



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

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

Dydd Llun, 10 Tachwedd 2014
Monday, 10 November 2014

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig (Cadeirydd Dros Dro) Welsh Conservatives (Temporary Chair)
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Neil Buffin	Llywodraeth Cymru Welsh Government
Sarah Dawson	Llywodraeth Cymru Welsh Government
Neil Hemmington	Llywodraeth Cymru Welsh Government
Amelia John	Llywodraeth Cymru Welsh Government
Carl Sargeant	Aelod Cynulliad, Llafur (y Gweinidog Cyfoeth Naturiol) Assembly Member, Labour (the Minister for Natural Resources)

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

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

Dechreuodd y cyfarfod am 13:32.
The meeting began at 13:32.

Cynnig i Ethol Cadeirydd Dros Dro Motion to Elect a Temporary Chair

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

[2] **William Powell:** I would like to nominate Suzy Davies for that position.

[3] **Alun Davies:** I agree.

[4] **Mr Williams:** Thank you. I declare Suzy Davies elected and invite her to take the chair.

*Penodwyd Suzy Davies yn Gadeirydd dros dro.
Suzy Davies was appointed temporary Chair.*

13:33

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

[5] **Suzy Davies:** Thank you very much, and I extend my welcome to you all here today as well. I have just a few housekeeping rules before we begin. There is no fire alarm anticipated today, but, should we hear one, following the advice of the ushers and staff would be what we need to do on that. I ask you to check that all your mobile devices, if they are not off, are at least switched to silent; perhaps I should check that as well. As you know, the National Assembly for Wales operates through the medium of both Welsh and English, and headphones are available for anyone who needs either translation on channel 1 or amplification on channel 0.

Tystiolaeth mewn perthynas â'r Bil Cynllunio (Cymru) Evidence in relation to the Planning (Wales) Bill

[6] **Suzy Davies:** Perhaps I can just begin by welcoming you, Minister, and your officials. We have about an hour to answer a considerable number of questions today. Perhaps, Carl Sargeant, Minister for Natural Resources, you could introduce your officials for the record.

[7] **The Minister for Natural Resources (Carl Sargeant):** Thank you, Chair. It is great to be back at committee again in such a short space of time. I will ask Neil and Sarah to introduce themselves with their full titles.

[8] **Mr Hemmington:** I am Neil Hemmington and I am the chief planner.

[9] **Ms Dawson:** I am Sarah Dawson; I am with Welsh Government legal services planning team.

[10] **Suzy Davies:** Thank you very much. As you say, Minister, you are a regular visitor to this committee, so you can probably anticipate our first question. I wonder whether you could tell us why you are confident that the Bill is within competence, and have you had any discussions with UK Ministers just to be certain of that?

[11] **Carl Sargeant:** Thank you, Chair. Yes, we do believe that the Bill is in competence. We have received no correspondence to say otherwise or any conversations to the contrary. We have been in discussion with the UK Government and I have corresponded with Chris Grayling in relation to consents. Again, nothing has been flagged up to suggest otherwise.

[12] **Suzy Davies:** Thank you very much. As you know, Minister, we are quite keen here in the Assembly to talk about the consolidation of legislation where it helps access to our legislation to be a little clearer. So, I wonder whether you could tell us why, having indicated that you were interested in introducing a consolidation Bill, you have not been able to do so at this stage.

[13] **Carl Sargeant:** I think that it is fair to say that, when we went out to consultation on this process, we wanted to fully understand the consequences of such a Bill. The planning laws are wide-ranging, and we recognised—very early on, actually—that there were probably two pieces of work required: the framework Bill, as presented to you and the Assembly, as well as a larger piece of work to look at consolidation, and including the Planning (Wales) Bill as such. We took advice and support from the planning advisory group in this process, but we were also seeing what work could be done by the Law Commission in terms of consolidation, and how that could be interpreted better. We found that the Law Commission added great value to the work around the Housing (Wales) Bill, and, therefore, we think that, longer term, we can get a much better shape in terms of consolidation, of all planning aspects, at a later date. So, that is why it is our intention to pursue a second planning Bill, containing basically, consolidation of planning law.

[14] **Suzy Davies:** Thank you. We have had some additional papers from you very recently, including Keeling reports on how amendments could work, and what effects they are likely to have. Can you give us an indication of how long you think it will take for the next Bill to come forward?

[15] **Carl Sargeant:** Well, it certainly will not be in this session, Chair; it will be something that the next Government, I would hope, would begin to implement. However, what we are doing is starting to do some work on what that may look like, but that will be for a future Government to consider. My view is that we should, at some point in time, introduce a second Bill, which would consolidate the legislation.

[16] **Suzy Davies:** Okay. Alun Davies has the next questions.

[17] **Alun Davies:** Thank you very much. Much of the debate around this Bill to date has been about planning issues, rather than the planning Bill in itself. Since you are not able to introduce the consolidation legislation, as you describe—and I think that we all accept fully that explanation—I wonder whether you could do two things, Minister. First, could you outline what you see as the purpose of this piece of legislation, and what you seek to achieve with it, and, secondly, could you outline in a bit more detail how you see the Law Commission process unfolding? You have given us an indication of the sort of timescales, but I wonder whether the Law Commission will be looking at consolidating legislation in a more comprehensive way, because, by the time it comes to report to you, we will have had not only this Bill, but the future generations Bill and the natural resources Bill, all of which will have made changes to the planning environment.

[18] **Carl Sargeant:** Thank you, Alun, for your question. Let us start with the principle of what the Bill is. You are absolutely right—it is not a policy enabling Bill; it is a framework skeleton Bill of terms of procedure. What we have seen very clearly is that there are 25 planning authorities across Wales that deal with procedure in a very different way. What we are seeking to do with this Bill is the consolidation of procedure—so, consistency, fairness

and enabling are the three key words that we have been using across the principle of development on this Bill. The engagement process has been huge, and the evidence returns have been a massive challenge, but an opportunity. What we are trying to do is to stabilise a planning system that operates effectively wherever you are in Wales.

[19] However, the policy agenda is completely separate. I believe that the policy is being interpreted, in general terms, in the same way wherever you are, across the 25 authorities—it is just the way that that is enacted in the process. That is why the Bill will make some changes to understanding—whether you are a customer of planning, or whether you are a professional of planning—the principle of how that will operate.

[20] The work of the Law Commission will be very wide-ranging and, again, a really good piece of work around the Housing (Wales) Bill—and we learnt an awful lot again—looking from a non-political perspective in terms of how the law operates. Again, the Law Commission will look at lots of different pieces of legislation that currently exist in planning terms, how that can be brought together, and informing us as a Government currently, but also a Government in future, of how best to proceed in terms of that consolidation exercise. It is not without noticing the importance of the Well-being of Future Generations (Wales) Bill and how it will have an impact in terms of the general principle of all policy and developments, including this Bill. It is something that the Law Commission will have to take seriously in its consideration and deliberations moving forward.

[21] **Alun Davies:** It is a good thing that all three pieces of legislation come within the same portfolio, because that enables you to work more closely with yourself rather than in the previous situation whereby a number of Ministers were responsible for these different pieces of legislation. One of my concerns is how those pieces of legislation will interrelate. You have a number of different issues here, in terms of secondary legislation and the framework in which the legislation itself is framed, which makes significant changes to the current system. My concern, if you like, is that we are making changes in an incremental way when it might be more sensible to make more comprehensive changes in a more consolidated fashion, and that we will be creating a system that is more complex than it needs to be, rather than streamlining, which I think you have accepted you would want to see as part of the result of this legislation.

[22] **Carl Sargeant:** I do not recognise some of the issues that the Member raises in terms of the complexities of this. Actually, he is absolutely right—the downfall of this now is that I appear before the Constitutional and Legislative Affairs Committee more than most Ministers to explain the three of these.

[23] **Alun Davies:** We are delighted with that, Minister.

[24] **Carl Sargeant:** I am glad that you are pleased to see me, more than I am of you. [*Laughter.*] However, on a very serious note, the evidence that has been provided to us is about ensuring that we are able to have a system that operates more effectively. That is why we are splitting the policy and process clearly. We have not entered into the realms of policy in the Bill, purely because of the consistency. I have spoken to many within the system who say that an application in Swansea, compared with a relatively similar one in Conwy, will be dealt with very differently. Interpreting the policy is one thing, but the way that people deal with this process is equally as important. I believe that there is a clear relationship between the economy and the planning system. If either of those are misaligned, it compromises Wales and the general economy. So, we have to make sure that we get that right. I believe that we have. On the evidence provided, we believe that the structure of the Bill is effective in terms of the framework it delivers.

[25] The other important point that Alun raises is about how we overlap the principles of

the three Bills. Again, what I would ask the committee to ponder over is the fact that the difference is in what the Bills will deliver. Why did we not introduce a single Bill—an environment and wellbeing and sustainable development Bill, for example? It is because they are different. The reason behind that is that they have their own prescriptive piece of legislation around the developments of process or policy that they relate to directly. Do they overlap? Absolutely. The future generations Bill has an implication for the planning Bill, as it does for the environment Bill, and as it does for every other piece of policy objective that we have in Welsh Government. We have done a little bit of work—for me, particularly, as the Minister responsible—on the overlap. I am more than happy to share that with the committee if that is helpful, but it does not set the scene for the whole objective of the future generations Bill. The future generations Bill covers all Welsh Government, all policy and all the public services. So, there is a small piece where I am more than happy to indicate how it affects the planning Bill, but it actually encompasses so much more. We have taken that very carefully into consideration.

[26] **Suzy Davies:** Perhaps we could have a note on that if you think it would be helpful.

[27] **Carl Sargeant:** I would be happy to do that, Chair.

[28] **Suzy Davies:** If it is not prejudging anything, the reply that you have just giving is likely to have an effect on the heritage Bill, as well. Obviously, there are planning considerations there. Bearing in mind that you will not be dealing with that, perhaps I could ask you this: in Schedule 7 to the Bill, as it currently stands, which refers to quite a lot existing planning Acts, how can you say that this Bill makes it easier for people to understand what your unified approach will look like when, not only do we have non consolidation in Schedule 7 here, but the fact that you will be dealing with three or four other Acts? How does Schedule 7 help?

13:45

[29] **Carl Sargeant:** What is very clear is that the discussion that we have had—. We have had a massive amount of evidence, as I said earlier on, to support the Bill's policy objectives in terms of the framework.

[30] **Suzy Davies:** Yes, but this is process now.

[31] **Carl Sargeant:** Yes, and that is my whole point; people understand consistency. Wherever you are in Wales, you will be getting the same deal. This is about understanding what legislation will apply and how it will be interpreted and enacted. The very reason why we park policy to one side and have the process as a fundamental issue around this Bill is that people currently—. I will give you an example of one very simple process issue that is different between two authorities. One local authority has every elected member on the planning committee for making the decision, while most others have a proportionate number to the size of their organisations. Again, that has an effect in terms of determination and process. People do not understand the reason behind that. Therefore, within the Bill, the structure, we are saying, gives some consistency; you know if you are dealing with a council, wherever you are in Wales, or a local planning authority, you will be dealt with fairly, because the Bill will be very prescriptive about what is expected in terms of delivery.

[32] **Suzy Davies:** My question was about how Schedule 7 makes it easier for people to understand that that is what they are getting. I think that Alun wants to come in with a very short question.

[33] **Alun Davies:** In terms of the reply that you have just given to the Chair, it appears that, from what you are saying, a part of the objective of this legislation is about creating

uniformity in the way that these matters are dealt with across Wales.

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

[35] **Alun Davies:** I presume that, through streamlining and creating uniformity and all the rest of it, you are also seeking to reduce the number of planning authorities and reduce the space for planning authorities, having been through the process, to come to wildly different conclusions at the end of that process as well. I will leave you to answer that.

[36] **Carl Sargeant:** The three words that I used were ‘fairness’, ‘enabling’ and ‘consistency’ being right at the heart of the Bill. It would be fair to say that it is no secret that I suggested that 25 planning authorities for Wales is too many. We gave a submission, as a department, to the Williams commission that suggests that between 10 and 12 planning authorities would probably be the right number for Wales, not because of the tinkering with local government or reorganisation, but actually the effectiveness of planning resilience. That is key to the delivery of this. There is no structure in the Bill that will define what new planning authorities will look like, but it probably will be my intention at some point to table an amendment to look at powers that will give all planning authorities the same level of competence.

[37] Currently, we are able to merge those planning authorities under a local authority guise. We would need to make amendments to the relevant primary legislation in order for national parks to fall under the same remit. That is not being presumptuous in terms of what a map may look like, but what it would give is an enabling power for a Minister, subject to change and the wish to change, with the ability to do that.

[38] **Alun Davies:** So, you see that process as being a part of a wider Williams process, rather than being a consequence of this legislation.

[39] **Carl Sargeant:** No, I do not. I actually think that Williams is a bit of a red herring in terms of the opportunity for change or not. What I have to do, as Minister for planning, is ensure that we have resilience of service. I have already seen local authorities starting to haemorrhage staff because of financial consequences. In turn, you start to see a weakening of service delivery. I cannot allow that to happen in Wales. If it is directly linked to the economy, I want a resilient service and if that means merging authorities’ planning functions, then that is what I will seek to do.

[40] **Suzy Davies:** That leads us quite neatly into our favourite area of questioning, which is powers, and powers to make subordinate legislation. So, I wonder, Minister, whether I can draw your attention particularly to section 3, which inserts the powers into an existing Act—the Planning and Compulsory Purchase Act 2004. This is about strategic planning areas, as you know.

[41] The introduction of the strategic development plans is a core introduction of this Act, yet the means for doing it or describing what its functions are likely to be or who should be sitting on the panel relating to it is introduced via the negative procedure. Trying your very best to avoid the word ‘technical’ if you possibly can, in view of the words of the Chair of this committee, can you tell us why you want to make such significant changes using the negative procedure?

[42] **Carl Sargeant:** You call them significant. I would call them important process issues in the whole structure of the way the planning system works. They are not effectively being required to do something new. What we are seeking for them to do is to bring data together and inform better, on a regional basis, planning detail. The principle of this is not new; we have city regions that operate in a strategic way across a region not in legislation. We are

saying that this just gives us an opportunity to start to frame operational issues of how local planning authorities can interact better at a strategic level in legislation.

[43] We believe, as we would do, that the procedure that we have laid for this is of a technical nature. The detail of this will be the detail that the strategic panels consider, not in terms of the structural approach to how we get there. We believe that we have applied the appropriate procedure to create the strategic planning panels and we would welcome comments from the committee, of course.

[44] **Suzy Davies:** You drew attention there to the city regions and perhaps one of the failures of that whole procedure was the fact that the Assembly did not really get much of a say in what they looked like—who was on the panels and what their remit would involve, actually. This is an opportunity, I think, to improve upon that. So, the affirmative procedure would perhaps allow the Assembly to have some scrutiny to assist Government in achieving its policy aims. Bearing in mind the breadth of the powers that these bodies are likely to have, would you consider looking at this particular power again?

[45] **Carl Sargeant:** Well, I am sure it was not—. Forgive me; the political statement that may have been made was that of the failure of the city regions. I do not see them as a failure at all.

[46] **Suzy Davies:** The failure of the process. I do not mean of the city regions themselves.

[47] **Carl Sargeant:** I think that they are working very effectively. Of course, I listen to this committee very carefully in the recommendations that it makes.

[48] This is not in isolation. These processes will be consulted on, so it is not the case that they will just be made by the Minister, in agreement with a local authority. Actually, there is a lot of consultation behind this process. One of my team could just explain that detail to you, if that is helpful, Chair.

[49] **Mr Hemmington:** Just to add to that, really, the Minister did issue some statements of policy intent last week, which describe some of the detail that you are looking for. So, they do describe how we intend to use those powers. However, the basic principle behind the powers is that we recognise that there is a need for strategic planning in certain parts of Wales, but we do not wish to be overly prescriptive in terms of the area, the membership and those sorts of issues. So, we are seeking an opportunity for those areas themselves to actually identify the area and the membership that they want to have on those panels.

[50] **Suzy Davies:** I am not quite sure how that fits in with your consistency principle. Was it Alun or William who wanted to speak first?

[51] **Alun Davies:** May I come in on the regions issue? The question of the power is commensurate with the extent to which that power will be exercised. Now, if, for example, you are suggesting that you were to acquire power through the negative process to designate an area, for example a Cardiff bay area, which we have already seen, I would be very content with that power being exercised through the negative process. The Chair mentioned city regions. If the strategic planning area is across city regions, which would involve potentially 4 or 5 local authorities, well, that would be a different sort of proposal, and I think that that would require a different sort of process. So, for me the question over the power is commensurate with the extent to which that power would operate. Would you see this power being exercised on a smaller area, such as Cardiff bay, or a much wider area, such as a city region?

[52] **Carl Sargeant:** I am not convinced of the argument about whether the power should

be based on proportionality. I think that, actually, it is either right or it is wrong. I think that what we believe is that the power when exercised, and the Order, that will be made will be based upon evidence. Again, it will be a case of local planning authorities demonstrating the reasoning behind the plan position. Now, of course, as I am sure Members will be aware, the planning process means that there will have to be one local authority—one whole local authority—and then there is a relationship between other planning areas in relation to how that planning system works. An example may be that Cardiff, being the planning authority, may have a better planning economic relationship with Caerphilly, and therefore part of Caerphilly borough might be within the Cardiff strategic planning zone. However, the other elements over the hill might have a better planning determination with the Newport area. Now, that is just one example of how it could work. We are not being prescriptive about this; it is actually about what works well for your community. That is what is really important to us. It is about people understanding the local need better. Then, as I said, Chair, it is not a case of these organisations doing more of something. Once that is established, the local authorities will still have to produce a local development plan, but it will be informed on the basis of housing need, travel to work areas et cetera, all of which are fundamental issues in terms of the determination.

[53] Again, it is about making sure that local authorities and the strategic planning areas have their view on what the democratic appropriateness is in terms of that determination and how we balance that regarding responsibility, consistency and democratic accountability. They are all of fundamental importance, but more importantly the fundamental point here is consultation—not us dictating it; it is about being driven from the bottom up.

[54] **William Powell:** Good afternoon, Minister. Some leading commentators in the field of economic development and planning, notably Professor Brian Morgan, have spoken about their view that, in recent years, since the abolition of the Land Authority for Wales, authorities have been less confident in bringing forward compulsory purchase proposals to aid regeneration schemes. Is it one of your objectives through the amendments you propose to the Planning and Compulsory Purchase Act 2004 to build confidence and capacity in local authorities to take forward, where necessary, compulsory purchase initiatives?

[55] **Carl Sargeant:** First of all, that is not my intention, but, of course, there are many commentators out there, some of whom I agree with and some of whom I do not. The fact of the matter is that I think that this Bill will enable local planning authorities to have an assessment of what their land use is. So, the LDP process is outside of this—you know, developing the LDP. The policy objectives stay outside. This is a framework Bill, which will enable authorities to deliver on the policy consistently across Wales. It was a very general comment that your commentator may have suggested. I would not suggest that that was true for all 25 authorities.

[56] **William Powell:** Thank you for that, Minister. Moving now to issues around the front-loading of development management, as you will be aware, Minister, one area of some controversy on occasion within planning is around the means by which local authorities engage with potential developments in the pre-application phase. Would you agree with concerns that have been expressed as to why so many of the provisions in sections 15 and 16 of the Bill on front-loading the development management system have been left to subordinate legislation rather than appearing on the face of the Bill, given the potential danger that we therefore have a lesser opportunity to expose those to scrutiny?

[57] **Carl Sargeant:** On the raft of the detail in the Bill, I am really quite excited about this bit, if you can get excited about planning issues. One of the major issues that I know the Member will have experienced in terms of the community that he represents is where the discussion between a developer and community does not really exist, and then an application comes through, everybody is up in arms, it costs a lot of money, it gets rejected, and then

there is a long-term appeal, it all comes back and, as is often the case—in two out of three appeals—gets approved, the development is brought to the community.

14:00

[58] I think that this is a really important process in terms of where we are saying that pre-application status needs to be delivered with the community, so you have to go out to your community and you have to demonstrate, before you put the application in, what the consequences of the development are to your community.

[59] In terms of the specific question of whether this should be on the face of the Bill and not left to subordinate legislation, as the Member will be aware, when we launched the Bill, it was a weighty document, with the explanatory memorandum being another weighty document, and we also said that we will be issuing lots of consultation and statements of intent along the way. We issued the statement of intent on Friday—I would say this, would I not, Chair?—and that was quite a challenge for us, because I wanted to ensure that we got this out to you as soon as possible and gave you the most detail possible to be as transparent as we could be.

[60] In terms of the front-loading of the development system, we have a consultation on that ongoing currently, and what we want to have is the flexibility for—. I do not know what the development is. I do not want to be making a new Bill in—. This piece of legislation is for 15 or 20 years. What we need to have is the flexibility to look at schemes that could be of national significance and have the ability to bring them in and make changes with flexibility, as opposed to amending the face of the Bill. I think that I am right in saying that this has happened in England, where they were listed on the face of the Bill, which may have caused a little bit of confusion.

[61] **Mr Hemmington:** That has certainly happened in relation to national infrastructure projects.

[62] **Suzy Davies:** Could I just ask a question here?

[63] **William Powell:** Yes, absolutely.

[64] **Suzy Davies:** Bearing in mind the importance of this and that we are trying to introduce consistency and clarity, is there any reason why you did not introduce the consultation on this a little earlier, because this is a part of your intention that it would have been ideal to see on the face of the Bill?

[65] **Carl Sargeant:** In the ‘Positive Planning’ document, we gave indications of what these proposals may or may not have been. What we are asking communities across Wales is, ‘What is a significant development to you?’ That is an important plan. As I have said, what we have tried to do in the development of this Bill is to ensure that our Bill is evidence based and, therefore, the finer detail of what is significant to one community in Bill Powell’s area may be very different to what is significant to a community in Alun Davies’s area. Once we have the consistency in terms of that, we will put that into subordinate legislation, so then everybody will understand the pathway—understanding what a significant development is and what is not. It would be—forgive me, Chair—slightly premature if we were to consult on the detail of this prior to the Bill being launched, and I think that we have given an indication in the ‘Positive Planning’ document of what we would seek to consider, but the detail has to be delivered from the community.

[66] **Mr Hemmington:** Just in support of what the Minister has said, the front-loading agenda has been one that we have been following, as far as planning is concerned, for some

years now. There was a report undertaken by GVA Grimley Ltd looking at the planning application process. What we sought to do was to introduce front-loading changes where we could, using guidance, secondary legislation and policy. This now becomes an opportunity to give another emphasis to that by using primary legislation and then, supporting secondary legislation. So, it is something that we have been attempting to do for some time now.

[67] **Carl Sargeant:** If I may, finally, some local authorities already do this, and they do it very effectively. Again, it is about consistency. Where we see good practice, why would we not introduce legislation around that to ensure that it is done on a statutory basis?

[68] **Suzy Davies:** That was basically my question. Why not put it on the face of the Bill? Over to you, William.

[69] **William Powell:** Minister, in the context of pre-application advice, could you give us some reassurance that, when you are looking to develop subordinate legislation, you would be alive to the issue of pre-application advice that is funded by potential developers? That is sometimes a matter where communities and local bodies have some concern that the planning process could, potentially, be seen to be bought by a chargeable approach to pre-application advice. Also, do you have any views as to whether or not such advice would be subject to the provisions of the Freedom of Information Act 2000, given its very nature?

[70] **Carl Sargeant:** I will have to write to the Member on the last question that he raised on FOI, just to see the competence on that. However, it is a bit of a chicken-and-egg situation, is it not? Planning is an interesting beast, and you generally please 50%, and there are 50% who are very angry about the whole process. What I am saying to communities is that what you have to be clear about is transparency and consistency. So, there is a consultation currently out to local authorities on fees and charges. I think that it is wholly appropriate that, with a pre-consultation process, there should be a charging process for that, so that people understand the system and how it operates, but it should be open and transparent. What that has proven, in the way that it operates currently, is that communities then fully understand what an application may or may not look like in real terms, as opposed to hearsay. I think that pre-application consultation is a key, fundamental change to the planning system, but it should be seen by local communities as a positive tool, and it should also be transparent in that process, too. However, I will respond to the Member, through the Chair, in writing in terms of the FOI issue that the Member raised.

[71] **William Powell:** I appreciate that, Minister. I will move now to the issue that I wanted to develop, which is to explain the intentions that lie behind the provisions in section 17—that relates to applications for planning permission for what have been termed ‘developments of national significance’—and why there is currently no definition of such developments of national significance on the face of the planning Bill as we have it at the moment.

[72] **Carl Sargeant:** It is a very similar principle to the last question that the Member raised. We are looking at ensuring that we define this in regulation, again to have the flexibility to understand what is of national significance, again driven by local communities. We need to understand what that will mean for the future, and what I would be reluctant to do is to have this on the face of the Bill, so that every time we have a perceived new criterion for national significance—and that can vary in terms of community, as well, in terms of what that may mean—we will have the flexibility to change that in regulations, as opposed to amending the framework of the Bill.

[73] **William Powell:** I am obliged, Minister. Thank you.

[74] **Suzy Davies:** Could I just pursue that one a little bit further, Minister? You have new

tier of powers coming in here for Welsh Government, and a new definition of ‘national significance’—we do not know any more than you, by the sound of it, as to what ‘national significance’ might mean. Bearing in mind, again, that this is a core principle, can you tell us what thoughts you already have about what ‘developments of national significance’ might mean, and how Welsh Government would deal with that? This is such a central principle; surely it has to be on the face of the Bill. You must have developed some thoughts so far.

[75] **Carl Sargeant:** Of course, and thank you for the detailed question, Chair. I would refer the Chair, but I am more than happy to write to the Chair in terms of the detail that we consulted on in ‘Positive Planning’. This is not new; the principle of issuing this is something that we have already had a discussion on in the national conversation with communities and developers and professionals in the system. I am more than happy to provide further advice on that. However, I do not see this as such a fundamental change as the Member would suggest. Actually, again, this is a process-driven issue. The majority of DNSs, I would suggest, are encompassed within the call-in principle that is already in place. The complexities of that mean that a developer, or a community, would not know, as there is uncertainty about where the decision may just land—it may land on the local authority, or it may be called in by the Minister. With the DNS process, at least it will be defined in the legislation where the principle, of whatever it may be, will be, whether it is a principle of a development of over 50 homes, for instance—and that is just an example; it is not definitive, Chair—that may be categorised within the category of DNS. That would be consistent across Wales. Currently that is not the case; an applicant for a similar development may have it called in or may not have it called in, depending on where you are in Wales. This gives a structure to the approach so that you know exactly what will be dealt with by local authorities and exactly what will be dealt with by ministerial intervention or by PINS. As regards the criteria for DNS, that will be done by the affirmative procedure, so it is not the case that Ministers will issue guidance or principles around this; there will also be the checks and balances of the Assembly.

[76] **Suzy Davies:** It is a relief to hear about the affirmative process, but I have to come back to the point that, as you said, this is not new, so why is it not on the face of the Bill? However, I would like Alun to come in as well.

[77] **Alun Davies:** Thank you very much for that. One of the advantages if you do not put things on the face of a Bill is that you create a level of flexibility in terms of approach and in terms of being able to deal with evolving situations. I think that a clear majority of us wish to see a significant level of devolution of powers over energy, for example. I am interested to understand whether the Bill, as it is currently worded, would enable us to absorb that level of devolution without necessitating further primary legislation, which would mean, for example, that if the proposals that are currently being made for the devolution of planning over energy, this would be absorbed by the Bill without us needing to come back for further legislation.

[78] **Carl Sargeant:** I think that that is quite a technical question and we would have to respond in detail. However, the principle that the Member raises is absolutely right, that there is flexibility in order for us to have any additional powers that come to Wales and the ability to add that to DNS, if it was appropriate, would enable us to do this, rather than the principle of amending the Bill at primary legislation stage.

[79] If I may, Chair, Neil was going to offer some additional information.

[80] **Mr Hemmington:** In terms of the DNS process and the categories, we did identify those in the ‘Positive Planning’ document. We also undertook some research to quantify the potential numbers of these applications. The one where there appears to be greatest certainty at the moment is on the sub-50 MW energy projects; that is the one that was identified as being between 25 MW and 50 MW. However, we are not talking about massive numbers. The

research identified a maximum of about five or six of those a year, so it is not huge. We also looked at the differential relationship between England and Wales, because at the moment there are things where decisions are made in England by Ministers whereas in Wales they are made by local planning authorities to preserve the devolution settlement under the Planning Act 2008. So, we looked at that as well as a potential area that may come to Ministers in Wales, as these matters are already dealt with by Ministers in England.

[81] **Alun Davies:** One of the reasons why that number of planning applications is restricted is because developers know about the complexity of gaining planning permission, so they would go elsewhere rather than seek permissions here, in Wales. Since the Minister has outlined that one of the objectives of the legislation is to streamline and to make the planning system more responsive to community needs, it would follow therefore, would it not, that that level of flexibility would enable more renewable energy projects, for example, to take place in Wales?

[82] **Carl Sargeant:** Indeed. That is the principle as to why we are doing this.

[83] **Suzy Davies:** Thank you. Simon Thomas is next.

[84] **Simon Thomas:** A gaf i ofyn yn Gymraeg? Weinidog, ymddiheuriadau fy mod i'n hwyr oherwydd fy mod wedi teithio i lawr yma. I droi at ran arall o ddatblygiadau o arwyddocâd cenedlaethol, sef y rhan o'r Bil sy'n ymwneud â'r ffaith bod cydsyniad eilradd—cydsyniadau sydd yn mynd gyda'r datblygiadau hyn—yn cael ei reoli hefyd gan Weinidogion Cymru. Yn benodol o dan adran 18, mae nifer o gamau sy'n gallu cael eu cymryd er mwyn ymwneud â'r cydsyniadau eilradd hyn. A fedrwyd chi esbonio pam mae cyn lleied ar wyneb y Bil ynglŷn â pherthynas y cydsyniadau hyn â'r datblygiadau o arwyddocâd cenedlaethol? Gan fod cyn lleied yno, pam ydych chi wedi dewis y dull negyddol i ddod â'r pethau hyn i rym?

Simon Thomas: May I ask my question in Welsh? Minister, apologies for my late arrival; there were some travel problems in getting here. Turning to another aspect of developments of national significance, that is the section of the Bill that relates to the fact that secondary consent—consents that go hand in hand with these developments—will also be controlled by Welsh Ministers. Specifically under section 18, there are a number of steps that can be taken in terms of these secondary consents. Can you explain why there is so little on the face of the Bill on the relationship between these consents and the DNS? As there is so little there, why have you chosen the negative procedure to bring these things forward?

[85] **Carl Sargeant:** Thank you for the question. Secondary consents directly link to what the DNS may or may not be. Again, if I go a step back, the process of understanding what a DNS is to a community is a really important process for us too, with the affirmative procedures in place for the checks and balances around that.

14:15

[86] As to it not being defined on the face of the Bill, the issue around whether, in relation to any future legislation, whether hazardous substance consents, listed building consents, and planning permission surrounding them, all the secondary consent needs to have the flexibility based upon the DNS criteria—. So, it is about understanding what the DNS will be and then what the application may be in the future to secondary consents. The same principle applies for the conversation that we have just had, Chair. We cannot be definitive in this because we do not know what the future provisions may or may not need to be. We believe that we have futureproofed the Bill in order for us to be adaptable, where a DNS procedure and secondary consents are needed to be flexible in that process.

[87] **Simon Thomas:** What is the sort of ‘evil’, if I can put it that way, that you are trying to address here? Is it that a major infrastructure project might get the green light at a national level, but you do not want the local planning authority quibbling over a public footpath that stops it from going ahead? Is that the kind of associated secondary consent that you want, in your hands, to be part of the package when you are talking about the national infrastructure project?

[88] **Carl Sargeant:** Not necessarily; I would not, perhaps, put it like that. I think that what we have tried to do is to make the service professional, whether it is being dealt with at a local level or a national level. It is about having the determination and understanding the whole package of what the consequences are. Actually, we do see sometimes that secondary consenting is a great excuse not to have the primary consent or to disrupt the primary consent in the first process. I think that what is really important is that, when a Minister, PINS, or a local authority makes a decision, they are fully apprised of the whole package. That is where the secondary consents and DNS come hand in hand. I would not say it was necessarily an evil that we are trying to protect ourselves from; I just think that it makes more sense that they are together. That is why I think, when we understand what DNS is and secondary consents and the implications of that, we have the flexibility to make amendments should we need to in the future.

[89] **Simon Thomas:** Os caf ofyn wedyn, yr hyn nad wyf cweit yn ei ddeall—a derbyn yr hyn yr ydych yn ei ddweud ar hyn o bryd; rydych yn sôn am rywbeth sydd yn fwy proffesiynol ac yn fwy o becyn, os liciwch chi, sydd i gyd yn cael ei wneud gyda’i gilydd—yw pam bod yr un rhan, sef datblygiadau o arwyddocâd cenedlaethol, yn cael ei wneud drwy’r broses cadarnhaol, ac felly bydd y Cynulliad yn cael dweud ei ddweud ynglŷn â’r broses hon, ond bod y rhan hon, sef y cydsyniad eilradd, yn benodol yn cael ei wneud drwy’r dull negyddol. Os ydyn nhw’n rhan o’r un pecyn, pam nad ydych yn trin y ddwy ran o’r datblygiad yn yr un ffordd? Beth yw’r rheswm penodol dros fynd yn negyddol yn y fan hon?

Simon Thomas: If I may ask then, what I do not quite understand—I accept what you say at present; you are talking about something that is more professional and is more of a package, if you like, done in a more coherent way—is why one section, namely developments of national significance, is done through the affirmative procedure, so the Assembly can have its say on that process, but this section, namely the secondary consent, is specifically done through the negative procedure. If they are part of the same package, why do you not treat both aspects in the same manner? What is the specific reason for taking the negative procedure approach here?

[90] **Carl Sargeant:** It is purely that they are secondary consents. We think that they are ancillary to the first decision-making process, which will have been—

[91] **Simon Thomas:** But they would have been consents that would have been decided much more locally at one stage. So, you are removing that power and making it a more national decision. I am not saying that it is a wrong thing, but there is a process there. It is not just secondary in terms of secondary, is it? It is removing power from one level to another—it may be a more appropriate level, but surely that demands a little bit more scrutiny.

[92] **Carl Sargeant:** I will await the committee’s response to our tabling of processes.

[93] **Simon Thomas:** I think that you know what the committee’s response might be. *[Laughter.]*

[94] **Carl Sargeant:** I recognise the point that the Member is making, but I would not give it as much weight as perhaps the Member is doing in his contribution this afternoon.

[95] **Suzy Davies:** Alun, I think that you have some questions about the appropriateness of regulations and the processes applied to them.

[96] **Alun Davies:** Yes. In reading through the legislation, and section 20 on the option to make an application directly to Welsh Ministers, this is, I understand, an area where our planning authorities seem to be failing. So, can you reassure us, Minister, that that process—the area of application—is strictly delineated in the legislation so that it could not be done through any other means, which would bypass the planning process completely, and whether you are content with the negative process being used in terms of the regulations under this section, which do provide the Minister with quite considerable powers?

[97] **Carl Sargeant:** The principle of when an applicant has the option to apply directly to a Minister is one of significant importance. That means that we have, ultimately, a failing element of a local authority—or a local planning authority, I should say—which troubles me. I have to have confidence for the economy to ensure that, wherever that is—. I have been very clear with my department too that we have to be up to the game in terms of delivery as well. Therefore, where the applicant specifically—and we will be testing this around the performance of local planning authorities in their annual report, et cetera, to see where we have resilience of service and delivery, which is really important—. It will be prescriptive to areas of failure. So, whether it is that they are poor on large-scale development, or are weak on quick turnarounds on smaller developments, it will be a process that they fully understand, and that we fully understand. However, it is a last resort this element, in terms of the ability for a developer to apply directly to Welsh Ministers, and, of course, that whole process is an option. It is not a case of their having to—it is a case of a developer may wish to use and enable that process in directly referring the application to the Minister, subject to a local planning authority being in difficult circumstances.

[98] **Alun Davies:** I remember having a similar conversation with you, as the Minister, on the Local Government (Wales) Measure 2011, in this committee. It does seem to me that we are returning to these matters. How will you know that a planning authority is failing?

[99] **Carl Sargeant:** We already have data in terms of a benchmark of where local authorities lie. We have 25 planning authorities. There is an Excel sheet—that is not a hidden document—in the public domain, which indicates already where local authorities are better than others in terms of their determination and application in relation to costs, fees, the applied length of determination, and the effectiveness of determination, more importantly, so that we are keeping the timescale—let us say its refused, then, actually, how many principles are then considered by an independent inspector and are overturned. These are all subject to detail that my team is currently looking at. There will be a reporting process for each local planning authority in the future too, so we will be able to very clearly demonstrate where a local authority is not meeting its obligation in terms of the quality planning service that is expected.

[100] **Alun Davies:** But it would be your decision?

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

[102] **Suzy Davies:** Do you have any more questions, Alun?

[103] **Alun Davies:** No, I am happy with that, Chair.

[104] **Suzy Davies:** Okay. William Powell has the next questions.

[105] **William Powell:** Thank you, Chair. I would like to move to the issue around enforcement and appeals, Minister. I would like to have some further thoughts from yourself

as to why the regulations made under the power in the new section 322C, inserted by section 44, are subject only to the negative procedure, given the discretion that it affords to Ministers over setting the rates for costs, especially as the level of those rates could be seen as prohibitive to persons wishing to bring an appeal forward.

[106] **Carl Sargeant:** These fees are charged in advance, for making an application, and, again, the Member is right that there may be some financial burden on the applicant. However, they are clear in terms of the way that they are defined and set out in the affirmative procedure, as laid down in the Bill. We believe that that is appropriate, in terms of ensuring that we are clear, the application is clear, and that, in terms of the process, which will, of course, be under the scrutiny of the Assembly, we are moving forward on that.

[107] **William Powell:** Minister, do you not have some concerns around the fact that this power contrasts with that in paragraph 18 of Schedule 4 of the Bill, in respect of the setting of planning application fees, which is itself affirmative? The explanation provided by the Welsh Government for using the affirmative procedure in relation to paragraph 4 is specifically that the regulations would impose a financial burden on the public, which would also be the case under section 322C.

[108] **Carl Sargeant:** They are slightly different, one being where an applicant has inadvertently caused costs to an authority, including Welsh Government, in terms of the appropriateness of recovery of costs, and one being is about the application fee. So, they are slightly different. There is already consistency in what we have applied in terms of the negative procedure in award of costs. That is already in place. We have continued that process. Again, we believe that we have struck the right balance in terms of the determination, based on historic and future potential, for one about the setting of the fees and one about the recovery of costs.

[109] **William Powell:** I am grateful for that response, Minister, but do you believe that the regulations made under the new section, 323A, inserted by section 45, which is subject to the negative procedure, would receive adequate scrutiny, given the potential that exists to restrict the ability of applicants to appeal, rather as I related in the previous question?

[110] **Carl Sargeant:** May I ask one of my team for the details of that, in terms of whether—? If I may, Chair, I listened carefully to the questions from the Member, and, based on the question that he asked previously, I would like to qualify with my team our reasoning behind the use of the negative and affirmative procedures across the three strands that the Member raises. I will write to Member with regard to that.

[111] **Suzy Davies:** That is very kind of you, Minister. That gives us time for you to ask one more question, William.

[112] **William Powell:** Indeed. Thank you very much. Minister, why, in section 53 of the Bill, does the power give Welsh Ministers such wide areas of discretion to repeal or, indeed, to amend primary legislation where it is in connection with the Bill rather than the more usual consequential on provisions in the Bill itself?

[113] **Carl Sargeant:** I think that it is a technical interpretation of this, Chair. [*Interruption.*] We will have to take the word ‘technical’ out then. It is about how you interpret the process. We believe that the principle of consequential is very clear. It is a tidying-up exercise. This is consistent with other legislation. I do not think that it compromises the Bill or, indeed, indicates that there is anything other than consequential to the Bill as interpreted by us or others, apart from yourselves.

[114] **William Powell:** Thank you, Minister. I look forward very much to the committee

receiving the written answers that you have committed to sending through.

[115] **Suzy Davies:** Yes, I thank you as well, Minister. I am afraid that time has defeated us, because we have another important issue that we want to discuss with you today. With your permission, we will write to you with the outstanding questions that we have, or, possibly, investigate the opportunity of bringing you back to us to ask additional questions, if that is okay.

[116] **Carl Sargeant:** Indeed, Chair.

[117] **Suzy Davies:** Are Members content with that as a way forward? You are.

14:28

**Gorchymyn Adran 109: Gorchymyn Deddf Llywodraeth Cymru 2006 (Diwygio)
2015
Section 109 Order: The Government of Wales Act 2006 (Amendment) Order
2015**

[118] **Suzy Davies:** As we are fortunate to have the Minister as a captive audience here today, it is a good opportunity for us, as a committee, to take some evidence in relation to the section 109 Order, the Government of Wales Act 2006 (Amendment) Order 2015, papers on which have been brought before us today. Hopefully, that will mean that we will not need to ask you to come forward to this committee to answer questions on the section 109 Order again.

[119] **Carl Sargeant:** I am grateful, Chair.

[120] **Suzy Davies:** This, again, is in relation to what we have been looking at today. I wonder whether Gwyn, our lawyer, would give us some preliminary remarks about the procedure that is involved with it.

[121] **Carl Sargeant:** Would you like me to leave while you do that, Chair?

[122] **Suzy Davies:** No, I am more than happy for you to stay.

[123] **Carl Sargeant:** Fine.

[124] **Mr Griffiths:** Diolch, Gadeirydd. Mae gennyf ychydig o fân sylwadau ynglŷn â'r offeryn anghyffredin hwn. Bydd y rhai ohonoch a oedd yma yn ystod y trydydd Cynulliad, wrth gwrs, yn gyfarwydd â'r broses Gorchymyn cymhwysedd deddfwriaethol—LCO—ac yn falch o weld diwedd arni, ond nid yw wedi diflannu'n llwyr, oherwydd dyna'r math o broses sy'n berthnasol i'r Gorchymynion hyn. Mae drafft arfaethedig yn cael ei osod er mwyn ei ystyried yma, ac, os yw'r Pwyllgor Materion Cymreig yn dymuno gwneud hynny, yn San Steffan.

Mr Griffiths: Thank you, Chair. I have some brief comments on this unusual instrument. Those of you who were here during the third Assembly will be familiar with the legislative competence Order process and may have been pleased to have seen the end of it, but it has not disappeared entirely, because that is the kind of process that is relevant to these Orders. A proposed draft is laid for consideration here, and, should the Welsh Affairs Committee wish to do so, in Westminster.

14:30

[125] Ar sail adroddiadau'r pwyllgorau hynny, mae'r Llywodraeth a Llywodraeth San Steffan yn mynd yn ôl i ailddrafftio'r Gorchymyn, os oes angen, cyn gosod Gorchymyn drafft sydd wedyn yn destun pleidlais yma ac yn y ddau Dŷ yn San Steffan. Wrth gwrs, bydd diwygio'r Gorchymyn hwn yn anodd gan mai'r cwbl y mae'n ei wneud ydy dweud, 'ar ôl "78," mewnosoder "79,". Nid oes llawer o le i ddiwygio yn y fan honno, ond eto, mater am ystyriaeth bellach ydyw, efallai.

On the basis of reports drawn up by those committees, the Government here and in Westminster will go back to redraft the Order, if necessary, before laying the draft Order, which is then subject to a vote here and in both Houses of Parliament at Westminster. Of course, it would be difficult to amend this Order, because all it does is say, 'after "78," insert "79,". There is not much room for amendment there, but again, that is perhaps a matter for further consideration.

[126] **Suzy Davies:** Thank you. I hope the whole committee, the Minister and officials found that helpful. This, of course, relates to another of your Bills, Minister, and congratulations on this being the shortest Order possible. Could you give us some sort of indication of when you discovered that section 79 of the Government of Wales Act 2006 might be necessary?

[127] **Carl Sargeant:** Our intention for this to take place was under a different Minister, as the Member will recognise, but it was part of a White Paper that was set out, 'A Sustainable Wales Better Choices for a Better Future'. It is set out in that paper of December 2012.

[128] **Suzy Davies:** In terms of the timing and discussions that you had with the UK Government, obviously you have given us an indication of why you think that constituted a delay, but bearing in mind its importance, was there any way that you could have brought some information to the Assembly about it before?

[129] **Carl Sargeant:** Not recognising that we would not seek to give the Assembly as much information as we possibly had, I think that that would have been a bit premature in terms of the detail that the UK Government was seeking at the time. We could not provide in terms of the detail of the Bill, as we were still in the drafting stages, and therefore, it was not content to do that. Although, it was not negative about this, and may I say that it has been very positive in this process? However, it just did not have enough detail in order to agree or otherwise the laying of the Order around that. So, this was not about keeping the information away from you, Chair. This was about the fact that there was not any detail to give you.

[130] **Suzy Davies:** Okay. Simon is next.

[131] **Simon Thomas:** A gaf ofyn, felly, o ran y manylion hynny rydych chi'n dweud nad oeddent ar gael i Lywodraeth San Steffan penderfynu y naill ffordd neu'r llall, ai dyna'r manylion sydd ym Mil Llesiant Cenedlaethau'r Dyfodol (Cymru) bellach?

Simon Thomas: Could I just ask, then, on those details that you say were not available for the Westminster Government to decide one way or the other, are they the details that are now in the Well-being of Future Generations (Wales) Bill?

[132] **Carl Sargeant:** Yes. In a broad aspect, yes.

[133] **Simon Thomas:** Felly, roedd Llywodraeth San Steffan am weld y Bil, mewn ffordd, cyn ei bod yn gallu llwyr gydsynio i'r broses hon.

Simon Thomas: So, the Westminster Government wanted to see the Bill, in a way, before it could consent to this process.

[134] **Carl Sargeant:** That is right.

[135] **Simon Thomas:** Pam, felly, nad oedd mwy o drafod am eich bwriad yn y fan hon? Rwy'n derbyn yn llwyr ei fod yn y Papur Gwyn, ac rwyf hefyd wedi gweld peth o'r dystiolaeth o'r ymateb i'r Papur Gwyn, lle'r oedd nifer o fudiadau wedi dweud, 'Wel, rydym yn gweld y mater hwn yn codi, ond nid ydym yn gallu cydsynio ychwaith, un ffordd neu'r llall, nes ein bod yn gweld y manylion'. Er eich bod yn gofyn am yr hawl yn y Gorchymyn hwn, nid ydych eto'n rhoi yn y manylion ychwaith beth fydd y gwelliant hwnnw. Felly, pam na fu mwy o drafod am y bwriad polisi hwn yn fwy amlwg wrth inni drafod y Bil?

Simon Thomas: Why, therefore, was there not more discussion about your intention here? I completely accept that it is in the White Paper and I have also seen some of the evidence in response to the White Paper where a number of organisations have said, 'Well, we see this issue coming up, but we cannot consent one way or the other either, until we have seen the details'. Even though you are asking for the right in this Order, you have not yet provided any details as to what that amendment will be. So, why has there not been more prominent discussion about this policy intention as we discuss the Bill?

[136] **Carl Sargeant:** Again, Chair, the White Paper was issued in 2012, so there was nothing hidden there. It was the intention of the Welsh Government to pursue this in that process. Engagement with the UK Government has taken place along that journey. The First Minister wrote to the Secretary of State for Wales in October of 2012 to make the initial request for an Order to start, in terms of process and more detail available because of the future generations Bill coming online. However, it is heavily reliant on, in terms of detailed policy intent, the future generations Bill, which, of course has only just been launched. That is relevant to what the detail of the policy will be.

[137] It would have been rather presumptuous of me, or any other Minister, actually, to issue the policy intent without having agreement from the UK Government in terms of its intention to support this or otherwise. What we have tried to do, which has been an interesting journey, it would appear to me, is work well together to ensure that the policy objectives as set out in the White Paper become a reality and are achievable. This is not a case of working against each other. It is a clear statement of fact that my department and the UK Government have worked very closely on this to achieve a successful outcome.

[138] **Suzy Davies:** That is always good to hear. Alun is—

[139] **Simon Thomas:** Can I—?

[140] **Suzy Davies:** Oh, sorry, Simon.

[141] **Simon Thomas:** That is very high-minded of you, Minister—not something shared by all Ministers. For example, the Agricultural Sector (Wales) Act 2014 was not pursued with that high-minded regard for Westminster's understanding of the policy intentions. Nevertheless, to return to this Bill—[*Laughter.*] You did not have the agreement of Westminster at the time, Alun. However, returning to this Bill, I understand what you are saying in terms of there being a constitutional issue here. In effect, you are amending a bit of Westminster legislation, so you have to get their agreement. I understand that. However, there is still a policy issue around here, which was flagged up in the White Paper responses, as you are quite right to say, but then it is not dealt with in the explanatory memorandum in any sort of detail for the Well-being of Future Generations (Wales) Bill and you have not mentioned it in other committees when you have explored this. You have not said, 'Oh, by the way, I hope to be able to do this'. Is it that you had forgotten about it and suddenly the letter popped up in your e-mail and said, 'Yeah, you've got this consent after all'? What has gone wrong here—well, not 'wrong' because we have not seen the detail yet, but why has this been handled out of kilter with the rest of the legislation?

[142] **Carl Sargeant:** Well, because it is not an Order yet. The policy objective has always been there, and there is no secret around that; it has been a clear objective. I think that what we have been trying to do is construct the right—or ensure the appropriateness of ensuring that we have agreement with the UK in terms of what our intent is in order to ensure that you are able to scrutinise this properly with all of the detail. With regard to the ‘what if?’ situation—what if this was not going to happen, and what if the UK did not apply this?—then what we would have to do is, effectively, have two elements of sustainable development duties, one in GOWA and one in the future generations Bill. It would be complex and probably very difficult to interpret it fairly. However, we would have had to use some different drafting techniques with the future generations Bill in order that there would be some sort of process that would have understood the future generations Bill as opposed to the GOWA element, and taken it into consideration. I just think that this makes it much neater. It is a procedural issue, and now that we believe that we have support from the UK Government in terms of how we do this, I would hope that the committee would not think that we were trying to sneak this through in any way. This has been a long, drawn-out process of trying to get agreement with the UK Government. We have finally got that and that is why, for us, it is much tidier to have the amendment brought forward to amend GOWA, as opposed to having the two elements of the future generations Bill and the Government of Wales Act.

[143] **Suzy Davies:** Before I bring you in, Alun, may I just ask you one very straight, simple question, Minister? Bearing in mind that the White Paper was in 2012 and you knew that an Order was likely to be required, why are you not in a position to publish your draft amendment now so that we can consider it and ‘all of the detail’, just to quote what you have said?

[144] **Carl Sargeant:** Yes, of course. It is because we have only just received agreement of the Order, so we—

[145] **Suzy Davies:** But you knew it was coming.

[146] **Carl Sargeant:** I think that what I will consider, Chair, is providing anything that we have in detail in relation to what the Order will say and the detail around that. I will be more than happy to share that with the committee. However, as I said before, Chair, I think that it would have been rather presumptuous for us to issue what the revision would be without the Order having been secured, and we have only just received that confidence from the UK Government that we are able to proceed with this.

[147] **Suzy Davies:** Okay, thank you. Alun is next.

[148] **Alun Davies:** Thank you, Chair. I am struggling to understand what the issue is here. We have here a draft Order, which provides legislative competence in this particular issue, which will be transferred to Cardiff, subsequent to the Order’s being agreed in Council. That will enable you to amend GOWA in the way that you will describe as a part of the process of passing the future generations Bill, and we will have an opportunity to scrutinise and to look at that draft amendment at that time.

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

[150] **Alun Davies:** Well, that is a process that I am completely content with. It seems to me an eminently sensible way of approaching the issue.

[151] **Suzy Davies:** No question on that?

[152] **Alun Davies:** I have no questions. I think that we should congratulate the

Government on the process it has followed. I have got no issues with it at all.

[153] **Suzy Davies:** Do you have any other questions, Alun?

[154] **Alun Davies:** No.

[155] **Suzy Davies:** William has a question.

[156] **William Powell:** Chair, just a final question from me in terms of timetabling. Given that Privy Council approval of the Order is not scheduled to come forward until February of next year, when is it currently your intention to amend the future generations (Wales) Bill?

[157] **Carl Sargeant:** Stage 3 of the future generations Bill. That is when we would intend to make an amendment to the Bill.

[158] **William Powell:** I am grateful for that clarification. Thank you, Chair.

[159] **Simon Thomas:** Can I just ask one follow-up on that?

[160] **Suzy Davies:** Yes, by all means.

[161] **Simon Thomas:** That amendment will be then the wording to go into GOWA, I assume. It is your intention to have any kind of committee scrutiny of that wording or any consultation on what that wording might be, because Stage 3 is quite advanced?

[162] **Carl Sargeant:** The Order will have already been passed. That is the point.

[163] **Simon Thomas:** The Order will have been passed, but the wording that you want to insert we will not have seen until Stage 3, will we?

[164] **Mr Buffin:** It would form part of Stage 3 scrutiny in the usual run of things, as we see it.

[165] **Simon Thomas:** That is quite a late stage in the Bill process to amend primary legislation.

[166] **Carl Sargeant:** Chair, if I may, I am trying to be helpful in terms of this process. It has been a long, drawn-out process, but it is a positive move. We are receiving powers to make amendments to the Government of Wales Act, and I think that is something very positive in terms of the Assembly and the powers vested in it.

[167] What I will seek to do, subject to agreement with the UK Government, and, again, working with it very closely, is share the detail of what the amendment may be. I would be happy to share that with the committee as soon as we have the detail.

[168] **Suzy Davies:** That would be very helpful, Minister, and it fits in with what other Ministers are doing in providing draft regulations, when they are not able to give us detail on the face of a Bill. At the risk of being a little bit cheeky, do you think that is likely to come forward before Stage 2?

[169] **Carl Sargeant:** I will have to drop you a note on that, Chair. I am not sure.

[170] **Suzy Davies:** That would be fine. I appreciate that I was putting you on the spot.

[171] **Simon Thomas:** A final question from me.

[172] **Suzy Davies:** By all means.

[173] **Simon Thomas:** Was the change in the Wales Office helpful to this process?

[174] **Suzy Davies:** I do not know whether that question needs answering.

[175] **Carl Sargeant:** I do not think that that is a question for me, either. [*Laughter.*]

[176] **Suzy Davies:** I do not think that is a process question, Mr Thomas.

[177] **Carl Sargeant:** I must say that the Secretary of State has been very helpful in helping us to get to this point.

[178] **Suzy Davies:** I am grateful to you, Minister. Thank you very much, everybody else, as well.

14:42

Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad Arnynt o dan Reol Sefydlog 21.2 na 21.3

Instruments that Raise no Reporting Issues under Standing Order 21.2 or 21.3

[179] **Suzy Davies:** We now turn back to our standard business and the instruments that raise no reporting issues under Standing Order 21.2 or 21.3. We have all had an opportunity to look at these. Are Members content or do they have any matters that they wish to raise?

[180] **Alun Davies:** I am content.

[181] **William Powell:** I am also content.

[182] **Suzy Davies:** That is excellent news.

Offerynnau sy'n Cynnwys Materion i Gyflwyno Adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3

Instruments that Raise Issues to be Reported to the Assembly under Standing Order 21.2 or 21.3

[183] **Suzy Davies:** We have one instrument that came before us, and there are some reporting issues on this. Gwyn, I wonder whether you would like to lead us through this.

[184] **Mr Griffiths:** Diolch, Gadeirydd. Dim ond ychydig iawn sydd gennyf i'w ddweud ar hwn, ond rwy'n meddwl ei bod yn werth nodi'r peth. Mae'r pwyllgor hwn dros y blynyddoedd wedi bod â diddordeb mewn sicrhau bod modd gweld deddfwriaeth yn rhwydd i aelodau'r cyhoedd yn ogystal â chyfreithwyr. Y pwynt sydd wedi codi yn yr achos hwn yw pa mor anodd ydyw i ddod o hyd i ddeddfau lleol, neu o leiaf rai ohonynt. Yn y gorffennol, pan oedd Bil yn mynd drwodd, bu'n rhaid imi ofyn i'r Llywodraeth am gopiau o'r deddfau lleol yr oedd cyfeiriad

Mr Griffiths: Thank you, Chair. I have very little to say on this, but I do think that it is something worth noting. This committee over the years has taken an interest in ensuring that legislation is easily accessible for members of the public as well as lawyers. The point that has arisen in this case is how difficult it is to find bye-laws, or at least certain bye-laws. In the past, when a Bill was going through, I used to have to ask the Government for copies of any bye-laws referred to, because they were not easy to get hold of. You will see from the Government's

atynt, oherwydd nad oeddent yn hawdd cael gafael arnynt. Gwelwch o ymateb y Llywodraeth, sydd wedi'i atodi i'r adroddiad drafft, ei bod wedi ymrwymo i gydweithio â'r Archifau Cenedlaethol a'r awdurdodau lleol i drïo dod i sefyllfa lle mae'r holl hen ddeddfau lleol hyn i gyd ar gael ar wefan legislation.gov.uk. Os gwireddir hynny, bydd hynny'n step mawr ymlaen i bawb sy'n trio gweithio gyda'r ddeddfwriaeth leol hon.

response, which is attached to the draft report, that the Government has committed to working with the National Archives and local authorities to try to come to a position whereby all of these old bye-laws are available on the legislation.gov.uk website. If that is achieved, that will be a major step forward for everyone who is trying to work with these bye-laws and local legislation.

[185] **Suzy Davies:** Thank you. Does anyone have anything to add? Simon.

[186] **Simon Thomas:** Dim ond i nodi fy mod yn ddiolchgar i Gwyn am ein hatgoffa, ond er bod hwn yn edrych fel cam positif, achos rydym am weld yr hen ddeddfau hyn, mae'n wir i ddweud bod y broses o sicrhau bod pob dim ar legislation.gov.uk hefyd yn araf, o safbwynt y pethau yr ydym yn eu pasio ar hyn o bryd, a hynny'n ddwyieithog. Felly, mae'n rhywbeth, efallai, y gallai'r pwyllgor ddychwelyd ato, fel rhan o'r ymchwiliad i mewn i gyfreithlona, os dyna'r gair. Er bod y Llywodraeth wedi addo ac wedi bod yn gweithio i drïo gwneud hyn yn well, mae pethau dal yn araf iawn o ran gweld yr holl ddeddfwriaeth sydd gyda ni, yn ogystal â mynd yn ôl i'r hen stwff, wrth gwrs. Rwy'n derbyn y pwynt yr oedd Gwyn yn ei wneud; o leiaf mae ymgais yma i wella'r sefyllfa.

Simon Thomas: Just to note that I am grateful to Gwyn for reminding us of this, but despite the fact that this looks like a positive step, because we want to see these old bye-laws, it is true to say that the process of ensuring that everything is on legislation.gov.uk is a slow one, in terms of the things that we are passing ourselves, and bilingually. So, it is something that maybe this committee could return to, as part of the inquiry into law making, if that is the right work. Even though the Government has promised and has been working to do this better, things are still slow for us to see all the legislation that we have, as well as going back to the old stuff, of course. I accept the point that Gwyn made; at least there is an effort here to improve the situation.

[187] **Suzy Davies:** Rwy'n cytuno â hynny. **Suzy Davies:** I agree with that.

14:45

[188] There is another thing that I wanted to mention in relation to this, and it is the same thing that was faced with the disqualifications Order previously, namely, how do people know that changes have been made? I know that things are going onto a website, maybe, but there is nothing alerting anybody to the fact that a change has been made to the website. So, I think that that is an ongoing difficulty that the establishment has raised. I just wanted to make that observation.

Papur i'w Nodi **Paper to Note**

[189] **Suzy Davies:** Next, we have some papers to note. We have all had a chance to look through the European Commission's reasoned opinion on the storage of metallic mercury waste—it could not be more exciting, really. Are there any observations on that?

[190] **Simon Thomas:** Rwy'n nodi hefyd fod Llywodraeth Cymru yn ymuno gyda Llywodraeth San Steffan i ddweud bod y trosglwyddo wedi digwydd. Mae hynny'n **Simon Thomas:** I also note that the Welsh Government is joining with the Westminster Government to state that the transfer has happened. That is inevitable, and this is an

anochel, a dyma enghraifft o le rydym yn gwneud y gyfraith ar y cyd, onid yw—y ddau sefydliad yn ei gwneud ar y cyd? example of where we make law jointly, is it not—the two institutions working together?

[191] **Suzy Davies:** Does anyone wish us to write to the Minister, just to keep up to date with what is going on? Are you okay with that, Simon? However, you would prefer us to do that.

[192] **Mr Griffiths:** A gaf i argymhell, Gadeirydd, gan fod y Gweinidog yn cyfeirio'n benodol at ddulliau drafftio, sydd yn fater sydd o bwys canolog i waith y pwyllgor hwn, ein bod ni'n gofyn iddo ysgrifennu at y pwyllgor yn esbonio'r peth pan fo modd i'r esboniad hwnnw gael ei wneud yn gyhoeddus, er mwyn i ni gael deall beth ydy'r broblem gyda dulliau drafftio'r Deyrnas Gyfunol o'u cymharu â'r hyn y mae'r Comisiwn Ewropeaidd yn chwilio amdano? **Mr Griffiths:** Could I recommend, Chair, given that the Minister refers specifically to drafting approaches, which are of central importance to the work of this committee, that we ask him to write to the committee explaining this, when it is possible for that explanation to be made public, so that we can understand what the problem is in terms of drafting approaches in the UK compared with what the European Commission is looking for?

[193] **Suzy Davies:** I think that it helps to be as specific as that. That would be great, thank you.

14:46

Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod

Motion under Standing Order 17.42 to Resolve to Exclude the Public from the Meeting

[194] **Suzy Davies:** The rest of the session is timetabled to be in private session. I move that

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

[195] Does any Member object to that? I see that no Member does.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:47.
The public part of the meeting ended at 14:47.*