



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

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

**Dydd Llun, 4 Chwefror 2013**  
**Monday, 4 February 2013**

### **Cynnwys** **Contents**

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

Tystiolaeth ar y Bil Trawsblannu Dynol (Cymru)  
Evidence in Relation to the Human Transplantation (Wales) Bill

Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i Gyflwyno Adroddiad arnynt o dan  
Reolau Sefydlog Rhifau 21.2 neu 21.3  
Instruments that Raise no Reporting Issues under Standing Orders Nos. 21.2 or 21.3

Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad o dan Reolau  
Sefydlog Rhifau 21.2 neu 21.3  
Instruments that Raise Issues to be Reported to the Assembly under Standing Orders Nos.  
21.2 or 21.3

Tystiolaeth ar Orchymyn Corff Adnoddau Naturiol Cymru (Swyddogaethau) 2012  
Evidence in relation to the Natural Resources Body for Wales (Functions) Order 2012

Tystiolaeth ar y Bil Llywodraeth Leol (Democratiaeth) (Cymru)  
Evidence in relation to the Local Government (Democracy) (Wales) Bill

Ymchwiliad Byr—Rheoliadau Cynlluniau Gostyngiadau'r Dreth Gyngor

Short Inquiry—Council Tax Reduction Scheme Regulations

Cynnig o dan Reol Sefydlog Rhif 17.42(ix) i Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod  
Motion under Standing Order No. 17.42(ix) 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.

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**

Mick Antoni	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

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

Sharon Barry	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Debra Carter	Dirprwy Gyfarwyddwr, Cyllid a Pherfformiad Llywodraeth Leol, Llywodraeth Cymru Deputy Director, Local Government Finance and Performance, Welsh Government
Dave Clarke	Cynghorydd Technegol, yr Amgylchedd a Chynaliadwyedd, Llywodraeth Cymru Technical Adviser, Environment and Sustainability, Welsh Government
Frank Cuthbert	Pennaeth y Tîm Craffu, Democratiaeth a Chyfranogi, Llywodraeth Cymru Head of Scrutiny, Democracy and Participation Team, Welsh Government
Grant Duncan	Y Gyfarwyddiaeth Feddygol, Llywodraeth Cymru Medical Directorate, Welsh Government
Patricia Gavigan	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
James George	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
John Griffiths	Aelod Cynulliad, Llafur (Gweinidog yr Amgylchedd a Datblygu Cynaliadwy) Assembly Member, Labour (The Minister for Environment and Sustainable Development)
Lesley Griffiths	Aelod Cynulliad, Llafur (Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol)

Carl Sargeant	Assembly Member, Labour (The Minister for Health and Social Services) Aelod Cynulliad, Llafur (Y Gweinidog Llywodraeth Leol a Chymunedau)
Pat Vernon	Assembly Member, Labour (The Minister for Local Government and Communities) Pennaeth Polisi ar Ddeddfwriaeth Rhoi Organau a Meinweoedd, Llywodraeth Cymru
Sarah Wakeling	Head of Policy for Organ and Tissue Donation Legislation, Welsh Government Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gareth Pembridge	Cynghorydd Cyfreithiol Legal Adviser
Siân Richards	Y Gwasanaeth Ymchwil The Research Service
Owain Roberts	Y Gwasanaeth Ymchwil The Research Service
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 1.31 p.m.*  
*The meeting began at 1.31 p.m.*

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

[1] **David Melding:** Welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. We do not expect a routine fire drill, so if you hear the alarm, please follow the instructions of the ushers, who will help us to leave the building safely. Please switch off all mobile phones and other electronic equipment as, even on silent, they interfere with our broadcasting equipment. These proceedings will be conducted in Welsh and English. When Welsh is spoken, simultaneous translation is available on channel 1 on the headsets, and channel 0 will amplify our proceedings for those who are hard of hearing.

[2] I have received apologies from Julie James, and I welcome Mick Antoniw as her substitute this afternoon. We are grateful for your continuing interest in our work, Mick.

1.32 p.m.

**Tystiolaeth ar y Bil Trawsblannu Dynol (Cymru)**  
**Evidence in Relation to the Human Transplantation (Wales) Bill**

[3] **David Melding:** I am very pleased to welcome Lesley Griffiths, the Minister for Health and Social Services, as the Member in charge of the Bill, and her officials. Minister, do you want to introduce your officials?

[4] **The Minister for Health and Social Services (Lesley Griffiths):** Yes. On my left is Pat Vernon, the policy lead for the Bill. On my right is Grant Duncan, the senior responsible owner for the Bill and on my far right is Sarah Wakeling, the senior lawyer for the Bill.

[5] **David Melding:** Thank you, Minister. The purpose of this evidence session is to scrutinise those elements of the Bill that fall within our terms of reference, particularly subordinate legislation, issues of competence, and so forth. I know that I can always rely on Members to look at those matters that fall within our strict technical scrutiny. Some of these issues fall within a wider context, but I do not want to get side-tracked too much into policy discussions, which are the preserve of another committee that is scrutinising the Bill.

[6] I will ask you the first question, Minister. How did you seek to strike a balance between what is on the face of the Bill and what is left to subordinate legislation?

[7] **Lesley Griffiths:** The Bill provides for the introduction of a soft opt-out system for organ and tissue donation. As such, there are relatively few secondary legislation-making powers in the Bill. The current Act offers a framework to regulate transplantation and this remains the same with our Bill. The operational details are supplied by technical codes of practice that are developed by the Human Tissue Authority. This will also be the case for our Bill. The secondary legislation-making powers allow for additional detail to be provided and for operational detail in the Bill to be amended. We believe that this is much more proportionate than amending the Bill each time a relatively minor practical change is identified. However, it does not alter in any way the major principles that are set out in the Bill.

[8] The powers of Welsh Ministers to make secondary legislation mirror the current powers of the Secretary of State under the Human Tissue Act 2004. Our policy is to take a different approach to the existing legislative framework only when the policy intent for an opt-out system demands it.

[9] **David Melding:** Thank you for that explanation, Minister. You refer to the sensitivity of the subject matter in the explanatory memorandum. I think that this is the first time we have come across this, and we note your candour. Has that had an effect on your decision to choose, in most instances, the affirmative procedure? Did you think about using the superaffirmative procedure in some cases?

[10] **Lesley Griffiths:** I will start with your last question. The superaffirmative is quite a new procedure and it affects more wide-ranging powers. We believe that this Bill contains very specific powers, which is why we chose the affirmative over the superaffirmative. However, we did consider it. We refer to the subject matter as 'sensitive'. It is a sensitive and emotive topic and is a decision taken at times of great difficulty for families. We think it is appropriate for the National Assembly to debate any proposed secondary legislation because it is such an emotive topic. There is also wide public interest in the Bill, which is another reason why we chose the affirmative procedure, because it would reassure the public that matters had received appropriate attention from elected representatives.

[11] **David Melding:** My final question relates to issues of competence. This Bill, as you

indicate, takes something from the existing Human Tissue Act 2004, but leaves UK-wide policy and operation of the transplantation authority unaffected. For those reasons, have you had any discussions with the UK Government with regard to competence? Has it raised any issues of competence with you?

[12] **Lesley Griffiths:** As you can imagine, we have had very detailed discussions with the UK Government at an official level. The only Minister whom I met was the previous Secretary of State for Wales. Discussions around competence have happened. We believe that we have the competence. The Presiding Officer believes that we have the competence, and I agree with her view. We have also secured the section 150 Order, in relation to taking competence from the Secretary of State, for the Bill.

[13] **David Melding:** You have not had any indication from the UK Government that competence may be disputed.

[14] **Lesley Griffiths:** No.

[15] **David Melding:** Finally, what consideration has been given to existing human rights legislation in developing the Bill?

[16] **Lesley Griffiths:** Any Bill has to consider human rights, otherwise it would be outside of competence. We have considered those issues in great detail.

[17] **Eluned Parrott:** I have a few questions about section 7 of the Bill, looking at appointed representatives and the technicalities surrounding that. I note that, in section 7(10)(b), you say that persons of a particular description cannot access appointed representatives in relation to somebody who dies in Wales. So, there are potential exemptions to who may be appointed a representative under section 7. Can you explain the type of person that you are referring to?

[18] **Lesley Griffiths:** An example could include people who lack capacity, but we will liaise with the Human Tissue Authority on any potential areas that we may wish to set out in regulations.

[19] **Eluned Parrott:** I see. That is one example, but are there other examples that you anticipate having to use that exemption for?

[20] **Lesley Griffiths:** No. I do not think that it has been used before. I will pass over to Sarah.

[21] **Ms Wakeling:** Under the Human Tissue Act 2004, the power to make regulations is vested in the Secretary of State, but the power has not been used. Here, there is a power for the Welsh Ministers to make regulations, and it is envisaged that that power will be used. It is very important, for anyone who appoints a representative to make an important decision about organ donation et cetera, that that person is fit for purpose. The regulations could cover anything. Capacity is one of the issues we have mentioned, but it could also cover the suitability of the person. I cannot think of an immediate example. Obviously, we will be working through the detail of that through discussion and liaison with the Human Tissue Authority. However, it is all about the suitability of an appointed representative.

[22] **Eluned Parrott:** Once the power is then conferred on Welsh Ministers, they will, potentially, have the ability to exempt other types of persons, rather than just on the question of capacity, as you say.

[23] **Ms Wakeling:** Yes. They will be able to exempt anybody who would not be suitable

to be an appointed representative.

[24] **Eluned Parrott:** You say that the power under the Human Tissue Act 2004 has never been used. It has been eight or nine years, and it has never been used. Why did you feel that it was necessary to duplicate that in this Welsh Act?

[25] **Ms Wakeling:** First, we think that Welsh Ministers may want to prescribe in regulations where a person will not be suitable to hold that post. As I have explained, it is an important post. There may be circumstances, through detailed policy thinking, that will not be suitable. So, it is intended that that regulation power will be used, otherwise it would not have been contained within the Bill. I note, as I mentioned earlier, that the equivalent power for the Secretary of State in the Human Tissue Act 2004 has not been used. There is a secondary issue here, which is that the Human Tissue Act 2004 will continue to apply in Wales, if and when our Welsh legislation is made. There is an inevitable interplay between the Welsh legislation and the Human Tissue Act 2004, because the two pieces of legislation will be relevant. So, wherever possible, we are trying to minimise the movement away from the position in the Human Tissue Act 2004. We want to cause minimum disruption to the existing system and ensure that there is a uniformity of approach, wherever possible, while acknowledging that the Welsh legislation will change the trigger for consent to donation by introducing a deemed consent system.

[26] **Eluned Parrott:** Given the significant level of public interest in this particular area and the fact that the subject of whom you might class as a suitable or not suitable person under this power is so vague at this point in time, do you think it might be appropriate to consider the superaffirmative procedure, instead of the affirmative procedure, just to make sure that there is that extended opportunity for consultation and discussion?

[27] **Ms Wakeling:** Policy officials did consider that as part of the development of the proposals. We noticed that there is a negative procedure for this particular power under the equivalent procedure in England. We thought that it was more appropriate for it to be an affirmative procedure in Wales, and that the regulations should be the subject of debate, and that is why the affirmative procedure is reflected on the face of the Bill. However, we did not think that it would be proportionate for it to be a superaffirmative procedure, because we gave due regard to the relevant factors and thought that the affirmative procedure was proportionate.

[28] **David Melding:** Before you move on, Eluned, Suzy has a question on the issue of the suitability of appointed representatives.

[29] **Suzy Davies:** Yes. Thank you for your answers. I realise that matters are not fully developed yet. However, I think that the committee would like to have some sort of idea of the type of people you are thinking of exempting, apart from those without the mental capacity. For example, will they be people who have a history of dishonesty in their background or people who have been prisoners? Why are they relevant to something like this?

[30] **Lesley Griffiths:** It is important to say that this is probably something we can look at in the communication plan. It is important that when a person appoints a representative, they have full confidence in that person. That is a message that needs to go out in our communication. We have a robust communication plan that will go alongside this Bill, which is on the face of the Bill.

[31] **Suzy Davies:** I am sorry, I do not want to take any more time, Chair, but will we have a better idea as this process proceeds?

[32] **Lesley Griffiths:** Certainly, and I would be very happy to write to committee members.

[33] **Suzy Davies:** That is great.

[34] **Mick Antoniw:** On that point, is it the intention to bring in some regulations here, or is this just a cover-all in the event that it is required or felt to be required? Is there a specific intention that this is something that has to be addressed during the passage of the legislation?

[35] **Ms Wakeling:** I think that the policy intent is to develop some regulations, but I do not know how far that has progressed at the moment. As you say, I do not think it is essential to the passing of the Bill that the regulations are drawn up now, although the committee may feel that it is necessary for effective scrutiny to take place. However, I do not believe that there is any policy intention in that regard.

1.45 p.m.

[36] **Ms Vernon:** In policy terms, as has been said, the important point is to maintain parity with the rest of the UK on the way that the system works. So, although we might not have any immediate plans, there may well be a requirement for that as we go along. That would be fully consulted on.

[37] **David Melding:** The shift to a deemed consent model could well make it much more necessary to have these regulations in place, could it not? There might be an immediate demand or a great propensity of people appointing representatives.

[38] **Lesley Griffiths:** We intend to fully consult on the regulations and that is something that will be taken into consideration.

[39] **Eluned Parrott:** There are issues to do with the practical implementation of this particular point. I understand that the Health and Social Care Committee has heard evidence of concerns about what would happen in circumstances where it was difficult to find out if an appointed representative existed and how to identify that appointed representative. Would you be looking to address this through additional regulations?

[40] **Lesley Griffiths:** We are hoping to see whether that person's name could be on the organ donor register. If a person appoints somebody, that would go alongside the wishes on the register.

[41] **Eluned Parrott:** Can that be accounted for in terms of the Bill? Will it be in the regulations going alongside the—

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

[43] **Eluned Parrott:** Okay. Thank you.

[44] **Lesley Griffiths:** Were you asking what would happen if that person could not be found, or were just asking how we would record the wishes?

[45] **Eluned Parrott:** I am asking what would happen in circumstances where the appointed representative was unknown or could not be found, or in circumstances where you did not know whether there was an appointed representative or not.

[46] **Lesley Griffiths:** If there was an appointed representative and that was known, but that person could not be found, the transplantation would not go ahead.

[47] **Eluned Parrott:** What would happen, if it was not known whether or not there was an appointed representative?

[48] **Ms Wakeling:** One would hope that the deceased would have spoken with their family members and made their decisions about organ donation known. The whole point of placing a duty on the face of the Bill for Welsh Ministers to educate the people of Wales and inform them how the new system will work, is to change the way in which people view organ donation in Wales, and start people talking about it, et cetera. At the moment, the same problem arises with appointed representatives under the current framework. We recognise that that might be a problem. One of the safeguards that has been developed is for the name of an appointed representative to go on the register, and, as that proceeds, if that is the policy choice, it will be detailed in a code of practice.

[49] **Eluned Parrott:** Moving away from the system that we have at present, which is a register of people who have opted in to a system, we are moving towards a system where everybody is presumed to have been opted in to the system, so those people who have not had a conversation, regardless of what one would hope, also have a right to expect to be protected under the law. What ways are you looking at to safeguard those individuals?

[50] **David Melding:** I think that that is a policy issue, Eluned. If people are not known to have expressed a wish to have an appointed representative or actually appointed someone, it is a little difficult.

[51] **Lesley Griffiths:** From the responses that we have had to the consultation, the White Paper and the draft Bill, if somebody went to the trouble to appoint a representative, the information that we were getting in is that they would make sure that family and friends were aware of who that appointed representative was.

[52] **Eluned Parrott:** Thank you. I would like to move on to section 8 of the Bill, if I may, Minister, which looks at activities involving material from living adults who lack capacity to consent. It says that the consent of a living adult who lacks capacity to consent is deemed other than in circumstances that would be in the adult's best interest. Could you give us examples of where you would specify, in regulations, when that consent was deemed?

[53] **Lesley Griffiths:** The only circumstance where consent of a living adult lacking capacity is deemed is when it is in the person's best interests; for instance, to donate relevant material to a close relative. This is something that we are looking at in the drafting of the provision to ensure that it is very clear.

[54] **Eluned Parrott:** Again, you have decided to use the affirmative procedure in this case. Perhaps even more so than the previous section, this is a subject that is incredibly emotive for people and raises a lot of moral and ethical questions. Have you considered using this superaffirmative procedure in this case so that a greater level of consultation could be provided for?

[55] **Lesley Griffiths:** Yes, we looked at the superaffirmative procedure but we have allowed the same level of scrutiny through the current Parliamentary process, which is done through the affirmative procedure.

[56] **Eluned Parrott:** It might be considered that, in this case, we are moving beyond the provisions of Westminster, in that we are moving away from an opt-in register to a register that includes everyone. Therefore, as I say, perhaps there should be a level of public scrutiny that goes beyond what the Westminster legislation covers.

[57] **Ms Wakeling:** The provision that we are actually discussing is about living donation, so, deemed consent will not be relevant to living donation.

[58] **Eluned Parrott:** It states here that deemed consent will be relevant to living donation and might be in an individual's best interests.

[59] **Ms Wakeling:** It is deemed consent in a different context. It is not deemed consent as in a new presumed consent system. That provision actually exists now in the legislation, which applies in Wales—the Human Tissue Act 2004. It refers to consent being deemed when a living person lacks capacity. That happens now under the current law. It is not something that we are introducing in Wales as part of the deemed consent, where someone does not make a decision but has capacity. It is in a different context.

[60] **David Melding:** I think that I understand. So, there is existing deemed consent in that very narrow area.

[61] **Ms Wakeling:** Yes, but only for living people who lack capacity. We are not changing that in Wales.

[62] **Eluned Parrott:** That is understood. Thank you.

[63] **Suzy Davies:** I wish to press you slightly on something. I understand the idea of deemed consent, which is already in current legislation, but there is obviously an opportunity for the Welsh Government to be a bit clearer perhaps about why it makes certain decisions. I have a problem with this because I have struggled to understand when it can be in the best interests of a donor as opposed to a donee. Could you expand slightly on your thinking, rather than just saying, 'This is the current position'? I would really like to know why you have chosen the words 'best interests' in relation to the donor.

[64] **Ms Wakeling:** Are you just talking about the living donation of adults who lack capacity?

[65] **Suzy Davies:** Yes.

[66] **Ms Wakeling:** I have heard your question, but I will start by saying that the Welsh Government's policy is not to change in any sense the arrangements for living donation. As you have said, it is a very complicated, very emotive and sensitive subject matter. Also, the Mental Capacity Act 2005 comes in here, as does case law. 'Best interests' is a theme that runs throughout the legislation.

[67] **Suzy Davies:** With respect, you are not answering my question. How can it be in the best interests of a donor for material to be removed from them?

[68] **David Melding:** I appreciate the importance of this context, but we may want to reflect our concerns in the procedures that we think have to apply to the regulations; in other words, whether the affirmative procedure is enough in this area, or whether it should be the superaffirmative procedure.

[69] **Suzy Davies:** That was my next question, of course, Chair.

[70] **David Melding:** We kind of need to get to that point rather than concentrating on policy scrutiny, which is really the work of another committee.

[71] **Suzy Davies:** Right.

[72] **Ms Wakeling:** It might be in the best interests of the individual who lacks capacity if there is a brother or a sister involved. It does happen; it might be in the family member's best interests and then it is deemed to be in the individual's best interests for them to donate.

[73] **Suzy Davies:** That leads to my next question, Chair, which bears in mind how complicated it is. I am still not 100% sure that I am satisfied with that answer. Would this not be better dealt with on the face of the Bill or, at the very least, by the superaffirmative procedure? It is a very specific point.

[74] **Ms Vernon:** Currently, each case is dealt with on a case-by-case basis. I think that the Human Tissue Authority would set up a panel to look at each case on an individual merits basis because it could be so different in every case. For example, the example that Sarah just gave, which is that it could be in the interests of the donor to donate a kidney, say, to a member of their family, would be looked at quite specifically.

[75] **Ms Wakeling:** A carer or—*[Inaudible.]*

[76] **Ms Vernon:** Someone in their family, perhaps, who cares for them now. So, obviously, it would be in their interests to give that kidney, or whatever, to that person.

[77] **Suzy Davies:** If you are talking about looking at things on a case-by-case basis, which I am sure gives us some reassurance, how could you be sure that the regulations that you are talking about, regardless of which procedure they are introduced by, could be published to coincide with the Bill coming into force? Is there not an inevitable in-built delay if things are to be considered case by case, which I would say they should be?

[78] **Ms Vernon:** I think that we were going to look at that point in a bit more detail, actually, and come back to the committee.

[79] **Suzy Davies:** Could we have a note on that, Chair?

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

[81] **Suzy Davies:** Thank you. To stick with the idea of excepted adults for the moment, and the qualifying relationships, we have a system here of ranked lists of people who could be spokespeople for excepted adults, and it is a familiar-looking list—we have seen things like this in other legislation, particularly to do with inheritance. However, life being what it is, there will be spouses who are separated from their partners, or they are not talking to each other, and there will be parents and children who are not in touch with the person in question at the time. How do you propose to deal with that in this qualified list?

[82] **Lesley Griffiths:** Again, we have mirrored the existing legislation, and so, for sections 5 and 6, if the adult or child has died and not made a decision for or against, we are not ranking the list of relationships. In terms of section 7, it relates to appointed representatives where qualifying relations will have no role.

[83] **Suzy Davies:** Will your regulations propose to deal with these slightly complicated issues? Obviously, I am not talking policy, Chair, but instances or examples under which those who are ranked will be discarded.

[84] **Lesley Griffiths:** There is not a ranking.

[85] **Suzy Davies:** There is for part of it—for sections 5 and 6.

[86] **Mr Duncan:** There is a ranking for expressed consent.

- [87] **Lesley Griffiths:** But not for deemed consent.
- [88] **Suzy Davies:** For expressed consent, are you bringing in anything in the regulations to say that if the first person is no good for some reason, then the next person applies?
- [89] **Lesley Griffiths:** In relation to expressed consent?
- [90] **Suzy Davies:** Yes.
- [91] **Lesley Griffiths:** No.
- [92] **Suzy Davies:** So, if you have a spouse who is separated from the donor for some reason, they will still be the first port of call.
- [93] **Ms Wakeling:** What happens now is that this Welsh legislation, as the Human Tissue Act 2004, is a framework underpinned by the Human Tissue Authority codes of practice, which contain quite a bit of detail. One of the consent issues that is detailed in the code of practice is about family relationships and, when a discussion is happening in a hospital setting with family members, who do you go to, how do you go to them, and, if there is a dispute, what happens? All of that is detailed in the Human Tissue Authority code of practice, and that will continue. We will have a code that will detail the Welsh system, and what happens if somebody does not want to make a decision, or if somebody cannot make a decision or cannot be found, or if there is any dispute among the chain or the ranks—all of that is detailed in a code of practice.
- [94] **Suzy Davies:** So, there is some flexibility at that stage. In what circumstances can you envisage a future Welsh Government wanting to amend this list of qualifying relations?
- [95] **Ms Wakeling:** I believe, from memory, that aunts and uncles are not included in the list, and there is an ongoing debate on a UK basis as to whether they should be, and, if they were, where would they be ranked et cetera. New things develop and societal change might mean that the ranking needs to be changed anyway. The powers will allow for flexibility for that sort of thing, so that the Welsh Ministers can, first, make a decision for themselves, but, secondly, keep abreast with societal changes and considerations on a UK basis. Again, going back to the point that it is a UK system, Welsh Ministers are mindful of keeping some sort of uniformity in the system.
- [96] **Lesley Griffiths:** If I could just add to that, there is flexibility to add or change, but we would have to do it in light of best practice recommendations from NHS Blood and Transplant or the Human Tissue Authority.
- [97] **Suzy Davies:** You mentioned societal changes, which are sometimes very difficult to get a grasp on, if you do not have a chance to consult widely, so is there an argument for introducing regulation by the superaffirmative procedure in this circumstance, because it gives you that built-in time for the relevant level of consultation to take place?
- [98] **Lesley Griffiths:** We did not think that that was proportionate at the current time, but it is something that we can look at.
- [99] **Suzy Davies:** Finally, I would like to ask you about consent from the Secretary of State. Have you had that for this particular part of the Bill?
- [100] **Lesley Griffiths:** Yes, I mentioned that we have had that—

[101] **Suzy Davies:** So, it is throughout. There are no exceptions or anything with a question mark over it.

[102] **Lesley Griffiths:** No. There have been very robust discussions with officials.

[103] **Suzy Davies:** About amending UK—

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

2.00 p.m.

[105] **David Melding:** Simon Thomas will take us through the next questions.

[106] **Simon Thomas:** Trof yn benodol at adran 4 o'r Bil fel ag y mae. Mae gennyf gwestiynau tebyg i rai Suzy Davies ond maent yn edrych yn benodol ar berthnasau cymhwysol oedolion. Mae'n cael ei dderbyn os bydd y Bil hwn yn cael ei basio y bydd oedolion sy'n byw yng Nghymru wedi rhoi caniatâd oni nodir yn wahanol. Un o'r ffyrdd o ganfod bod dymuniad person yn wahanol yw bod rhywun mewn rhyw fath o berthynas cymhwysol gyda'r person hwnnw yn gallu dweud nad oedd y person sydd newydd drengi wedi cytuno i roi ei organau. Mae gennyf restr o'r bobl hyn yn y Bil. Mae'n amlwg bod y rhestr hon heb ei rancio; nid oes trefn neu hierarchaeth ynddi, sy'n wahanol i'r rhestr yn Neddf Meinweoedd Dynol 2004. A fedrwch chi esbonio pam fod rancio perthnasau yn digwydd yn y Ddeddf honno ond nad ydych yn dewis eu rancio yn y Bil hwn?

**Simon Thomas:** I will turn specifically to section 4 of the Bill as it stands. The questions are similar to Suzy Davies's, but focus on adult qualifying relationships. It is accepted that if this Bill is passed, adults living in Wales will be presumed to have consented unless it is noted otherwise. One way of identifying that a person wishes otherwise is that someone who is in a qualifying relationship with them can say that the individual who has just passed away did not agree to donate their organs. You have a list of these people in the Bill. It is clear that this list is not ranked; it does not contain an order or a hierarchy, unlike the list in the Human Tissue Act 2004. Can you explain why the relationships are ranked in that Act, but you choose not to rank them in this Bill?

[107] **Lesley Griffiths:** The main thing is that this provides a safeguard for the individual's wishes to be respected, so that anybody on that list can provide information that would lead a person to conclude that the deceased would not have consented.

[108] **Simon Thomas:** Fodd bynnag, nid ydych yn cynnwys unrhyw fath o *ranking*. Er enghraifft, a fydd rheoliadau neu god ymarfer yn dweud wrth ymarferwyr meddygol sut maent i drin y bobl ar y rhestr hon—gyda phwy fyddant yn trafod yn gyntaf a chyda phwy arall ddylent fod yn trafod?

**Simon Thomas:** However, you do not provide any sort of ranking. For example, will regulations or a code of practice inform medical practitioners how they are supposed to deal with the people on this list—with whom they first have a discussion and who else they should consult?

[109] **Lesley Griffiths:** As I said, we believe that this gives greater protection to the deceased. It will be part of a communications campaign that will be extensive and we will explain these issues in clear terms.

[110] **Simon Thomas:** Onid ydych yn meddwl y bydd y ffaith bod un rhestr yn y Bil a rhestr wedi'i rancio yn Neddf 2004 efallai yn drysu a thanseilio'r ymgyrch

**Simon Thomas:** Do you not think that the fact that there is one list in the Bill and a ranked list in the 2004 Act may cause confusion and undermine the

hysbysebu rydych yn dymuno ei chynnal am y Bil hwn? communications campaign that you wish to undertake about this Bill?

[111] **Lesley Griffiths:** No, we do not believe that; it will be part of the communications campaign.

[112] **Simon Thomas:** Yn y rhan hon o'r Bil, fel rydym newydd glywed, mae modd i chi newid pwy sydd ar y rhestr hon, ac rydym wedi sôn am fodrybedd neu ewythredd, er enghraifft. A fedrwch chi esbonio sut y byddech yn defnyddio'ch pwerau i newid y rhestr pe bai angen yn y dyfodol a pha weithdrefn y byddech yn ei defnyddio i wneud hynny? **Simon Thomas:** In this part of the Bill, as we have just heard, you can change who is included in this list, and we have discussed uncles or aunts, for example. Can you explain how you would use your powers to amend the list should the need arise in the future and what procedure you would use to do so?

[113] **Lesley Griffiths:** I mentioned before, in answer to Suzy Davies, that we would have to reflect on that in light of best practice recommendations from NHSBT and the Human Tissue Authority.

[114] **Simon Thomas:** Fodd bynnag, os penderfynwch newid y rhestr o bobl sydd mewn perthynas gymhwysol, onid ydych yn credu, yn y rhan hon o'r Bil hefyd, y byddai'r weithdrefn uwchgadarnhaol yn dangos i'r cyhoedd a'r Cynulliad eich bod yn dymuno casglu'r farn ehangaf ar fater sydd yn ddadleuol, fel rydych yn cydnabod? **Simon Thomas:** However, if you decide to amend the list of people in qualifying relationships, do you not think that, in this part of the Bill as well, the superaffirmative procedure would demonstrate to the public and the Assembly that you wish to consult as widely as possible on an issue that you admit is contentious?

[115] **Lesley Griffiths:** Yes, as I said to Suzy, it is something that we can look at.

[116] **Simon Thomas:** A throi at y cod ymarfer yr ydych wedi cyfeirio ato sawl gwaith, sydd eisoes yn bodoli o dan y Ddeddf Meinweoedd Dynol, pan oeddech yn rhoi tystiolaeth i'r pwyllgor iechyd, gofynnwyd i chi ynglŷn â rhoi organau llai cyffredin, o ystyried y datblygiadau newydd yn ymwneud â'r wyneb a'r dwylo—pethau nad yw pobl efallai yn eu hystyried fel organau ond sy'n cael eu cynnwys yn y Bil fel y saif. Wrth drafod hynny, dywedoch wrth y pwyllgor bod hwn yn fater i'r cod ymarfer a bod cwestiynau ynglŷn â rhoi organau fel hynny yn cael eu trin ynddo. Felly, a fedrwch chi esbonio sut y bydd cod ymarfer yr Awdurdod Meinweoedd Dynol yn cael ei adlewyrchu mewn unrhyw reoliadau rydych yn eu gwneud o dan y Bil? **Simon Thomas:** To turn to the code of practice, to which you have referred many times, which already exists under the Human Tissue Act, when you gave evidence to the health committee, you were asked about the donation of organs that are not commonly donated, given the new developments with the face and hands—perhaps people do not consider them as organs, but they are included in the Bill as it stands. In discussing those issues, you informed the committee that this was a matter for the code of practice and that questions on the donation of such organs would be dealt with there. So, can you explain how the code of practice of the Human Tissue Authority will be reflected in any regulations that you make under the Bill?

[117] **Lesley Griffiths:** In Wales, under deemed consent arrangements, novel transplants—that is the phrase used for the types of transplantations to which you refer—would not proceed because this, as you say, was covered in the code of practice. It is something that we are looking at in great detail because the Human Tissue Act, like the Bill, does not detail which organs and tissues can be transplanted; it just refers to relevant materials. It is very

important that people understand that. We have to be aware that, at the present time, I think that there have been only one or two of these transplants undertaken across the whole of the UK. Again, it is done case by case. The novel forms of transplantation are not covered by any existing legislation at this time.

[118] **Simon Thomas:** Well, they are, in a sense, because they are allowed under the Act and the Bill. So, they are allowed for.

[119] On this particular point, and also on the wider point, is it your intention to legislate for a code of practice by putting it into regulations in Wales, or would it remain a code of practice issued by Human Tissue Authority?

[120] **Lesley Griffiths:** The Human Tissue Authority.

[121] **Simon Thomas:** Okay. You have proposed to change in the Bill the way in which the Secretary of State, who has ultimate control of the Human Tissue Authority, consults on such a code of practice, because you say that the consultation in future should be with Welsh Ministers, rather than with the Assembly. Could you explain why?

[122] **Lesley Griffiths:** At the moment, as you say, we are only consulted. What we are referring to does not relate to the code of practice concerned with consent in Wales for transplantation activities under our Bill; this is about the other codes of practice that the Human Tissue Authority produces. They are subject to consultation with Welsh Ministers, rather than with the Assembly; we have merely taken the opportunity to update the Act to reflect the constitutional position.

[123] **Simon Thomas:** I am not quite clear on that. Are you saying that the present regulations or the law is to consult only with the Ministers, or are you saying that, in effect, the present practice is to consult with the Ministers?

[124] **Lesley Griffiths:** The present practice is to consult with Welsh Ministers.

[125] **Simon Thomas:** Okay. Bearing in mind the fact that this is a contentious Bill, would not consulting with the wider public, through the medium of the Assembly, be a positive message to send out when consulting on codes of practice?

[126] **Ms Wakeling:** I think that codes of practice will be sent to the Welsh Ministers, as consultees. Those are the general codes of practice that might touch on issues such as research, et cetera, which are matters that are not covered in the Welsh legislation. Where there is a matter that is the subject of Welsh legislation, and that is dealt with in a code, it would be appropriate for that to come in, it is felt, to the Assembly to be subject to the negative procedure. However, in terms of consultation, it was felt appropriate that it should be with Welsh Ministers on codes.

[127] **Simon Thomas:** Thank you. May I be clear, then? When a code of practice comes before the Assembly, what regulation power are you using to have any sort of resolution in the Assembly, whether affirmative or negative, on the code of practice? Are you putting codes of practice into force by regulation, or by Order? What are we talking about here, exactly?

[128] **Ms Wakeling:** The Human Tissue Act 2004 will be amended—there are proposed amendments to it in the Welsh legislation. What will happen is that the code will be prepared by the Human Tissue Authority, it will be sent to Welsh Ministers and then laid before the Assembly. The relevant amendments in the Bill, in section 15, under the heading,

[129] ‘Consequential and incidental amendments to the Human Tissue Act 2004’,

[130] propose to make amendments to the face of the Human Tissue Act 2004, so that the code, where it covers matters under the Bill, comes in specifically for laying. What happens now is that that does not exist; it is just a consultation process. However, because the code will cover Wales-specific issues that are detailed in the Welsh legislation, it was thought appropriate for that to be laid in the Assembly.

[131] **Simon Thomas:** I have a final question on that aspect of it. Can you just confirm, Minister, that I understood correctly that the novel transplant things that we talked about earlier would be dealt with in this way by a specific reference in a code of practice coming before the Assembly for the negative procedure? Is that correct?

[132] **Lesley Griffiths:** Yes; it is.

[133] **Simon Thomas:** Is it therefore appropriate to use a negative procedure for such a contentious code of practice?

[134] **Ms Wakeling:** That has been considered. Yes, the code will contain contentious material. One consideration has been the fact that, at the moment, Welsh Ministers are consulted on the code and, for the reasons that we have already discussed, there will be a need for the code to be laid. One issue of which we are mindful is the fact that the code is updated quite regularly. When considering which process to prescribe on the face of the Bill, it was thought that the negative procedure would be more appropriate. However, it is logical to listen to the argument that the code will contain sensitive information.

[135] **Lesley Griffiths:** I think that we need to reflect on this matter and have another look at it. I will send a note to the committee.

[136] **David Melding:** How often is ‘regular’?

[137] **Ms Vernon:** It is not monthly or anything like that.

[138] **Lesley Griffiths:** It is not monthly, but it is regular.

[139] **Ms Vernon:** The code is updated perhaps every couple of years.

[140] **David Melding:** We have affirmative resolutions on an annual basis now.

[141] **Lesley Griffiths:** It is certainly something that we can look at as we reflect on these discussions.

[142] **Ms Wakeling:** Going back to the question of how often the code is updated, I imagine that it will be updated quite frequently as the new system beds in. However, I still see the logic of asking whether there is or is not a need for the affirmative procedure.

[143] **Mick Antoniw:** Minister, I will raise a couple of smallish technical points. Section 16 contains a definition of ‘relevant material’, while paragraphs (a) and (b) of section 16(2) note certain exclusions. Are you satisfied that that list is sufficiently complete, or would you consider that there might be a need for a power to expand on it from time to time?

[144] **Lesley Griffiths:** I consider it to be complete. It just mirrors the existing legislation.

[145] **Mick Antoniw:** That answers that.

[146] I will now take you on to section 13, with regard to the functions of a coroner. I think that you have to look at section 13 in conjunction with section 19(3), which relates to commencement. Why is the commencement provision there for the purpose of the implementation of section 13, with regard to the functions of a coroner?

[147] **Ms Wakeling:** It is there because it links back to the provision in the Human Tissue Act 2004—from memory, I think that it is section 43—about when a body—let us call it that—is a body in which the coroner has an interest, and when somebody can take steps to preserve that body for the purposes of transplantation. That particular provision was inserted into the Human Tissue Act 2004 by the Coroners and Justice Act 2009. That provision has not been commenced in the current legislation that applies to England, Wales and Northern Ireland. In the Welsh legislation, therefore, that provision is replicated so that the Bill would not be out of date as soon as it came into force. However, there is the caveat that the provision is not commenced until the equivalent provision in the Coroners and Justice Act 2009 comes into force.

[148] **Mick Antoniw:** Do you know what the UK Government's position is in that regard? There are quite a few items in that Act that were not commenced, are there not?

[149] **Ms Wakeling:** Yes, exactly. We are liaising with the UK Government on this matter. This is one provision that we understand will be commenced, so we want to ensure that the Welsh legislation is up to date from the start and that we do not exclude certain provisions. However, we are mindful that we do not commence it; again, it is about the uniformity of approach and the coexistence of legislation. We are liaising with the UK Government on this.

[150] **David Melding:** Do Members have any other questions? I see that you do not. Unless you wish to say anything further, Minister, we thank you and your officials for your attendance this afternoon.

2.14 p.m.

**Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reolau Sefydlog Rhifau 21.2 neu 21.3**  
**Instruments that Raise no Reporting Issues under Standing Orders Nos. 21.2 or 21.3**

[151] **David Melding:** The instruments are listed for you on the agenda. Do Members have any comments? May I assume that you are content? I see that you are.

2.15 p.m.

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

[152] **David Melding:** These instruments are listed and are in relation to the council tax reduction schemes. Are there any comments on these? I was just going to say that we were all satisfied with them, but then I saw Suzy indicate that she wanted to come in.

[153] **Suzy Davies:** I have just a quick question. We have heard the Government's response on the availability of bilingual regulations. Is there any suggestion that, in future years, they might come through bilingually?

[154] **David Melding:** I think that it is committed to that.

[155] **Simon Thomas:** I think that a commitment was given in Plenary on that.

[156] **Suzy Davies:** It is just surprising that the instruments have not referred to that. I just wanted to confirm that that had not been forgotten.

[157] **David Melding:** Are there any other points? I see that there are not. That concludes item 4.

[158] As we have such a long afternoon ahead of us, I suggest that we take a short break.

*Gohiriwyd y cyfarfod rhwng 2.16 p.m. a 2.42 p.m.  
The meeting adjourned between 2.16 p.m. and 2.42 p.m.*

**Tystiolaeth ar Orchymyn Corff Adnoddau Naturiol Cymru (Swyddogaethau)  
2012**

**Evidence in relation to the Natural Resources Body for Wales (Functions) Order  
2012**

[159] **David Melding:** I reconvene this meeting of the Constitutional and Legislative Affairs Committee, and I welcome the Minister, John Griffiths. Perhaps, John, you would like to introduce your officials.

[160] **The Minister for Environment and Sustainable Development (John Griffiths):** Yes. On my right is James George, one of our lawyers, and on my left is Dave Clarke, from my department.

[161] **David Melding:** I remind the witnesses that these proceeding will be conducted in Welsh and English. When Welsh is spoken, translation is available on channel 1, and should you need amplification, that is on channel 0.

[162] This is obviously a fairly complicated area, and it has required discussions and consent from the UK Government. Will you outline the discussions that you have had about the draft Order in relation to the consent required by the UK Government?

[163] **John Griffiths:** I have had some very fruitful discussions with Ministers from the Department for Environment, Food and Rural Affairs and the Wales Office. A number of issues have been raised, but we have come to an agreement, and I am optimistic, Chair, that we will gain the necessary consent that will enable us to proceed with the Order.

[164] **David Melding:** Therefore, at the moment, you do not see any difficulties in taking forward your policy intentions in this Order.

[165] **John Griffiths:** No. Discussions have been very positive to date, Chair.

[166] **David Melding:** Would you be prepared to write to the committee just to outline where consent was sought and the response that you received?

[167] **John Griffiths:** Yes, absolutely. That might be useful for the committee, and I would be very happy to do that.

[168] **David Melding:** Why have you sought to pursue this policy via two Orders, rather than just a single Order, as was initially envisaged and which may have been a bit easier for

the Assembly to scrutinise?

[169] **John Griffiths:** We have not really envisaged a single Order at any stage, Chair, because we were committed to whatever process would be the best means of taking forward this important change. There may have been a time when ‘Order’ was used as shorthand, if you like, without a great deal of consideration being given as to whether one or more Orders would be required.

2.45 p.m.

[170] However, when we looked at the necessary work, the process involved and the time constraints, we felt that it would be important to take forward an initial Order that set up the body in shadow form. This meant that work could proceed to allow a timely transition that otherwise would have been more difficult.

[171] **Suzy Davies:** Obviously, there was a slightly controversial start to this whole process. Bearing in mind that there are three bodies coming together, each one with its own very complicated set of regulations already, why did you choose to bring this Order forward by means of amending those old regulations rather than having one good composite Order that we could all understand? Why did you not start from scratch? At the very least, why is there not a table of derivations with this Order so that we can follow where the changes have been made?

[172] **John Griffiths:** We will have a Schedule that sets out those pieces of legislation that have been amended, which is important for clarity. I guess that a lot of this comes down to user-friendliness and accessibility regarding length, because we could have had an Order running to many hundreds of pages if we had adopted that particular approach. In terms of being clear and accessible, the balance that we have struck is appropriate.

[173] **Suzy Davies:** In terms of clarity, and you are talking about a shadow body having to look and implement these regulations, nothing is going to be more confusing for that body than leaping around a dozen other Acts to try to find out which particular Schedules or sections have been changed and apply to it. Bearing in mind as well what the Counsel General has said about consolidating legislation, particularly when we are starting again, would you be prepared to reconsider this?

[174] **John Griffiths:** A table of derivations is useful if it is not clear from the new piece of legislation what existing pieces of legislation are being amended or repealed. In those circumstances, it is entirely appropriate to have a table of derivations. However, that is not the case here. The schedule listing the pieces of legislation amended will provide what I think is probably the most user-friendly approach.

[175] **Suzy Davies:** I would like to make one last point. A table of derivations would have been my second-best option. My first-best option would be a brand new start from scratch several-hundred-page resolution. We would all know where we were looking for things.

[176] **John Griffiths:** Perhaps I could bring the officials in to give the committee a flavour of what would have been involved in such an exercise.

[177] **Mr Clarke:** It is worth understanding that, when we came to look at the task, we initially looked at around 500 pieces of legislation. We have ended up finding that we need to amend some 200, with some other pieces of legislation remaining relevant. Some of those, individually, run to many hundreds of pages. So, if we sought to consolidate the legislation in a single place, we would have been looking at an Order that ran to thousands of pages. James may add a couple of comments about the legal viability of that as well. Nevertheless, it would

not have been practical to do it.

[178] **Mr George:** Legally, one problem with the idea of trying to set everything out again afresh is that the powers we have in the Public Bodies Act 2011, under which we are making the Order, are just powers to modify and transfer functions of the particular bodies that we are dealing with. So, we do not have the power to restate everything that is in each piece of legislation because most of them deal with other things apart from the functions of those bodies. We do not want to be taking out parts and restating those, but leaving other things behind. That would not necessarily produce a very user-friendly result.

[179] The other thing, as the Minister and Dave have said, is that if you tried to restate everything—even if we had the power to do it—you would end up with thousands of pages of legislation. Let us look at one example. We are amending the Environmental Permitting (England and Wales) Regulations 2010. There are functions included there for local authorities that we are not doing anything about, therefore, we probably could not restate them anyway. Also, our amendments are two pages. The regulations themselves are over 200 pages. Not every piece is as extreme as that, but if you extrapolate that across the whole Order, you can see that we would quickly end up with many thousands of pages of legislation, ranging from forestry, flooding, water, pollution to a whole range of other topics. It was not viable.

[180] **Eluned Parrott:** Minister, as a former Counsel General yourself, you will be interested in statements that the First Minister and the current Counsel General have made about the clarity of the law. In June 2012, for example, the Counsel General said that

[181] ‘To the extent that it is possible, Welsh laws should be drafted afresh, instead of amending existing provisions’

[182] and that

[183] ‘new legislation in Cardiff should be drafted in a way that simplifies the statute book by consolidating Welsh legislation and separating it from legislation that also applies to England.’

[184] You have talked about the practical reasons, but do you believe that the approach that you have taken is consistent with that direction from the Welsh Government’s legislating office?

[185] **John Griffiths:** I do. These matters are always couched in practicalities, so you can have a general approach and set of principles that are absolutely valid, but in any particular case, you have to address the individual nature of the exercise involved. As they say in law, guidelines are not tramlines. You always have to look at the particular aspects and circumstances of what is involved in any particular piece of legislation, and I think that is what we have done here. The general principles still hold, and the Government is very much signed up to those, but it is always a matter of ‘whenever possible’.

[186] **Eluned Parrott:** Thank you. That was a very interesting answer. However, I wonder, in terms of drafting this particular piece of work, if there were to be an ambition in the future to create a statute book for Wales, referencing back rather than creating anew is going to cause problems and confusion for those who are trying to apply the law in Wales. How do you feel that you could have got around this better?

[187] **John Griffiths:** I do not think that we could have achieved a better result with regard to those matters with this particular legislative exercise because of the constraints and issues that we have already mentioned. That is why I say that the general principle holds good but,

as with any general principles, there will always be exceptions.

[188] **Eluned Parrott:** This is one of the first pieces of legislation to come forward under this set of general principles since the devolution of primary law-making powers. Do you think that it will be common that it is not possible to hold to the general principles that have been stated?

[189] **John Griffiths:** I certainly hope not. I do not think that it will be a matter of the exception becoming the norm. If that were the case, the general principle would be without practical application, and that is not what we want to see. In any particular exercise, you have to take into account the practical and other aspects. It is sensible to take the most practical way forward, and you have to be pragmatic to some extent about these matters.

[190] **Eluned Parrott:** Thank you.

[191] **Simon Thomas:** Weinidog, mae'r pwyllgor wedi cael tystiolaeth gan nifer o gyrrff amgylcheddol gan gynnwys, er enghraifft, RSPB Cymru, sy'n poeni nad yw geiriad y Gorchymyn drafft hwn yn adlewyrchu'r ddyletswydd cadwraeth natur bresennol sydd ar Gyngor Cefn Gwlad Cymru a bod hynny, felly, yn gwanhau'r sefyllfa fel y mae ar hyn o bryd. A ydych wedi cael cyfle i edrych ar y dystiolaeth honno?

**Simon Thomas:** Minister, the committee has received evidence from a number of environmental bodies including, for example, RSPB Cymru, which are concerned that the wording of the draft Order does not reflect the present nature conservation duty of the Countryside Council for Wales, and that that, therefore, weakens the present situation. Have you had an opportunity to look at that evidence?

[192] **John Griffiths:** Yes, Simon, we have considered that evidence. In fact, we have decided to remove article 5A(2)(b), which, I hope, will deal with those concerns.

[193] **Simon Thomas:** Just to confirm that, because of the concerns regarding the removal of the words 'necessary protection', you will amend the Order so that that no longer takes place. Is that correct?

[194] **John Griffiths:** Yes. We will amend the Order.

[195] **Mick Antoniw:** Minister, with regard to the whole series of directives and issues relating to European law that apply, are you satisfied that adequate consideration has been given to ensuring that all our obligations and legal requirements under European legislation are being fully complied with?

[196] **John Griffiths:** Yes; I am content that all EU obligations have been complied with. It is relevant to consider the nature of what we are doing, which is, largely, to transfer existing functions, rather than create new ones. So, yes, we are quite content that all our EU obligations are being properly observed.

[197] **Mick Antoniw:** Okay. I have one technical point, then. The draft Order removes a requirement for the Environment Agency to be subject to language standards in the future. Could you clarify the reasoning behind that, or will that be rectified during the course of the procedure?

[198] **John Griffiths:** Again, I am happy to give what, I hope, is reassurance to the committee on that, Chair and Mick. The requirement was initially removed largely because the Environment Agency's substantive functions in Wales were being removed, but it will still have relevance to Wales as an organisation. So, I am quite happy to change that position

to reflect the committee's concern.

[199] **David Melding:** There would be no gap, in other words.

[200] **John Griffiths:** Exactly, Chair.

[201] **David Melding:** I have a concluding question about the whole business of how we try to have a statute book that is as consolidated and elegant as possible. I recall Mr George's remark that two pages of amendments can relate to 200 pages of primary law. I may be missing something, but why did we not just have our own Bill? Presumably, you would then start afresh and build the structure that you require. Was it because the Public Bodies Act 2011 does not give you that power? You could have sought it, presumably.

[202] **John Griffiths:** There are a number of things to say about that. The first thing is that, in the nature of this exercise, we are dealing with some non-devolved functions that are without our competence. The Public Bodies Act 2011 has enabled us, with the necessary consents, to deal with those matters, which we could not have done in our own Bill. The other thing is that we propose to take forward an environment Bill in this Assembly in due course. That will give us the opportunity to deal with some of the aspects that stakeholders would seek movement on at that stage. Really, it has been a matter of looking at timeliness and do-ability, if there is such a word. The Public Bodies Act 2011 was the best vehicle to achieve the change necessary within the time frame that we felt was necessary. Once we announced a change of this magnitude, the three existing organisations, the stakeholders in the field and the staff of the organisations, of course, faced, to some extent, a degree of uncertainty and instability. We felt that it was very important, therefore, to take the timeliest route to bring the new organisation into being and to address those concerns and anxieties.

[203] **David Melding:** When things are of a capital magnitude, should primary law not be your first consideration as the appropriate vehicle?

[204] **John Griffiths:** We always start from the viewpoint, Chair, that primary legislation—now that we have these new powers available to us—is the starting option. However, when other factors and considerations come into play, sometimes another route is taken for pragmatic and practical reasons.

[205] **David Melding:** The advice you had was that you did not have the range of powers and that the Assembly did not have the appropriate competence to achieve all your policy objectives through an Act of the Assembly.

[206] **John Griffiths:** Indeed. We would not have been able to transfer all of the functions through an Assembly Bill in the way that we can using the Public Bodies Act 2011.

[207] **David Melding:** Thank you. Are there any further questions? I see that there are none. That concludes our session with you Minister. Thank you very much and thanks also to your officials.

3.00 p.m.

**Tystiolaeth ar y Bil Llywodraeth Leol (Democratiaeth) (Cymru)  
Evidence in relation to the Local Government (Democracy) (Wales) Bill**

[208] **David Melding:** I am delighted to welcome the Minister for Local Government and Communities, Carl Sargeant, who is the Member in charge of the Bill, and his officials. Carl, do you want to introduce your officials?

[209] **The Minister for Local Government and Communities (Carl Sargeant):** I will let them do so.

[210] **Mr Cuthbert:** I am Frank Cuthbert. I work in the local government policy department of the Welsh Government.

[211] **Ms Gavigan:** I am Patricia Gavigan from the legal services department of the Welsh Government.

[212] **David Melding:** Thank you and welcome. I will just say, for the sake of the witnesses, that these proceedings will be conducted in Welsh and in English. When Welsh is spoken, there is a translation on channel 1 of your headsets and, if you are hard of hearing, you will get amplification on channel 0.

[213] I will begin, Minister, by asking how you sought to strike a balance between the powers on the face of the Bill and those that will be left to Welsh Ministers, in terms of making subordinate legislation.

[214] **Carl Sargeant:** Thank you, Chair, and thanks to the committee for the opportunity to support the evidence today. I am well versed now in bringing forward legislation, Chair. So, hopefully, my department now fully understands the scope in terms of how we need to shape the way in which we present Bills, moving forward.

[215] The main purpose of the Bill is around the democratic processes of local government. We believe that we have struck the balance appropriately. I have attended the Communities, Equality and Local Government Committee, of course, and there have been various questions around this issue. We work within the boundaries of advice and we believe that we have acted appropriately in setting out this Bill.

[216] **David Melding:** Thank you, Minister. Have you had any discussions with the UK Government and has it raised any concerns regarding competence in relation to this Bill?

[217] **Carl Sargeant:** There is only one element of the Bill that relates to the UK Government, which is around police boundaries. I have had correspondence with the Home Secretary.

[218] **David Melding:** Can you give us any further indication of what the difficulties have been and whether they have been resolved?

[219] **Carl Sargeant:** I am not pursuing any issues as difficulties, Chair. I have corresponded with the Home Secretary and it was indicated to us that the UK Government would be in touch with us subject to the progression of the Bill; we have heard nothing since from the Home Secretary.

[220] **David Melding:** Have you been back in touch since you realised that it was not responding perhaps as quickly as you would like?

[221] **Carl Sargeant:** No, on the basis that we have indicated to the UK Government the whole procedure and the issues within the Bill. I would expect it, if there was an issue, to raise that with us.

[222] **Mick Antoniw:** Minister, I have a couple of technical questions. Section 14, which deals with directions, is the section that includes a requirement for the commission to comply with any direction given by Welsh Ministers in relation to the operation of the commission. There is no procedure set out; it is a fairly open-ended power that is given. Is there a

particular reason for that? What is the logic behind that?

[223] **Carl Sargeant:** There are two elements in terms of the directions for the commission. There are sections 16 and 19, which are very specific about the detailed role of the accounting officer, which you will have noted, and sections 14 and 6 on the procedures of this. You might remember some of the technical problems that we had with organisational issues around the commission. Within this Bill, we have ensured that, subject to any changes to the commission, we have the ability to make a general direction as to the broad principle of the commission, as opposed to some of the directions within the commission. That is why we have left that very open-ended.

[224] **Mick Antoniw:** So, it is the specific intention of the Government to achieve that, is it?

[225] **Carl Sargeant:** Yes.

[226] **Mick Antoniw:** Okay. I will move to another area, under section 34(3), which is the procedure for local government reviews that allows the Ministers to specify persons as mandatory consultees. There are two aspects to this. What do you consider to be a likely mandatory consultee, and do you consider that there is any need for there to be identified, on the face of the Bill, certain key mandatory consultees?

[227] **Carl Sargeant:** The issue around creating lists is that you always leave someone off the list. That is why we have the process in terms of a fall-back position: if we miss someone out, we can add them at a later date. This gives the opportunity, should a Minister so wish, if a new body was established at any point, to add that body to the list of consultees via that process. So, not having a list is not unique to this Bill, and, once you are prescriptive on the face of the Bill, it is very difficult to change that in terms of going beyond that scope.

[228] **Eluned Parrott:** I will turn to Part 3, Chapter 5, which deals with implementation following review. In particular, with regard to the Order-making powers contained in sections 38 to 40, relating to implementing local government review recommendations, why is there no procedure recommended there, whereas, in section 37, there is a procedure recommended?

[229] **Carl Sargeant:** I may ask the technical team to broaden out my response. However, predominantly, where it is locally based, in terms of determination, and there have been no issues around procedures in the past, we have mirrored that procedure. I do not know whether my colleagues wish to broaden out on the detail.

[230] **Mr Cuthbert:** In the main, this replicates provision that is currently in the Local Government Act 1972 whereby, if an Order is made following a review by the boundary commission, it is normally a local Order, which only affects one county or part of one county. Traditionally, or, rather, since the Assembly has been in being, these have not been subject to a procedure. The exception to that is if the Order is to make any change to boundaries between counties that necessarily affect more than one county, in which case they go through the negative procedure.

[231] **Eluned Parrott:** Okay. Obviously, we are making new legislation now, so we have an opportunity to make it fit for our own purposes rather than it being based on tradition. Were there any other reasons why you felt that the current provisions were adequate?

[232] **Carl Sargeant:** We believe that that is the appropriate vehicle for taking this forward. We have never come across any reason to think that that was not the appropriate process.

[233] **Eluned Parrott:** Okay. Thank you. Are you able to give us an example of an implementation Order that might be made by Welsh Ministers that would make changes to a principle county or preserved county area, other than those just discussed? You had said that that would be subject to the negative procedure on this occasion.

[234] **Carl Sargeant:** As Frank mentioned earlier, it is about whether or not it crosses two county primary boundaries. If it does, the implications of that are much broader than a local determination within a county boundary. That is where you would move to the negative procedure.

[235] **Eluned Parrott:** Looking at sections 37, 38, 39 and 40, why did you make the decision not to vest all of those powers in Welsh Ministers? With regard to sections 38 and 39, those powers are being vested elsewhere.

[236] **Carl Sargeant:** The only element there is with the commission. In the past, the commission has been the postmaster, in effect, where there have been no changes in a boundary review. We have said that, where there are no changes to a local boundary, the commission can ratify that and take that through. It is just a case of, where there is no change, allowing it to deal with that as a procedural issue rather than it being passported through from it to me or to the Minister and back again, when actually it can deal with it quite effectively under these procedures. That is the only element that we have done.

[237] **Eluned Parrott:** Did you not feel that there was an opportunity to give yourself ultimate control in those instances if you needed it?

[238] **Carl Sargeant:** We have, subject to there being change, but if there is no change—just the status quo after the review—then the commission will make that determination. There is no change, and therefore I believe that we have the right control mechanism in place.

[239] **Eluned Parrott:** Moving on to section 41, under Part 3, Chapter 5, which gives Welsh Ministers a power to make regulations providing for incidental and consequential matters, and to make sure that Orders can be fully implemented. Why are powers conferred on Welsh Ministers in this instance exercised by regulations?

[240] **Carl Sargeant:** The complexities of boundary changes are unknown, because we do not know what they might or might not be in the future. What we have said here is that a boundary change may be of just ward significance, or it may be a proposal that the Vale of Glamorgan, after a boundary review—hypothetically—should take over half of Cardiff. That is hypothetical, but the consequences of that would be significant, and therefore we believe that there are things like dealing with community assets, council assets et cetera that would be better informed by regulation. That is why regulations will deal with individual aspects of change more successfully in that process—because it is unknown.

[241] **Eluned Parrott:** It says that the negative procedure applies unless the regulations purport to amend primary legislation.

[242] **Carl Sargeant:** Sorry, I did not catch that.

[243] **Eluned Parrott:** It says that the negative procedure would apply unless the regulations purport to amend primary legislation. Could you give examples of cases under section 41 where you would seek to amend primary legislation? Which primary legislation?

[244] **Carl Sargeant:** Again, it is really difficult to pre-empt what might or might not happen. I suppose it is where an Act might get caught up between two county boundaries. You might create a new boundary, and have an Act that covers two different ones, and you

would then have to consider that process. However, we do not know until we have actually seen the shape of the boundary review and what it might or might not envisage. By this method, we believe that we have the appropriate tools to deal with that.

[245] **David Melding:** Could your officials give us an example—[*Inaudible.*]

[246] **Carl Sargeant:** That is a very nice way of saying, ‘I didn’t understand a word you said, Minister.’ [*Laughter.*]

[247] **David Melding:** We are asking for an example, really, I think, so that we can give an intelligent opinion on why you are using these mechanisms, and whether they are appropriate.

[248] **Mr Cuthbert:** A boundary change could result in a need to change the boundaries of another organisation whose boundaries had been defined in primary legislation; it would be a consequential boundary change. I suppose an example could be a local health board—that is just an example. That could require the primary legislation to be amended. There is also the possibility of local Acts; if, for some odd reason, you had a boundary change that went halfway through Abergavenny, you might need a local Act to be amended to cater for that. Probably the reason why I am being very vague is that we have not had to make such regulations over the last 10 years, at least.

[249] **David Melding:** That is helpful. I think that Cardiff bay has been mentioned—a harbour authority might be an example. You could suddenly create an additional authority in Cardiff and in the Vale that would have some partnership with an existing body. I think that I understand.

[250] **Eluned Parrott:** Just to follow that up, as part of the preparation and scoping work that you have done in advance of publishing this, surely you have made a list or an assessment of the primary legislation that could be affected in these instances?

3.15 p.m.

[251] **Carl Sargeant:** As was alluded to, we do not know what the effects of a boundary review might or might not be, and that is why, within this provision, we think that we have the tools to deal with whatever Order that may be presented. Frank gave you examples. We do not actually know what the effects will be because we do not know what the scale of a boundary review might or might not be. We believe that this will be encompassing enough to deal with that.

[252] **Eluned Parrott:** You think that the affirmative procedure in those instances would be adequate even though you do not know what legislation that you are potentially amending.

[253] **Carl Sargeant:** Yes.

[254] **Simon Thomas:** Weinidog, a throi at adran 43, mae modd i Orchymyn gweithredu fel hwn gael ei amrywio neu hyd yn oed ei ddirymu gan Weinidogion, y comisiwn neu gan brif gyngor. A allwch chi roi enghraifft i ni o pam y byddai angen amrywio neu ddirymu Gorchymyn yn y fath fodd?

**Simon Thomas:** Minister, turning to section 43, it is possible for an implementation Order of this sort to be varied or even revoked by Ministers, the commission or a principal council. Can you give us an example of why there would be a need to vary or revoke an Order in such a way?

[255] **Carl Sargeant:** Thank you for your question, Simon. The issue of keeping up to date with the Orders is imperative. We would rather not leave to chance the issue of a court proceeding or view; it would be appropriate to take the most up-to-date Order. We believe

that subject to a new Order becoming available, we should have the opportunity to revoke the old one, so that there is complete clarity about moving forward in the process.

[256] **Simon Thomas:** Unwaith eto, nid oes unrhyw fath o weithdrefn yn cael ei nodi. Nid oes gweithdrefn negyddol neu gadarnhaol yn ymwneud â hynny. A ydych yn dibynnu o hyd ar eich dadleuon blaenorol bod hwn yn fater lleol oni bai ei fod o bwysigrwydd ehangach, fel petai?

**Simon Thomas:** Again, no procedure of any sort is noted. There is no negative or affirmative procedure to do with that. Are you still dependant on your previous arguments that that is a local issue unless it has broader significance, so to speak?

[257] **Carl Sargeant:** Yes.

[258] **Simon Thomas:** Mae un peth penodol yn cael ei nodi ar wyneb y Bil, sef bod modd gwneud hyn os bu camgymeriad. Ceir diffiniad o gamgymeriad sy'n *handy* iawn. Nid oes llawer o ddiffiniadau o gamgymeriadau ar wyneb deddfwriaeth. A allwch chi esbonio pam eich bod wedi rhoi diffiniad o gamgymeriad, yn hytrach na'i adael yn fwy penagored?

**Simon Thomas:** There is one specific thing that is noted on the face of the Bill, namely that this could be done if there is a mistake. There is a definition of a mistake which is very useful. It is not very common to have a definition of a mistake on the face of legislation. Can you explain why you have provided that definition of a mistake, rather than to leave it more open-ended?

[259] **David Melding:** We are not suggesting that there is anything peculiar to the Minister in charge. [*Laughter.*]

[260] **Carl Sargeant:** Chair, you cannot do right for doing wrong sometimes with wording. It is important to establish that where there are local complexities associated with boundary change—and we have seen this in the past where names for areas have been vague or incorrect in terms of the Welsh or English translation—this gives us the opportunity to rectify mistakes should they occur. However, I would not see this part of the Bill being in regular use. It is just that some people, sometimes, make errors and this Bill will be encompassing enough to ensure that we can get it right.

[261] **Mr Cuthbert:** I do not know how many Members present will have had the opportunity to look at community Orders or electoral Orders. They often have to list large numbers of place names and those have often been provided by a principal council to the commission or by the commission to us. The chances of there being a mistake or a translation error in those are very high. That is why there is this odd reference to a mistake in the legislation.

[262] **Simon Thomas:** Os ydym yn gwneud hyn ar sail camgymeriad neu fod angen dirymu Gorchymyn sydd eisoes yn bodoli, mae'r ffaith y gellir ei wneud gan Weinidogion, y comisiwn neu gan brif gyngor yn fy arwain i gwestiynu a oes perygl o ddryswch yma. A ydych chi'n hapus, Weinidog, fod y Bil, fel y saif, yn ddigon clir ynglŷn â phwy sy'n gyfrifol am y gwahanol lefelau o benderfyniad yma?

**Simon Thomas:** If we are doing this on the basis of a mistake or on the basis that there is a need to revoke an Order that already exists, the fact that it can be done by Ministers, the commission or a principal council leads me to question whether there is a risk of confusion here. Are you content, Minister, that the Bill, as it currently stands, is adequately clear as to who is responsible for these different levels of decisions?

[263] **Carl Sargeant:** My understanding, and I would hope that it is the understanding of others, is that the line of accountability is as follows: the body that makes the Order is the one that can revoke it. If that is not clear in the Bill, I would be happy to offer clarification.

[264] **Simon Thomas:** Nid wyf yn siŵr a ydyw, felly mae'n werth edrych. Dyna'r pwynt yr oeddwn am ei wneud.

**Simon Thomas:** I am not sure that it is, so it is worth looking. That is the point that I wanted to make.

[265] Gan droi at rywbeth a godwyd eisoes, sef y ffordd y gellir newid ffiniau'r awdurdodau heddlu drwy Orchymyn gan Ysgrifennydd Gwladol, yr ydych eisoes wedi trafod yr ohebiaeth rhyngoch chi a'r Ysgrifennydd Gwladol, neu ei diffyg ar un lefel, ond a fedrwch esbonio pam yr ydych wedi ceisio yn y Bil hwn i roi'r hawl i wneud y Gorchymyn hwnnw yn nwylo—rwy'n deall fod y pwerau yno eisoes, ond pam yr ydych yn ceisio drwy'r Bil i ail-osod hynny yn y modd hwnnw?

Turning to something that was raised earlier, namely the way in which the Secretary of State can change police authority boundaries by means of an Order, you have already discussed the correspondence between you and the Secretary of State, or the lack of it in one sense, but can you explain why you are seeking through this Bill to place the right to make such an Order in the hands of—I understand that the powers exist already, but why are you seeking to the Bill to re-assert that in this way?

[266] **Carl Sargeant:** The Member is absolutely right to reaffirm the issue that we are just continuing with the current provision of this. We believe that devolved and non-devolved functions apply here in terms of responsibility. We clearly have a fully devolved responsibility over local authority boundaries, and the Home Office currently has responsibility over the policing aspect and police boundaries within that.

[267] To date, no complications have been encountered, and no concerns have been raised by either party in moving this forward, and it has been enacted in certain areas already. I have no reason to seek to change the position until it is more fully understood in terms of the provision of powers for the National Assembly with regard to the Silk commission at the appropriate time. The current position, however, is that it rests with the Home Office, and legally, that is appropriate.

[268] **Simon Thomas:** You referred to Silk and possible changes in the devolution of police powers to Wales, but the specific issue here, and the question that I have, is this: can you think of a reason you have not had a more effusive response from the Home Office? Or have you? Have you had something welcoming the restatement of these powers and confirming that this is the correct way to proceed with the current Bill?

[269] **Carl Sargeant:** For what it is worth, Chair, my experience has been that the times when the UK Government may wish to engage with us are when there is a problem.

[270] **Simon Thomas:** Can I just add that, in my experience, it often leaves it until very late in the day?

[271] **Carl Sargeant:** That is also correct, Chair. As I said, we are not making any changes to the Bill; it is a continuation. We have given the Home Secretary the opportunity to make observations known, and this certainly comes as no surprise to the Home Secretary in any way. We can only assume that, by not having had any observation from her, she is content with the process, although it would be easy to argue the reverse, in that she may have lots of problems but has just not told us yet.

[272] **Simon Thomas:** One body that has concerns about this is the Local Government Boundary Commission for Wales. As you know, it gave evidence to the Communities, Equality and Local Government Committee, saying that the requirements of the Secretary of State to inspect the police areas may be different from the requirements for effective and convenient local government that you would require, Minister. Have you been able to reflect

on that evidence and think of whether you have the right powers in the Bill to deal with that problem?

[273] **Carl Sargeant:** I come back to the issue of accountability. While the Home Secretary has compliance over the police boundaries and limited involvement in determining them, compared with how you can reflect into Wales, I am very comfortable with the powers delegated to Welsh Ministers in determination of the boundaries of local authorities and the coterminosity—I do not see it being a problem. Also, I do not share the concern as much as the commission has alluded to in the evidence presented to the committee.

[274] **Simon Thomas:** Do you think that it has overstated its concerns?

[275] **Carl Sargeant:** I think that it is right to raise the issue, because it should not be a hidden issue and people should know the process involved. However, I do not share the concern that it referred to.

[276] **Suzy Davies:** Before we finish with Chapter 6, I have a question on section 48. Before that, however, I want to ask you a question on section 47, on watercourses. It may seem a very innocuous matter and I cannot foresee a situation where a ward would lose an entire community due to a change of watercourse. However, minor changes in watercourses do have effects on local authorities; for example, they stand to lose or gain a piece of ground for which they either lose or gain responsibility. Sometimes, watercourses change because of the actions of one local authority affecting a neighbouring local authority. Bearing in mind that there are potential controversies in such a situation, and that no-one likes to involve lawyers when there is no need for them, why do you think that any changes such as watercourse changes should not be subject to any procedure at all. Would it not be a good idea to use at least a negative procedure to flag up when watercourses are responsible for changes of boundary?

[277] **Carl Sargeant:** On watercourses, this is not a new procedure in that we currently use them as boundary markers. Furthermore, there is provision for undertaking a consultation process on such changes—they are not made on the whim of someone who wants to move a stream somewhere else. They do not do so without consultation or without having an impact on how the boundaries may change in the future. There is a full consultation process on that through the commission. I do not think that there is a high risk in this and it is concurrent with what happens now.

[278] **Suzy Davies:** You are satisfied that the local consultation that you talk about would identify any potential legal consequences.

[279] **Carl Sargeant:** I believe so. Are you referring to a challenge of land ownership and so on?

[280] **Suzy Davies:** Yes, and responsibility. If you have a bank of council houses whose gardens are being eaten into, a local authority would want to know about that and whether there are any hazards as a result of that.

[281] **Carl Sargeant:** Of course.

[282] **Suzy Davies:** Section 48 gives the power to Welsh Ministers to issue directions to the commission, but there is no procedure. As an opposition Member, I like to scrutinise what Welsh Ministers are up to, so why is there no procedure for that?

[283] **Carl Sargeant:** Again, that is the current position, so we are mirroring the provision that is already in place.

[284] **Suzy Davies:** Could you improve on that?

[285] **Carl Sargeant:** I am certainly in favour of more intense scrutiny; that is absolutely right. However, that should be done only where that is appropriate and at appropriate levels. I think that we have got that balance right in taking that forward. I do not see the need to increase the delegation around that in this instance.

[286] **Suzy Davies:** I will take you, therefore, to Part 4 and give you some compare-and-contrast situations. This is where the Welsh Ministers have the power to direct the commission to review the membership of certain qualifying bodies. I remember a situation in this Assembly not so long ago when people, through lack of information, ended up with problems over disqualification. Can you not see a mirroring or a potential situation here where people might wonder whether they would or would not be a qualifying member and whether that might cause problems for individuals purely because of a lack of knowledge? If this were a move that you wanted to take forward, would there not be an argument for doing so at least through a negative procedure simply for the sake of raising awareness?

[287] **Carl Sargeant:** I do not share that view. The information that the member raised was pretty evident to most people. It was not hidden information.

[288] **Suzy Davies:** Are you suggesting that this would be then?

[289] **Carl Sargeant:** No, I am not; that is not the case. The fact is that, for whatever reason, individuals chose not to take the advice outlined in the information or genuinely did not see it. That has been well documented. The issue for me on this is whether procedurally we should change the direction that we have applied up until now. I do not believe that we should do so because it has been appropriate until now, and it is appropriate for the future, too.

3.30 p.m.

[290] **Suzy Davies:** So, has there been any suggestion in the past that people were not able to find out who their qualifying members would have been or, if the Welsh Government—or whoever it was—had suggested new members as being appropriate qualifying members, that people did not know that such a change had taken place?

[291] **Carl Sargeant:** That argument has been used in recent events at the National Assembly. It is about how far you take it. The documentation and evidence are in the public domain; it is up to people whether they wish to access them. As long as people are aware of where this information is held, that is appropriate.

[292] **Suzy Davies:** Therefore, under what circumstances would you consider asking for reviews of membership, and what sort of new members would you be thinking of? Are you able to tell us?

[293] **Carl Sargeant:** It goes back to a similar part of the Bill about what the future may or may not hold. You had John Griffiths in front of the committee earlier talking about a new body that is being set up. The organisation has great skills, and it is able to look at the broader public sector and not just the local government family. I am not suggesting this for a minute, but it could be an opportunity to look at the membership of health boards, fire authorities or any other body within the public domain, or at new bodies that may be in the future. This provides the opportunity to do that and to scrutinise and outline the correct procedures to take it forward.

[294] **Suzy Davies:** Would it include the ability to remove a body of members as well?

[295] **Carl Sargeant:** I believe so, or to recommend a structure.

[296] **Simon Thomas:** Just to understand the competence of the Bill, do national park authorities count as local authorities under the Bill, or do they count as these public bodies that we have just been talking about?

[297] **Carl Sargeant:** They would be included.

[298] **Simon Thomas:** So, does what you have just talked about apply to national park authorities in the same way?

[299] **Carl Sargeant:** Yes, anywhere where there are local authority members.

[300] **Simon Thomas:** Thank you.

[301] **Eluned Parrott:** I would like to move on to Part 5, which makes miscellaneous changes—it is the ‘any other business’ section. I note that section 53 relates to community councils and requires them to publish information electronically and to have regard to guidance issued by the Welsh Ministers. The guidance issued by Welsh Ministers under that section is not subject to any procedure. Can you explain why that is the case?

[302] **Carl Sargeant:** Guidance is not subject to Assembly procedures; that would be a new procedure. The Welsh Government, more often than not, has a consultation period of at least 12 weeks. We believe that consultation on a draft would be appropriate. I am surprised at the amount of interest that the publication of town and community websites has created. Of the whole Bill, this is the bit that many have focused on, for some reason. It is a good question, but I believe that it is appropriate to continue with the way that we conduct consultation and guidance together.

[303] **Eluned Parrott:** Thank you. Sections 58 to 62 make minor changes to the arrangements of the Independent Remuneration Panel for Wales, and section 59 includes a power to vary, by Order, the authorities that come within the remit of this panel. What is the intention behind the provision to do this, and can you give us some examples of when you might seek to vary the authorities that come within that remit?

[304] **Carl Sargeant:** This mirrors the commission element of new bodies that may be set up and bodies that are not included already. It is something that I have given some thought to. It is an interesting debate, and I know that the Member has raised questions, too, about the chief executive’s pay et cetera. There are questions around broader public sector funding. The panel may have the skill base to look more closely at how that works. That is why we are introducing this, but we do not have a list of organisations, such as we had in response to the last question, with regard to who I would be looking to for them to comply. However, it is about the ability for them to do so within the Bill structure.

[305] **Eluned Parrott:** So, senior executive pay might come under that, but you do not currently have a list of other existing bodies that you may seek to bring into the remit.

[306] **Carl Sargeant:** I am not sure about the first part of your question with regard to whether the senior salary element would come into this, but there are similar options that could. It is about allowing the remuneration panel to have the ability to look at organisations specified, and that might be part of what is considered, but it currently is not, because there is not a list of people that I am considering for the Bill.

[307] **Simon Thomas:** O ran adran 63, sydd yn caniatáu sefydlu pwyllgorau safonau ar y cyd rhwng awdurdodau ac sy'n rhoi grym i chi wneud rheoliadau ynghylch swyddogaethau'r pwyllgorau hyn, a allwch chi gadarnhau, neu egluro, i'r pwyllgor, a oes gennych rym yn yr adran hon i ehangu neu newid swyddogaethau'r pwyllgorau safonau fel ag y maent yn awr, wrth symud at y posibilrwydd o sefydlu rhai ar y cyd?

**Simon Thomas:** Turning to section 63, which permits the establishment of joint standards committees between authorities and gives you the powers to make regulations on the functions of these committees, can you confirm or explain to the committee whether you have powers in this section to expand or change the functions of standards committees, as you move to the possibility of having joint committees?

[308] **Carl Sargeant:** The function for standards committees are in the 2000 Act, in terms of individual committees. It is intended for these functions to apply equally to the joint standards committees, on creation.

[309] **Simon Thomas:** Felly, a fydd ganddynt union yr un swyddogaethau? I gael bod yn glir, nid ydych chi'n chwilio am y grym a'r pŵer i newid y swyddogaethau.

**Simon Thomas:** Therefore, will they have exactly the same functions? To clarify, you are not seeking powers to change the functions.

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

[311] **Simon Thomas:** Gofynnwyd i chi yn y pwyllgor llywodraeth leol, a fyddech yn ystyried newid y ffordd y mae rheoliadau ynghylch y pwyllgorau hyn yn cael eu ffurfio, o'r weithdrefn negyddol i'r un gadarnhaol. A ydych chi wedi cael amser i ystyried y cais hwnnw? A ydych chi wedi dod i benderfyniad o gwbl ynghylch newid y ffordd y mae'r rheoliadau'n cael eu gwneud?

**Simon Thomas:** You were asked in the local government committee whether you would consider changing the way the regulations on these committees are made from the negative procedure to the affirmative. Have you had time to consider that request? Have you come to any decision on changing the procedure for the regulations?

[312] **Carl Sargeant:** I listened very carefully, and I take advice from committees. I asked the team to look at this very closely. I have considered that position, but I have not made any changes to that regulation. I am content with the negative procedure. It is appropriate, and it falls into the same procedure as a mirror procedure, building on the issue of creating joint standards committees. So, I did not fully agree with the argument that was presented by Peter at that time.

[313] **Simon Thomas:** So, you did consider the request but decided to decline.

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

[315] **Mick Antoniw:** With regard to section 64, which has fairly open-ended ancillary provisions with no procedure, what do you consider the intentions there might be? Why is it so open-ended?

[316] **Carl Sargeant:** Provisionally, it is a tidying mechanism—and, again, it is not unique to this Bill—for when there are provisions that could get in the way of enacting a Bill. We cannot specify the particular elements because we do not know what they may be, but there are examples already in consequential amendments and ancillary provisions in the Local Government (Wales) Measure 2009 that was passed in this Assembly and the Localism Act 2011. So, we are just mirroring a provision that gives us a fall-back position, subject to our ability to enact this Bill, giving us a provision to smooth that passage.

[317] **David Melding:** Suzy, do you have a final question, if you think that it is worth asking?

[318] **Suzy Davies:** Yes, but I was not going to ask it actually.

[319] **David Melding:** That is fine, if you do not want to.

[320] That concludes that item 6, Minister. We thank you for your presence this afternoon. Unless you want to add anything, we will come to the end of the session.

[321] **Carl Sargeant:** I am grateful for the opportunity to come to committee. If there is anything that you need to clarify, I would be more than happy to help by writing to the committee.

[322] **David Melding:** Thank you, Minister. You are also with us for item 7, but you may want to avail yourself of a short break. Your next officials, when they are ready, can join you.

3.41 p.m.

### **Ymchwiliad Byr—Rheoliadau Cynlluniau Gostyngiadau'r Dreth Gyngor Short Inquiry—Council Tax Reduction Scheme Regulations**

[323] **David Melding:** I remind Members that our inquiry focuses on, but is not necessarily limited to, why the Welsh Government was of the opinion that it could not lay the council tax regulations scheme before it had received the financial transfer from the Treasury, which was eventually published in the Chancellor's autumn statement on 5 December 2012; the extent and nature of the communications that took place between the Welsh Government, the Treasury and the Wales Office in order to resolve the issue; and, what lessons may be drawn from this episode.

[324] Again, I welcome the Minister, Carl Sargeant. Carl, do your new officials want to introduce themselves for this session?

[325] **Ms Barry:** I am Sharon Barry from Legal Services.

[326] **Ms Carter:** I am Debra Carter, head of local government, finance and performance.

[327] **David Melding:** I remind everyone that these proceedings will be conducted in Welsh and English. If you require translation, it is available on channel 1. Should you require amplification, it is on channel 0.

[328] Minister, when did you first become aware of the UK Government's plans regarding council tax support and what you may have wanted to do in particular in Wales?

[329] **Carl Sargeant:** Thank you for the opportunity to present to the committee for your inquiry. We, as well as the broader public, were alerted to it in the comprehensive spending review in 2010. The UK Government announced its intention to abolish council tax benefit and to pass that responsibility for providing assistance with council tax on to local authorities in England, the Welsh Government and the Scottish Government, accompanied by a 10% indicative reduction in funding at that time. It was done, at that point, without any prior warning or engagement with the Welsh Government.

[330] It is certainly worth noting the scale of challenge that we faced. Council tax benefit was not being devolved to Wales, or any other organisation—it was being abolished. The Welsh Government had to take up the responsibility of putting a new scheme in place, as did

other organisations.

[331] **David Melding:** Can you describe the sort of discussions that you had with the UK Government during those early stages, when it became apparent that you would require different mechanisms to pursue a different policy potentially?

[332] **Carl Sargeant:** I can tell you in quite some detail, if that would be helpful; tell me when you have had enough detail. Following the announcement in 2010, I wrote to Iain Duncan Smith, shortly after his announcement, asking for an urgent meeting with him to discuss the proposed change in policy and to seek the implications for Wales. I did not receive a response to that letter.

3.45 p.m.

[333] However, when the UK Government introduced the Welfare Reform Bill in Parliament on 16 February 2011, it became apparent that it was pressing ahead with its plans to abolish council tax benefit. At this time, again despite requests from the Welsh Government, I did not receive any details of the proposals to abolish council tax benefit, or the impact on Wales and the practicalities that had to be undertaken to continue a system. It was not until the publication of the Department for Communities and Local Government's consultation at the beginning of August 2011, and its plans to localise council tax support in England, that the full extent of the welfare reform started to become a little clearer.

[334] As I said earlier, it was not about council tax benefit being devolved, but about it being abolished and creating a new scheme. The relevant powers were not transferred to the Welsh Government and we have had to work out what could be achieved within the timescale of the existing council tax system, and within the Assembly's legislative competence, which explicitly excludes social security benefits. So, there was also a competence challenge to face. In short, we had to design a scheme from scratch and replace the council tax benefit scheme that had been developed and amended over a 20-year period. We had to do that within an 18-month timescale in Wales.

[335] **Mick Antoniw:** I have a couple of questions, Minister. The original Local Government Finance Bill did not include any mention of Wales. It was a rather strange position. Is there any background that we ought to know as to why Wales was specifically excluded and why it then became necessary for us to be included? What would the consequence have been if we had not been included?

[336] **Carl Sargeant:** We were subject to a lack of early dialogue and information coming from Westminster; we were just not included in many of the decisions taking place there. On the decision to abolish the scheme for the UK and to pass the responsibility to local authorities in England, the Welsh Government and the Scottish Government, prior to the introduction of the Local Government Finance Bill on 19 December, my officials were not made aware of the UK's intentions in the Bill, which included provisions enabling the replacement of the scheme only in England. Therefore, the Welsh Government was not given the opportunity to ask for the powers to be included in it. Although, following on from that, we had discussions with Eric Pickles at the time about securing time, which was more difficult than we had considered.

[337] **Mick Antoniw:** You had a number of discussions with Iain Duncan Smith and Lord Freud. Did those discussions reveal any explanation or greater understanding as to why Wales was so specifically excluded from the legislation? Are you saying that it was an oversight, or an error, or is there some reason that we were omitted?

[338] **Carl Sargeant:** I cannot offer reasons as to why the UK Government did not engage

with us on the proposals. This is what I believe happened: it was a case of the UK Government saying, 'We are going to stop a scheme and we have a bundle of money and you, as the Welsh Government, the local authorities in England and the Scottish Government, can do with that consequential as you wish'. There was no guidance running alongside that.

[339] I went to see Iain Duncan Smith and Lord Freud, as you quite rightly said; I have been twice, maybe three times to see them. Leighton Andrews has also been to see them. They were very welcoming, but the discussion was predominantly about the reduction in the amount of money that we would be getting and when we would have clarity around that. Nothing other than that was offered. Despite my visits to London and despite the Minister for Finance writing to the Treasury, we still could not get clarity from the UK Government on these issues.

[340] **Mick Antoniw:** Does it highlight the fact, perhaps, that within certain departments there is a lack of understanding of the devolution process? The devolution issues are arising as almost last-minute add-ons to some of the proposals and legislation.

[341] **Carl Sargeant:** I think that you are right to raise that. I also think that it is about the level of competence that the UK Government understands as being the competence level of devolved administrations. As I said earlier on the issue around the social security benefit element of this, we do not have competence over that. Therefore, we had to consider a scheme that could come across to Wales in the context of our legislative competence, and whether that would be a grant or a scheme such as the one that we have brought forward now. However, we do not have competence in relation to benefits, as the UK Government either missed or chose to miss.

[342] **Mick Antoniw:** If we just left the situation as it was, what would have happened?

[343] **Carl Sargeant:** At what point do you ask that question?

[344] **Mick Antoniw:** I suppose that I ask that question because, since there is no mention of Wales in the Local Government Finance Bill, and if we had just left that situation as it was, we would have ended up with a complete constitutional lacuna with the UK Government wanting to do something, but us not having the power to do it. There would have been an impact of some sort, would there not?

[345] **Carl Sargeant:** Technically, yes, but there would have been a transfer of funding across from the UK to Wales, and then, from the consequential, we would have had to develop a grant scheme of some sort to transfer that money out. It would have been even more difficult, I expect.

[346] **Mick Antoniw:** There is probably no advantage to speculate, is there?

[347] **Carl Sargeant:** Let us hope not.

[348] **David Melding:** Did you just want to clarify something, Simon?

[349] **Simon Thomas:** Yes. Before we get into a little more detail about more recent events, I just want to reflect on that period. In general, Minister, things were being discussed in and among the English county councils about how this might be panning out; it was being done very tentatively, but there were discussions. There was also some consultation taking place in Wales over the summer with specific groups and the local authorities were asking about a possible scheme. At that stage, why did you not think that it would be appropriate to bring a debate or some kind of procedure to the Assembly by which more light could have been shone at an earlier stage on what was happening between Westminster and Cardiff bay,

and on some of the difficulties that were happening? We might have questions on this, but when we came to the start of December, I think that many Members were very surprised at the difficulties that had been experienced. On reflection, do you think that we should have had an earlier attempt to look at some of these issues?

[350] **Carl Sargeant:** Politics aside in terms of some of the debates that have taken place in the Chamber, I have tried to be as open and transparent with regard to the process that has taken place with the UK Government. I have made statements in the Chamber, and have certainly had many questions throughout the year in terms of where we are. I have held nothing back on the issue around difficult processes that would have indicated that there was anything new to offer to the Assembly beyond the fact that we were having extreme difficulty in getting the numbers from the UK. That was of no surprise and it was known pre December. Certainly, the issue around the discussions that we have been having was made clear to Members through a statement to the Chamber. In terms of whether a debate would have helped, it may have been politically savvy to do that, but I think that, professionally, we believed that we were acting appropriately through all the process of taking this forward.

[351] **David Melding:** Before we relieve the preliminaries, Eluned, did you wish to add something?

[352] **Eluned Parrott:** I have just one point. You said, Minister, that you were concerned that there was no guidance from Westminster as to how to develop this particular area. Do you normally receive guidance on issues along these lines, and would you have welcomed it?

[353] **Carl Sargeant:** No, we would not. You are absolutely right about the guidance. Again, we were clear from the start. It was announced in the comprehensive spending review that this was going to happen and that council tax benefit would be abolished, at which point I was clear in saying, 'We don't want to be part of this. We don't want this function'. I still do not want this function, but we have it. I think that it is appropriate for the record, perhaps, to say that, in a discussion with senior Ministers at Westminster, it was suggested to me, 'We are removing the risk from the Westminster Government and we are passporting it through to you.' I was extremely concerned about that, and I said, 'I don't want your risk or the reduced amount of money. This is a duty of the UK', but it was a case of, 'Well, this is what's happening. Off you go and do what you wish', knowing that there was going to be a problem later on down the line in terms of funding.

[354] **David Melding:** Suzy Davies will take us on to the next set of questions.

[355] **Suzy Davies:** You got in touch with this committee in November last year to tell us that you had concerns about the timing of the scrutiny of the regulations. You pointed out that the Local Government Finance Bill was due to receive Royal Assent in the summer of last year, but it did not come until three or four months later. What effect did that have on your drafting of secondary legislation?

[356] **Carl Sargeant:** That was just one element of the difficulties that we were having in drafting the legislation. The regulations that we brought forward were based on the amount of funding that we were due to have. We were due to have that in the autumn statement, but the autumn statement, as was clear to all, came in December—a new definition of the seasons. However, that was the case, and it was extremely difficult to fit those numbers into the regulations. Again, the Local Government Finance Bill did not receive Royal Assent until 1 November, which put us back. With regard to the drafting of the regulations at that point, even if we had had those numbers earlier, I could not have delivered the regulations until the finance Bill had received Royal Assent, so, even if the statement had happened before then, 1 November would have been the earliest opportunity that I would have had to have started that process.

[357] **Suzy Davies:** Did you start drafting the regulations back in the summer, then?

[358] **Carl Sargeant:** We have been working on the regulations for an awful long time and, again, we are not in isolation. Simon Thomas alluded earlier to the discussions that we have been having with local authorities and other interested groups about shaping the way forward. We also did a scoping paper in terms of target groups and who would be negatively affected by such a process, and we hope that it is recognised and reflected in the scheme that we have tried to protect the most vulnerable in that process, albeit we have moved on since that day.

[359] **David Melding:** I am sorry if I am cutting across anyone, but you were already consulting on drafts, were you not, before the Royal Assent?

[360] **Carl Sargeant:** Yes, we were.

[361] **David Melding:** So, these regulations were drafted.

[362] **Carl Sargeant:** They did not have any legal standing, Chair.

[363] **David Melding:** That is true, but they were being consulted on.

[364] **Carl Sargeant:** Well, they did—yes. They did or they did not, Chair.

[365] **Suzy Davies:** Was the only thing that was missing at that stage the figures? I am trying to work out why the delay in Royal Assent was particularly important.

[366] **Carl Sargeant:** The Royal Assent was really important, because, as I said to the Chair, it determined the legal position of the scheme. If that had not happened, there would not have been a process for us to take the scheme forward. That was—

[367] **Suzy Davies:** But you had started, albeit informally.

[368] **Carl Sargeant:** Of course, but it is about appropriateness, is it not? It is a difficult call. If you wish Ministers to start issuing draft documents that may or may not come into force—just drafting these was an extremely challenging process and the closure of that was based upon whether the Local Government Finance Bill received Royal Assent or not. On the basis of that, we were able to start working up from the draft to a more final document that we could offer to the committee or Members who would wish to see it.

[369] **Suzy Davies:** Can you explain to me then when the English regulations came out, which obviously suffered from the delay in the Royal Assent as well?

[370] **Carl Sargeant:** I will ask Sharon to answer on the time element, but I will give you a fuller answer.

4.00 p.m.

[371] **Ms Barry:** One of the major issues in terms of the drafting was the welfare reform benefit changes and, in particular, the introduction of matters such as universal credit and personal independence payments. Effectively, the regulations set out the various types of income that people receive that must be taken into account when determining levels of income, as opposed to what is known as ‘an applicable amount’—they are all connected, in effect. The schemes are substantively based on the same provisions contained in the existing council tax benefit regulations, which are excessively detailed also. However, previously, the only qualifying benefits that have really mattered are jobseeker’s allowance, income support,

et cetera, and they have to be replicated, because they will be carried forward for a time. In addition, however, you will have new benefits being introduced, and information about those new benefits was not finalised and produced to us until mid-November.

[372] **Suzy Davies:** So, are you saying that England had that information more quickly than we had it in Wales?

[373] **Ms Barry:** No; England actually had it about the same time.

[374] **Suzy Davies:** So, why were the regulations not out at the same time?

[375] **Ms Barry:** The English regulations were not made until the last part of November either. That is, the final English regulations for the reduction scheme were laid in November as well.

[376] **Suzy Davies:** So, because the English regulations were late as well, that in itself did not contribute to the Welsh regulations being late, did it?

[377] **Carl Sargeant:** No. To be perfectly honest with you, what England does with its regulations is of little significance to me. The issue for me is how we establish Welsh regulations that work for Wales.

[378] **Suzy Davies:** Okay. So, there was no question at all that you were waiting to see what was in the English regulations.

[379] **Car Sargeant:** Absolutely none.

[380] **Suzy Davies:** That is very clear. Thank you, Minister.

[381] **Simon Thomas:** Specifically, I am trying to understand constitutionally why English regulations could be made—it was all due to the Royal Assent, I accept that—before the funding settlement was known in the autumn statement, but you told the Assembly that you could not make the regulations in Wales until you knew the funding settlement. In fact, you brought them forward on the day of the autumn statement. Legally and constitutionally, how can it be that one country can go that way and another can go the other?

[382] **Carl Sargeant:** It was the same for Scotland, too, in that element, if I may offer that example. The regulations are not the same in that process. There are similarities, but they are very different schemes. We based our scheme on ensuring that we fully understand and prescribe the number within the regulations for funding. We were only able to do that once we had sight of the final number, which came through in the autumn statement at 4.15 p.m., on the last day of the Assembly term.

[383] In England, the scheme is very different, and Scotland is still amending their regulations now—it is the other way around, in effect. However, in terms of the technical aspect of that, I will ask my legal team to give you the detail, if that would be helpful.

[384] **Simon Thomas:** I think that Suzy has something further to ask about this.

[385] **Suzy Davies:** Yes. My remaining questions are on this area, really. It is still about trying to get to the bottom of why everybody heard the details of the spending review at the same time, they knew about the Local Government Finance Bill at the same time, and they knew about the Royal Assent at the same time, and yet we have Scotland, England and Wales coming out with their regulations at different times. We have a situation in which I think you said in a letter to us that—

[386] **David Melding:** It says:

[387] ‘To assist in developing the technical aspects of the scheme, such as the method to be adopted in calculating income, my officials have had to have regard to the draft Regulations which England are preparing, as they have the benefit of the input of colleagues in DWP.’

[388] So, it seems to contradict some of the statements.

[389] **Suzy Davies:** Thank you, Chair. That is my question, basically.

[390] **Carl Sargeant:** I said in response to Simon Thomas earlier that there were similarities to the English regulations, but, predominantly, there have been policy changes in England, Scotland and Wales in terms of their determinations. Let me give you an example, if I may, Chair, from England. The default scheme that would have come into place, subject to the non-adoption of a scheme, would indicate that a local authority in Wales would have to provide the full 100% of council tax benefit, despite our getting 90% of the funding for that from the UK. In England, if a new scheme had not been adopted, they would have had to find 100%. In Scotland, there was a pre-determined agreement between the Scottish Government and local government in Scotland on, for want of a better word, back-filling whatever the reduction would be. I was not in a position to do that, and that is why there are three definitive differences in the scheme in terms of the policy agenda.

[391] **David Melding:** It is still with you, Suzy, unless we are moving on.

[392] **Suzy Davies:** I just wanted to ask this question: I take the point that you consider that it was not possible to bring forward your final regulations without the figures, but, obviously, a set of regulations was published without those figures—they were floating around just a couple of days before. Could those not have been brought to the Assembly a little earlier, with the proviso that the figures still had to be filled in?

[393] **Carl Sargeant:** We are talking days here, are we not? We are talking days.

[394] **Suzy Davies:** Are we?

[395] **Carl Sargeant:** Yes, we are—purely days. The fact of the matter is that I had also asked my team to give technical briefings to Members of all the opposition parties on the detail of the draft documents, so, when it was suggested that those parties had never seen them before, that was not strictly accurate in terms of the whole discussion. Members of parties had seen the draft regulations. The only thing that was absent was the numbers, and that was very clearly suggested to Members at that point. Could we have technically brought forward incomplete regulations? I would have to seek guidance from the committee—

[396] **David Melding:** Well, you could and it is often done, Minister. That is the whole point of this inquiry.

[397] **Carl Sargeant:** On the issue of the detail in terms of the numbers, we were not able to quantify them, because we just did not have them.

[398] **Suzy Davies:** Do you accept that, in principle, a debate could have been brought forward sooner, without the figures, but with the kind of benefits that are referred on the face of the regulations, to discuss the principles by which those regulations were drawn up?

[399] **Carl Sargeant:** We can always look back at procedures and how we deal with these issues. I believed at the time that I brought forward the appropriate processes to engage with

all the political parties of the Assembly in order for them to understand fully what the regulations might or might not be. In that process, I also explained to them the difficulty with the timeline and what the regulations contained at the appropriate time.

[400] **Suzy Davies:** So, you thought that you did enough.

[401] **Carl Sargeant:** At the time, yes, I did.

[402] **Simon Thomas:** I droi at rai o'r pethau a ddigwyddodd o gwmpas 5 Rhagfyr a'r broses a aethom drwyddi, rydych wedi sôn wrth ymateb i Suzy Davies bod fersiwn ddrafft o'r rheoliadau hyn wedi cael ei dangos i'r pleidiau eraill, ac, yn sicr, rwy'n meddwl bod rhyw fersiwn wedi ei ddosbarthu yr wythnos flaenorol i bob Aelod, os rwy'n cofio'n iawn. Pryd wnaethoch chi benderfynu nad oedd yn briodol i gael cymal machlud yn y rheoliadau?

**Simon Thomas:** Turning to some of the events that happened around 5 December and the process that we went through, you have mentioned in response to Suzy Davies that a draft version of these regulations was shown to other parties, and, certainly, I think that some version was distributed to every Member the previous week, if memory serves me. When did you decide that it was not appropriate to have a sunset clause in the regulations?

[403] **Carl Sargeant:** If I can couch that question in slightly different terms, when did I find it appropriate to add a sunset clause? When—

[404] **Simon Thomas:** I know when you found it appropriate to add one; I was asking when you found it appropriate not to have one. Was it suggested to you in advance of 5 December?

[405] **Carl Sargeant:** Around that time—that day, maybe. Around that time. However, the issue is that I brought forward the regulations as they were on the principle that I did not think that at the time that a sunset clause was required, or I would not have done that. The reason for that is partly because, as we are already seeing, the consequences of the sunset clause are that we have to bring it back to the Assembly every time. However, I accept that, to gain support from the opposition parties, the sunset clause was added.

[406] **Simon Thomas:** There is another aspect to this, Minister, if I may suggest it, which is that when you wrote to this committee saying that you did not have time to prepare these regulations bilingually, one of the things that you prayed in aid was the fact that this was being done at a very late stage in the day. We can take a judgement as to how late that was, but the committee's view in its reply was very strong that we thought that Welsh legislation should be done bilingually. The sunset clause also benefits the preparation of legislation bilingually in the next year or so, does it not?

[407] **Carl Sargeant:** Yes, it does. On the issue of translating such a significant document that was being drafted at that stage, we have an indication that to translate this document would take around 26 weeks.

[408] **Ms Barry:** It is expected to be 20 weeks' translation work on an average of 92,000 words for one set of regulations, and roughly four to six weeks of Welsh-checking. There is some leeway to that, but that is the broad guidance that has been issued to us. To have laid Welsh regulations in November, they would have had to have been available for translation in May when the local government Bill was yet to be amended.

[409] **Simon Thomas:** Is that similar to the timescale that you have for next year as well?

[410] **Ms Barry:** Yes.

[411] **Simon Thomas:** Okay. To come back to your earlier question to me, when did you find it appropriate to include the sunset clause?

[412] **Carl Sargeant:** I made agreement with the parties seeking to support the Bill, subject to a sunset clause.

[413] **Simon Thomas:** So, it was not a constitutional decision but a political decision?

[414] **Carl Sargeant:** Yes.

[415] **Simon Thomas:** They often are. Turning to 5 December, the Government asked us to suspend Standing Orders in order to pass the regulations on the day. We did not see the final regulations until about 20 minutes before that. We had seen a draft the week before, but not the final regulations until about 20 minutes before. I am one of the Members who could not support your request on that occasion, as I felt it to be inappropriate. However, it emerged that you did not succeed in suspending Standing Orders; the Assembly had to be recalled, and they were passed with the agreement on the sunset clause, as we have just discussed. However, you came back in January and redid them all over again, which was very generous because it now has a better deal for the people of Wales. Therefore, why was it so essential to take that unusual step of suspending Standing Orders to pass regulations, when the final regulations that we passed were those that were passed in January, which have been widely welcomed and which local authorities are able to deliver, albeit tightly?

[416] **Carl Sargeant:** That is partly the reason. The last part of your question was about the ability of local government to consult on the regulations that were being laid. That is why we had to have regulations in place before Christmas in order to start that consultation process. If we had predetermined a decision to introduce new regulations in January, local government would not have had the time to consult on the regulations that were in place, and would therefore have fallen into the default scheme that commenced on 31 January. So, it was about following procedure for local authorities to be able to deliver on the consultation.

[417] **Simon Thomas:** Is it not the usual way to make regulations or any legislation to hit the consultation window and start consulting on a version and then suddenly to say 'This is the updated version'. That is not a very good way of making legislation, is it?

[418] **Carl Sargeant:** If you consider the whole process from removing the function that the UK Government is currently delivering to issuing a directive to any administration to say 'Now you'll be doing this' with no structure in place and no understanding of finances, you will see that what we have done has been incredibly challenging, yet we have still delivered a scheme that I hope will be welcomed by many residents in Wales. It would be fair to say that this scheme is more substantially supported by any Government in the UK in terms of the additional finances that we have put in.

[419] **Simon Thomas:** Let us stick to your decisions. When did the Government decide to increase the support from 90% to 100%? Was it a Cabinet decision?

4.15 p.m.

[420] **Carl Sargeant:** It was a decision that was ratified by colleagues.

[421] **Simon Thomas:** When was that?

[422] **Carl Sargeant:** It was on 15 January, I think. I do not have the exact date, but it was during the week prior to the decision to lay them—

[423] **Simon Thomas:** For the third time?

[424] **Carl Sargeant:** The final time.

[425] **Simon Thomas:** And the final time; yes.

[426] **Carl Sargeant:** Yes, it was the last set of regulations.

[427] **Simon Thomas:** So, it was very much after the autumn statement, then.

[428] **Carl Sargeant:** Yes.

[429] **Simon Thomas:** You said in that statement that these funds and the increase in support were a result of careful financial management and the prudent use of resources, which is always good to hear. Why was it not possible to identify that in the Government's finance systems in the week before Christmas when we had that opportunity to pass regulations?

[430] **Carl Sargeant:** The week before Christmas?

[431] **Simon Thomas:** Yes. The Government now has wonderful financial systems and I am trying to understand what new financial information identified that such a significant sum of money was going to become available not only from your department, as I understand it, but from other Government departments?

[432] **Carl Sargeant:** We measured the risks—and you will be very aware of pressures that start to be released towards the end of the year, such as risks related to a flu pandemic and so on—and some of the risk related to such events starts to pass. Changes to some of the welfare system benefits, which had been announced at the beginning of January, were also coming across. For example, issues that the Joseph Rowntree Foundation and Citizens Advice had alluded to. They were all adding additional pressure to the system and we measured those pressures versus the risk and what available finances were left among the Welsh Government's finances.

[433] **Simon Thomas:** In effect, did it become a higher political priority?

[434] **Carl Sargeant:** It was always a high political priority.

[435] **Simon Thomas:** Yes, but did it become higher?

[436] **Carl Sargeant:** It was just a matter of affordability. It was not the case that I did not want to finance this fully in the beginning; the Welsh Government should not have been in that position because I still believe that this is a UK Government function. However, given the financial constraints on my budget at that time, I was unable to comply with increasing the funding in any way, as I hope I have been able to explain. The risk versus increased challenges in the welfare system and the availability of finance from other departments enabled us to finance that after Christmas.

[437] **Simon Thomas:** Taking all of this together, the fact that there are these uncertainties in the welfare system, which you have talked about, and that you could only identify this money in this financial year and not necessarily in future financial years, as well as the fact that the regulations will need to be recast bilingually because, I would imagine, that would certainly be the wish of this committee, does it not now look like the sunset clause would have been an appropriate way to make such regulations?

[438] **Carl Sargeant:** Is it the view of the committee that I, as Minister, had no intention to review the scheme moving forward? I had already said, before any discussion on a sunset clause, that this would be subject to a review. I have made many public statements—and I may be wrong about this, so I will try to choose my words carefully—in terms of the detail that I have given to the Assembly; I have said that, when moving forward, we would look at the target groups. We still do not fully understand the implications of welfare reform. I was working with third-party groups, looking at who should and should not be eligible for council tax benefit. That was always the case and I would have brought that back to the regulations. However, to give some security to the parties that have supported the Bill, it is clear that the sunset clause is the belt-and-braces element to this process.

[439] **David Melding:** I am finding it very difficult to understand how you had to wait until the autumn statement on 5 December to get the final figures, or what you thought would be the final figures. You knew that you would get 90% of the scheme, but that there would be a 10% reduction. What were your officials telling you the spread of risk was when the figures actually came through and you knew what 90% was? They must have given you a range, in terms of how difficult it was to estimate the sum that you were going to get.

[440] **Carl Sargeant:** Of course, and if I may clarify your question, because parts of it were not strictly accurate, in terms of my understanding of the amount of funding available for the scheme—

[441] **David Melding:** You made a statement to the Assembly saying that you were going to get 90%. I think that I am right in saying that. Or, you may have said that there would be a 10% reduction. You may have put it that way.

[442] **Carl Sargeant:** I was following on from the statement made by the UK Government that there was due to be a 10% reduction to the scheme, and I concur with that process. However, in the process of discussions with Lord Freud and my team, the figures that were given to us, as the Welsh Government, was a more than 10% reduction. In fact, it was around a 13% reduction, in terms of the indicative figures.

[443] **David Melding:** Could you tell us how much that was?

[444] **Carl Sargeant:** What was the number?

[445] **Ms Carter:** We were given an indicative figure in May 2012 of £214 million, as the transfer. The issue with whether the percentage is 90%, or some other percentage, is that the 10% cut was not described in terms of what was being cut by 10%. So, we were looking at current expenditure figures, and compared to how things were currently panning out for 2012-13, the figure of £214 million was substantially more than a 10% cut. So, that was the focus of the discussions at that point: the basis for that £214 million figure, and when we would know the final figures. It took some time, but we established that the £214 million was based on a forecast of expected expenditure in 2013-14, and those forecasts were due to be updated on the basis of the Office for Budget Responsibility figures, feeding into the autumn statement. So, that is why the figures were uncertain. It is probably worth pointing out that there were estimates prior to that. In the previous autumn statement, the figure had been £220 million, and in the initial indications it was £225 million. So, there was a great deal of fluctuation around those numbers.

[446] **David Melding:** On the best data you had, what would a 10% reduction have been, because you have already passed a judgment that £214 million was substantially more than 10%, so, presumably, you know, roughly, what a 10% reduction would have been?

[447] **Carl Sargeant:** We had a figure in mind, and it was around the £220 million or £225

million figure.

[448] **David Melding:** Which would have reduced from what? Would that have been a £20 million or a £30 million reduction?

[449] **Ms Carter:** Working on an estimate for this year's expenditure of around £244 million or £245 million, the £220 million, which is now being provided, would be the 10% shortfall. However, that does not take account of what might happen subsequently.

[450] **Carl Sargeant:** That is a really important point. The discussion with Lord Freud was about—and I know that the committee recognises this—the fact that this went from being a demand-led budget to a fixed budget. We are working on the assumption that the fixed figure will be accurate on the demand of claimant. That may be completely wrong, and we may get many more claimants. The figures that we contested with the UK Government suggest that, with universal benefit, there will be a reduction in council-tax claimants. Year on year, for the past five years, there has been a marked increase of take-up; this year, for some reason, there is an indicator that would suggest that that will not happen. That is completely worrying.

[451] **David Melding:** The problem we have in all of this, Minister, is that you wrote to me saying that until you knew the financial settlement you could not lay the draft, and you needed the final figures, but then, hey presto, six weeks later you lay a different draft with new figures. Why such a contradictory approach, if you were able to lay a further draft later when you knew the final figures? As we have heard from your officials, all sorts of things get revised in-year to reflect the accurate expenditure levels. We got into this horrible delay waiting for a final figure, for which no other jurisdiction had to wait. Why was it so necessary here?

[452] **Carl Sargeant:** It was about different policy schemes and we believed that we were trying to protect the most vulnerable in our communities by creating a scheme. I could have presented regulations, as the Chair rightly suggests, with the numbers that were provided to us on an indicative basis from the UK Government, but they would have been completely wrong. In fact, it would have been a 13% reduction instead of a 10% reduction.

[453] **David Melding:** In effect, you have changed the ones that were eventually laid anyway, without further scrutiny. Although, I suspect that the scrutiny would not have said, 'We do not want the reduction to go to 100%.' However, we find it difficult to understand what you were thinking of doing and why you were using a process and delaying until you had a finitude, which, frankly, is often not achieved. You should have started the process much earlier, as other jurisdictions did, so that we could have got on with the blood and guts of the scrutiny. Then we could have said in a merits report that the final figures will come whenever for us to give them our attention.

[454] **Carl Sargeant:** I have seen the report in terms of the detail—the small amount of scrutiny that you have been able to apply to the regulations—but I do not accept that the delay is about the process that we follow. We have acted within the policy objectives of the regulations with the information that was provided by the UK Government, which was essential to delivering this properly. The whole process has not been pain-free. Anything that we could have done to bring that forward would have been appropriate, but I do not believe that we have tried to delay, or otherwise, any part of this process.

[455] **David Melding:** Will your future practice be not to lay regulations until you have certainty on figures?

[456] **Carl Sargeant:** We have learnt a lot from this process, in terms of the handling of regulations. We should not underestimate the scale of trying to establish a set of principles

and regulations to develop a completely new scheme, with which we are not at all familiar. Our local authority partners have been very supportive in bringing this forward. Would I do this in a different way—

[457] **David Melding:** That is why we need scrutiny, Minister. We did not want to get into the situation that we did.

[458] **Carl Sargeant:** My point is that we were constricted in this process by what was happening in Westminster.

[459] **Suzy Davies:** Picking up on your last sentence, Minister, do you think that local authorities in England and the Government in Scotland were reckless in laying their regulations, when they had exactly the same information as you had?

[460] **Carl Sargeant:** No.

[461] **David Melding:** So, why did you not do so?

[462] **Carl Sargeant:** The whole policy agenda is different. The question was whether I think they were reckless, and, no, I do not. I do not think that we were, either.

[463] **Suzy Davies:** Do you think that their local authorities have suffered as a result of having longer to consult?

[464] **Carl Sargeant:** How have they had longer to consult?

[465] **Suzy Davies:** Their regulations were laid before the autumn statement.

[466] **Carl Sargeant:** In England, the regulations were not complete until a similar time as ours were complete.

[467] **Suzy Davies:** What about Scotland, given that you mentioned that they were already talking about amending the Scottish one? They presumably had a longer run at it.

[468] **Carl Sargeant:** Scotland is very different. Subject to the finance being available and to carrying the risk, we could have done exactly the same as Scotland did. I think that what Scotland has done in working with local authorities is commendable. It has managed to find additional funding to supply the council tax benefit. I did not have that flexibility within my budget to do that. That is the whole point. Therefore, we have to deliver a policy agenda and a scheme that complies with the procedural processes that we need to have in place. One of those is about knowing what the numbers were from the UK Government in order for us not to be able to backfill that provision, because we believed that that was not affordable. That is why we laid the regulations at that appropriate point.

4.30 p.m.

[469] **Suzy Davies:** I do not want to push it too far, but you talk about the flexibility in Scotland. I am not familiar with where that flexibility was found.

[470] **Carl Sargeant:** The indication from the Scottish Government was that it would backfill whatever the number was.

[471] **Suzy Davies:** That is quite reckless if it did not know the figures, surely?

[472] **Carl Sargeant:** That is your opinion. I do not believe that the Scottish Government

or the English authorities have acted recklessly; I believe that they have reacted appropriately to their local demand, as we have. It could have gone horribly wrong in Scotland, and we were not prepared to take the risk, whether it was 10%, 13% or more, because we just did not know. Despite asking Lord Freud and Iain Duncan Smith, they were not able to tell us what those numbers were, even up to the day of the autumn statement when we thought that we would have them. We had great difficulty with the Treasury in identifying that number for the final session. So, even up to until 5.15 p.m. we were still struggling to find out what that number was.

[473] In terms of the technical detail, I will ask my colleague—

[474] **David Melding:** I am not sure that we need technical detail. You have given very clear answers. There may be some difference between the committee's view on whether the procedure could have been managed better, and all the rest of it, but it was a challenging area of policy, nobody can doubt that, and there can be very logical reasons about why different things were done in different jurisdictions. It is not for us to say that you should have followed others or that they should have waited and followed us.

[475] **Simon Thomas:** To pick up on that point, I appreciate that the numbers were very late coming and I am sure that you had to scream for them on the day, but that underlines the issue that we are trying to get hold of here. It is very unusual to legislate on the basis of numbers and the finance available; it is more usual to legislate on the principles that you want to employ, to set out the principles on which you will use x sum of money, and, when the numbers become available, apply that as best as you can. You may have some examples of where your approach of waiting for the numbers then legislating has been done—I am not saying that it has never been done, but it is unusual.

[476] I want to go back to several things that you raised, Minister, in reply to questions. You said several times that this is not usually a devolved area in terms of competence. Therefore, by inference and by experience, that is not an area in which Welsh Government officials have much experience, and legislating is not something that is usual for Welsh Government in this area. We have ongoing welfare reform, including the social fund, which will also be devolved. What lessons can you take from all of this in terms of the capacity of Welsh Government to deal with this complex area, and on the way in which we should legislate in future in trying to equitably distribute an ever decreasing sum of money, because that is what is basically happening? Is there not something to be said for taking a different approach to the one that you took on these particular regulations?

[477] **Carl Sargeant:** That is a really useful question in terms of asking how we can prevent some of these issues from arising in the future. The Member is quite right to suggest that this is a moving feast; we are still unsighted on some of the proposals, whether we like them or not. The politics of this is that it is happening, and we still do not know what the effect will be.

[478] You are absolutely right that my team did not have the experience to build a scheme such as this, and it has been a huge learning curve for it in just drafting the regulations—it is a huge set of regulations, as Members have seen—but also in terms of delivery. I pay tribute to the proposals that the team has put forward—it has worked very hard—

[479] **Simon Thomas:** That was not meant as a criticism; I was just giving an analysis.

[480] **Carl Sargeant:** Of course. You are right about how we should develop these new interventions. I have spoken to my director about how we can strengthen the teams in these areas, but, again, we just do not know what the effects will be. On the back of the sunset clause, I am still keen to ensure that we target the right people with the limited amount of

money that we have, and that will be subject to support from opposition parties. Alongside Leighton Andrews, who is running the welfare reform group in terms of understanding all of the implications, we are trying to understand the impacts this will have in Wales, and how we can best mitigate those through our interventions. Again, can we strengthen the teams in terms of support? Absolutely, and the director fully understands that, but that should not be taken as a criticism of the team that was in place to draft these.

[481] **Simon Thomas:** Precisely. The second bit of the question was about strengthening the team and also about your reflections on the way you might need to legislate in future. What lessons have you learnt from this process?

[482] **Carl Sargeant:** I have learned that communication is critical and that it works both ways. If we take a step back and look at the process—I have tried to answer the questions that you have offered to me today—we will see that when we first engaged with the UK Government there was not a lot of information, apart from ‘It is going to be 10% less, but you will be getting it—off you go’. That was not a lot of information, and we were in that position for quite a long time. Despite asking, it was not forthcoming. So, it works both ways. Actually, the UK Government could help: if there are going to be significant changes, or any changes to any part of a devolved or non-devolved function, we should have the ability to engage with it as early as possible.

[483] Without being overtly political, Chair, a lot of the decisions being taken, and a lot of these changes, are being thought through on the hoof. This has not been planned; it is about a number and a structure so that they can save in the longer term. I accept that; that is what the decision is. It is just that it complicates things when you passport the risk. I was told, ‘This is not our problem anymore; it is yours. Get on with it.’ We have had to create the scheme. So, dialogue is important, and having that information. Again, the datasets that come alongside welfare reform are not held by us; they are held by the UK, and we have had to make some significant financial investment to ensure that we could draw down those data to deliver these schemes. This was not a duty of ours, and we should never have had it, but we have, and that is just one element of it. Communication is essential in taking this forward.

[484] **David Melding:** Eluned, we might have covered most of your questions, but there might be one or two points that you want to make.

[485] **Eluned Parrott:** Minister, would you accept that, given that the Scottish Government was able to lay its regulations a full month before you were able to lay your first version, and if engagement and communication are the critical factors here, the Scottish Government was more effective in that area than you were?

[486] **Carl Sargeant:** No.

[487] **Eluned Parrott:** I am surprised by that answer, Minister, because clearly there is a month’s difference—actually seven or eight weeks’ difference in the time that the Scottish Government needed to lay its regulations and the time in which you laid your latest version. Clearly, the Scottish Government was better able to communicate. Certainly it had its local authorities on board much earlier than the time you spoke to yours in the process.

[488] **Carl Sargeant:** No, that is not the case. Again, if you were comparing apples with apples I might agree with you, but you are not; the scheme is completely different. Actually, the decision by the Scottish Government to backfill any risk that would be relayed to the Scottish Government or to local authorities is significantly different to what is happening in Wales.

[489] **David Melding:** It had the same information that you had, though, did it not?

[490] **Carl Sargeant:** Yes.

[491] **David Melding:** It would not have known what 10% meant, either.

[492] **Carl Sargeant:** Of course, and that is why I said that the risk to the Scottish Government was enormous. It could have been 10% or 50%. We were unsighted, and so was Scotland. I wrote a joint letter with John Swinney to the UK Government—in fact, two letters might have gone—elaborating on the issue about not understanding the consequences of the finances. A bigger element for Scotland was trying to manage the risk of what it had committed to, because the numbers could have been very big, and we just could not carry that risk. So, I do not accept that we are measuring the same thing here, and that is where the policy agenda is completely different.

[493] **Eluned Parrott:** But do you never budget on the basis of a forecast?

[494] **Carl Sargeant:** Not on the basis of being told one thing when they deliver another.

[495] **Eluned Parrott:** The variance in this case is less than 3%, and you have managed to find four times that amount down the back of the sofa in the three weeks following the laying of the regulations, have you not?

[496] **Carl Sargeant:** That is an interesting comment, but it certainly was not down the back of the sofa. The Member may think that 3% of this amount—£22 million—is insignificant, but I certainly do not.

[497] **Eluned Parrott:** No, I certainly do not think that it is an insignificant amount, but I do think that it is interesting that you were able to find four times that amount in the space of three weeks, Minister. It suggests to me that there was perhaps an aversion to risk in the Welsh Government that was not seen in other places.

[498] **Carl Sargeant:** We call that responsible government.

[499] **Eluned Parrott:** I see, and so, you are suggesting that other places were not implementing responsible government, Minister.

[500] **Carl Sargeant:** I did not suggest that at all. I said that we were introducing responsible government, and the Member may want to reflect on her comments.

[501] **Eluned Parrott:** Fair enough.

[502] Moving on, you said to Suzy Davies a little earlier that you felt that you had taken the appropriate steps at that time. With the benefit of hindsight, what steps would you take to avoid that situation arising again?

[503] **Carl Sargeant:** For any Minister who takes legislation to the Chamber that does not pass, it is not a good place in terms of where you would like to be. The discussions with opposition parties, which ultimately supported the regulations, were certainly welcome, and perhaps a lesson learnt is one of ensuring engagement early on, despite the fact that it would be wrong to say that there was no engagement and the regulations were not shared with parties. What is more critical is that you share information with opposition parties—that is, at some point, you look to gain support earlier than on the day of the vote.

[504] **Eluned Parrott:** I think that that is certainly appropriate.

[505] **Mick Antoniw:** I have two very short points to make. You mentioned the implications of several percentage points of variance and how it could cause a significant impact. One of the issues raised with me by local government at the time was about the accuracy of the data given that the data on which the calculations were based were already considerably out of date. That is: the number of claimants, who is claiming, the amounts, et cetera—none of it is ever static. What implication did that have? Also, what implication does it potentially present for any considerations next year? You mentioned that these are data that had to be accessed—well, of course, there must be question marks now as to the extent to which those data are accurate for future preparations.

[506] **Carl Sargeant:** In developing these regulations, we were in the lap of the gods in trying to understand what data were available. We have not done this before; it is completely new to my team and to local government. So, we were creating a new scheme that was reliant on the number of people eligible to claim and the amount of money available for the system. There is also the fact that we were moving from a demand-led system to a fixed budget. All of those factors presented risks then and in the development of the process, but the risks are actually even higher now that we have regulations in place. I do not know whether the amount of funding available within the council tax benefit system that we have introduced will be enough for the claimants in Wales. That causes concern for local authorities, and for me, because, unlike what happens elsewhere, I am not prepared to say that the risk has been transferred to local authorities. What we have to do is to measure this risk together and try to find a suitable outcome. I am hopeful that there will be enough money in the pot, but the indications that we saw, and the historic data, suggest that there has been a year-on-year growth in council tax benefit claims. Unless something significant happens, such as welfare reform, I do not know why I or anybody else would have reason to believe that those figures are not going to increase.

4.45 p.m.

[507] **David Melding:** I just have Suzy to come in quickly.

[508] **Suzy Davies:** That might have answered my question, Minister, because I was going to ask whether we will have to wait until the autumn statement this year for any proposed amendments to the existing regulations.

[509] **Carl Sargeant:** We will be working on the new regulations, and the translation element of this means that we will have to start early to take this forward. Chair, I accept that this has not been an easy process for the Assembly or for my department with the information that we have received. However, we have tried to be as open and transparent as possible with the information that we have received from the UK Government. Not having some of that information has had a knock-on effect. Therefore, I am pleased that, in January, we approved a more generous scheme than anywhere else in the UK, but the procedures and processes to get there probably could have been a lot better.

[510] **David Melding:** That is a good note on which to end. I thank you and your officials. I think that we have had a useful and candid session, and we will draw some conclusions and make some recommendations in our report. Thank you for your attendance this afternoon, Minister.

4.46 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42(ix) i Benderfynu Gwahardd y Cyhoedd  
o'r Cyfarfod**  
**Motion under Standing Order No. 17.42(ix) to Resolve to Exclude the Public  
from the Meeting**

[511] **David Melding:** I move that

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(ix).*

[512] **David Melding:** Does any Member object? I see that no Member objects.

*Derbyniwyd y cynnig.  
Motion agreed.*

[513] *Daeth rhan gyhoeddus y cyfarfod i ben am 4.46 p.m.  
The public part of the meeting ended at 4.46 p.m.*