibility and can ensure how we can futureproof, as you say. So, how can Assembly Members, who, ultimately, are responsible for legislating, also play their role and how can they actually work appropriately in order to ensure that it is appropriate to delegate powers to the Welsh Government? It's not only the Government who can have ownership of this idea of flexibility, for example. That has to be shared.

[97] **Jane Hutt:** I think that does have to be shared, and I very much appreciate the fact that, in legislation that's come before the Assembly, those questions have been asked directly of Ministers bringing the legislation forward on more than one occasion. As a result of that, the Ministers have been very clear that they've got to hold on to what are those most important matters that remain on there, and actually focus in terms of what's on the face of the Bill and what isn't on the face of the Bill. There are times when we will have to listen to the scrutiny, listen to the observations, and decide whether we put more on the face of the Bill, and we have done that. But, I mean, I think this is what is—. That's part of the dynamic process that we have developed. It does go back to the fact that, as a Government, we're bound to listen to that kind of scrutiny, but we also cannot compromise our legislation and the main purpose of that legislation by putting onto the face of the Bill opportunities that should actually be provided within the secondary legislative regime. I think it's something where we've learned lessons, but I think there will be, as I said, ongoing tension on this matter. I would think that the First Minister, with overall responsibility for the legislative programme,

will I'm sure also want to comment, perhaps more fully than I can on this matter. Ministers who've been through this will know how they've had to defend their position, and I think that has been accepted by the Assembly on those occasions.

14:30

[98] **Simon Thomas:** Yn gyffredinol, mae'n ymddangos i mi bod yna—wel, mae yna gannoedd ohonyn nhw, mae'n siŵr—ddau faes eang iawn ar gyfer is-ddeddfwriaeth. Mae yna'r math o is-ddeddfwriaeth sy'n ymwneud â phethau amlwg iawn sy'n newid o flwyddyn i flwyddyn—costau cofrestru rhywbeth neu'i gilydd yn codi neu'n newid; mae'r ffordd rydych yn ymwneud â rhyw ddeddfwriaeth Ewropeaidd yn newid o flwyddyn i flwyddyn, ac mae'n gwbl briodol bod hynny'n cael ei ddodi mewn is-ddeddfwriaeth. Ac mae yna ail set o is-ddeddfwriaeth sy'n ymwneud yn llawer mwy â'r rheoliadau y mae'r Gweinidog yn eu rhoi i ryw faes penodol—addysg, iechyd, neu beth bynnag—sydd yn cyfarwyddo pethau o ddydd i ddydd yn y maes yna. Ond wrth gwrs, yn y maes yna, mae yna berygl y gallai ddechrau mennu ar bolisi, a phriod waith y Cynulliad, yn aml iawn, yw edrych ar y prif amcanion polisi a sicrhau nad yw is-ddeddfwriaeth yn cael ei defnyddio i danseilio neu lurgunio'r polisi a oedd yn cael ei ysgrifennu yn y ddeddfwriaeth sylfaenol yn y lle cyntaf.

**Simon Thomas:** Generally, it appears to me that there are—well, there are hundreds of them, I suppose—two very broad areas for subordinate legislation. There's the kind of subordinate legislation that relates to the very obvious things that change from one year to the next—an increase or change in the cost of registering something; the way that you deal with European directives or legislation can change annually, and it's entirely appropriate that that should be placed in secondary legislation. Then there's another set of subordinate legislation that relates far more to the regulations that a Minister will bring forward in any particular area—health, education, or whatever—which direct things on a day-to-day basis in those areas. But in that case, there is a risk that it can start to impinge upon policy and the main work of the Assembly, very often, is to look at the main policy objectives and to ensure that secondary legislation isn't used to undermine or pollute the policy written in primary legislation in the first place.

[99] Felly, beth yw'r canllawiau mewnol sydd gan y Llywodraeth ar gyfer cyhoeddi is-ddeddfwriaeth ar ffurf drafft tua'r un pryd ag y mae'r brif ddeddfwriaeth yn mynd drwyddo er mwyn rhoi arwydd i Aelodau Cynulliad o sut mae'r is-ddeddfwriaeth yn mynd i gael eu defnyddio eto?

So, what is the internal guidance that the Government has for the publication of subordinate legislation in draft form around the same time as the main legislation goes through in order to give Assembly Members some signal of how subordinate legislation is going to be used?

[100] **Jane Hutt:** Well, I think that is a very important point for us at this stage in terms of developing our role in terms of making legislation and our responsibilities and your role as a legislature in terms of scrutiny. I think Jeff might want to come in with a view on this, because I'm not sure whether I can say we've got clear guidance in terms of that, and the strategy that we would take in terms of, 'This clearly has to be for secondary legislation'.

[101] **Mr Godfrey:** As the Minister said, there will always be tensions around what are the important issues that need to be on the face of the legislation and what are matters of detail to come in behind. In terms of making that judgment, obviously Ministers are advised as to what to have to develop particular Bills. It's very important to be clear about the terms of the enabling power, which should give an indication of the nature of what may be brought forward under subordinate legislation on the implementation of the Bill. Clearly, everyone's focused on that, but there have probably been odd occasions—I think there was an education

Bill—where an indicative set of regulations has been brought forward. That may or may not be possible, depending upon capacity and production. We work within the capacity that we've got in terms of policy and lawyers—that level of detail that features in subordinate legislation can involve quite a lot of time to get right. But I think the focus really is on what is important enough to be on the face of the legislation, the terms in which the enabling power are expressed, and the extent to which that can give confidence about the nature of the detail that's going to follow that's not immediately available.

[102] **Simon Thomas:** Is there a role here for the explanatory memorandum to say a little more about what the likely purpose of secondary legislation would be? Would that be an appropriate place to say—? I'm not talking about a fully defined set of regulations here, but 'The Minister is minded to do x if powers are granted in this Bill'—that kind of approach.

[103] **Jane Hutt:** Well, it's something we could look at, I'm sure. Of course, you've got the benefit, Simon, of having been in Westminster, because there's obviously a fairly standard approach, which—

[104] **Simon Thomas:** This is not a good example. Bringing forward plain packaging for cigarettes through secondary legislation is not a good example in this context. Whatever you think of the policy, it's not a good example of legislation.

[105] **Jane Hutt:** Well, that's helpful in itself. I'm very mindful of the issues around Henry VIII powers, for example, and the fact that we've got to be mindful of that as well as a Government. Okay, there have been centuries of history and practice against our four or five years. We have to look at that very carefully. Clearly, the tension about the primary and secondary legislative powers and responsibilities is something that we need to look at, but I'm sure that the First Minister will really want to respond to that question as well.

[106] **Simon Thomas:** My last point or question, if I may, is to say that the impression that sometimes is formed in committees, and I think in this committee on occasions as well, is that powers are being sought when there hasn't been a fully fledged policy proposal for why those powers are being sought, and that further detail either around the Bill or an explanatory memorandum about why those powers are being sought, and possibly the Henry VIII powers as well, would give some—it's not a legal comfort, I know, but it might give some—political comfort as to why particular powers are sought at particular times. So, I simply put it to you that perhaps there is a little more thinking that needs to be done around these things.

[107] **Jane Hutt:** I wonder if I could just say, Chair, as well, just in terms of trying to explain the process, obviously, as Minister, I've got an oversight of this, and the First Minister has got a clear responsibility—lead responsibility. Our officials, as we've progressed and strengthened their capacity—. I hope we've managed to get that over in the written evidence and also in the evidence you've taken. For example, you, looking at my officials, are all supported by economists. You're also supported by the knowledge and analytical services team. It may be just helpful for you to say—. This is done in detail and you've had it strengthened, the expertise that you've had—.

[108] **David Melding:** I think we do have quite a good grasp of this area, and we've been exploring it with you. We've explored with other Ministers. There are a few more questions we need to put to you. I have to say that I think the written evidence that the Government has given has been excellent—

[109] **Jane Hutt:** Good.

[110] **David Melding:** It has allowed us to conduct these quite rigorous oral sessions with the Government. We are very grateful. William Powell.

[111] **William Powell:** Thank you very much, Chair. Good afternoon, Minister.

[112] **Jane Hutt:** Afternoon.

[113] **William Powell:** Returning to that very written evidence, the Government suggests that scrutiny may be subject to curtailment where there are, and I quote:

[114] ‘occasions where time may be of the essence’.

[115] I wonder if you could expand a little on what is meant by that phrase.

[116] **Jane Hutt:** As you are well aware—and Standing Orders provide for this—we have brought forward emergency Bills and Bills that have proceeded straight to general principles debate at Stage 1. Clearly, this has been very much to do with specific circumstances.

[117] **William Powell:** Absolutely, and the National Health Service Finance (Wales) Act 2014 comes to mind, as indeed do a couple of pieces of legislation that were, in a previous life, promoted by my neighbour in committee Alun Davies and which I also had some involvement in. Elaine Edwards of Undeb Cenedlaethol Athrawon Cymru, when she spoke to the committee just a short while ago said—and again I quote this because I think it’s useful:

[118] ‘Then, in considering what, in our view, would be principles for the use of powers to push legislation through urgently, then, what we felt, generally, was that it should only be used in a real emergency where it wouldn’t be possible to act effectively without legislating. Therefore, to be a true emergency, the current processes wouldn’t be at all adequate and there’d be a need to take immediate action on a particular issue, and then only if there are situations where the Government would not be able to operate at all without legislating. I have to say that I can’t think of anything within the Assembly’s competence that would actually require that sort of emergency legislation.’

[119] **David Melding:** We’re talking about plague and pestilence.

[120] **William Powell:** Indeed. I think she went on to reference the foot and mouth disease crisis of 2001, from my recollection. I wonder, Minister, whether you would share your thoughts on what Elaine Edwards had to say to us, and that reflects some concerns also brought by other stakeholders who’ve spoken to us.

[121] **Jane Hutt:** Well, I think that was very helpful evidence. Obviously, I was aware of evidence of that kind. Certainly, we don’t expect emergency Bills or fast-tracked Bills to be very common at all. I mean, I think you know of the specific cases where we’ve taken this forward, but this is not going to be common practice.

[122] **William Powell:** Do you consider that there are any lessons that we can learn a year or so on from those particular events?

[123] **Jane Hutt:** Well, I think—. I mean, with some of them, like the one you mentioned in terms of the National Health Service Finance (Wales) Act, in fact there was very strong cross-party support—I think there were calls for it as well—for getting this on the statute book as quickly as possible to provide that flexibility. It was a very constructive way in which the Assembly was working with the Government to ensure that we could, in managing and supporting health boards in the management of their finances, get the benefits of that three-year financial planning regime on the statute book. Of course, with the other Bills, which we’re well aware of, which Alun took forward in terms of control of horses and the agricultural sector, there were strong reasons for doing that. But what’s clear is that there are

always lessons to be learned from that. There are clear standards in terms of transparency and consultation that we have to follow in all cases, and that will certainly be the case in the future.

[124] **William Powell:** Thank you, Minister, for that response. Finally from me on these matters, you refer in the evidence to the possibility that alternative scrutiny processes might be appropriate, particularly when considering finance or tax bills. I wonder if you could share maybe a little bit more of your thinking in that area.

[125] **Jane Hutt:** Well, this of course is part of our new powers—our new financial and fiscal powers and regime. At the moment I'm developing a financial framework to reflect our new powers, which are laid out in the new legislation of the Wales Act 2014, but also very helpfully, of course, the Finance Committee has undertaken an inquiry into best practice budget processes. So, I'm now considering their recommendations because we have to move forward in terms of those opportunities. I think the Wales Act is very helpful in that it does have a broad framework from which we can actually take forward these reforms, which would be, I'm sure, on a statutory and a non-statutory basis.

[126] **William Powell:** At this stage, are there any other specific legislatures that you would aim to be drawing best practice from in this area?

[127] **Jane Hutt:** We went to Scotland just before Christmas, and it was a team effort, because I went with the Finance Committee, specifically to look at how they'd managed this, because, of course, they'd had powers well before us. So, we met with the Finance Committee and the finance Minister. We do often look to Scotland, who are ahead of us in terms of some of the powers. We were looking at other responsibilities in terms of legislation as well, but specifically looking at Scotland. But the Finance Committee has gone much further than that. They've taken very useful evidence from the Organisation for Economic Co-operation and Development, the Chartered Institute of Public Finance and Accountancy and a whole range of organisations. So, that inquiry, I believe, will help inform me in terms of taking this forward as the Welsh Government finance Minister. They, of course, have already come up with their recommendations, which are very relevant to your questions.

[128] **William Powell:** Thank you very much. Diolch.

[129] **David Melding:** I think that finishes the range of questions that we want to put to you.

[130] **Simon Thomas:** A gaf i jest ofyn **Simon Thomas:** Can I just ask one? un?

[131] **David Melding:** Well, there are two of you who are just in under the fence if we're going to extend this. I'll briefly hear what Suzy's got to say and then Simon. Then if you can respond to those two, we'll call it a day at that. Suzy first.

[132] **Suzy Davies:** Okay. I'll try to keep them short. My first question is for Mr Godfrey. You mentioned enabling powers and an inevitable tension. Would that inevitable tension be released somewhat if it were clearer which secondary legislation should be qualified by 'may' and which should be qualified by 'must', to avoid the sort of questions that arise once secondary legislation—? Secondary legislation, if it's not introduced, actually leaves the Bill making little sense.

14:45

[133] **Mr Godfrey:** The Bill should be clear as to whether it's mandatory or it's a

discretion. I'm not sure—

[134] **Suzy Davies:** It always is, but then that decision may not always be right.

[135] **Mr Godfrey:** I'm not sure that you would want to—. I mean, mandatory is fairly straightforward—there will be regulations that cover the particular provisions—but I think there will always be situations where there are forms of subordinate legislation that will be a discretion; they can be brought forward to deal with particulars. So, I don't think that everywhere should be 'must'.

[136] **Suzy Davies:** Excuse me; I appreciate, because I'm going to have a row otherwise—

[137] **David Melding:** We're getting late in the day now, Suzy.

[138] **Suzy Davies:** I appreciate the difference, but do you think that we always get it right? I say 'we': the Assembly Government. Perhaps I could leave it at that.

[139] **David Melding:** And Simon.

[140] **Simon Thomas:** Un peth yn benodol sydd gyda fi. Yn y dystiolaeth mae'r Llywodraeth wedi ei chyflwyno, a hefyd yn y dystiolaeth gawsom ni wythnos diwethaf gan y cyfreithwyr sydd yn rhan o Swyddfa y Cwnsleriaid Deddfwriaethol, roedd e'n amlwg nad oedd fawr o feddwl am ffurf y gwelliannau sydd wedi eu cyflwyno gan Aelodau meinciau cefn y Cynulliad. Y teimlad rydych yn ei gael o dystiolaeth y Llywodraeth ym mhob ffordd yw mai dim ond y Llywodraeth sydd wir yn deall sut mae gwelliannau yn gallu ffitio mewn i Fil, achos mae'r broses mor hirfaith o adeiladu'r Bil, ac ati. Mae bron yn dweud wrthym ni fod gwelliannau gan Aelodau meinciau cefn byth yn mynd i gael eu derbyn gan y Llywodraeth, ac mae hynny yn neges anffodus i'w gyrru mewn Senedd o unrhyw fath. Ai dyna'r argraff gywir sy'n cael ei rhoi?

**Simon Thomas:** I have just one specific thing. In the evidence provided by the Government, and also in evidence received last week from the lawyers who are part of the Office of the Legislative Counsel, it was clear that they didn't have a very high opinion on the form of amendments tabled by Assembly backbenchers. You get a feeling from the Government's evidence that it is only the Government that understands how amendments can fit into a Bill, because the process is so lengthy in terms of building the Bill, and so on. It's almost telling us that backbench amendments are never going to be accepted by Government, and that's a very unfortunate message to be giving in a Parliament of any sort. Am I getting the right impression from that?

[141] **Jane Hutt:** I hope I've said right throughout my evidence giving that we have to approach this, and I believe we have approached this, with respect for the process, respect for the relationships that we're developing, and respect for the fact that we are a minority Government that has been taking through these new powers in this Assembly. It's not just a question of you've got to engage; it is about a genuine desire to engage, accept and adopt, where there is added value, additional strength and evidence, to improve the legislation. I did say earlier on, as you'll remember, Simon, that last week was an example where we did accept amendments from opposition Members.

[142] **Simon Thomas:** The week before was an example where you didn't, but let's not—

[143] **Jane Hutt:** And I can recall other Bills where we have. So, as Minister, obviously we rely entirely on our guidance and expertise as Ministers, but clearly of the amendments that come forward, some, of course, aren't going to deliver what we need as a Government, but some have also been very constructive and have been accepted on more than one occasion.

[144] **David Melding:** I think some of the themes we will follow up with the First Minister. I know this issue about whether backbenchers are seen as even being technically competent, even when acting on our lawyers' advice, of amending coherently Government legislation is a huge issue. It is perhaps something we can profitably take up with the First Minister next week. Can I thank you, Jane, for your evidence this afternoon? It's been a long session, but it's been very helpful. Thanks also to your officials.

[145] **Jane Hutt:** Thank you very much.

14:48

**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**

[146] **David Melding:** Item 3 is instruments that raise no reporting issues. There's just one, and it is listed there. Are Members content?

**Papurau i'w Nodi  
Papers to Note**

[147] **David Melding:** Item 4 is papers to note. We've a letter from the Minister for Public Services on the Non-Domestic Rating (Multiplier) (Wales) (No. 2) Order 2014, and then another paper from the Chair to the Minister for Public Services on the Non-Domestic Rating (Multiplier) (Wales) (No. 2) Order 2014. It gets us closer to a procedure for dealing with these things. There's still a bit of work to do if you read the exchange, but we seem to be creeping in the right direction. Are Members content to leave that to our ongoing background discussions?

[148] Paper 5 is a written statement on the statutory instruments under Part 2 of the Housing (Wales) Act 2014. We would want to note the instrument is to be considered next week.

[149] Paper 6 is a letter from the Presiding Officer on the legislative consent memorandum. Are we content, then?

[150] I suggest we break for 10 minutes now—*[Interruption.]* Yes, go on.

[151] **Simon Thomas:** A gaf i ject grybwyll un peth? Jest gofyn cwestiwn ydw i. Oni bai ein bod wedi colli rhywbeth, a yw'r rheoliadau safonau'r iaith Gymraeg yn dod i'r pwyllgor yma o gwbl? Yr wythnos nesaf, rwy'n cymryd, y bydd y rheini, ie? Océ, achos mae'n amlwg eu bod gerbron y Cynulliad yr wythnos nesaf hefyd, felly mae bach yn gyfyng.

**Simon Thomas:** Can I just mention one thing? It's just a quick question. Unless we've missed something, are the regulations on the Welsh language standards coming before this committee at all? I take it that they will be here next week. Yes? Okay, because they are coming before the Assembly next week also, so it is a bit of a restricted timescale.

[152] **David Melding:** They are.

[153] **Mr Griffiths:** Mi fydd y rheoliadau'n dod i'r pwyllgor yr wythnos nesaf.

**Mr Griffiths:** The regulations will be before the committee next week.

[154] **Simon Thomas:** Ocê. Diolch. **Simon Thomas:** Okay. Thanks.

[155] **David Melding:** Okay. If we can return sharp at 3 o'clock and we'll have the Law Commission. Thank you very much. That was a very good range of questions.

*Gohiriwyd y cyfarfod rhwng 14:50 ac 15:01.  
The meeting adjourned between 14:50 and 15:01.*

**Tystiolaeth mewn Perthynas â'r Ymchwiliad i Ddeddfu yn y Pedwerydd  
Cynulliad  
Evidence in Relation to the Inquiry into Making Laws in the Fourth Assembly**

[156] **David Melding:** Good afternoon and welcome back, everyone. We are back in public session. We move now to item 6, which is further evidence in relation to our inquiry into making laws in the fourth Assembly. And I'm delighted to welcome Sir David Lloyd Jones, chair of the Law Commission, and Elaine Lorimer, who's the chief executive of the Law Commission, back to Wales, because you will recall we had a most productive working lunch with the Law Commission last year. So, welcome, both, and I'm sure we're going to have a very productive session this afternoon as well.

[157] Sir David, did you want to make a few introductory remarks?

[158] **Sir David Lloyd Jones:** If I may, please.

[159] Diolch yn fawr iawn am eich croeso. Thank you very much for your welcome.

[160] Thank you very much for your invitation to appear before the committee this afternoon. May I introduce Elaine Lorimer, who's the chief executive of the Law Commission, and to her left is sitting Adrian Hogarth, who's our Senior Parliamentary Counsel? We've previously lodged our written evidence with the committee. We hope that it's of assistance, and we hope to be able to assist further today. I should perhaps mention at the start that there may be some areas where it would not be appropriate for me as a judge, or for the commission as an independent, non-political body, to tread, but we can deal with such matters if and when they arise.

[161] As you know, one of our current projects at the Law Commission is an advisory project on the form and accessibility of the law applicable in Wales. That project is at an early stage; we've not yet gone out to consultation. There will, inevitably, be some overlap with the work of this committee, and we look forward to an exchange of views with this committee during its currency. We particularly welcome this opportunity to appear before you today, as we're very keen to strengthen our links with the Assembly and its committees, and we should be very grateful for any guidance you might be able to provide us as to how we should achieve that.

[162] We have brought some further documentation, which I hope will be of assistance—not necessarily to be looked at during the hearing today, but perhaps afterwards. I've left that with the clerk. You will see there copies of a recent publication of the commission, entitled 'The Work of the Law Commission'. It's published bilingually: '*Gwaith Comisiwn y Gyfraith*'. There are copies here of the most recent annual report. There are copies of the protocol between the Law Commission and the Lord Chancellor. There's a list of the members of the Welsh advisory committee. There's a paper by Mr McMillan, who is the chief executive of the Scottish Law Commission, which deals with the special procedure that has been established in Holyrood to deal with Scottish Law Commission Bills. And there's a

document that shows our recent and current work in the Law Commission of England and Wales, which also has a table of the recent implementation of our recommendations. A glance at that—it's a three-page document, headed 'Law Commission of England and Wales: Recent Reports and Implementation'—will give you some idea of the scale of the projects, and the variety of the projects, with which we have recently been concerned, and with which we are currently concerned.

[163] Thank you.

[164] **David Melding:** Thank you, Sir David. You just alluded to the fact that you'd welcome some suggestions from us about how the Law Commission can work with this committee. I just wonder, you know, what the initial response is in terms of thinking through the implications of the Wales Act 2014, now that Welsh Ministers have strengthened statutory rights in terms of what it can refer and request of the Law Commission.

[165] **Sir David Lloyd Jones:** We were very concerned at the Law Commission that the machinery for law reform, essentially that under the 1965 Act—the Law Commissions Act of 1965—had not kept up to date with the reality of devolution in Wales. As a result, we pressed for amendments to our statute, which would enable us to function effectively as a law reform body for Wales as well as for England. As a result, I'm glad to say that the Wales Act of 2014 has amended the Law Commissions Act of 1965 in three important ways. The first, and perhaps the most important, is that it's now possible for us to accept direct references from Welsh Ministers. In fact, at the moment, we are conducting two projects, effectively for the Welsh Government, proposed by the Welsh Government, within the devolved areas: one on planning law and one on the form and accessibility of Welsh law. Those came to us actually as part of the programme of law reform—our twelfth programme of law reform. In future, it will be open to the Welsh Ministers to propose directly law reform projects for the Law Commission to undertake.

[166] Secondly, there is now to be a protocol between the Law Commission and the Welsh Ministers, and we're working on that at the moment. It will, I suspect, closely resemble that between the Law Commission and the Lord Chancellor, but of course, it will be open to us to modify that to meet the particular needs of Wales.

[167] The third important change is that the Wales Act 2014 requires Welsh Ministers to report annually to the Assembly about what progress they are making—or lack of progress I suppose—in relation to the implementation of Law Commission recommendations. That mirrors an obligation of the Lord Chancellor to report annually to Parliament on what the Government has done to implement our recommendations in the field of law reform. So, these are important improvements in the machinery, and we hope that, with this now in place, we will be able to work even more effectively to benefit Wales.

[168] In addition, of course, completely outside the statutory scheme, we've set up our own Welsh advisory committee. That's now been functioning for over two years. It seems to be working extremely well. There's a list that the Members have—

[169] **David Melding:** We have it here.

[170] **Sir David Lloyd Jones:** That has been circulated.

[171] **David Melding:** Thank you very much. William Powell.

[172] **William Powell:** Thank you very much, Chair. Good afternoon, both. There's a strong emphasis running through your evidence on the importance of good legislative drafting. I think it would be helpful for this committee, in our work and in this inquiry, if you

could actually give us some specific examples of Welsh legislation that you consider to be well drafted, and maybe some that are less well drafted.

[173] **Sir David Lloyd Jones:** If you'll forgive me, I would prefer not to speak about particular provisions in particular statutes, but to deal with the matter perhaps a little more generally, and to address the question of problems that exist in legislation, with particular reference to Wales. I don't feel able to comment on the merits or demerits of specific legislation, but as part of our project on the form and accessibility of the law in force in Wales, we have been given examples of areas where it is very difficult to ascertain what precisely the law is. This is the result of a number of factors, but one is certainly the multiple pieces of legislation being passed in Westminster and in Cardiff, and complex amendments without consolidation of the legislation being put in place. The most common example, I suppose, in the field of secondary legislation is that much secondary legislation gives powers to the Secretary of State, and lawyers and laypeople who have to find out what the law is have to engage in a chase for the elusive meaning of these provisions, and they have to go through a number of transfer of functions Orders. If they're diligent and persevere, they may eventually discover that the powers have been transferred first of all to the Assembly and then to the Welsh Ministers.

[174] Another example is in the field of education. There's been a great deal of primary and subordinate legislation, both in Wales and in Westminster, with very little consolidation. As a result, it seems to us that it would be difficult for a headteacher, or a parent, or another professional in Wales to know precisely what laws apply and where they can be found. So, this is the sort of thing that we are planning to look at in our project on the form and accessibility of Welsh law.

[175] We're also interested in looking at the benefits and drawbacks of different drafting styles and practices. For example, some Welsh legislation contains aspirational clauses; some includes an overview in addition to a long title of the statute. When we go out to consultation—and we hope to go out to consultation in June, and the consultation period will then run for a minimum of 12 weeks—we hope to learn the views of the public at large about these different approaches. We're also interested to hear how supporting documentation, such as explanatory notes or memoranda, could be used more fully to explain the policy behind the legislation.

[176] **William Powell:** Thanks for that. It's clear that the Law Commission undertakes reviews of legislation that is drafted in two languages, but could you please give us some indication as to how you actually go about that task?

[177] **Sir David Lloyd Jones:** So far as Welsh legislation drafted in two languages is concerned, it is of course something completely novel within the United Kingdom. This is the first time, for example, that the courts will have been confronted with the interpretation of legislation drafted in two languages, each language being equally authoritative, save that there's some limited experience in the courts interpreting international treaties, when the treaty text is implemented and when you find sometimes there could be two, or even four or five different authoritative—sometimes equally authoritative—texts of the treaties. So, the courts have some experience, but it's a pretty new thing.

[178] As to how we are equipped within the commission, well, we currently have two Welsh speakers in the commission. I am one, and we have a research assistant, Elin Hughes, who is sitting in the gallery with Sarah Young, a lawyer who is also working on a Welsh project. So, we're the two Welsh speakers at the commission. We do have access to interpretative services, as provided by the Ministry of Justice. We've not yet carried out any comparative reviews of legislation drafted in English and Welsh, but we are particularly interested in the whole process of bilingual drafting and the different ways in which texts can

be produced that are equally authoritative and where one is not merely a translation of the other and suffers from the deficiencies of being no more than a translation of thoughts first expressed in the other language. In the context of our project on the form and accessibility of the law, we are looking at the Canadian experience in relation to that and also what's happened in Hong Kong and the experience of bilingual drafting there. It's a matter in which I am personally particularly interested. In fact, I'm writing the chapter in the consultation paper in relation to that, which will also cover questions of Welsh legal terminology and also will cover the question of the approach of the courts to the interpretation of bilingual legislation.

[179] **David Melding:** I should say, as a point of information here, we had some very interesting evidence indeed last week from the head of the Government's legislative services on this whole issue of bilingual drafting. I think we extracted some slightly surprising evidence. So, we'll ensure that that's passed on to you.

[180] **Sir David Lloyd Jones:** This was Mr Hughes?

[181] **David Melding:** Yes.

[182] **Sir David Lloyd Jones:** I've been able to read some of Mr Hughes's evidence. Of course, we're working very closely with the Government legislative service in preparing this consultation paper.

[183] **William Powell:** Absolutely. Thank you for that clarification, Chair.

[184] In your evidence, you state—and I quote—

[185] 'The discipline of translating proposals for law reform into draft legislation is also of enormous benefit in our development of good law, in that it provides us with an opportunity to test the viability of our provisional proposals.'

[186] I wonder if you could please expand a little on that important point.

[187] **Sir David Lloyd Jones:** At the Law Commission, we have the great advantage of having in-house a team of Parliamentary Counsel. At the moment, we have three, and they're led by Mr Hogarth.

15:15

[188] Our policy, right from the start, has been that most of our reports—not all, but most of our reports—on law reform matters will include a draft Bill, so that, if the Government sees fit, there's a Bill that could be introduced. In fact, we had a striking example last year: we published our latest report on the law of insurance on a day in July, and the next day, the Government introduced our draft Bill, which was annexed to the report, into the House of Lords under the special procedure. That went through the special procedure and received the Royal Assent last month. It doesn't always work quite like that, we've discovered. *[Laughter.]*

[189] The fact that we have in-house counsel is a huge advantage, because it's not simply a one-way process of preparing instructions, sending them to counsel and then leaving counsel to get on with it. It is an iterative process: there's a constant to-ing and fro-ing between the team of lawyers working on the particular project and the Parliamentary Counsel who are involved in the drafting of the statute. Of course, it's a test of the ideas and it's a test of the policies. Sometimes, counsel will come back and will say, 'Well, are you sure about this?' and 'Why are you doing it this way?' and so on. So, there's a constant to-ing and fro-ing, which we think strengthens the end product. The work of one will inform the other.

[190] The commission's policy, of course, will already have been the result of extensive analysis and consultation before we get to the stage of instructing counsel and before this process goes on, but the commission, in relation to our projects, is, essentially, one client; whereas when the draftsmen are working in the Office of Parliamentary Counsel on a Government Bill, they've probably got a lot of clients and a lot of competing interests there.

[191] **William Powell:** Okay. Is it your judgment that Wales, at this point, would benefit from an interpretation Act? In what ways would that assist the good drafting of legislation?

[192] **Sir David Lloyd Jones:** This is something that we're going to be looking at in the project. At the moment, legislation applying in Wales, whether it's enacted by the Assembly, or if it's delegated legislation by the Welsh Ministers or by Parliament or UK Ministers, is all subject to the United Kingdom Interpretation Act of 1978, which is a consolidation Act with amendments recommended by the Law Commission in a report, I think, as far back as 1969. So, the real question will be whether there should be separate principles of interpretation that apply in relation to Wales and Welsh legislation. I haven't come to a considered conclusion in relation to this. We are, at the moment, only formulating proposals for consultation. I can see difficulties in such a course, subject to one point, and that is, of course, that we're dealing with bilingual legislation now and it may well be that there is a case for laying down special rules of interpretation for bilingual legislation. I can see real scope for that.

[193] The alternative would be to leave it to the judges. It may be thought that it is more appropriate to establish certain basic principles, particularly in relation to bilingual legislation. Professor Thomas Glyn Watkin has recently published—well, it's not come out yet—a lecture he recently gave to the Statute Law Society on the whole issue of the interpretation by the courts of bilingual legislation. It's going to appear in a forthcoming edition of the *Statute Law Review*. In due course, I'd commend that to the committee as a particularly insightful consideration of the particular issues that arise in the interpretation of bilingual instruments.

[194] **William Powell:** Thanks for highlighting that.

[195] **David Melding:** He's a great friend of our committee's, as well. Before we move on from the interpretation Act issue, Suzy, did you want to come in?

[196] **Suzy Davies:** Well, my question actually relates to your earlier answer, Sir David, when you were talking about the to-ing and fro-ing about making sure that whatever's in your report when you're trying to translate it from ideas into law—. Can I just check that what you're talking about there is the articulation of ideas you already have, in a way, into a functional piece of draft legislation? It's not actually about changing the ideas that were in your original report. What I'm trying to get to is that there's no sort of policy development equivalent at that stage. You know what you want; it's just about how to articulate it in a way that works.

[197] **Sir David Lloyd Jones:** It could be both. It sometimes happens that the Parliamentary Counsel, when they come to it, will identify something that had been overlooked—a particular aspect. It may be to do with the way of expressing it, but it may also be something that goes more to the substance. In those circumstances, it may well be it would come back, and the team and the commissioners themselves would, in due course, look at it, and they may well change the policy in relation to that. So, it's another way of testing the policies.

[198] **Suzy Davies:** Thank you.

[199] **David Melding:** William.

[200] **William Powell:** In your evidence on how the commission seeks to improve legislative standards, you state, and I quote:

[201] ‘only projects that are appropriate for the commission and have a reasonable expectation of implementation are selected for the programme.’

[202] Could you please share with us how that choice is determined?

[203] **Sir David Lloyd Jones:** I wonder if I could ask Ms Lorimer to answer that.

[204] **Ms Lorimer:** The starting point for us around the consideration of projects is, of course, our protocol that we have with the Lord Chancellor, because that requires the relevant Government Minister to give an undertaking that there is a serious intention to take forward law reform in this area. I guess, in the event that reform isn’t taken forward, after we’ve embarked on a project and reported on a project, the Lord Chancellor is ultimately accountable to Parliament for that, because of the implementation report that he’s got to produce. So, it comes down to discussions, which take place at quite a level of detail with relevant Government officials. When the proposal that we should take on a project comes up, it might be something that’s come out of our consultation for our law reform programme, it might be something that Government officials think, outside the terms of the programme, would be relevant for a ministerial reference to come to us. We have very detailed discussions at official level to really try and test what it is they’re looking for from the commission: why come to the commission in the first instance with this particular project? We’re trying to establish, then, as part of those discussions, what the Government plans are for implementation. So, have they thought ahead—have they thought three years ahead, which is the average length of time for our projects—to think about whether they would, if it was going to be Bill, bid for a slot in the legislative programme? Is it something that might be relevant for the Law Commission’s special procedure, for example? Is it something that wouldn’t necessarily require legislation to implement it? Or, indeed, is it a project that is going to have a Bill attached to it at all? It might be just a piece of advice that they want from us.

[205] Of course, at the end of the day, we can’t get a cast-iron guarantee, and, as we’re independent of Government, we can only take forward to the commissioners for their consideration of whether to take on a project or not as much information as we can glean as officials. Commissioners will then take the decision about whether this is a project that is suitable for the Law Commission, and, in addition to that, they’ll also be wanting to see what Government has said in terms of plans for implementation, bearing in mind that when we take a project on, we don’t know what it is we’re going to be recommending. But, we think that the fact that we’ve got the protocol has really helped focus those sorts of discussions at the earliest stages with Government, and it’s reaping benefits in terms of the implementation record that we now have, where most of the projects that have been undertaken since the protocol’s been brought into effect have been taken forward to implementation.

[206] **William Powell:** Thanks very much for sharing that insight.

[207] **Simon Thomas:** Os gallaf i jest ddilyn pwynt y cwestiwn gan William Powell, rwyf newydd gael copi o’r protocol, wrth gwrs, a newydd gael cipolwg brysiog drwyddo fe. Mae’n amlwg yn fanwl iawn, ac mae’n amlwg eich bod chi’n chwilio am—fel rŷch chi newydd ei amlinellu—ymrwymiad ymarferol iawn gan yr adran o’r Llywodraeth

**Simon Thomas:** If I could just follow on from William Powell’s point, I’ve just received a copy of the protocol and I’ve just had a quick glimpse at it. It’s very detailed, obviously, and you’ve just outlined that you are seeking a practical commitment from the relevant Government department in relation to legal reform before you even think about

ar gyfer diwygio'r gyfraith cyn eich bod chi hyd yn oed yn mentro i mewn i'r maes. Rwy'n cymryd na fyddwch chi am ildio'r tir yma wrth drafod protocol gyda Llywodraeth Cymru, felly ai dyma'r egwyddor y byddech chi hefyd eisiau ei gweld gyda Llywodraeth Cymru: bod ymrwymiad ar gyfer adnoddau, adnoddau staff, adnoddau cefnogol, ac ymrwymiad o ran y broses ddeddfu yn mynd ymlaen, cyn eich bod chi hefyd yn trafod â Llywodraeth Cymru?

taking action in this area. I take it that you wouldn't want to cede this ground when you're discussing the protocol with the Welsh Government, so is this the principle that you would also like to see with the Welsh Government: that there is a commitment in terms of resources, staffing resources, auxiliary resources, and a commitment in terms of the legislative process going forward, before you enter into discussion with the Welsh Government?

[208] **Ms Lorimer:** Yes, that would very much be our starting point, because, obviously, our resources are finite, and one of the reasons that the commission felt it was necessary to enter into the protocol in the first instance with Westminster was because they wanted to make sure that the work that the commission was doing was going to be taken seriously by the Government of the day, and was going to be taken forward and implemented if that was felt appropriate. I wouldn't see any reason why we would have a different approach in our protocol with the Welsh Government.

[209] **Simon Thomas:** Yes. Okay.

[210] **Sir David Lloyd Jones:** Could I just add to that? We could have a wonderful time at the commission doing fascinating projects on intriguing points of law, which would result in superb reports that would never see the light of day and would just gather dust and wouldn't serve any purpose.

[211] **Simon Thomas:** Always a temptation on this committee as well. [*Laughter.*]

[212] **Sir David Lloyd Jones:** We have to have an eye to the prospects of implementation from the start. It's early days because the protocol's not been in force for very long, but the indications are that it is bearing fruit, and we are seeing a remarkable change in the rate of implementation as is borne out by the document I've just circulated.

[213] **William Powell:** Thank you, Sir David, for bringing us back to the realpolitik of the situation. If I can move on now to the issue of consolidation. Your evidence states:

[214] 'Modern methods of updating legislation have reduced the pressure to consolidate simply to take account of amendments. There is still, however, a need for consolidation as a process.'

[215] I wonder if you could please expand on what the thinking was, underlying that.

[216] **Sir David Lloyd Jones:** Yes. The tendency over the last 50 years or so has been to amend legislation by making textual amendments rather than by enacting separate, free-standing propositions of the law in an amended form, leaving it therefore to the reader to work out the effect of the amendment on the pre-existing legislation. I can see why it might be thought appropriate to do it in that way, but it's not user-friendly and it has an important bearing on the accessibility, or lack of it, of the resulting law. Now, the position is improved to a certain extent by the fact that there now exist online and printed versions of updated legislation, although we have to be a little bit cautious about that because some of the various versions of Westminster legislation, for example, and indeed Welsh legislation, which are available online are not entirely up to date, and it's possible to be caught out by the fact that, if you rely on what you find on the websites, it may well be that it's not the up-to-date version. I was caught out, myself, the other day with the Law Commissions Act. I was sure

that there was a provision somewhere that said that the chairman had to be a High Court judge or a judge of the Court of Appeal. There is, but it wasn't in the copy that I found on legislation.gov.uk—it was by amendment. So, it has been improved to a certain extent by the fact that you can get these updated versions online. I think that is improving, and I understand that legislation.gov.uk hopes to be completely up to date by the end of the year. I hope so, and it would be splendid if they could do that.

[217] Consolidation goes beyond that, or it should go beyond that, because repeated legislative activity in a particular field can distort the law—distort the shape of the statute—with different amendments at different times, and it can leave the law in a poor state. We've attempted to describe that in our written evidence. Sometimes, in the absence of a new substantive Act to replace the law, consolidation is the only way of bringing order to the legislation. I can give you an example of this: it's in a non-devolved field, and it's that concerned with sentencing procedure in the criminal courts. Here, there have been amending statutes—there's been a Criminal Justice Act virtually every year for the last 25 years, altering the rules of sentencing procedure. The position has become so complex that it must be questionable whether it is now possible to amend those statutes effectively once again. The effect it's had in the criminal courts is that professional judges who are experts in the field are regularly making bad mistakes in relation to the sentencing procedure. It results in a large number of unlawful sentences being passed, and we see it in the criminal division of the Court of Appeal, where a very high proportion of the cases that come before us do in fact involve unlawful sentences. This is an area that is just simply crying out for a consolidation.

15:30

[218] In fact, we are currently undertaking such a project. It's a three-year project as part of our twelfth programme. We hope that it will go beyond mere consolidation, however, as we hope it will involve an element of clarification. So, it's more radical and more ambitious than a simple consolidation, and we hope that it will result in a single statute, which, thereafter, would be the one point of reference for all those concerned in the administration of criminal justice, and that any amendments would be amendments to that particular codifying statute, and those amendments could be brought into force at regular intervals. That's what we are hoping to achieve there.

[219] Consolidation, I should make clear, is a part of our statutory functions, and, in the 50 years of the commission's existence, we have produced 222 consolidated Acts of Parliament. The two hundred and twenty-second was the Co-operative and Community Benefits Societies Act of 2014, for which Mr Hogarth and I were responsible, with the assistance of others. Mr Hogarth is currently working on a consolidation of the law in relation to bail. It's also right to say that, over the last five or six years, the Law Commission has done very little on the front of consolidation. The reason for that is, frankly, a lack of co-operation from the Government departments in Whitehall and a lack of funding. We would be able to do a lot more on this front if we had the co-operation of Government departments and the funding to go with it, but it is an important part of our function.

[220] **William Powell:** Thank you very much indeed for highlighting the issue of resources. That was very much the area that I wanted to pursue questioning in, based upon the comments in your evidence. You state:

[221] 'Since 2010, the Commission will not agree to a proposal that it produce a consolidated statute unless that Department is fully committed to supporting the project by making contributions both in terms of human resources (typically, a lawyer made available to answer queries from the drafter and to comment on his or her work) and funding. It is also now expected that a draft consolidation Bill will usually be published by the Department for wider consultation before it is introduced.'

[222] I think it would be very helpful to this committee, with this current piece of work that we're doing on the inquiry, if you could indicate what support you've experienced to date from Welsh Government in terms of the Welsh work that you've been undertaking.

[223] **Sir David Lloyd Jones:** We've had a lot of assistance from the Welsh Government. Of course, we've been closely involved with the Welsh Assembly and the Welsh Government right from the start of devolution. We've got an excellent relationship with the Welsh Government. The chairman of the Law Commission and the chief executive meet the First Minister and the Counsel General and Dr Hugh Rawlings on a regular basis to discuss the commission's work. Welsh Government officials are very generous with their time. Our public law team in particular has met with staff from a wide range of directorates in order better to understand the policy and the procedural and legislative challenges and decisions that are made. Today, Mr Hogarth has been meeting officials in the Office of the Legislative Counsel to discuss the planning law project. Sarah Young and Elin Hughes, who are in the gallery, have been meeting with officials to discuss the form and accessibility project.

[224] We worked very closely with the Welsh Government in relation to our project on adult social care, and our recommendations have now of course been implemented by the Assembly in the Social Services and Well-being (Wales) Act 2014. That was an important milestone for us at the commission and, dare I say, for the Assembly too, in that it was the first occasion on which Law Commission recommendations had been implemented by the National Assembly using its powers under Part 4 of the Government of Wales Act 2006. The Welsh Government introduced on 9 February this year a Bill to implement our 2006 report on renting homes. That was published in 2006. The Government in England said, 'We're not going to implement this'. I'm delighted to say that it is in the process of being implemented in Wales and, who knows, England may catch up in due course. In 2013, at the request of the Welsh Government, we produced a report that updated the recommendations of our 2006 report, considering how they could be implemented in Wales. That was 'Renting Homes in Wales'/'*Rhentau Cartrefi yng Nghymru*' and it was published in April 2013. So, we've had enormous support from the Welsh Government in relation to that.

[225] In the same way, they are funding and supporting us in relation to the two current Welsh projects on planning and form and accessibility. Officials work closely with the teams from the commission during the life of the project and they also help us to keep in touch with a wide range of stakeholders in Wales. So, for example, on the Welsh planning project, the Welsh Government has provided us with contact details for those who are the key stakeholders in the preparation of the Planning (Wales) Bill. From this information, we've been able to arrange two advisory group meetings in Cardiff to discuss the work that we're doing in the preparation of our consultation paper.

[226] The Welsh Government was also very supportive of our proposals to set up our Welsh advisory committee. We did make it clear to them that, of course, we wouldn't be able to invite their representatives to be members of the committee. Because we're independent of Government, it would not have been appropriate for representatives of the Government to be members on that committee; we have to maintain a distance from Government. But, in every other way, they've been hugely supportive of that development.

[227] We also have advisory groups for each project. So, for example, at the moment, we are deeply engaged in a project on electoral law, which will, we hope, result in UK-wide reform of the law of elections in time for the 2020 UK general election. On that project, Dr Hugh Rawlings serves on the advisory group of the electoral reform project on behalf of the Welsh Government, so officials are involved in many ways in our work and we receive enormous support from them.

[228] **William Powell:** Excellent. Well, it's really heartening to hear that you've had that level and that quality of interaction with Welsh Government and, indeed, that level of support.

[229] A final question from me, if I may, Chair, and that relates to the fact that it's often assumed that there hasn't been much need for statute law repeal in relation to Welsh legislation. I wonder whether you could speak to that point.

[230] **Sir David Lloyd Jones:** Yes. Statute law repeal, so far as the Law Commission is concerned, is concerned with primary legislation and we don't undertake statute law repeal functions in relation to secondary legislation. The test is whether primary legislation is no longer of any practical utility. Typically, it's concerned with the repeal of historical statutes and there are many quite exotic examples of that. The most recent statute law repeal Act repealed a statute, for example, to raise money for the rebuilding of St Paul's Cathedral after the Great Fire of London. Primary legislation by the Assembly, on the other hand, is in its infancy and so it's unlikely that, as yet, there will be any Welsh primary legislation, which, in that sense, is defunct.

[231] **Simon Thomas:** Some of us are not so sure. [*Laughter.*]

[232] **Sir David Lloyd Jones:** However, we did make some inquiries about this, and our recent SLR Acts have included some Westminster Acts that apply only to Wales. For example, the most recent statute law repeal Act included the repeal of the Glamorgan, Brecon and Monmouth Court of Request Act 1809, the Montgomery and Pool Poor Relief Act 1825, and a statute of particular interest to anybody with an interest in the railways of south Wales, the Barry Railway Act 1865—no longer on the statute book as a result of the efforts of the Law Commission.

[233] **William Powell:** Thank you very much.

[234] **Sir David Lloyd Jones:** The time may come when there'll be a lot of defunct legislation from the Assembly that is no longer of any practical use, but I suspect that may be some way off.

[235] **William Powell:** Indeed, yes. Thank you.

[236] **David Melding:** Before I ask Simon to take us on, can I just clarify one thing? Last week, we heard from the Office of the Legislative Counsel that the Law Commission did not currently draft consolidating Bills. I think they've just assumed, because of the reasons you've just explained—that there's not been much activity—that now you're not doing it, but, with a Government or departments of Government that were intent on being more active, you would, wouldn't you? I mean, that's—

[237] **Sir David Lloyd Jones:** Certainly. We certainly would.

[238] **David Melding:** It's just a complete misunderstanding, I realise. We're just tightening up evidence. But I think that's why he made that comment.

[239] **Sir David Lloyd Jones:** I did notice that in Mr Hughes's evidence. I can understand why he may have thought that, because there's been a huge reduction in the level of activity, as far as the commission is concerned, in the field of consolidation. The reason we took on the Co-operative and Community Benefit Societies Bill was because there was clear support within Whitehall for it; indeed, it was particularly requested by Downing Street, so we felt that we could take that one on safely.

[240] **David Melding:** Right, we can move on. Simon.

[241] **Simon Thomas:** Diolch, Gadeirydd. A throi at y dyfodol posibl nawr, a'r berthynas newydd fydd gyda chi gyda Gweinidogion Cymru o dan Ddeddf Cymru 2014, wrth gwrs bydd diddordeb, rwy'n credu, yn y Cynulliad hwn hefyd i weld y gwaith yr ydych yn ei wneud ar ran, neu gyda, Gweinidogion Cymru, ac ym mha ffordd rŷch chi'n cyfrannu at adeiladu y llyfr statud yma yng Nghymru.

**Simon Thomas:** Thank you, Chair. Turning to the possible future now, and this new relationship that you will have with Welsh Ministers under the Wales Act 2014, of course there will be interest in this Assembly also, I believe, to see the work that you do on behalf of, or with, Welsh Ministers, and the way in which you contribute to building a statute book here in Wales.

[242] Nawr, yn San Steffan, mae'n ddigon clir, rwy'n meddwl, bod yr atebolrwydd i'r Senedd yna yn mynd drwy'r Arglwydd Ganghellor, mewn ffordd, ond mae'ch adroddiadau yn cael eu gosod gerbron San Steffan; maen nhw'n cael eu trafod yno, o bryd i'w gilydd, mewn trafodion a dadleuon. Beth fyddech chi'n hoffi ei weld fel proses lle mae'r Cynulliad cyfan yn gallu hefyd bod yn rhan o'r gwaith rŷch chi nawr yn ei wneud yng Nghymru, yn ogystal â'r ffordd mae Gweinidogion eu hunain yn adrodd nôl i'r Cynulliad? Oes gyda chi unrhyw farn benodol ar hynny?

Now, in Westminster it's very clear, I think, that the accountability to that Parliament goes through the Lord Chancellor, in a way, and your reports are laid before Westminster; they're discussed in that place, from time to time, in proceedings and debates. So what would you like to see as a process where the whole Assembly can also be a part of the work that you are now doing in Wales, as well as the way that the Ministers themselves report back to the Assembly? Do you have any opinion on that?

[243] **Sir David Lloyd Jones:** I would very much like to see, in Westminster, if I can start there, a more active role played by Members of the House of Commons and peers in asking more questions of the Lord Chancellor about precisely why Law Commission recommendations are being taken forward or are not being taken forward. There is, I'm sorry to say, still a lack of understanding in Westminster as to the precise nature of the Law Commission and precisely what we're trying to do, and the resource that is available to parliamentarians as a result. We are trying quite hard to improve the position there.

[244] So far as the Assembly is concerned, I think the key to this is likely to be the new duty imposed on Ministers to report annually to the Assembly on what is being done in order to implement Law Commission recommendations.

[245] **Simon Thomas:** Is that likely to be one specific Minister—the First Minister or the Counsel General or—

[246] **Sir David Lloyd Jones:** I don't think—I think it says 'the Welsh Ministers'. I can just check that, if I may take a moment to do that. The report of implementation, it's now section 3C of the Law Commissions Act 1965, says that:

[247] 'The Welsh Ministers must prepare a report each year on...the Law Commission proposals relating to Welsh devolved matters that have been implemented'

[248] and those

[249] 'proposals relating to Welsh devolved matters that have not been implemented as at the preparation of the report.'

[250] **Simon Thomas:** But simply an annual report, for example, laid before the Assembly,

that wouldn't be really enough to give you the kind of wider engagement with the Assembly or civic society—you've set up a Welsh advisory committee, you'd want a bit more than that wouldn't you?

[251] **Sir David Lloyd Jones:** Yes, we would welcome more than that, and that's one reason why I mentioned right at the outset the possibility of a closer link with this committee. For our part, we would welcome the opportunity to appear before the committee, say at six-monthly intervals, in order to report on what we're doing and to answer questions that you may have in relation to that. Of course, it would also be open to Members of the Assembly to make proposals for the commission to undertake projects. Now, that could not be done under the new machinery under the Wales Act 2014 amending our statute, but, every three years, we go out to public consultation on what projects should be included in a new programme of law reform, and there it's open to anybody to make suggestions for new projects, and there'd be a particular opportunity there for Members of the Assembly to make proposals.

[252] **David Melding:** This committee could co-ordinate, possibly, suggestions.

[253] **Sir David Lloyd Jones:** The project we're doing on the form and accessibility of Welsh law was actually proposed by members of the Welsh advisory committee, and was then taken up with enthusiasm by the Government. But it did come originally from that committee.

15:45

[254] **Ms Lorimer:** But we do see an opportunity to raise awareness within Wales, and within the Assembly, with Assembly Members, about our work, and that's why we're interested in hearing your views about how best to do that. Because it's only by continually raising awareness and talking to people about our work that we will be able to add value through future law reform projects.

[255] **Sir David Lloyd Jones:** We think that we're a valuable resource. We're anxious that you should know that this resource is available. We do have expertise in the field and we do have some expertise in the process of consultation as well.

[256] **Ms Lorimer:** So, giving evidence, for example, like today, on the matters that you're looking into today, would be something that, in the future, we'd be very willing to do again, if there were other inquiries being undertaken where we felt we could add some value; it's that sort of relationship building, I think, that would be beneficial.

[257] **Simon Thomas:** Yn sicr, byddwn i'n croesawu hynny achos mae nifer ohonom ni wedi bod yn gofyn i Gomisiwn y Gyfraith fod yn fwy o ran o ddemocratiaeth yng Nghymru, gan gynnwys y berthynas gyda'r Llywodraeth, ac mae'n hynod bwysig bod dyletswydd arnom ni, fel Cynulliad, i wneud hynny a gwneud y cysylltiad yna. A fyddai'n rhywbeth y byddech chi'n ceisio ei roi i mewn i'r protocol gyda Llywodraeth Cymru, bod y pethau ehangach yma, nid jest gyda'r Cynulliad, ond gyda'r gymdeithas yn fwy eang yng Nghymru—. A ydy hynny'n rhywbeth y byddech chi'n ceisio ei roi i mewn? Nid ydw i'n ei weld yn yr un yma, ond mae San Steffan yn wahanol; rŷm ni'n **Simon Thomas:** Well, certainly, I would welcome that because a number of us have been asking for the Law Commission to be more of a part of democracy in Wales, including the relationship with the Government, and it's incredibly important that there is a duty on us, as an Assembly, to do that and to ensure that that link is made. Would it be something that you would be trying to include in the protocol with the Welsh Government, that those wider issues, not just with the Assembly, but wider engagement with society in Wales—. Is that something that you would try to include? I don't see it in this one, but Westminster is different; we can do different things here, if

gallu gwneud pethau gwahanol fan hyn, os we need to, in Wales.  
oes angen, yng Nghymru.

[258] **Sir David Lloyd Jones:** I'm not sure it's a matter for the protocol. It seems to me it's a matter for the Assembly and its committees. There's no reason why we shouldn't come to an arrangement or enter into a protocol with the Assembly or its committees, completely independently of the protocol.

[259] **David Melding:** We could make a recommendation to the Commission, or whatever we have to do internally, and just do it ourselves.

[260] **Simon Thomas:** Yn wir, Gadeirydd, a'r rheswm dros ofyn hynny oedd i droi at y sefyllfa yn yr Alban, lle mae pwyllgor penodol wedi'i sefydlu, yn ôl beth rwy'n deall—yn Gymraeg, y Pwyllgor Pwerau Dirprwyedig a Diwygio'r Gyfraith—ac rŷch chi wedi copïo, o *Scottish Parliamentary Review*, erthygl am hynny, so bydd e'n ddi-ddorol edrych ar hynny. A ydy hynny, yn Senedd yr Alban nawr, yn rhan o'r broses o drosglwyddo eich argymhellion chi i mewn i ddeddfwriaeth yr Alban hefyd—ai dyna'r achos? Mae gyda chi, yn San Steffan, llwybr *House of Lords committees* a phethau felly—ai dyna beth sy'n digwydd yn yr Alban hefyd? Ac wedyn, wrth gwrs, y cwestiwn yw: a ddylem ni, fel Cynulliad, fod yn edrych ar hynny hefyd?

**Simon Thomas:** Indeed, Chair, and the reason for asking that was to turn to the situation in Scotland, where a specific committee has been established, as I understand it—the Delegated Powers and Law Reform Committee—and you have copied a *Scottish Parliamentary Review* article on that, so it will be interesting to look at that. In the Scottish Parliament, is that part of the process of transferring your recommendations into Scottish legislation—is that the case? In Westminster, you have the House of Lords committees route and so on—does the same pathway exist in Scotland? And then, of course, the question is: should we, as an Assembly, be looking at that also?

[261] **Sir David Lloyd Jones:** That is, I think, very much a matter for you. There is, as you point out, a special procedure—a number of special procedures, in fact—in Westminster. There's one in respect of non-controversial Law Commission law reform measures; the Insurance Bill, which I mentioned a moment ago, went through under that procedure. That procedure has the great advantage that the legislation can be introduced into the House of Lords. The Second Reading is taken off the floor of the House in committee, the committee is usually chaired by someone with expert legal knowledge, and the committee is usually made up—. Most of the members have got some legal expertise; the Insurance Bill committee was chaired by Lord Woolf, in fact. The commissioner responsible gives evidence before the committee, a number of other senior lawyers can be called—Lord Mance and a member of the Court of Appeal, Lord Justice Longmore, gave evidence on the Insurance Bill. The result of that was that the time taken up in the Commons was—. I think the entire time occupied in the Commons was about 45 minutes on that legislation. There's also a special procedure for consolidation measures, where the Second Reading is taken before the Joint Committee on Consolidation Bills. Scotland has now set up its own special procedure, modelled on that, and the first Bill has gone through under that procedure last year, and you've got the copy of Mr McMillan's article on the subject. I think it's very much a matter for you, in the Assembly, but it would seem to us that there is, we understand, pressure on time for the Assembly, and that it would be particularly welcome if there were a special procedure for non-controversial law reform measures, both of the consolidation type and of the law reform type.

[262] **Simon Thomas:** I'll just set to one side, just for a moment, the idea that law is non-controversial, of any kind, and we've had our experience with insurance law here with the asbestos Bill, of course, which has not been non-controversial in that regard. But just to say we already have a procedure here—well, we have an emergency procedure, but I don't think

that would be appropriate for this—. But we have a fast-track procedure, which means that Bills can be taken, very often, without the first evidence-gathering stage, Stage 1, because the evidence has already been done in the past by previous Assembly committees. That principle could be extended to the fact that you'd done the work. Have you at all looked at that in our Assembly procedures? Is that the kind of procedure—albeit a decision for the Assembly—that you could envisage taking forward your proposals?

[263] **Sir David Lloyd Jones:** I think, rather, we had in mind that the Assembly might devise a new procedure and fashion it to meet the particular needs of the legislation. The procedure that we have in Westminster has now seen six Bills go through, and the unresolved question as to what is non-controversial, which is the point that you make—

[264] **Simon Thomas:** Which is the one I parked just for a second, but I was going to come back to it, don't worry. [*Laughter.*]

[265] **Sir David Lloyd Jones:** It's an appropriate procedure for non-controversial measures. Of course, there's a spectrum: some law reform proposals will be much more controversial than others. Some will be very arid, technical points that, really, nobody would get very excited about. On the other hand, there are some that cross the line into being too controversial for the abbreviated procedure to be used. An example of that is that there were to be included in the Insurance Bill some clauses that would establish a cause of action for damages for late payment by an insurer. There is such a cause of action in Scottish law; there is none in the law of England and Wales, as matters stand. That was included in our report. The appropriate clauses were included in the draft Bill, and those clauses were taken out by the Government before the Bill was introduced into the House of Lords on the basis that they were too controversial. For our part, we're keen to use this procedure wherever it can be used, because we like to see our proposals implemented. On the other hand, we're also anxious to protect this very precious procedure that we have, and we don't want to do anything to damage it as a result of overstepping the mark.

[266] **Simon Thomas:** And that is the question that I want to ask because I don't think anyone, apart from David Davies, Lord Llandinam, and he's long gone, so he's not going to, would argue about the Barry railway docks—

[267] **Sir David Lloyd Jones:** I don't think so. John Cory might.

[268] **Simon Thomas:** So, we're safe there, I think. But how do you establish what's non-controversial? Is it a discussion between yourselves and the Government, in which case, by extension, it would be with Welsh Government, or is it a wider discussion that you have with your reference groups or your expert groups? Who decides what's non-controversial or not?

[269] **Sir David Lloyd Jones:** During the currency of a project, we will come to a view as to whether something is or is not controversial. Largely, it's through discussion with the stakeholders. One of the remarkable things about this long-running project that we've had on insurance, which is more or less coming to its conclusion now—we've had the Consumer Insurance (Disclosure and Representations) Act 2012 and now the Insurance Act 2015—is that the commissioner responsible, David Hertzell, who's just retired from the commission, was able to bring together the competing interests of consumer groups and insurers in such a way that this fundamental reform of the law, the biggest reform for over 100 years, dealing with things like non-disclosure, misrepresentation in contracts and warranties, has all gone through under a procedure for non-controversial measures, which, in itself, is remarkable. It's largely because he brought the competing interests together and there was an element of reconciliation there. So, that's the first step. We decided that it would be appropriate, but, of course, ultimately it's for the Government to decide whether it is going to introduce our proposals under this particular procedure.

[270] **Ms Lorimer:** If I may, what I was going to say, in addition to that, apart from making it quite clear that it's Government's decision, is that, within Westminster, there's a whole machinery of approval that goes on before the relevant Government department can get the go-ahead to introduce our Bill using the non-controversial procedure, involving close discussion with the House authorities. So, there is a process there that has to be followed to enable our Bills to be taken forward outside of the main legislative programme, and using our own legislative procedure.

[271] **Simon Thomas:** We have, of course, a similar procedure here—not, of course, anything as complex as the one there, but it involves the Government and the other parties.

[272] **Ms Lorimer:** Yes, that's right, because one of the things that has to be established is that there's all-party agreement to the fact that our procedure can be used.

[273] **Simon Thomas:** I was simply struck that you thought that we could be and should be looking at a specific procedure for commission proposals, which I think is worth this committee taking very seriously. Diolch yn fawr.

[274] **Ms Lorimer:** One of the benefits of having this additional procedure outside of the main legislative programme is it means that the main legislative programme, for which there is always competition for slots, can be left to one side, if you like. In a sense, this procedure runs along in parallel to that. So, the Assembly would have to be satisfied, it seems to me, that there were Bills coming from the Law Commission that could be dealt with appropriately outside of the main legislative programme using a different procedure.

[275] There was one other point I was just going to make, chairman, which is that we talk about the non-controversial procedure as being a fast-track procedure. Yes, things can go through quite quickly, but the level of scrutiny is really quite detailed. In fact, the Law Commission Bills that go through that procedure are subject to a level of intense scrutiny that, frankly, other Bills going through the main legislative programme are not given,

[276] **Simon Thomas:** There was one thing that I did want to follow up and that I'd forgotten initially, sorry. You do mention in your evidence that backbenchers have taken through your proposals on occasion.

[277] **Ms Lorimer:** Yes.

[278] **Simon Thomas:** We have that provision here, as well. Is a backbencher taking through your proposal a kind of failure of your relationship, if I can put it that way, with the Government, or is it just something that happens in the legislative programme anyway? In other words, could we potentially see that happening here in Wales?

[279] **Sir David Lloyd Jones:** I think you could see it happening here, but I don't think it is necessarily to be regarded as a failure. Those clauses on late payment by insurers make a very nice private Member's Bill for someone to propose in Westminster. It's not a failure of the relationship with Government. It's simply that Government took the view that it was too controversial to be included in a Bill that went through under the special procedure. There's no other appropriate vehicle for it at the moment. So, it may well be that, in due course, a private Member would take that one up and that it would find favour.

[280] **Ms Lorimer:** It's one option that is always open in terms of a way to take forward our proposals through to law, through to legislation, but, clearly, there are risks associated with it going forward as a private Member's Bill, which we don't have if we go through either the main legislative programme or, indeed, our own special procedure.

[281] **David Melding:** Suzy Davies.

[282] **Suzy Davies:** Thank you. I'd like just to take you to the evidence that you've given regarding the principles for better legislation. I've got a couple of things I wanted to ask you, but I want to start with reference to your evidence, 1.59 through to 1.61, and the answer you gave to my question earlier about the translating of ideas into serviceable legislative text. Obviously, you gave me one example where policy can be influenced by the viability test that you mentioned, but that's different from something that Government experiences, which is, occasionally, that perhaps policy is not fully developed before it gets to that stage. In your evidence, you say that:

[283] 'better legislation can be promoted by identifying and analysing the underlying policy issues in a way which will highlight clearly the problems to be addressed and possible solutions.'

[284] Are you able to perhaps explain a few ideas around that, taking into account the inevitable reality that there will be political positions on policy?

[285] **Sir David Lloyd Jones:** We are, of course, independent of political considerations, and we have that freedom and that luxury. As a result, we are able to put forward the proposals that we think best suit the needs of the community and best address the particular problem that has arisen in law. We're lucky that we have enough time and resources to be able to formulate what we think are workable proposals, to work up instructions to counsel, and then to engage in this iterative process that I've described between the team responsible for the project and Parliamentary Counsel. There may be some change in policy, as I've explained, at that stage, but, by the time we get to the finished product, the report and the annexed Bill, we will have run the course and we will have formed a view as to what the appropriate policy is.

16:00

[286] They'll then go off to the Government, and the Government is required to respond: a preliminary response within six months under the protocol, and a full response within 12 months, although that's not always observed by the Government, I'm sorry to say. They may decide that they're going to take forward some of the proposals and not others. We've recently had a response from the Government in relation to our proposals in relation to the regulation of healthcare professionals and social workers, and there, the great majority of our proposals are being taken forward, I'm glad to say, but not all of them. With something on that scale, it's perhaps not surprising that they haven't accepted all of our recommendations. So this, then, will involve the Government in producing another version of the Bill, no doubt based on ours. I don't think we—. Yes, we did on that occasion.

[287] **Ms Lorimer:** Yes, we did.

[288] **Sir David Lloyd Jones:** No doubt, it will be based on ours, but it'll be modified, so there will be changes in policy in play at that stage, and it will be then for the Government's Parliamentary Counsel to reflect those changes in the Bill.

[289] **Suzy Davies:** But that's in a situation where the original impetus has come from you, and actually there's a great deal of good drafting already to work with. I'm interested in the comparison with the Bills that have come from Government, which aren't related to the Law Commission. Some of the evidence that we've had, certainly in relation to law here, is that there are uncertainties of policy that lead to two things: one, significant amendments throughout the primary legislative process here, and possibly the kicking into the long grass

of some policy ideas into secondary legislation, which I'll ask you a little bit more about that in a minute. How would you get around that? What a question! What advice can you give?

[290] **Sir David Lloyd Jones:** More time for debate in order to consider the amendments, because I suppose there's a danger that when these amendments are introduced, there's not sufficient time to consider the full policy implications of the amendments. That must be a concern, I suppose.

[291] **Suzy Davies:** What about pre-legislative scrutiny? Do you think there's an enhanced role here, maybe, we could consider?

[292] **Sir David Lloyd Jones:** There certainly is, but, of course, that would not necessarily take account of amendments.

[293] **Suzy Davies:** No, no, but it might prevent them arising in the first place.

[294] **Sir David Lloyd Jones:** It might prevent them from arising in the first place. Now, as far as that pre-legislative scrutiny is concerned, we've not had much personal experience at the commission of this recently. There was pre-legislative scrutiny on the Bill that implemented in Westminster our adult social care report, and there was also pre-legislative scrutiny on the Bill that implemented three of our reports in the Consumer Rights Bill, which is still before Parliament at the moment, as we speak, but there, the relevant Law Commission reports were, unusually, not accompanied by Bills, so the Bills that were actually produced were produced by Government and the pre-legislative scrutiny, therefore, was not a process that affected us in the same way as if there had been pre-legislative scrutiny of Bills that we'd produced.

[295] As to whether it's appropriate, it would seem to me that it can have benefits for some Bills. It will enable legislators to make Government justify its proposals and test the policy choices that have been made. I understand some Bills have changed radically as a result of that process in Westminster, and many have been improved by it. To take an example of one of our proposals that could benefit greatly from such a process, we produced a report in 2014 on the regulation of taxis and private hire vehicles, and if that is to be taken forward by the Government, and we don't know yet whether it will be or not, it would reform a system of regulating taxis and mini cabs, replacing a large number of enactments going back over 150 years. There were a lot of difficult policy choices to be made in the course of that project. The Bill is long. In some places, it's—necessarily I'm afraid—detailed and it's complex. Now, it's that sort of Bill that really could benefit from pre-legislative scrutiny. On the other hand, some of our law reform measures are very concise and brief. The recent Insurance Bill is an example. It was very short: no more than a dozen clauses, I think. There, it probably wouldn't benefit greatly from pre-legislative scrutiny.

[296] **Suzy Davies:** But with your taxi example there, you said there was almost like a range of policy choices there and that's where your draft Bill—in that circumstance, it would be a Welsh Government draft Bill—was actually valuable to Government, because a select committee would have looked at it first. Would that have been right? Have I understood the process right?

[297] **Sir David Lloyd Jones:** The process would be undertaken by a select committee. We did take part in pre-legislative scrutiny in relation to the Deregulation Bill in 2014. That was in rather unusual circumstances. We were not taking part in that because our proposals would be implemented in the legislation. We took part in it because there was one clause that would confer on Ministers the power, by Order, to repeal primary legislation that was considered by the Minister to be no longer of any practical use.

[298] **Suzy Davies:** Oh; familiar. [*Laughter.*]

[299] **Sir David Lloyd Jones:** This was a striking provision. Of course, it has its constitutional implications as well. We left it largely to others to make the constitutional point. We took part in the pre-legislative scrutiny on that Bill, because we were concerned that it cut right across our function of statute law repeals, and in the result, the view that we put forward was favoured and the clause was withdrawn from the Bill. That's the only recent example of my personal involvement in pre-legislative scrutiny.

[300] **Suzy Davies:** Oh, right. That's interesting to know as well.

[301] **Ms Lorimer:** Chairman, I was just going to add that, on the two examples that our chairman gave of the Bill implementing an adult social care report and the Consumer Rights Bill, I think I'm right in saying that on those occasions where pre-legislative scrutiny was undertaken there, the relevant commissioner gave evidence to the committee about the policy background to some of the proposals that we had come forward with in our report.

[302] **Suzy Davies:** That's interesting. Thank you. I'll come to my last question now, and it's an old favourite of ours on this committee: what principles should be applied to determine the balance between what goes on the face of the Bill and what goes into secondary legislation?

[303] **Sir David Lloyd Jones:** I think that's a very difficult question.

[304] **Suzy Davies:** You've got 10 seconds. [*Laughter.*] No; I'm joking.

[305] **Sir David Lloyd Jones:** My time is up. [*Laughter.*] It's a very difficult question to answer in the abstract. I think it must depend on the context. We've seen, in a number of projects that we put forward, there's a spectrum between things that one might expect to be left to subordinate legislation—matters of minor detail, procedural matters—and things that one would not—the creation of a serious new criminal offence, for example. You'd expect that to be in primary legislation, not in the subordinate legislation. There are certain areas of particular constitutional concern—taxation, retrospective legislation, delegation of a power to amend primary legislation. If those things are to be done, you'd expect those to be in primary legislation. Again, it's going to be easier, in due course, to amend the content of secondary legislation than to amend primary legislation. It may be appropriate to include within secondary legislation matters of detail that are expected to require amendment during the life of the primary statute, so that that can be done more effectively and more efficaciously, but I find it a virtually impossible question to answer in the abstract beyond that.

[306] **Suzy Davies:** Well, perhaps I can help a little here. There have been concerns expressed by this committee, in scrutinising Bills here over the last few years, that some items that have been deferred, shall we say, to secondary legislation perhaps don't really belong there, for one of two reasons. One is because it's not the sort of day-to-day, 'This will need to be amended in a years' time' kind of thing that might relate to fees, or perhaps appointing different personnel to a board or something like that, but, actually, a sense that certain decisions are being put into secondary legislation because, at primary legislation stage, it's not entirely clear what the policy intention is. Therefore, a Minister will reserve some powers to himself or herself and say, 'Right, well, Welsh Ministers may make regulation to define something in the future.' But, the difference between 'must' and 'may' is actually quite critical in that particular situation, because if regulations aren't made, you're left with an inchoate piece of primary legislation. Is that something that you've picked up from the way we legislate here, or is this news to you? I would imagine it's a concern. How would you—?

[307] **Sir David Lloyd Jones:** It's not a matter of which I was previously aware, I have to

say, but approaching it in general terms, of course if the concern is that the subordinate legislation might be used in due course to implement or pursue different policies from those that have underlain the primary legislation, then it's a matter for the legislators to say that it's not appropriate for subordinate legislation.

[308] **Suzy Davies:** Ambiguity is the issue.

[309] **Sir David Lloyd Jones:** We've had a look at this question in the context of a number of regulatory projects that we've undertaken, where subordinate legislation is nearly always going to be an important part of the overall structure. Some of the provisions will be in primary legislation and some of them will be in subordinate legislation. In our project on regulation of healthcare professionals, we adopted a public interest test when deciding which matters should be in statute and which matters should be left to subordinate legislation. So provisions would be spelt out in the Bill if there was a public interest in doing so—for example, in order to ensure consistency of fitness to practise across the nine United Kingdom regulators, or to allow the regulators to secure efficiencies in how they operate. Otherwise, matters could be left, perhaps, to the discretion of the regulators themselves, and provision could be made through subordinate legislation. How they decided to regulate education providers, or something like that, might be a matter that could quite legitimately be left to the subordinate legislation. But it's a matter to be considered really in the context of each case.

[310] **Suzy Davies:** But it would be fair to say, wouldn't it, I think, that if primary legislation sets up an expectation amongst the people who are going to be affected by it that some more detailed information will follow in secondary legislation about what they are expected to do, that secondary legislation must be made? It can't be discretionary. Would that be a fair observation? Do you want me to try and resay that?

[311] **Sir David Lloyd Jones:** I'm not sure that I could answer that in the abstract like that.

[312] **Suzy Davies:** Right, okay. I'm happy to accept that answer. That's fine. Thank you.

[313] **David Melding:** Could I ask an abstract question? On secondary legislation, the Hansard Society told us that it increasingly creeps into policy and principle, and there's certainly been more secondary legislation in statutes the last generation or so. It cannot be amended. It's rejected or adopted by the legislature—secondary legislation—under the required procedure. Do you think it's a good principle that it's not subject to amendment? Why do we say that a member of the legislature cannot propose an amendment to a piece of secondary legislation that is coming before the legislature? We have that right in primary legislation. Why is it just accepted as not being appropriate to the Westminster system, as far as I can work out?

[314] **Sir David Lloyd Jones:** I think perhaps here we're just trespassing a little into an area where I feel a bit uncomfortable about answering the question, particularly in the abstract.

[315] **David Melding:** Okay, but it's a principle, isn't it? I'm not asking you to comment on any particular statute or proposal.

[316] **Ms Lorimer:** It's not something the Law Commission has published a view on, I don't think. So, I think we'd probably rather not—

[317] **David Melding:** But, you know, a Martian would come down and he'd say 'Well, I can understand how primary law's done: they have a vote, and if they want to suggest a better way of doing it, they can amend it'. And then, when it comes to secondary legislation, even with a procedure that's quite tight, and which does imply there should be a level of scrutiny,

the legislature just can't amend. I just wonder what the first principle is that determines that. I'm not a lawyer.

[318] **Ms Lorimer:** I'm sorry, I don't know the answer to your question.

[319] **David Melding:** We're running out of time. Can I just note that I thought, in your written evidence, what you said about post-legislative scrutiny was interesting? I think we will consider that, but not explore it today. It is something that, in the Assembly, we've been interested in, and we have had a recent example, actually, of a committee that's spent quite a lot of time on a piece of post-legislative scrutiny, which we thought was commendable. Thank you for that, but we're just out of time. I'll just invite you, Sir David, that if you do want to make any closing remarks, you're welcome to do so.

16:15

[320] **Sir David Lloyd Jones:** On post-legislative scrutiny, could I just say that we published a report on that in 2006, and it's available on the Law Commission website? Could I, in conclusion, say that we really are most grateful to the committee for this very stimulating discussion that we've had this afternoon? It provides us with a lot of food for thought as well. I hope you've found our answers of assistance. Could I mention two things in particular, please, very briefly? The first is that, next week, to mark the fiftieth anniversary of the Law Commission, we're holding a seminar at the Wales Governance Centre, here in Cardiff. The topic will be 'The future of legislation in Wales', and the speakers will be Sir Geoffrey Palmer, who is a former Prime Minister of New Zealand, Lord Thomas of Cwmgiedd, the Lord Chief Justice, the Counsel General, and Mr Dylan Hughes, the First Legislative Counsel. That's next Wednesday at 5.30 p.m. for 6 p.m., and it would be excellent if you were able to join us for that.

[321] The other matter is this: in July, I will complete my term as chairman of the Law Commission, and so I will return to the Court of Appeal full time. When I leave, it will inevitably be with a sense of some sadness at leaving what I consider to be an excellent organisation but also with a sense of there being unfinished business. That's inevitable, I'm afraid. I hope I may be allowed to continue to play some part in relation to the form and accessibility project. I believe that, in my time as chairman, we've been able to put in place the appropriate machinery to enable the Law Commission to be an effective law reform body that can meet the needs of the people of Wales. I do hope so.

[322] May I, finally, wish this committee every success in its current work? Thank you very much.

[323] **David Melding:** Thank you for that, Sir David. I know I speak on behalf of all committee members, we've found you and your colleagues most productive partners, and we look forward to a deeper relationship in terms of how we help inform the work and also have these regular discussions with the Law Commission. So, thank you very much, both Sir David and Ms Lorimer, for your attendance this afternoon. It's been most helpful.

16:17

**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**

*Cynnig:*

*Motion:*

*y pwyllgor yn penderfynu gwahardd y the committee resolves to exclude the public  
cyhoedd o weddill y cyfarfod yn unol â Rheol from the remainder of the meeting in  
Sefydlog 17.42(vi). accordance with Standing Order 17.42(vi).*

*Cynigiwyd y cynnig.  
Motion moved.*

[324] **David Melding:** I now move the relevant Standing Order to conduct the rest of our meeting in private, unless any Member objects. I don't see a Member objecting, so please switch off the broadcasting equipment and clear the public gallery.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 16:17.  
The public part of the meeting ended at 16:17.*