



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

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

Dydd Llun, 23 Mawrth 2015
Monday, 23 March 2015

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

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

Eraill yn bresennol
Others in attendance

Jeff Godfrey	Cyfarwyddwr Gwasanaethau Cyfreithiol, Llywodraeth Cymru Director of Legal Services, Welsh Government
Dylan Hughes	Y Prif Gwnsler Deddfwriaethol, Swyddfa'r Cwnsleriaid Deddfwriaethol, Llywodraeth Cymru First Legislative Counsel, Office of Legislative Counsel, Welsh Government
Carwyn Jones	Aelod Cynulliad, Llafur (y Prif Weinidog) Assembly Member, Labour (the First Minister)

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Daniel Greenberg	Cynghorydd Arbenigol Special Adviser
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Gareth Pembridge	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.

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

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the

Constitutional and Legislative Affairs Committee. I will just start with the routine housekeeping announcements. We do not expect a routine fire drill, so if we hear the alarm, please follow the instructions of the ushers, who will help us leave safely. Please switch all electronic devices to silent or off. These proceedings are conducted through Welsh and English. When Welsh is spoken, there's a translation on channel 1. Channel 0 will amplify our proceedings.

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

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

[2] **David Melding:** We move now to item 2, which is our final evidence session in relation to an inquiry into making laws in the fourth Assembly, and I'm delighted to welcome the First Minister, the Right Honourable Carwyn Jones, to our meeting. First Minister, do you want to introduce your officials?

[3] **The First Minister (Carwyn Jones):** I think they're well known, Chair. Jeff Godfrey to my left, who will introduce himself in terms of his title.

[4] **Mr Godfrey:** Director of Legal Services.

[5] **The First Minister:** Thank you very much. And Dylan Hughes.

[6] **Mr Hughes:** Dylan Hughes, First Legislative Counsel.

[7] **David Melding:** You're all welcome. I know it's your practice to invite us to dive into questions, so I think we will do that immediately, and I'll ask Suzy Davies to start.

[8] **Suzy Davies:** Thank you, Chair. First Minister, we've had some written evidence from witnesses who were delighted with the amount of pre-legislative consultation there is, but then expressed some concern that, when they respond to those consultations, they don't see their efforts reflected in the final proposals. Can you give us some examples where you think legislative proposals have been either influenced or amended significantly as a result of that pre-legislative consultation or, indeed, pre-legislative scrutiny?

[9] **The First Minister:** Well, there would be examples, of course, where legislation has taken a particular route as a result of the responses we've had in consultation. The Well-being of Future Generations (Wales) Bill would be one example of that, where, in crafting the Bill, we took great account of what was being said to us by outside organisations, and then, of course, during the course of the Bill through the Assembly. In terms of the approach that we take, consultations are useful in terms of organisations being able to give us practical examples of how something may or not work, and that is always considered as part of the legislative process, and something that we very much value.

[10] **Suzy Davies:** Thank you. Well, I believe, then, when we spoke to Dylan Hughes earlier in our evidence taking, he referred to policy possibly changing as it went through the process of drafting. Would you consider that part of the consultation process, if you like?

[11] **The First Minister:** I suppose there are two different bits. The initial consultation process is with the public, with outside organisations. We look to that consultation to comment on what we're proposing and to form ideas as to how what we're proposing can be put into practical effect. When a draft Bill is then produced, it goes through the formal process of the Assembly. There will be areas where there will need to be some fine tuning—no question about that—and there will be areas where other parties have come up with ideas

that, as a Government, we would want to support. So, in some ways, there are two different processes; one is much more open-ended than the other, inevitably, because once a draft Bill is produced, there is something there that then needs to be examined, and parties take a view as to how they wish to take it forward.

[12] **Suzy Davies:** Just thinking about draft Bills for a second, we haven't had that many in this last Assembly; about four or five, I think. Do you think they're good as a general way of proceeding, or would you prefer them to just be done on an ad hoc basis, and if so, why?

[13] **The First Minister:** I think the more complex a proposed Bill is, then the more likely it is to be a draft Bill. Particularly if it's in an area where there's known to be a number of areas of disagreement or controversy, it's important that the draft Bill is there so that all can see what's proposed to be in the Bill and offer comments at that stage to accommodate some of the issues that are raised. But there'll be other Bills that are not particularly substantial where a draft Bill wouldn't be appropriate.

[14] **Suzy Davies:** Okay. Obviously, we've heard also from witnesses that, as a piece of legislation goes through the scrutiny process—you know, Stage 1, Stage 2 and so forth—by the time we get to Stage 3, sometimes those who contributed to the consultation originally don't recognise the Bill that's before them after several drafts. How do you think their concerns might be accommodated?

[15] **The First Minister:** Well, it's sometimes inevitable that when a Bill progresses through the Assembly, it will change, sometimes fundamentally. But the thrust of a Bill will still be there. Where there is a draft Bill, and where there is a final Act, it's inevitable that there will be changes, sometimes significant, as a result of the process of the Bill going through the Assembly.

[16] **Suzy Davies:** Okay; thank you. And just finally from me, Chair, on pre-legislative scrutiny—some of our committees here undertake it; do you find that valuable?

[17] **The First Minister:** Yes, it can be. I think there's no way of analysing whether there should be a set process for every Bill, because some Bills are far, far more complicated than others, but there will be occasions when that would be something worth considering.

[18] **Suzy Davies:** Okay; thank you. Thank you, Chair.

[19] **David Melding:** Can I just clarify? The Government has introduced two significant draft Bills, I think you'd agree—planning and human transplantation—which strike me as Bills that really did warrant draft status and were improved by that. On human transplantation, we all saw that going through and that was really significant. Is that the model? Quite a lot of large Bills, or large subjects, have not received draft Bill status, and I wonder what sort of judgment is being made.

[20] **The First Minister:** The Human Transplantation (Wales) Act 2013 is an example where there were consultations on the policy at the beginning of the process, and indeed, the consultation on the draft Bill did lead to improvements in the Bill itself. That was a very significant piece of legislation. Even though it was perhaps not as complicated as other Bills in terms of its content, its implementation clearly needed to be thought through very carefully. As far as that Bill is concerned, certainly the process of taking it through as a draft Bill, through consultations, was certainly helpful.

[21] **David Melding:** Simon.

[22] **Simon Thomas:** Diolch, Gadeirydd. **Simon Thomas:** Thank you, Chair. You've

Rydych eisoes wedi sôn, Brif Weinidog, am y Bil Llesiant Cenedlaethau'r Dyfodol (Cymru). Os edrychwn ar enghraifft y Bil yna, dyma Fil a oedd yn mynd drwy'r Cynulliad ar yr un adeg ag yr oedd y broses ymgynghori ar y Bil, sef 'Y Cymru a Garem', yn parhau. Roedd y diffiniad, er enghraifft, o ddatblygu cynaliadwy, wedi newid yn sylweddol yn ystod y broses yna. A ydych chi'n gweld hynny fel arfer da?

[23] **Y Prif Weinidog:** Roedd yn anarferol—y Bil hwnnw—achos, wrth gwrs, yn gyntaf i gyd, roedd rhaid inni sicrhau beth oedd diffiniad cyfreithiol datblygu cynaliadwy, ac wedyn, ehangu'r syniad i le mae'r Bil nawr, sef cenedlaethau'r dyfodol. Felly, roedd hwnnw'n Fil a oedd yn datblygu'n gyflym wrth fynd drwy'r Cynulliad. Ond ni fyddwn yn erfyn i'r rhan fwyaf o Filiau ddatblygu yn yr un ffordd.

[24] **Simon Thomas:** Serch hynny, mae'r dystiolaeth rydym ni wedi'i derbyn yn awgrymu bod nifer o bobl yn poeni nad yw Biliau'r Llywodraeth wedi eu gorffen cyn cael eu cyflwyno, a bod yna newid polisi—nid jest newid drafftio, ond newid polisi—gan y Llywodraeth yn digwydd i Filiau wrth iddynt fynd drwy'r Cynulliad. A ydych chi'n derbyn y feirniadaeth yna o gwbl?

[25] **Y Prif Weinidog:** Byddwn i'n gorfod gweld enghraifft o hynny, er mwyn rhoi unrhyw fath o sylw ar hwnna.

[26] **Simon Thomas:** Wel, rydym ni fel pwyllgor wedi edrych ar y Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru), ac, yn ôl y cyngor rydym ni wedi ei gael fel pwyllgor, roedd 75 y cant o welliannau'r Llywodraeth i'r Bil yna yn rhai sylweddol—hynny yw, nid gwelliannau technegol, ond gwelliannau a oedd yn ymwneud â natur y Bil. Felly, mae honno'n enghraifft, onid yw?

[27] **Y Prif Weinidog:** Eithriad bydden i'n ei ddweud oedd y Ddeddf honno, ond—

[28] **Simon Thomas:** Mae dau eithriad gyda ni nawr, Brif Weinidog; felly, mae yna ddau Fil sydd yn eithriad.

[29] **Y Prif Weinidog:** Wel, bydden i'n dweud, ynglŷn â'r Bil ei hunan—y Bil

already spoken, First Minister, about the Well-Being of Future Generations (Wales) Bill. If we look at the example of that Bill, that's a Bill that went through the Assembly while the consultation process on the Bill, namely, 'The Wales We Want', was also ongoing. The definition, for example, of sustainable development, changed significantly during that process. Do you see that as good practice?

The First Minister: It was unusual—that Bill—because, first of all, we had to get the right definition of sustainable development in legal terms, and then expand the idea to where that Bill is now, which is future generations. So, that was a Bill that developed swiftly as it went through the Assembly. But I wouldn't expect most Bills to develop in a similar manner.

Simon Thomas: Nonetheless, the evidence that we've received suggests that many people are concerned that the Government Bills haven't been finalised before being introduced, and that there is a change of policy—not just in drafting, but in policy—on the Government's behalf in Bills as they go through the Assembly. Do you accept that criticism at all?

The First Minister: I would have to see an example of that, in order to make any comment on it.

Simon Thomas: Well, we as a committee have looked at the Social Services and Well-being (Wales) Bill, and, according to the advice that we have received as a committee, 75 per cent of Government amendments to that Bill were substantial—so they weren't technical amendments, but amendments in relation to the nature of the Bill. So, that is an example, isn't it?

The First Minister: I would say that that Act was an exception, but—

Simon Thomas: We have two exceptions now, First Minister; so, there are two Bills that are exceptions.

The First Minister: Well, I would say, in relation to the Bill itself—the social services

gwasanaethau cymdeithasol—bod yna lot fawr o welliannau wedi dod o'r Llywodraeth, mae hynny'n wir, ond hefyd o'r pleidiau eraill, ac roedd yn rhaid delio â nhw. Ac wrth gwrs, nid yw hynny'n rhywbeth hollol anarferol—byddai'r Aelod yn gwybod hyn, wrth gwrs—o'i gymharu, er enghraifft, â Senedd y Deyrnas Unedig, lle mae yna enghreifftiau lle mae lot fawr o welliannau, a hefyd, wrth gwrs, gwelliannau llywodraethol, yn enwedig gyda Biliau sydd yn gymhleth.

[30] **Simon Thomas:** O ran Bil Addysg (Cymru) wedyn—y Bil addysg cyntaf i ni ei wynebu—fe dynnwyd Rhan 2 o'r Bil yna allan yn llwyr ar ôl Cyfnod 2 y broses. A oedd hwnnw'n eithriad hefyd?

[31] **Y Prif Weinidog:** A ydych yn siarad nawr am ran o'r Bil a oedd yn delio ag anghenion arbennig?

[32] **Simon Thomas:** Ie, anghenion arbennig.

[33] **Y Prif Weinidog:** Wel, roedd hynny'n rhywbeth, wrth gwrs, roedd y pleidiau eraill yn moyn ei weld; yn enwedig un blaid. So, yn lle mynd ag ef drwyddo yn y ffordd yna, cymryd y penderfyniad ei bod yn well mynd â'r Bil drwyddo mewn dwy ran, er mwyn sicrhau ei fod yn deg i rai o'r sylwadau a oedd wedi cael eu gwneud gan y pleidiau eraill, bod yna ffordd o fynd â hynny drwyddo, a dyna beth oedd yr addewid a gafodd ei roi gan y Gweinidog, mewn Bil gwahanol.

[34] **Simon Thomas:** Mae hyn i gyd yn wir—

[35] **Y Prif Weinidog:** Nid dewis y Llywodraeth fyddai hynny wedi bod, ond—

[36] **Simon Thomas:** Na, rwy'n derbyn bod yna reswm, bob tro, dros y broses yma. Beth rwy'n ceisio ei weld gennych chi yw unrhyw ymdeimlad bod rhai o'r Biliau yma wedi eu cyflwyno yn rhy fuan, heb eu paratoi yn ddigon trwyadl, neu heb ymgynghori digon arnyn nhw gyda'r rhanddeiliaid, sydd yn bwysig yn y broses yma.

[37] **Y Prif Weinidog:** Mae yna 17 Bil, rwy'n credu, wedi mynd drwy'r Cynulliad

Bill—that there were a number of Government amendments, that is true, but also from the other parties, and we had to deal with those. And of course, that wasn't entirely unusual—the Member will be aware of this, of course—if you compare, for example, the situation in the UK Parliament, where there are examples where there are numerous amendments, including Government amendments, especially with complex Bills.

Simon Thomas: In terms of the Education (Wales) Bill—the first education Bill that we dealt with—Part 2 of that Bill was taken out entirely at Stage 2 of the process. Was that an exception also?

The First Minister: Are you talking about the section of the Bill dealing with special needs?

Simon Thomas: Yes, special needs.

The First Minister: Well, that was something, of course, that the other parties, and particularly one party, wanted to see. So, rather than doing it in the original way, we decided that it was better to take the Bill through in two different parts, in order to do justice to the comments made by the other parties, in ensuring that that could be taken through properly, and that was the pledge that was made by the Minister, in a different Bill.

Simon Thomas: This is all true—

The First Minister: That wouldn't have been the Government's choice, but—

Simon Thomas: No, I accept that there's a reason, every time, for this process. What I'm trying to probe with you is any feeling that some of these Bills were put forward too soon, without being prepared sufficiently thoroughly, and without sufficient consultation on them with the stakeholders, who are important in this process.

The First Minister: Seventeen Bills, I think, have gone through the Assembly up to now,

lan at nawr, a bydden i'n dweud bod y rhan fwyaf ohonyn nhw wedi cael eu trin yn y ffordd y bydden i'n ei erfyn, sef mynd drwy'r Cynulliad, wrth gwrs, â gwelliannau. Mae yna rai Biliau sydd wedi gorfod cael mwy o waith, a dyna'r enghreifftiau sydd wedi cael eu rhoi.

[38] **Simon Thomas:** Wel, dywedodd Jane Hutt wrthym ni yr wythnos diwethaf mai chi, yn y bôn, a oedd yn gyfrifol am benderfynu a oedd Bil yn barod i gael ei gyflwyno i'r Cynulliad neu beidio. A fedrwch chi, felly, esbonio wrthym ni beth yw'r prosesau mewnol rydych chi'n eu defnyddio i wirio a yw Bil yn barod?

[39] **Y Prif Weinidog:** Wel, fi sy'n gyfrifol am y rhaglen lywodraethol—nid am bob Bil yn unigol; mae hynny wrth gwrs—

[40] **Simon Thomas:** Ocê, so pwy sy'n gyfrifol am—

[41] **Y Prif Weinidog:** Gweinidogion, wrth gwrs, sy'n gyfrifol am y Biliau hynny. Ond, wrth gwrs, mae'n wir dweud, pan mae Bil yn barod i symud ymlaen, wrth gwrs mae'n rhaid i fi, gyda'r Gweinidog, ganiatáu hynny. Nid fi sydd yn gyfrifol am bob Bil unigol—mae hynny'n rhywbeth i Weinidogion—ond rwy'n gyfrifol am y rhaglen lywodraethol yn gyfan gwbl.

[42] **Simon Thomas:** Jest i fod yn glir felly, yr awgrym o dystiolaeth Jane Hutt yr wythnos diwethaf oedd bod rhyw fath o borth neu drothwy roeddech chi—gyda'r Gweinidog a oedd yn gyfrifol am y Bil—yn gorfod mynd drwyddo cyn cyflwyno'n ffurfiol. A yw hynny'n wir, felly—bod yna rhyw broses fewnol lle mae hynny'n digwydd?

[43] **Y Prif Weinidog:** Mae'n rhaid cael caniatâd gennyf fi—mae hynny'n iawn.

[44] **Simon Thomas:** Reit. So, beth felly yw'r prosesau sy'n gorwedd y tu ôl i hynny, sy'n golygu bod y Bil yn addas, ac yn barod?

[45] **Y Prif Weinidog:** Byddai'r Bil, a phopeth sydd yn berthnasol i'r Bil, yn cael eu pasio ymlaen ataf i gan y Gweinidog, ac felly byddai rhywbeth gen i wedi hynny i ganiatáu

and I would say that most of them were dealt with in the way that we would have expected, having gone through the Assembly, of course, with amendments. There are some Bills that have required more work, and those are the examples that have been given.

Simon Thomas: Well, Jane Hutt told us last week that you are responsible, ultimately, for deciding whether a Bill is ready to be introduced to the Assembly or not. Could you therefore explain to us what internal processes you use to ensure that a Bill is ready?

The First Minister: Well, I am responsible for the programme of government—not for every individual Bill; that of course—

Simon Thomas: Okay, so who is responsible for—

The First Minister: Ministers, of course, are responsible for those Bills. But, of course, it is true to say that, when a Bill is ready to progress, then I, along with the Minister, do have to allow that. I am not responsible for every individual Bill—that is a matter for Ministers—but I am responsible for the programme for government in its entirety.

Simon Thomas: Just to be clear, the suggestion in Jane Hutt's evidence last week was that there is some sort of portal or threshold that you—with the Minister responsible for the Bill—have to go through before the Bill can proceed. So, is that true—that there is some sort of an internal process where that happens?

The First Minister: I must give my permission—that is correct.

Simon Thomas: Right. So, what therefore are the processes that lie behind that, to ensure that the Bill is appropriate, and ready?

The First Minister: The Bill, and everything that is related to the Bill, would be passed to me by the Minister, and then I would have something to allow the process to commence.

i'r broses ddechrau.

[46] **Simon Thomas:** A ydych yn hapus bod hynny'n ddigon cadarn fel mae'n gweithio ar hyn o bryd?

Simon Thomas: Are you content that that is sufficiently robust as it currently stands?

[47] **Y Prif Weinidog:** Ydw. Mae'n rhaid inni gofio, wrth gwrs, bedair blynedd yn ôl, bach iawn o brofiad oedd gennym ni fel Llywodraeth, a hefyd fel Senedd, o ddelio â Biliau fel hyn. Mae'n wir dweud bod Mesurau, ond bach iawn o Fesurau a oedd wedi dod trwyddo mewn pedair blynedd, so mae yna broses ddysgu fan hyn. Roedd yn rhaid, wrth gwrs, adeiladu'r adran deddfwriaethol o ran y cyfreithwyr, ac mae hynny wedi digwydd. Nid yw'n rhwydd recriwtio pobl sydd â'r sgiliau hynny, yn enwedig sgiliau dwyieithog.

The First Minister: Yes. We must bear in mind, of course, that, four years ago, we had very little experience as a Government, and as a Senedd, in dealing with Bills of this kind. It's true to say that there were Measures, but very few Measures came through in that four-year period, so there is a learning process here. Of course, we had to build the legislative department, in terms of lawyers, which has happened. It's not easy to recruit people who have those skills, particularly people with bilingual skills.

[48] Ond, wrth gofio hynny, rwy'n credu, dros y pedair blynedd diwethaf, ein bod ni wedi symud ymlaen yn dda, a bod yna lawer o Filiau wedi cael eu pasio. Rhaid cofio'r ffaith, wrth gwrs, wyth mlynedd yn ôl, nid oedd profiad o gwbl gan yr un ohonom fan hyn—yn y sefydliad hwn—o sut roedd Biliau'n cael eu drafftio.

But, bearing that in mind, I think that, over the last four years, we have made good progress, and that many Bills have been passed. We must bear in mind, of course, that, just eight years ago, no-one here—in this particular institution—had any experience in terms of how Bills were drafted.

13:45

[49] **Simon Thomas:** Mae hynny'n wir. Rŷm ni wedi derbyn tystiolaeth gan Mr Hughes o'r blaen hefyd ynglŷn â'r broses yna o adeiladu capasiti sydd wedi digwydd. Mae'r hyn rŷch chi'n ei ddweud yn wir, wrth gwrs, ond mae hefyd yn wir i ddweud, wrth ddechrau ar y daith yma, fod gyda ni fel Cynulliad a chithau fel Llywodraeth nifer o opsiynau a dewisiadau ynglŷn â'r ffordd rŷch chi'n dymuno deddfu. Byddwn i'n leicio tynnu eich sylw chi at y dystiolaeth rŷch chi wedi'i chyflwyno lle rŷch chi'n dweud eich bod chi'n dymuno symud i ffwrdd oddi ar Filiau fframwaith, ond ar yr un pryd, rŷch chi'n dweud eich bod chi'n hyderus bod y cydbwysedd rhwng yr hyn sy'n cael ei gynnwys mewn deddfwriaeth sylfaenol ac is-ddeddfwriaeth yn gywir. Mae'r ddau i fi yn awgrymu dwy ffordd wahanol o lunio deddfwriaeth. Felly, p'un yw'r gyriant mwyaf cryf sydd gyda chi mewn Llywodraeth? Symud i ffwrdd oddi ar Filiau fframwaith a chael mwy ar wyneb y Bil?

Simon Thomas: That's true. We have also received evidence from Mr Hughes previously on that process of building capacity that has happened. What you are saying is true, of course, but it's also true to say that, as we're commencing this journey, we as an Assembly and you as a Government have a number of options and choices to make about the way that you want to legislate. I would like to draw your attention to the evidence that you've submitted where you say that you want to move away from framework Bills, but, at the same time, you say that you're confident that the balance between what is included in primary legislation and what is included in secondary legislation is correct. The two, to me, suggest two different ways of drafting legislation. So, what's the strongest driver that you have as a Government? Is it to move away from framework Bills and to have more included on the face of the Bill?

[50] **Y Prif Weinidog:** Lle mae hynny'n iawn, byddwn i'n moyn gweld mwy o fanylion yn y Bil ei hunan, wrth gwrs. Yn gyntaf i gyd, y cwestiwn cyntaf yw a oes eisiau Bil. Wedi hynny, wrth gwrs, ynglŷn â'r Bil, beth sy'n mynd ar wyneb y Bil? Ynglŷn â phenderfynu ym mha ffordd rydym ni'n symud ymlaen, mae'n rhaid inni ystyried faint o *flexibility* a ddylai fod mewn rhai adrannau o'r Bil. Mewn rhai rhannau o unrhyw Fil, mae'n bwysig cael rhywbeth i lawr ar bapur er mwyn sicrhau bod rhywbeth yn mynd i fod yna a bod rhywbeth sicr yn mynd i fod ar wyneb y Bil am flynyddoedd. Lle mae yna deimlad na fydd pethau'n newid am sawl blwyddyn, felly, ar wyneb y Bil y byddai'r manylion, ond lle mae'n rhaid i ni ystyried rhywbeth efallai a fyddai'n newid o flwyddyn i flwyddyn, a bydd cynllunio yn rhan o hynny, felly, wrth gwrs, ni fyddai unrhyw fath o ganllawiau neu reoliadau ar wyneb y Bil, er mwyn sicrhau bod pethau'n gallu symud yn gyflym lle mae eisiau gwneud hynny.

[51] **Simon Thomas:** Mae'n ddigon clir, y cydbwysedd yna, pan ŷch chi'n sôn am, dywedwch, ffioedd neu dâl sy'n cael ei godi, neu fod y flwyddyn yn newid a bod eisiau ysgrifennu hynny i mewn i ddeddfwriaeth, neu fod nifer yn gallu amrywio o flwyddyn i flwyddyn, ac ati. Mae hynny'n ddigon clir. Ond a ydych chi o gwbl yn ystyried, fel senedd newydd—ac fel rŷch chi'n ei ddweud, rŷm ni ar ddechrau ar y daith ddeddfu yma—fod angen i'r Cynulliad ei hunan gael mwy o ddweud neu fwy o oruchwyliaeth ynglŷn â beth sydd yn cael ei ysgrifennu ar wyneb Bil? A ydych chi o gwbl yn derbyn y feirmiadaeth sydd wedi dod bod rhai o'r Biliau naill ai'n ymddangos fel nad yw'r polisi wedi'i weithio mas eto, neu yn cadw yn ôl gormod o bŵer i Weinidogion benderfynu ar y polisi yn nes ymlaen?

[52] **Y Prif Weinidog:** Na, nid wy'n derbyn bod hynny'n iawn. Byddwn i'n dadlau ein bod ni wedi cael y cydbwysedd yn iawn. Nid yw'r ffaith nad yw rhywbeth ar wyneb y Bil yn meddwl nad yw rhywbeth wedi cael ei weithio allan, neu nad oes unrhyw fath o ystyried wedi cael ei rhoi i'r ffordd y bydd y polisi yn cael ei weithredu. Ond, weithiau, wrth gwrs, mae'n bwysig gael y *flexibility* yna er mwyn sicrhau ein bod

The First Minister: Where that's appropriate, we would like to see more details in the Bill itself, of course. First and foremost, the first question to ask is whether a Bill is necessary. After that, of course, in terms of the Bill, what's going to appear on the face of the Bill? In terms of deciding how we should move forward, then we have to take into account how much flexibility there should be in certain sections of a Bill. In certain part of any Bill, it's important to get things down on paper to ensure that there will be something there and assurances provided on the face of the Bill over a period of years. Where there is a feeling that things won't change for many years, therefore, it's on the face of the Bill that those details should appear, but where we need to consider an issue that may be fluid and change from year to year, and planning will be a part of that, of course, then, any kinds of guidance or regulations wouldn't appear on the face of the Bill, in order to ensure that things could move swiftly where that's required.

Simon Thomas: It's perfectly clear, that balance, when you talk about fees, let us say, or charges that are levied, or that the specified year needs to change and that needs to be written into the legislation, or if a figure is prone to variation from year to year, and so on. That's clear enough. But do you consider, as a new parliament—and, as you say, we're only now at the start of this legislative journey—that the Assembly itself needs to have more of a say in, or more oversight over, what is written on the face of a Bill? Do you accept at all the criticism that has been put forward that, with some of the Bills, it either appears that the policy hasn't been worked out yet, or that they reserve too many powers for Ministers to decide on the policy later on?

The First Minister: No, I wouldn't accept that that's the case. I would argue that we have struck the correct balance. The fact that something doesn't appear on the face of the Bill doesn't mean that it hasn't been worked out yet, or that no consideration has been given to how the policy will be implemented. But, on occasion, of course, it's important to have that flexibility in order to ensure that we can change things where it's important to do

ni'n gallu newid pethau lle mae'n bwysig gwneud hynny—wrth gofio'r ffaith, wrth gwrs, fod perffaith hawl gyda'r Cynulliad i geisio gwrthdroi beth mae'r Gweinidog yn ei wneud, ta beth.

[53] **Simon Thomas:** Pam nad ydych chi'n ystyried bod y Cynulliad yn gallu bod yn hyblyg?

[54] **Y Prif Weinidog:** Rwy'n credu bod y Cynulliad, ond nid wy'n credu y dylem ni ddod â phopeth o flaen y Cynulliad. Pan ddaethom ni yma y tro cyntaf, fanna oedd y lle. Roeddem ni'n delio â phopeth ar lawr y Cynulliad a llawer o bethau nad oeddent, efallai, yn bethau y byddai neb wedi moyn eu hystyried a phleidleisio arnyn nhw. Mae'n wir i ddweud bod y rhan fwyaf o reoliadau sy'n mynd trwyddo fel is-ddeddfwriaeth yn ddeddfwriaeth nad yw'n mynd i achosi lot fawr o anghytuno. Weithiau, wrth gwrs, mae hynny'n wahanol. Dyna pam, weithiau, ein bod ni'n dod â phethau o flaen y Cynulliad er mwyn cael bendith y Cynulliad cyn symud ymlaen gyda rhai o'r rheoliadau. Rydym ni i gyd yn gwybod, wrth gwrs, ei bod e'n bosib i'r Cynulliad wrthdroi rheoliadau y mae Gweinidogion yn eu gwneud.

[55] **Simon Thomas:** Yn gyffredinol, ynglŷn â'r cydbwysedd yma rhwng y ddau beth, beth sydd ar yr wyneb a beth sydd mewn is-ddeddfwriaeth, mae Cymdeithas Hansard wedi dweud wrthym ni fod yna dueddiad mewn deddfwriaeth Brydeinig—ac nid jest yng Nghymru yr oedden nhw'n sôn amdano ond tueddiad yn gyffredinol—i bethau ddrifftio, os leiciwch chi, i mewn i sefyllfa lle mae yna fwy a mwy yn cael ei gadw yn ôl ar gyfer is-ddeddfwriaeth ac yn gynyddol lai yn cael ei ddatgan ar wyneb y Bil. A ydych chi'n gweld hynny, yn gyntaf oll, fel disgrifiad teg o dueddiadau sydd i gael mewn deddfwriaeth Brydeinig ac a ydych chi'n ei weld fel bygythiad i'r ffordd y byddai'r Senedd hon yn datblygu dros amser?

[56] **Y Prif Weinidog:** Ni fyddwn i'n moyn dilyn beth sy'n digwydd yn San Steffan ynglŷn â beth sydd wedi digwydd fanna. Mae hynny'n rhywbeth iddyn nhw, wrth gwrs, i'w ystyried: y ffordd y maen nhw'n symud ymlaen gyda Biliau. Ynglŷn ag edrych ar Filiau, beth y byddem ni'n ei

that-bearing in mind, of course, that the Assembly has every right to try and reverse what the Minister is intending to do, in any case.

Simon Thomas: Why don't you consider that the Assembly can be flexible?

The First Minister: I think that the Assembly is, but I don't think that we should bring everything before the Assembly. When we came here first, that was the place. We were dealing with everything on the floor of the Assembly and many of those things were things that no-one would've wanted to have to consider or to vote on. So, it is true to say that most of the regulations that go through as subordinate legislation are legislation that isn't going to cause a great deal of controversy. There can be exceptions, sometimes, of course, and that's why we do occasionally bring things before the Assembly for the Assembly's blessing, before going ahead with regulations. We all know, of course, that the Assembly is able to overturn regulations brought forward by Ministers.

Simon Thomas: Generally speaking, in terms of this balance between the two things, between what is in secondary legislation and what is on the face of a Bill, the Hansard Society has said to us that there is a tendency in UK legislation—and it was not just within Wales that they were talking about, but a general tendency—for things to drift, if you like, into a situation where more and more is reserved for secondary legislation and increasingly less is being written onto the face of a Bill. Do you see that, first of all, as a fair description of the tendencies seen in legislation in the UK, and do you see that as a threat to the way that this Senedd would develop over time?

The First Minister: I wouldn't want to follow what's happening in Westminster, in terms of what has happened there. That is something for them, of course, to consider: the way in which they proceed with their Bills. In terms of looking at Bills, what we would consider first of all would be the

ystyried yn gyntaf yw dwyn i le y polisiau, wrth gwrs, y strwythurau, a sicrhau bod cynifer o fanylion ag sy'n bosib yn cael eu rhoi i mewn i'r Bil er mwyn ehangu'r strwythurau a'r polisiau yn y Bil ei hun. Weithiau, wrth gwrs, er mwyn ystyried y manylion yn ehangach, mae'n rhaid cael rhyw fath o ffordd o sicrhau bod y manylion ynglŷn â'r ffordd y mae rhywbeth yn gweithio yn gallu cael eu newid yn rhwyddach na chael Bil i newid Deddf drwy'r Cynulliad.

implementation of the policies, of course, the structures, and ensuring that as much detail as possible is provided within the Bill in order to enhance the structures and the policies within the Bill itself. On occasion, of course, if we want to consider the broader details, we'd have to have some way of ensuring that those details as to how a Bill actually works could be changed or adapted more swiftly, rather than needing a Bill to go through the Assembly to change an Act.

[57] **Simon Thomas:** Drwyddi draw, felly, a ydych chi'n teimlo bod eich Llywodraeth chi wedi parchu dyletswyddau a chyfrifoldebau'r Cynulliad hyd yma wrth ddeddfu?

Simon Thomas: Do you feel that your Government has, throughout, respected the duties and responsibilities of the Assembly in legislating hitherto?

[58] **Y Prif Weinidog:** Rwy'n mynd i ddweud 'ydw', rwy'n credu hynny. Nid yw hyn yn wyddoniaeth sydd yn berffaith ynglŷn â gwybod ble yn gymwys y dylai'r ffiniau fynd, ond byddwn i'n dadlau ein bod ni wedi gwneud hynny ac wedi doddi cynifer o fanylion ag sy'n bosib i mewn i Fil, lle mae hynny'n bosib.

The First Minister: I am bound to say 'yes', I do think that that's the case. It's not an exact science in terms of knowing exactly where the boundaries lie, but I would argue that we have achieved that and have provided as much detail as was possible into Bills where that has been possible.

[59] **Simon Thomas:** Diolch.

Simon Thomas: Thank you.

[60] **David Melding:** First Minister, you said something I think very instructive: that just because something isn't on the face of the Bill, it doesn't mean that the policy intention has not been worked out, even if you want the flexibility of doing it in regulations. In those circumstances, though, don't you think best practice would be for the regulations to be published in draft as the primary legislation is going through, because that would permit first-degree scrutiny, which sometimes is not always achievable if you leave it to secondary legislation?

[61] **The First Minister:** I think the difficulty that can sometimes exist with regulations is that a Bill, potentially, could change significantly, which would then render those regulations, as they were then drafted, ineffective. Now, I know that there have been instances where thought has certainly been given to bringing draft regulations forward at the same time as the Bill, but there is that difficulty that sometimes exists that if a Bill does change quite significantly, the regulations may well become, at least partially, redundant. So, it's a difficult call to do that. Normally, of course, the regulations would follow once the structure has been put in place, then of course that structure is fleshed out through regulations. Sometimes the Bill will have more detail, and sometimes the Bill would be more of a framework Bill, as it's been described, but as I say, where we can, we will put as much detail as possible on the face of the Bill, while considering the need for flexibility.

[62] **David Melding:** I'm not quite sure you answered the question. So, ideally, if you need the flexibility, if you know what your policy intent is in the first place, or initially, you would then seek to issue those regs in draft at the same time as the primary legislation is being considered. It seems to me that that would be the most robust way of proceeding.

[63] **The First Minister:** If you have the luxury of a majority in Government, yes, you can do that, because you can be fairly certain that, if you can get a Bill through, then the regulations that come with that Bill are going to be robust. That's not the situation that exists here.

[64] **David Melding:** Again, I think you've deflected the question rather than answered it, but let me move on. Your Government's had a couple of run-ins on this sort of issue. I think the definition of 'eligibility of care' caused quite a lot of controversy in the social care Bill, and I think you had to publish your intention in the end. I'm speaking off the top of my head, if any Member can help me, but certainly, with future generations and the sustainability duty, your Minister avoided saying anything very detailed in that, and said it ought to be dealt with in regulations, as I recall—but in the end, did actually publish something for the committee that was considering Stage 2 to consider. Now, these sorts of things were big, big principles. I don't think you could say they weren't principle or policy, but you needed flexibility, and the Government seemed reluctant to be fully candid at the time of Stage 2 consideration, and that does seem to fall short of best practice, would you agree?

[65] **The First Minister:** I can't say that I saw the Stage 2 process; nevertheless, I would expect that, where Bills are brought forward, the policy intention, of course, is fully thought through, and we are in a position to present a Bill to the Assembly that, from our perspective, could be passed more or less in the form that it's presented.

[66] **David Melding:** Okay, we'll move on. Alun.

[67] **Alun Davies:** Thank you. In terms of reading through the Government's response to this inquiry, which I thought was very, very comprehensive, and very detailed and extremely helpful, on page 4, which is helpfully pack page 5, according to mine, you have 'Management of the legislative programme', paragraph 8 through to 13. In that, you explain your role:

[68] 'As First Minister I oversee decisions on the content and management of the...Legislative Programme'.

[69] I wonder if you could, First Minister, outline what that actually means in practice. Do you see, or would you anticipate seeing, or have you seen the policy instructions that would go to legislative counsel to write the Bill? Would you expect to be a part of writing those instructions? At what point would you see first drafts of potential Bills?

[70] **The First Minister:** Yes, I certainly have to approve instructions being given. I certainly have to approve a Bill going forward. In terms of the detailed work on a Bill, that's something, of course, I would expect a Minister to take forward; nevertheless, as somebody in overall charge of the legislative programme, I do have a responsibility to sign off those matters as they arise.

[71] **Alun Davies:** So, you'd expect to be a part of the policy development, as well as the policy instructions?

[72] **The First Minister:** Generally. I wouldn't expect to be part of the detailed development of a Bill, but where there are particular issues, and when I'm asked my view on a particular way forward, then, yes, I would expect to be part of that process.

[73] **Alun Davies:** In terms of taking that forward through the process, I would expect—tell me if I'm wrong here—that you would take a greater interest in some Bills than others, and, where there are particular difficulties, you'd take more interest in those than where there aren't difficulties. I'd assume that would be the case. To what extent would you then, or how closely would you then follow the legislative process? Would you read through the Record of

Proceedings, for example, of committees? Would you read through amendments that have been proposed? To what extent would you then be involved in that level of management of the legislative process?

[74] **The First Minister:** Well, I treat all Bills equally, in terms of the way I see them, but I am copied into all the processes that a Bill follows. If there are particular issues that arise, they will be brought particularly to my attention. Can I read through all Records of Proceedings? The answer to that probably is ‘no’, but where there are particular issues that are flagged up, then, yes, of course, they are flagged up to me.

[75] **Alun Davies:** In terms of the support provided to Ministers for individual Bills, would you play a part in ensuring, not that Ministers have the support they feel appropriate, but that you take an overview as to the support that is provided, both by Legal Services and also by policy officials?

[76] **The First Minister:** Yes. More so at the beginning of the Assembly term than now, when the situation was more difficult, in the sense that the experience wasn’t there that there is now. I think it’s fair to say that, in 2011, we needed more drafting lawyers. We managed. It was a challenge, but we got there, in terms of having the lawyers we wanted. I took a very hands-on approach to that. The same with Bill teams. We had to put in place a system of Bill teams. I certainly took very much a hands-on approach in making sure that I was happy with the Bill teams that would take Bills forward.

[77] **Alun Davies:** Have you ever needed to intervene to ensure that you are happy, or have you been quite content with what’s been presented?

[78] **The First Minister:** I’ve been quite content with what’s presented when Bills are being taken forward. Now, there is less of an issue in terms of ensuring that Bill teams are in place and constituted in the way that I’d want, because the experience is there. But, at the beginning, certainly in 2011 and 2012, there was a need to be very proactive in terms of making sure that the drafting experience and expertise was there, and also to ensure that we had the right people running the Bill teams.

[79] **Alun Davies:** Okay. That’s very helpful. I think it’s given us a far clearer idea of the management role that you play, as First Minister. Taking this forward, in terms of the process and the scrutiny, paragraph 20 of the Government’s evidence, starts with:

[80] ‘When considering the appropriate level of scrutiny for bills’.

[81] The Government will take a view on what is appropriate and what isn’t appropriate, but it is, of course, the Assembly that then determines the sort of scrutiny that each Bill will be subject to, and a timescale for that. Have you been content as First Minister that the scrutiny determined by the Assembly has been appropriate on all occasions, or have there been areas where you’ve not been content?

14:00

[82] **The First Minister:** I’m not sure it’s a question I could answer. I mean, if you’re sitting on the Government side, you feel there’s a huge amount of scrutiny taking place with Bills. There are wider questions, as we know, in terms of the pressures that are imposed on backbenchers from all parties in terms of scrutiny—well-known issues that are wrapped up in the issue of the number of Assembly Members that we have. I’ve not felt that scrutiny has been lacking from the Government point of view. I mean, ultimately, of course, it’s for the Assembly itself to decide how scrutiny is taken forward. We do try and timetable Bills according to their complexity and according to the size and nature of each Bill. It’s not an

exact science in terms of determining how much time exactly is needed, but we are certainly aware that, when a substantial piece of legislation comes forward, we have to think about ensuring that Members are able to scrutinise properly during the course of the Bill's progress.

[83] **Alun Davies:** Thank you. You touched in answer to a question from Simon and again in paragraph 20 on the processes that are currently employed by the National Assembly in terms of legislation. You've begun to start to discuss in paragraph 20 whether there should be a level of flexibility. Would it be the Government's view that the National Assembly, in terms of its approach currently, has sufficient flexibility, or do you believe that the Government requires—or the Assembly requires—greater flexibility in terms of how it currently legislates?

[84] **The First Minister:** Again, it's difficult to comment from the Government end in that regard. What I see is a huge amount of scrutiny work being done by relatively few people, given the numbers that we have here, particularly compared with other institutions. I don't think the quality of scrutiny has suffered because of it. I think the fact that we see that line-by-line scrutiny in committees, we see amendments coming forward—. We've seen a substantial number of amendments coming forward at Stage 3 proceedings and that to me is a sign of the scrutiny process working. If very small numbers of amendments were being brought forward to Bills then that would be perhaps more concerning, but that's certainly not the case from where I sit.

[85] **Alun Davies:** So, you don't believe—. I would like to push you a bit further on that, in fact, because you say it's not the role for Government, but the Government is the sponsor of the vast majority of legislation here, and it is the Government's programme that this place spends most of its time delivering. So, it would be surprising were the Government not to have a view on the flexibility of current processes and procedures in this place.

[86] **The First Minister:** I've seen nothing to suggest that the current procedures are causing difficulty in terms of scrutiny.

[87] **Alun Davies:** Okay. And in terms of Government getting its programme?

[88] **The First Minister:** Well, no—. From our point of view, it is always, of course, a challenge to take a Bill through, but then perhaps it should be. That's the whole point of scrutiny. We've seen, of course, Bills coming to Stage 3 with a large number of amendments. That's something we accept that we have to deal with. It strikes me from where I sit that that's a sign of a high level of scrutiny by Members.

[89] **Alun Davies:** Okay. In answer to a previous question, you spoke about Ministers and backbenchers bringing forward amendments, and we've touched on this debate already this afternoon. In terms of the conversations that you would have with Ministers and with Bill teams and legal services and the rest of it, what attitude would you expect Ministers and others to take to opposition amendments or individual Members' amendments?

[90] **The First Minister:** Well, I would expect Ministers to engage as early as possible with opposition spokespeople to understand where the areas of disagreement are. I would expect them, throughout the whole of the process of a Bill, to keep that line of communication open. There will be occasions, of course, where there can be no agreement. There will be other occasions where that's possible. Sometimes, we are, as a Government, able to accept amendments. There'll be other occasions when we will be able to put down our own amendments, which perhaps improve on a Member's own amendment, which the Member can then accept.

[91] **Alun Davies:** One of the interesting parts of this inquiry and the conversations we've

had through this has been a comment made by the Hansard Society, which I think has had a wider resonance, that there is a lack of a backbench culture in the National Assembly, partly because of the numbers, on which I think there would probably be broad agreement—unanimous agreement—amongst us here, but also potentially because this is the first time this body has acted like a proper legislature, like a Parliament. We need to recognise that we do need time to develop a culture, but is there also potentially, possibly, a resistance on the part of Government to actually accepting non-Government amendments, which means that backbenchers don't feel, quite often, that they've had sufficient fair play? Do you believe the Government has a role to play in being perhaps—I'm trying to avoid using the word 'magnanimous'—more generous with backbenchers who are trying to amend Bills, where the Government doesn't have a fundamental political objection to what is attempted to be done?

[92] **The First Minister:** Well, there have been examples of amendments that have been accepted. I suspect that, if we looked back at the record, that most weren't, but most certainly some were. We have to start on the basis of being open-minded. There's a simple arithmetic behind that, obviously, with the numbers, and it's important, of course, that we're able to understand what the thrust of the amendments is and whether we can support those amendments, but we don't start off from the basis that, if we seek to take a Bill through the Assembly, then the default position is that we will try to oppose every opposition amendment. That wouldn't make sense in terms of taking a Bill through, and that's certainly not where we start. Well, it's not where we end either. That's something we bear in mind through the entire process.

[93] **Alun Davies:** But in terms of the cultural approach, if you like—the attitudinal approach—it would be one of, 'If you can reach accommodation, please try to do so. If you can't, you can't'.

[94] **The First Minister:** Well, that's perfect. I think that sums it up neatly.

[95] **Alun Davies:** Going back to when we started this conversation and the Government's view of process and scrutiny, we agreed that the National Assembly controls the process rather than the Government once it comes to this place. Of course, there is one area where that is not true, and that is in terms of Report Stage. There have been—. Ministers have said 'yes', Ministers have been bluntly forced to say 'yes', and Ministers have just said 'no', and it is absolutely their right to take any of those different views. But would you not accept that, in a unicameral system, where there is only one opportunity for line-by-line scrutiny in committee, only one then Stage 3 debate on the floor of the National Assembly, that there should be an opportunity within that process for the National Assembly itself to take an additional overview of the Bill as amended?

[96] **The First Minister:** Well, that would take a change in Standing Orders, of course. That would mean, effectively, from our point of view, opening the door to the Member in charge losing control of a Bill, which I think has wider implications.

[97] With regard to the unicameral nature of the Assembly, I mean, we are in a similar position to Scotland—another unicameral legislature, where there's no provision for an automatic Report Stage. We've taken the view that Report Stage would be appropriate in some cases but not in others. A Bill goes through a number of stages in any event, and, as we know, Bills do quite often get substantial alteration through amendments, of which some are Government amendments and some, of course, are amendments from opposition parties. I don't think there's a lack of stages of scrutiny in the Assembly. To add another compulsory stage, as it were, I don't think that would be something that would add anything, although there are occasions when the Report Stage clearly has been used.

[98] **Alun Davies:** There have been some instances—I'm thinking, in particular, of the

future generations Bill and the violence against women Bill—where there’s been significant amendment at both Stage 2 and Stage 3, and there hasn’t then always been the same opportunity—. For example, the violence against women Bill is probably the best example, where there’s no Report Stage and there’s no opportunity then to take an overview of the work that was done at Stage 3. I’m not suggesting that Report Stage should be an opportunity to rehearse the same arguments as at Stage 3 or to give particular Members the same opportunity to put the same amendment as they’ve put twice already. I’m not suggesting we go down that route, but perhaps there may be virtue and merit in the National Assembly as a collective having that opportunity to sign off that Bill before it goes through Stage 4 and Royal Assent. I’m not sure I understand why you believe that such a demand would mean that the Member in charge would lose control of the Bill.

[99] **The First Minister:** I think what you’re suggesting is that there will be a Report Stage that will be quite limited in the sense that it wouldn’t be a rerun of Stage 3. In which case, of course, it then begs the question of how that is different to Stage 4, if, for example, the suggestion is that it will be a stage where the Bill, as it currently stands after Stage 3, is looked at once again, and that’s what Stage 4, in effect, does. So, it’s not clear how a Report Stage would work in those circumstances.

[100] **Alun Davies:** Well, Report Stage, normally, is not a rerun of—I’m thinking possibly in House of Commons terms—Committee Stage. But it’s certainly not and shouldn’t be an option simply to have the same debate this week as we have already had two weeks ago. But there would be merit, surely, having made significant amendments, as has been done, you know—. I find it curious that some people argue that Government should make a whole series of amendments and then criticise the Government for making those amendments. But, in terms of where a Bill would be, subject to and following a series of amendments, there is no opportunity, then, to look at that Bill, which could have and might have changed quite significantly.

[101] **The First Minister:** It would depend how a process would work. I mean, I, personally, wouldn’t favour the system where the Report Stage is, in effect, another Stage 3 where any number of amendments are just put down once again and exactly the same situation happens again. I don’t think that adds anything. So, I think the answer would be it would depend on what the stage might look like. You know, is it something that would add a substantial amount of time to the passage of the Bill? How limited would the scope of the Report Stage be? Would there be the opportunity for, as it were, technical amendments to be put down, and if so, who would define what those amendments would be? I think all of those things would have to be looked at in terms of coming to a view as to whether a Report Stage of that kind would be appropriate.

[102] **Alun Davies:** Thank you very much.

[103] **David Melding:** I think, on this section, I saw Suzy first and then Simon, with points they want to clarify or add to. Suzy.

[104] **Suzy Davies:** Yes. Thank you very much. If I can just take you back, First Minister, to an earlier answer to Alun Davies, it’s on the issue of how the Welsh Government manages the balance between progressing legislation with the need for thorough scrutiny. Certainly, at Stage 2, and I think it’s actually here, as well, we’ve had Ministers try and argue that one of the reasons that certain provisions might be deferred to secondary legislation rather than appear on the face of the Bill is the fact that there isn’t time for much scrutiny; it’s one of the factors they take into account in deciding what goes on the face of the Bill and what goes into secondary legislation. Do you think that’s a relevant consideration?

[105] **The First Minister:** I think thinking about the capacity and the workload on

Members of an Assembly committee is something, certainly, that Ministers are aware of. We have to take these decisions as well. For example, our capacity to produce legislation isn't unlimited. We have a legislative programme we have to take forward; we have to bear in mind the legislative capacity that we have and that does have a bearing then on the view that we sometimes take of private Members' Bills, where the amount of legal capacity, particularly, that has to be dedicated to a private Member's Bill can sometimes be quite significant and it can interfere with their own legislation because of it.

[106] So, we are not unmindful of the scrutiny pressures, which, to my mind, can really only be resolved by an increase in the number of Members, which, of course, is something that we know there is a logical argument for, but is not easy to get past the public.

[107] **Suzy Davies:** Well, I perhaps wouldn't—. Sorry, if I could just ask one more. Perhaps I wouldn't disagree with you on that, but, actually, a principle for deciding what is primary and what is secondary legislation; that's the crux of my question.

[108] **The First Minister:** Well, that wouldn't be the only reason. I mean, there are a number of issues that are examined when doing that. Capacity might be one issue, but the other issues would be to do with the issue of flexibility and the need sometimes to futureproof legislation to make sure we don't have legislation that becomes obsolete quickly and then there's need for an amended Act to change that legislation, but it certainly wouldn't be the case that we decide on what is and what isn't in the Bill according to our analysis of the scrutiny capacity of the Assembly.

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

[110] **David Melding:** Simon.

[111] **Simon Thomas:** Pam ydych chi'n meddwl bod yna gyn lleied o welliannau wedi cael eu cynnig gan Aelodau meinciau cefn y blaid mewn Llywodraeth? **Simon Thomas:** Why do you think that so few amendments have been tabled by backbench Members of the party in Government?

[112] **Y Prif Weinidog:** Wel, achos, fel Llywodraeth, mae gennym dueddiad i gefnogi beth mae'r Llywodraeth yn ei wneud gan law Llywodraeth Lafur yw'r Llywodraeth. **The First Minister:** Well, because, as a Government, we tend to support the Government because it is a Labour Government.

14:15

[113] **Simon Thomas:** Ie, mae hynny'n esbonio cefnogi'r Llywodraeth a gwelliannau'r Llywodraeth, ond nid yw'n esbonio pam mae cyn lleied o welliannau yn cael eu cynnig mewn pwyllgor ac yn *Stage 3* gan Aelodau meinciau cefn y Llywodraeth. Mae'n mynd yn ôl i'r pwynt roedd Alun Davies yn ei godi ynglŷn â diwylliant meinciau cefn. Mewn unrhyw Senedd arall, mae gan feinciau cefn y Llywodraeth ymgyrchoedd eu hunain, mae ganddyn nhw bethau etholaethol maen nhw eisiau eu gweld, ac maen nhw'n defnyddio gwelliannau nid o reidrwydd i wella Bil, ond **Simon Thomas:** Yes, that explains support for Government amendments, but it doesn't explain why so few amendments are put forward in committee and at Stage 3 by backbench Members of the Government. It goes back to the point that Alun Davies raised in relation to the backbench culture. In any other Parliaments, the Government's backbenchers have their own campaigns, they have constituency-based issues that they want to raise, and they use amendments not necessarily to improve a Bill, but to drive that process of drawing those issues to the attention of the Government, and perhaps

i yrru'r broses yna o ddod â materion gerbron y Llywodraeth, ac efallai newid rhywfaint ar bolisi neu'r ffordd mae'r Llywodraeth yn mynd i fihafio yn y dyfodol. Nid ydym yn gweld dim o hynny yn y fan hyn. Rwyf wedi bod ar bum Bil, ac nid wyf wedi gweld un gwelliant o gwbl gan Aelod o'r Blaid Lafur, er bod yr adroddiadau gan y pwyllgorau sy'n edrych ar y Bil yn rhestru'r gwelliannau sydd angen eu gwneud yn y Bil, ac wedyn does dim un o'r blaid sydd mewn Llywodraeth yn cynnig y gwelliannau yna. A ydy hyn yn ffordd iach o barhau?

[114] **Y Prif Weinidog:** Ond y tueddiad o fewn y Blaid Lafur yw bod Aelodau yn mynd at y Gweinidog a gofyn i'r Gweinidog i gefnogi rhywbeth, ac mae'r Gweinidog wedyn yn gallu gwneud hynny. Felly, y broses sydd gennym ni yw nid bod Aelodau yn dod i rhywbeth o flaen y pwyllgor i ddechrau, ond maen nhw'n mynd at Weinidog er mwyn sicrhau eu bod nhw'n cael cefnogaeth y Gweinidog, ac wedyn symud ymlaen o hynny.

[115] **Simon Thomas:** Felly, pam nad yw'r Llywodraeth, wrth ymateb i welliannau'r pwyllgor, yn dweud hynny yn blwmp ac yn blaen?

[116] **Y Prif Weinidog:** Mae fe wedi digwydd; rwy'n gwybod unwaith lle nad oedd modd i'r Llywodraeth gefnogi gwelliant a oedd yn dod gan Aelod o'r Blaid Lafur—mae hynny wedi digwydd, ac mae hynny'n iawn.

[117] **Simon Thomas:** Mae yna enghraifft eithaf diweddar o rywbeth fel yna, oes.

[118] **Y Prif Weinidog:** Mae hynny'n hollol iawn.

[119] **Simon Thomas:** Mae'n enghraifft mor brin, mae'n dod i feddwl.

[120] **Y Prif Weinidog:** Ond pe bai Aelod eisiau codi rhywbeth a sicrhau bod rhywbeth yn cael ei ystyried gan Weinidog, beth sy'n digwydd gyda ni yw y byddai'r person yn mynd at y Gweinidog er mwyn cael cefnogaeth y Gweinidog.

[121] **Simon Thomas:** So, nid ydych yn

changing a little of the policy of the Government or how the Government will behave in future. We see none of that here. I have worked on five Bills, and I've not seen any amendment by a Member of the Labour Party, even though the reports of the committees looking at the Bill do list those amendments that need to be made to the Bill, but then no-one from the party that is in Government puts forward those amendments. Is that a healthy way to proceed?

The First Minister: What tends to happen within the Labour Party is that Members approach the Minister and ask the Minister to support something, and then the Minister can do so. So, the process we have is not that Members bring something before the committee initially, but they approach the Minister to ensure that they receive the Minister's support, and then progress from there.

Simon Thomas: So, why doesn't the Government, in responding to committee amendments, say that?

The First Minister: It has happened; I know on one occasion where it wasn't possible for the Government to support an amendment put forward by a Labour Party Member—that has happened, and that's right.

Simon Thomas: There's quite a recent example of that, yes.

The First Minister: That's right.

Simon Thomas: It's so rare that it comes to mind.

The First Minister: But if a Member wanted to raise something and ensure that it was taken into account by a Minister, what happens with our group is that that individual would approach the Minister in order to seek the Minister's support.

Simon Thomas: So, you're not concerned

pryderu o gwbl am hyn.

[122] **Y Prif Weinidog:** Mae yna ddigon o lobïo Gweinidogion yn digwydd gan Aelodau meinciau cefn y Blaid Lafur; nid yw'n wir i ddweud eu bod nhw'n eistedd yna a dweud dim byd. Mae yna lawer o ddadlau, maen nhw'n dod â phroblemau at Weinidogion, felly, na, fyddai fe ddim yn wir i ddweud bod fy Aelodau i ar y meinciau cefn yn derbyn popeth a ddim yn gofyn cwestiynau—wrth gwrs eu bod nhw—ond maen nhw'n ei wneud e mewn ffordd wahanol i San Steffan.

[123] **Simon Thomas:** Ond yr argraff mae'n roi yw mai dim ond y gwrthbleidiau sydd yn ceisio gwella deddfwriaeth, ac mae hynny'n peri i'r argraff yma gael ei rhoi bod y Llywodraeth mewn un sefyllfa a bod y gwrthbleidiau mewn sefyllfa arall, a'r Llywodraeth yn gwrthod y gwrthbleidiau bob tro—nid bob tro, byddech chi'n ddweud, ond 85 y cant o'r amser yn gwrthod y gwrthbleidiau. Ac mae'n edrych felly fod gyda ni Senedd sydd ddim yn gweithio fel Senedd, ond sy'n gweithio jest fel dwy ochr y tŷ, fel petai, ac nid yw hynny'n rhoi argraff fwyaf buddiol o ddemocratiaeth ar waith, nac ydy?

[124] **Y Prif Weinidog:** Ond rwyf wedi gweld sawl enghraifft o Aelodau meinciau cefn y Blaid Lafur yn gofyn cwestiynau anodd i Weinidogion mewn pwyllgorau—

[125] **Simon Thomas:** Dylen nhw hefyd.

[126] **Y Prif Weinidog:** Felly, nid yw'n wir i ddweud nad ydynt yn gofyn cwestiynau anodd a'u bod nhw ddim ond yn gofyn cwestiynau sydd yn rhwydd i Weinidogion eu hateb—nid felly mae hi, ac rwyf wedi ei weld fy hunan. Mae hynny'n rhan o'r broses; nid oes ots gennyf i am hynny o gwbl. Ond er ei bod yn wir i ddweud bod gwelliannau fel rheol ddim yn cael eu doddi i lawr, byddai'n wir i ddweud bod Aelodau Cynulliad y Blaid Lafur yn gofyn cwestiynau anodd i Weinidogion, ac mae'n bwysig bod Gweinidogion yn rhoi'r atebion iddyn nhw.

[127] **Simon Thomas:** Rhaid i ni dderbyn eich gair ar hynny, achos nid wyf yn ei weld e.

about this at all.

The First Minister: There is plenty of lobbying of Ministers going on by Labour Party backbenchers; it's not true to say that they are sitting there silent. There is a lot of debate, they bring concerns to Ministers' attention, so it's not true to say that my backbench Members accept everything put forward by Government and don't ask questions—of course they do—but they do it differently to the way it's done in Westminster.

Simon Thomas: But the impression that it gives is that it's only the opposition parties that try to amend legislation, and that gives rise to this impression that the Government is in one situation and that the opposition parties are in another, and the Government is rejecting the opposition parties every time—not every time, you would say, but 85 per cent of the time. And it seems therefore that we have a Parliament that doesn't operate as a Parliament, but works as two sides of the house, as it were, and that doesn't give the most beneficial impression of democracy at work, does it?

The First Minister: I've seen numerous examples of Labour Party backbench Members asking difficult questions of Ministers in committees—

Simon Thomas: And so they should.

The First Minister: So, it isn't true to say that they don't ask difficult questions and that they only ask easy questions of Ministers—that's simply not the case, and I've faced that myself. That's part of the process; I have no problem with that at all. But although it is true to say that amendments as a rule aren't tabled by Labour backbenchers, it is true to say that Labour Party Assembly Members do ask difficult questions of Ministers, and it's important that Ministers answer those questions.

Simon Thomas: We'll have to take your word for that, because I don't see it myself.

[128] **Y Prif Weinidog:** Nid yw'n wir i ddweud bod yna ryw fath o restr o gwestiynau mae Aelodau'n eu gofyn a bod Gweinidog yn rhoi'r atebion; mae gan Aelodau berffaith hawl i ofyn cwestiynau sydd yn profi'r Gweinidog.

[129] **Alun Davies:** And we don't need Simon Thomas to tell us how to do it.

[130] **David Melding:** I think we've given that an airing, and I'll ask William Powell to take us through the final section.

[131] **William Powell:** Thank you, Chair. Good afternoon, First Minister. How satisfied are you currently with the progress that's been made in terms of the drafting and producing of bilingual legislation?

[132] **The First Minister:** I'm very satisfied, given the circumstances. We have to remember, of course, that Welsh has been resurrected as a legal language after 1,000 years, and to do that in quite a short space of time—2007 onwards, well, 1999 onwards, but 2007 onwards for quasi-primary legislation, and primary legislation from 2011 onwards—a huge amount of work has been put into producing dual language texts. We have looked at other jurisdictions where this is normal—Canada being one example there. Ensuring that there are people with the appropriate Welsh-language skills within the Office of the Legislative Counsel has been a priority for us.

[133] There were two challenges at the beginning of the process: firstly, to ensure that we could recruit drafting lawyers, and they are very rare indeed; and secondly, of course, to recruit drafting lawyers who are also, not just bilingual, but bilingual in the law—able to operate in a legal drafting context in Welsh. So, given the timescale, I think the achievement has been huge to produce bilingual primary legislation and to produce legislation that, as far as the courts are concerned, has been sound.

[134] **William Powell:** That's helpful; thanks. In answer to an earlier question, you referred on a number of occasions to capacity. How resilient do you consider the current drafting teams to be, given the extreme pressures that they're working to? Also, is staff retention an issue that may become a concern at a future time, or has it been up to this point?

[135] **The First Minister:** I'll ask Dylan to come in in a second, but I think the answer from my point of view is I am far happier now than I was in 2011, when I think we were very thinly spread. Much work has been done since that time to make sure that we have the right capacity in place. Perhaps I could ask Dylan to come in on the detail.

[136] **Mr Hughes:** Yes. I think I mentioned this when I appeared before the committee a couple of weeks ago. We've expanded now to 14 people. In terms of resilience, that enables us to do two things: it enables us to put more time into the process, to be involved sooner in the process, and to have processes internally so that we're able to check the work of each other, which was something that we possibly didn't do enough of because of the capacity issues that we had initially. I think I also mentioned that we've got a framework in place for the use of consultants. So, that's another mechanism that we have in terms of resilience so that, as and when required, we can draw upon the experience of those people. So, as the First Minister said, it is considerably better than it was at the beginning of this Assembly.

[137] **William Powell:** To what extent are we able, and is it necessary for us, to draw on good practice elsewhere—obviously, not in terms of the Welsh language context, but in terms

of the wider experience of drafting skills?

[138] **Mr Hughes:** Again, I think, to an extent, we went into this last time, but we have a very close working relationship, obviously, with the Parliamentary Counsel's office in London. That's the starting point for us. They helped us a great deal during the third Assembly. They were actually involved in some of the drafting. They helped us, as I mentioned earlier on, at the beginning of this Assembly when we were fewer in number. Whilst we weren't able to use the resources that were available in the Parliamentary Counsel's office in the same way as before, they did still help us, and they were able to help us in terms of providing some more experience, providing some of the checking that we now are able to do ourselves. So, that's the starting point. We also meet regularly with the—. I personally meet the heads of the drafting offices every six months—so, my counterparts in Scotland and Northern Ireland. We work quite closely and we've learned a lot from each other. This was particularly important when we were expanding the office, because we wanted to look at the ways that other jurisdictions had approached this, and to look at the processes that they have in place, and that was an obvious place for us to learn. As well, there is a wider drafting community. The Commonwealth Association of Legislative Counsel is meeting in Edinburgh in April, and I'm actually speaking at that conference. That, again, is a source of expertise for us. These people have been doing it for a lot longer than we have, and we'd be foolish not to learn from them.

[139] **William Powell:** Yes, absolutely. Thank you very much. I'd like to turn now to the impact that certain Supreme Court rulings have had during the life of this fourth Assembly. We've had a number of headline rulings. I wonder, First Minister, if you could speak to that point as to its impact on both Government legislation and also the wider legislative programme.

[140] **The First Minister:** I think the two that are worth considering here are, firstly, the Agricultural Sector (Wales) Bill, which was hugely important in the sense that it offered a great deal more flexibility—you could almost argue that it was more than Scotland—in terms of what was within the competence of the National Assembly. The waters have been muddied a little by the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill judgment, where the Supreme Court have not made it clear, if I'm blunt, especially in the light of the agricultural sector wages Bill, where that competence lies in every single case. The agricultural sector wages Bill was incredibly important in terms of providing a level of clarity that doesn't exist in the legislation, but, again, it's not as clear as we would want it to be in the light of the last judgment on the asbestos Bill.

[141] **William Powell:** Thanks very much. Following the UK Government's St David's Day command paper, you've made some very interesting comments on the potential significance of a new Government of Wales Bill, in terms of its potential to narrow the devolution settlement rather than taking it forward. In the context of that, and maybe also some of the comments attributed to Owen Smith in your own party regarding the potential ebb and flow of devolution, could you explain what implications you see a new Government of Wales Bill potentially having on the process?

[142] **The First Minister:** On the model of devolution?

[143] **William Powell:** On the model, yes.

[144] **The First Minister:** Having a reserved powers model is hugely welcome. There's no party that argues against that. The fact that we have a very different model to Scotland, a very different model again from Northern Ireland, which is another model that is different from Scotland. The fact that we've had Bills that have had to be referred to the Supreme Court, shows that the model we have now has come to the end of its useful life. So, I don't think that

anybody's disagreed with that, particularly. But, there will be devil in the detail, because we take a very different view from some Whitehall departments as to what is and what isn't devolved. There may be attempts to define the reservations to Westminster in too extensive a way in terms of what we would like to see. For example, would there be an attempt to redefine competence over agricultural wages so that it was specifically excluded? We don't know what would happen, so a huge amount of work will need to be done to make sure that, whilst there is goodwill towards the model being implemented, it doesn't lead to an inadvertent or not-so-inadvertent attempt to restrict the current powers that the Assembly has.

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

[146] **David Melding:** Suzy first, then Simon.

[147] **Suzy Davies:** Yes, just on this point, if we set aside any specific exclusions and exceptions, how likely is it that a judge would interpret in any court in a way that would allow retrograde steps to be taken in terms of devolution? In all those fuzzy edges—

[148] **The First Minister:** Under the current system?

[149] **Suzy Davies:** No, under a new system.

[150] **The First Minister:** Much more difficult. There'll be far greater clarity, because we would know—. The assumption would be that what it is not specifically reserved is devolved. We see that that system has—. It's not perfect, but it's worked pretty well in Scotland. What we have is almost the opposite: it's a hangover from the days of the Welsh Office where, for example, those of us who were here, Chair, from 1999 will know that the Welsh Office—. There was not much scope for innovation in the Welsh Office. There was in some parts of the Welsh Office, but in the main, it wasn't encouraged to be innovative in its thinking—different to the Scottish Office. As a result of that, quite often we found that we had bits of areas that were devolved, so, for example, animal health was devolved apart from foot and mouth disease, for no reason that we could see. There are still issues with marine legislation. There's no logic to them. The conferred powers model has helped in some instances in us being able to understand some more clarity in terms of what we can legislate for, but there are still far too many fuzzy edges. The one that I always use is the fact that adoption law, for example, is devolved, but family law isn't. I mean, that doesn't make—. I know what you were trying to say, but it's an inelegant way, shall we say, of drafting an exception.

[151] **Suzy Davies:** Okay, because what I'm trying to get to is, if there are going to be far fewer fuzzy edges now, are any concerns about the inadvertent narrowing of devolution perhaps overstated? With the clear and obvious attempts—and I hope there won't be any—that's one thing, but—

[152] **The First Minister:** Well, the difficulty is—. This is not an issue that appertains to Ministers rather than to the way that some Whitehall departments work; they'd do the same whoever was running them. I think there are issues, certainly, that we have with some departments that aren't there with others. Those that are used to dealing with devolved administrations tend to be far more understanding of the model that exists within the UK of devolution. There are different models of devolution. There are others, the Home Office being one example, that are not as well briefed in terms of the way that devolution operates in Wales. Whitehall departments will argue that, in some areas, no doubt, what we assume to be devolved is not devolved. They will do that, not malevolently, particularly, but that's the position that they take. So, certainly, there will be debate and discussion, regardless of what happens after May, I suspect, in terms of where exactly the lines lie.

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

[154] **David Melding:** Simon.

[155] **Simon Thomas:** Jest ar y pwynt yna, gan eich bod chi wedi dweud bod angen bod yn wylidwrus ynghylch rhai o'r pethau yma, a oedd unrhyw drafodaeth o gwmpas y broses a oedd yn arwain at y cyhoeddiad ar Ddydd Gŵyl Dewi, naill ai o gwmpas beth ddylai gael ei gadw ai peidio, neu, o leiaf, o gwmpas y broses a oedd yn cael ei defnyddio i sicrhau'r model newydd?

Simon Thomas: Just on that point, as you have said there is a need to be vigilant in relation to some of these issues, have there been any discussions around this process that has led to the St David's Day announcement, either about what should be reserved or not, or, at least, around the process adopted to secure this new model?

[156] **Y Prif Weinidog:** Roedd yna fanylion a gafodd eu trafod, ynglŷn â lle roedd yna gytundeb rhwng y pleidiau; roedd yna restr eithaf manwl ac aethom ni drwy'r rhestr yna mewn ffordd fanwl. Ynglŷn â'r ffordd ymlaen, rwy'n credu bod yna gytundeb rhwng y pleidiau y bydd hyn yn cael ei symud ymlaen nawr drwy Ddeddf. Ond, wrth gwrs, gydag unrhyw fanylion, yr hyn nad yw'n glir yw lle fydd yna anghytuno ynglŷn â ble mae'r llinell yna'n cwmpo.

The First Minister: There were details discussed in terms of where there was agreement between parties; there was a relatively detailed list and we went through that in great detail. In terms of the way forward, I think that there is agreement between the parties that this will now be progressed through legislation. But, of course, in terms of any detail, what isn't clear is where there will be disagreement about where the line actually lies.

[157] **Simon Thomas:** Ond, a oes unrhyw broses i sicrhau, dywedwch, fod dim byd yn cael ei roi yn y Ddeddf oni bai bod y Llywodraeth yn fan hyn yn cytuno? A oes yna broses fel yna wedi'i chytuno, neu a ydy e'n llwyr i fyny i'r Llywodraeth nesaf yn San Steffan?

Simon Thomas: But is there a process to ensure, for example, that nothing is included in the Act unless the Government in this place agrees? Has such a process been agreed, or is it just up to the next Westminster Government?

[158] **Y Prif Weinidog:** Yn gyfansoddiadol, mae hynny'n iawn, ond byddwn i'n gobeithio na fyddai hynny'n iawn yn wleidyddol. Byddwn i'n erfyn bod y broses yn parhau lle mae yna gydweithio rhwng llywodraethau, ta beth fyddai'n digwydd, er mwyn sicrhau bod gyda ni Ddeddf y mae'r rhan fwyaf o bobl yn hapus â hi. Rŷm ni'n moyn gweld yr heddlu wedi'i ddatganoli, ac mae yna bleidiau eraill sy'n cymryd barn arall ar hynny. Ond, ynglŷn â beth sydd wedi cael ei gytuno, byddwn i'n erfyn bod hynny'n symud ymlaen ac ni fyddwn i'n erfyn gweld unrhyw fath o gulhau ar bwerau'r Cynulliad, fel rŷm ni'n eu gweld nhw.

The First Minister: Constitutionally, that's right, but I would hope that, politically, it wouldn't be. I would want to ensure that the process should continue where there is collaboration between governments, whatever happens, in order to ensure that we have legislation that the majority of people would be content with. For example, we want to see policing devolved, and there are other parties that take a different view on that issue. But, in terms of what's been agreed, I would hope that that could now proceed and I wouldn't want to see any narrowing of the powers of the Assembly, as we see them.

[159] **Simon Thomas:** A ydych chi'n gweld rôl ar gyfer llywodraethau eraill yn y Deyrnas Gyfunol yn y broses yma? Mae'n brin o'r confensiwn rydych chi wedi galw amdano, ond a oes yna unrhyw rôl iddyn nhw

Simon Thomas: Do you see a role for the other governments within the United Kingdom in this process? It might be a step back from the convention that you want to see, but is there a role for them in ensuring

hefyd, wrth sicrhau bod yna setliad mwy cytbwys i bawb?

that there is a settlement that's more balanced for everyone?

[160] **Y Prif Weinidog:** Nid ydyn nhw wedi dangos lot fawr o ddiddordeb yn hynny lan i nawr. Yn yr Alban, wrth gwrs, mae'n wir dweud bod datblygiadau cyfansoddiadol yr Alban wedi bod yn ddatblygiadau sydd wedi cael eu hystyried yn fanwl yn yr Alban; nid oes lot fawr o sylw wedi cael ei roi i Gymru, yn yr Alban ynglŷn â hynny. Mae Gogledd Iwerddon yn wahanol, ynglŷn a'r setliad cyfansoddiadol yn fanna—

The First Minister: They've not shown a huge amount of interest in that to date. In Scotland, of course, it's true to say that constitutional developments there have been developments that have been considered in detail in Scotland; Wales hasn't been given much coverage in Scotland in that regard. Northern Ireland is different in terms of the constitutional settlement there—

[161] **Simon Thomas:** Nid ydyn nhw'n wahanol ynglŷn â rhai o'r pethau sydd, o bosib, yn cael eu datganoli, nac ydyn?

Simon Thomas: But, it's not different in terms of some of the things that are devolved, is it?

[162] **Y Prif Weinidog:** Mae lot yn fwy wedi cael ei ddatganoli. Mae yna broses yng Ngogledd Iwerddon lle mae yna bwerau sydd wedi cael eu trosglwyddo, pwerau sydd wedi cael eu cadw, a phwerau eraill sydd yn rhai hanner a hanner, lle maen nhw'n mynd i gael eu trosglwyddo os bydd rhai amgylchiadau yn cael eu cwrdd—mae'r heddlu a chyfiawnder yn enghraifft o hynny. So, mae'r system dipyn bach yn wahanol yng Ngogledd Iwerddon. A ydw i'n credu y bydd yna ddiddordeb yn yr Alban ac yng Ngogledd Iwerddon ynglŷn â beth fydd setliad cyfansoddiadol Cymru? Na, nid wyf yn credu y bydd yna lot fawr o ddiddordeb. A ddylai fod diddordeb ynglŷn â setliad cyfansoddiadol i'r Deyrnas Unedig? Wel, o beth rydw i wedi'i glywed, mae yna ddiddordeb yn hynny. Mae hynny, wrth gwrs, yn rhywbeth sy'n wahanol, ac ni fyddwn i'n moyngweld unrhyw gonfensiwn cyfansoddiadol yn arafu'r broses sydd wedi cael ei dechrau o achos y drafodaeth sydd wedi cael ei dechrau ynglŷn â phroses Dewi Sant.

The First Minister: Well, far more has been devolved. There's a process in Northern Ireland whereby there are powers that are transferred, powers that have been retained, and then other powers that are 50/50, if you like, and they will be transferred if certain circumstances are met—policing and justice is one example of that. So, the situation is a little different in Northern Ireland. Do I think that there will be interest in Scotland and Northern Ireland in terms of what the constitutional settlement for Wales will be? No, I don't think there will be any great interest. Should there be an interest in the constitutional settlement for the whole of the UK, well, from what I understand, there is interest in that. That is a different issue, of course, and I wouldn't want to see any constitutional convention actually slowing the process that has been started in terms of the St David's Day agreement.

[163] **David Melding:** There are a couple of points I just want to clear up, First Minister. Can I take you back to the issue of bilingual legislation? As the Minister responsible for the Welsh language, I wonder what sort of vision you have for—say, in five or 10 years' time—a more fully bilingual process to legislation within the Government and also within the Assembly. I think it's fair to say, on the evidence we received from Mr Hughes, that we're making progress, but it's still a fairly early stage. We don't have co-drafting, really, at the moment, as the norm. There may be, you know, the production of highly skilled translations that then, lead to discussion on points of ambiguity and working them out in both languages to see where we can get greater clarity. If we compare it to the way in which some of the provinces and the way the Government in Canada work, there's some way to go on that. I just wonder what your vision is. I don't say this in terms of censure, because I think we now more

fully understand the opportunities and the challenges here, but, as an aspiration, how fully do you uphold that?

[164] **The First Minister:** I think the immediate aspiration would be to move to a situation where we are not over-reliant on a translation service, I think that's fair to say, and to have, in time, more drafting lawyers who can truly operate bilingually in both languages. We would need then to recruit more drafters, more lawyers and more Bill officials who can work through the medium of Welsh, so that they can work with support from the translation service, but not relying on the translation service to translate, but, rather, they are seen as working seamlessly bilingually both as teams and as lawyers.

[165] Equally, it's important that we have translators who are familiar with the legal terminology. We have trainee translators at the moment, with a view to increasing capacity in that regard. But, I think, in a nutshell, what I'd say is that we would hope to move to a situation where both languages are equally at the forefront of drafting when Bills are drafted. It's going to take a little time to get to that position, but that would be the aspiration eventually.

[166] **David Melding:** Thank you; that's helpful. For my final question, can I place on record our thanks to your officials for the co-operation we've had? We've had some really interesting, candid evidence. We also found the Welsh Government—

[167] **The First Minister:** That worries me, Chair.

[168] **David Melding:** Sorry?

[169] **The First Minister:** The word 'candid'.

[170] **David Melding:** No, you shouldn't be worried; I just mean it was helpful. The Government's written evidence was excellent as well and has helped us in our inquiry. In paragraph 67 of that evidence, you do actually note that the explanatory memorandums vary significantly in terms of their quality. And this is the situation across the UK; it's not just in Wales. We found that quite a few witnesses commented on the variability of the standard of some of the explanatory memorandums. I just wonder what commitment you can give us that work will now commence to ensure that the general quality of explanatory memorandums is improved. That's not to say that there isn't some good practice now, but that we raise the standard.

[171] **The First Minister:** I did note that the Presiding Officer's officials were of the view that the explanatory memoranda were improving, so we take heart from that. There is variation across the UK in terms of explanatory memoranda—I think that's true to say as well. We know the documents have an important role to play in terms of setting out the context of legislation in terms of the options considered and, of course, to explain the intended effect. I think, as we explained in the evidence, that more can be done to improve the quality of explanatory notes, and that is something that is work that is in hand now.

[172] **David Melding:** Okay, I think that concludes this evidence session, and can I thank you again, First Minister, for helping the committee with its work, and also your officials?

[173] **The First Minister:** Thank you.

14:38

**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

[174] **David Melding:** We move now to item 3: instruments that raise no reporting issues. They are listed; there are lots of them. Are Members content?

14:39

**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**

[175] **David Melding:** Item 4: instruments that raise reporting issues. They're also listed. Are Members content? Any questions? Okay, we are content, then, with those reports.

14:39

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

Cynnig:

Motion:

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

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

*Cynigiwyd y cynnig.
Motion moved.*

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

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:39.
The public part of the meeting ended at 14:39.*