



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

The Constitutional and Legislative Affairs Committee

9/1/2017

Agenda'r Cyfarfod
Meeting Agenda

Trawsgrifiadau'r Pwyllgor
Committee Transcripts

Cynnwys Contents

- 4 Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest
- 4 Bil Treth Gwarediadau Tirlenwi (Cymru): Sesiwn Dystiolaeth gydag
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Landfill Disposals Tax (Wales) Bill: Evidence Session with the Cabinet
Secretary for Finance and Local Government
- 29 Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reol
Sefydlog 21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order 21.2
or 21.3
- 30 Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r
Cynulliad o dan Reol Sefydlog 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under
Standing Order 21.2 or 21.3
- 31 Papurau i'w Nodi
Papers to Note
- 32 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

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

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. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Yr Arglwydd / Lord Dafydd Elis-Thomas Bywgraffiad Biography	Annibynnol Independent
Nathan Gill Bywgraffiad Biography	Annibynnol Independent
Huw Irranca-Davies Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Dai Lloyd Bywgraffiad Biography	Plaid Cymru The Party of Wales
David Melding Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Emma Cordingley	Llywodraeth Cymru Welsh Government
Mark Drakeford Bywgraffiad Biography	Aelod Cynulliad, Llafur (Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol) Assembly Member, Labour (the Cabinet Secretary for Finance and Local Government)
Sarah Tully	Llywodraeth Cymru Welsh Government

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

Siân Giddins	Dirprwy Glerc Deputy Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser

Dr Alys Thomas Y Gwasanaeth Ymchwil
Research Service

Gareth Williams Clerc
Clerk

Katie Wyatt Cynghorydd Cyfreithiol
Legal Adviser

*Dechreuodd y cyfarfod am 14:30.
The meeting began at 14:30.*

**Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest**

[1] **Huw Irranca–Davies:** Could I, as we start this session of the Constitutional and Legislative Affairs Committee, remind Members and participants here to make sure that their mobile devices are switched off? Could I welcome you all here? A happy new year to everybody. It's good to see everybody back and in good shape and, I hope, very well rested—members of the committee and our team, and also you, Cabinet Secretary, and your team as well. It's good to have you in front of us today.

[2] A couple of housekeeping remarks: as everybody knows, in the event of a fire alarm, we have fire exits very clearly signed—just follow the instructions from staff. We have translation facilities, through Welsh and English, here, so please use those, on channels 1 and 0, and interpretation is available.

**Bil Treth Gwarediadau Tirlenwi (Cymru): Sesiwn Dystiolaeth gydag
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Landfill Disposals Tax (Wales) Bill: Evidence Session with the Cabinet
Secretary for Finance and Local Government**

[3] **Huw Irranca–Davies:** So, with that, with the housekeeping remarks out of the way, can we welcome you, Cabinet Secretary? Could you, just by way of introduction, just introduce—or if your colleagues here want to introduce themselves?

[4] **The Cabinet Secretary for Finance and Local Government (Mark**

Drakeford): Fine. Thank you, Chair. I'll ask my colleagues to introduce themselves.

[5] **Ms Cordingley**: Sure. I'm Emma Cordingley and I'm a lawyer in the Welsh Government.

[6] **Ms Tully**: I'm Sarah Tully and I'm the policy lead for the landfill disposals tax.

[7] **Huw Irranca-Davies**: Thank you very much. You're all very welcome.

[8] We're turning to the issue of the Landfill Disposals Tax (Wales) Bill in front of us today, and if I could begin by asking you, Cabinet Secretary, what seems like a very straightforward question, but I'm looking for reassurance that everything within this you are content is within the Assembly's competence, and that you've had the necessary discussions with the UK Government to assure yourself that it is.

[9] **Mark Drakeford**: Thank you, Chair. Yes, it is my clear view that the Bill in front of the National Assembly is within the competence of the National Assembly. The Wales Act 2014 amended the Government of Wales Act 2006 to provide the Assembly with the legislative competence to make provision in relation to devolved taxes. That includes a tax on disposal to landfill. Those amendments are found at section 108 and Schedule 7 to the Government of Wales Act and that's where the competence to bring this Bill in front of the Assembly derives. In the normal way, and as part of the protocols we have with the UK Government, the Bill was shared with the Wales Office in advance of publication, and officials will have had discussions with the Treasury as well given the nature of this Bill, and no issues in relation to competence have been raised as part of those discussions.

[10] **Huw Irranca-Davies**: And if the Wales Bill currently before Parliament is actually passed and does make it onto the statute book, does this change anything in regard to competences?

[11] **Mark Drakeford**: Well, Chair, as Members will be aware, the Wales Bill, if passed, would move the Assembly to a reserved-powers model. The Bill in front of the Houses of Parliament at the moment does have a reservation—I think it's reservation A1 in the Bill—on fiscal, economic and monetary policy. But the Bill also provides a specific exemption to that reservation for devolved taxes including their collection and management. Therefore, the

Wales Bill would not have an impact on the Assembly's competence as far as this Bill is concerned.

[12] **Huw Irranca-Davies:** Okay. So there would be nothing in this that would be outside of competence if the Wales Bill was passed?

[13] **Mark Drakeford:** I don't believe so, Chair. As you know, there is a second dimension to the Wales Bill, in that it alters some of the balance in relation to consents that need to be obtained from UK Government Secretaries of State. But there are no consents in this Bill that are required either from the Secretary of State for Wales or from Ministers at the Treasury, so that aspect of the Wales Bill would not be engaged either.

[14] **Huw Irranca-Davies:** Thank you for that. Just one final question in opening. This is quite a complex Bill: 95 sections, three Schedules, divided into six Parts; 29 powers for Welsh Ministers to make regulations; Order commencement powers, and so on. It is quite complex. So, can I ask you: how did you approach minimising that complexity? It's one of the things we're always concerned with—to make clear, understandable, legible legislation. Do you think you've achieved it?

[15] **Mark Drakeford:** Well, Chair, let me begin by agreeing with you that this is a complex and technical area. It's a shared ambition, certainly by me, in terms of bringing legislation in front of the Assembly and this committee, that we should do everything we can to try and minimise complexity. But you can get to a stage where striving for simplicity actually distorts the objectives that you are trying to pursue. So, there is a level of complexity that you can't avoid is what I'm trying to say.

[16] How did we go about trying to minimise it? Well, I suppose the first way we set about it has been by working very closely with the sector itself, because this is a Bill that is of direct interest to, actually, a very small group of people. This is a tax that will be paid by landfill site operators, and there are only 20 of them in Wales—we could get them all inside this room—and the number is falling. The number will be smaller within the next five or 10 years as well. So, our starting point was to get those people into a room and to discuss with them the things that would work best from their point of view, because they are the people who have to operate this area of complexity. One of their very key messages to us was the need for continuity within the system with which they are very familiar today and the law that operates in Wales today, and the law as it will operate beyond 2018.

[17] So, a second way, then, has been to try and observe that principle, and only to depart from the way the law currently operates when we were convinced that to do so would be to clarify, improve and tighten up the way that the law currently operates. So, we believe that this Bill would be recognisable to the people who have to work with it.

[18] Finally, I think a third and maybe the most significant way in which we've tried to address the issue of complexity is that we've taken the opportunity in this Bill to attend to the history of legislation in this field. So, over the 20 years or more that there's been this sort of legislation, it's grown up in the way that legislation tends to do: by amendments through secondary legislation; amendments to different parts of primary legislation; notices; directions; guidance. It's a complex Bill, and if you don't know you're way around, it's quite hard to find it all. What we've done is we've tried to bring it together in one coherent place and to put as much as possible on the face of the Bill. So, there's a lot of material that currently exists in guidance and in regulations, and we've put it directly onto the face of the Bill. Now, in some ways it makes the Bill look a bit more complex, and—.

[19] **Huw Irranca-Davies:** Well, perhaps on that very point, David, if I could bring you in on that aspect of what is on the face of the Bill and what isn't?

[20] **David Melding:** Perhaps you'd just like to develop your remarks there, in terms of the balance between what's on the face and what's been left to regulations, because I think it has interesting follow-ons in terms of other procedures that are used. So, how did you strike that balance? Indeed, I'm interested that you feel there's more written into the Bill on its face than perhaps you inherited or what would have been there if these taxation powers were not devolved.

[21] **Mark Drakeford:** Thank you, Chair. So, our starting point was to create a Bill in which as much as possible is on the face of the Bill and in one place, and set out in some detail in order to provide clarity and certainty to those people who have to operate within it. So, Chair, I don't know how much detail you will want. I'm very pleased to be guided by you, but could I give you just a small number of examples—

[22] **Huw Irranca-Davies:** Some examples would be helpful, yes.

[23] **Mark Drakeford:**—of places where currently you would not find material on the face of current legislation but is to be found on the face of this Bill?

[24] So, one of the contentious areas in relation to landfill disposal tax is to do with material being brought to a landfill site and weighed, because, if you need to work out how much tax has to be paid, you need to know how much material is being brought onto the site. There have been difficulties in the past with the methods by which waste is weighed, the point in the process at which it is weighed, the way in which the weight is then recorded for tax purposes. We put all of that, all those weighing provisions, on the face of this Bill.

[25] A second contentious area is in relation to water discount. There are very good public health reasons why people are encouraged to put water in with material that is being brought for disposal, but you then have to discount the water when it comes to paying the tax because the water either just evaporates or sort of leaks away from the landfill site. How you do that—how you measure the amount of water and the water discount and how it operates—has also been litigiously contentious in the past. We put all that on the face of this Bill.

[26] Then, landfill sites are complex areas. Not everything that's brought onto a landfill site will, in the end, be disposed of in landfill. Material is brought in and it's sorted. Some of that material is then taken away from the landfill site for recycling and reuse. So, we clarify in this Bill how land within the curtilage of the landfill disposal site is to be used for non-disposal purposes. All of that again appears on the face of this Bill.

[27] There are other examples, Chair, that I could give you, but the general point is that we have taken, we think, a pretty broad set of opportunities to bring together, put on the face of the Bill and set out in detail so that there is clarity for those people who are operating the Bill, and clarity for the Welsh Revenue Authority in the work that it will do in collecting revenue for Welsh public purposes. There are exceptions to that, because there are things that are left to regulations. I think they're in three broad areas where we've decided to use regulations. First of all, there are areas that are subject to regular review. So, qualifying materials will be an example of that—materials that qualify to be taxed. That's kept under regular review. The list changes and we decide that a regulation-making power to keep that up to date would be necessary.

[28] There are some areas that are genuinely new and where technology is changing. So, another litigious area in landfill tax has been what is called 'fines', and fines not in the sense of money fines, but fines in the sense of the fine material that is left, and whether that should be taxable or not. There is a procedure that allows for that to be tested to find out whether it should be subject to tax. The UK Government introduced that loss on ignition test, as it is called, in 2015, and the Scottish Government introduced it in October of last year. We take a regulation-making power there because we want to be able to keep up to date with that changing technology.

[29] Finally, there are some areas that are just genuinely technical in detail. There are some tax credit powers that come with this Bill. We intend to use them in relation to bad debt credit. We think it's of such technical detail that the Assembly will get a better sight of it through regulations.

[30] **David Melding:** Minister, it's interesting to hear you go through the rationale there because, in general, this committee takes the view that what could be on the face should be on the face. It's interesting to hear the arguments you've put forward there. But then we do have to come back to the regulation-making powers. As the Chair said, there are 29, of which 19 permit primary legislation to be altered by those regulation-making powers. This is our friend the Henry VIII powers. In this respect, there's a pretty strong whiff of Thomas Cromwell rather than a Minister that is respecting the rights of the legislature, is there not?

[31] **Mark Drakeford:** Well, Chair, let me begin by recognising the importance of the point that's being made. I personally tend to share the view that primary legislation should only be amended via regulation when there is a strong case for doing that. I don't think we've approached it lightly in this Bill. But Members will see the tension immediately. This committee has consistently argued for more material to appear on the face of the Bill, but, then, if you need to keep a Bill up to date and keep it usable, that does push you in the direction of having to amend primary legislation via regulations.

14:45

[32] Had the things that I outlined in my last answer to the committee been dealt with via regulations, I wouldn't have needed the Henry VIII power to keep them up to date, because they would have been regulation powers, not

face-of-the-Bill powers. So, there is a tension, it seems to me, between the two things. However, shall I say that I think we've gone about it carefully here? There are no examples in this Bill where we take Henry VIII powers beyond the way that those powers are used in current legislation.

[33] **David Melding:** You make a subtle point, so—you know, to treat your argument with the respect it deserves—in your view, is this particularly necessary for a financial piece of legislation, simply because the area does change so much, you have to have so much technical detail, a material that may be regarded as being completely inappropriate for landfill may suddenly get invented, and one that is hardly ever used, you know, is not so central? I can see all that, but, you know, this is a dangerous principle to general law making, I would say—or at least 'an irregular principle'; that'd be less pejorative. So, have you had to use it because it's a financial piece of legislation?

[34] **Mark Drakeford:** Well, we had to use it for a number of reasons, and the fact that it's financial legislation is certainly one of them, because we don't have an annual finance Bill, which would often be used in the UK Government to make changes of this sort. We don't have recourse to the Provisional Collection of Taxes Act 1968, which, again, the UK Government would have recourse to. So, because our tax-making powers are limited at the moment, we have to find bespoke ways of attending to those taxes that we do have. But I'm going to say again that I don't disagree with the point that Mr Melding is making about needing always to attend carefully to if you are using powers of this sort, and, as I've said, I think there are three different ways in which I would defend the use we've made of them here. First of all, as I say, we never go beyond the Henry VIII powers that are there in the current legislation. One of the reasons why there are more of them numerically in this legislation is that we have broken up some of the very broad and sweeping Henry VIII powers that there are in the current legislation and made it much more specific and precise to the purpose that we are pursuing. So, in doing that, we end up with more of them, but they are much narrower in their scope. And, thirdly, whenever we have Henry VIII powers, I think that, other than in two instances, they're all made subject to the affirmative procedure. So, we do put in safeguards that the Assembly itself as a legislature will be able to exercise, to make sure that the Executive isn't using these powers in a way that wouldn't have the support of the legislature.

[35] **Huw Irranca-Davies:** So, more Henry VIII, but slimmer, narrower.

[36] On the basis of everything that you've said, Cabinet Secretary, what do you anticipate the lifespan of this Bill is?

[37] **Mark Drakeford:** Well, I think there are two points to make there, Chair. First of all, this is a declining tax—inevitably and intentionally, it is designed to reduce the use of taking waste to landfill, and there will come a point at which the administrative costs in using the tax will outweigh the receipts taken by the tax. So, in the autumn statement, the Office for Budget Responsibility—its estimates are that receipts from this tax will be below £30 million by the time the Assembly inherits it. So, there is a sort of built-in obsolescence to the Act.

[38] Having said that, the existing legislation has not been one that has been, you know, very regularly changed. So, the basic outline of the tax has survived the test of time.

[39] **Huw Irranca-Davies:** So, it would be reasonable to expect that this will take us to the point of obsolescence, then.

[40] **Mark Drakeford:** Well, the tax itself will be obsolete at the point that it costs more to collect than it raises.

[41] **Huw Irranca-Davies:** Okay. Thank you very much. Nathan.

[42] **David Melding:** [*Inaudible.*]

[43] **Huw Irranca-Davies:** Sorry, David. Nathan.

[44] **David Melding:** [*Inaudible.*]

[45] **Nathan Gill:** Okay. Cabinet Secretary, you've highlighted the fact that this is a very complex and technical area, and you've also mentioned that there's a desire to minimise the complexity of this Bill. You've also talked to us about the fact that you've worked with the 20 people who have these landfill sites in order to make sure that this Bill has continuity. What I wanted to know was: is there anywhere that you've actually highlighted the differences between this Bill and the existing legislation?

[46] **Mark Drakeford:** There are a number of places where this Bill is different to the current system. Mostly, as I say, it's a matter of clarifying and

tightening provision. But, sometimes, we think we have been able to learn from experience and do some things in a different way. Chair, maybe I'll just give you one example of that, and Sarah might give you more of the detail if you want to, but I mentioned earlier what is a vexed business in the practical, day-to-day world of landfill-site operating—this business of material that is brought onto the site that isn't going to go into landfill, and where it can be stored and how it can be sorted and how it is to be taxed. So, in the current system, if a landfill-site operator violates the agreement that they have with HMRC over where that waste can be stored and how long it can be stored for and so on, there is only one—penalty is not quite the right word—only one way of dealing with it that's available to HMRC, and that is to declare that the whole of the material that is in that non-disposal area becomes subject to the tax.

[47] That is a draconian power and, as a result, it's very hard to find any examples of it ever being used. So, in effect, there is no penalty. Because there's no penalty, the area becomes a pretty difficult one. So, in this example, we have decided to change the way that this Bill approaches that altogether, and what we have is a penalty that we think is proportionate and more specifically drawn so that, in the future, the Welsh Revenue Authority—which will know where this area is on the landfill site, will know what's meant to go on there, will know how long material is meant to be stored there—will be able to fine, in a penalty sense, the landfill operator for the offence that they have committed, rather than having to tax the whole material. We think that is a more proportionate way, we think it is a more workable way, we think it is a more understandable way of dealing with what is, on a day-to-day basis, an area of contentious difficulty to people who work in the field. That's an example of where we've changed the current system because we think we can make it work better.

[48] **Nathan Gill:** Thank you. In section 4, it defines the disposal of material by way of landfill. Now, regulations may amend this definition, including by amending this section or any other enactment relating to the tax as defined in section 93. Now, what does this mean in practice?

[49] **Mark Drakeford:** Thank you, Chair. I should say that this is one of those areas where we thought long and hard as to whether or not to include this provision in the Bill. It is a provision in the existing legislation at the UK level and it was replicated in the Scottish legislation when the Scottish Parliament became responsible for landfill disposal, but it's never been used. So, it's a power that, in the 20 years that it's been available, has never been

used.

[50] We discussed the question as to, given that it's never been used, would we be better off not including it in the Bill. So, why did we decide in the end that it would be included? I think there are a number of reasons. The first is that sort of overriding principle of continuity: it's there now, landfill operators understand it, they know about it, and we promised them that we would design a Bill that had as much in common with the previous legislation as possible. Secondly, these are new powers for Wales and new areas for Wales. The question was: was it sensible to give away a tool that you might need in the future in an area that you've never operated before? I think my feeling was I'd rather keep it until we are sure about the ground that is under our feet. Again, this has been—as I have said several times now—a litigious area. One of the areas of constant litigation has been around the definition of a taxable disposal. There are a number of cases making their way through the courts. The Court of Appeal disposed of a large case in relation to methane gas, for example, only just before Christmas. If, as a result of litigation, the definition of a taxable disposal needs to be amended, I thought it was worth keeping the power in the Bill against that day. Fourthly, and maybe most importantly, this power is available to Ministers in what will be [correction: will be the law in] England. If they were to change the definition of a disposal in England and we hadn't included the power in this Bill for Welsh Ministers, then we wouldn't be able to act to take account of the change that they had made. For all those reasons, although it is a closely balanced argument, I felt that it just tipped into the area of keeping it rather than excluding it, albeit that it's not a power that has had any very great use so far.

[51] **Nathan Gill:** Okay, thank you. Given the likelihood that the taxation rates will be different in England and Wales, there's a possibility that it will be more beneficial for companies to dispose of their waste across the border. Do you have any provisions, or what are the measures that you have in place, to record cross-border waste arisings to ensure that the Wales recycling figures are accurate?

[52] **Mark Drakeford:** Well, Chair, again, a number of answers: I think the first point that Mr Gill is making is that, up until now, the need for real accuracy with those figures has been pretty low because, in the end, it's all part of a single system and activities attributed across the border, and, in a rough and ready way, I'm sure it's pretty fair. But the detail of it hasn't mattered. From now on, the detail will matter. It's part of the reason why the

OBR forecasts changed such a lot between March and November. Up until March, they really didn't matter that much. Now, they need to know it in more detail. So, it's an important point and one we are alert to.

[53] The first part of the question was about what is inelegantly called 'waste tourism', and that is that, if the rates of tax on either side of the border were to differ too much, there would be perverse incentives either for people from outside Wales to bring their waste to Welsh landfill disposal sites, or for waste produced in Wales to be driven further away across the border. That's not in anybody's interest because, sometimes, this is hazardous material, it's not easily transported, and it causes environmental degradation in the process. The research we have suggests that that behaviour is pretty sensitive to tax changes in this area, and it wouldn't take much more than a £10 difference between the rate per tonne charged in Wales and charged in England for some of those behaviours to start being produced. Now, I will not be setting rates for landfill disposal tax—assuming that the Bill goes through the Assembly, of course—until the budget-making process in the autumn of this year. But it is exactly that set of arguments that I would need to take into account in setting rates for Wales.

[54] **Nathan Gill:** Okay, thank you.

[55] **Huw Irranca-Davies:** Thank you, Nathan. David. Sorry, Dai.

[56] **Dai Lloyd:** Diolch. Rwy'n troi rŵan at adran 15 a deunydd cymwys. Rwy'n ymwybodol, yn naturiol, o'r atebion yr ydych chi wedi'u cyflwyno gerbron ar y mater hwn, a hefyd y ffaith eich bod wedi cyfarfod â'r 20 cwmni sy'n darparu'r gwasanaeth eisoes. Yn naturiol, fel yr ydych yn ymwybodol, gall rheoliadau restru deunydd cymwys lle codir treth ar gyfradd is na ellir ei phennu heblaw hynny. Ond a allaf i ofyn eto pam mae cyn lleied o wybodaeth am gynnwys y deunydd hwn ar wyneb y Bil? Rwy'n cymryd bod hyn yn rhywbeth i wneud efo'r holl sylwadau yr ydych chi wedi'u cael oddi wrth yr 20

Dai Lloyd: Thank you. Turning to section 15 and qualifying material, I'm aware, naturally, of the responses that you've already given on this issue and the fact that you have met with the 20 companies that provide the services already. Naturally, as you are aware, regulations can list qualifying materials on which tax is chargeable at a lower rate than what is decided without that. But may I ask why so little information about what constitutes such materials is on the face of the Bill? I take it that it's based on the responses that you have had from the 20 companies that you have met with, but would it be

cwmni yr ydych wedi bod yn cyfarfod â nhw, ond a fuasai'n bosib, neu a fuasai'n syniad da i gael rhyw syniad o'r mathau o ddeunydd a gynhwysir er mwyn rhoi rhyw sicrwydd i fusnesau sy'n debygol o gael eu heffeithio gan hyn?

possible, or would it be a good idea to have some kind of idea of the kinds of materials to be included to give some assurance to the businesses that are likely to be affected by this?

15:00

[57] **Mark Drakeford:** Wel, diolch, Gadeirydd. Jest i ddweud unwaith eto, achos ein bod ni'n delio gyda nifer fach o fusnesau, maen nhw'n ymwybodol yn barod o beth sydd ar y rhestr ar hyn o bryd. Maen nhw'n ddigon ymwybodol o'r ffordd y mae'r cynllun yn gweithio. Nid ydyn nhw wedi gofyn i ni ei wneud e mewn ffordd wahanol i'r ffordd rŷm ni'n ei wneud e nawr. Rŷm ni'n bwrw ymlaen yn yr un math o ffordd ag y mae'r Ddeddf yn gweithio ar hyn o bryd. So, nid ydym ni'n meddwl bod y ffordd yr ŷm ni wedi gwneud y Bil yn mynd i gael effaith ar fusnesau, achos rŷm ni wedi gweithio'n galed gyda nhw i wneud y pethau yn y ffordd maen nhw wedi dweud wrthym ni. Maen nhw'n gyfarwydd â'r broses ac maen nhw'n hapus i fwrw ymlaen i'w wneud e fel hyn.

Mark Drakeford: Well, thank you, Chair. Just to say once again, because we are dealing with a relatively small number of businesses, they are already aware of what's currently included on the list. They are highly aware of the way in which the scheme currently works. They haven't asked us to do it in a different way to the way that we're doing it currently. We are proceeding with the same methods as were adopted in the current legislation. So, we don't believe that the way that we've drawn up this Bill is going to have an impact on businesses, because we've worked hard with them in order to do things in the way in which they tell us. They are familiar with the process and they're happy to proceed with it like this.

[58] Un pwynt arall rwy'n meddwl sy'n bwysig yw: nid yw jest gwybod beth sydd ar y rhestr ddim cweit yn gwneud y gwaith i gyd. Beth sy'n berthnasol i'r bobl sy'n gweithio yn y maes yw gwybod beth sydd ar y rhestr a faint rŷm ni'n mynd i drethu a phethau. Nid wyf i'n mynd i wneud

One further point I think that is important is: just knowing what's on the list doesn't quite do all the work that's necessary. What's relevant to the people working in this area is to know what's on the list and how much we will tax them and so on. I'm not going to make those decisions

y penderfyniadau yna tan hydref y flwyddyn yma. I fi, bydd yn fwy defnyddiol i'r busnesau, ond hefyd i'r bobl yn y Cynulliad sy'n craffu ar bopeth, i gael y ddau beth gyda'i gilydd achos maen nhw'n mynd law yn llaw â'i gilydd.

until the autumn of this year. For me, it will be more useful to the businesses, but also to those Assembly Members scrutinising all of these issues, to have those two things together because they do go hand in hand.

[59] **Dai Lloyd:** Jest yn dilyn o hynny—diolch am yr ateb yna—beth rŷm ni'n poeni amdano fo pan rŷm ni'n cynllunio, yn naturiol, deddfwriaeth newydd ydy pa mor ymarferol yw hi ar ddiwedd y dydd. Fe allem ni fod yn trin a thrafod yr holl eiriau pleserus yn fan hyn, ond ar ddiwedd y dydd rŷm ni eisiau sicrhau bod y ddeddfwriaeth yn mynd i weithio ac yn mynd i wneud beth mae hi fod i'w wneud. Wedyn, yn dilyn o'ch ateb chi o hynny, felly, rwy'n cymryd eich bod chi wedi cysidro pa ddeunydd ddylai fod ar wyneb y Bil a pha ddeunydd arall allai fod mewn unrhyw restr o reoliadau, os nad ydych chi eisiau ei roi ar wyneb y Bil, ac wedi penderfynu eich bod yn mynd i gario ymlaen fel yr ŷch chi, ac mae pawb yn y maes yn hapus gyda'r trefniant yna. Dyna beth rwyf yn cymryd o hynny.

Dai Lloyd: Just following on from that—and thank you for that response—what we're concerned about when we plan new legislation, naturally, is how practicable it is ultimately. We could be discussing all of these lovely words here, but at the end of the day we want to ensure that the legislation is going to work and is going to do what it is meant to do. Then, following on from your response there, therefore, I take it that you have considered what material should be on the face of the Bill and what other material could be listed in regulations, if you don't want to put it on the face of the Bill, and that you've decided to continue as you are, and everyone in this field of work is happy with that arrangement. That's what I took from our response.

[60] **Mark Drakeford:** Yn union. Dyna beth mae pobl yn y maes wedi ei ddweud wrthym ni: maen nhw eisiau cario ymlaen gyda'r system sylfaenol lle maen nhw'n gyfarwydd â'r ffordd mae pethau'n gweithio. Maen nhw wedi dod atom ni i ddweud, 'Rŷch chi'n gallu gwneud mwy i'n helpu ni fan hyn a fanna', ac

Mark Drakeford: Exactly. That's what people working in the field have told us: they want to continue with the fundamental system where they're familiar with the way things work. They've approached us and said, 'You can do more to assist us here and there', and they've also told us that we need to retain an element of

maen nhw wedi dweud hefyd bod yn rhaid i ni gadw rhyw fath o hyblygrwydd ar gyfer y dyfodol. Ond fel mae Mr Lloyd wedi'i ddweud, y Bil sydd o flaen y pwyllgor yw'r Bil yr ŷm ni wedi ei greu gyda'n gilydd gyda'r sector, ac maen nhw'n hapus—rwy'n meddwl. Cawn ni weld pan fyddan nhw o flaen y Pwyllgor Cyllid. Beth maen nhw wedi ei ddweud wrthym ni yw eu bod nhw'n hapus gyda'r pethau sydd yn y Bil ar hyn o bryd.

flexibility for the future. But as Mr Lloyd has said, the Bill before the committee is the Bill that we have drawn up together with the sector, and I believe that they are content. We'll see, of course, when they will be appearing before the Finance Committee. What they have told us is that they're happy with the Bill as it currently stands.

[61] **Huw Irranca-Davies:** Dai.

Huw Irranca-Davies: Dai.

[62] **Dai Lloyd:** Diolch am hynny. Fe wnawn ni symud ymlaen i gwestiynau ar adran arall: adran 40, y rhan yna sy'n nodi'r dreth sydd i'w chodi mewn perthynas â chyfnod cyfrifyddu. Nid wyf am sôn am unrhyw frenhinoedd Tuduraidd eto ond mae ymhlith y cwestiwn yn fan hyn, ac, wrth gwrs, mae'r rheoliadau yma o dan adran 40 yn dilyn y weithdrefn negyddol. Wrth gwrs, rŷch chi wedi awgrymu eisoes bod y rhan fwyaf o'r newidiadau yma o dan bwerau Harri VIII yn dod o dan y weithdrefn gadarnhaol ac rŷm ni'n fodlon derbyn y bydd trafodaeth ar lawr y Cynulliad, os bydd angen, efo'r trefniant yna. Ond pan rŷch chi'n sôn am drefniant negyddol, a ydych chi'n fodlon felly â'r adran yma? Rwy'n cofio eich sylwadau chi ar y dechrau ynglŷn â'r adrannau sy'n mynd i fod yn negyddol o dan y trefniant yma, ond a ydych chi yn hapus â'r trefniant yna? Ac a ddylem ni, fel Cynulliad, fod yn hapus bod yna lefel is, felly, o

Dai Lloyd: Thank you very much for that. We'll move on now to questions on another section: section 40, the section that notes the tax chargeable in respect of an accounting period. I don't want to talk about any Tudor kings again but it is in the question, and, of course, these regulations under section 40 follow the negative procedure. Of course, you have already suggested that the majority of these changes under Henry VIII powers come under the affirmative procedure and we are content to accept that there will be a discussion on the floor of the Assembly, if needs be, with that arrangement. But when you're talking about the negative procedure, are you content with this section? I remember your comments at the beginning about those sections that are going to be under the negative procedure, but are you content with that procedure? And should we, as an Assembly, be content that there is, therefore, a

graffu yn mynd i fod ar yr adran yma lower level of scrutiny on this
 achos mae'n bŵer o dan drefniant particular section because it is a
 Harri VIII a gweithdrefn negyddol yw Henry VIII power and it is under the
 hi ac ni fydd modd felly inni gael negative procedure and so we won't
 trafodaeth arni ar lawr y Siambr? be able to have a discussion on it on
 the floor of the Chamber?

[63] **Mark Drakeford:** Chair, I suppose this is one of those areas where there is some difference of view between the Government and the committee, as there was in the previous Assembly on this matter. I've read, of course, the committee's report in relation to land transaction tax, and I know it is the committee's view—I think you've set it out very clearly there—that there is no matter that can be so trivial that, if you're using a Henry VIII power, it ought not to be subject to the affirmative procedure. And the Government's view is different to that, I'd have to say. It is our belief that there are some instances where even Henry VIII powers are being used to change matters that are so technical, or mechanical, in nature that the negative procedure is the correct procedure to use.

[64] I don't know if either of my colleagues has got Schedule 2, which is the subject of section 4. So, this is the Schedule—thank you—that sets out the content of a landfill invoice. Now, section 40 does not allow Ministers to repeal Schedule 2; all the regulation-making power does is to allow Ministers to amend the technical detail of it. And the sort of material that is set out in Schedule 2 requires the person to put on it the date on which the invoice is issued, to put on it the name and address of the person issuing the invoice, to put down the rate of tax that is to be charged on the material. It really is the fine administrative detail that lies behind the tax. And I suppose the Government's position will be that, if we were to want to alter something of this very basic administrative nature, that, although it is using a negative procedure, and it is a Henry VIII power, a negative procedure is not an unreasonable way of proceeding.

[65] **Dai Lloyd:** Rwy'n cymryd y **Dai Lloyd:** I take that point, naturally, ddadl, yn naturiol, ond, wrth gwrs, but, of course, in other areas, and in mewn meysydd eraill, ac efallai mewn other legislation, perhaps, there Deddfau eraill, bydd yna ddadleuon would be a debate to be had about ynglŷn â beth sydd yn newid bach what is a very small change and what iawn, a beth sydd ddim yn newid isn't a small change with regard to bach iawn ynglŷn â phwerau Harri Henry VIII powers. I'm talking VIII, ac rwy'n sôn yn benodol, felly, o specifically about the Wales Bill.

dan Fil Cymru.

[66] Ond yn yr union fan yma, wrth gwrs, rwy'n credu y buasem ni'n cael ein cysuro nad dim ond materion bach fel yna fuasai'n cael eu trin a'u trafod. Ond yn nhermau beth mae'r pwyllgor wedi bod ynglŷn â fe, ac wedi bod yn poeni amdano, ydy pethau sydd ddim cweit mor fân â hynna yn cael eu gwthio drwodd o dan unrhyw drefn negyddol. Achos mae gyda ni *issue* efo'r holl weithred Harri VIII—os ydy'r gwir i fod allan yna—a buasem yn licio cael ein sicrhau, gan amlaf, os oes yna rywbeth o unrhyw natur, hyd yn oed os nad ydy o y mwyaf sylweddol erioed, mai'r gyfundrefn gadarnhaol fyddai'n cael ei gweithredu, ac nid y gyfundrefn negyddol. Ond rwy'n deall, ac yn derbyn, yn naturiol, eich atebion o dan yr adran yma. Diolch yn fawr i chi.

But in this specific area, of course, I think that we would be comforted, perhaps, that not only small issues should be discussed in terms of Henry VIII powers. But the committee has previously been concerned that issues that aren't quite perhaps as minor are being pushed through under any negative procedure. Because we do have an issue with these Henry VIII powers—truth be told—and we would like to be reassured that, as a matter of course, if it's not a major issue, then the affirmative procedure should be used, not the negative procedure. But I accept your responses under this particular section. Thank you.

[67] **Huw Irranca-Davies:** I wonder if I could just follow up briefly on that, because you know, Cabinet Secretary, that the use of Henry VIII powers generally has been subject to much criticism, not only by this committee, but also by the former Lord Chief Justice, not least in terms of the recent Wales Bill debates and so on, and many committees over time. But I just wonder with this, you refer to Schedule 2—do you believe that there is nothing within that Schedule 2, and as it relates to the main section of the Bill, that could be more than purely technical and minor—nothing that would cause consternation within the industry, within the sector, within the people who are affected?

[68] **Mark Drakeford:** Well, I don't believe there is. And there is a further point, which I should maybe refer to, and I'll ask Emma, probably, to explain. It isn't simply that the Schedule, by itself, is a matter of very basic administrative detail, but it's also the effect that the Schedule has, because the Schedule has a very limited effect in relation to the operation of landfill

tax.

[69] **Ms Cordingley:** So, the effect of section 40 is, generally, when a taxable disposal is made, you pay the tax during that accounting period. If you choose to issue an invoice that complies with Schedule 2, within 14 days of the disposal, you can then pay your tax in the accounting period in which you issued the invoice. So, it's basically an accounting mechanism that allows you to carry it over into the next accounting period. So, it's not going to change anybody's tax liability or the amount of tax owing; it's simply a mechanism for carrying that tax across to the next accounting period.

[70] **Huw Irranca-Davies:** David.

[71] **David Melding:** Minister, you make your case with great skill, if I may say, but when we deal with Henry VIII powers—this committee is concerned with principle, and technical matters don't cut an awful amount of ice when you're really talking about how you make law. What I'd really like to ask you is: if you have the defence of the affirmative and something's been missed, if there's an unintended consequence that then is exposed, the affirmative principle, obviously, allows a full discussion of that before the matter proceeds. And nine times out of 10, you may well be right that the thing is so de minimis that it just doesn't have any impact. And we all know what happens on the floor of the Assembly in those cases: there's no discussion whatsoever. The Presiding Officer calls for the regulation to be moved, the Minister says 'Formally', there are no speakers, and there's no vote—or, at least, no-one calls for a formal vote. It takes 10, 20 seconds. So, why—why—are you trying to avoid that procedure when, functionally, things are seen to be technical and not of a substantive nature? It seems to me that the case you make for using the Henry VIII powers, which, I don't fully agree with, but, as I said, you are making it with some skill, is strengthened if you avoid ever using the negative procedure within the Henry VIII power, surely.

[72] **Mark Drakeford:** Well, it's the word 'never'—that's the only word that really separates the Government's position from the position that this committee has previously taken. The committee's view is—as you put it yourselves directly in your previous report—that there can never be anything that is so trivial that the affirmative procedure would not be the right one to use. That is certainly not the way that the current law is constructed. And it's not an afternoon for being adversarial, is it, but I could say that Mr Melding is putting the point to me as though I was the person seeking to change the status quo, whereas in fact it's the committee that thinks that the status quo

is not satisfactory? And the onus is less on me than on the committee, perhaps.

[73] **Huw Irranca-Davies:** Perhaps I could put it to you in a different way, then—and you are being very agile and fleet of foot, with good explanations, and I commend you on that—in your opening remarks, in answer to earlier questions, you laid out the criteria very clearly under which you would seek to have regulations rather than having something on the face of the Bill. And the third criterion you mentioned there were things that were technical areas, such as tax credit, or this and that. Now you’ve just described this as a technical, minor thing that is never going to be used; why is it on the face of the Bill?

[74] **Mark Drakeford:** Well, it’s on the face of the Bill because of that other principle that I outlined to you earlier, that we have taken—. Our starting point of this Bill is that it is better, for the sake of clarity, for the sake of accessibility for the sake of the people using the Bill, to be able to make use of it, to have as much on the face of the Bill as possible. Therefore, it is a small number of cases that are so technical and so complex in their technicality that we’ve put them into regulations, per se. I think it is just a matter of proportionality, I suppose. For me, it’s on the face of the Bill because then it’s easily accessible for people. It is of such a minor administrative, mundane nature that if it needed to be changed, it doesn’t require even the brief period of time—

[75] **David Melding:** That is subjective, at the end of the day—

[76] **Mark Drakeford:** That’s the case I’m making for you, Chair.

[77] **David Melding:** I’m not sure the fact that it’s always been done this way is a very—. It’s not in the spirit of enlightenment, is it, if we just leave things and we don’t seek improvement? However, I suspect we’ve taken this as far as we can go.

[78] **Huw Irranca-Davies:** We’re not trying to beat down the battlements today, I don’t think, but thank you, Cabinet Secretary, for explaining that to us. Dafydd Elis Thomas.

[79] **Lord Elis-Thomas:** Diolch yn fawr, Gadeirydd. That exchange reminds me of a long and serious debate on ‘normally’, which we had during the passage of the Wales Bill. These words, never normally, are difficult words

when it comes to legislation.

15:15

[80] Ond a gaf i, yn gyntaf, ddiolch am y cyflwyniad, yn y dystiolaeth ac yn y papur gwreiddiol, a'r pwyslais ar amcanion amgylcheddol y ddeddfwriaeth? Beth oedd yn bwysig i mi rydw i'n meddwl, yn gyffredinol ynglŷn â'r Bil yma, yw ei fod yn enghraifft dda iawn o Lywodraeth Cymru a'r Cynulliad Cenedlaethol yn cymryd pwerau, ond gyda'r bwriad o allu deddfu yn fwy manwl gywir gyda'r drefn bresennol, yn hytrach na cheisio tanseilio neu gwneud newidiadau radical. Rydw i'n meddwl bod honno'n neges bwysig i'w chyflwyno yn y drafodaeth ynglŷn â phwerau ychwanegol.

But may I, first of all, thank you for the evidence that you've given and in your original paper, and the emphasis on the environmental objectives of this legislation? What was important to me I think, generally speaking about this Bill, is that it's a very good example of the Welsh Government and the National Assembly taking powers, but with the intention of legislating more accurately with the current system, rather than trying to undermine or make radical changes. I think that's an important message to put forward in the debate on additional powers.

[81] **Mark Drakeford:** Diolch.

Mark Drakeford: Thank you.

[82] **Yr Arglwydd Elis-Thomas:** Felly, yn dilyn y cyflwyniad yna, mae fy nghwestiynau i yn llawer iawn mwy uniongyrchol. Mae gen i ddiddordeb yn rhesymeg y rheoliadau o dan adran 45 ynglŷn â'r ffaith bod y weithdrefn gadarnhaol yn cael ei gwneud yn y dechrau, ac yna, ar ôl y tro cyntaf, bydd y weithdrefn gadarnhaol dros dro yn cael ei defnyddio. Byddai'n help i fi gael esboniad ynglŷn â'r rhesymeg yna. Diolch.

Lord Elis-Thomas: Following on from that preamble, my questions are far more direct. I am interested in the rationale for regulations under section 45 being subject to the affirmative procedure in the first place and then, after the first time, the provisional affirmative procedure will then be used. It would be useful to have an explanation of the rationale behind that.

[83] **Mark Drakeford:** Diolch yn fawr, Dafydd. Gadeirydd, os gallaf i, rydw i'n mynd i gyfeirio at *section* 14

Mark Drakeford: Thank you very much, Dafydd. Chair, if I may, I'm going to refer to section 14 as well in

hefyd, achos mae'r Bil yn defnyddio this response, because the Bill uses
 yr un broses yn y ddau le. the same process in both sections.

[84] So, Members who sat on the committee during the consideration of the land transaction tax will be familiar with this procedure, because it occurs in that Bill as well. This is the procedure to be followed when Welsh Ministers change the rates of tax. It goes back to the point that David Melding asked me in the beginning, about having to make processes in the tax area in Wales, because we don't have some of the standard ways of doing things that would be available in the House of Commons. So, in the House of Commons, if the Chancellor of the Exchequer puts 10p on a gallon of petrol—if there's such a thing as a gallon left of petrol—or a litre of petrol, he's able to bring it into effect immediately. That is to prevent perversity in the system, where people try and beat the tax by rushing out to do things or delay doing things because the rates of tax are going down, and so on. In this area, that applies as well.

[85] So, the first time that rates are set, they will be through the ordinary affirmative procedure, but thereafter, if Welsh Ministers needed to change the rates of tax in relation to landfill, the provisional affirmative allows for that change to be introduced immediately, but then to be subject to the oversight of the legislature. Within 28 days that decision has to come in front of the National Assembly; it is subject to the affirmative procedure; the Assembly can either decide to endorse the course of action that a Minister has taken, or to overturn that course of action. But you can imagine—just to give one practical example—let us make the assumption for a moment that a Minister in England decides to raise the tax on landfill in England by more than £10. We know, from the earlier question, that that might have the effect of diverting lorries now to come to Wales to pay the lower tax. Because, if a Minister was not able to bring that in immediately but had to wait for 28 days, there'd be 28 days when lorries might be queueing to the border while people are trying to beat the tax. So, there is a proper policy need to be able to make these decisions stick on the day that they are made, to avoid those perversities. But the Bill provides for, I think, a proper safeguard for the legislature.

[86] If the legislature decides that the Government's course of action is not to be supported, then the Bill, as in Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill, means that the taxpayer is not affected. Because if the person has paid more tax than they should, they get it paid back to them; if they have not paid tax that the Assembly says they should,

they don't get penalised. So, it's only the Government that bears the consequences of making the wrong decision if the legislature isn't prepared to support them.

[87] **Yr Arglwydd Elis-Thomas:** Mae hynny'n ddefnyddiol iawn. A gaf i sicrhau yr Ysgrifennydd Cabinet y bydd y dystiolaeth y mae e'n ei chyflwyno heddiw yn cael ei thrafod yn fanwl gennym ni yn y pwyllgor yma? Oherwydd beth sydd o ddiddordeb i ni, fel y mae cydweithwyr wedi'i ddweud yn barod, yw bod gennym ni egwyddorion—fel y gwyddoch chi, rydym ni wedi eu gosod gerbron yn y pwyllgor yma yn y gorffennol, ac yn y pwyllgor yn y Cynulliad diwethaf. Os oes yna wrthdaro rhwng yr egwyddorion ynglŷn â gweithdrefnau cadarnhaol—fel rydym ni wedi pwysleisio yn y gorffennol—â'r angen i gael trefn o ddeddfwriaeth gyllidol newydd, effeithiol, sydd yn datblygu'r drefn sydd gennym ni, yn hytrach nag yn creu trafferthion i'r sector, yna mae hynny'n amlwg yn rhywbeth y byddai pwyllgor rhesymol yn ei ystyried ac yn dod i gasgliadau arno fo.

Lord Elis-Thomas: That's most useful. Can I reassure the Cabinet Secretary that the evidence that he presents today will be discussed in detail by us at this committee? Because what's of interest to us, as colleagues have already said, is that we have principles—as you will know, and we have put these principles forward in this committee in the past, and in the predecessor committee also. If there is any conflict between those principles on the affirmative procedure, as we've emphasised in the past, and the need to have a regime of new fiscal legislation that is effective and develops the system that we have, rather than creating difficulties for the sector, then that is clearly something that any reasonable committee would consider and come to conclusions on.

[88] **Mark Drakeford:** Wrth gwrs, a diolch am hynny. Rwy'n gallu gweld y pwynt y mae'r Arglwydd Elis-Thomas yn ei godi yn fanna. Jest i ddweud hefyd, wrth gwrs, cyn dod ymlaen gyda'r broses newydd, roeddwn i wedi trafod pethau gyda'r Llywydd yn barod, i weld ei barn hi, ac roedd hi'n ddiolchgar i weld beth ddywedodd y pwyllgor am y Bil diwethaf, pan oedd y pwyllgor wedi trafod y pethau

Mark Drakeford: Of course, and thank you for that. I can see the point that Lord Elis-Thomas made there. But, just to say also, of course, before bringing forward this new process, I had discussed this with the Presiding Officer, to hear her opinion, and she was grateful for what the committee said about the previous Bill, when the committee had discussed the issues that we bring

rydym yn dod ymlaen â nhw fel Llywodraeth. A, jest i ddweud hefyd, yr un pethau maen nhw'n eu defnyddio yn yr Alban achos maen nhw yn yr un sefyllfa. Nid oes pwerau eraill ganddyn nhw i'w defnyddio, ac rydym wedi trafod pethau gyda'r sector hefyd, i esbonio iddyn nhw y ffordd rydym yn mynd i drio gwneud pethau yn rhesymol yma yng Nghymru.

forward as a Government. And, also to say, they use the same arrangements in Scotland, because they're in the same situation as we are. They have no other powers to be used in this regard, and we've discussed this with the sector too, to explain to them how we are going to try to make things reasonable here in Wales.

[89] **Yr Arglwydd Elis-Thomas:** Rwy'n meddwl bod y pwynt arall roeddwn i am ei godi ynglŷn ag adran 59 yn dilyn y weithdrefn negyddol yn hytrach na'r weithred gadarnhaol yn un y mae'r Ysgrifennydd Cabinet wedi ateb yn gyffredinol yn flaenorol, ond fe garwn i ofyn un cwestiwn penodol ynglŷn ag adran 67(2) a'r caniatâd i ddiddymu yr adran. O dan ba amgylchiadau y byddai'r Gweinidog, pe byddai mewn swydd, mewn amgylchiadau penodol lle byddai'r cwestiwn o ddiddymu'r adran yma yn dod gerbron? Beth fyddai'r amgylchiadau yna, a pha ystyriaethau fyddai ganddo ynglŷn â defnyddio'r diddymiad yna? Jest i ni gael mwy o eglurder, achos mae hwn eto yn rhywbeth newydd i ni.

Lord Elis-Thomas: I think the further point that I was going to raise on section 59 following the negative procedure rather than the affirmative is one that the Cabinet Secretary has responded to in general terms previously, but I would like to ask one specific question on section 67(2) and the power to repeal this section. Under what circumstances would the Minister, if he were in post, be in a position where the issue of repealing this section would be brought forward? Under what circumstances would he envisage using the power of repeal, and what consideration would he give in terms of using this repeal power? Just so that we can get greater clarity, because, again, this is a new issue for us.

[90] **Mark Drakeford:** Ac mae mewn maes newydd hefyd, Gadeirydd. Fel roeddwn yn esbonio pan gododd Nathan Gill y cwestiwn o bethau newydd yn y Bil, rydym yn ôl at y pwnc yna, achos rydym yn siarad fan hyn am beth rydym yn mynd i'w

Mark Drakeford: It is also in a new area for us, Chair. As I explained when Nathan Gill raised the question about new issues in the Bill, we're back to that issue again, because we're talking here about what we're going to do to penalise people who

wneud i gosbi pobl sydd ddim yn don't use the non-disposal areas, as defnyddio'r *non-disposal areas*, fel we say in English, in the right rydym yn eu galw nhw yn Saesneg, manner. mewn ffordd gywir.

[91] So, I explained earlier, Chair, that this was one of those genuinely different parts of the Bill. Under the current system, if people make a mistake or fail to observe the rules in relation to non-disposal areas, then the whole of the material in that area becomes subject to tax. We've decided instead to have a different regime, where the Welsh Revenue Authority will be able to penalise people, through fines of up to £5,000, for any violation of the agreement. We think that's more proportionate. We think that will be a more effective and workable way of the Welsh Revenue Authority being able to make sure that these non-disposal areas are properly used, and if they're not properly used, to take action to make sure that they are. However, it is a new way of doing things, and as I've said a few times in front of the committee, this area is an area where the way the law is interpreted, and working practices, have not always been entirely straightforward. So, I wanted to take a power that if this penalty regime turned out to be abused, or wasn't actually working in the way that we thought it would, that we could think again, and we could take this regime out and think of a better way of policing this very important part of activity on landfill sites.

[92] We worked hard with the sector to shape this part of the Bill and we think we have their support as well, in thinking that this is a better way of trying to make sure that those people who operate within the law are not disadvantaged by people who take advantage of the law. But, because it is new, you can't be completely certain that things will work out as you anticipate, and that's why we take the power to repeal the regime that we are introducing, in case it turns out to be one that is capable of being subverted in a way that we haven't yet anticipated.

[93] **Yr Arglwydd Elis-Thomas:** A **Lord Elis-Thomas:** May I just say how gaf i jest ddweud mor ddiolchgar ydw grateful I am for that response, i am yr ateb yna? Oherwydd rydym ni because we have all in our work— i gyd wedi dod ar draws, yn ein those of us who are interested in the gwaith—y rhai ohonom ni sydd â way in which environmental law is diddordeb yn y modd y mae implemented—come across examples cyfreithiau amgylcheddol yn cael eu whereby exactly what you have gweithredu—enghreifftiau lle mae'r described has arisen, namely peth yn union fel yr wyt ti wedi ei inappropriate and illegal activities,

ddisgrifio, sef gweithredoedd having an impact on the legal anaddas ac anghyfreithlon, yn activities of other companies in effeithio ar ymgais gyfreithlon complying. There has been some cwmnïau eraill i allu cydymffurfio. doubt cast over activities across the Mae yna ryw fath o amheuaeth wedi sector more than once. I'm not going mynd dros weithgaredd ar draws y to mention any specifics, of course, sector fwy nag unwaith, ac nid wyf i but this does confirm the attitude am enwi achosion arbennig, wrth that the Government is taking in this gwrs, ond mae hwn yn cadarnhau'r area. agwedd y mae'r Llywodraeth yn ei chymryd, rydw i'n credu.

[94] **Mark Drakeford:** Diolch, ac **Mark Drakeford:** Thank you, and the mae'r cefndir, Gadeirydd, yn dangos background does show that we do bod yn rhaid inni fod yn ofalus yn y have to be careful in this particular maes yma. Nid ydw i'n hollol siŵr area. I don't know whether we have bod y ffigurau sydd gennyf i yn wir the figures or if they're correct, but nawr, ond, os nad ydynt, byddwn ni'n perhaps we could write to you with gallu ysgrifennu atoch chi, ond beth them, but what I have in my mind is sydd yn fy mhen i yw hyn. this.

[95] In the case of LTTA, the loss of tax is about 1 per cent—about 1 per cent of tax that should be collected is not collected. In the case of landfill disposal tax, it's about 12 per cent. So, you can see that we are dealing with a different area here and that the power we take to repeal is a reflection of that general background that Lord Elis-Thomas referred to.

[96] **Yr Arglwydd Elis-Thomas:** **Lord Elis-Thomas:** Interesting. Thank Diddorol. Diolch, Gadeirydd. you, Chair.

[97] **Huw Irranca-Davies:** Thank you, Dafydd, and it's no surprise that one of the themes of this whole session has been to do with the use, in different ways, of Henry VIII powers, and so I make no apologies for finishing, actually, on this question as well. It's in respect of section 90(1), to do with making consequential, transitional provisions; supplemental, transitory, transitional or saving provisions; and so on, and section 90(2), the power to amend, revoke or repeal any legislation. It's a Henry VIII power; we're back there again. So, it's that question: it's a Henry VIII power, normally we would, as a committee, say on a point of principle we'd like to see that used in an affirmative way, but this is subject to negative procedure. An explanation?

[98] **Mark Drakeford:** Chair, I hope you won't mind, I anticipated that the committee might want to ask a question in this area, because it's an area that you explored with me directly in relation to land transaction tax, and I know you made a specific recommendation about it in your report. So, I hope you don't mind, but I'm going to refer more to my notes than I have so far this afternoon, because I wanted to make sure that I gave you the best answer that I was able to in relation to the question that you raised last time and that you've raised again this afternoon, because this is a regulation-making power that is essentially subject to the negative procedure, but where there are some circumstances where Ministers could choose to use the affirmative procedure. You asked me in your last report to clarify the way in which Ministers would seek to make that distinction, and, Chair, maybe I should say that I do hope to write to you before the end of this afternoon in relation to the points made in your previous report. I wanted to wait until I'd heard what committee members had to say today, in this session, and to reflect on that before I finally sign the letter off to you, but it will provide some further material in this area in relation to LTTA.

[99] But, in relation to what you've asked me this afternoon, I think the argument for me goes in this way: to begin with, it's important to emphasise that the scope of the regulations made under section 90 is limited to giving effect to incidental, consequential or supplementary changes required as a result of the Bill becoming law. The power, therefore, cannot be used to make regulations containing new substantive powers or to make fundamental changes to other legislation or to extend the scope of this Bill by the back door.

15:30

[100] Rather, those are changes that are simply necessary to ensure that the provisions of this Bill work properly. The power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill. It cannot be used to do anything contrary to the provisions of the Bill as approved by the Assembly, if indeed the Bill is approved. So, that's why it's essentially a negative power. However, as the committee has raised with me previously, the power can be capable of being used to make changes that could affect a person's tax liability. And it's another general principle of the way that we've constructed this Bill and the previous Bill that, if a regulation-making power could change the amount of tax that an individual might have to pay, then we always make that subject to the affirmative procedure, because we think that that is a significant change

and therefore that the Assembly itself ought to have guaranteed and direct oversight of it. So to remain consistent with that broad approach, the affirmative procedure can be used where regulations made under this section have the effect of imposing or increasing an individual's tax liability.

[101] I do think it's important for me to be clear that, apart from a small number of regulations made under this section shortly after Royal Assent, for example to provide for the transition from the current law to the new law, section 90 is unlikely to be used to make regulations by itself. It's far more likely to be used in conjunction with another regulation-making power provided for in the Bill, and the procedure associated with that other regulation would inform the procedure to be used under section 90. So, for example, if a tax credit is introduced using the affirmative procedure, then it is likely that any consequential provision required using this section would also use the affirmative procedure. So I think, in your previous letter, you asked me how would Ministers make the decision, and I think I'm just trying to explain that, in this Bill, the decision would be guided in that way.

[102] **Huw Irranca-Davies:** That's very helpful indeed. Thank you for that explanation. Now, short of any other questions from my colleagues, Cabinet Secretary, can I thank you very much, and your colleagues, for being with us today and, again, wish you, as you depart, the very best wishes for the new year ahead? Thank you very much. Diolch yn fawr iawn.

[103] **Mark Drakeford:** Diolch yn fawr.

[104] **Huw Irranca-Davies:** We'll return to some discussion on that in private session subsequently, if we move into private session later. Very good.

15:33

**Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reol
Sefydlog 21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order 21.2
or 21.3**

[105] **Huw Irranca-Davies:** We can move on now, then, with the leave of the committee, to item no. 3. We have instruments that raise no reporting issues under Standing Order 21.2 or 21.3. Under this, under paper 1, we have two affirmative resolution instruments: the Council Tax Reduction Schemes

(Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2017 and the Education Workforce Council (Registration Fees) Regulations 2017. Do we have any comments on those? And if not, if you're content, we can note the SIs.

15:34

**Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r
Cynulliad o dan Reol Sefydlog 21.2 neu 21.3
Instruments that Raise Issues to be Reported to the Assembly under
Standing Order 21.2 or 21.3**

[106] **Huw Irranca-Davies:** That takes us on to item no. 4, those instruments that do raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3. And we have under this the affirmative resolution instrument, the Welsh Language Standards (No. 6) Regulations 2017. Just to note that the Government's response on this has been received and it's available for Members in hard copy here. We haven't e-mailed around—

[107] **Mr Williams:** We have.

[108] **Huw Irranca-Davies:** And it's been e-mailed around as well. I thought it had. And we've also received, which I draw to your attention here formally, correspondence from Cymdeithas yr Iaith Gymraeg, expressing their concerns around the regulations. Do you want to provide any update on that at all? Does anybody want to—?

[109] **Mr Williams:** Members will have before them a copy of the letter from cymdeithas and also a summary document as well.

[110] **Huw Irranca-Davies:** Okay. We note that the culture committee is due to take evidence from the Cabinet Secretary on the regulations in its meeting on 18 January. If you recall, we had a discussion on this in the session before the Christmas recess. The Plenary debate on the regulations is likely to be at the end of this month. The report we have that we discussed before was on the technical points. I think the culture committee will look at it more on the substantive issues of policy. So if you're happy to note that; thank you very much.

[111] We move on to negative resolution instruments, the first of which is

the Local Election Survey (Wales) (Amendment) Regulations 2016. Do we have any comments from our legal experts here, our lawyers? No, none. Any comments from committee members in respect of that? If not, if we're happy to note that, then we can move on to item no. 5, our papers to note.

15:36

Papurau i'w Nodi Papers to Note

[112] **Huw Irranca-Davies:** The first of these is in respect of the Wales Bill, and the UK Government's response to the House of Lords Constitution Committee's report on the Wales Bill, which was in the papers that were circulated. I'm in your hands, in a sense, whether or not Members have any comments on that. As you know, the Lords Constitution Committee in some ways reflected the substance and the content of the report that we brought forward, but also touched on other areas. The response is there now to be seen. For us it's purely to note, but unless Members have any particular comments—. Okay, we will note that.

[113] Then we turn to the Wales Bill—the correspondence from the UK Government regarding clause 60 of the Wales Bill. We have two items there: the correspondence from the UK Government to the Llywydd regarding clause 60 and the correspondence from the UK Government to the First Minister on the same clause 60. Now, it may be that we want to consider this when we go into private session and discuss this a little bit, because there may be aspects of the letter that we want to raise and discuss. Are you happy to note that for now? We'll come back to it in private session.

[114] We then have the Wales Bill—the fiscal framework for Wales. This is to note. We have the written statement by the Cabinet Secretary for Finance and Local Government on the fiscal framework for Wales and the details of the agreement of, respectively, 19 and 20 December. Are we happy to note that and the papers? Obviously, that's something that we have touched on in our previous letter to the Secretary of State for Wales, so we might want to return to that in discussion as well.

[115] We then have, under paper 14, the call for evidence from the House of Lords Constitution Committee on delegation of powers. This may well be something that we take an interest in as well, so we may want to return, but for the moment, if you're happy to note that.

15:38

**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:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(iv).*

*accordance with Standing Order
17.42(iv).*

Cynigiwyd y cynnig.

Motion moved.

[116] **Huw Irranca-Davies:** In which case, could I seek your agreement that we move now into private session in accordance with Standing Order 17.42(iv)? Are we in agreement? So, we now move into private session, please.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 15:39.

The public part of the meeting ended at 15:39.